Terms and Conditions of Business - NEWBASE GmbH

NOTE: This English translation is provided strictly for information purposes only. Only the original German document is of legal and contractual significance.

A. General Terms and Conditions

§ 1 Scope, supplementary contract terms and conditions
(1) These order conditions apply solely to commercial business sales with legal business entities regulated by public law (referred to hereafter as the "**customer**"); they do not apply, in any way whatsoever, to public consumers (§ 13 German Civil Code).
(2) These General Terms and Conditions also apply to any future transactions with the same customer, without obligation on the part of NEWBASE to explicitly refer to their applicability to each and every new contract.
(3) These General Terms and Conditions apply unconditionally. A customer's own differing, contradictory or additional General Terms and Conditions can only be accepted as part of the contract once NEWBASE has specifically agreed to them in writing. The necessity for this specific agreement always applies, also and especially when NEWBASE, despite being aware of the customer's General Terms and Conditions, unreservedly effects a delivery or service for the customer.
(4) The General Terms and Conditions are supplemented by contractual conditions for the cession of software ("B. Software Terms and Conditions"), contractual conditions for software maintenance and hotline services ("C. Maintenance Terms and Conditions") and contractual conditions for the provision of consulting and other services ("D. Services Terms and Conditions"). The abovementioned conditions apply particularly to the scope of these contract terms and conditions.

§ 2 Conclusion of contract and documentation of offer
(1) As a matter of principle, our offers are subject to alteration without prior notice, unless specifically declared otherwise.
(2) An order given by a customer constitutes a binding offer. We can accept the offer within 4 weeks of receiving it either by a written order confirmation, the fact that the customer takes delivery of the ordered goods or that the ordered services are effected within this period.
(3) All papers, technical documents and product information as well as cost estimates and other offer documentation remain the property of NEWBASE. We grant the customer a simple, non-exclusive, non-transferable right to use these papers and documents. These documents may not be passed on to or otherwise made available to any third party without our prior written approval and are furthermore, in the case where a contractual agreement is not reached, to be returned to us. The aforementioned conditions apply equally to the customer's documentation; we reserve the right however to make these available to third parties to whom we have bestowed delivery, service provision or usage rights.

§ 3 Delivery, dispatch, receipt and transfer of risk
(1) Delivery and shipping are effected on a non-binding basis using the lowest-cost delivery method unless specifically agreed otherwise with the customer.
(2) The risk is transferred to the customer as soon as the goods have been given to the contracted deliverer or directly to the customer. In the case where the goods are ready for dispatch or delivery and the dispatching and/or receiving of the goods by the customer is delayed for reasons for which we are not responsible, the risk is transferred to the customer upon their receipt of the notification of readiness for dispatch/delivery. Where goods are to be delivered, the risk for destruction or accidental damage is transferred to the transport company at the point in time that the goods are accepted by the transport company, their representative office or agent responsible for delivery.
(3) In the case where we have declared ourselves responsible for setting up or installing equipment on the customer's premises, the risk shall be transferred to the customer once the equipment has been set up or installed in the agreed location and handed over to the customer.
(4) Delivery times are agreed to be "approximate" unless we have specifically confirmed in writing an obligation on our part to deliver at or prior to a specific time. Delivery periods (time allowed for delivery) begin on the day that we issue an order confirmation, however not before the customer has correctly fulfilled all obligations in the matter of co-operation and all technical questions have been cleared. Where delivery times have been agreed, NEWBASE will not be held in breach of contract until a written warning has been issued. It is agreed that delivery times have been respected if, before the end of the period agreed, the goods to be delivered have left our premises or, in the case of delivery using a transporter, the readiness for dispatch has been notified to the customer. In the case of delay, the customer must set a reasonable new deadline by which delivery is to occur. This does not apply if NEWBASE is responsible for the delay.
(5) The adherence to delivery and/or service provision conditions are subject to the customer punctually and correctly fulfilling their responsibilities. If the delivery period is influenced by changes to the order requested by the customer, it may be extended by an appropriate delay.
(6) Should we be unable to deliver the goods or services ordered for unforeseeable, extraordinary situations beyond our control (especially as a result of Acts of God, natural catastrophes, acts of State, production incidents, industrial action or delays in our receiving important materials), which despite our best efforts cannot be overcome, the delivery period will be extended by an appropriate period of time, as long as the situation remains an impediment, as a rule. This also applies when such situations occur at our suppliers.
(7) Should the delivery time be substantially extended as a result of the aforementioned situations, both parties have the right, after setting a reasonable new deadline, to withdraw from the contract. The same applies where it is impossible to effect delivery, in which case the customer will be informed at the earliest possibility. Any settlement already made is to be refunded to the customer.
(8) In the case where we are responsible for the inability to respect contractually confirmed delivery times and deadlines, and are therefore in breach of contract, the customer can (insofar as they can prove that a financial loss results) demand damages for each completed week of contract breach of 0.5% of the delivery value up to a maximum of 5%.
(9) We otherwise only accept responsibility in the case of a delay or the impossibility of damage claims in accordance with § 12. The customer can only withdraw from the contract because of a delay in supplying goods or services as per German Law where we are responsible for that delay. The abovementioned does not alter the burden of proof in such a case to the customer's disadvantage.
(10) We reserve the right to make changes or alterations as a result of improvements in technology or legal requirements during the period allowed for delivery, insofar as the alterations do not result in lesser functionality or performance, and insofar as the alterations are reasonable for the customer.
(11) If, in an isolated case, the entirety of the goods is not available, we are authorised to make a partial delivery.

§ 4 Pricing
(1) In the case where prices are either not quoted or quoted with the condition "current list price", the invoicing will be calculated based on the list prices valid on the day of the order confirmation or, if this is not available, on the day of dispatch, collection or provision of service. Should a substantial change of certain cost factors occur after the conclusion of the contract, in particular due to wage settlements, changes in raw material costs or currency exchange rates, the agreed price can be changed in accordance with the influence of the changes in cost factors. Evidence of the factors responsible for the price change will be supplied to the customer on request.
(2) Our prices are "ex-works" in Hamburg, unless otherwise agreed, and are subject to Value Added Tax, packing costs and (where relevant) freight/shipping charges; these will be separately charged.

