

Terms and Conditions for Software Services

I. Delivery of Software Products

§ 1 Scope of Contract

- 1.1 The software products (in the following referred to as the "programs") shall operate as specified in the product description and more detailed in their user documentation. The user documentation may describe functions not ordered by the customer.

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

- 1.2 Embedded Office GmbH & Co. KG (hereinafter "Embedded Office") shall transmit the programs to the customer in machine-readable format (object code) on data storage media or Embedded Office may provide them for download from the Internet. Unless otherwise agreed, Embedded Office may deliver the programs by e-mail. Embedded Office shall provide the user documentation either as a printed copy or in electronic format.

In the event Embedded Office's programs have interfaces for interoperability with other programs, Embedded Office shall provide information for the use of the interfaces, if so requested by the customer, subject to reimbursement of Embedded Office's expenses. The customer may pass such information on to other contractors to the extent necessary.

Embedded Office shall deliver the programs on media which shows that the customer has acquired a legal copy of the programs. Title in the data carrier shall pass to the customer only after full payment of the license fee.

- 1.3 To the extent that programs are specified in the contract as products of pre-suppliers, Embedded Office shall only be liable for the correctness of features of these products as they are substantial for the usage of the application programs of Embedded Office. Other than the foregoing, Embedded Office does not assume any warranties or liabilities, neither express nor implied, for any information in the product descriptions of the respective manufacturers.

For these programs Embedded Office shall not assume any duty for defect removal or for maintenance services. However, in cases of material defects, Embedded Office shall use its best endeavours for defect removal by the manufacturer to the extent that the manufacturer agrees to it in accordance with its business policy.

Embedded Office only grants the customer to use these programs together with the programs of Embedded Office.

§ 2 Right of Use

- 2.1 Embedded Office shall grant the customer the right to use the programs within the limits of the scope defined in the contract, for the customer's own purposes and for the purposes of the customer's group of companies in accordance with §§ 15 ff. AktG (German Stock Act).



- 2.2 The license fee for the right of use is determined by the extent of the customer's right of use, in particular by the size of the configuration and/or the maximum number of simultaneously active users. Unless otherwise agreed, the customer is only entitled to use the programs on one (1) designated IT system (single user license). If the customer wants to extend the right of use, the customer shall pay additional compensation, in advance of the extended use.

The customer is entitled to replace the designated IT system by another IT system used by the customer, but the customer is only entitled to use the programs on one (1) IT system at the same time.

- 2.3 The customer agrees to use the programs only on configurations Embedded Office has declared to be compatible with the programs. The customer shall inform Embedded Office of any modifications of the customer's configuration without delay.
- 2.4 The customer may transfer the granted right of use per program to another user if the customer confirms to discontinue the use of the programs and if the new user accepts in writing towards Embedded Office to take over all obligations to the protection of the programs and to comply with the restrictions of the right of use as they were agreed on between the customer and Embedded Office.

If Embedded Office has granted the customer an unrestricted right of use, this right of use is not transferable.

- 2.5 The customer shall not modify or enhance the programs and the related documentation in any way.

§ 3 Performances

- 3.1 It shall be the responsibility of the customer to install the programs on the customer's IT systems. At the request of the customer, Embedded Office shall install the programs in return for compensation based on expense and execute a brief training session. The customer shall confirm the successful installation in writing in such a case.

In the event it is agreed that Embedded Office will install the programs, the customer shall ensure that qualified operating staff are available by the time of installation at the latest.

Embedded Office strongly recommends that the customer train its employees in a training course by Embedded Office.

- 3.2 It shall be the responsibility of the customer to bring the programs into operation. To this end, the customer shall inspect the programs under their conditions of use before the customer uses the programs productively. Embedded Office is prepared to assist the customer in this respect upon request in return for compensation based on expense.
- 3.3 The customer shall examine all Embedded Office performances for defects without delay, if appropriate in the proper course of business. In particular, the customer shall examine programs designed only for occasional use.
- 3.4 Embedded Office shall appoint a customer adviser and the customer a contact person. The customer adviser and contact person shall either make decisions or bring about decisions without delay. The customer adviser shall record decisions in writing. The contact person shall be available to Embedded Office to provide all necessary information. Embedded Office shall be obliged to involve such contact person if necessary for the execution of the agreement.



