

GENERAL TERMS OF USE OF SUPPORT SERVICES

Updated on 3 September 2019

Introduction

PrestaShop S.A. is the designer and vendor of an open source software solution, distributed under a free licence, which allows its users to create an online shop.

The basic version of that solution can be freely downloaded at no cost from PrestaShop's website located at www.prestashop.com.

The solution has open source, modular architecture that allows each user to customize their online shop and implement additional features.

PrestaShop S.A. offers paid maintenance and support services for that solution.

Those services, which are reserved exclusively for professionals, are marketed and distributed via the website www.addons.prestashop.com.

The user, as defined below, has decided to subscribe to one of those support packages and has added a support service to their online order.

The present general terms of use and the appendices hereto define the Parties' rights and obligations in relation to the supply of the support services thus ordered by the user.

1. Definitions

Wherever they begin with an uppercase letter hereinafter, in either the singular or the plural form, the terms defined below will be understood as explained in this section.

Account: the private interface which allows the User to manage their account and submit Support Tickets.

Additional Support Ticket: a request for an extra Support Ticket, over and above the Ticket Limit.

Appendix: an appendix to the General Terms of Use.

Business Hours: 9 am to 6 pm CET, Monday to Friday (excluding French bank holidays).

General Terms of Use (GTU): the present general terms of use and the Appendices hereto.

Order: the order placed online by the User in order to receive Support.

Party / Parties: Hereafter referred to jointly as PrestaShop S.A. and the User and separately one of them.

PrestaShop: PrestaShop S.A., a limited company with registered capital of €339,227.10 whose head offices are located at 12 rue d'Amsterdam, 75009 Paris, France, and which is registered with the Paris Trade & Companies Register under number B 497 916 635.

Price: the cost of the Support as defined in the proposal accepted by the User and for which the Order was placed.

Scope of Service: the services provided in the name of Support, as exhaustively defined in Appendix 1.

Shop Set-up: a specific Support service to set up a Shop on behalf of the User, as per the terms and conditions defined for the Scope of Service.

Shop: an e-commerce shop built using PrestaShop software.

Start-up Package: a series of Support services designed to launch the User's Shop, as per the terms and conditions of the Scope of Service.

Support Period: the period during which PrestaShop S.A. will be bound to provide the Support, based on the User's submission of a Support Ticket under the Support Plan.

Support Plan: a complete plan identifying the Support services, the defined Support Period, Time Limit and Ticket Limit, and the terms and conditions of the Scope of Service.

Support Ticket: the User's request for Support on a given subject.

Support: the support and maintenance services subscribed to by the User as part of a Shop Set-up, a Start-up Package, a Support Plan or any other Support service covered by the Order, those services being exhaustively defined in Appendix 1.

Ticket Limit: the maximum number of Support Tickets which the User may submit in each calendar month in the Support Period, as set out in the proposal accepted by the User.

Time Limit: the maximum number of hours of Support which the User may request, as set out in the proposal accepted by the User.

User: any natural person or legal entity that has placed a Support Order for their business needs, and whose contact information is provided in the Account.

2. Acceptance of the General Terms of Use

The purpose of the General Terms of Use is to define the rights and obligations of the User

and PrestaShop as part of the provision of Support.

The User has been duly informed that the Support is reserved exclusively for professionals, as defined by consumer law, and represents being in possession of that status.

That representation was decisive to the willingness of PrestaShop to enter into this Agreement, as the Price was defined as a function of the exclusions and limitations of liability stipulated in the GTU.

The User's full and unreserved acceptance of the GTU is considered to have been given once the User ticked the "I agree to the general terms of use" box when placing or updating the Order.

If the User does not tick that box, their subscription to a Support service will not be possible and will be considered invalid, which consequence the User acknowledges.

3. Changes to the General Terms of Use

PrestaShop reserves the right to modify the General Terms of Use at any time, such modifications taking effect upon their publication on the website <https://addons.prestashop.com>.

Such changes will take effect when brought online on the PrestaShop website and will apply to all new Orders and renewals occurring after their effective date.

4. Submission of Support Tickets

Support Tickets may only be submitted during the Support Period and must not exceed the Ticket Limit or lead to an overrun on the Time Limit.