§ 5 Payment terms and compensation
(1) Purchase price and remuneration for services are due immediately on receipt of the invoice, unless the order confirmation specifies a specific payment date. Any other form of settlement must be agreed to in writing.
(2) Where payment is made by bank transfer or other non-cash methods, only the receipt in full in our bank account frees the customer from the potential debt associated with the invoice. Our compensation will be invoiced according to the dates on which they become due, even if the customer stipulates otherwise.
(3) Should the customer default on payment or part-payment of the compensation owed, the unpaid portion still owed will attract interest at the rate of 8% above the official bank rate in accordance with §

247 German Civil Code, unless we can provide evidence of higher damages caused by the default. We have the right, in the case of defaulted payment, to make all unfulfilled requests/orders due for payment; any settlement periods allowed will then no longer be applicable and payment will become due immediately.
(4) The customer can only deduct counter-claims that are legally established, uncontested or recognised by us. The customer is not entitled to refuse contractual obligations or withhold payment or materials.
(5) Should the customer default on payment by a substantial amount, NEWBASE has the right to temporarily suspend further provision of goods and services which are part of the same contractual agreement to which NEWBASE has committed itself. NEWBASE also has the right to make all outstanding amounts resulting form this contractual agreement due with immediate effect. Deadlines and delivery times agreed to by NEWBASE will no longer be applicable in this case, without NEWBASE having to specifically inform the customer thereof.
(6) We reserve the right to check the solvency of customer with normally-available methods. If doubts as to the customer solvency arise before or during the conclusion of the contract, or should there be a significant worsening of the customer's financial position, we have the right to cancel the settlement periods granted, to demand a pre-payment or deposit payment within a reasonable period of time and withhold goods or services until such time as our demand has been met. We have the right to withdraw from the contract and/or demand damages in lieu of payment in the case where the customer refuses such demand or the payment deadline passes without payment having been made.

§ 6 Faults and claims
(1) Faults occurring in delivered hardware and software (technical or legality issues), including errors in manuals or other documentation, or other items supplied will be rectified after notification by the customer within a "responsibility for faults" period of 12 months (Germany) and 6 months (other countries) from the delivery and/or installation. This will, at our discretion, be through the removal of the fault (improvement) or delivery of error-free software (replacement). The customer will pay for the transport or delivery of software, hardware or other items that are to be returned to us for the purposes of improvement.
(2) The customer can demand, at their discretion, a reduction in the purchase price, withdrawal from the contract, damages or compensation for efforts which did not resolve the issue if the fault can not be rectified within a reasonable time or improvements or replacements have failed for other reasons. The latter two claims are subject to § 12 of these Terms and Conditions. A withdrawal from the contract does not affect a customer's rights to claim compensation. Minor faults in hardware or software do not give the customer the right to withdraw from the contract.
(3) A failure of an improvement or replacement can only be deemed to have occurred if we have been granted sufficient opportunity to make improvements or supply replacements and the desired success has not resulted, if improvement or replacement is impossible, if we decline or delay unacceptably, if there is justifiable doubt as to the chances of success or if deemed unacceptable for other reasons.
(4) The customer must contact us before returning faulty goods. The return must include the reference of the associated invoice and, where applicable, reference to the notification of the fault(s) and/or statement of withdrawal. The bearing of risk for the returned items becomes ours once the returned items have been properly accepted at our premises.
(5) The scope of our deliveries and services is exclusively defined in our order confirmation and any related documents (the product description in particular) mentioned therein. The technical specifications of the supplied item (including pictures, diagrams and reports) contained in such documents do not constitute any form of guarantee; rather they portray characteristics according to the contract. Public statements, praise or publicity statements, on the other hand, do not portray legally-binding characteristics. We accept no responsibility for the usability of our products in relation to the implementation foreseen by the customer. Information, suggestions and recommendations regarding use, compatibility or other performance characteristics which exceed the respective specifications of the supplier only constitute a responsibility on our part if they have been confirmed to the customer in writing.
(6) We only accept responsibility for guarantees to the customer which concerns goods or services delivered by us where such guarantees have been clearly and specifically issued by us.
(7) The guarantee will become null and void if changes (irrespective of their nature) are made to the hardware and/or software (unless party to § 9), usage which does not comply with the technical characteristics and return with inadequate packaging. The guarantee for hardware will become null and void if the customer makes technical or construction changes to the equipment or part thereof without our agreement, and for faults, outages and damage which are the result of incompetent operation, excessive wear and tear, or the fact that the customer has failed to have regular maintenance to the hardware carried out. We are not responsible under guarantee for normal wear and tear to the hardware.
(8) Costs which the customer incurs as a result of gross negligence or the deliberate assertion of inexistent rights are to be borne by the customer.

§ 7 Liability
(1) Customer claims for damages or the compensation of needless expenditure are handled according to this § 7without consideration of the legitimacy of the claim.
(2) We accept full responsibility for damages involving injury to life, limb or health resulting from gross negligence of duty on the part of the deliverer/transporter or an unnecessary or deliberate negligence on the part of their appointed representative or agents.
(3) We accept full responsibility for other liability claims only in the case where guaranteed and explicitly defined characteristics are absent, as well as for intentional and gross negligence on the part of our appointed representatives and management. In the case of the culpability of other agents, we accept responsibility only for minor negligence as per paragraph 4 below.
(4) We accept responsibility for minor negligence only, insofar as a duty had been neglected, if the compliance with it is of particular relevance for the achievement of the purpose of the contract (cardinal responsibility). If a cardinal responsibility is neglected, liability is limited to such damages whose occurrence must typically be included in the case of cession of software, as well as to a sum equivalent to two times the sum charged for cession.
(5) Liability for loss of data is limited to the effort typically required to restore it, which would have been necessary when regular and risk-oriented backup copies have been taken.
(6) The paragraphs above also apply in favour of our personnel.
(7) Claims under this § 12 are barred by the statute of limitations within 12 months of the claim originating as does the customer's knowledge or grossly negligent ignorance of the circumstances substantiating the claim. This does not apply when we can be accused of malicious acts or gross negligence as well as in the case of our being responsible for bodily injury, degradation of health or loss of life.
(8) Statutory liability in accordance with the § 14 German Product Liability Law is not affected.

