General Maintenance Conditions

of MID GmbH, Kressengartenstr. 10, 90402 Nuremberg, Germany

1. General Introduction

Licensee has acquired usage rights for the software products of Licensor.

For support and maintenance with regard to the software products, the parties enter into a maintenance agreement according to the terms and conditions specified below.

2. Definitions

To avoid misunderstandings, the following major terms of this agreement and of the ongoing business relation shall be defined as follows:

Generation: Generation of the data carriers with executable software for a specified operating system platform. The full version number of the product shall consist of at maximum four digits separated by periods. The first and the second digit hereby refer to the version, the third digit to the release and the fourth is the build number.

License: A software that encompasses one or more workplaces for one or more operating system platforms within a defined operational area (corporation, division, department or similar). The License Repository stored on the respective License Server identifies the legitimate workplace (computer), the number of partial licenses and their scope as well as the expiry date (for test versions and separated single licenses) of the licensed software. The License Repository also contains information with regard to the platform license and the person assigned as responsible for the license.

License Repository: Data pool of the License Server according to the product description.

License Server: A host bound program which allows the admin-istration of the Licenses indicated in the product description.

Release: Technically improved version without or without major functionality enhancements which primarily serves to fix defects. The changes do not generally leads to an amendment of the technical documentation.

Software Alternative: Fixed release for an error that only occurs under certain circumstances, e.g. with specific operating systems.

Update: Delivery of a more recent/current release.

Upgrade: Delivery of a more recent/current version.

Version: Software of a specified generation. New versions con-tain an amendment of the technical as well as of the functional level. The amended functionality generally leads to changes in the technical documentation.

3. Standard Services

The maintenance obligation of Licensor consists of the following services.

3.1. Customer Support/Hotline

Licensor shall be available to Licensee via telephone for their technical questions and shall also assist them otherwise in questions with regard to the application of the product.

Licensor shall nominate one or more representatives who will be available to Licensee for defect notices and questions, particularly with regard to the supply of the maintenance and upgrade services. Licensor shall indicate one or more telephone numbers to contact these representatives.

Support via telephone shall be available to Licensee during regular office hours (on workdays from Monday to Friday between 9 a.m. and 5 p.m. CET).

3.2. Standard Upgrades

Licensor makes available to Licensee all product upgrades and revised documentations that generally are being made available to the customers, if and to the extent Licensee has acquired the respective products and keeps them maintained by Licensor.

The publication of an upgrade will be announced by Licensor in advance. It is up to Licensee to formally request the delivery of the upgrade.

With regard to the most recent version, upgrades are upward compatible (if necessary via transformation); to the extent technically and methodically possible the transfer to a new version will be without influence to the data pool.

Old issues of the software shall be maintained and supported by Licensor for a term of at least six month.

4. Error Diagnoses and Elimination

In case of software errors, i.e. deviations from the respective product description, Licensor shall fulfill his obligations by:

a) delivery of an upgrade, or

b) delivery of an update, or

c) delivery of a hotfix, or

d) delivery of a software alternative

Error diagnoses and elimination shall be done at Licensor. Should the error not be locatable within a reasonable time or only at the site of Licensee, Licensor is willing to conduct an error analysis at the site of Licensee and, if necessary, also the error elimination.

In case the cause of the error is not attributable to the software delivered by Licensor, all expenses by Licensor necessary to clarify the issue shall be invoiced to Licensee.

In case the error cannot be eliminated within a short time, Licensor shall offer an interim solution to work around the error. The workaround, the update, the upgrade, the hotfix or the software alternative shall be documented accordingly.

Licensor shall be available during regular office hours (on workdays from Monday to Friday between 9 a.m. and 5 p.m. CET) via telephone as well as via telefax or e-mail.

Further, Licensor shall be available daily (Monday to Sunday) 24 hours via fax or e-mail for the acceptance of defect notifications. In case of errors notified in writing, Licensor shall confirm the acceptance of the defect notification at latest on the workday following the day of receipt of the defect notification and to begin with the examination between 9 a.m. and 5 p.m. CET.

Error types are categorized according to the following:

Error type 1: The user is not able to use the system or he is able to use it but important customer applications do not run.