- 3.5 If the usage of the programs is ended by the customer, for whatever reason, the customer shall delete all copies of the programs and the customer shall notify Embedded Office in writing that the customer has done so, if so requested by Embedded Office. The customer may not claim for repayment of any consulting or support services Embedded Office has rendered to the customer.

§ 4 The Customer's Duties on Software Protection

- 4.1 The customer acknowledges that the programs, including the user documentation and additional documents, even in future versions, are copyright-protected and constitute business and trade secrets proprietary to Embedded Office. The customer shall ensure with no limit in time that the programs are protected from misuse.

If Embedded Office provides source codes the customer shall make the programs accessible only to employees creating and processing object codes derived from the source code.

- 4.2 If Embedded Office provides programs in source code, the customer shall only make them accessible to any third party with Embedded Office's prior written consent. Embedded Office shall not unreasonably withhold such consent, but Embedded Office does not need to give it to enable the customer to obtain maintenance services for the programs from a third party.
- 4.3 The customer shall not create programs derived from the programs.

The customer shall use the user documentation for internal purposes only and only copy it to the extent admissible with regard to the customer's right of use. The customer shall not translate, modify or enhance the user documentation or develop any works based on the user documentation.

§ 5 Special Terms and Conditions for Contracts on Hire or Hire Purchase of the Programs

- 5.1 If a hire or hire purchase contract is agreed on, the customer shall pay the hire charges monthly in advance. Embedded Office is entitled and obliged to adapt the monthly charge to the extent that Embedded Office adapts Embedded Office's list prices for the maintenance of the programs with respect to contracts for the delivery of the programs against one-time payment of the license fee. Embedded Office shall announce raises of the hire charge giving six (6) months notice. In this event the customer may terminate the contract to the date of the effectiveness of the raise at any time before the date of the effectiveness.
- 5.2 In addition, the terms and conditions of §§ 1 through 4 shall be applicable. However, the terms and conditions set forth in § 2.4 about the resale of the programs and the terms and conditions set forth in § 1.3 about the customer's title on the programs shall not apply.
- 5.3 The limitation of the warranty period set forth in § 17.2 shall not be applicable. The customer's right to request rescindment of the contract in accordance with § 17.1 shall be replaced by the customer's right to an extraordinary notice of cancellation. The yearly hire charges at the time of the breach of the contract shall be set as the contract value in accordance with § 15.2 and § 18.3.
- 5.4 With respect to hire or hire purchase contracts, Embedded Office's maintenance services are compensated in part by payment of the hire charges. Details shall be specified in the contract. In addition, the terms and conditions of §§ 6 through 9 shall apply to Embedded Office's maintenance services with respect to hire or hire purchase contracts.



II. Conditions for Customer Specific Programming

§ 6 Scope

- 6.1 The customer may use the modifications and enhancements of the standard programs to the same extent as the customer is entitled to use the related standard programs.
- 6.2 Embedded Office shall deliver modified standard programs in object-code only. Embedded Office shall deliver enhancements of the standard programs or other additional individual programs in source code, only if this is agreed upon in the contract. The documentation related to the source code shall only be delivered, if this is expressly agreed upon in the contract.
- 6.3 Embedded Office shall deliver a user documentation only if expressly agreed upon in the contract. In this event the following shall apply: The user documentation for modifications and enhancements need not be integrated into the user documentation of the related standard programs, but shall be delivered as an addition thereto.

§ 7 Performance

- 7.1 If it is necessary to detail the customer's requirements listed in the contract or requested pursuant to § 8.1, Embedded Office shall develop a detailed specification with the customer's assistance and shall submit it to the customer for approval. The customer shall respond in writing within 14 days. Unless otherwise agreed, this performance shall be remunerated by the customer on the basis of time and material in accordance with Embedded Office's valid price list.
- 7.2 The approved detailed specification is the decisive basis for the realization of the programming. In the course of the realization of the programming, the detailed specification may be further detailed with the customer's assistance.
- 7.3 In addition § 3 shall apply accordingly.

