

# Maintenance and Support Terms and Conditions for IT-QBase products

## 1. Scope of application, Order, different maintenance programs

1.1 These IT-QBase Maintenance and Support Terms and Conditions for IT-QBase products ("Support Conditions") apply with regard to maintenance and support services that IT-QBase provides to users of software developed and distributed by IT-QBase ("Program"). The Support Conditions become effective upon Your unconditional acceptance of the offer of IT-QBase GmbH, Hanauer Landstraße 114-116, 60314 Frankfurt am Main ("IT-QBase") in writing within the deadline stated in the offer and furthermore, only when IT-QBase confirms the order after Your unconditional acceptance of the offer in writing ("Effective Date"). The binding agreement shall hereinafter be referred to as the "Order".

1.2 IT-QBase shall perform maintenance and technical support services (henceforth: "Support") as specified in these Support Conditions commencing on the Date specified in the Order.

1.3 IT-QBase provides different maintenance programs (Gold, Silver and Bronze) that have a different scope.

1.4 Should You order the provision of Support by IT-QBase for a Program licensed directly from IT-QBase, these Support Conditions shall become a binding part of the License Agreement for IT-QBase Products entered into with IT-QBase ("License Agreement").

1.5 Should You order the provision of Support for a Program obtained from a different party than IT-QBase, Your contractual relationship with IT-QBase shall be governed by these Support Conditions.

1.6 Support shall only be provided to merchants and/or companies within the meaning of the German Commercial Code (HGB), to legal entities of public law or to public special funds. Support cannot be provided to private users, which are excluded from the scope of these Support Conditions.

## 2. Scope of Services, Supported Versions

2.1 Only the Program which is installed at the location specified in the Order (the “Site”) is covered by the Support. IT-QBase is entitled to provide Support by means of remote maintenance or remote diagnosis.

2.2 IT-QBase provides Support to all versions which are specified in the document “branchmanger\_supported\_versions.pdf.” The document can be downloaded under <http://it-qbase.eu/downloads/> .

2.3 Support does not include

- a general obligation of IT-QBase to develop new software releases or enhancements, in particular Updates, of the Program;
- services for non-supported versions according to Section 2.2;
- services outside the agreed times of support availability;
- services for the Program if the Program is not used in accordance with the conditions of the License Agreement or the Support Conditions;
- services for the Program if the Program has been changed by programming not carried out by IT-QBase;
- services for the Program if and to the extent that You are not in compliance with Your Obligations and Duties to cooperate according to Section 8;
- services that could be performed on Your Site but are, upon Your request, performed elsewhere.

## 2. Embedded products

Notwithstanding Section 2.3, if a Program is embedded into a bigger third party system (like, for example, the DOORS BranchManger into DOORS), IT-QBase has no obligations to provide Support for such bigger system. In particular, it might be the case that solutions will cause changes in the usage of the bigger system or that the root cause is a bug/defect in the bigger system. In those cases, IT-QBase will seek to solve the case or problem report after the root cause is solved by You or the bigger system provider. Unless the root cause is solved, IT-QBase owes no Support regarding the affected Program whatsoever.

## 3. Registered Persons according to Maintenance Program

3.1 IT-QBase will provide Support to Your employees who are registered as support contacts in IT-QBase’s System (“Registered Persons”).

3.2 Two primary persons and backups are allowed in this maintenance group within the Silver and Gold Maintenance Programs. Within the Bronze Maintenance Program, one primary person and a backup are allowed.

3.3 You undertake to notify IT-QBase of any changes to the Registered Persons without undue delay. The Registered person(s) must have experience in the use of the Program. Only the Registered Person(s) is/are entitled to register errors with IT-QBase.

## **4. Updates**

4.1 For the purposes of this Agreement, "Updates" are enhancements to the relevant component of the Program and are signified by increments of the numeral to the right of the decimal point of the component version number.

4.2 Insofar as Updates or new software releases are delivered to You within the Support IT-QBase shall make these available to You for download.

4.3 Such bug fixes, patches and Updates to the Program that are made available to IT-QBase's general client base at no additional charge shall be supplied to You, too.

