



Supplementary Terms and Conditions for IBM Services

Version: January 2016

1. Subject

These Supplementary Terms and Conditions for IBM Services (hereinafter referred to as "STC") govern the terms and conditions for the Services set out on the Order Form.

The provisions of the Agreement will apply accordingly to Eligible Machines, Eligible Programs or Services included in the scope of Service after commencement of the Agreement.

The Agreement consists of the Order Form, Statements of Work (SOWs), these STC and the "General Terms and Conditions for IBM Support Services" (GTC Services) or any equivalent terms and conditions agreed upon between the parties.

Unless otherwise agreed upon, Client's rights are valid only in Germany. Except as stated by mandatory law, IBM will not be obliged to provide Services for a Machine that is located outside Germany.

2. Definitions

Authorised Requestors means the Client's employees who may place Service requests with IBM in accordance with this Agreement. These employees must possess adequate technical skills to enable problem-oriented and purposeful communication between the Client and IBM.

Installation Location means a location specified on the Order Form where Eligible Machines are installed (Client installation address).

Eligible Machine means a Machine identified on the Order Form or included later in the scope of Service. **Machine** means – unless otherwise described – the Machine itself, including its model variants, features and Machine elements.

Eligible Program means a Program listed on the Order Form or included later in the scope of Service.

Order Form means the Order Form itself – including its Attachments – and/or any associated additional document agreed between the parties.

Machine/Service List means a list contained on the Order Form that lists the Eligible Machines and Services.

Enterprise is any legal entity (such as a limited liability company or private company) and the subsidiaries it owns by more than 50 percent. The term "Enterprise" applies only to the portion of the Enterprise located in Germany.

Contract Year is the period as of which the contract becomes effective, from 00:00 h (commencement of contract according to order form) until 24:00 h in the subsequent year at the day which in the calendar precedes the starting day.

3. Term

The minimum term of this Agreement – beginning on the date specified on the Order Form – will be one year.

If the parties agreed on a fixed minimum term of two, three, four or five years ("Fixed Agreement Term"), the Client will receive a discount for that fixed term.

At the end of the respective term the Agreement will be automatically renewed by one further year. In case of renewal Service, the Service charges will be charged on the basis of the charges applicable at the time of renewal.

In each case, the remaining term will be agreed for new Machines, Programs and Services included during the Agreement Term.

4. Automatic Inclusion of Machines and Programs

4.1. Automatic Inclusion of Machines

Newly acquired Machines will be included automatically in the Agreement. The following will apply:

- A Machine that the Client acquires directly from IBM will be included on the day after its installation. The Service Type for the respective Machine will correspond to the Service Type for comparable IBM Machine Types at the same location. If no comparable Machines are installed at the location, Maintenance will be provided in compliance with the basic Service type available for the applicable Machine.
- A Machine that the Client acquires from an IBM Business Partner and which is known to IBM will be included in the scope of Service of this Agreement on the day after expiry of the warranty period for the applicable Machine, provided the IBM Business Partner itself has not offered or sold such a Service for this Machine.

The start of the obligation to pay charges is detailed in the "Charges" section.

Automatic inclusion will also refer to separate Machine extensions or upgrades, including additional features, elements and model conversions for an existing Eligible Machine.

The Client can object in writing to chargeable automatic inclusion of a Machine in the scope of Service, but the objection must have been received by IBM at the latest one month after the date of the first invoice for the Maintenance Service.

However, there will be no right to objection for automatic inclusion of Machine extensions or upgrades, including additional features, elements and model conversions for an existing Eligible Machine.

If IBM has already provided Maintenance Services for automatically included Machines at the Client's request, the Client will be obliged to pay for them.

4.2. Automatic Inclusion of Programs

When a software Service Agreement expires that referred at the time of acquisition to an Eligible Program in compliance with this Agreement, it will be included in this Agreement if the software runs on an Eligible Machine. IBM will update the inventory after inclusion of a Program. The Client may object in writing to chargeable automatic inclusion of a Program in the scope of Service. However, the objection must have been received by IBM at the latest one month after the date of the first invoice for the software Service.