§ 8 Checking and fault-notification obligations
(1) The customer will check the delivered hardware and software and its documentation within 8 days of delivery and/or installation, with particular attention to the completeness of the media on which the software is supplied, the documentation and the correct functioning of the basic program functions. Faults which are thereby determined must be notified to us by registered letter within the following 8 days. The complaint must contain, to the best of the customer's ability, a detailed description of the faults.
(2) Faults which could not be found during the required checking described must be notified within 8 days of their discovery respecting the requirements of the complaints procedure in paragraph 1.
(3) If the checking and fault-notification obligations are neglected, the hardware, software or other items are considered to be accepted in respect of the particular fault.
(4) In the interests of avoiding damage or loss, the customer is urged to ensure that their data is backed-up on a daily basis using current best practice tools and methods.
(5) The customer will, with respect to the goods and services that NEWBASE is obliged to supply, provide co-operation as necessary free of charge to NEWBASE. In this respect, it is of particular importance that NEWBASE receives, without having to request it and in a timely manner, all necessary information from the customer such as goals, milestones and requirements. In addition, the customer will make any rooms or equipment available necessary for the installation or operation of the deliverables in a timely manner.

§ 9 Information obligations
(1) The customer must notify NEWBASE in writing of the name and full address of the new owner if the

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sells the software.

(2) If the ceded software was specially customised for the customer's hardware and was acquired for a purchase price exceeding EUR 5,000.00, the customer is furthermore required to notify us in writing of a hardware change. This also applies should the customer wish to implement the software concerned in a network.

(3) The customer will co-ordinate all extensions and changes to the system with us.

(4) Regardless of the value of the ceded software, the customer is required to notify us in writing of the removal of a copy-protection or similar protection mechanism from the program code. The interruption in the program's availability which made this type of authorised program change necessary must be transcribed in as detailed a manner as possible. This transcription responsibility includes a detailed description of the problem symptoms, the suspected problem cause and in particular, a complete description of the change made to the program.

§ 10 Ownership

(1) We retain ownership of the hardware delivered and the software released to the customer until such time as all outstanding claims, whether at the time of supply/delivery or subsequent claims arising form this contractual relationship, have been met; in the case of payment by cheque or bill of exchange, until full redemption.

(2) If the customer breaches their responsibility, particularly in the case where payment is withheld, we have the right after setting a reasonable deadline for payment to withdraw and retrieve the hardware and software delivered; this does not affect statutory conditions regarding the superfluity of setting a deadline. If the supplier decides to withdraw, the customer must return the hardware and software supplied along with all program copies made. The right to further use of the software expires.

§ 11 Setting of deadlines, threat of claims for damages, withdrawal and cancellation

(1) Insofar as the customer has the legal right to request compensation for damages instead of compensation for expenses incurred, after a reasonable deadline set by the customer has elapsed without success, the setting of such a deadline by the customer must include a specific threat by the customer that they intend to invoke this legal remedy upon expiry of the deadline.

(2) The abovementioned is valid accordingly, insofar as the customer has the legal right to withdraw from the contractual relationship with NEWBASE or terminate without notice for an important reason, after a reasonable deadline set by the customer has elapsed without success.

§ 12 Secrecy, confidentiality

(1) Insofar as the parties to the contract exchange confidential commercial or technical information, or one party gains knowledge about the other party which would normally be seen as a business secret (*e.g.* client data), they undertake to treat such information as strictly confidential, not to make it available to a third party nor to use it in any way whatsoever outside of the fulfilment of this contract without the agreement of the other party to the contract. Exceptions to this mutual obligation for secrecy concern such information which demonstrably a) is general public knowledge or without any action on the part of a party to the contract becomes public knowledge; b) becomes known to a party to the contract from another source which is not bound to secrecy vis-à-vis the other party to the contract; c) must be made accessible due to the obligation of a legal instance concerning a party to the contract (courts of law, criminal investigation organisations and authorities in particular).

(2) Each party to the contract is obliged to physically return confidential information in its possession received from the other party upon request, or to destroy such information if so requested, including any copies or recordings thereof. All information or documents put together by one party and containing confidential information of the other party must be destroyed immediately; confidential information transmitted and/or stored electronically must be deleted. The destruction/deletion is to be confined in writing to the other party if they so request. The aforementioned conditions in this paragraph do not however apply to copies kept on record as evidence of contract by a party under confidential conditions.

(3) The obligation for secrecy and confidentiality continues to apply for a period of five (5) years after the termination of this contract.

(4) NEWBASE however reserves the right to transmit test files, which may contain confidential business information (*e.g.* client data) to licensers (and contracted OEM partners), in order to resolve the customer's questions and problems with the software ceded to them by NEWBASE. In this case, NEWBASE will in turn oblige the licenser to secrecy and confidentiality.

§ 13 Differences with other Terms and Conditions

The contract can also be concluded without specific agreement on the applicability of the customer's own Terms and Conditions of Business. Where the Terms and Conditions of the parties are equivalent, these are taken to be agreed. Contradictions in content are superseded by non-mandatory legal provisions. The same applies if the customer's Terms and Conditions contain conditions which are not included in these (NEWBASE's) Terms and Conditions. NEWBASE's Terms and Conditions will apply in the case where conditions mentioned in NEWBASE's Terms and Conditions are not contained in those of the customer.