## **5. Defect Support**

5.1 IT-QBase shall provide You with Defect Support, Monday through Friday, during IT-QBase's regularly scheduled business hours (9.00 am to 5.00 pm CET), excluding nationwide German public holidays as well as 24 December and 31 December ("Business Hours").

The priority of the request will be determined and the case will be sorted into a queue.

5.2 IT-QBase is pleased to evaluate all problem reports. IT-QBase will handle all major and critical problem Reports with a higher priority than creating new features. Problem reports will be planned in our future release cycles.

5.3 Support may include dealing with errors or other defects in the Program, which become known to IT-QBase independent of the Program's use by You. Your rights in case of defects under the License Agreement shall remain unaffected.

5.4 Services for dealing with errors may, at IT-QBase's discretion, also be provided through workarounds, delivery of Updates or upgrades or, upon prior consultation with You, through delivery of a new version.

## **6. Telephone and Email Support (Gold and Silver only), Power Support (Gold only)**

6.1 IT-QBase shall provide You with email Support; Monday through Friday, during IT-QBase's Business Hours. The priority of the request will be determined and the case will be sorted into a queue.

6.2 Within the Bronze Maintenance Program, no Telephone and Email Support is provided.

6.3 Within the Gold Maintenance Program, IT-QBase will provide specific Power Support by an assigned IT-QBase person and his backup. Such Power Support will include monthly reporting of all Your related requests and monthly based telephone conferences to discuss open requests.

## **7. Case Number and Response Times**

7.1 Upon receipt of a Support request (and provided that the contact is a registered Support contact), IT-QBase technical Support will create an incident and provide the incident number to You within

- eight (8) Business Hours in case You opted for the Gold Maintenance Program;
- twenty-four (24) Business Hours in case You opted for the Silver Maintenance Program (default);
- thirty-two (32) Business Hours in case You opted for the Bronze Maintenance Program.

7.2 IT-QBase will provide a response to Your request for Support services (henceforth referred to as the "Initial Response") within

- twenty-four (24) Business Hours in case You opted for the Gold Maintenance Program;
- thirty-two (32) Business Hours in case You opted for the Silver Maintenance Program;
- forty (40) Business Hours in case You opted for the Bronze Maintenance Program.

7.3 As used herein, Initial Response will mean IT-QBase's confirming receipt of a Support request from You. In case of an error Your Support request shall include the details of such error, particularly (if applicable and reasonably expectable by IT-QBase)

- a list of additional information reasonably required by IT-QBase, and
- a description of the assistance reasonably required by IT-QBase from You to assist in the evaluation of the report and diagnose the error or symptoms.

## 8. Your Obligations and Your Duties to Cooperate

8.1 In order for IT-QBase to resolve a software issue, You must provide IT-QBase's technical personnel with enough information regarding the issue in order to allow Technical Support to replicate the incident at IT-QBase's site. For some circumstances (Hook feature of the BranchManager), You may be required to provide IT-QBase with sample code that demonstrates the reported behavior. IT-QBase will provide a resolution to the software issue or a temporary work around for the software issue as possible and appropriate. You are responsible for providing technical support to Your end-users, in particular for Your developed applications. IT-QBase will not accept actual source code from You or Your customer unless specifically requested by IT-QBase's technical support engineer.

### 8.2 You must

- supply proper notes, documentation and information necessary for the provision of Support, in particular concerning available facilities, equipment, computer programs and parts of computer programs, which are intended to function with the services to be provided;
- make available the necessary working offices and materials;
- make available at Your own cost all facilities, equipment and suitably qualified personnel for the cooperation, to the extent necessary for the provision of Support;
- fulfil the (cooperation) obligations, particularly those in 7.3, on time, carry out the (cooperation) activities on time and give declarations in accordance with the time limits.

8.3 You shall carry out an analysis of the system environment as far as possible before filing a Support request, in order to ensure that the error is not caused by system components which are not the subject of this Agreement.

8.4 You undertake to maintain a continuing system management of the system environment in which the Program runs and to continue the support and maintenance of Your system environment (hardware and software). It is Your obligation to conclude and maintain appropriate support and maintenance contracts for this.

