

Terms and Conditions for the Use and Maintenance of Software Products

I. Delivery of Standard Programs

§ 1 Scope of Delivery of Standard Programs

- 1.1 The programs shall operate as described in their product description and more detailed in their user documentation, which may describe functions which have not been ordered by Client.

The programs shall embody all legal and other provisions, with which the programs must comply.

- 1.2 The programs shall be delivered by IXXAT in a machine-readable format (object code), together with installation instructions and a set of user documentation, part of which may be stored on machine readable media.
- 1.3 IXXAT shall deliver the programs on media which shows that Client has acquired a legal copy of the programs. Unlimited ownership in the data carrier shall pass to Client only after full payment of the license fee.

§ 2 Right to Use Standard Programs

- 2.1 IXXAT grants to Client the right to use the programs to the extent agreed in the contract. Client may use the programs for its own purposes and for the purposes of Client's group of companies.

- 2.2 The license fee is determined by the extent of the right of use, in particular by the size of the configuration and/or the maximum number of simultaneously active users. Unless otherwise agreed, Client shall only be entitled to single use of the programs on one designated IT-system. If Client wants to extend the agreed maximum, Client shall pay an additional charge. Such extension of the use must be agreed on in advance.

Client is entitled to replace the IT-system by any other IT-system used by Client, but Client shall only be entitled to use the programs on one IT-system at the same time.

- 2.3 Client agrees to use the programs only on configurations that IXXAT has declared to be compatible with the programs. Client shall inform IXXAT of any modification of the used configurations without delay.
- 2.4 Client may transfer the right to use the programs by transferring the media with the programs in machine-readable format (object code, not source code) to another user if Client confirms to discontinue the use of the programs and the new user, before receiving the media, accepts in writing towards IXXAT to take over all obligations to protect the programs and to comply with the agreed restrictions of the right to use.

In case Client is entitled to use the programs on more than one IT-system, Client shall only be entitled to transfer the right to use the programs as a whole, and Client shall not be entitled to transfer any parts of its right of use. Client shall be entitled to transfer parts of the right of use, however, if Client completes its right of use for single IT-systems, i. e. if Client evens out the quantity rebate which Client has received with regard to the number of IT-systems, for which Client wants to transfer the right of use.

§ 3 Performance

- 3.1 Client shall be responsible for the installation of the programs on its IT-system. At Client's request IXXAT shall install the programs and render brief training into the operation of the

programs. In this case Client shall confirm the successful installation of the programs in writing. Any such support shall be reimbursed in accordance with § 9.2.

- 3.2 Client shall be responsible for the implementation of the programs, Client is also responsible to test the programs under the conditions they shall be used under productively, before using them productively. At Client's request, IXXAT shall provide support (i.e. consultancy, installation support, demonstration of proper installation, brief or extended training). Such support shall be reimbursed in accordance with § 9.2.
- 3.3 Client shall test IXXAT's deliveries for defects without delay in the ordinary course of business. Client shall also, in particular, test those parts of the programs which will be used only occasionally, for instance at the end of a year.
- 3.4 IXXAT shall name a consultant manager, Client shall name a representative. Both shall promptly make the necessary decisions on their own authority or shall provide for them. The consultant manager shall put decisions in writing. The representative shall provide all information required. IXXAT shall contact the representative as is required to ensure the proper performance of the mutual obligations.
- 3.5 In case it is agreed in the contract that IXXAT shall install the programs, Client shall ensure that its personnel is capable of handling the programs at the moment of installation at the latest. IXXAT recommends that Client's personnel shall have received extended training before the installation of the programs.

§ 4 Client's Responsibilities for Software Protection

- 4.1 Client acknowledges that the programs and the related documentation – including future versions – are copyrighted, and represent confidential information and trade secrets proprietary to IXXAT or to IXXAT's supplier. Client shall take all necessary steps to avoid disclosure of the source-code of the programs and the related documentation to any third party.

If and to the extent programs are delivered in source-code, Client shall make them available to any third party only with IXXAT's permission. Client's obligation shall be permanent. The permission may not be unreasonably withheld, but it need not be given to enable Client to obtain maintenance from a third party.

- 4.2 Client may copy the programs only for back-up purposes, for replacement or – if source-code has been delivered – in order to search for defects.
- 4.3 Client shall not be entitled to develop any programs based on IXXAT's programs, nor shall Client be entitled to copy, translate, modify or develop any works based on the user documentation.
Client may make copies of the user documentation only to the extent admissible and only for internal purposes.
- 4.4 IXXAT may revoke Client's right of use, if Client substantially violates its obligations referring to the restriction of use (§ 1) or to software protection. In cases of minor importance, IXXAT must first set a period, during which Client may make good its breach of contract.

II. Terms and Conditions for the Maintenance of the Programs – if offered in the Quotation –

§ 5 Scope

- 5.1 In case maintenance is agreed on in the contract, basic maintenance services comprise the delivery of new versions of the programs, the correction of incorrectnesses (after the end of the warranty period) and support by telephone related to the reporting of incorrectnesses during IXXAT's normal business hours, subject to a comprehensive charge.