If, over the course of the Support Period, the User does not reach the Ticket Limit or the Time Limit, this will not give rise to a refund, credit or deferral to a later period, which eventuality the User accepts.

For the User to qualify for Support, they must submit Support Tickets exclusively from the Account, by means of the functionalities provided for that purpose.

If the Ticket Limit is reached before expiration of the Support Period, the User may request Additional Support Tickets, the Price of which is set out in the proposal accepted by the User.

5. Supply of Support

PrestaShop undertakes to provide Support to the User, exclusively during Business Hours, on the basis of a submitted Support Ticket falling within (i) the Scope of Service, (ii) the Time Limit and (iii) the Ticket Limit, as defined in the proposal accepted by the User.

The response time for Support is a maximum of 72 Business Hours.

Any fraction of a Support hour will be counted as a full hour, even if the actual Support time is less.

By express agreement, PrestaShop's obligation to provide Support is considered to be a best efforts obligation, with PrestaShop undertaking to make its best do everything in its power to handle the need or the problem expressed by the User in the Support Ticket, with no guarantee of results.

6. Specifics of migration requests

The User acknowledges that a migration request is divided into two (2) stages:

- a data migration phase, during which access to the Shop may be suspended for a maximum of five (5) business days;
- a configuration phase which should not in theory suspend access to the Shop, on condition of the User's responsiveness in providing information and taking an active role in the process.

During the five (5) business days following completion of the migration, the User may contact PrestaShop with any requests relating

to the migration. Such requests will not be processed however if a theme or module was purchased at the time of the migration.

The User acknowledges having chosen a host capable of handling the requested migration. PrestaShop declines all responsibility concerning the User's choice of host for the migration.

7. User cooperation

The User undertakes to give PrestaShop all the cooperation it needs in order to handle the Support Tickets and the Support Plan, which could in particular require the provision of remote access to the Shop's host and administration environment.

8. User data

The User undertakes to provide all the documents and information listed in Appendix 2.

The User undertakes to provide accurate, up-to-date data. All data which the User transmits to PrestaShop will be considered as accurate.

The User alone is responsible for backing up and protecting the User's data and, to that end, undertakes to take every useful and necessary measure to preserve the integrity of those data before and after any services rendered by PrestaShop and, more generally, throughout the Support Period.

The back-ups generated by PrestaShop during a Shop's migration will be kept for five (5) calendar days.

PrestaShop will delete any data transferred to it by email when it closes out the related Support Ticket.

The User undertakes to change its passwords used to access the closed Support Ticket, whether the data were transmitted to PrestaShop by email or in the Support Ticket. Consequently, PrestaShop shall not be held responsible in this respect.

9. Financial conditions

Unless the Parties have agreed otherwise, the User must, at the time of Order placement, make online payment of the Price of the Support, plus any applicable VAT, via the website <https://addons.prestashop.com> (payments accepted by bank card, PayPal account or bank transfer), which payment will only be applied to a single Shop.

An Order for one or several Additional Support Tickets will require immediate online payment via the website <https://addons.prestashop.com>.

Any unpaid invoices will give rise to late penalties as well as the application of a collections fee of forty euros (€40) exclusive of VAT, under the conditions laid down in Article L.441-6 of the French Commercial Code.

If a payment is rejected for any reason whatsoever, the provision or completion of Support may be suspended.

PrestaShop reserves the right to freeze a payment in order to perform verifications required by law, namely in respect of the prevention of money laundering.

Any requests for support services not covered by the Scope of Service will require a price quote provided in advance and duly accepted by the Parties.

10. Liability

Any liability which PrestaShop may incur on any grounds whatsoever in connection with the Support, shall not exceed the total Price of the Order, save in the case of fraud or gross negligence.

Moreover, PrestaShop shall not under any circumstances be bound to remedy any indirect damage including, but not limited to: loss of revenue or turnover, drop in traffic, loss of customers, damage to image or reputation, loss or theft of data, and so on.