There will be no right to object, however, if the Program is only an update, a new feature, a new release or a new version of an existing Eligible Program or a further copy of an existing Eligible Program on an Eligible Machine.

If IBM has already provided Services for automatically included Programs at the Client's request, the Client will be obliged to pay for them.

5. Licence for Service Programs

The following terms and conditions apply to all Programs that IBM provides together with a Service and that is not otherwise accompanied by a separate license agreement. In connection with the provision of the Service IBM grant to the Client a non-exclusive license to use the Service Program on the Eligible Machines defined by IBM to assist in problem determination or other system support in conjunction with the Services under this Agreement.

The Client will not be entitled to

- modify the Program's Machine-readable instructions or merge data into another Program;
- reverse assemble, reverse compile, or otherwise convert the Program, unless such a conversion is provided by a binding legal regulation;
- sublicense, assign, or transfer the license for the Program, or
- distribute the Program to any third parties.

IBM provides the Program without warranties of any kind.

If IBM does not provide a backup copy of the Service Program, the Client has the right to create one copy for backup purposes provided the Client reproduces the copyright information or any other copyright notes on the copy. The backup copy will be subject to the same terms and conditions as the original.

The Client's licence terminates, when

- the Service is terminated, is withdrawn by IBM or the Agreement Term ends and is not renewed;
- the Service Program is no longer required for provision of the Service; or
- the Eligible Machines designated by IBM for the Program is removed from productive use by the Client

IBM may terminate the licence if the Client does not fulfil the Client's contractual obligations or at IBM's own discretion, e.g. if the Program is no longer needed for the Services. Upon termination of the licence, the Client will be obliged to destroy the Service Program including all backup copies received or made by the Client.

6. Responsibilities

6.1. Inventory Review

If the Client or IBM requests a review of the inventory of the Eligible Machines and Programs, the parties will update and mutually exchange the inventory list last created. IBM may change the Service charge if a change in the inventory is discovered.

6.2. Required Consents

The Client is responsible for promptly obtaining and providing to IBM all required consents necessary for IBM to provide the Services in compliance with this Agreement e.g the owner's agreement in case it is not the Client owned Machine. A required consent means any consents or approvals required to give IBM and its subcontractors the right to access, use and/or modify (including creating derivative works) the hardware, software, firmware and other products the Client use, without infringing the

ownership or license rights (including patent and copyright) of the providers or owners of such products.

The Client will indemnify, defend and hold IBM, its affiliates and subcontractors, harmless from and against any and all claims, losses, liabilities and damages (including reasonable attorneys' fees and costs) arising from or in connection with any claims (including patent and copyright infringement) made against IBM that occur as a result of the Client's failure to provide any required consents.

IBM will be relieved of the performance of any obligations that may be affected by the Client's to promptly provide any required consents.

6.3. Client Responsibilities

In performing Services, IBM must rely on the due performance of the Client's obligation. In the event the Client should not meet its obligations in due time and this should lead to delays and/or extra costs, IBM may – notwithstanding any additional right granted by law – request corresponding changes to the time schedule and prices/charges. Moreover IBM is entitled – after granting a reasonable grace period to comply – to terminate the Agreement. However, the mere expiration of any such grace period granted by IBM will not lead to an automatic cancellation of the Agreement.