Maintenance shall be rendered as from installation. The amount of the comprehensive charge, which shall be paid during the warranty period, shall be agreed on in the contract.

- 5.2 All other services shall be charged in addition, including, in particular, the installation of the new versions and the transfer of modifications onto the new versions of the programs or the adaptation of Customer's extensions to new versions.
- 5.3 The maintenance agreement shall run for an indefinite period of time. It may be terminated as to the end of a contract year (or to the end of a minimum period; if so agreed) by giving three month's notice in writing.

IXXAT is entitled to terminate the maintenance agreement before the end of the third full calendar year only for the purpose of adapting the maintenance services to new technical conditions, and, in particular, to the situation that the supplier of the system-software needed for the operation of the programs restricts the maintenance thereof.

§ 6 Correction of Deficiencies

- 6.1 Deficiencies are defined as deviations from the quality, which the current version of the programs is designed to have or must have for ordinary use.
- 6.2 Only the current and the immediately previous version of a program shall be supported (telephone support; correction of defects). The support for the immediately previous version shall end six months after the release of the new version. However, the support shall be continued, if the use of the new version is not acceptable to Client, provided that IXXAT is capable of doing so; IXXAT shall be entitled to reimbursement of its additional expenses (including the expenses for keeping the necessary maintenance environment).
- 6.3 The correction of defects as an agreed service shall be carried out according to the terms of § 12.

§ 7 Further Development of the Programs under Maintenance

- 7.1 IXXAT shall deliver any new version, together with one set of the related documentation after the release of such version, on a data carrier; amended parts shall be delivered in printing as well. This shall not apply to amendments which IXXAT offers separately as new products. Client shall test new versions before using them productively.
- 7.2 If a new version of such system-software needed for the operation of the programs for which the supplier offers maintenance is released by its supplier, IXXAT shall test whether or not it is compatible with the programs, and if this is the case, declare it as compatible (see § 2.3). If this is not the case, IXXAT shall adapt the programs within a reasonable period of time so that they are compatible with the new version of the system-software. Such period shall commence with the release of the new version and its availability to IXXAT.
- 7.3 With respect to system software for which its supplier does not offer new versions under a maintenance contract, but offers new generations from time to time for sale, the following shall apply: If the suppliers makes enhancements of the old generation available, IXXAT shall proceed in accordance with § 7.2.

If the supplier offers a new generation for sale, IXXAT will adapt its programs to such new generation taking into consideration the needs of all of his Clients. If IXXAT does so, IXXAT shall only be obligated to further develop its programs on this basis (see also § 7.4 para. 2).

- 7.4 Client shall ensure that its IT-equipment, in particular its system software, always meets the technical level which IXXAT's programs may require pursuant to § 7.2 and § 7.3. IXXAT shall in a timely manner inform Client of the technical level, which is required as from which date.

However, IXXAT must ensure that Client can use the old generation of the system software for at least three years, unless otherwise agreed. If necessary, IXXAT shall further develop its

programs on the basis of the old generation of the system software until this period is elapsed; but IXXAT is only obligated to keep its programs operational. This period shall commence with the release of each new generation of the system software; but if IXXAT has to make its programs compatible with a new generation of the system software, the period shall commence with the release of such compatible version of its programs.

Client agrees to install a new version or generation of the system-software only after IXXAT has released its programs for the use of this version or generation (§ 2.3).

Client shall inform IXXAT of the installation of a new version of the system-software beforehand.

- 7.5 § 7.2 to § 7.4 shall also apply to other programs with which IXXAT's programs shall be compatible, if a new version of those programs is released. Such programs may be programs of other suppliers or freeware or programs in public domain (e. g. Linux).
- 7.6 IXXAT is obligated to further develop its programs, if alterations of legal provisions or other provisions with which the programs must comply require such adaptation.
- 7.7 If the adaptations pursuant to § 7.2 to § 7.6 require major redevelopment of the programs, the comprehensive charge does not cover the delivery of the new version. In this event, IXXAT is entitled to an appropriate additional compensation taking into account the number of Clients that need and order such redevelopment. This shall also apply if new legal or other provisions with which the programs must comply have been introduced.
- 7.8 If a new version of the programs is not compatible with the old one, IXXAT shall make available migration tools insofar as technically and at acceptable costs to IXXAT feasible. With respect to third party programs, IXXAT is only obligated to pass such migration tools that it's supplier has made available to him.

§ 8 Charges and Payments

- 8.1 The comprehensive monthly charge shall be dependent on the agreed extent of the right to use the programs (see § 2.2). If the right to use is extended, the charge shall be adjusted accordingly. This shall be done on the basis of IXXAT's current price list.
- 8.2 The comprehensive charge shall be paid without deductions annually in advance.
- 8.3 IXXAT may increase the comprehensive monthly charge in accordance with its new price list for new maintenance agreements with effect from the next calendar year. IXXAT shall notify increases three months in advance. Decreases shall become effective immediately.