Error type 2: The user is able to use the system, not all functions are available and thus there are significant limitations in the application of the system.

Error type 3: All functions of the system are available with minor limitations.

Error type 4: In spite of occurring problems, the user is able to use the system without limitations, or the documentation is defective.

The deadlines for error rectification depend on the error types as follows:

Error type 1: To the extent possible, feedback about the estimated duration until defect analysis / elimination on the workday following the day of notification; immediate start of analysis and elimination measures; after the elimination immediate delivery of a software alternative, a hotfix, an update or upgrade.

Error types 2 and 3: To the extent possible, feedback about the estimated duration until defect analysis / elimination or until creation of a workaround within five workdays after the notification. After the elimination, immediate delivery of a software alternative, a hotfix, an update or upgrade.

Error type 4: Elimination with the next update or upgrade, at latest however in the update or upgrade following the next update or upgrade.

5. Conditions and Obligations

The elimination of errors, i.e. deviations from the respective product description, subsidiarily from the respective user guidebook, shall be effected by the delivery of a software alternative, a hotfix, an update or upgrade. The error is eliminated under the condition that it is reproducible and occurs in the latest version acquired by Licensee. Licensee shall provide Licensor with all information and documents necessary for the error elimination in written form, without delay and without charge, to the extent they are available to Licensee and they do not fall under a specific confidentiality obligation. Licensee shall grant to Licensor access to all affected equipment and data and shall provide all necessary data and machine time without charge. Until the provision of new software in which the error has been eliminated, Licensor will provide an interim solution to work around the error if this is possible with reasonable expenses.

Licensor hereby informs Licensee that due the complexity of Innovator, the defect analysis and elimination of major defects is not possible in less than five working days, because such an amount of time is necessary only for the correction of a localized error as well as for porting, tests etc.

The costs and the risk of the transport of the data carrier to Licensee shall be borne by Licensor.

6. Termination of Maintenance without Notice

Licensee shall be entitled to terminate the maintenance agreement for cause without notice if there is no error rectification within a reasonable period of time or no workaround can be provided in a manner expectable for Licensee.

7. Exclusion

The maintenance obligation does not include the analysis and elimination of errors that have been caused by in appropriate handling or mistakes in the operation of the software product or other circumstances not attributable to Licensor (such as non-adherence to the contractual condition of use, hardware defects, incompatibility of hardware or software use at the same time). Licensee shall not be entitled to claim the implementation of additional functions or features or adaptations.

Any such services shall be invoiced by Licensor according to the relevant valid price list. Licensor shall not provide maintenance to programs that have been installed in violation of his license rights at Licensee or at third parties or to programs which have been manipulated in violation of the contractual terms and conditions.

8. Restrictions

Licensee shall not be entitled to claim

a) the addition of new features or the support of new operating systems;

b) enhancements of specific program versions or the support of a specific programming language – neither in its original version nor in a new version of the programming language;

c) the delivery of new software versions and alternatives within a specific time frame – the decision to develop the respective products and to deliver them is in the sole discretion of Licensor;

d) support or maintenance of an older version for which Licensor published a new software version more than six month ago.

Licensor may offer the above mentioned services as a gesture of good will or against appropriate remuneration.

9. Remuneration

9.1. Applicable Prices

The maintenance fees for the software are specified in the relevant valid price list.

9.2. Amendment of Remuneration Fees

The maintenance fees may be increased respecting a notice period of three months. In this case, Licensee shall be entitled to terminate the maintenance agreement with a notice period of one month to the date on which the increase of the maintenance fees takes effect.

The prices shall be increased at earliest two years after the grant of the licenses to Licensee. The fees shall be due upon com-

mencement of the agreement for each term twelve months term (exception: rental fees, which shall be due on a monthly basis).

9.3. Other Services

In addition to the maintenance fees, MID will separately invoice the analysis and elimination of errors that have been caused by inappropriate handling or mistakes in the operation of the software product or other circumstances not attributable to MID, according to the prices applicable at the respective date.

10. Term and Termination

10.1. Conclusion of Maintenance Agreement

The maintenance agreement shall be concluded at the same time as the respective license agreement or the date of the first delivery of the contractual software.

