

General Business Conditions of CIWI GmbH

about the licensing, delivery and maintenance of software and hardware as well as about the consultancy

Standard Business Conditions

General Conditions

§ 1 Scope

- (1) These conditions apply to all performances of the CIWI GmbH as far as they are turned towards the delivery, licensing, rental, purchase or maintenance of software or consultancy. Divergent conditions of the CUSTOMER which are not approved in a written form, are non-committal for us even if we particularly do not contradict them.
- (2) These conditions are basis of all future performances and deliveries even if their inclusion is not agreed on particularly.
- (3) The regulations of the copyright, particularly the copyright law of the Federal Republic of Germany §§ 69a pp. over the protection of programs, are supplementary valid. The parties assume, that in the case that in this contract usage rights are defined, then it is derived from usage rights regarding the copyright regulations. If the license material should completely or partly be unprotected against expectation according to the copyright law of the Federal Republic of Germany as it is valid at conclusion of this contract or after it, the parties agree to behave so as if there would be a copyright on the license material.

§ 2 License Grant

Purchase, Rent, Test Period

- (1) License materials according to this contract are Data processing programs and /or licensed data stocks in machine-readable form inclusively necessary documentations or manuals. The programs correspond to the descriptions in the manual; extra functionality of the programs is not owned. The Source code of the program is not part of the license material.
- (2) Usage is each completely or partially copying (saving) of machine-readable license material for the aim of processing of the contained instructions or data on a server for the use on several workstations or on a single workstation. The CUSTOMER is entitled to the concurrent use of the license material (multi user license) stored on a server merely on the number of workstations contracted and determined in the program bill. As far as the license material is stored on workstations (single user license), the one storage is limited on

- the number of workstations contracted and determined in the program bill. The software has to be completely deleted from other workstations before being installed on further workstations so that the number of workstations given on the program bill is not exceeded. The usage right extends also on the required use of the documentation belonging to the license material or manuals. The CUSTOMER is authorized to make a copy of the machine-readable license material for purposes of data backup. Manuals may not be duplicated.
- (3) CIWI GmbH grants the CUSTOMER a time restricted, not transferable however not exclusive right to the use of the license material for a certain number of workstations mentioned in the respective program bill. The use of the license material for an extended number of workstations beyond the number described in the respective order is only permitted after ordering an expansion license from the CIWI GmbH. The grant of the usage right is by the previous order confirmation postponed until obligatory ordering on official ordering forms of the CIWI GmbH or issuance of invoice statement as well as complete payment of the license fees occurs. CIWI GmbH reserves the property for herself of the contract objects (e.g. data carrier, manual) up to the complete settlement of the requirements. The CUSTOMER is not authorized to change the programs provided by the CIWI GmbH. Furthermore the CUSTOMER is authorized to connect machine-readable license material with other programs. Also only partial transformation of the source code as well as it's processing is not permitted. All rights on the license material including all complete or partial copies of the machine-readable license material, which are produced by the CUSTOMER, even if it got processed, translated or unchanged or edited and connected to other programs regardless of the property of the CUSTOMER, are property of and stay with the CIWI GmbH. The CUSTOMER is obliged, to attach on all these copies the copyright remark of CIWI GmbH. The CUSTOMER obliges himself to make license material including copies of every manner, not accessible to third parties (inclusively other licensees of the program). This holds also in the case of a complete or partial disposal or dissolving of the enterprise of the CUSTOMER. Em-

General Business Conditions of CIWI GmbH

about the licensing, delivery and maintenance of software and hardware as well as about the consultancy

ployee of the CUSTOMER and the CIWI GmbH as well as other persons are not regarded as third parties as long as it is for the use of the licensed program as stipulated in the contract for the CUSTOMER at his place.

- (4) If the license material is marked in the program bill as "purchase" the CUSTOMER purchases the usage right to acquire the program as long as he lets maintain the license material for the surroundings expelled in the program bill. With the purchase of the license material the price for the yearly maintenance and licensing is regulated in the program bill.
- (5) If the license material is marked in the program bill as "rent" the CUSTOMER purchases the restricted usage right on the surroundings expelled in the program bill according to the term of the contract indicated. Data carrier and documentation remain property of CIWI GmbH. The charges on the maintenance and licensing are also contained in the monthly rent agreed on, provided that the CUSTOMER has the teleservice facilities at his disposal. The least rental period is 36 months.
- (6) A test period of 6 weeks is valid for standard programs as well as a test period of 10 days for CUSTOMER-required customizations. The test period starts with completion of the installation of the respective program provided that the CIWI GmbH owes this. If the CIWI GmbH does not install the programs, then the test period starts 2 days after delivery of the program to the CUSTOMER. The CUSTOMER is authorized to explain the resignation of the contract in written during the test period.

