

Terms and Conditions for the Repair of Hardware

§ 1 Scope of Contract

- 1.1 Client shall send the defective hardware to IXXAT, using the original packaging, if possible. Client shall re-implement the hardware itself after the repair. Before shipping, the Client shall apply for a RMA number (see IXXAT's website under Support/RMA-Procedure). The costs for shipment of the defective hardware to IXXAT have to be paid by the customer.
- 1.2 IXXAT shall name a responsible manager in case problems arise; Client shall name a contact person. Both shall promptly make the necessary decisions on their own authority or shall provide for them. The contact person shall provide all information required. IXXAT is obliged to contact the contact person if required to ensure the proper performance of the mutual obligations.
- 1.3 The customer is herewith informed that data, which is stored on the hardware to be repaired (e.g. configuration data) might be deleted or modified and that the customer himself is responsible for making a backup of this data before sending the hardware for repair.

§ 2 IXXAT's Claims, IXXAT's Delay

- 2.1 In the event of any circumstances for which IXXAT is not responsible, and which adversely affect the performance of the contractual obligations, including strike and lock-out, IXXAT is entitled to an appropriate adaptation of the terms of the contract, in particular to an appropriate extension of the delivery date. If the cause is attributable to Client and if it results in additional efforts to IXXAT, IXXAT is also entitled to additional compensation.
- 2.2 If IXXAT's delay exceeds 30 days, Client is entitled for every subsequent week to a penalty of 0,5 % of the value of that part of the works that cannot be used according to the purposes of the contract, but the penalty shall be limited to 5 % of the total contract value.

§ 3 Charges and Payments

- 3.1 When the warranty period is expired or if the defect was caused by the customer itself, IXXAT charges at least a 70 EUR fee for the repair. This is made without informing the customer in advance, except the customer informs IXXAT explicitly that he likes to be informed, which is possible by indicating this within the RMA form.
- 3.2 On request, IXXAT provides the customer a cost estimate for the repair.
- 3.3 Payments shall be due without deductions within 30 days after invoicing. After this period Client shall be in default without any further notice by IXXAT.
- 3.4 Duties, taxes and levies including VAT – if applicable – shall be paid by Client on all prices.

§ 4 Correction of Defects

- 4.1 Client shall test IXXAT's deliveries for defects without delay in the ordinary course of business.
- 4.2 If Client finds, in the course of correct use of the hardware, what Client believes to be a defect, Client shall provide IXXAT with reasonably specific information as to the nature of the defect and the conditions under which it occurs; in writing, if so requested by IXXAT.

Client is only entitled to raise claims if Client can reproduce the defect or demonstrate it by using computer output.
- 4.3 IXXAT shall, within a reasonable period of time and at no cost to Client, effect subsequent performance, i.e. at its discretion replace the defective hardware or correct any defects.

- 4.4 The obligation to effect subsequent performance shall be expressly excluded if Client modifies the hardware or manipulates it in any other way, unless Client proves, when reporting a defect that the defect did not result from any such modification or manipulation.
- 4.4 IXXAT is entitled to reimbursement of costs if Client reports what Client believes to be a defect without being able to prove it to be so.

§ 5 IXXAT's Liability

- 5.1 If IXXAT is in delay with the primary performance (delivery) or with the subsequent performance, Client is entitled to ask for the performance within an adequate period of time. If IXXAT definitely fails to effect the primary or the subsequent performance, in particular to cure the breach of contract within the notified period, Client may exercise its statutory rights, claims for damages, however, only within the limitations of § 5.3. IXXAT is entitled to set a period, within which Client must declare whether or not Client still requests primary or subsequent performance. If Client does not request primary or subsequent performance timely, Client cannot claim it any longer.
- 5.2 The period of warranty (the limitation period for claims based on defects) shall be 12 months.
- 5.3 IXXAT – including any person engaged in performing any obligation under this contract – shall be liable for damages under any claim based on normal negligence only if IXXAT breaches a basic obligation under this contract. In this event, IXXAT's liability shall be restricted to the higher of the following amounts:
- EUR 100,000.00,
 - the contract value, or
 - the characteristic and foreseeable damages.

The customer is entitled to claim for a higher maximum, but IXXAT may then require a surcharge for the aggravated risk.

These restrictions shall not apply if and to the extent to which damages are covered under IXXAT's business liability insurance and further provided that the insurance company has actually effected payment to IXXAT. IXXAT agrees to uphold the coverage of this insurance as given at the time of the signing of the contract.

Claims for personal injury shall remain untouched.

§ 6 Miscellaneous

- 6.1 The contract shall constitute the entire agreement between the parties and shall not be altered, amended or cancelled, except in writing and with the consent and signature of all parties concerned.
- 6.2 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. Exclusive venue shall be IXXAT's main place of business.