The conclusion of a maintenance agreement at a later date shall only be possible if the maintenance fees are paid retroactively for the time that has passed until the conclusion of the respective license agreement, respectively the date of the first delivery of the contractual software.

10.2. Contract Term and Termination

The term of the agreement shall be one year. The agreement shall automatically extend for one further year each time it is not terminated to the end of the respective one year term with a notice period of three months.

10.3. Termination without Notice

Licensor shall be entitled to terminate the agreement without notice and without compensation if Licensee violates the intellectual property rights of Licensor, including but not limited to

a) reproduction of software of Licensor or its multiple or unlicensed operation or

b) negligently or intentionally allowing a third party to reproduce the software of Licensor or to use it without proper license.

Any and all damage claims by Licensor remain unaffected.

11. Statutory Warranty

The delivery of new updates and upgrades and the conclusion of this agreement shall not imply an extension of the statutory warranty claims nor an extension, suspension or interruption of the statutory period of limitation.

12. Liability

12.1. Limitation of Liability

Licensor shall be fully liable according to the statutory provisions in case of damages that are based on intentional or grossly negligent conduct, in case of damages of life, body or health and in cases of mandatory liability according to the German Product Liability Act (Produkthaftungsgesetz).

Licensor shall also be liable in cases of negligent violations of major contractual obligations. However, in this case liability is limited according to clause 12.2 of these Maintenance Conditions. Major contractual obligations are deemed to be such obligations of which the fulfillment is essential for the due execution

of the agreement and on which the customer regularly relies on and is allowed to rely on.

Any other liability not covered by the provisions of this Section 12.1 shall be excluded.

12.2. Limitation by Amount

The liability of Licensor in case of ordinary negligent violations of major contractual obligations shall be limited to an amount of EUR 1,250,000.00.

In this amount, licensor has entered into liability insurance for financial, health and property damages. Should Licensee regard this amount as insufficient, Licensor shall increase the insurance some to the amount requested by Licensee at the expenses of Licensee.

12.3. Consequential Damages

Licensor may only be liable for loss of profits, loss of revenues, damages from claims of third parties, other indirect and direct consequential damages as well as data losses due the extent they have been caused by a culpable violation of major contractual obligations of Licensee or its representatives or agents.

13. Confidentiality

The parties shall only use information received in connection with the contractual relation during or after the term of the agreement for the purposes for which the respective other party has disclosed the information. The parties shall treat them like their own business secrets and shall not make them available to third parties. This obligation does not apply to information that is in the public domain, that has demonstrably been created independently or that has been received lawfully from third parties.

14. Instructions

Licensee is aware that daily data backups in long term cycles, prevention against computer viruses and regular virus screenings as well as due testing of the programs created with the contractual software are necessary.

If necessary, Licensee may seek advice from Licensor about the appropriate measures to be taken.

15. General Provisions

15.1. Ancillary Provisions

Every suspension, amendment, termination or extension of this agreement requires written form to be valid. Oral agreements – including, but not limited to agreements about the waiver of this written form requirement – shall be void.

Contact partner for issuing or receiving notifications on the side of Licensor shall exclusively be the managing director at the headquarters in Nuremberg.

15.2. No Set-off or Assignment, Exclusion of Retention Rights

The assignment or pledging of receivables against Licensor shall be excluded without his express authorization. Further, the set-off or invocation of retention rights shall only be allowed with

claims that have been bindingly awarded by court or are not contested by Licensor.

15.3. Severability Clause

The invalidity of individual provisions of this agreement shall not affect the invalidity of the agreement as such.

In case of invalidity of one or more provisions, the parties shall agree on a valid substitution clause that comes closest to the invalid provision in terms of its business purpose.

15.4. Legal Venue

Place of fulfillment and exclusive venue for all disputes arising all of the business relation shall be at the principal office of Licensor.

15.5. Applicable Law

This agreement and all legal relations between the parties shall be subject to the laws of the Federal Republic of Germany. The applicability of the United Nations convention on contracts for the international sale of goods (CISG) shall be expressly excluded.

15.6. Data Protection

The data concerning the business relation and customers shall be processed to the extent admissible by the German Federal Data Protection Act (BDSG).