

## **General Contract Terms and Conditions regulating the use and maintenance of standard Software Programs**

This is the translated version of Infopark's German-language document "Allgemeine Vertragsbedingungen über die Nutzung und Wartung von Standard-Softwareprogrammen". In all matters, legal or not, only the German version is decisive.

**Valid from 2003-01-01**

### **1 Scope of Application**

The following conditions ("General Contract Terms and Conditions") shall apply for use and operational support of standard software programs (software) of and developed and offered by Infopark AG, thereafter called Infopark.

### **2 Type and Scope of Services**

The type and scope of the reciprocal services are regulated by contractual agreements.

The following shall apply:

- the defined scope of services of the software stated in the contract which is specified in the user documentation,
- the qualification for the use as stated in the contract
- the conditions stipulated in the contract,
- the conditions stipulated below,
- generally applicable technical regulations and standards, in particular the international standards and recommendations of the Internet Engineering Task Force (IETF), as documented in the Request-for-Comments (RFC) and the W3C (World Wide Web Consortium).

In the event of discrepancies, the contractual agreements apply in the above order.

Further conditions and in particular general terms and conditions of contractual partners do not apply, even if the supplier does not explicitly reject these. The General Terms and Conditions of Infopark AG apply exclusively.

### **3 Terms of Use**

#### **3.1 Customer Rights to Software, Scope of Delivery**

We shall deliver executable program files of the software including the user manual. The software's source code is not part of the scope of delivery.

Infopark shall grant the customer a non-exclusive and non-transferable right to use the software stated in the contract within the scope of the contract.

Software may only be copied for the purpose of use as provided under the contract and for data storage.

The client agrees to use the software solely according to the contract and to neither make it available to third parties, nor make it accessible to third parties in any way. The client shall not reverse engineer, decompile, disassemble the software, or use any part of the software in order to develop a separate application. The customer guarantees to store the software in a way to best prevent copying of software by third parties.

The customer herewith acknowledges that Infopark is the sole grantor of the software license and all copyrights thereof. Infopark's rights as sole grantor of licenses shall also apply to software expansions, which are delivered by Infopark to the customer, unless otherwise agreed in writing.

The customer acknowledges herewith Infopark's brand, name, and patent rights in reference to the software and any associated documentation. The customer shall not remove, nor change, nor otherwise modify, any copyright information or other similar owner references in the programs or any associated documentation thereof.

### **3.2 Additional User Rights of Licenses for Application Service Providing (ASP)**

Infopark may offer a special license allowing use within the scope of Application Service Providing.

If the software is operated at the customer's location, Infopark shall grant the customer the non-exclusive, non-transferable, and non-exclusive user rights within the scope of special licensing and within the scope determined in the contract.

If the software is operated at the customer, Infopark shall additionally grant the non-exclusive and non-transferable right to use the software within the scope determined by the contract in a way, that the contractual use of the software is available to third parties.

### **3.3 Violations of User Terms and Conditions**

In case of violations of stated User Terms and Conditions, Infopark shall have the right to terminate the contract in whole or in part without further notice. Infopark reserves the right to file for any damage claims against the customer arising under any use contrary to contract.

## **4 Terms of Maintenance**

### **4.1 Contract Duration and Termination**

The minimum term is stated in the contract. If there is no minimum term stated in the contract, then the minimum term shall be a period of twelve months. After the minimum term, both parties shall have the right to terminate the contract within four weeks prior to the end of the following month.

### **4.2 Maintenance Levels**

#### **4.2.1 Update-Option**

Infopark may change structure and content of software at anytime.

Within the scope of the Update-Option, Infopark shall provide the customer the newest available version of the software stated in the contract for the term of the contract. Infopark shall grant the customer the rights as stated in section 3. The software is offered for download from the internet. It is mandatory to order the Update-Option together with the respective software. Subsequent orders are not possible.

This Update-Option does not entitle to software transfer in machine-readable form to the customer's computer installations, nor the installations of new versions.

Furthermore, this Update-Option does not include the data transfer or adaptation of customer's own developed expansions of the previous software version. Infopark, however, agrees to do so for an extra charge.

#### **4.2.2 Standard-Support**

In addition to the Update-Option, the customer shall have access to the following services under the Standard-Support.

Infopark agrees to provide support to the customer's professional and technical personnel for the software stated in the contract. Part of the support shall be answering general technical questions related to the software stated in the contract and its application, case processing, recording of any program errors, and explanation of manuals and technical documentation. We provide a hotline

reachable by e-mail and telephone during working days in the State of Berlin between the hours of 10 a.m. and 5 p.m. with the exception of December 24<sup>th</sup> and December 31<sup>st</sup>.

We shall provide the user with a case number needed for tracing the processed case.

The user shall take measures within a reasonable scope in helping to find the errors and its causes; especially, providing us with necessary information.

Infopark shall support software versions for up to twelve months after the date of release. Infopark shall not warrant any further support for older software releases.

Pre-condition for Standard-Support is the Update-Option.

#### **4.2.3 Premium-Support**

In addition to the Standard-Support we shall provide extended services to the customer under Premium-Support.

