

GENERAL TERMS OF SERVICE AGREEMENTS

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I. Preamble

1. General Introduction

Licensee has acquired a license from Licensor relating to certain Software specified in the License Agreement concluded by Licensor and Licensee. For the purpose of supporting and servicing said Software, Licensor and Licensee enter into an additional software service agreement on the following terms and conditions.

2. Definitions

For the purposes of the software service agreement ("Service Agreement") between Licensor and Licensee as well as for the entire business relations between Licensor and Licensee, the following terms shall have the following meanings:

"Generating" means the generating of data carriers with executable software for a specific operating system platform. The complete version number of the Software comprises of a maximum of three digits separated by dots. The first and second digit identifies the Version and the third digit identifies the Release.

"License" means a software license relating to one or more workstations for one or more operating system platforms within a firmly defined field of application by Licensee (group of companies, division, department and the like). The License Repository deposited with the respective License Server identifies the legitimate workstation, quantity, scope of performance and expiry date (for demo test versions) of the licensed Software. The License Repository further contains data relating to the platform license and the person in charge of the license.

"License Repository" means the database of the License Server in accordance with the product certificate.

"License Server" means a program linked to a host which enables the administration of the licenses recorded in the product certificate.

"Release" means a technically enhanced Version with or without substantial expansion of functionality which primarily serves the purposes of debugging. Such changes usually do not cause any changes in the software manual.

"Software" means the computer programs of Licensor which have been licensed to Licensee subject to the terms of the License Agreement as specified in the product certificate.

"Update" means the supply of a newer/up to date Release.

"Upgrade" shall mean the supply of a newer/up to date Version.

"Version" means Software of a specific generation. New Versions comprise an expansion of the technical as well as of the functional level. Normally, changes in the functionality result in changes to the software manual.

3. Protection Against Unauthorized Use

The Software is protected against unauthorized use. This may include protection against unauthorized copying and/or unauthorized installation and/or other means of unauthorized use of the Software. The use of the Software shall always be conducted in compliance with the terms of the license issued by Licensor relating to the Software. If a password, license key or other device is necessary to enable Licensee to make proper use of the software ("Key"), such Key shall be made available by Licensor to Licensee.

II. Standard Services

1. User Support/Hotline

Licensor shall be available for telephone enquiries of Licensee to answer technical questions of Licensee relating to the Software and to assist Licensee in other matters relating to the application of the Software.

Licensor shall name one or more persons in charge respectively give one or more dedicated telephone numbers to reach said persons, who shall be available to Licensee for his reporting of bugs and to answer his queries, and in particular regarding the provision of support and upgrade services.

Licensee may use such telephone support on working days Monday through Friday during regular business hours from 09.00 am to 05.00 pm (German time).

2. Standard-Upgrades

Licensor shall provide Licensee with all Upgrades and revised documentation which are generally made available to users of the Software if Licensee has acquired a license and maintains a valid Service Agreement for the Software concerned.

Upgrades will be announced by Licensor before they are released.

Upgrades are—in relation to the most recent Version—upward compatible (where appropriate by transformation); the transfer to a successor is possible without effect on the data basis if this can be technically/methodically realized.

Old Releases shall be supported and serviced by Licensor for a period of six months.

III. Diagnostics and Removal of Bugs

In the event of bugs in the Software, i.e. negative deviations from the respective product description, Licensor performs its obligations by:

- supply of an Update, or
- supply of an Upgrade, or
- supply of a patch, or
- supply of a variant of the Software (i.e. a bug free Version/Release for a specific bug which only occurs on certain conditions, e.g. with certain operating systems).

The diagnostics and removal of bugs shall be effected with Licensor. In the event that the bug can not be localized within reasonable time or only at Licensee's premises, Licensor is prepared to conduct bug diagnostics and, where necessary, bug removal there.

In the event that the bug is not caused by the Software supplied by Licensor, all costs of services relating to the determination of this fact shall be charged to Licensee.

In the event that a bug can not be removed within a short period of time, Licensor shall provide to Licensee an interim solution to circumvent the problem. The circumvention of the bug, the Update, the Upgrade, the patch or the version of the Software shall be documented appropriately.