The Client will

1. pay all communication charges at the Client end in connection with use of the Services, unless otherwise agreed;
2. make sure that all access codes provided by IBM are used exclusively by the designated authorised requestors;
3. provide IBM with the necessary and available diagnostic information (including product or system information) in connection with problems relating to the Eligible Machines and, if applicable, Programs for which support is requested;
4. use the information received within the scope of this Service exclusively for support of the IT requirements within the Client's enterprise;
5. without the prior written consent of IBM, neither cede the described Services nor the Client's rights or obligations within the scope of this Agreement, or otherwise transfer or pass them on. Every attempt in this respect will be void;
6. install on the Client's Eligible Machines the Programs specified by IBM that are needed for the use of electronic tools for remote access;
7. provide IBM with the necessary remote access to the Client's Eligible Machines and grant the necessary authorisations to enable IBM to provide the Services via the remote access;
8. be responsible for reasonable protection of all Programs and data stored on the Eligible Machines during Client-authorized remote access by IBM;
9. provide IBM with sufficient, free, and safe access to its facilities and systems (including remote access) and will support IBM by providing information, personnel and other resources that are necessary for the provision of the Services. This also includes that the Machine is in a safe condition;
10. communicate inventory changes to Machines, processors, parts and Programs within one (1) month.
11. follow the Service instructions that IBM provides (which may include installing Machine Code and other software updates either downloaded from an IBM Internet Web site or copied from other electronic media);
12. before IBM provides Service, where applicable, follow the problem determination, problem analysis, and follow the service request procedures that IBM provides for the Machine;
13. inform IBM of changes in a Machine's location.

7. Charges

Charges to be paid by the Client are specified on the Order Form. These are based on the agreed Services, the agreed Agreement Term and the method of payment chosen by the Client.

IBM may adjust the charges if an installation location is added or modified, or if an Eligible Machine and/or an Eligible Program is added, removed or modified. The same will apply analogously to changes in relation to the nature and scope of the Services. The charges applicable at the time of the change will apply to such changes.

No general price increases will be made during the period defined on the relevant Order Form (on page 1) in the event of advance payment of the charges or if the "with price protection" option has been agreed upon. However, the applicable charges will apply to all the agreed Services after this initial contract period has expired.

If no "price protection" was agreed upon, then IBM may increase recurring Service charges for Services provided under this Agreement, by giving the Client three (3) months' written notice. An increase applies on the first day of the invoice or Charging Period on or after the effective date IBM specifies in the notice.

If any eligible Machines or Services have been added to those already agreed or if the existing eligible Machines or Services have been extended, then the general valid charges applicable at the time of addition / extension will apply to the remaining initial contract period.

These prices will be payable according to the payment terms for the remaining Agreement Term.

The Client will receive the benefit of a decrease in applicable charges for amounts which become due on or after the effective date of the decrease.

If required by business requirements of the Client, by mutual arrangement invoicing may be split according to the Client's wishes.

Services for which the Client prepays must be used within the applicable contract period. Unless otherwise agreed upon, IBM does not give credits or refunds for unused prepaid Services.

Note: The termination rule, appropriate for the appendent contract, is separately reaffirmed within the "Terms and Conditions in order of their precedence". Below please find the three termination options.

8. Termination in Case of Yearly Term

1. If the Client or IBM does not wish any automatic renewal as detailed in the "Term" section, the respective party will communicate this to the other party in writing three months before the end of the agreed term.
2. Either party may terminate this Agreement for the first time in writing after expiry of the first contractual year with a period of notice of three months prior to the end of the respective contractual year.
3. The Client may terminate this Agreement in writing within four weeks from communication of a charge increase if IBM increases the charges for a new contractual year to such an extent that the Service charge of the next contractual year for the same inventory of Eligible Machines, Eligible Programs and Services rises by more than 8%. In this case, the required contractual end can be at the earliest on the last day before the charge increase takes effect.
4. The Client may terminate the Service for individual Machines, Programs or Services for the first time in writing after expiry of the first contractual year with a period of notice of three months prior to the end of the respective contractual year.
5. The Client may terminate the Service for individual Machines beforehand in writing if a different Machine is included in an IBM Service/Maintenance Agreement that replaces the terminated one and is comparable to it in terms of its nature and in relation to its function or task.

