

IBExpert Contract Terms for the Supply of Software ("General Terms and Conditions Software")

I. Scope of application

The following terms and conditions of IBExpert ("IBExpert") governing the supply of software ("General Terms and Conditions Software") shall apply to all contractual relationships with Customers in connection with the permanent supply of software programs and shall be deemed to be an integral part of the contract unless otherwise agreed between IBExpert and the customer by an individual agreement in writing. The General Terms and Conditions Software supplement the IBExpert Standard Business Terms ("General Terms and Conditions") which shall, together with the General Terms and Conditions Software, constitute an integral part of the contract.

II. Services to be performed by IBExpert

2.1 IBExpert shall provide the Customer with the software program as specified in the order confirmation (Contractual Software) in machine-readable form (object code) together with a printed and/or electronic user manual as well as with other documentation if available (e.g. operating manual, help files, online help, other technical information and documentation). IBExpert shall transfer the Contractual Software, at its discretion, on a data carrier or by data telecommunication (e.g. by Internet download). These General Terms and Conditions Software shall apply mutatis mutandis for the provision of new versions of the Contractual Software (e.g. patches, bug fixes, updates, upgrades. etc.).

2.2 In the event that IBExpert transfers the Contractual Software to the Customer via data telecommunication, IBExpert shall endeavor to warrant the availability of the Contractual Software during regular business hours on a server for downloading by the Customer.

2.3 The online documentation of the Contractual Software describes in detail the functions and services that can be performed by the Contractual Software if used as stipulated in the Contract ("Specifications"). Solely the relevant Performance Description shall be significant for the quality of the Contractual Software and its intended use. Public statements, recommendations or advertisements shall not constitute any description of the quality of the Contractual Software.

2.4 The services to be performed by IBExpert within the scope of lease of the Contractual Software shall not include the supply of new versions of the software, software installation, nor customized adjustments ("Customizing"), training or other consulting or company services above and beyond the leasing of the Contractual Software. In particular, IBExpert is not obliged to support the Customer, in attempts to connect the Contractual Software to a different software for the purpose of performing data exchange using any interfaces which may be contained in the Contractual Software. Both the establishment of such a connection, as well as the services mentioned above, will be provided by IBExpert only in a separate agreement with the Customer and for an additional fee.

III. Customer's obligations to cooperate

3.1 The order confirmation from IBExpert or the respective user manual (online documentation) of the Contractual software states the prerequisite hardware and software environment (minimum processor clock rate, memory, operating system, etc.) for a correct and error-free operation of the Contractual Software. It is the Customer's responsibility to provide an appropriate hardware and software environment in due time. Should he fail to do this, the Customer takes full responsibility if the Contractual Software supplied cannot be used solely because of this failure.

3.2 The Customer is obliged to test all functions of the Contractual Software in the Customer's hardware and software environment. In the same manner, the Customer must check the faultlessness of the data

carrier or remote data transfer (Internet downloads), user manuals and other documentation upon receipt. Any defects, not obvious in this examination and subsequently discovered by the Customer must be notified to IBEExpert within the time period referred to in 7.4.

3.3 The Customer is obliged to take appropriate measures to prevent unauthorized access to the Contractual Software and to the user manuals or other documentation. The Customer will store the original supplied data carrier in a secure place to protect against unauthorized access by any third party.

3.4 The Customer will provide IBEExpert upon request and within a reasonable period of time, written confirmation, that the Contractual Software is being used by the Customer in accordance with the contract, especially whether the Customer is complying with the contractually agreed terms of deployment (i.e. in terms of the number of software installations) as well as the Terms of Use in accordance with IV. And V. To verify the information provided by the Customer, IBEExpert shall be entitled to conduct a Customer audit once in each calendar year. IBEExpert will inform the Customer at least ten (10) working days prior to such an examination in writing of the commencement and the cause for or the scope of the audit. The Customer will allow IBEExpert, or an auditor assigned by IBEExpert, access to its property and buildings during normal business hours, as well as access with administrative rights to the hardware and software on which the Contractual Software is installed, to the extent as is necessary to review the contractual use of the Contractual Software. IBEExpert is obliged to maintain confidentiality of all non-publicly known knowledge concerning the Customer's enterprise, which IBEExpert may learn of during the review. The cost of the audit shall be borne by the Customer should a significant violation of obligations on the part of the Customer be detected.