8.5 It is Your obligation to regularly backup Your data with the due care of a prudent businessman. You shall, in particular prior to any installation and/or access by IT-QBase or third parties mandated by IT-QBase to Your system, take a complete data security backup of all system and application data. The data backup is to be stored in such a way that the recovery of the secured data is possible at any time.

8.6 You must ensure that IT-QBase is given the right to use the systems of third parties, to the extent that this is necessary in order to provide Support owed hereunder.

8.7 If You fail to perform the activities for which You are responsible, then the obligations of IT-QBase which cannot be rendered without such activity or only by incurring disproportionate additional expenses, shall be suspended for the duration of such default. Additional expenses caused thereby shall be reimbursed by You to IT-QBase in addition to the fees agreed upon in the Order on the basis of the then current rates per man working day/hourly rates, which shall not drop below the normal level of remuneration. This shall not affect any legal rights of IT-QBase to terminate the Order.

## **9. Fees, Payments**

9.1 You shall pay the Support fees as set forth in the Order. Services outside the extent of the Support shall be paid for by You on the basis of the then current rates per man working day/hourly rates.

9.2 The Support fees are due annually, in advance, beginning on the date of the commencing of the Support as specified in the Order and thereafter on each anniversary of such date.

9.3 The Support fees shall be payable within thirty (30) days following receipt by You of IT-QBase's invoice without any deduction.

9.4 All payments shall be made in Euros.

9.5 All payments not made when due shall be subject to late charges of nine (9) percentage points above the basic rate of interest.

9.6 IT-QBase may modify the Support fees and the agreed rates per man working day/hourly rates for by providing You written notice at least sixty (60) days prior to an anniversary of the Effective Date. In such a case, You will have the right to termination according to Section 15.4. If the Order is not terminated it will continue with the modified Support fees and rates per man working day/hourly rates as of the respective anniversary of the Effective Date.

## **10. Taxes**

All sales taxes and indirect taxes, which are attributable to the payments, shall be borne by You. All amounts are excluding any applicable Value Added Tax, unless explicitly stated otherwise. The current rate of statutory Value Added Tax shall be invoiced and paid in addition to all fees.

## **11. Optional Services**

You may, for an additional fee, elect to add the following services:

- Consultancy Service to incorporate the BranchManager into Your landscape and processes;
- Additional specific BranchManager enhancements.

## 12. Overview Programs

|                                    | <b>Gold Maintenance Program</b>             | <b>Silver Maintenance Program (Default)</b>        | <b>Bronze Maintenance Program</b>           |
|------------------------------------|---|--|---|
| <b>Program Updates</b>             | Yes, at no additional charge*.              | <u>Yes, at no additional charge*.</u>              | Yes, at no additional charge*.              |
| <b>Power Support</b>               | Yes.  | <u>No.</u>   | No.   |
| <b>Telephone and Email Support</b> | Yes.  | <u>Yes.</u>  | No.   |
| <b>Defect Support</b>              | Monday through Friday during Business Hours | <u>Monday through Friday during Business Hours</u> | Monday through Friday during Business Hours |
| <b>Registered Persons</b>          | Two primary persons and backups.            | <u>Two primary persons and backups.</u>            | One primary person and a backup.            |
| <b>Case Number</b>                 | Eight (8) Business Hours.                   | <u>Twenty-four (24) Business Hours.</u>            | Thirty-two (32) Business Hours.             |
| <b>Response Times</b>              | Twenty-four (24) Business Hours             | <u>Thirty-two (32) Business Hours</u>              | Forty (40) Business Hours                   |

\*As made available to IT-QBase's general client base

## 13. Warranty

13.1 Insofar as Updates or new software releases are delivered to You within the Support Your warranty claims for alterations which are not part of the warranty under License Agreement are subject to the following provisions:

13.2 IT-QBase warrants that Updates and new software releases correspond with the description in the documentation.

13.3 If a defect exists, IT-QBase shall remedy the defect (e.g. by means of elimination of error or work-arounds) or supply the Update or new software release free of defect ("Supplementary Performance", Nacherfüllung) at its own choice. IT-QBase can rectify defects at its choice through remote maintenance. IT-QBase is entitled to refuse Supplementary Performance if such is only possible at unreasonable cost. In the case of supply of an Update or new software

release free of defect, IT-QBase carries the cost for such action, particularly transportation costs, insofar as costs do not increase because the defect free the Update or new software release must be provided to a site other than the contractually agreed Site. Should IT-QBase provide an Update or new software release free of defect for the purpose of Supplementary Performance, You must return / delete the originally delivered Update or new software release.