Licensor may be contacted for the reporting of bugs by telephone and by facsimile letter on working days Monday through Friday during regular business hours (from 09.00 am to 05.00 pm German time).

Furthermore, Licensor shall be available for the notification of bugs by facsimile letter or email 24 hours daily (Monday till Sunday). Licensor shall confirm receipt of written notifications of bugs at the latest on the next working day following the day of notification and shall commence to work on the bug between 09.00 am and 05.00 pm (German time).

The types of bugs are categorized as follows:

- Bug Category 1

The user is unable to use the system or such use is possible but important user applications are not executable.

- Bug Category 2

The user is able to use the system but not all functions can be utilized resulting in material limitations of the application.

- Bug Category 3

All functions of the system can be used with slight limitations.

- Bug Category 4

The user is able to use the system without limitations albeit occurring problems respectively the documentation is incorrect.

The allowed time period to rectify bugs depends on the bug category as follows:

- Bug Category 1

If possible, return information on the estimated time until diagnostics/removal of the bug during the working day following the notification; immediate commencement of diagnostics and efforts to remove the bug; upon removal of the bug supply of a Software variant without undue delay.

- Bug Categories 2 and 3

If possible, return information on the estimated time until diagnostics/removal or circumvention of the bug during five working days from the notification. Supply of a Software variant without undue delay after removal of the bug.

- Bug Category 4

Removal of the bug with the next, at the latest with the second following Update or Upgrade.

IV. Requirements and Obligations

The removal of bugs, e.g. negative deviations from the respective product description and (subordinated) from the respective user manual, shall be performed by supply of a Software variant, a patch, an Update or Upgrade. It is a precondition that the bug has the ability to be reproduced and to occur within the most recent Version accepted by Licensee. Licensor shall receive from Licensee in writing, without undue delay and free of charge all documentation and information necessary for the removal of the bug provided that these are available to Licensee and not subject to specific confidentiality obligations. Where necessary, Licensee shall enable Licensor to access all equipment and data concerned and shall make available to Licensor all necessary data and machine time without cost. For the period until new Software without the bug can be supplied, Licensor shall make available to Licensee an interim solution to circumvent the bug if this is possible using reasonable efforts.

Licensee is herewith informed that—due to the complexity of Innovator-diagnostics and removal of serious bugs is normally not possible in less than five working days since said period is already required for the correction of a localized bug including porting and testing. Transportation of data carriers to the Licensee shall be made at the cost and risk of Licensee.

V. Extraordinary Termination of Servicing

In the event that a bug can not be removed within an appropriate time period or circumvented in a manner reasonably acceptable to Licensee, Licensee shall be entitled to terminate the Service Agreement with immediate effect.

VI. Disclaimer

Licensor's obligation to support and service the Software does not include the diagnostics and removal of disruptions caused by inappropriate handling or mistakes in handling the Software or other circumstances beyond the responsibility of Licensor (including without limitation non-compliance with presumed conditions of use, hardware defects, incompatibility between hardware and other software used etc.). Licensee is not entitled to demand implementation of additional functions or performance criteria or that application services are performed.

Services rendered by Licensor for these purposes shall be charged by Licensor based on its price list as updated from time to time.

Licensor does not assume any servicing obligations relating to computer programs which have been installed with Licensee or third parties in disregard of Licensee's rights under the License Agreement or which have been manipulated.

VII. Limitations

Licensee shall not be entitled to claim

- inclusion of new performance criteria in the Software or the support of new operating systems;

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- further development of specific Versions respectively in relation to supporting the respective programming language—whether with regard to the originating version or a new version of the programming language;
- supply of new Versions and Software variants within a specific timeframe—the principle decision to develop and supply the respective products is the sole decision of Licensor;
- support and servicing of an older Version in relation to which the release of a new Version has been made by Licensor more than six months prior.

It is the sole decision of Licensor to render any of the aforesaid services as a sign of goodwill or to offer such services for a fee.

VIII. Service Fees

1. Amount

The amount of the "Service Fee" payable by Licensee to Licensor shall be the amount stated in Licensor's price list as updated from time to time.