§ 3 Compensation

- (1) The compensation for the cession of the license material is regulated in the program bill. Additional to the amounts expelled there, if not otherwise expressed, the legal sales tax in its respective height will be added. All invoices are payable within 10 days after date of invoice without discount.
- (2) If the compensation consists, according to the program bill, of monthly or other regularly payments and the contract is over a period longer than 12 months, the CIWI GmbH is authorized to adjust the prices after expiry of 12 months after previous communication of the general price trend.

- (3) Regular license fees are calculated respectively in advance for the following month.
- (4) A technical training in the license material and its installation is not contained in the compensation. Both has to be compensated in accordance with the respectively valid price list, separate.
- (5) If with the CUSTOMER a contractual right of withdrawal or a test period is agreed, then in the case of the resignation or at not taking place of the contract single charges and services for installations provided by the CIWI GmbH have to be compensated to the CIWI GmbH after expiry of the test period. This holds also to performances or components of third parties who were provided and contracted on behalf of the CUSTOMER request. No rents, license or maintenance charges arise during the test period. Being charged to rents or license and maintenance charges only after expiry of the test period.

§ 4 Guarantee and Liability

- (1) If at contracted usage defects appear, the CUSTOMER has to report these defects as soon as possible to the CIWI GmbH in a comprehensible form in detail to help the CIWI GmbH to eliminate the errors especially to make computer time available on request of the CUSTOMER.
- (2) If a defect occurs due to the work of the CIWI GmbH, then CIWI GmbH is authorized to choose eliminating the defects or substituting it. If the CIWI GmbH eliminates the defects, the CIWI GmbH carries the required charges; particularly transportation, work and cost of materials as far as these do not increase by the fact that the license material is in another location as the location mentioned in the program bill..
- (3) CIWI GmbH will remove appearing faults. The speed of the fault correction depends on the degree of the business hindrance by the CUSTOMER as well as the possibility of teleservice. In the case of the existence of a far maintenance agreement CIWI GmbH will start as quick as possible with the fault correction on receipt of the error message during the usual business hours. If there isn't the possibility of the teleservice, an adequate reaction time is entitled to CIWI GmbH. CIWI GmbH will inform software systems correction measures in a written or in machine-readable form. The CUSTOMER will apply the corrections according to instruction of CIWI GmbH on his plant. The fault elimination is made by over-shipment of a data carrier on which an error-

General Business Conditions of CIWI GmbH

about the licensing, delivery and maintenance of software and hardware as well as about the consultancy

corrected version exists, which the CUSTOMER installs. If technically possible CIWI GmbH is authorized to cover the error-corrected version either up to place through the over-shipment of a data carrier or online.

- (4) The guarantee doesn't extend on defects caused by deviations on operating conditions intended for the program and indicated in the performance description or in the program bill or in the duty exercise book.
- (5) The guarantee period is 12 months after the installation of the time unlimited license material. The same period also applies on claims to substitute defects as far as no claims are asserted from forbidden actions taken by the CUSTOMER.
- (6) If within adequate time CIWI GmbH fails to improve or doesn't manage to remove a considerable deviation from the product information (manual) so that the program gets fit to be used by the CUSTOMER, this allows the CUSTOMER to withdraw from the contract or ask for reduction of the license fees. If with adequate effort the elimination of defects is not possible, then CIWI GmbH can withdraw from the contract with regard to the program concerned. The contract parties agree that it isn't possible to develop programs that are fault-free for all functionalities. Costs for services already paid aren't refunded. The limitation of the guarantee claims and the right of the CUSTOMER to improvement are in lapse after the legal regulations. This process starts by delivery.
- (7) Any adhesion of CIWI GmbH is independent of the legal justification and is limited by EURO 15,000 or the single charges of the license material, which has caused the damage or is object of the claim or is in a direct relation to it. The respectively larger amount is valid. Authoritatively are the charges without value added taxes at emergence of the claim. CIWI GmbH doesn't liable loss of profit, savings and damages from claims of third parties and other indirect damage as well as for recorded data. Number 9 remains untouched.
- (8) CIWI GmbH doesn't assume any liability and guarantee for hardware, bought or rented by the CUSTOMER. By the handing over of the hardware to the CUSTOMER the take over occurs. This applies also for the lease of hardware. The rent of the hardware serves as a financing for the purchase. In the case of the cancellation of the rent the respective valid selling price to be paid by the CUSTOMER takes into consideration the paid rent with a maximum value of half the selling price.