13.4 Should IT-QBase be unwilling or not able to provide Supplementary Performance, or should IT-QBase delay such beyond a reasonable period of time based on reasons caused by IT-QBase, or if the Supplementary Performance fails for any other reason, You are entitled to assert Your rights to withdraw or reduce payment as set out under statutory law or to claim damages subject to Section 13.5. Supplementary Performance is deemed failed when three (3) attempts have been made without success.

13.5 Further claims by You beyond the rights to Supplementary Performance, to withdraw or to reduce payment, in particular claims for damages including lost profit or other pecuniary damages, exist only within the scope of the liability provisions of this License Agreement (see Section 14 below).

13.6 The warranty period consists of one (1) year, which begins with the standard statutory limitation period. The above does not apply to claims based on the German Product Liability Act (Produkthaftungsgesetz, "ProdHaftG") as well as to damages to life, body or health and to intentional or grossly negligent breaches of duty that expire within the standard limitation period.

13.7 Guarantees in the legal sense or assurances regarding specific characteristics of the delivered item are only deemed issued by IT-QBase if they are expressly designated as such in the order confirmation of IT-QBase.

13.8 IT-QBase has no obligations if a defect is attributable to Your conduct. This particularly includes – unless not the cause –

- if a defect is attributable to a bigger system according to Section 2,
- improper use, servicing, repair or modification not performed by IT-QBase, or
- the use of the Program on inappropriate hardware according to the Program description and Program documentation, or
- the incorrect installation by You or a third party, improper operating conditions as well as atmospheric or static discharge, natural wear and tear, modified operating system components, interfaces and parameters and the use of inappropriate organizational materials and data carriers.

Your contributory negligence is to be attributed to You.



## 14. Limitation of Liability

14.1 IT-QBase is liable - irrespective of the legal basis - without limitation

- within the scope of fault-based liability in case of intent or gross negligence,
- for damage caused by injury to life, body and/or health caused by the intent or negligence of IT-QBase
- according to the provisions of the German Product Liability Act,
- in case of fraudulent intent and/or
- to the extent of a guarantee provided by IT-QBase.

14.2 Unless there is a milder standard of liability according to statutory law (e.g. due diligence in own affairs), the liability of IT-QBase is limited in scope to foreseeable, typically occurring damages in case of slight negligent violation of an essential contractual obligation ("Kardinalspflicht"). In particular, the liability for loss of data is limited to the typical restoration costs that would have occurred had there been a regular and appropriate production of security copies. Essential are such contractual obligations, the fulfillment of which enable the proper performance of the contract and in the compliance with which can and will be regularly trusted.

14.3 Apart from that, the liability of IT-QBase is excluded.

14.4 The limitations of liability stipulated above shall also apply to breaches of duty by persons whose faults IT-QBase has to assume responsibility for according to statutory law.

## 15. Term; Termination

15.1 These Support Conditions shall commence as of the Effective Date and shall remain in effect until terminated as provided herein.

15.2 IT-QBase may terminate the Order by providing You written notice at least thirty (30) days prior to the end of a quarter year or to an anniversary of the Effective Date.

15.3 You may terminate the Order by providing IT-QBase written notice at least sixty (60) days prior to an anniversary of the Effective Date.

15.4 If IT-QBase modifies the Support fees and the agreed rates per man working day/hourly rates according to Section 9.6 You will have the right to terminate the Order by providing IT-QBase written notice at least thirty (30) days prior to the respective anniversary of the Effective Date.