6. The Client may also terminate additional Services (if such have been agreed) beforehand in writing if the terminated Service is replaced by equivalent Services within an IBM Service/Maintenance Agreement.
7. Regardless of this, the Client may terminate a Service for a Machine in writing with a period of notice of one month prior to the end of one calendar month if use of the Machine within the Client's enterprise is permanently and finally ended and the Machine is not replaced by a Machine that is comparable to it in terms of its nature and in relation to its function or task. By terminating, the Client also confirms the permanent dismantling or rather the final end of the use of the respective Machine within the Client's enterprise. The Client may also terminate a Service in writing if the eligible location, for which the Service is provided, is no longer controlled by the Client, because of closing or sale of the facility.
8. For the Service, IBM also relies on spare parts suppliers for both non-IBM products and its own Machines. If such suppliers terminate spare parts deliveries, IBM may terminate the Service by giving the Client at least three months' notice in writing.
In the event that the contractual terms agreed between the respective manufacturer and IBM, or the manufacturer's support policy terms, have been changed, IBM reserves the right to adjust the charges and/or the contract terms and/or the terms and conditions, or to terminate this Agreement without notice. The Client will also have the right to terminate this Agreement without notice, if the Client has not granted its consent to any adjustments made by IBM. Notice of termination must be made in the written form.
9. The Client will be credited with Service charges already paid in advance.

9. Termination in the Case of a Fixed Agreement Term with general Termination Possibilities and with Termination Charges

1. If the Client or IBM does not wish any automatic renewal as detailed in the "Term" section, the respective party will communicate this to the other party in writing three months before the end of the agreed Fixed Agreement Term.
2. The Client may terminate the Service for individual Machines or additional Services for the first time in writing after the expiry of the first contractual year with a period of notice of three months prior to the end of a calendar month, the contract for the first time before the expiry of the second contractual year with a period of notice of three months prior to the end of the respective contractual year-
3. The Client may terminate this Agreement in writing within four weeks from communication of a charge increase if IBM increases the charges for a new contractual year to such an extent that the Service charge of the next contractual year for the same inventory of Eligible Machines, Eligible Programs and Services rises by more than 8%. In this case, the required contractual end can be at the earliest on the last day before the charge increase takes effect.
4. If the Client terminates the Agreement, individual Machines, Programs or Services prematurely, for each terminated Machine, each terminated Program or Service the Client will pay an early termination charge plus value added tax. The early termination charge will be independent of the time when termination takes effect and, in the case of a fixed contractual term of 24 months, will amount to 17% of the Service charge applicable to the Service, Machine or Program affected by termination for the applicable contractual year (ignoring the discount in the event of advance payment). In the case of a Fixed Agreement Term of 36 months, the corresponding percentage is 25%, in the case of a Fixed Agreement Term of 48 months the corresponding percentage is 33%, and in the case of a Fixed Agreement Term of 60 months, the corresponding percentage amounts to 42%.
5. The Client may already terminate the Service for individual Machines beforehand in writing – without paying early termination charges – if a different Machine is included in an IBM Service/Maintenance Agreement that replaces the terminated one and is comparable to it in terms of its nature and in relation to its function or task.

6. The Client may also already terminate additional Services (if such have been agreed) beforehand in writing – without paying early termination charges – if the terminated Service is replaced by equivalent Services within an IBM Service/Maintenance Agreement.
7. Regardless of this, the Client may terminate a Service for a Machine in writing – without paying early termination charges – with a period of notice of one month prior to the end of one calendar month if use of the Machine within the Client's enterprise is permanently and finally ended and the Machine is not replaced by a Machine that is comparable to it in terms of its nature and in relation to its function or task. By terminating, the Client also confirms the permanent dismantling or rather the final end of the use of the respective Machine within the Client's enterprise. The Client may also terminate a Service in writing if the eligible location, for which the Service is provided, is no longer controlled by the Client, because of closing or sale of the facility.
8. For the Service, IBM also relies on spare parts suppliers for both non-IBM products and its own Machines. If such suppliers terminate spare parts deliveries, IBM may terminate the Service by giving the Client at least three months' notice in writing. In the event that the contractual terms agreed between the respective manufacturer and IBM, or the manufacturer's support policy terms, have been changed, IBM reserves the right to adjust the charges and/or the contract terms and/or the terms and conditions, or to terminate this Agreement without notice. The Client will also have the right to terminate this Agreement without notice, if the Client has not granted its consent to any adjustments made by IBM. Notice of termination must be made in the written form.
9. The Client will be separately credited on a pro rata basis with Service charges already paid in advance, taking any early termination charges into account. No early termination charges will be payable in the event of termination or withdrawal by IBM.
10. If the parties are in agreement to change the commitment to an Agreement with Yearly Term after the end of the agreed term, the Client and IBM may then terminate the Agreement in writing by the end of one contractual year with a period of notice of three months prior to the end of the respective contractual year. All other termination possibilities, e.g. for individual Machines or in the event of a price increase, will continue to apply.

