

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

I. Scope of application

1.1 The following terms and conditions of IBExpert ("IBExpert") governing the leasing of software ("General Terms and Conditions Software Lease") shall apply to all contractual relationships with customers in connection with the permission of use of software programs for a limited period of time ("Software Lease Contract") 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 Lease supplement the IBExpert Standard Business Terms ("General Terms and Conditions") which shall, together with the General Terms and Conditions Software Lease, constitute an integral part of the contract.

1.2 Any customer General Terms and Conditions, which deviate, conflict with or include additional terms to these Standard Business Terms Software Lease, shall only become part of the Contract if IBExpert explicitly approves their validity in writing. Such approval requirement shall be applicable in all cases, specifically also when IBExpert - being aware of the Customer's General Terms and Conditions - performs a supply or service to the Customer without reservation.

II. Services to be performed by IBExpert

2.1 IBExpert grants to the Customer permission to use the software program specified in the order confirmation ("Contractual Software") for the duration of the respective Software Lease Contract to the terms and conditions laid down in these Standard Business Terms Software Lease. IBExpert shall transfer the Contractual Software in machine-readable form (Object Code) on a data carrier or by data telecommunication (e.g. by Internet download). The Customer shall be provided 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). These General Terms and Conditions Software Lease shall apply mutatis mutandis for the provision of new versions of the Contractual Software (e.g. patches, bug fixes, updates, upgrades, etc.). 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.

2.2 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 ("IBExpert features"). 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.

2.3 The services to be performed by IBExpert within the scope of lease of the Contractual Software shall not include the installation of the software nor customized adjustments ("Customizing"), training or other consulting or company services above and beyond the leasing of the Contractual Software.

2.4 IBExpert shall, during the contractual period of the respective Software Lease Contract, maintain the contractually stipulated state of the Contractual Software, i.e. it will ensure the usability of the Contractual Software in conformity with the Performance Description. Under this obligation, IBExpert shall make available to the Customer new program versions of the Contractual Software and shall provide First Level Support in accordance with the following provisions.

2.4.1 The permission to use new program versions shall be granted provided that they are currently marketed by IBExpert and available. Such obligation of a permission of use shall not apply to those extensions of the Contractual Software that are offered and marketed by IBExpert separately as a new

stand-alone product, and to new developments of the Contractual Software offering the same or similar functions on a different technological basis.

2.4.2 First Level Support shall in particular cover all enquiries regarding deployment and configuration issues and questions regarding applications in relation to the Contractual Software including basic advice by email ("Support"). If the Customer has acquired the Contractual Software through a distributor of IBExpert ("Partner"), the Customer can request the "First Level Support" from the respective partner. The partner responsible for providing First Level Support will be stated in the order confirmation.

III. Contracting parties, personal conditions for customers

The contracting parties to any Software Lease Contract shall be IBExpert and the Customer. In the event that the Customer has obtained the Contractual Software via a partner of IBExpert, the latter shall act only as an intermediary without becoming a party to the Software Lease Contract himself.

IV. Lease fee

4.1 The amount of remuneration payable for the lease of the Contractual Software ("Lease Fee") shall result from the order confirmation. The amount due for the rental of the Contractual Software remuneration (rent) is stated in the order confirmation. Insofar as this is not otherwise regulated, the lease fee for 12 months, 24 months or 36 months ("Software Lease Contract") is due in advance and payable immediately to IBExpert.

4.2 Should the Customer fail to pay the Lease Fee to schedule, IBExpert shall be entitled to claim interest in the amount of 8 per cent above the base interest rate according to Art. 247 Civil Code (BGB) as damages for delay, unless IBExpert proves that the damage suffered by IBExpert as a result of the delay is greater.

4.3 The Customer shall be entitled to offset, provided his counterclaim has been legally established by a declaratory judgment, recognized in a lawsuit as ready for decision, or has been accepted or is undisputed by IBExpert. A right of retention can be exercised by the Customer only if his claim for which payment is retained, is based on the same contractual relationship and has been established by a declaratory judgment, recognized in a lawsuit as ready for decision, or has been accepted or is undisputed by IBExpert.

