

## **Terms and Conditions for the Evaluation of Software in Object or Source Code**

### **§ 1 Scope of Contract**

- 1.1 IXXAT delivers to client the source code or object code of the programs for evaluation purposes.
- 1.2 The evaluation license is restricted to client.

### **§ 2 Restrictions of Right of Use**

- 2.1 The software may be used for client's evaluation purposes or for the evaluation purposes of client's group of companies only. The use for client's development or production purposes or for those of any third party is expressly inadmissible. In particular, it is inadmissible to use the programs for developing purposes that may result in any competitive products.
- 2.2 The source code or object code as software or hardware may not be passed on to any third party.
- 2.3 It is excluded to copy or distribute the software in source or object code as software or hardware.
- 2.4 Client shall not be entitled to claim any rights or bring any actions against IXXAT with regard to any modifications and/or extensions of the programs client has developed.

### **§ 3 Client's Responsibilities for Software Protection**

- 3.1 Client acknowledges that the programs and the related documentation are copyrighted, and represent confidential information and trade secrets proprietary to IXXAT. Client shall take all necessary measures to avoid the disclosure of the programs and the related documentation to any third party without IXXAT's permission, nor shall any third party, including consultants or certified public accountants be entitled to copy them or take them out of client's business premises.
- 3.2 At the end of the evaluation period, client shall delete all copies of the programs and client shall notify IXXAT in writing that client has done so.
- 3.3 Client may not claim for re-payment of any consulting or support services IXXAT has rendered to IXXAT in connection with this evaluation contract.
- 3.4 The above obligations shall be permanent.

### **§ 4 Client's Obligations to Test the Programs**

- 4.1 Client shall test the software with diligent care before using the software and client shall in particular do so before client uses the software in any applications which may result in personal injury or death or in any economic loss, respectively. As regards the internal relationship of the parties, client shall be solely responsible for any damages resulting from product liability. This restriction shall not apply, if IXXAT has acted in bad faith or gross negligence or, acting in normal negligence, in case and to the extent to which damages are covered under IXXAT's business liability insurance and the insurance company has effected payment to IXXAT.

### **§ 5 Restriction of IXXAT's Liability**

- 5.1 With regard to the fact that the test installation is free of charge, IXXAT disclaims any liabilities in cases of normal negligence.

### **§ 6 Miscellaneous**

- 6.1 In addition, IXXAT's "Terms and Conditions for the Use and Maintenance of Software Products" shall apply. Please find them on the internet under <http://www.ixxat.com>.

- 6.2 In case client wishes to license the programs after the evaluation period, the parties shall enter into a separate license agreement.
- 6.3 The contract shall conform with and be governed by the laws of the Federal Republic of Germany without regard to its choice of law rules and excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods. If the customer is merchant in terms of law exclusive venue shall be IXXAT's main place of business.
- 6.4 In the event individual provisions hereof are invalid or impracticable, the validity of the remaining provisions hereof shall remain unaffected. The parties hereto shall replace the invalid or impracticable provision with the valid alternate provision which most closely approximates the economic purpose of the invalid or impracticable provision. The same shall apply where this agreement is silent.