10. Termination in the Case of a Fixed Agreement Term without any Termination Possibilities

1. If the Client or IBM does not wish any automatic renewal as detailed in the "Term" section, the respective party will communicate this to the other party in writing three months before the end of the agreed Fixed Agreement Term.
2. Either party may terminate this Agreement for the first time in writing with a period of notice of three months prior to the end of the agreed Fixed Agreement Term.
3. The Client may terminate this Agreement in writing within four weeks from communication of a charge increase if IBM increases the charges for a new contractual year to such an extent that the Service charge of the next contractual year for the same inventory of Eligible Machines, Eligible Programs and Services rises by more than 8%. In this case, the required contractual end can be at the earliest on the last day before the charge increase takes effect.
4. The Client may already terminate the Service for individual Machines in writing if a different Machine is included in an IBM Service/Maintenance Agreement that replaces the terminated one and is comparable to it in terms of its nature and in relation to its function or task.
5. The Client may also already terminate additional Services (if such have been agreed) in writing if the terminated Service is replaced by equivalent Services within an IBM Service/Maintenance Agreement.
6. Regardless of this, the Client may terminate a Service for a Machine in writing with a period of notice of one month prior to the end of one calendar month if use of the Machine within the Client's enterprise is permanently and finally ended and the Machine is not replaced by a Machine that is comparable to it in terms of its nature and in relation to its function or task. By terminating, the Client also confirms the permanent dismantling or rather the final end of the use of the respective Machine within the Client's enterprise. The Client may also terminate a Service in

writing if the eligible location, for which the Service is provided, is no longer controlled by the Client, because of closing or sale of the facility.

7. For the Service, IBM also relies on spare parts suppliers for both non-IBM products and its own Machines. If such suppliers terminate spare parts deliveries, IBM may terminate the Service by giving the Client at least three months' notice in writing. In the event that the contractual terms agreed between the respective manufacturer and IBM, or the manufacturer's support policy terms, have been changed, IBM reserves the right to adjust the charges and/or the contract terms and/or the terms and conditions, or to terminate this Agreement without notice. The Client will also have the right to terminate this Agreement without notice, if the Client has not granted its consent to any adjustments made by IBM. Notice of termination must be made in the written form.
8. The Client will be credited with Service charges already paid in advance.
9. If the parties are in agreement to change the commitment to an Agreement with Yearly Term after the end of the agreed term, the Client and IBM may then terminate the Agreement in writing by the end of one contractual year with a period of notice of three months prior to the end of the respective contractual year. All other termination possibilities, e.g. for individual Machines or in the event of a price increase, will continue to apply.

11. Contact Information

The Client agrees that IBM Deutschland GmbH, based at IBM-Allee 1, D-71139 Ehningen (Germany) (called "IBM Deutschland" in the following) may collect, process and use the Client's contact information for the purpose of the performance of the contractual relationship and for promoting the business relationship with the Client. "Business Contact Information" is business-related contact information that the Client has disclosed to IBM Deutschland, in particular, names, job titles, business addresses, telephone, and fax numbers as well as e-mail addresses of Client employees or of third parties. The Client also agrees that such Business Contact Information may be disclosed to the IBM companies and IBM Business Partners and their respective subcontractors or that such contact information may be processed and used by these companies in relation to the intended purposes specified in this paragraph of the present GTCs. IBM companies means the International Business Machines Corporation based in Armonk, New York (USA) and their affiliated group companies.

The Client agrees that such Business Contact Information may be transferred to countries outside the European Economic Area in conformity with the intended purposes specified in the two preceding paragraphs, provided that IBM Deutschland will ensure an adequate level of data privacy. Such an adequate level of data privacy may be achieved through the use of standard contractual clauses published by the Commission of the European Union or any other contractual agreement approved by the competent data protection regulatory authority.