During working days in the State of Berlin, we shall operate a telephone hotline between the hours of 9 a.m. to 6 p.m. with the exception of December 24<sup>th</sup> and December 31<sup>st</sup>.

Infopark shall support the customer with operation and maintenance of the software stated in the contract.

Details about the scope of support services are stated in the contract. Pre-condition for Premium-Support is the Update-Option and the Standard-Support.

#### **4.3 Maintenance Conditions**

Pursuant to section 4.2.2 and section 4.2.3, Infopark's support personnel have direct access to the system in question and can provide active support. The customer shall provide an electronic direct line to the system where he operates the software. The connection shall be established by TCP/IP communication protocol, ssh (secure shell), http, and https. Access is provided via Internet.

Per special customer request, Infopark may establish this connection via ISDN based on callback with customer's router and supplying information about the router configuration. The customer shall be responsible for any ISDN connection charges.

The customer shall provide any official documents and company authorisations which may be necessary for Infopark to carry out its services. Infopark will assist the customer thereby.

#### **4.4 Compensation**

The monthly fee charged for maintenance and support services is stated in the contract. Any costs incurred are invoiced once a month in advance.

### **5 Warranty**

The current state of technology does not allow the exclusion of any possible software errors under all possible user conditions. Infopark, however, warrants that the software stated in the contract is in general usable. This means that your mode of operation is in agreement with the contractual determined condition. Statute of limitations shall be one year.

Infopark agrees to remedy any software glitches and related errors in documentation within a reasonable timeframe and free of charge. Condition for this claim to remedy program errors is, that the malfunction is reproducible and happens in the latest version the customer has received.

At Infopark's discretion, fulfilling the warranty claim may either be done by repairing the program or by delivering a substitute. Specifically, Infopark may provide the customer with a new version of the software in order to fulfill its warranty duty. Infopark may deliver an alternative solution to repairing the program, allowing the customer the use according to the contract.

Infopark shall not be liable, if the software was not installed according to instructions. Furthermore, Infopark shall not be liable, if the customer made modifications or developed additions to the stated software, unless the customer proves that the error is not related to the modifications or additions.

If Infopark does not rectify a substantial program error as provided in the aforementioned conditions, then the customer may either ask for a discount in purchase price or rescind the contract. Infopark shall have the same right, if correcting the error cannot be reasonably accomplished.

If during the process of eliminating the program error, we discover that the problems are due to customer's operating error or improper use, then Infopark shall be entitled to a reasonable fee.

Infopark does not warrant that the software stated in the contract fulfills the customer's individual needs. This shall specifically apply, if the customer did not obtain the desired economic success.

Only end users shall have the right to warranty claims against Infopark. This right cannot be assigned.

## **6 Limitations to Liability**

With the exception of cases involving intent or gross negligence, the contractual and tortuous liability of the supplier shall be limited in all events to 500,000 EUR for personal injury, 100,000 EUR for damage to assets, property and work in progress and 50,000 EUR for damage incurred due to loss of data. The supplier shall not be liable for the recovery of data if the customer has not conducted regular data backups.

Neither shall the supplier be accept any liability for interruptions to telecommunications connections, interruptions to internet routes, force majeure, or where the fault lies with third parties or with the customer. The supplier shall not be held liable for damage incurred where the customer has revealed passwords or user names to unauthorised parties.

## **7 Scope of Delivery, Reservation of Title**

Infopark retains exclusive title over all deliveries and services supplied by it.

After payment in full, Infopark shall grant the customer the licenses as stated in the contract for the use of the software.

## **8 Payment Conditions**

Invoices fall payable within fourteen days of billing and without discount. In the event of a failure to provide payment within this period, Infopark may charge late payment fees and interest up to eight percent above the basic rate of Deutsche Bundesbank without prior notice. Furthermore, a delayed payment may result in the discontinuation of services.

The customer is not entitled to issue invoices to Infopark, unless these relate to a legitimate claim or a claim which has been recognised in writing by Infopark.

## **9 Confidentiality, Data Protection**

The contractual parties agree to maintain confidentiality over knowledge obtained within the scope of the contract – in particular technical or economic data as well as other knowledge – and to utilise this knowledge purely for the purpose of fulfilling the terms of the contract. This does not apply to information which is in the public domain, information which is revealed to one of the parties without unauthorised action or negligence, or information which must be released due to the demands of an act of law or legislation.

Wherever it is necessary to process personal data within the scope of this contract, the supplier and customer shall both comply fully with the data protection act.

In accordance with the requirements of the German data protection act (Bundesdatenschutzgesetz - BDSG), Infopark hereby informs the customer that the customer's data shall be stored.

## 10 Conclusions

The place of fulfilment is Berlin. The place of jurisdiction for both parties is Berlin. The law of the Federal Republic of Germany shall apply exclusively. The contract, and amendments and alterations to it, must be in writing. If a clause should be or prove to be ineffective then this shall not affect the remainder of the contract.

The contractual partners agree to replace the ineffective clause with one which reflects the original intention as closely as possible. The same applies to any loopholes which may come to light.