Aside from the above, PrestaShop shall likewise assume no responsibility for damage originating in:

- the configuration of the Shop's host environment;
- the User's usage of a version of the PrestaShop solution other than the latest version;
- the User's failure to cooperate in resolving a Support Ticket;
- a loss of data, a computer virus or hack, or a slowdown or interruption in service on the User's website;
- the communication of incorrect information by the User;
- more generally, any circumstances attributable to the User or to one of the latter's service providers other than PrestaShop.

11. Force majeure

PrestaShop may suspend its provision of Support in the case of occurrence of an event outside its control, a force majeure event or an action by a third party outside the control of PrestaShop.

It is hereby agreed that the following may be considered force majeure events: legislative and regulatory modifications, fire, storm, flood, strike internal or external to PrestaShop, illness, power surge, electric shock, breakdown of cooling systems or computer hardware, blocked or slowed electronic communication networks, computer viruses and hacks and, more generally, any unforeseeable event outside PrestaShop's control.

12. End of the Support Period

The Support Period will come to an end on the earlier of either (i) the date on which the Time Limit has been reached or (ii) expiration of a period of twelve (12) months from the time of Order placement.

The User may subscribe to a new Support Plan via the website <https://addons.prestashop.com>.

In any case, the provision of Support will be dependent on the actual payment of the Price.

Given the nature of the Support services, each Support Ticket will be archived and then deleted after a period of five (5) years.

13. Termination

PrestaShop may unilaterally terminate the Support without notice, by sending a notification to the User by any means and without the need for any further formalities, if the User should:

- fail to pay the Price of the Support;
- violate the obligation of non-solicitation of personnel;
- broadcast denigrating remarks against PrestaShop or its solution;
- communicate incorrect information.

Termination of Support for any of those reasons will not give rise to any refund issued to the User.

It is further specified that this clause removes the requirement for PrestaShop to have the termination announced by legal proceedings.

14. Intellectual property

PrestaShop is a registered trademark in France, the European Union and internationally.

The present General Terms of Use entail no transfer of intellectual property rights, even for any such rights engendered during the provision of Support.

PrestaShop owns all the intellectual property rights relating to the PrestaShop software.

Use of the Support services will not confer any transfer of ownership to the other Party. Consequently, the User undertakes to refrain from infringing, in any way whatsoever, on the intellectual property rights held by PrestaShop and undertakes to take all reasonable measures to ensure compliance with those rights.

Sanctions for violations of intellectual property rights

In the event of the User's violation of the intellectual property rights of PrestaShop or of a third party on its Shop's website, of which PrestaShop has been duly notified in accordance with current legal requirements, the latter reserves the right to unilaterally terminate the Support within one (1) month of sending a notification to the User to that effect.

These actions shall not preclude any indemnification to which PrestaShop may be entitled.

15. Counterfeits

As part of the global fight against online counterfeiting, Users who create Shops warrant that their content is compliant with the applicable legislation, does not infringe upon the rights of any third party and does not market any counterfeit merchandise, and that they themselves are not the subject of any infringement or other legal proceedings. PrestaShop cannot be held liable for the sale of counterfeit items by a User.

16. Personal data

Information relating to our collection and processing of personal data is provided in our Personal Data Protection Policy, available via the [following link](#).

17. Confidentiality

Subject to the "Personal data" clause above, the Parties mutually undertake to protect the confidentiality of all information and work transmitted by the other Party as part of the provision of Support, to refrain from disclosing them to any third parties other than their employees and/or agents with a need to know, and to only use that information for the purpose of fulfilling their respective obligations under the General Terms of Use.

18. Non-solicitation of personnel

The User undertakes to refrain from making any job offers to or directly or indirectly hiring a member of PrestaShop's personnel throughout the Support Period and for an additional period of one (1) year from the date of termination of the Support.

In the event of violation of this clause, the User undertakes to pay compensation to PrestaShop in the form of a lump sum equal to two years of remuneration of each poached personnel member.

19. Agreement on proof

The information provided in the Account or by email, particularly information relating to Support Tickets and Support time, will be considered as being of probative force between the Parties.

To that end, the User hereby authorizes PrestaShop to record any information which may be useful to the establishment and conservation of such proof, subject to its compliance with all confidentiality obligations.