12. Processing of Client Data by Order

IBM explicitly indicates to the Client that it may be necessary to access the Client's systems from countries outside the EU/EEA (if necessary) for the purpose of the Service provision by IBM. If IBM, or any third party commissioned by IBM, has accessed the Client's systems or other storage media temporarily (e.g. when performing system tests or Maintenance Services), the Client must ensure that the Client's personal data or that of any third party will not be accessed in such a case. The terms of this section will also apply if IBM, or any third party commissioned by IBM, could be able to access the Client's data or the data of any third party otherwise during IBM's Service provision (e.g. if data is transferred by the Client) or in any other cases in which IBM, or any third party commissioned by IBM, processes data by order of the Client (for example, during the disposal of storage media).

The Client will inform IBM in writing if it is unable to fulfill this obligation in any particular case. The Parties will conclude an agreement on the processing of Client data by order in this case, if this is required under applicable law. This will be made by agreeing an Attachment to the "IBM Supplementary Terms and Conditions (STCs) for Processing Client Data by Order according to §11 BDSG" ("STCs for Processing Client Data by Order"). These STCs (as amended) can be found on the Internet at www.ibm.com/terms/de or will be provided to the Client by IBM upon request.

The terms set out in the section regarding "Subcontractors" of the STCs for Processing Client Data by Order will apply to those cases described in the preceding paragraph. IBM will agree EU Standard Contract Clauses with all Service providers based outside the EU/EEA in these cases, particularly in accordance with the Client's (written) power of authority prescribed therein, if a reasonable level of data privacy cannot be ensured otherwise.

IBM's Service Centers

A large number of incidents are handled by IBM's Service Centers (called the "Center(s)" in the following). These Centers are based in different countries worldwide. The reserve capacities of these Centers are such that a trouble-free continued operation of the Centers will be ensured, even in the case of a failure of the public power supply network. These Centers are able to manage all calls from Clients in the case of an incident according to different incident categories and to forward such calls according to competence, in order to find a solution to the incident in question in each particular case. The Incident Management Systems (IMS) used at these Centers will support the respective Client requests, according to the Services required by the respective Client and based on given internal processes. Each incident message received by the Centers will be recorded by means of problem tickets that either already exist or in new tickets and they will be tracked up to the respective solution. A response or an escalation will be triggered, as agreed by contract, if necessary, provided that this has been agreed with the Client.

The problem ticket systems used at the Centers enable easy identification and tracking of existing tickets or of tickets not yet resolved, where the SLA threshold values defined jointly with the Client will be considered in each particular case. All notifications regarding operational malfunctions concerning the contractually agreed product portfolio will be accepted by specially trained staff members (incident reception), and will be classified, analyzed and resolved immediately, if possible. A knowledge-based system will be used for the analysis of errors. Any unresolved problem tickets, for which the Centers are not responsible, will be recorded, prioritized and forwarded to the lower-tier support functions of IBM, of the Client, or to third parties.

All incidents will be processed at a Center in several steps, i.e.

- i) the identification whether a contractual relationship with the caller's company exists will be made by means of the product type and the respective serial number of the Machine in question;
- ii) if an incident (entry of a problem ticket in the IMS system) has been received by a Center for the first time, the caller's contact details and the incident itself will be recorded in the system and will be stored in systems operated worldwide, so that the caller can be identified as quickly as possible if another call is received and all incidents already reported to the respective Center can be tracked, in order to be able to process the incident in question efficiently;
- iii) the incident message will be processed within IBM's worldwide support infrastructure by the respective staff member in charge of the incident in question;
- iv) it may be necessary that the responsible staff member requests the Client to transfer specific data, so that an analysis of such data can be made for a comprehensive incident analysis and in order to eliminate the incident in question, or the responsible staff member will access the affected Machine or the Client's infrastructure remotely, after prior consultation with the Client's responsible staff member.

The Client must ensure that IBM cannot access any other personal data of the Client when performing an incident analysis and the elimination of the incident. More details can be found in the terms of the "STCs for Processing Client Data by Order".

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