

General Terms and Conditions for Hardware Maintenance

Preamble

ImageWare Components GmbH points out, that according to the state-of-the-art, it is not possible to develop software, firmware and hardware that it is able to work without errors with and on all hardware systems and hardware components and system combinations.

§ 1 Scope of Contract

- (1) The following terms apply to all maintenance and lease contracts between ImageWare Components GmbH, henceforth referred to as IWC, and the customer. Even if contradicting general terms and conditions of the customer exist, the terms and conditions of IWC will apply exclusively. No delivery, service or offer is made by IWC to other than their own terms and conditions.
- (2) Subject of these contract is the maintenance of the referred/described products (hardware, accessory equipment, systems and configured parts of the system) at the agreed installation address in Germany.
- (3) If software is delivered with the named products within a system configuration, a separate software maintenance contract must be signed.

§ 2 Scope of Service

- (1) Telephone Support
Telephone support is included for the installation of new firmware, the analysis of operator and system errors and resolution of these.
- (2) Improved and enhanced software
New and/or improved versions of the firmware will be made available to the customer without delay as soon as they have been tested and released by IWC. New or improved firmware is made available only by e-mail or FTP. If the customer so wishes, the firmware can be delivered on CD and will be charged at the prices in the IWC price list valid at the time.
- (3) Maintenance
 - a) Testing of important functions and parts subject to wear, cleaning, oiling and greasing, the setting of equipment parts as well as the exchange of damaged or not working parts. In case if wearing parts or expendable items have to be replaced, they will be charged separately.
 - b) The installation of technical changes / updates, which are intended by IWC.
- (4) Fault repair & overhaul
 - a) The fault repairing will be carried out as soon as the unit has been delivered to the IWC repairing center. IWC will start with the repairing within 24 hours after receiving the unit. If a repairing is not possible, IWC will provide for free a same / similar system including the same functions during the repairing time.
 - b) In case of an error repairing, IWC has the choice to make available another equivalent system instead of an overhaul.
 - c) IWC is obliged to realize the above-named service within 5 working days. Important for the calculation of the period of time are the date of delivery through the responsible haulage company the new handing in of the repaired system at the same company. If IWC cannot realize this, IWC will provide the customer with an equal system during the repairing-time.
 - d) The mentioned times and time-limits are only valid, if the error description given by the customer is exact and comprehensible.
 - e) Parts which are damaged will return to property of IWC.

§ 3 Exclusions

- (1) The following are not included in the maintenance:
 - a) Work outside the service times and outside the IWC location.
 - b) The resolution of problems caused by operator errors, inappropriate handling, attempts by the customer or third parties to perform a repair, or other circumstances outside the influence of IWC.
 - c) The maintenance of not mentioned accessories, modifications, supplements or other installations.
 - d) Exchangeable parts, which are rapidly used as well as the costs of expendable items like lamps.
 - e) Services such as training, installation, system configuration etc., not explicit mentioned.
 - f) Moving as well as the location change of the maintenance system.
- (2) Further services can be supplied by IWC as the customer wishes. All personnel, traveling and material costs incurred during such services will be charged by IWC at the valid rate at that time.

§ 4 Availability of Maintenance

- (1) Maintenance and telephone support services are available on working days Monday to Friday between 9:00 and 17:00
- (2) If clause §4 No. 1 is extended or restricted by the parties, this must be explicitly noted.

§ 5 Obligations of the Customer and Conditions of Service

- (1) Installation
 - a) The customer commits himself to manage at his own expenses the requirements, that are mentioned in the installation conditions, particularly the security distance and operating distance.
 - b) If the requirements are not managed or maintained, IWC is legitimated to reject the carrying out of the maintenance or to demand an extra pay for difficult working.
- (2) The customer commits himself
 - a) to handle the products careful according to the instructions manual and to define a responsible person.
 - b) to let a relocation only be realized through IWC.
 - c) to let all works connected with installation, configuration and overhaul only be realized through IWC.
- (3) The customer will keep the technical documentation of all connected devices and components at hand, which is needed for the localization of problems.
- (4) The customer will adhere to the manufacturers' installation and operation instructions and use only the accessories, consumables and replacement parts recommended or approved by the corresponding manufacturer.
- (5) The customer is obliged to install all updates of firmware and software made available by IWC, as only the current and the previous version are maintained.
- (6) Problems and errors must be reported immediately after their occurrence to IWC on the support form, stating the number of the contract, serial number, version, counter values and an exact description, so that IWC can localize the problem.