§ 14 Written form

All agreements containing an amendment, supplement or further explanation to the conditions of the contract, as well as any special guarantees and arrangements must be in the written form. Statements made by our representatives or agents are only binding if we issue a respective written statement of agreement.

§ 15 Choice of Law

The parties to the contract agree that all legal issues arising from the contractual relationship are subject to the laws and statutes of the Federal Republic of Germany and exclude the United Nations CISG.

§ 16 Domicile, legal venue and Salvatory Clause

(1) The domicile is Hamburg, Germany.

(2) It is agreed that Hamburg - insofar as legally permissible - is the competent court to settle any disputes arising out of this contractual agreement or its execution.

(3) Should individual conditions of the Terms and Conditions of Business be or become ineffective, the applicability of other conditions contained in these Terms and Conditions will not be affected as a result. The ineffective condition will be replaced by a condition which is economically as close as possible to it, which would have been agreed to by the parties had they known of the ineffectiveness of the original condition.

B. Software Terms and Conditions

§ 1 Scope

The following contractual conditions of NEWBASE GmbH („NEWBASE") for the cession of software ("Software Terms and Conditions") apply to all contractual dealings with the customer in connection with the cession of software programs and form part of the contract, insofar as no individual written agreement between NEWBASE and the customer to the contrary exists. The Software Terms and Conditions are supplementary to the NEWBASE Terms and Conditions of Business ("A. General Terms and Conditions"), which form part of the contract along with the Software Terms and Conditions.

§ 2 NEWBASE's Commitments

(1) NEWBASE cedes the software program specified in the order confirmation ("contracted software") to the customer in machine-readable form (object code) together with a User Handbook in printed and/or electronic form as well as - where available - other documentation (*e.g.* operating instructions, help files, other technical information and documentation). The cession of the contracted software is effected - according to available possibilities/customer request - via a data medium or file transfer (*e.g.* download from the Internet).

(2) Where NEWBASE cedes the contracted software to the customer via file transfer, NEWBASE guarantees the availability of the contracted software on a server for download by the customer.

(3) The User Handbook and/or other program documentation contain specific details of the functions and performances that can be attained through proper use of the contracted software as per the contract ("performance description"). The agreed characteristics of the contracted software as well as the conditions applicable to its use are agreed to be solely those contained in the respective performance description. Public statements, praise or publicity cannot be accepted as defining the characteristics of the

contracted software.

(4) The services offered by NEWBASE within the framework of the cession of contracted software do not include the delivery of new versions of the contracted software, software installation and customisation to meet specific customer needs, training nor any advice or works services which goes beyond the framework of the cession. In particular, NEWBASE will not support the customer where the latter wishes to connect the contracted software with another software program for the purposes of data exchange through the use of the interfaces contained in the contracted software. The provision of such a connection, as well as the other aforementioned services, will only be provided to the customer at additional cost and on the basis of a special agreement with the customer.

§ 3 The customer's obligations in the matter of co-operation

(1) The order confirmation and/or the respective User Handbook for the contracted software specify (binding) hardware and software requirements (min. processor speed, storage, operating system etc.) necessary for its proper and error-free operation. The customer is responsible for having an appropriate hardware and software environment available at the required time. If unavailable, and if the contracted software cannot be used as a result, the customer alone bears responsibility.

(2) The customer is urged to fully test all functions of the contracted software in the customer's hardware and software environment before implementing the contracted software into production. The customer must also check for errors on all data media, User Handbooks and other documentation upon receipt. Any errors discovered by the customer are to be notified to NEWBASE without delay.

(3) The customer is responsible for ensuring that unauthorised access to the contracted software is blocked by appropriate measures. The customer will keep the original data media supplied in a location secured against unauthorised access by third parties.

§ 4 The right to make copies and access protection

(1) The customer has the right to make copies of the program supplied where this is necessary for the use of the program. The notion of "necessary copies" includes the installation of the program from the original data media to the storage of the respective hardware, as well as the loading of the program into working memory.

(2) The customer additionally has the right to make a backup copy of the program. Only one single backup copy is permitted to be made and stored and this should be labelled or marked as a backup copy of the ceded program.

(3) The customer is authorised to make as many backup copies as necessary for a backup cycle where the taking of complete system backups is is imperative for data security or to ensure a rapid reactivation of the computer system after total outage. The data media are to be labelled or marked accordingly. The backup copies may be used solely for archiving purposes.

(4) The customer bears the responsibility for ensuring that access to the program and the documentation is not possible for unauthorised third parties via appropriate measures. The customer will keep the original data media supplied and all backup copies in a location secured against unauthorised access by third parties. The customer's personnel must be specifically informed of the need to respect these contractual conditions and of the conditions laid down by German Copyright law.

(5) The customer is not permitted to make any other copies, which include the printing out of program code, photocopying of the complete Handbook or significant portions thereof. Extra Handbooks for personnel are to be obtained from us.

§ 5 Multiple and networked use

(1) NEWBASE gives the customer the non-exclusive and non-transferable right, for an open-ended period, to use the contracted software in accordance with the terms specified in these Software Terms and Conditions. This right to use the contracted software is subject to the contracted software having being paid for in full.

(2) The customer is permitted to deploy the contracted software on any hardware platform available to them. If the customer changes the hardware, they must also delete the software from the hardware used previously. The storage, keeping available or use of the software on more than one hardware platform at any one time is not permitted.

(3) Should the customer wish to deploy the software on more than one hardware platform at a time, they must purchase the appropriate number of program packages.

(4) The implementation of the ceded software within a network or other multi-workstation system is not permitted if the possibility thereby exists for concurrent multiple use of the program. Should the customer wish to implement the software within a network or multi-workstation system, the customer must either block concurrent multiple use through access protection mechanisms or pay a special network fee to the supplier, the amount due being calculated as a function of the number of users connected to the system. We will promptly notify the network fee due from the customer as soon as the customer has notified us in writing of the planned networked use as well as the number of connected users. Deployment in such a network or multi-workstation system is allowed only after the network fee has been paid in full.