15.5 The right of each party to termination for good cause without observance of a notice period shall remain unaffected. A good cause is in particular for IT-QBase given

- where You are in delay with an amount equaling the fees to be paid for two month of Support for a period of more than two month;

- where a third party system according to Section 2 (like, for example, DOORS) is shut down by the provider of such system (e.g. not distributed or maintained any longer) and therefore IT-QBase is not able to provide Support any longer. In such an event, provided that the third party system was shut down by no fault of IT-QBase, You are not entitled to further claims, in particular to compensation for damages.

Furthermore, a good cause is given where a contracting party can no longer be held liable to the Order or the Support for another reason in the person of the other contracting party, taking into account the circumstances of the individual case and the interests of the other party, in particular where circumstances exist in the person of the other contracting party that support the assumption that the latter will no longer be able to fulfill its obligations under the Order.

15.6 Termination shall not affect obligations that accrued prior to the effective date of termination.

## **16. Licenses for Updates and new software releases**

16.1 Insofar as Updates or new software releases are delivered to You within the Support IT-QBase hereby grants to You the following non-exclusive and non-transferable (except for the right to sell used software) and non-sublicensable license for the term agreed between the parties in writing:

- a. To install and execute the object code version of the Updates or new software releases at the Site;
- b. The right to install the Updates or new software releases is limited to the installation on a computer system which is in Your immediate possession and a copy thereof which is required for the loading, display, running, transfer or storage of the Updates or new software releases.
- c. The right to further copy or to decompile the Updates or new software releases is excluded, except where permitted by mandatory law.

16.2 The licenses granted to You are expressly conditioned on full payment of the fees agreed between the parties in writing and on Your compliance with each of the following conditions:

- a. You shall install and execute the Updates or new software releases only on the equipment at the Site, or on such other computer equipment or at such other site as IT-QBase may approve in writing in advance;
- b. You shall use the Updates or new software releases only within the intended purpose of the Order and if permitted by law, and solely to manage the operations of Your own business and develop applications ("Applications") for Your own business, and shall not otherwise use it for the benefit of any third parties, including without limitation, Your subsidiaries or affiliates, except as specified herein;

- d. All copies of the Updates or new software releases made by You must retain IT-QBase's copyright and trademark notices; and
- e. You undertake to allow IT-QBase or an agent of IT-QBase to audit whether Your use of the Updates or new software releases is consistent with the rights granted to You herein upon request by IT-QBase and provided there is a legitimate interest therein and to give full co-operation to IT-QBase or its agent carrying out such audit.

16.3 Provided You are current on all fees payable, You may change the Site to another location, provided (i) any applicable fee is paid by You, (ii) the prior use is discontinued, and (iii) You continue to use the Updates or new software releases under the terms of the Order. You shall give IT-QBase written notice no less than thirty (30) days prior to such relocation, including the new address. Such new location shall then qualify as Site.

16.4 No more extensive rights to use and exploit the Updates or new software releases are granted to You.

## **17. Proprietary Rights and Information**

You acknowledge IT-QBase's proprietary rights in the Program, Updates, new software releases and documentation and shall use Your best efforts to protect and defend the proprietary nature of these. You shall own all rights, title and interest to Your applications. IT-QBase retains all rights not expressly granted.

## **18. Confidential Information**

18.1 You undertake to keep confidential information from IT-QBase secret and not to pass it on to third parties, in whole or in part, without the prior written consent of IT-QBase. You are committed to protecting the confidential information from unauthorized access by third parties.

18.2 Confidential information is any orally communicated, written or stored information, of which You have acquired knowledge as part of the business relations of the parties and that

- has been designated as “confidential” or “proprietary” by IT-QBase expressly and in writing;
- belong to the protected business and operational secrets of IT-QBase according to § 17 German Fair Trade Practices Act (UWG), which are not public but only known to a narrowly defined group of persons and whose secrecy IT-QBase has a legitimate economic interest in;
- belong to the protected samples and guidelines of technical nature of IT-QBase according to § 18 UWG;

- is the entirety of practical knowledge gained through experience, is relevant for the production of software developed by IT-QBase and is useful and sufficiently described (know-how) and/or;
- is protected by other intellectual proprietary rights or copyright.