2. Increase of Service Fee

Licensor shall be entitled to increase the Service Fee upon giving three months notice. In such event, Licensee shall be entitled to terminate the Service Agreement with one month notice to be effective as of the date of the increase.

However, such increase shall not be made with effect before the second anniversary of commencement of the license under the License Agreement. The Service Fee shall be paid annually in advance for a period of twelve months with commencement of the Service Agreement and each anniversary thereof (except for software leases: in such event the Service Fee shall be paid monthly in advance).

3. Other Services

In addition to its services under the Service Agreement Licensor offers to analyze and remove problems, which are caused by inappropriate handling or mistakes in handling the Software or other circumstances beyond the responsibility of Licensor at the service fee rates stated in Licensor's price list as updated from time to time.

IX. Term of Agreement and Termination

1. Conclusion

Principally, a Service Agreement can only be concluded considered effective from conclusion of the underlying License Agreement respectively from the time of first delivery of the Software to Licensee.

A later conclusion of a Service Agreement is only possible against retroactive payment of Service Fees up to the aforesaid time.

2. Term

The Service Agreement is in effect for a fixed period of one year.

It is deemed to be renewed automatically for another fixed period of one year at the conclusion of each fixed term unless it has been terminated with three months notice effective to the end of its current term.

3. Termination without Notice

In the event that Licensee infringes any copyright or any other intellectual property right of Licensor, including without limitation

- by duplicating Licensor's Software or using additional copies thereof without license or
- by negligently or willfully enabling a third party to duplicate Licensor's Software or to use additional copies thereof without license,

Licensor shall be entitled to terminate the Service Agreement without notice and without substitution. Licensor's right to claim damages remains unaffected thereby.

X. Liability/Warranty

1. Warranty of Title

Licensor warrants to Licensee that Upgrades, Updates and new Versions of the Software including their accessories are free from any rights of third parties provided that to the extent that products of a third party form part of the Software, this warranty of Licensor is limited to the statement that Licensor is authorized to grant to Licensee the rights to use such Software subject to the terms and conditions of the License Agreement. However, Licensee understands and agrees that such third party will not be bound by this Service Agreement in any way.

2. Warranty for Defects

Licensor does not give any warranty relating to the suitability of the Upgrades, Updates and new Versions of the Software for any specific purpose. Licensor does not warrant any specific characteristics of the Upgrades, Updates and new Versions of the Software. Licensee understands and accepts that based on the current technical standards, software meant to be guaranteed to be free from any bugs cannot be developed in an economically reasonable manner.

(a) Principle Liability

Licensor shall honor its warranty for defects of the Upgrades, Updates and new Versions of the Software respectively for non-deviations of the Upgrades, Updates and new Versions of the Software from the program specification for a period of twelve months from delivery of the respective Upgrades, Updates and new Versions of the Software however limited to such defects respectively deviations existing as of the time of delivery. The possibility of technical or legally necessary changes is reserved. Licensor's liability for non-performance or bad performance of service obligations shall become time-barred twelve months after the respective event or omission but in any event at the latest twelve months from expiry of the Service Agreement.

(b) Obligations to Examine and Reprimand

Licensor must notify Licensor of any defects in the Upgrades, Updates and new Versions of the Software within two weeks from the time the defects become noticeable. In case of a violation of the aforesaid obligation to reprimand, the respective defect shall be deemed to be approved by Licensee.

(c) Limitation of Warranties

In principle, defects and their symptoms shall be described and notified by Licensee in the best possible manner as soon as they occur so that they can be reproduced by Licensor and—as a consequence—be removed. Subsequent to the respective notice of Licensee, such defects shall be removed by Licensor by way of delivery of another Update/Upgrade respectively delivery of a so-called patch or by giving instructions describing how to circum-

vent the bug. Rescission of the Service Agreement respectively lowering of the Service Fee is excluded unless and until the bug has not been removed or circumvented within a reasonable period.

3. Hardware Requirements/Inappropriate Handling

Licensor's warranties do not extend to defects which are caused by a failure to comply with the required application conditions (incompatibilities between hardware and/or other software) or by inappropriate handling of the Software.