4.4 IBExpert shall be entitled to raise the lease fee for the first time after the lapse of twelve months following the conclusion of the contract in writing, if and to the extent to which the material and labor costs incurred by IBExpert for maintaining the contract-conforming state of the Contractual Software have increased.

V. Granting of rights

5.1 IBExpert grants the Customer the non-exclusive and non-transferable right, temporarily for the duration of the corresponding Software Lease Contract, to use the Contractual Software in accordance with the provisions of these Standard Business Terms Software Lease.

5.2 The Customer is entitled to install and use the Contractual Software on the number of installations stated in the Standard Business Terms Software Lease 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.

5.3 The Customer is not allowed to copy the Contractual Software, unless such reproduction is essential in order to use the Contractual Software. This includes the installation of the Contractual Software from

the original data carrier into the mass memory 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. 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 one copy may be made of the User Manual or other supporting documentation (including online documentation). Any further copying of the Contractual Software and the User Manual or other supporting documentation is only allowed with the express permission of IBExpert.

5.4 IBExpert shall grant the Customer the rights of use of the new program versions transferred within the scope of the corresponding Software Lease Contract, and 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 V. and VI. 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.

VI. Restrictions of the right of use, overuse

6.1 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 IBExpert 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 IBExpert, if it is to be feared that important program functions and working methods may be disclosed by the correction of the defect. Modifications introduced by the Customer during the correction of defects must be recorded and notified to IBExpert.

6.2 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.

6.3 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 IBExpert or other manufacturers contained in the Contractual Software as well as in the User Manual or any other documentation.

6.4 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, e.g. in case of non-approved simultaneous multiple use by more than one user, is considered in breach of contract. 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 IBExpert 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 IBExpert succeeds in discovering the overuse, the Customer shall pay IBExpert liquidated damages for such unauthorized overuse to the amount of three times the lease 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.

VII. Resale and re-lease

7.1 Without the prior written approval of IBEExpert, the Customer shall not be entitled to transfer to a third party the copy of the Contractual Software submitted to him for use, nor the associated User Manual or any other documentation, in particular to sell, lease or lend the material to third parties.

7.2 The dependent use of the Contractual Software by third parties, who are subjected to the Customer's will regarding the manner of use, i.e. in particular by employees of the Customer, shall be permitted. This prohibition of simultaneous multiple use provided for in subsection 5.2 or 5.3 respectively shall remain unaffected.

VIII. Use of software protection mechanisms

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

8.2 Any circumvention of the technical protection measures is a violation of the rights of IBEExpert 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 IBEExpert, 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.

IX. Customer's obligations to cooperate

9.1 It is the Customer's responsibility to provide an appropriate hardware and software environment in due time.

9.2 Prior to the startup of the Contractual Software, 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 upon receipt that the data carrier or remote data transfer (Internet downloads), user manuals and other documentation is free from defects. Any defects discovered by the Customer must be notified to IBEExpert immediately. To this end, the Customer shall forward to IBEExpert all information available to him necessary for eliminating the defect.

9.3 The Customer is obliged to take appropriate measures to prevent unauthorized access to the Contractual Software and to the user manuals or other documentation by taking appropriate measures. The Customer shall keep in safe custody the original data carriers or downloads supplied, as well as the data carriers with the copies prepared by him conformant to the contract. It shall also expressly instruct its employees, colleagues and vicarious agents, who use the Contractual Software in compliance with the provisions of these Standard Business Terms Software Lease, about the observation of these Standard Business Terms Software Lease and of the provisions of copyright law.

X. Warranty

10.1 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.

10.2 The Customer shall be required to inform IBExpert immediately in writing of any apparent defects, specifying and describing how the respective defect manifests itself, what are its effects and under what circumstances it occurs.

10.3 In case of errors contained in the User Manual or in any other documentation, IBExpert's warranty shall be such as to inform the Customer how the incorrect text passages should read correctly.

10.4 A defect properly 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. IBExpert's right to refuse the kind of subsequent fulfillment pursuant to statutory requirements remains unaffected. 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. The Customer may not enforce a leasing fee diminution by a deduction from the agreed leasing fee, unless the right of diminution is uncontested or established by a court judgment. The right of diminution in price shall only cover the particular defective functionality of the Contractual Software.