§ 6 De-compiling, program changes and overuse

(1) Reverse engineer, decompilation, or disassembling of the SOFTWARE PRODUCTS is not allowed, except and only to the extent that applicable law, notwithstanding this limitation expressly permits such activity.

(2) Any removal of a copy protection or similar protection mechanism is only permitted if said mechanism adversely affects or hinders a trouble-free utilisation of the program. The burden of proof of such adverse affect or hindrance by the protection mechanism to the trouble-free utilisation lies with the customer. § 10 paragraph 3 of these contract conditions is to be respected.

(3) The corresponding actions in accordance with paragraph 2 may only be contracted out to third-party service providers, who are potentially in competition with us, if we cannot or do not wish to make the program changes ourselves at reasonable cost to the customer. We must be given reasonable delay to investigate the acceptance of the order and the name of the third-part service provider must be notified to us.

(4) Insofar as the aforementioned actions are being made for commercial reasons, they are only permitted if they are imperative to the creation, maintenance of functioning of an independently created inter-operable program, and also if the necessary information has not yet been made public or otherwise available, or available from us on demand.

(5) In no case whatsoever may copyright notices, serial numbers and all other signs identifying the program be removed or changed. The same applies to the suppression of such identifying signs on monitor displays.

(6) A commercial use of the contracted software for third-parties along the lines of "Application Service Providing (ASP)" or as a rental model is not permitted. Furthermore, any use of the contracted software which goes beyond the terms laid down here, in particular a concurrent use of the software at more than the number of workstations specified in the order confirmation, is a breach of this contract. The customer will undertake to inform NEWBASE promptly. The customer agrees to pay NEWBASE a compensation for overuse as per NEWBASE's price list for the period of the unauthorised overuse. The basis of the calculation of the compensation will be a linear writing-off over four years. If the customer does not notify the overuse, a contractual penalty of at least three times the price of the utilisation as per NEWBASE's price list will be due.

§ 7 Transfer and sub-rental

(1) The customer has the right to permanently transfer the software, its User Handbooks and other accompanying items to a third party, whether for a fee or free of charge, on condition that the recipient third party declares that they agree that these Terms and Conditions remain in force and become applicable to them. In the case of such a transfer, the customer must hand over all copies of the program to the new user as well as any existing backup copies (or destroy the copies not transferred). The right of the old customer to use the program terminates as a result of the transfer. The old customer agrees to be bound by the information responsibilities as per § 9 paragraph 1 ("General Terms and Conditions") of this contract.

(2) The customer has the right to cede the software, its User Handbooks and other accompanying items to a third party for a defined period of time, on condition that this is not along the lines of a "business rental" (as part of the customer's normal business activity) or leasing activity and that the recipient third party declares that they agree that these Terms and Conditions remain in force and become applicable to them. In the case of such a transfer, the customer must hand over all copies of the program to the new user as well as any existing backup copies (or destroy the copies not transferred). During the period in which the software is ceded to the third party, the ceding customer has no right to use the program themselves. Rental for commercial purposes and leasing is not permitted.

(3) The customer may not cede the software to any third party when a justified doubt exists that the third party would not respect the contract Terms and Conditions, and in particular that such third party would makes unauthorised copies. This also applies to the customer's personnel.

§ 8 Use of Dongles

(1) NEWBASE specifically reserves the right to deliver the contracted software with a protection mechanism (copy protection), *e.g.* in the form of a Dongle.

(2) In the case where NEWBASE delivers the contracted software with a Dongle which then fails to function correctly, the customer can request a replacement Dongle from NEWBASE in exchange for returning the faulty Dongle. During the guarantee period of the contracted software as per 8.3 below, the supply of a replacement is free of charge for the customer. After the guarantee period, a charge in accordance with the price list in force, plus Value Added Tax and shipment costs will be invoiced. Theft or loss due to other reasons does not give the customer a right to a free replacement.

(3) The bypassing of technical protection mechanisms violates NEWBASE's rights and may, under certain circumstances, be regarded as a criminal offence. In particular, the removal and/or bypassing of the Dongle's program routine are not permitted. Only in the case where the Dongle protection adversely affects or hinders the trouble-free utilisation of the program and NEWBASE, despite an appropriate notification (including a detailed description of the occurring error) by the customer, cannot or does not wish to resolve the fault within a reasonable time, can the Dongle protection be removed or bypassed to ensure the correct functioning of the contracted software. The burden of proof of such adverse affect or hindrance by the Dongle protection to the trouble-free utilisation lies with the customer.

§ 9 Guarantee

(1) The customer's rights in the case of faults with the contracted software are defined by statutory provisions, unless otherwise specified below.

(2) A guarantee period of one year applies to the contracted software in Germany and 6 months in other countries. The one year guarantee period begins with the handover of the contracted software to the customer.

(3) NEWBASE guarantees that the contracted software, when deployed according to the terms of the contract, complies with its performance description and that it not afflicted with faults which adversely affect the contracted software for its contractually-agreed use more than insignificantly. Insignificant variations vis-à-vis the performance description are not considered to be errors but rather reserved changes. The customer is aware that current technical possibilities mean that software of the present complexity can not be developed totally error-free.

(4) The customer is obliged to notify NEWBASE promptly in writing of errors occurring, additionally describing how the fault manifests itself, what its effects are and under which conditions it occurs. A claim under guarantee is only possible where the notified error can be reproduced or recorded by mechanically-generated reports.

(5) NEWBASE will resolve a fault which has been properly notified by the customer by means of subsequent correction or provision of a replacement. The choice as to how a fault is to be subsequently resolved lies initially with NEWBASE. NEWBASE's right to refuse the resolution method chosen under the statutory requirements remains unaffected. Insofar as it is reasonable for the customer, NEWBASE has the right, in order to resolve the fault, to cede a new version of the software (*e.g.* update, maintenance release, patch) which no longer contains the fault notified or solves it.