IV. Granting of rights

4.1 IBEExpert grants the Customer the perpetual, non-exclusive and non-transferable right to use the Contractual Software in accordance with the provisions of these General Terms and Conditions Software. This right of use is subject to the full payment of the Contractual Software.

4.2 The Customer is entitled to install and use the Contractual Software on a single computer at one location at any given time. The term "computer" shall refer to the hardware if it is a single computer system, or to the computer system with which the hardware is operating if the hardware is a component of a computer system. The Customer may use the Contractual Software on any available hardware, which he owns or leases or rents. If he changes the hardware, he must delete the software from the previously used hardware. Any simultaneous storing, keeping in stock or using on more than only one hardware unit is not permitted. Use of the Contractual Software within a network or any other multi-station computer system is permitted, as long as this does not create the possibility of simultaneous multiple use of the program. Deviation of the number and the nature of usage rights (per user or per workplace) may be affirmed in the IBEExpert order confirmation.

4.3 The Customer may copy the Contractual Software, if such reproduction is essential in order to use the software. This includes installation of the Contractual Software from the original data carrier to the mass storage of the hardware used, and loading the Contractual Software into the working memory. In addition, the Customer is entitled to prepare and store a backup copy which is to be labeled as such. This may be used exclusively for archival purposes and may not be passed on to third parties. Simultaneous use of the original and the backup copy is not permitted. No further copies may be made. This also includes reproduction by the issue of the program code. Only one printout or copy may be made of the user manual or the other documentation. Any further copying of the Contractual Software and the User Manual or other supporting documentation is only allowed with the express permission of IBEExpert.

4.4 The Customer is entitled to pass on the Contractual Software as a whole and in its original condition to a third party, provided that the third party agrees to the terms of these General Terms and Conditions Software. With transfer of the Contractual Software the usage right is transferred to the third party, who is solely entitled to use the Contractual Software pursuant to the terms and conditions of these

General Terms and Conditions Software to the exclusion of the Customer. The Customer shall delete or destroy by other means all copies and partial copies of the Contractual Software. This also applies to backup copies. The Customer must notify IBEExpert of the transfer of the Contractual Software immediately in writing, stating the name and address of the third party.

4.5 The Customer is not entitled to rent out the Contractual Software or any part thereof for

4.6 IBEExpert grants the Customer the same usage rights of any new program versions published, whether provided under a separate maintenance contract or under warranty, to the extent to which such rights are existing for the Contractual Software according to the terms of the Contract with which they are being used, or which are intended to be replaced by them. The provisions of sections IV. and V. shall apply mutatis mutandis. The right of use of any Contractual Software, which is technically replaced by new program versions shall expire within two weeks from the date when the Customer uses the supplied program versions productively, however no later than one calendar month after the Customer has received the supplied program versions. The Customer is entitled to make one copy each of the technically replaced software programs for archiving purposes.

V. Restrictions of the right of use, overuse

5.1 The Customer is not entitled to process and/or copy the Contractual Software beyond the contractually stipulated use unless this is imperative for the purpose of debugging and if IBEExpert is in default of eliminating the defect. In such case, the Customer is permitted to commission the elimination of defects only to a third party that is not in a competitive relationship with IBEExpert, if it is to be feared that important program functions and operations may be disclosed by the elimination of the defect. Modifications introduced by the Customer during the elimination of defects must be recorded and notified to IBEExpert.

5.2 The Customer is also prohibited from analyzing, reassembling or in any way whatsoever processing or modifying the Contractual Software. A retranslation into other code forms ("decompiling") as well as any other kinds of reverse engineering of the different implementation stages of the Contractual Software by the Customer shall not be permitted subject to the following provision: The Customer shall be authorized to decompile the object code only if such decompilation is necessary to achieve interoperability with other software programs, if he has not been provided with the required data and/or information, following a written request setting an adequate time limit, and provided that the decompilation work is limited to those parts of the Contractual Software that are necessary to establish interoperability with other software programs.

5.3 The Customer is not permitted to remove, alter or make illegible any property and copyright references, serial numbers, version numbers, stickers, labels or trademarks of IBEExpert or other manufacturers contained in the Contractual Software as well as in the User Manual or any other documentation.

