IBAK Software Service Conditions (SwP 10/08)

1. Services to Be Provided by IBAK

1.1. These conditions apply to software services performed on the basis of software service contracts.

In the framework of the software service contract, IBAK shall provide the following services:

a) Automatic, free-of-charge delivery of *updates (improved versions of the licensed software)* of the enhanced standard software of a product version.

b) Upgrades *(enhanced product lines of the licensed software)* shall be made available at a preferential price. This price advantage for service contract clients always applies to the direct predecessor version of the licensed software!

c) As a general rule, updates (upgrades) are supplied by email or internet download.

d) Use of the hotline excluding telephone charges

e) Error analysis and elimination

f) Services relating to interfaces.

For standard interfaces as defined by IBAK, updates of the official interface will be implemented free-of-charge if they can be implemented within the framework of the existing interface module and do not relate to single projects/clients and if the update of the interface does not constitute a considerable technical step forwards.

1.2. Software products of other manufacturers, such as Windows licences, Interbase, MPEG decoders etc., are excluded from the software service contract.

1.3. The service obligation (enhancement) always applies exclusively to the current program version.

1.4. Privacy

IBAK engages to use all data and documentation exclusively for the purpose of providing the contractual services and in compliance with the provisions of the Federal German Data Protection Act (BDSG).

2. Obligation of Clients to Cooperate

2.1. For error analysis and elimination, it is prerequisite that the client should provide the necessary information, documentation and data material to permit the error to be identified and/or reproduced.

2.2. For software installation by IBAK (chargeable service), it is prerequisite that the hardware provided by the client should fulfil the requirements agreed upon with IBAK when the order for the software to be installed was placed. If there are any differences, the client is obligated to advise IBAK of these before installation. The client must make available all installation discs and drivers for the computers to which the software is to be installed. The computers to which the software is to be installed must be ready for operation and, in the case of network operation, must be configured as network capable.

2.3. The client shall name in writing an employee who is responsible for the IBAK software in his company as contact partner for IBAK software services. For updates, upgrades and documentation purposes, IBAK must be notified of the contact partner's telephone number and email address. The contact partner shall independently perform software installations to the workstations and carry out user training.

2.4. IBAK must be kept informed of the numbers and versions of the licences used (basic systems, interface modules and options). Any alterations in the number of licences must be reported to IBAK by the client.

3. Fees

3.1. The service contract fees are calculated on the basis of software service fees for the basic system, interface modules and options as stated in the IBAK price-list and the number of each type of licence plus the legal rate of VAT, if applicable.

3.2. All modules and options must be included in the service contract fees according to the price-list. For technical reasons, it is not possible to provide software services for only a limited share of the total number of licences for a particular product line.

3.3. If additional licences (basic systems, interface modules and options) are purchased, these shall be charged according to the IBAK software service price-list.

3.4. The service contract fees to be paid annually in advance do not include any material, travelling and accommodation costs that may be incurred. These costs will be charged separately after prior agreement.

3.5. IBAK is entitled to increase the annual service contract fee at the end of the year provided that 2 months notice is given in writing. However, such increases shall only be allowed at the earliest 12 months after conclusion of the software service contract.

3.6. The service contract fees must be paid in advance without deduction upon receipt of invoice at the beginning of each contractual year. At the earliest possibility (in the year following the conclusion of the contract), invoicing will be changed to a calendar year basis.

4. Warranty and Liability

4.1. The client's warranty rights against IBAK are defined in the currently valid version of our Conditions of Sale and Delivery (VuL) and the Conditions for Use of IBAK Software (VuL-Software). The client is not entitled under the warranty to commission third parties with error analysis and elimination and charge IBAK for the costs thus incurred. For the rest, the legal provisions shall apply.

4.2. IBAK shall be held liable to the extent stipulated in the valid Conditions of Sale and Delivery (VuL) and the Conditions for Use of IBAK Software (VuL-Software) to which the purchase contract is subject and this shall also apply accordingly to services performed under the service contract. Liability for losses and damage is excluded if these are due to culpable violation by the client of this contractual obligation to cooperate or to gross negligent disregard of reasonable precautions. Liability for purely financial losses, in particular for consequential damage resulting from data loss, is hereby excluded.

5. Period of Validity of the Contract

5.1. The software service contract takes effect on the first day of the month following conclusion of the contract and is valid for one year. It is renewed automatically each year for a further 12 months unless the contract is terminated by one of the contract parties by registered letter with three months notice before expiry of the validity period.

5.2. The licences for use of the software for which services are to be provided shall remain unaffected by termination of the software service contract..

6. Severability

6.1. The invalidity in whole or part of any provision of this contract at present or in the future shall not affect the validity of the other provisions. The contract parties agree to negotiate a legally valid substitute provision that comes closest to the parties' original intent in its economic effect. The same shall also apply to any gaps in the provisions.

7. Final Provisions

7.1. The contract parties hereby agree that each party may record and store the personal data of the other party to the extent that this is required for the administration and execution of this contract.

7.2. No ancillary verbal agreements were made upon conclusion of the software service contract. To become effective, ancillary agreements must be made in writing and signed by both contract parties.

7.3. Place of jurisdiction for all disputes arising from the contractual relationship shall be Kiel, as far as legally permissible. The laws of the Federal Republic of Germany shall apply.