§ 8 Change Requests

- 8.1 If the customer requests Embedded Office to undertake any modification of the agreed requirements, including any addition to it, and if the requested modification is reasonable and acceptable, Embedded Office must agree. If the realization of such a request results in any burden on Embedded Office's side, Embedded Office is entitled to an appropriate adaptation of the terms of the contract, in particular to the extension of time for the completion of the programming and/or to additional compensation.
- 8.2 Modifications and resulting adaptations of the terms of the contract must be confirmed in writing by both parties. If the customer gives a request for a modification orally, Embedded Office may request the customer to give it in writing or Embedded Office may confirm it in writing. The wording of such confirmation of Embedded Office shall be deemed to express the customer's requirement correctly unless the customer objects in writing without delay.
- 8.3 Embedded Office shall submit its request for adaptations of the contract without delay. The customer shall notify Embedded Office without delay if the customer refuses the requested adaptation.



III. Maintenance and Support for the Programs

§ 9 Subject Matter

9.1 If maintenance and support are agreed on in the contract, maintenance and support services shall include the delivery of further developed versions of the programs, the remedy of defects and telephone support during the usual business hours of Embedded Office, in return for a lump-sum compensation.

Support shall be performed starting with the installation of the programs.

9.2 All other performances shall be compensated separately, in particular the installation of further developed versions, the transfer of customer specific modifications to further developed standard versions, and the adaptation of customer specific enhancements to further developed versions.

9.3 The maintenance and support agreement shall run for an indefinite period of time. It may be terminated by the customer or by Embedded Office to the end of a contract year, in writing, giving three (3) months notice.

Embedded Office may not terminate until the end of the third support year, but shall be entitled to termination with the option of alterations to the agreement even earlier on objective grounds, particularly in the event support for system software required by the programs or other software needed for the operation of the programs is limited by the supplier thereof.

§ 10 Correction of Defects

10.1 Defects are defined as deviations from the features the programs shall have in accordance with § 1.1 or which they must have for customary use.

10.2 The duty to remove defects as a specified performance and to provide telephone support shall relate to the current and the preceding version of the programs. Support for the preceding versions shall end six (6) months after the release of the latest version. However, such duty shall continue to exist if the acceptance thereof would be unreasonable to the customer, provided Embedded Office is capable of rendering such performances. In the above case, Embedded Office is entitled to claim for added costs and expenses, including costs and expenses accruing for maintenance of the required support and maintenance environment.

10.3 § 17 shall apply accordingly for the execution of defect removal as a specified performance.

§ 11 Further Development of the Programs under Maintenance

11.1 Embedded Office shall deliver further developed standard versions including associated documentation to the customer as set forth in § 1.2, after the release of such versions by Embedded Office. The above shall not apply to enhancements Embedded Office offers separately, as new programs in Embedded Office's price list.

The customer shall test new versions before the customer uses them for productive purposes.



11.2 In the event the manufacturer of the system software necessary for use of the programs for which Embedded Office performs maintenance and support releases a new version of the system software under a maintenance agreement with Embedded Office, Embedded Office shall examine after the availability thereof whether such version works properly together with Embedded Office's programs under maintenance with the customer. If that is the case, Embedded Office shall release such version (cf. § 2.3). Otherwise, Embedded Office shall adapt Embedded Office's programs to the further developed version of the system software within a reasonable period. The reasonable period shall begin upon the release and availability thereof for Embedded Office.

11.3 For system software whose manufacturers do not offer new versions within the framework of maintenance and support performances, instead offering new generations for sale from time to time, the following shall apply: In the event the manufacturer offers improvements (e.g. service packs), Embedded Office shall act in accordance with § 11.2.

In the event the manufacturer offers a new generation, Embedded Office shall evaluate if Embedded Office adapts Embedded Office's programs to the new generation with due regard for user requirements. In the event Embedded Office adapts Embedded Office's programs to the new generation, Embedded Office shall only further develop the programs on this basis.

11.4 The customer shall ensure that the customer's IT-equipment, particularly the system software thereof meets the state of technology required by the programs under maintenance within the framework of further development in accordance with § 11.2 and § 11.3. Embedded Office shall notify the customer promptly which state of technology must be provided for maintenance and support services.

The customer shall not introduce a new system software version until Embedded Office has released the programs for such version (cf. § 2.3).

The customer shall notify Embedded Office in advance if the customer plans to install a new version of the required system software.

11.5 § 11.2 through § 11.4 shall apply accordingly for other third-party programs with which Embedded Office's programs are to work together. § 11.3 and § 11.4 shall also apply for third-party programs which are freeware or in the public domain (e.g. Linux).