5.4 The commercial use of the Contractual Software for third parties by way of the so-called "Application Service Providing (ASP)" or "Software as a Service" (SaaS) is not allowed. Furthermore, any use of the Contractual Software beyond the limits stipulated herein, in particular in the case of non-approved simultaneous multiple use by more than one user, is considered in breach of contract. The Customer is obliged to inform of this IBEExpert immediately. For any period of overuse not agreed in the Contract, the Customer undertakes to pay the lease fee for the Contractual Software calculated on the actual scope of use and according to the IBEExpert price list with retroactive effect immediately upon receipt of the invoice. In the event that the Customer fails to give notice of such overuse and IBEExpert succeeds in discovering the overuse, for example following an audit as described in paragraph 3.4, the Customer shall pay IBEExpert liquidated damages for such unauthorized overuse to the amount of three times the fee that would have been payable for an authorized use of the Contractual Software by the Customer, according to the IBEExpert price list. The Customer is free to prove that IBEExpert suffered lesser damages.

VI. Use of software protection mechanisms

6.1 The Contractual Software is supplied with a technical protection mechanism in the form of an electronic software control.

6.2 If IBExpert supplies the Contractual Software with a dongle, and this has a malfunction, the Customer may request a replacement dongle from IBExpert by returning the defective dongle. The replacement delivery is free of charge during the warranty period for the Contractual Software according to the following paragraph 7.2. Following expiry of the warranty period, a fee of EUR 65.00 plus VAT and shipping costs must be paid. In the event of theft or other loss of the dongle, the Customer shall not be entitled to a replacement.

6.3 Any circumvention of the technical protection measures is a violation of the rights of IBExpert and is, under certain circumstances, also liable to prosecution. In particular, the removal and/or bypass of the software protection program routine is prohibited. Only in cases where the software protection impairs or prevents a trouble-free use of the program and IBExpert, despite notification and detailed description of the fault, is not able or willing to eliminate the fault within a reasonable period of time, the software protection may be removed or evaded in order to ensure the operability of the Contractual Software. The burden of proof of the impaired or hindered usability lies with the Customer.

VII. Liability for material and legal defects

7.1 Statutory provisions apply to the Customer's rights in the case of material and legal defects (hereinafter defects) of the Contractual Software, unless otherwise stipulated in the following paragraphs.

7.2 The warranty period for the Contractual Software is one year. The one-year warranty period begins upon delivery of the Contractual Software to the Customer. The statutory warranty period will however apply if IBExpert has fraudulently concealed a defect or has accepted a guarantee for the quality of the Contractual Software.

7.3 IBExpert warrants that the Contractual Software, when used conformant to the contract, will comply with its performance description and does not contain defects which impair the suitability of the Contractual Software for the contractually agreed application more than insubstantially. Insignificant deviations from the specifications are not deemed to be a defect.

7.4 The Customer is to examine the Contractual Software, including the documentation, within eight (8) working days following delivery, in particular with regard to the completeness of the data carriers and user documentation, as well as the operational capability of basic program functions. Defects that are identified or which are identifiable must be reported in writing to IBExpert within a further eight (8) working days, quoting the order details and the invoice number. When notifying of any defects, the Customer shall specify and describe how the defect manifests itself, what are the effects and under what circumstances it occurs. Defects, which are not detectable in the scope of an orderly examination, must be notified within eight (8) working days after discovery in compliance with the notice requirements set forth above. In the case of a breach of the inspection and notification obligation, the Contractual Software shall be considered as approved.

7.5 A defect correctly reported by the Customer shall be removed by IBExpert by way of subsequent remedy, i.e. by rectification or replacement. In the first instance IBExpert has the right to choose in what form and manner a defect is removed by way of subsequent fulfillment. As far as is reasonably acceptable for the Customer, IBExpert shall be entitled to remediate the defect by supplying the Customer with a new version of the Contractual Software (e.g. as an update or maintenance release/patch) which no longer contains or eliminates the notified defect. As far as can be reasonably expected by the Customer, IBExpert shall be entitled to remediate the defect by supplying the Customer

with a new version of the Contractual Software (e.g. as an update or maintenance release/patch) which no longer contains or eliminates the notified defect.