(6) The customer will set NEWBASE a deadline if the correction or replacement has still failed after a reasonable period of time, in as much as such a deadline is reasonable for the customer and NEWBASE has not finally refused to correct or replace. If these requirements have been met and the deadline has passed without success, the customer can withdraw from the contract or reduce the purchase price and may seek compensation in lieu of the service or reimbursement of futile expenses. After the deadline has passed without success, the customer must state, within a reasonable period of time, whether they are still requesting correction or replacement or invoking the abovementioned rights. A right to withdraw from the contract does not apply to an insignificant fault. Any right to the delivery of fault-free contracted software terminates with the customer's statement of withdrawal or price reduction.

(7) NEWBASE is not responsible for errors in the contracted software occurring after a change in the implementation and operating conditions, installation or errors in utilisation (where these are not due to errors in the User Handbook), after intervention in the contracted software such as changes, customisation, connections with other programs and/or use which does not comply with the contract, unless the customer can prove that the errors were already present when the contracted software or have nothing to do with the situations mentioned above.

(8) In the case of withdrawal for valid reason, NEWBASE has the right to demand reasonable compensation for the use the customer had of the contracted software in the past up to the time of withdrawal. This compensation for use is calculated on the basis of a total usage time of four years, whereby a reasonable deduction is envisaged for the impairment of the contracted software due to the error which led to the withdrawal.

§ 10 Validity of the General Terms and Conditions

The general conditions contained in NEWBASE's General Terms and Conditions ("A. General Terms and Conditions") which concern *e.g.* conclusion of contract, delivery, compensation, payment, ownership and legal provisions, liability, statute of limitations, legal venue, etc. apply to the contractual conditions for the cession of software programs.

C. Maintenance / Hotline Service Terms and Conditions

§ 1 Scope

The following contractual conditions of NEWBASE GmbH („NEWBASE") apply to all contractual relationships with customers in connection with software maintenance and hotline services and form part of the contract unless individual agreements in writing between NEWBASE and the customer have been reached. The Maintenance / Hotline Service Terms and Conditions are supplementary to NEWBASE's General Terms and Conditions *("A. General Terms and Conditions")* and NEWBASE's contractual conditions for the cession of software *("B. Software Terms and Conditions"),* both of which, along with the Maintenance / Hotline Service Terms and Conditions, form part of the contract.

§ 2 Object

(1) NEWBASE will provide maintenance services for software programs of which the customer is using the current version. If the customer is using an earlier version of a program, NEWBASE will, for a separate charge, perform a system check and bring the software program up-to-date for a one-off charge which is dependent on the number of programs which have not been kept up-to-date. If the upgrade cannot be performed with reasonable effort, NEWBASE is not in a position to provide maintenance services for the software programs in question.

(2) The extent of the services of the abovementioned maintenance services will be individually described below. Any services not mentioned below are not due by NEWBASE, but have to be ordered and paid for separately.

(3) NEWBASE will make efforts, according to its operational and commercial possibilities, to amend the software programs to be maintained within a reasonable period of time in accordance with changing statutory regulations. This does not apply if the amendments can only be effected with unreasonable effort. In such cases, NEWBASE will only carry out amendments for a reasonable additional charge.

§ 3 Hotline

(1) NEWBASE will provide short advice and support over the telephone or by electronic means for all questions concerning utilisation or other instances of difficulty in connection with the processing performed by the software programs to be maintained. Short advice and support is available to the customer during normal office hours (except on public holidays) from Monday to Friday from 08:00 to 19:00.

(2) Advice and/or support, as far as the present contract is concerned, refers to any problem-related answer which NEWBASE gives in response to the description of the Customer's technical software problem in connection with a software program described in more detail in the order confirmation. The response to a query can be made, at NEWBASE's choice, by telephone, e-mail, fax or in writing.

§ 4 Delivery of up-to-date program versions

(1) NEWBASE will make all new versions of the software programs to be maintained available to the customer, insofar as these are being currently marketed by NEWBASE and are available. This does not apply to extensions to the software programs to be maintained, which NEWBASE offers and markets

separately as a new and independent product as well as new developments of the software programs with the same or similar functions on a different technological basis.

(2) The cession of new versions of programs is done, depending on what is possible and/or the customer's wishes, via a data medium or file transfer (*e.g.* download from the Internet). Where NEWBASE cedes the new version of the program via file transfer, it guarantees the availability of the contracted software on a server for downloading by the customer. The functionality of the new version is described in the accompanying documentation and/or separate information issued by NEWBASE.

§ 5 Additional services

(1) At the request of the customer, NEWBASE will perform additional services which are connected with the software programs to be maintained, but which are not included in the aforementioned services, for an additional charge to be agreed. This is the case for the following services in particular, insofar as these are not able to be provided within the framework of short advice and support by phone (hotline):

- Individual resolution and analysis of errors in the software programs to be maintained;
- Services provided by NEWBASE at the customer's premises, work on the customer's data-processing system in particular;
- Services in connection with software programs which are not covered by this contract;
- Services which, at the customer's request, are performed outside NEWBASE's normal working hours;
- Services which are necessary due to incorrect operation of the maintained software and/or breaches of obligation by the customer, for example the ignoring of User Handbooks, irrespective of whether the responsibility lies with the customer's personnel other persons who have not been authorised by NEWBASE;
- Services which are necessary as a result of Acts of God or other reasons which are not the responsibility of NEWBASE;
- Services which are necessary in connection with the installation of a new version of a program received by the customer, in particular the briefing and training in connection with the software program as well as any data conversions which may possibly be necessary;
- Services which are the result of changed or new customer requirements. In particular, this includes advising the customer during the tailoring and creation of user software and/or questions concerning data-processing technology in general which are unrelated to the software programs to be maintained;
- Modifications of earlier customer-specific customisations, settings and extensions which, after a version change, are necessary for their continued existence in the system.