11.6 Embedded Office agrees to further develop the respective current version in the event changes in legal regulations or other provisions applicable for the programs require such further development.

11.7 Not covered by the lump-sum maintenance compensation shall be the inclusion of changes pursuant to § 11.2 through § 11.6 which can only be realized through full or partial reprogramming of the programs, or changes pursuant to new regulations or provisions. In such a case, Embedded Office may request a reasonable additional compensation with due regard for all customers which require and request reprogramming.

11.8 Embedded Office shall keep a further developed version of the programs compatible with the preceding version with regard to Embedded Office own performances. However, if circumstances not attributable to Embedded Office cause the incompatibility of the programs, e.g. if pre-supplier programs cause the incompatibility, Embedded Office shall only be obliged to transmit the migration aids provided by the pre-supplier.



§ 12 Compensation for Maintenance

- 12.1 The lump-sum compensation shall be calculated in accordance with the specified scope of use (cf. § 2.1). The compensation shall be adjusted as soon as such scope increases.
- 12.2 The customer shall pay the lump-sum compensation annually in advance.
- 12.3 Embedded Office is entitled to request the compensation which Embedded Office charges upon the conclusion of new maintenance agreements pursuant to the price list, effective next calendar year, with a notice period of three (3) months. Embedded Office shall be obliged to pass on reductions without a notice period.

§ 13 Maintenance of Customer Specific Programming

- 13.1 As long as there is an agreement on basic maintenance of the standard programs, Embedded Office shall render maintenance for the programming performed for the customer subject to remuneration on the basis of costs. The correction of defects shall be free of charge during the warranty period.
- 13.2 If maintenance is agreed subject to a comprehensive charge, Embedded Office shall render the same services as for the standard programs. The comprehensive charge shall cover also the transfer of modifications/enhancements onto new versions of the standard programs, and if needed the adaptation of the customer's individual programs to new versions. The customer is entitled to terminate the maintenance pursuant to § 9.3 regardless of the termination of the maintenance of the standard programs.

IV. General Terms and Conditions

§ 14 Charges and Payments

- 14.1 The provision compensation shall be due after delivery is made.
- 14.2 All support performances (particularly pre-installation support, preparations for use, installation and demonstration of operational readiness, conversion of old data, instruction, training or consulting) shall be compensated based on expense, unless otherwise agreed. Hourly rates, travel expenses and ancillary costs in this regard shall be in accordance with Embedded Office's price list. Embedded Office may invoice monthly.
- 14.3 Payments shall be made in full within 14 days after receipt of the invoice by the customer.
- 14.4 Duties, taxes and levies including VAT – if applicable – shall be paid by the customer on all prices.
- 14.5 If payments are delayed, the customer shall not be allowed to use the programs.

§ 15 Disruptions in the Performance, Default

- 15.1 In the event that a cause for which Embedded Office is not responsible, including strikes or lockouts, impairs compliance with a deadline, Embedded Office may request reasonable extension of the deadline. In the event the expense is increased due to a cause falling within the scope of responsibility of the customer, Embedded Office may request reimbursement for its added expenses as well.



15.2 In the event Embedded Office defaults for over 30 days, the customer may request a contractual penalty in the amount of 0.5 % of the value of the performances which cannot be used for the intended purpose, though no higher than 5 % of the contract value, for each additional week from that date. In the event of default in the delivery of a further developed version within the framework of support performances (cf. § 8), the annual lump sum for support then due shall be set as the contract value.

§ 16 Tele Support

16.1 On request by Embedded Office, the customer shall enable Embedded Office to perform tele support (tele diagnosis, tele corrections, transfer of new versions) to the extent technically possible. In concert with Embedded Office, the customer shall at its own expense provide a telecommunication connection as needed to meet the requirements from time to time, so that the It systems can be connected. The customer shall pay for the communication costs, unless otherwise agreed.

16.2 For security and privacy purposes, access to the customer's IT system by Embedded Office shall be controlled by a security procedure established by the customer. The customer shall release the connection for usage. Embedded Office shall inform the customer of the works performed by Embedded Office.

16.3 If the customer does not enable Embedded Office to perform tele support, the customer shall reimburse Embedded Office additional costs, in any event travel time and additional costs for the correction of defects.