- (9) Projected liability reduction isn't valid as far as CIWI GmbH has deliberately or roughly caused the damage negligently. CIWI GmbH is unrestrictedly liable as far as contract essential duties are neglected or if the CUSTOMER asserts damage compensation entitlements because of the lack of quality assured.
- (10) The liability of CIWI GmbH for the destruction and the loss of data confine itself to the effort, which is required at proper safeguarding by the CUSTOMER to the reconstruction of the data.

§ 5 License Duration and Cancellation

- (1) The validity of this contract is defined in the program bill. The running time starts with the 1st of the month for which the first full monthly rent gets due. A least running time of 36 months is required for the time-limited contracts (rent).
- (2) If the contract is time-limited and the CUSTOMER does not cancel the contract before 3 months of its respective phase down, this contract prolongs itself by 1 year respectively.
- (3) If the contract is time limited or unlimited, CIWI GmbH holds the right to discontinue the CUSTOMER's usage right, if the CUSTOMER has broken essential contractual duties and continues them despite caution given by CIWI GmbH, or doesn't remove the continual damage
- (4) CIWI GmbH holds the right – in time-limited or unlimited contracts - to discontinue the CUSTOMER's usage right without a prior notice period, if the CUSTOMER doesn't meet a due compensation obligation after a period longer than 60 day, despite reminder.
- (5) If CIWI GmbH terminates this contract effectively because of a contractual damage caused by the CUSTOMER, the CUSTOMER is obliged to compensate the damage arising from the cancellation to the CIWI GmbH. At leases CIWI GmbH is authorized to require 85% of the remaining periods rent as compensation. In the case of delay CIWI GmbH is authorized to calculate default interest of at least 5 percentage points above the base interest rate according to DÜG. The proof of a higher damage remains left up to CIWI GmbH.
- (6) By completion of the usage right -- either by expiry or cancellation -- the CUSTOMER is obliged to destroy all originals as well as all copies and partial copies of the license material. CIWI GmbH must be informed of the destruction within 30 days after the completion of the usage right. This applies also to copies changed or connected with other program ma-

General Business Conditions of CIWI GmbH

about the licensing, delivery and maintenance of software and hardware as well as about the consultancy

terial. The liability of the CUSTOMER to finish his contractual compensation is valid by the fulfillment of the above-mentioned obligations.

- (7) License, maintenance and consultancy services can be discontinued one by one provided that the cancellation does not aggravate or foil any other contractual issues.
- (8) Cancellations have to be in written form, where sending the form by telefax is enough.

§ 6 Re-legal use of the license material

- (1) At every form of the unlawful use of the license material the CUSTOMER obliges himself to a full payment of the current time-unlimited license price. This is also valid if the CUSTOMER passes the license material or makes copies of it without previous consent of CIWI GmbH to third parties.
- (2) CIWI GmbH holds the right to the proof of a higher damage.

§ 7 Act of God

- (1) The delivery period prolongs itself, in the case of act of god, and other unforeseen unusual and unencumbered circumstances e.g. at breakdowns, strike, shutout, lack of means of transportation, official interventions, energy supply difficulties, etc., even if similar circumstances existed with prior suppliers, if CIWI GmbH at the punctual fulfillment of its obligations is handicapped.
- (2) If by the mentioned circumstances the delivery or performance gets impossible or unreasonable, CIWI GmbH gets free of his delivering obligations. Provided that the delivering delay lasts longer than 2 month, the buyer is authorized to withdraw from the contract.
- (3) If the running time prolongs itself because of act of god, or CIWI GmbH-through the above-mentioned circumstances - gets free of its delivering obligations, the CUSTOMER cannot derive any damage compensation entitlements from it. CIWI GmbH only can refer to the mentioned circumstances if CIWI GmbH immediately informs the buyer.

§ 8 Advertising

- (1) The CUSTOMER assigns the permission to CIWI GmbH to refer to the CUSTOMER's name as a user of the license material or as a reference opposite third parties in advertising publications.