(2) NEWBASE is not obliged to perform services which are not part of this contract, in particular the abovementioned additional services. NEWBASE will however make efforts to support the customer, as far as its operational possibilities allow, where this is necessary for an efficient, cost-effective use of the software programs to be maintained.

§ 6 The customer's obligations in the matter of co-operation

(1) The customer will support NEWBASE free of charge in all matters concerning NEWBASE's fulfilment of their contractual maintenance services. In particular the customer will

- during the term of the contract, name a person in writing who has all necessary decision-making authority and mandates necessary for the carrying-out of this agreement;
- load new program versions received from NEWBASE according to NEWBASE's instructions;
- keep backup copies available in machine-readable form of all relevant data used with or produced by the maintained software program;
- make available, at the customer's expense, working new versions of the operating system, database and other third-party software necessary for the use of the software programs, insofar as this is necessary for the creation and/or usage of a new program version of the software program to be maintained;
- make appropriately-trained personnel available for the installation and implementation of new program versions.

(2) The abovementioned cooperation obligations are fundamental contract obligations. If the customer does not fulfil these cooperation obligations, NEWBASE is not obliged to effect the services. Work performed/efforts made will be charged. In the case of repeated or major non-fulfilment, NEWBASE has the right to terminate with a notice period of one month. The contractual relationship ends at the end of the following month.

§ 7 Payment, invoicing

(1) The amount charged to the customer for maintenance services is based on the order confirmation or NEWBASE's current price list. All prices quoted are subject to Value Added Tax and are payable without deduction.

(2) NEWBASE has the right to adjust its prices for providing maintenance services in line with the competition and operational conditions. A change to the current prices must be notified to the customer in writing three months before they become valid. The announcement of new prices gives the customer an exceptional right to terminate when the new prices become valid; the customer must inform NEWBASE of the decision to terminate 4 weeks, at the latest, after the announcement of new prices.

(3) If errors occur during the guarantee period for a software program ceded and to be maintained by NEWBASE and if NEWBASE is responsible for this error under the terms of the guarantee, then NEWBASE will not charge for, or will proportionally refund, the services rendered under the terms of this maintenance contract in connection with resolving the error, if the customer evokes the responsibility under guarantee when requesting that NEWBASE resolves the error.

(4) The invoice is raised as one payable amount on the first of the month following the conclusion of the maintenance contract for the period remaining until the 31st December of the calendar year. Subsequent invoices will be raised annually as one payable amount on the 1st January of each calendar year. Alternatively, an invoice can be raised payable in monthly parts via a mandate to debit the customer's bank account.

(5) Where the hotline service is to be charged for actual use, an invoice will be raised at the end of every calendar month for use of the Hotline and will include the following information: name of the caller, date, time, problem, solution, time needed in minutes, time accounted for.

§ 8 Disruptions

(1) Where NEWBASE is obliged to supply the customer with new program versions, the conditions of guarantee in the Software Terms and Conditions apply in the case where these software programs contain errors.

(2) NEWBASE is responsible for the prompt and proper processing of advice and support services provided via the Hotline, but not for the customer's intended financial or other performance success.

§ 9 Contract term, termination

(1) The maintenance contract is valid until the end of the year following the conclusion of the contract and is renewed for a term of one year unless notice to terminate of three months before the end of the first contract period or the then current renewal period is given.

(2) The customer's right to use the software is not affected by the termination of the maintenance contract.

(3) The right to exceptional termination for an important reason is unaffected. In particular, NEWBASE has the right to exceptionally terminate, if the customer has defaulted on payment for more than two months.

§ 10 Usage rights

(1) NEWBASE grants the customer usage rights for the new program versions ceded under the terms of this contract to the same extent that they exist for the software programs with which they will be used or which they will replace. The Software Terms and Conditions apply.

(2) The usage rights for software programs that were replaced by new program versions cease within two weeks after the customer has deployed the product versions supplied into production, at the very latest one calendar month after receipt of the program version by the customer. The customer has the right to make a copy of each technically-replaced software program for archive purposes.

§ 11 Validity of the General Terms and Conditions, and the Software Terms and Conditions

The general conditions contained in NEWBASE's General Terms and Conditions ("A. General Terms and

Terms and Conditions of Business - NEWBASE GmbH

Conditions") which concern *e.g.* conclusion of contract, delivery, compensation, payment, ownership and legal provisions, liability, satute of limitations, legal venue, etc. apply to the contractual conditions for the provision of maintenance services.

Insofar as new program versions are ceded to the customer as part of the maintenance services, NEWBASE's contractual conditions for the cession of software *(B. Software terms and Conditions)*.

D. Services Terms and Conditions

§ 1 Scope
The following contractual conditions of NEWBASE GmbH („NEWBASE") for the provision of advisory and other services ("Services Terms and Conditions") apply to all contractual dealings with the customer in connection with the provision of advisory and other services and form part of the contract, insofar as no individual written agreement between NEWBASE and the customer to the contrary exists. The Services Terms and Conditions are supplementary to the NEWBASE Terms and Conditions of Business ("A. General Terms and Conditions"), which form part of the contract along with the Services Terms and Conditions.

§ 2 Consultancy and other services provided by NEWBASE
(1) NEWBASE will provide various consultancy and other services in response to specific customer request in connection with the choice, introduction, installation, use and customer-specific customisation of NEWBASE software programs. The individual consultancy and other services to be provided by NEWBASE are specified in the order confirmation. The *Services Terms and Conditions* apply particularly to the following services provided by NEWBASE:

- Determination of the customer's software requirements taking the customer's existing hardware and software environment into account;
- Planning and development of a concept for the realisation of the implementation of NEWBASE software programs;
- Project support and advice during the implementation phase of the NEWBASE software programs;
- Implementing pilot programs of the respective NEWBASE software programs at the customer's business;
- Advice during installation and implementation of the NEWBASE software programs chosen by the customer;
- Supporting the customer during the creation and optimisation of preparations for the operation of the NEWBASE software programs;
- Advising the customer with regard to the optimal utilisation of NEWBASE software programs *e.g.* through support during the creation of the system design and the putting together of sample client records, data warehouse functions and OLAP data source;
- Advice during tailoring and extending NEWBASE software programs;
- End-user training and customer personnel (*e.g.* standard courses, workshops, seminars) for the optimal utilisation of NEWBASE software programs.

