

Support and Maintenance Agreement for iTech Software Products



Version 2.0, 29 Jan 2004

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1 Contract-specific terms

1.1 Product scope

This support and maintenance contract applies to the software components which belong to the products and product licenses for which this contract was concluded.

1.2 Multiple contracts

Existing support and maintenance contracts for certain products and licenses don't prevent the conclusion of new contracts for further products and licenses. There is no relation or interdependence between such contracts.

1.3 Conclusion prerequisites

The contract can be concluded only for products and licenses which are owned by the customer and which are up-to-date at the time of conclusion. Outdated products and licenses have first to be brought to the current version by the purchase of upgrades before a valid support and maintenance contract can be concluded.

1.4 Contract duration and period of notice

The contract starts at the day of contract conclusion and runs for an indefinite period. It can be terminated at the end of each quarter by giving 3 months in advance notice of cancellation, but not before the end of the first contract year.

1.5 Period of notice for iTech

iTech can additionally terminate the contract at the end of a month by giving one month in advance notice of cancellation if the customer doesn't use an important update or upgrade although it fixes serious problems with the software.

1.6 Included support and maintenance services

The following support and maintenance services are included in this contract; they apply only to the products and licenses affected by the contract:

- **E-mail support**

iTech provides an e-mail hotline which reacts within 24 hours on **questions** by the customer with a competent person.

When questions are related to more complicated usage procedures or to other issues for which separate training courses are offered, iTech reserves the right to refer the customer to such training courses.

Problem reports are also registered and processed by this hotline. iTech can process such problems only if the customer supplies iTech with the information required.

- **E-mail notification**

If desired, iTech keeps the customers up to date by e-mail by sending information about known problems, work-arounds and available patches, about new software versions and functions, usage tips, new possible fields of application etc.

- **Free provision of patches (error corrections) and updates** (minor functional extensions or improvements of the functionality of the software) on the iTech website

Patches are prepared at adequate intervals. The criterion of adequacy is the extent to which errors reduce the usability of the software.

If a patch cannot be quickly made available, iTech informs the customer if and how the error in the software can be circumvented in the meantime.

Updates are expected to appear all 2 to 6 months; however iTech makes no assurance that updates of the software will be produced.

- **Free provision of upgrades**

Upgrades are considerable extensions of the functionality or bigger adaptations to new versions of the operating environment (e.g., the operating system, the runtime environment, development tools). Upgrades are expected to appear all 2 years. However iTech makes no assurance that upgrades of the software will be produced.

1.7 Additional support and maintenance services

On arrangement with the customer and at customer's cost iTech provides the following additional services:

- **Analysis of reproducible defects** which are not basically caused by iTech's software.
- **Assistance with the removal of reproducible defects** which occur in connection with the use of the software but for which cannot be established that these problems are caused by an error contained in the software delivered by iTech. This statement doesn't affect the guarantee claims of the customer required by law.
- **Training of customer's employees in software usage.**

Such services are provided according to the then-current price lists of iTech, whereas the customer is granted a discount of 10%.

1.8 Contact persons on the customer side

The customer nominates and gives iTech the names of up to two contact persons which will then be entitled to request the services according to this contract and which can be contacted by iTech for delivery of the agreed on information and deliverables.

1.9 Payment date

Payment is due in advance at the begin of each calendar year for the following next twelve months. In the first year of the contract beginning with the day of contract conclusion a prorated payment is due for the period till the end of the current calendar year, whereas only full months are counted.

If the contract ends during the course of a calendar year iTech refunds the prorated remaining payment of the year, counted in full calendar months.

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1.10 Price changes

iTech can change the yearly contract fee taking effect at the beginning of each new contract year by giving 3 months in advance written notice of the forthcoming change.

If the customer doesn't agree to this change then within one month after receiving the fee alignment notice the customer can give notice to extraordinarily terminate the contract at the end of the next full 3 months. If the customer does so then the original contract fee applies until the contract expires.

1.11 Transfer of products and licenses

This contract cannot be transferred without consent of iTech. As a general rule the old contract must be cancelled and a new contract be concluded to transfer products with maintenance.

1.12 Limitation of liability

iTech Software is unlimitedly liable for intent and severe negligence and for the absence of assured properties.

In the case of slight negligence, the liability of iTech Software due to violation of essential duties of the contract is limited to the typically foreseeable damages. Otherwise the liability in the case of slight negligence is excluded.

Claims for compensation due to the violation of non-essential duties of the contract lapse with two years. This doesn't apply to claims for unpermitted actions.

These provisions don't apply to claims under the product liability law.

2 General terms

2.1 Applicable law

This Agreement is deemed entered into in Berlin, Germany, by both parties, and all business relations of iTech Software with the Customer are governed by the law of the Federal Republic of Germany. If this law refers to foreign law, then such referrals are inoperative. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is explicitly excluded.

Court of jurisdiction

The court having jurisdiction for both parties is Berlin. For Customers which aren't fully qualified merchants the statutory regulations apply.

2.2 Completeness and written form

This Agreement represents the complete agreement concerning this license between the parties and supersedes all prior agreements and representations between them. This Agreement may be amended only in writing executed by both parties.

2.3 Unenforceable provisions

Should any provision of this Agreement be or become unenforceable, then the remainder of this Agreement shall nonetheless remain in full force and effect. The parties agree already now to replace the unenforceable provision by one that comes closest to the economical aim of the unenforceable provision and that is itself enforceable.

2.4 Trademarks

All mentioned trademarks are properties of their respective owners.

2.5 Publication

iTech Software is authorized to publish the conclusion of the contract within the framework of its press and public relations activities.