10.5 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. The foregoing shall not apply if the Customer is entitled to change the Contractual Software, in particular when exercising the right of self-remedial action in case of defects pursuant to Art. 536 a paragraph 2 Civil Code (BGB), and the changes are properly performed and comprehensively documented.

XI. Liability

11.1 The liability regardless of negligence or fault of the lessor pursuant to Art. 536 para. 1 German Civil Code for defects of the Contractual Software already existing at the time of conclusion of the contract shall be expressly excluded.

11.2 In other respects, the liability regulation found in Section 9 of the IBExpert Terms and Conditions apply.

XII. Impairment of service

12.1 As far as IBExpert is obliged to deliver new program versions to the Customer, the warranty provisions in case of defectiveness, listed under section X. of the Standard Business Terms Software Lease apply in the case of defectiveness of these software programs.

12.2 For the services provided under the first-level support consulting and support services IBExpert shall be liable for the punctual and proper implementation, but not for economic or other performance success aims of the Customer.

XIII. Duration of lease, termination of contract

13.1 Unless otherwise provided for in the order confirmation, each Software Lease Contract shall come into force upon its completion.

13.2 The Software Lease Contract has a duration of 12, 24 or 36 months and is extended by one year unless three months' notice of termination is given prior to the expiry of the of the original or extended contract period respectively.

13.3 In addition, each contracting party is entitled to give extraordinary notice of termination of the Software Lease Contract for extraordinary cause if he can no longer be reasonably expected to continue the contractual relationship. A termination by the Customer due to inability to grant the contractual use in accordance with Art. 543 paragraph 2 No. 1 German Civil Code (BGB) shall be admissible only when IBExpert has been given an adequate chance to remedy the defect and it is deemed to have failed. IBExpert may terminate the Contract extraordinarily without notice when the Customer prepares pirate copies of the Contractual Software, passes the Contractual software to others without being authorized to do so, does not prevent the access by unauthorized persons, decompiles the Contractual Software without being entitled to do so, is in default of payment of the lease fee for more than two months or continues to use the Contractual Software in breach of contract in spite of having received a cease-and-desist letter.

13.4 Termination of the Software Lease Contract shall only be valid in written form by postal letter. A transmission of the notice of termination by telecommunication services or electronic means (e.g. by email) is not sufficient to comply with the aforementioned written form stipulation.

XIV. Obligations to return contractual software

14.1 Upon termination of the Software Lease Contract, the Customer shall be obliged to return to IBExpert the Contractual Software on the original data carrier, including the User Manual and all other documentation. Such return must be at no charge for IBExpert. Any copies made of the Contractual Software shall also be delivered to IBExpert or must be deleted if no delivery is possible. If the object of the Software Lease Contract is a software download, then such downloaded software and all copies must be deleted completely upon termination of contract. After being carried out, the deletions shall be confirmed to IBExpert in writing by the Customer.

14.2 The Customer may not continue to use the software in any way after the end of the Software Lease Contract.

XV. Gratuitous transfer of software

15.1 As far as IBExpert allows customers to download, install and register any software programs for gratuitous use ("Freeware", here IBExpert Personal Edition), the provisions of this section XV. 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.

15.2 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 und the associated user documentation shall be realized by data telecommunication ("download") or by transfer of a data carrier at the discretion of IBExpert. IBExpert is not obliged to provide further, additional supplementary services for the Freeware, such as support and maintenance services.

15.3 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.

15.4 IBEExpert 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.

15.5 The Customer shall not be entitled, without the prior written consent of IBEExpert, 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 5.2, 5.3 and VI. for using the Contractual Software shall apply mutatis mutandis to the use of Freeware.

15.6 In connection with the transfer of Freeware, IBEExpert 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.

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

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

XVI. Validity of the General Terms and Conditions

Unless otherwise provided for in these Standard Business Terms Software Lease, the Standard General Business Terms of IBEExpert ("General Terms and Conditions") shall apply mutatis mutandis.

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