III. General Conditions

§ 9 Charges and Payments

- 9.1 The license fee shall be due with delivery.
- 9.2 All support (including specifically pre-installation support, further installations, brief or extended training or consultancy) shall be reimbursed on the basis of costs incurred. Hourly rates, travel expenses and incidental expenses shall be paid in accordance with IXXAT's current standard rates (price list), unless other rates are agreed on. IXXAT may submit invoices on a monthly basis.
- 9.3 Payments shall be due without deductions within 30 days after invoicing. Client shall be in default of payment after this period of time without any reminder.
- 9.4 Duties, taxes and levies including VAT - if applicable - shall be paid by Client on all charges.
- 9.5 If payments are delayed, Client is not allowed to use the programs.

- 9.6 Client has no right of retention, in particular no right to withhold payment. Client may set off only those sums owed by IXXAT, which are unappealable or uncontested against sums owed by Client.

§ 10 IXXAT's Claims, IXXAT's Delay

- 10.1 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.
- 10.2 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. If IXXAT is in delay with the delivery of a new version under the maintenance agreement (see § 7), the penalty shall be calculated on the yearly maintenance fee.

§ 11 Tele-Support

- 11.1 On request by IXXAT, Client shall enable IXXAT to carry out tele-support (tele diagnosis and tele corrections, transfer of new versions) to the greatest extent technically possible. In concert with IXXAT, Client shall provide a telecommunication connection as needed to meet the requirements valid from time to time at its own expenses so that the IT-systems can be connected. Client shall pay for communication costs, unless otherwise agreed.
- 11.2 For security and privacy purposes, access to Client's IT-system by IXXAT shall be controlled by a security procedure established by Client. Client shall release the connection. IXXAT shall inform Client of the work performed.
- 11.3 If Client does not enable IXXAT to perform tele-support, Client shall reimburse IXXAT's additional costs as a result thereof, in any case travel time and additional costs for the correction of defects.
- 11.4 If data are transferred to IXXAT for their restoration or for the search of defects, IXXAT shall establish all technical and organizational measures in its organization equivalent to those Client has to establish for security and privacy pursuant to the Data Protection Act applicable to Client. At Client's request, details shall be agreed on separately.

§ 12 Correction of Defects

- 12.1 If Client finds, in the course of correct use of the programs, what Client believes to be a defect in a program, 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.

Upon request, Client shall give all necessary support to IXXAT, and Client shall, in particular, provide a copy of the relevant program, which Client has used when the defect appeared. Client shall provide testing time on Client's IT-system and install corrections delivered by IXXAT.

- 12.2 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 program or correct any defects. If a defect substantially restricts the use of the programs, IXXAT shall provide a workaround (temporary solution), if needed, so that the defect is not substantial any longer.

IXXAT may deliver the correction of other defects in a new version as soon as adequate subject to a reasonable policy of further development. IXXAT shall develop workarounds insofar as these are technically and at acceptable costs to IXXAT feasible.

With respect to programs which are defined as third party programs, IXXAT can only use its best endeavors to obtain and transfer corrective measures and, if appropriate, provide workarounds.

- 12.3 The obligation to effect subsequent performance shall be expressly excluded if Client modifies the programs or manipulates them in any other way, unless Client proves, when reporting a defect, that the defect did not result from any such modification or manipulation.
- 12.4 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 (but Client's claim for basic support by telephone pursuant to § 5.1 shall not be affected).

§ 13 IXXAT's Liability

- 13.1 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 § 13.3. 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.
- 13.2 The period of warranty (the limitation period for claims based on defects) shall be 12 months. The extension of the right to use the programs (§ 2.2) shall not result in a new period of warranty.
- 13.3 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.

If an obligation on the grounds of the maintenance obligations (part II) is violated, the yearly charge of the year in which the damage occurs shall be set as the contract value.

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

The restrictions shall not apply to the extent the damages are covered under IXXAT's business liability insurance and provided the insurance company has effected payment to IXXAT. IXXAT agrees to maintain the coverage of the business liability insurance as provided at the time of the execution of the contract.

Claims for personal injury and claims based on the German Product Liability Act shall remain untouched.

§ 14 Confidentiality

- 14.1 IXXAT shall keep confidential Client's trade and business secrets, and all other information designated in writing as confidential by Client, obtained under or in connection with this contract. IXXAT shall have no obligation with respect to any information that is already in its possession, is independently developed or becomes publicly known through no wrongful act of IXXAT. This obligation shall survive the contract in the case of its rescission.
- 14.2 IXXAT is not obligated to keep confidential any ideas, concepts, know-how or techniques related to the development of software.

- 14.3 IXXAT shall require its employees to adhere to the obligations stipulated in § 14.1.
- 14.4 IXXAT may enter Client's name into its list of customers together with a short description of the IXXAT's performance. All other references that Client is IXXAT's customer are subject to Client's prior approval.

§ 15 General Matters

- 15.1 This 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.
- 15.2 The parties, if they are merchants by registration, hereby submit to the jurisdiction of IXXAT's main place of business.
- 15.3 This contract shall conform with and be governed by the laws of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods (which has been incorporated into German law) shall not apply to foreign Clients.