

Special Terms and Conditions of Business for Licence and Maintenance Agreements
and Individual Software SPS/PLS Software of fiwa)group (Status August 2007)

1. Licence costs and service content

The costs of the object of the licence agreement are comprised as follows: the modules of the software from Finze & Wagner according to the signed offer and the optional service order. The maintenance agreement shall include ongoing further development, upgrading with new functions, consideration of statutory amendments, updates and releases, online support and online maintenance. The validity of the maintenance agreement (as contained in the schedule overleaf) shall automatically be extended by a further year unless the maintenance agreement is terminated in writing, subject to a notice period of 14 days before 1 December of the relevant year.

1.1. Maintenance agreement costs

The costs of the maintenance agreement in the first year will amount to 10% of the costs of the modules ordered. Thereafter, the costs of the maintenance agreement shall be set at 2% per month of the relevant valid module prices, in accordance with the relevant valid price list. On request, the current price lists will be sent to you on the basis of your offer.

1.2. Disclosure to third parties

The licensee is prohibited from disclosing the protocol against payment or free of charge. Upon payment in full the licensee will be entitled to use the software of Finze & Wagner.

1.3. Payment terms

Upon receipt of the invoice without deduction – ALL PRICES specified in the price list are quoted EXCL. OF the relevant valid VAT – all goods supplied by us shall remain our exclusive and undisputed property until payment has been made in full. In the event of late payment we shall charge **14% p.a. default interest and expenses**. Finze & Wagner Software GmbH reserves the right to forward the outstanding amount to a collection agency in the event of late payment.

1.4. Insolvency of the licensee

If the licensee is wound up or declared insolvent, all outstanding invoices will be payable immediately.

General Terms and Conditions of Business

2. Extent and validity of the agreement

All orders and agreements shall only be legally binding when they are signed by an authorised signatory of the Customer and shall establish obligations only to the extent stated in the order confirmation. The applicability to the legal transaction of the Customer's terms and conditions of purchase is hereby excluded. Offers are generally subject to confirmation.

3. Performance and inspection

3.1. The subject matter of the order is the purchase of user authorisations for software products, the purchase of authorisations to use the software, telephone consultancy, programme maintenance and other services.

3.2. Individually written software or programme adaptations shall require the purchase of the relevant programme no later than 4 weeks after delivery by the Customer. This will be confirmed by a protocol issued by the Customer. (The inspection of soundness and completeness shall be carried out with reference to the specifications accepted by the Contractor using the test data provided). If the Customer allows a period of four weeks to elapse without accepting the programme, the individually written software or programme adaptations shall be considered to have been accepted. If the software is deployed in live operations by the Customer, the software shall invariably be considered to have been accepted. Any defects arising, namely deviations from the specifications agreed to in writing, shall be reported with accompanied by sufficient documentation by the Customer to the Contractor, which shall ensure that the defect is remedied as quickly as possible. In the event of material defects reported in writing, which prevent the initiation or continuation of live operations, a new acceptance will be required after the fault has been remedied.

3.3. In the event of orders for (standard) library programs, the Customer confirms that at the time of ordering it is aware of the performance capability of the programme ordered.

3.4. Should it emerge during the course of the work that the fulfilment of the order pursuant to the specification is factually or legally impossible, the Contractor shall be obliged to notify the Customer immediately. If the Customer does not change the specification accordingly or create the prerequisite that makes fulfilment possible, the Contractor may refuse to fulfil the order. If the impossibility of fulfilling the order is the consequence of an omission by the Customer or a subsequent change to the specification by the Customer, the Contractor shall be entitled to reject the order. The costs and expenses incurred up to that point for the activities by the Contractor shall be reimbursed by the Customer along with all disassembly costs.

3.5. Any additional installations, training and explanations requested by the Customer shall be billed separately.

4. Prices, taxes and charges

4.1. The prices shall only apply to the current order. The prices specified are quoted for delivery from the registered office or branch of the Contractor.

4.2. The valid list prices on the delivery date shall apply to (standard) library programmes. For all other services, (organisational consultancy, programming, training, changeover support, telephone advice, etc.), the rates applicable for the time required on the day on which the service is provided shall be charged. Any deviations from the time estimated as a basis for the contractual price, which are not attributable to the Contractor, shall be charged as incurred.

4.3. The costs of travel, daily subsistence and overnight accommodation shall be billed to the Customer separately, according to the relevant valid rates. Travelling time counts as working time.