16.4 If the customer transfers data to Embedded Office for their restoration or for the search of defects, Embedded Office shall establish all technical and organizational measures in Embedded Office's organization equivalent to those the customer has to establish for security and privacy pursuant to the laws and statutes on data protection applicable to the customer. At the customer's request, details shall be agreed on separately.

§ 17 Agreements on the Remedy of Defects

17.1 In the event defects occur during contractual use of the programs, the customer shall give notice of such defects in comprehensible form, specifying information useful for identification of the defect, and, upon the request of Embedded Office, in writing.

A precondition for all claims against Embedded Office shall be that the defect is reproducible or can be displayed through mechanically generated copies.

The customer shall assist Embedded Office, within reasonable limits, in the removal of defects, particularly transmitting the program as used upon occurrence of the defect, at the request of Embedded Office, making available machine time or integrating replacement deliveries provided by Embedded Office.

17.2 Embedded Office shall remove defects within a reasonable period. Embedded Office shall render the supplementary performance either by removing the defects or rendering a replacement performance within a reasonable period, at its option. In the event of defects which seriously impair use of a program, Embedded Office shall provide a workaround solution prior to the final supplementary performance, if necessary, so that the defect no longer has a serious impact.

Embedded Office need only remove other defects at the time scheduled by Embedded Office within the framework of proper version support. Embedded Office shall provide workaround solutions for such defects as well if such is reasonable for Embedded Office (in the event of programs expressly identified as such by pre-suppliers, Embedded Office need only attempt corrective measures of the pre-supplier.



- 17.3 The duty for supplementary performance shall expire for programs which the customer modifies or in which the customer otherwise intervenes, unless the customer demonstrates that the intervention did not cause the defect.
- 17.4 Embedded Office may request reimbursement for its own expenses in the event Embedded Office performed work based on receiving notice of a defect (beyond telephone support in accordance with § 9.1) and the customer fails to demonstrate a defect.

§ 18 Embedded Office's Liability

- 18.1 In the event Embedded Office defaults on its performances (through delivery) or supplementary performances (through removal of defects or replacement delivery), the customer may set a reasonable period for performance/supplementary performance. If the period expires without result, or if the performance/supplementary performance ultimately fails in any other manner, the customer may assert its statutory claims. Damage claims shall exist within the framework of § 18.3. Embedded Office may request a period for the customer to declare whether the customer still requests primary or supplementary performance. If the customer does not request primary or supplementary performance within this period, the customer shall no longer be entitled to claim it.
- 18.2 The limitation period for claims based on defects shall be 12 months starting from the delivery of the programs to the customer. The extension of the right of use (§ 2.2) or the delivery of a further developed version under the maintenance agreement (§ 11) shall not cause a new limitation period.
- 18.3 Embedded Office – 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 Embedded Office breaches a basic obligation under this contract. In this event, Embedded Office's liability shall be restricted to the higher of the following amounts:
- EUR 100,000.00,
 - The contract value,
 - The characteristic and foreseeable damages.

In the event of claims on the grounds of a maintenance agreement, the yearly comprehensive maintenance charge for the year, in which the damage occurs, shall be taken as the contract value.

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

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

Claims for personal injury and claims on the grounds of the German Product Liability Act (Produkthaftungsgesetz) shall remain unaffected.



§ 19 Confidentiality Obligations

- 19.1 Embedded Office shall keep the customer's trade and business secrets confidential for an unlimited period of time, as well as all other information obtained by Embedded Office under or in connection with this contract designated in writing as confidential by the customer. However, Embedded Office shall have no obligation with respect to any information which is (i) already in Embedded Office's possession at the time of the execution of the contract, (ii) independently developed by Embedded Office, or (iii) which is publicly known through no wrongful act of Embedded Office.
- 19.2 Notwithstanding § 19.1, Embedded Office is not obliged to keep confidential any of Embedded Office's ideas, concepts, know-how or techniques related to the development of software.
- 19.3 Embedded Office shall obligate its employees to observe the above confidentiality obligations.
- 19.4 Embedded Office may include the name the customer and a brief description of the rendered performances in a reference list. All other advertising references to the customer shall be discussed in advance with the customer.

§ 20 Miscellaneous

- 20.1 The contract and its modifications require written form.
- 20.2 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.
- 20.3 If the customer is merchant in terms of law exclusive venue shall be Embedded Office's main place of business.