7.6 If the subsequent rectification is not successful within a reasonable period of time, the Customer will set IBExpert a further reasonable period of grace for the rectification, in so far as the Customer's deadline is reasonable and the remedy not ultimately declined by IBExpert. If IBExpert cannot remediate the defect within the period of grace, the Customer may withdraw from the contract or reduce the purchase price, and possibly claim damages in lieu of performance or reimbursement of expenses. Following unsuccessful expiration of the period of grace the Customer must give notice within a reasonable period of time, whether he still requires subsequent rectification or if he wishes to assert his rights above. A right of withdrawal does not however exist in the case of an insignificant defect. With the declaration of withdrawal or reduction the Customer's right to delivery of the flawless Contractual Software is no longer applicable.

7.7 IBExpert shall not be held liable under a warranty if defects of the Contractual Software have occurred following alteration to the conditions of application and operation, and following installation and user errors, unless attributable to errors in the User Manual or other documentation; following interference with the Contractual Software such as alterations, modifications, connections with other programs, and/or after any use in breach of contract, unless the Customer proves that the errors already existed on transfer of the Contractual Software, or are in no causal relation with the aforementioned events.

7.8 In the case of a justified withdrawal, IBExpert is entitled to demand an appropriate compensation for the usage of the Contractual Software sustained in the past by the Customer up to the time of the rescission. This compensation for usage is determined based on a four-year cumulative usage period of the Contractual Software, allowing a reasonable deduction for the impairment of the Contractual Software due to the defect which led to the withdrawal from the contract.

7.9 If the Customer has held IBExpert liable for any warranty claims, and it transpires that there either is no defect or the claimed defect is based on a circumstance which IBExpert is under no obligation to guarantee, then the Customer, provided he has at least negligently caused the claim against IBExpert, is to replace all resulting costs to IBExpert.

VIII. Gratuitous transfer of software

8.1 As far as IBExpert allows Customers to use software programs gratuitously ("Freeware"), the provisions of this section VIII. shall apply. Furthermore, these provisions shall apply mutatis mutandis to the transfer of new program versions of such Freeware (e.g. patches, bug fixes, updates, upgrades, etc.) as well as to any user documentation of the Freeware made available for downloading on IBExpert's homepage.

8.2 IBExpert shall provide the Freeware to the Customer in machine-readable form (Object Code) together with an electronic user manual and, if available, other documentation (e.g. operating instructions, help files, other technical information and documentation). The transfer of the Freeware and the associated user documentation shall be realized by data telecommunication ("download") or by transfer of a data carrier at the discretion of IBExpert.

8.3 The user manual or other documentation of the Freeware describes in detail which features and benefits can be achieved by the Freeware when used as stipulated in the Contract ("Performance Description"). Solely the relevant Performance Description is, in this respect, significant with regard to the quality of the Freeware and its intended application. Public statements, recommendations or advertisements shall not constitute any indication of the quality of the Contractual Software.

8.4 IBExpert grants the Customer the non-exclusive and non-transferable right to use the Freeware supplied in the object code for an unlimited period of time in accordance with the provisions of these Contractual Terms.

8.5 The Customer shall not be entitled, without the prior written consent of IBExpert, to transfer the copy of the Freeware provided, as well as the associated user manual and other documentation - if applicable - for use to any third party nor to sell, lease or lend them to third parties. In particular, the Customer is not allowed to transfer the Freeware to third parties against payment of a charge, e.g. by way of the so-called "Application Service Providing (ASP)" or "Software as a Service" (SaaS). Otherwise the above provisions in sections 4.2, 4.3 and V. for using the Contractual Software shall apply mutatis mutandis to the use of Freeware.

8.6 In connection with the transfer of Freeware, IBExpert shall be liable only for intent and gross negligence. Any further claims for damage and compensation of expenses of the Customer for whatever legal reason, in particular due to infringement of duties arising from the relationship under the law of obligations and from tortuous acts, shall be excluded.

8.7 IBExpert shall only be liable for material and legal defects of the Freeware if IBExpert has fraudulently concealed a material and/or legal defect. Any further liability or warranty for material or legal defects shall be excluded.

8.8 In as far as no deviating regulations have been provided for in this section VIII., the provisions of the General Terms and Conditions shall apply to the software usage of Freeware mutatis mutandis.

IX. Validity of the General Terms and Conditions

The general provisions regarding e.g. the conclusion of the contract, delivery, remuneration and terms of payment, retention of title and reservation of rights, liability, statute of limitation, place of jurisdiction, etc. contained in IBExpert's General Terms and Conditions shall apply mutatis mutandis to contractual relationships within the framework of the transfer of software, unless these General Terms and Conditions Maintenance contain any deviating provisions.

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