20. Business references

The User hereby authorizes PrestaShop to list the User as a business reference, including on its website, for promotional purposes. The User may object to such a mention by making an express request to that effect.

21. General provisions

Non-waiver

Should either Party elect not to invoke any of the clauses laid down in the General Terms of Use against the other Party, this shall not be interpreted as a waiver of its right to do so at a later date.

Entire agreement

No modification or addition made by the User to any of the provisions laid down in the General Terms of Use will be binding upon PrestaShop unless accepted in a written amendment, signed by a duly authorized representative of PrestaShop.

Severability

If any of the clauses of the General Terms of Use should become null and void or unenforceable, in whole or in part, the GTU will remain in effect as concerns the other clauses and the remaining provisions of the clause in question. The Parties will endeavour to renegotiate the said clause in good faith in order to achieve the Parties' aims at the time when the initial clause was written.

22. Applicable law and jurisdiction

Both the form and substance of these General Terms of Use are governed solely by French law.

In the case of the commercial courts' jurisdiction, any disputes relating to the validity, interpretation or execution of the GTU will fall under the sole jurisdiction of the Commercial Court of Paris, including in matters involving multiple defendants or the introduction of third parties.

APPENDIX 1: SCOPE OF THE SUPPORT SERVICES

1. *The Support services cover:*

- unfreezing of the User's back office and front office;
- email problems (emails not received by the User or the latter's customers);
- display problems (in the front office);
- the installation of native modules (excluding configuration);
- the installation of PrestaShop Addon modules (not including Zen options and excluding configuration);
- the installation of themes (only themes purchased on the PrestaShop Addons platform are covered);
- version updates as part of a migration;
- the installation of the PrestaShop software – subject to the provision of the documents and information listed in Appendix 2.

2. *The Support services do not cover:*

- actions performed on versions of the PrestaShop software which are under development;
- actions performed on PrestaShop software whose core has been modified by the User or at the latter's request;
- custom developments which the User wants to add;
- the creation of a graphic charter or a theme;
- repairs of source files modified by the User;
- the installation of community Addon modules not developed by PrestaShop;
- the resolution of errors in modules not developed by PrestaShop;
- support for errors which cannot be reproduced;
- travel to the User's site;
- Shop audits, except as part of subscribed options (performance and SEO audits);
- answers to functional questions about the use of the PrestaShop software.

3. *Start-up Packages do not include:*

- the installation of a theme which is not compatible with the Shop's version;
- the installation of a non-Addon theme;
- the configuration of transport carriers;
- the import or creation of a catalogue;
- the configuration of native modules;
- the configuration of payment methods;
- hosting of the online Shop;
- the purchase of a domain name;
- the Shop's search engine referencng.

4. *Password retrieval services:*

- include the creation of a new password for the Shop's registered employee(s), in the event of a forgotten password;
- do not include problems accessing the back office, other than in the case of forgotten passwords.

APPENDIX 2: ELEMENTS WHICH THE USER MUST PROVIDE TO PRESTASHOP

In the interest of the Support services, the User must first provide the following to PrestaShop:

- access to the back office (required: Admin URL, login and password);
- access to the FTP server (required: FTP URL, login and password);
- a domain name;
- an Apache 1.3, Apache 2.x, Nginx or Microsoft IIS web server;
- activation of PHP 5.1+;
- installation of MySQL 5.0+;
- an existing database;
- activated PHP extensions: GD, cURL, SimpleXML and SOAP.

In the specific case of the Start-up Package, the User must provide bank information to PrestaShop in order to set up the payment module.

APPENDIX 3: AMENDMENT RELATING TO PERSONAL DATA PROCESSING

This amendment, the above General Terms of Use of the Support Services and PrestaShop's [Personal Data Protection Policy](#), constitute the entirety of the terms of use of the Support, as applicable to all Users.

As part of that Support, the User may need to communicate personal data to PrestaShop. As defined by Article 4, points 7 and 8 of the General Data Protection Regulation (GDPR), the User is the controller, and PrestaShop is the processor, of the personal data.

Article 1. Definitions

For the purposes of this agreement, wherever the following terms begin with an uppercase letter, they will be understood as having the meanings defined below.