4. Entitlement to Upgrades

To the extent that Upgrades can be claimed by Licensee based on the Service Agreement, such entitlement only extends to the supply of the respective current Version of the Software. In particular, it does not extend to any claim to have specific Versions of the Software advanced or enhanced respectively to support any particular programming language—whether referring to the initial Version or any new Version of the programming language. Moreover, there shall be no entitlement to any transition between Versions of different operating systems.

5. Liability

(a) Limitation of Liability

Licensor shall only be liable for damages caused in a willful or grossly negligent manner by itself or by its vicarious agents. However, Licensor's liability for warranties, for contractual principal obligations which are of particular importance for the achievement of the purposes of the Service Agreement, as well as for claims based on willful or grossly negligent conduct, for initial impossibility to perform the contract and for product liability remain unaffected.

(b) Maximum Amount of Liability

Save for Licensor's liability for personal injury and death as well as for willful or grossly negligent damaging acts and omissions, the amount of Licensor's liability shall not exceed a total amount of € 1,250,000.00 in relation to any individual Service Agreement. Licensor has taken out third party liability insurance for monetary, personnel and property damages in said amount. If and when Licensee considers said amount to be insufficient, Licensor is prepared to take out higher insurance as requested by Licensee at Licensee's cost.

(c) Consequential Damages

Licensor does not assume and hereby expressly excludes all liability for lost profit, unachieved savings, damage resulting from claims of third parties, other indirect and direct consequential damages as well as for damages incurred by the loss of data, unless and until proven that such damages are caused by Licensor's or its vicarious agents' gross negligence or willful breach of obligations.

XI. Confidentiality

Licensor and Licensee shall treat confidential all information obtained from or received with regard to the confidential matters of the respective other party during the term and after expiry of the Service Agreement and shall use such information only for the purposes for which it has been obtained or received and shall prevent access of third parties to such information as if they were their own business secrets. Said obligation does not extend to such information which is known to the public or—verifiably—has been developed independently or lawfully obtained from a third party.

XII. Notices

Licensee confirms its knowledge that the creation of daily data backups in long-term cycles, precautionary measures against computer viruses and regular virus checks as well as diligent testing of the computer programs created using the Software is advisable and necessary. In the case of need, counseling on appropriate measures may be given by Licensor at its discretion.

XIII. Miscellaneous

1. Compliance with Law

Licensee undertakes to comply with all legal requirements—in particular under the Copyright Act and potential legal restrictions of trade—when using and/or disposing of the Software.

2. Ancillary Agreements

Any cancellation, change, termination or amendment of the Service Agreement requires the written form to be valid and effective. Oral agreements are invalid including agreements on the waiver of the written form. On behalf of Licensor, only management shall be authorized to give and receive any such declarations which are binding on Licensor.

3. Restrictions of Set-Off, Assignment and Retention

The assignment and pledging of claims against Licensor shall be invalid without Licensor's express approval. Licensee shall not be entitled to set-off any of its claims against Licensor or claim any right of retention unless such claims or rights are absolute and legally binding on Licensor or beyond controversy.

4. Severability

The invalidity or unenforceability of individual provisions of the Service Agreement shall not affect the validity and enforceability of the remaining provisions thereof. In case of such invalidity or unenforceability, Licensor and Licensee shall be obliged to agree on a valid and enforceable provision the economic effect of which comes as close as possible to the invalid or unenforceable provision.

5. Venue

In the event that Licensee is a party capable to enter into a valid agreement on the place of venue for disputes, it is hereby agreed that the exclusive place of jurisdiction for all disputes between Licensor and Licensee out of or in connection with the Service Agreement and the entire legal relationship between the parties shall be at the principal office of Licensor. Place of performance of all obligations legally possible to be performed at Licensor's principal office shall be deemed to be at the place of Licensor's principal office.

6. Applicable Law

The governing law of the Service Agreement as well as all other legal relations between Licensor and Licensee shall be German law with the exclusion of the United Nations Convention on the International Sale of Goods (CISG).

Nuremberg, August 2007