Installation of the license material

§ 9 Installation

- (1) The system prerequisites like computer configurations, operating systems, databases released by CIWI GmbH as well as the hard- and software components are valid for the teleservice facilities. The software licensing and technical installation applies respectively to the configuration agreed on by contract. CIWI GmbH publishes the technical system prerequisites. The technical system surroundings as well as the administration lie in the responsibility of the CUSTOMER.
- (2) CIWI GmbH is only obliged to the installation of the software if this is agreed upon in the program bill. Provided that CIWI GmbH installs the software with the CUSTOMER, CIWI GmbH can determine the technical, functional, and the appointed time of the installation with the CUSTOMER. The preparation of the duty-book is carried out upon request of the CUSTOMER and is compensated according to effort. As far as nothing else is agreed, the take-over of custom-designed keys and system settings on the earlier system are not contained in the data take-over.
- (3) If no duty-book is prepared, the appointments and prices set in the program bill are then valid. Customizations and the technical installation are cashed up in this case after effort in accordance with current price list of CIWI GmbH.
- (4) The technical installation is regarded as completed if for the respective software product the test client of CIWI GmbH is executable on the CUSTOMERs configuration. After delivery the software remains executable for 4 weeks. During this time period the CUSTOMER has to forward to CIWI GmbH the system- and hardware related data of his configuration in order to obtain the license-code. This license code makes the use of the software as stipulated in the contract possible. Changes of the hardware, the operating system or the data base also must be informed about since the license code is the base for the guarantee and maintenance to CIWI GmbH.
- (5) Operating system, computer configuration, data base and teleservice facilities are installed by CIWI GmbH only if this is agreed upon in the duty-book/program bill.
- (6) If a licensed program is used under different operating conditions than these mentioned above, the obligation to the guarantee is then dropped.

General Business Conditions of CIWI GmbH

about the licensing, delivery and maintenance of software and hardware as well as about the consultancy

Delivery

§ 10 Delivery

- (1) Is made by delivery of the license material on machine-readable note straps on the scale of the program bill. On the note strap are the several versions of the software, which could be activated by a free, wiring code (key). CIWI GmbH carries out the installation only as a separate service with cost.. CIWI GmbH takes no guarantee- for it going out in accordance with following number 6- that the delivered license material is free of viruses. CIWI GmbH explains, however, that CIWI GmbH doesn't have knowledge of viruses in the delivered license material. CIWI GmbH will check Data carrier with Virus scanners, which are generally available and corresponding to the state of the art technology, whether the license material or the data carrier contains viruses, before delivery.

Maintenance- /Consultancy Performances

§ 11 Program Maintenance

- (1) The license material is maintained by CIWI GmbH. The maintenance shall make sure that the CUSTOMER has got the software performances according to the program description, that disturbances are cleared, and improvements and customizations carried out according to the conditions set in the contract. Maintenance isn't a performance, which has to be equated with guarantee. In principle, the maintenance activities of CIWI GmbH have to be compensated in the context of a maintenance agreement.
- (2) At technical disturbances of the teleservice facilities resulting by the CUSTOMER, the additional effort resulting to CIWI GmbH is charged based on the current price list of CIWI GmbH.
- (3) CUSTOMER individual customizations are maintained only through separate agreements.

§ 12 Contents of the Maintenance

- (1) Disturbance- and Inadequacy Elimination on the license material according to the conditions of a locked far maintenance agreement or these contract conditions.

- (2) Installation of the changes at the license material considered necessary by CIWI GmbH as well as the delivery of new releases.
- (3) Provision of user documentation in machine-readable form.
- (4) The performances, which aren't covered and have to be compensated by the CUSTOMER separately are:
 - A. Elimination of disturbances, which are caused by improper handling, or maintenance of the software, had it become necessary by act of god, firm intention or negligence of the CUSTOMER or its staff.
 - B. Remedying of disturbances of every kind, related to the system components, which weren't integrated by CIWI GmbH.
 - C. Charges which lead to the inquiry of faults in system components, which weren't integrated by CIWI GmbH.
 - D. Costs, which arise by the fact that the CUSTOMER impedes CIWI GmbH at the execution of the maintenance.
 - E. The delivery or release of new program; should CIWI GmbH produce new programs or new releases of the left software CIWI GmbH will make a not obligable offer to the CUSTOMER regarding these software.
- (5) Services can (to 4) make the CIWI GmbH dependent on a written order of the CUSTOMER performances. If at such performances journeys of employees of CIWI GmbH or of CIWI GmbH authorized persons become necessary, the traveling expenses, caused by its mileage allowance and the CUSTOMER at the sentences asked by CIWI GmbH generally also carries other expenses.
- (6) CIWI GmbH is authorized to let the maintenance for suitable third parties execution.