- **Breach:** a security breach leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, Personal Data transmitted, stored or otherwise processed.
- **Controller:** as defined by Article 4(7) of the GDPR. For the purposes hereof, the User is the Controller.
- **Customer:** any person who has entered into a contract with the User via the Shop.
- **GDPR:** Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016.
- **Personal Data:** any and all information relating to identified or identifiable natural persons (hereinafter referred to as "data subjects").

An "identifiable natural person" is any individual who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

Personal Data are those entrusted by the User to PrestaShop for the purpose of their Processing on behalf of the former under this agreement. These data are listed in Article 4 below.

- **Processing:** any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.
- **Processor:** the natural person, legal entity, public authority, service or other organization processing the Personal Data on behalf of the User. For the purposes hereof, PrestaShop is the Processor.

Article 2. Object

The purpose of this amendment is to define the terms and conditions under which PrestaShop undertakes to perform the Personal Data Processing operations described below.

Within the context of their contractual relations, the Parties undertake to comply with current Personal Data Processing regulations, particularly the GDPR (as well as the French Data Protection Act no. 78-17 of 6 January 1978, as amended).

Article 3. Term of the agreement

This agreement will take effect upon the User's subscription of the Support services and will come to an end upon termination of the said Support.

Article 4. Description of Processing

- Services rendered:

PrestaShop is authorized to process the Personal Data needed to provide Support to the User, on the latter's behalf.

- Types of operations performed:

Data Processing for purposes of Support entails access to the Shop's Personal Data when Support services are carried out on behalf of the User.

- Purposes of Processing:

This access is necessary in order for PrestaShop to satisfy its contractual commitments to the User and to provide the Support services.

- Processed Personal Data and data subjects:

The Support services require actions by our teams, performed on the Shop at the request of the User. Access to the Shop's back office necessarily provides access to the User's Personal Data (full name, email address and telephone number).

Likewise, PrestaShop may have access to Customer data. PrestaShop may have access to the following Personal Data: Customer identification data (full name, postal address, email address and telephone number), as well as to data about any purchases made on the User's website.

For the purpose of performance of the services covered by this agreement, the Controller will provide the Processor with the information required as per the latter's Personal Data Protection Policy.

Article 5. PrestaShop obligations

5.1. Personal Data Processing

PrestaShop undertakes to:

- (i) process the Personal Data **solely for the purpose(s)** of the Processing, as defined in Article 3 and pursuant to the General Terms of Use of the Support Services;
- (ii) process the Personal Data **in accordance with the User's documented instructions**. If PrestaShop considers that an instruction violates the GDPR or any other provision of EU law or the laws of the EU Member States as concerns data protection, it will **immediately notify** the Controller. Further, if PrestaShop is required to transfer data to a country outside the European Union, it must inform the User of that legal obligation prior to Processing, unless the law in question prohibits such notification on important grounds of public interest.

To that end, the User's instructions concern the following:

- the provision of Support;
- Support functionalities;
- as documented in this amendment and in the General Terms of Use of the Support Services.

The User is hereby informed of the possibility of transmitting written instructions, so long as they are consistent with the Support services;

- (iii) **guarantee the confidentiality** of the Personal Data processed by virtue of this agreement. If PrestaShop should be legally compelled to transmit the Personal Data to an authority, it will first notify the User of this, unless the law should prohibit such notification on grounds of public interest;
- (iv) ensure that the **people authorized to process the Personal Data** by virtue of this agreement:
 - undertake to respect the confidentiality of the Personal Data,
 - receive the necessary personal data protection training;
 - only process the Personal Data for the aforementioned Processing purposes;
- (v) incorporate the principles of **data protection by design** and **data protection by default** into its tools, products, applications and services.

5.2. Subsequent Processing

PrestaShop may call on another data processor (hereinafter the "subsequent processor") to carry out specific Processing tasks.

The User is hereby informed that PrestaShop already uses the processors listed below for its Support services.

For the management and provision of Support to Users, PrestaShop uses software from Zendesk Inc., 1019 Market Street, San Bruno, CA 94103, USA.