(2) The consultancy and other services listed above will only be provided to the client by NEWBASE under the different conditions of a labour contract or delivery contract where this has been specifically agreed with the customer.

§ 3 Nature and provision of the services
(1) Milestone planning, the extent of task identification and procedures are decided by the customer and defined in writing in the order confirmation.
(2) In the case where NEWBASE provides support services for the customer within the framework of the project, the customer is obliged to check on a regular basis that the project goals which were specifically defined in writing are being adhered to. In this regard, project management and responsibility lie solely with the customer. NEWBASE and the customer will agree on the type and representation of the results as well as the documentation and record-keeping of project work in addition to agreeing on the defined timing, thereby determining which tasks NEWBASE will undertake.
(3) NEWBASE has to deploy qualified personnel, and to manage and control them continuously as they perform the task(s). NEWBASE will decide, at its own discretion, which members of its personnel to deploy or replace.
(4) Where the customer's personnel work within the framework of projects in a supportive capacity, the customer is responsible for such personnel to be led (from a disciplinary standpoint) by an appropriate manager. The appointed contact persons are to be named to NEWBASE before NEWBASE begins to support the project.
(5) If NEWBASE is supporting the customer with the customisation and extension of NEWBASE software programs at the request and according to the requirements of the customer, NEWBASE is bound to perform the respective tasks, but is not however bound to any associated guarantee or version maintenance unless otherwise specifically agreed.
(6) NEWBASE will provide consultancy and other services during normal office hours (except on public holidays) from Monday to Friday from 09:00 to 18:00. Additional services outside these times require special agreement and will be charged for separately.

§ 4 Payment, invoicing
(1) Consultancy and service orders are charged according to the time required, whereby the prices charged are taken from the NEWBASE price list effective at the time of order confirmation. The prices specified in the case of training are per training day. Consultancy and other services are based on an 8-hour day. The time required, which the customer has to pay for, includes the working activities of NEWBASE personnel, their participation in any meetings or project meetings as well as all preparatory and supplementary work performed exterior to the customer's premises *e.g.* in a NEWBASE branch office. All prices are cited without deduction and are subject to Value Added Tax.
(2) Expenses incurred by NEWBASE in connection with the performance of tasks will be charged to the customer and are subject to Value Added Tax. Such expenses include travel, overnight accommodation and subsistence costs as well as communications, photocopy, print and postage costs. Travel costs incurred in Germany will be calculated according to the distance and time charges in the price list, those incurred outside Germany will be charged at cost.
(3) Consultancy services performed by NEWBASE will be signed for on service reports. Invoicing will be based on these service reports when the consultancy services have come to an end or weekly, should the consultancy services last more than one week.
(4) Where the order confirmation gives a "time required", this is only to be regarded as an estimation. It is possible that additional time may be required to fully perform the service. In this case, NEWBASE will promptly inform the customer that the originally estimated time required is being exceeded. If the customer wishes to set a binding upper limit for the excess, this must be specifically agreed to in writing.
(5) NEWBASE reserves the right to invoice monthly in the case of larger Advisory or service orders. For individual, non-complex tasks, NEWBASE will invoice the services provided after they have been completed.
(6) If services ordered cannot be performed, or only partially performed, for reasons that are the responsibility of the customer, NEWBASE can still invoice for the work, with a deduction for the portion not caried out.

§ 5 Disruptions
NEWBASE is responsible for the prompt and proper carrying out of the advisory and other services, but not for the customer's intended financial or other performance.

§ 6 The customer's obligations in the matter of co-operation
(1) If required, the customer will provide appropriate office accommodation for NEWBASE personnel working on the customer's premises, in which documents, tools and data media can be stored.
(2) If required, the customer will make all necessary supplies available in sufficient quantity without invoicing for them, afford NEWBASE personnel access at no charge and at all times to information necessary for the carrying-out of the work, and promptly provide all necessary information.
(3) Where NEWBASE, as part of its advisory tasks, installs software programs at the customer's premises for testing purposes, the customer is responsible for making an appropriate hardware and software environment available. The customer is urged to test all functions of these software programs in the customer's particular hardware and software environment prior to deployment. NEWBASE cannot be held

responsible for data loss if such loss could have been avoided had the customer properly taken backups. "Taking proper backups" is understood to mean that the customer backs up all data on a daily basis in machine-readable form and that these backups are properly accounted for, thereby ensuring that the data can be restored with an acceptable amount of effort.

§ 7 Usage rights to services rendered, documentation, protective rights
(1) The customer has the right to freely use whatever NEWBASE provides for the contractually foreseen purpose at its discretion. NEWBASE may use what it produced elsewhere as long as this doesn't breach confidentiality stipulations. This also particularly applies to all documentation and other items which NEWBASE creates within the framework of providing a service to the customer.
(2) In the case where it may be possible to protect the results of any consultancy work (*e.g.* copyright, patents, registered design), it is agreed that these belong to NEWBASE if they have come about exclusively as a result of the efforts of NEWBASE personnel. In this case, NEWBASE grants the customer a non-chargeable, unlimited (in time), non-exclusive and transferable (only with NEWBASE's agreement) right to use.

§ 8 Validity of the General Terms and Conditions
The general conditions contained in NEWBASE's General Terms and Conditions ("A. General Terms and Conditions") which concern *e.g.* conclusion of contract, delivery, compensation, payment, ownership and legal provisions, liability, statute of limitations, legal venue etc. apply to the contractual conditions for the provision consultancy and other services.

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