§ 6 Commencement, Duration, Cancellation

- (1) The contract is valid for an unlimited period. For lease contracts maintenance is restricted to the duration of the lease.
- (2) The contract can be cancelled by either party with a notice period of 6 weeks, initially to the end of the stated minimum period, thereafter to the end of each further 12-month period.
- (3) IWC has the authorization to cancel the contract, if the maximum number of scans is reached. The customer can prevent this cancellation, if he orders an overhauling, which will be liable to costs.
- (4) If the contract for the purchase or lease of the product that is to be maintained is prematurely cancelled during the period of the maintenance contract, then this maintenance contract is cancelled without notice at the same time. The customer receives a credit for the remaining maintenance costs.
- (5) If the customer defaults on payments, IWC can refuse to perform the services for the remainder of the contract period or cancel the contract without notice.
- (6) IWC can cancel the contract in extraordinary circumstances. These are, for example, breach of the software license and usage agreements, the opening of bankruptcy or insolvency proceedings in or out of court.

§ 7 Payment

- (1) Payment is due and will be billed for each contract period in advance. The prices are exclusive of VAT. The payment conditions are within 10 days net. Further services, or services not covered, will be billed separately according to the IWC services price list valid at the time.
- (2) If payment is delayed, the customer will pay interest at the rate of 1% per started month. IWC reserves the right to claim further damages.

§ 8 Non-Disclosure

- (1) Both parties agree to keep all knowledge of company secrets and confidential information obtained during the contractual relationship in confidence for an indefinite period of time.
- (2) The customer consents to the data needed for the execution of the contract being stored, processed and archived electronically.

§ 9 Authentication

- (1) If the technical support is accessed by telephone, IWC reserves the right to ask for the maintenance contract number in order to confirm the identity and authorization of the caller. Support requests by fax or e-mail must contain the contract number. If the customer cannot authenticate himself, IWC can refuse to provide service until authentication takes place.

§ 10 Liability

- (1) Claims must be issued to IWC without delay. IWC will provide improvements to meet justified claims.
- (2) In all circumstances, the customer himself is responsible for the update and backup of his data and systems. When maintenance activities are performed by IWC or new software is made available, it is assumed that current backups of the data and systems exist. This also applies to data and system data that are not local but kept in a network.
- (3) IWC is only liable for damages of any kind resulting from this contract up to a maximum of one year's fees. IWC is only liable for intentional or grossly negligent acts.
- (4) IWC is not liable for loss of profit, hindrance of savings, direct damage and/or consequential damages.

§ 11 Type of Contract, Transferability, Written Agreements

- (1) The contract is only valid with the signature of IWC.
- (2) IWC can transfer the rights and obligations of this contract singly or permanently to a qualified third party.
- (3) The customer may only transfer his rights and obligations from this contract to third parties with the prior agreement of IWC.
- (4) There are no subsidiary agreements to this contract. Changes or additions must be made in writing to become legally binding. This applies especially to the waiver of the requirement of the written form.

§ 12 Final Clauses

- (1) If individual clauses of these terms and conditions become invalid, this does not invalidate the entire contract.
- (2) In the event of one of the above terms becoming invalid, this will not affect the validity of the remaining terms. In this case, the invalid term will be replaced by a different, legally valid term with the same meaning.
- (3) This contract is made according to the laws of the Federal Republic of Germany.
- (4) The exclusive place of jurisdiction for any legal disputes between IWC and their customers is the location of IWC.