That company is an active participant in the Privacy Shield, which guarantee that the level of personal data protection that it offers has been deemed sufficient and adequate.

As part of the PrestaShop Checkout solution, PrestaShop uses the company Active Contact to provide first-line support for Users. A subcontracting agreement and standard contractual clauses have been signed with them.

PrestaShop also uses Jira, software published by Atlassian, 341 George Street, Sydney, NSW 2000, Australia, to provide the ticketing system used to transmit User requests to the Support teams. That software is hosted internally on PrestaShop's Google server.

In the event of subsequent Processing, PrestaShop will inform the User of any changes involving the addition or replacement of other processors, at least one month prior to the change, so as to give the User the chance to share any objections to the said changes.

Whenever PrestaShop recruits a new processor, PrestaShop undertakes to ensure that the same Personal Data Processing obligations are imposed upon that subsequent processor as those defined herein, such that this sub-processor will also satisfy the requirements of the GDPR.

5.3. Data subjects

Data subjects' right to information: the User is responsible for communicating information about Personal Data Processing to its concerned Customers at the time of collection of the said data.

Exercise of data subjects' rights: as far as possible, PrestaShop will help the User to fulfil its obligation of handling requests from its Customers to exercise their rights – of access to, rectification or erasure of their Personal Data, to object to or restrict the Processing thereof, to data portability and to not be the subject of an automated decision (including profiling).

The services are set up so that the User can respond to its Customers' requests.

5.4. Notification of Personal Data Breaches

PrestaShop will notify the User by email of any Personal Data Breach within seventy-two (72) hours of having become aware of it. This notification will be accompanied by all useful information to enable the User to notify the competent data protection authority of the Breach, if necessary.

PrestaShop will provide the following information, where such is available:

- the nature of the incident;
- the date and time of detection of the incident;
- the affected Personal Data;
- any measures taken directly to limit any additional damage;
- the date and time when the incident came to an end;
- any structural prevention measures going forward.

5.5. Help

PrestaShop undertakes to help the User, to the extent possible, so that the latter may fulfil its obligations in respect of the aforementioned Processing, as concerns the conduct of any impact assessments, for the purpose of notification of a data Breach and for the exercise of Customer rights.

5.6. Fate of Personal Data

At the end of the Support services relating to Personal Data Processing, PrestaShop undertakes to return all Personal Data to the User or to the subcontractor designed by the latter.

That return will include all existing copies in PrestaShop's information system and written proof of their destruction, unless the applicable legislation prohibits the destruction of the Personal Data for a certain period of time. In that instance, PrestaShop undertakes to protect the confidentiality of the Personal Data and to archive them, namely to retain them as proof.

5.7. Documentation

PrestaShop represents that it will keep a written register of all categories of Processing activities performed on behalf of the User.

PrestaShop will provide the necessary documentation to the Controller to demonstrate compliance with all its obligations and to enable the User to conduct audits.

Article 6. User obligations

The User undertakes to:

1. document all of its instructions in writing concerning Personal Data Processing by PrestaShop, if specific instructions should be necessary;
2. ensure PrestaShop's compliance with the obligations laid down in the GDPR, before and throughout the Processing period;
3. supervise the Processing, including the performance of audits and inspections of PrestaShop's services;
4. report any Personal Data Breach which entails a legal obligation to notify the competent supervisory authority.

Article 7. Security measures

PrestaShop undertakes to implement technical and organizational measures intended to protect the security and confidentiality of the Personal Data against any unauthorized access, alteration, use, modification or disclosure during the performance of the Support services.

To that end, PrestaShop's Support staff are subject to an obligation of confidentiality.

Given the state of the art, the cost of implementation and the nature, scope, context and purposes of the Processing, the Parties undertake to implement all appropriate technical and organizational measures to provide a level of security which is commensurate with the risk.

The User is responsible for the Shop's security at all times.

Article 8. Responsibilities

The Parties acknowledge that they share responsibilities to the Customers, pursuant to Article 82 of the GDPR.

The User acknowledges that PrestaShop shall only be held liable for any damage caused by the Processing if the latter has failed to satisfy the obligations specific to processors under the GDPR.