§ 13 CUSTOMER Role at the Maintenance

- (1) The CUSTOMER is obliged to follow the operational instructions of CIWI GmbH, whether they are verbal or in written form.
- (2) It is incumbent the CUSTOMER to make fault descriptions according to the details in the application documentation. Error messages are reported generally in written form (by e-mail or fax) to the hotline. As far as possible, a screen shot of the error message has to be enclosed. CIWI GmbH immediately starts with the program maintenance on receipt of the fault description. CIWI GmbH can for additional information or documents if necessary.

General Business Conditions of CIWI GmbH

about the licensing, delivery and maintenance of software and hardware as well as about the consultancy

CIWI GmbH ensures the confidential treatment of the data.

- (3) The CUSTOMER is obliged to provide CIWI GmbH with the necessary computer time within the maintenance times at his location.
- (4) Upon request of CIWI GmbH the CUSTOMER or a well-informed third party engaged consultant has to be present at the maintenance place during the maintenance time. Based on requirements free of cost telephone connections have to be provided.
- (5) The CUSTOMER obliges himself opposite CIWI GmbH to safeguard the license material in the installed form by a copy separate from the regular data logger. In the same manner data, which the CUSTOMER needs, within the software, has to be secured at the latest within 24 hours after its processing.
- (6) The CUSTOMER obliges himself, to build up his system in accordance with the recommendations of CIWI GmbH for further system technical development (Database, Computer, Net-Express and others) with all the required business components.
- (7) The obligation to correct errors does not hold, if the CUSTOMER or a third-party caused alterations (changes) in the license material or in the installation environment.
- (8) The appearance of faults doesn't authorize the CUSTOMER to hold payments back or to cut payments. CIWI GmbH is obliged only to the elimination of the fault or to give the advise how to bypass the error, but not to compensate damages caused by the error, unless the fault arises as a result of the fault of CIWI GmbH which negligently or deliberately roughly caused the fault or the fault is based on the injury of cardinal duties. Own charges of the CUSTOMER in connection with fault diagnosis and fault elimination don't have to be refunded by CIWI GmbH.
- (9) Maintenance performances are on weekdays (Monday – Friday) between 09:00 - 12:00 and between 13:00 - 17:00.

§ 14 Running Time, Compensation and Cancellation of the Maintenance Performances

- (1) The aforementioned maintenance performances are included in the price at contracts at which the usage compensation is done in regular payments (rent), unless the parties agree on something else. A least running time of the maintenance agreements of 36 months applies on time unlimited licenses (purchase). This starts after completion of the technical installa-

tion with the first of the month. The maintenance performances otherwise are calculated separately according to the program bill. The compensation for the maintenance has to be paid every year in advance.

- (2) Maintenance agreements can be handed in with a period of 3 months before its respective phase down. The maintenance agreement otherwise prolongs itself by another year respectively. The cancellation requires the in writing in which case a telefax suffices.

§ 15 Consultancy Performances, Support

- (1) CIWI GmbH consults the CUSTOMER about the maintenance on request, at the execution of work, which the CUSTOMER requires.
- (2) Program developments, which CIWI GmbH makes in the context of the consultancy, are entitled to CIWI GmbH including protection rights placed for it. The CUSTOMER gets a none exclusive and none transferable right to the use.
- (3) Application support and consultancy performances have to be compensated in accordance with the valid price list of CIWI GmbH, provided that not something else is agreed on.

Final regulations

§ 16 Compensation Prohibition

- (1) The CUSTOMER can only set off payments of the single or regular amounts mentioned in the program bill against demands of CIWI GmbH if the counter demand of the CUSTOMER either was acknowledged by CIWI GmbH or is stated finally. Retention rights of the CUSTOMER as well are excluded.

§ 17 In Written

- (1) Supplementary agreements aren't met. Changes of this contract have to be in a written form. This also applies to the abolition of this in writing clause.

§ 18 General Clause

- (1) If one or several of the terms of this contract should be ineffective, this doesn't touch the effectiveness of the remaining terms of this contract. The parties oblige themselves to consent to a new regulation which serves the economic purposes and gets close to the incorrect regulation, which would had been agreed upon if they had known the ineffectiveness.

General Business Conditions of CIWI GmbH

about the licensing, delivery and maintenance of software and hardware as well as about the consultancy

§ 19 Place of Jurisdiction, Legal Rights

- (1) The place of jurisdiction for all disputes arising from the contract relationship between the parties is, as far as the CUSTOMER is a full merchant, a legal person of the public or legal law, Ulm / Germany.
- (2) The right of the Federal Republic of Germany is exclusively applicable to the contract relationship between the parties excluding the UN purchase right.