Information is not confidential if and to the extent that such information

- was already publicly known or publicly available at the time of the acquisition by You;
- got publicly known or publicly available after the point of time specified at the time of the acquisition without any breach of this License Agreement or obligations of secrecy of third parties;
- has already been legally and without a duty of secrecy in Your possession before the conclusion of this License Agreement.

You bear the burden of proof that information is not confidential.

18.3 You may disclose confidential information to the authorities, if and to the extent that You are obliged to do so by law, by an official order or by a legally binding court decision. You may forward confidential information to Your employees as long as they need the information to conduct the business relationship. You will inform Your employees about the confidentiality of the information before disclosing the confidential information to them. You will ensure through contractual agreements that Your employees are subject to the essential provisions of this confidentiality agreement, as far as this is permissible under applicable labor law. You are obliged to conclude such agreements with Your employees by way of a genuine contract for the benefit of third parties according to Section 328 (1) of the German Civil Code (BGB). You guarantee towards IT-QBase that the employees of You will respect this confidentiality agreement.

18.4 Confidentiality obligations between the parties shall remain in effect for a period of three (3) years following termination or expiration of all business relations between the parties. Confidentiality obligations and longer confidentiality periods according to statutory law shall remain unaffected.

## 19. Publicity

Neither party shall issue a press release announcing the business relationship established by the Order without the prior written consent of the other party. IT-QBase may, however, disclose publicly that You are a customer of IT-QBase.

## 20. Text form and written form

Where these Support Conditions require written form, the text form according to § 126b of the German Civil Code (BGB) shall be sufficient except where expressly stipulated otherwise. An e-mail shall qualify as such medium.

## 21. Force Majeure

There is no liability of IT-QBase to You for delays in performance resulting from force majeure, in particular circumstances outside the influence of IT-QBase. These are, in particular: natural forces, dangers of the sea and air, fire, flood, drought, explosions, sabotage, accidents, embargoes, turmoil, internal unrest, including acts of local governments and parliamentary authorities; the inability to provide the Program or materials, incidents of equipment and labor disputes of any kind and for any reason, in particular strikes and lockouts. The same applies if IT-QBase is unable to provide services under the Order due to a lack of information or cooperation by You.

## 22. No Assignment

The Order, the rights and obligations arising from or in connection with the Order and in particular the licenses granted hereunder may not be assigned, sub-licensed or transferred by You without the prior written consent of IT-QBase. IT-QBase is entitled to entrust suitable third parties with the fulfillment of IT-QBase's obligations under the Order. Section 354a of the German Commercial Code (HGB) shall remain unaffected.

## 23. Final Provisions

23.1 The Order and these Support Conditions and the License Agreement, if applicable, are the complete agreement between the parties with respect to the subject matter hereof and supersede any and all prior agreements and understandings. Amendments or additions to the Order and these Support Conditions must be made in writing to be effective. This shall also apply to amendments of this written form requirement.

23.2 The Order and these Support Conditions is subject to the laws of the Federal Republic of Germany excluding the conflict of law provisions. The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply.

The place of performance shall be the registered seat of IT-QBase. The exclusive place of jurisdiction for all disputes (including check proceedings, summary bill enforcement procedures and proceeding restricted to documentary evidence) directly or indirectly arising from the contractual relationship is the registered seat of IT-QBase. In addition, IT-QBase is entitled to file suit at the statutory venue.

23.3 The courts for IT-QBase's registered office in Frankfurt am Main shall have exclusive jurisdiction over all disputes under and in connection with the Order and these Support Conditions, provided that You are a merchant within the meaning of the German Commercial Code or if upon the commencement of legal proceedings, You have no place of business or ordinary residence in the Federal Republic of Germany.

23.4 Should any provision of this Agreement be or become invalid, this shall not affect the validity of the remaining terms. The parties shall in such an event be obliged to cooperate in the creation of terms which achieve such legally valid result as comes closest commercially to that of the invalid provision. The above shall apply accordingly to the closing of any gaps in the Order and these Support Conditions.