5. Delivery deadline

5.1. The Customer shall endeavour to abide by the agreed deadline for performance (completion) as closely as possible.

5.2. The Contractor is not responsible for delivery delays and cost increases incurred as a result of the provision of data and information or documents that are incorrect, incomplete or subsequently changed data do and such circumstances cannot be considered as grounds for establishing late performance by the Contractor. All ensuing additional costs thereby shall be borne by the Customer.

5.3. The Contractor shall be entitled to make partial deliveries and issue invoices for part payment for orders relating to several units or programmes.

6. Payment

6.1. The payment terms applicable to the whole order shall apply *mutatis mutandis* to partial invoices.

6.2. The Contractor shall be entitled to issue invoices after delivery of each individual unit or service for orders relating to several units (e.g. programmes and/or training involving phased implementation).

6.3. Compliance with the agreed payment terms shall constitute a material condition for delivery or compliance with the agreement by the Contractor. Failure to abide by the agreed payment terms shall entitle the Contractor to discontinue ongoing work and to withdraw from the agreement. All associated costs and lost profit shall be borne by the Customer. In the event of late payment, default interest shall be charged at the usual bank rate. In the event of failure to pay two instalments for part payments, the Contractor shall be entitled to consider payment to have been missed and to demand payment for invoices for part payment already issued.

7. Copyright and use

7.1. The Contractor or its licensors are entitled to all copyrights in the agreed services (programmes, documents, etc.). Upon payment of the agreed price, the Customer shall only obtain the right to use the software exclusively for its own purposes, and only for the hardware specified in the agreement and in accordance with the number of licences acquired for simultaneous use on several workstations. Only authorisation to use the software is obtained under this agreement. The German Law on Copyright law prohibits the Customer from distributing the software. No rights to the use permitted under this agreement shall be obtained through participation by the Customer in the creation of the software. All infringements of the copyright by the Customer shall give rise to claims to damages, and in such cases compensation shall be paid in full. If individual

software is created the right shall be transferred to the Orderer.

7.2. The Customer is permitted to make copies for archiving and backup purposes, subject to the condition that the software does not contain any express prohibition by the licensor or a third party, and that all copyright and ownership notices are transferred to these copies unchanged.

7.3. If disclosure of the interface is necessary to establish the interoperability of the software concerned, the Contractor shall be instructed to do so by the Customer for a charge. If the Contractor fails to comply with this request and decompilation is, undertaken, according to the German Law on Copyright, the results shall be used exclusively to establish interoperability. Any abuse shall result in a requirement to pay compensation.

8. Right of withdrawal

8.1. Failure to meet a delivery deadline due to the general negligence or unlawful conduct of the Contractor, the Customer shall be entitled to cancel the orders concerned by registered letter unless the material parts of the performance agreed to are carried out within a reasonable additional period and provided that the Customer is in no way to blame for these circumstances.

8.2. Force majeure, industrial disputes, natural disasters and transport blockages or any other circumstances that lie outside the sphere of influence of the Contractor shall release the Contractor from the obligation to deliver or shall permit the Contract to reschedule the agreed delivery

8.3. Cancellations by the Customer are only permitted with the written consent of the Contractor. If the Contractor agrees to cancellation, the Contractor shall be entitled to charge a cancellation fee of 30% of the value of the total project order not yet billed,

in addition to the services provided and any costs incurred.

9. Warranty, maintenance and changes

9.1. Claims regarding defects shall only be valid if they relate to reproducible defects and if they are made within 4 weeks from the supply of the agreed service or, for individual software, after the acceptance of the programme has been documented in writing pursuant to clause 3.2. In the event of justified claims regarding defects, the defects shall be remedied within a reasonable period, and the Customer shall enable the Contractor to carry out all necessary measures in order to investigate and remedy the defect.

9.2. Corrections and supplements which may prove to be necessary prior to the transfer of the agreed performance due to organisational or programme-related defects for which the Contractor is responsible, shall be undertaken by the Contractor free of charge.

9.3. The costs for assistance, error diagnosis as well as error and troubleshooting for which the Customer is responsible and similar corrections, changes and additions shall be undertaken by the Contractor against payment.

9.4. Moreover, the Contractor accepts no liability for errors, faults or damage caused as a result of improper use, modified operating system components, interfaces and parameters, the use of inappropriate organisational means or data carriers, insofar as prescribed, abnormal operating conditions (in particular deviations from the installation and storage conditions) as well as damage during transit. The Contractor shall be entitled to charge a corresponding fee in the invoice for restoration and repair work to the software that falls under this agreement in the event of data loss of any kind. This specifically applies to damage to the software that falls under this agreement as a result of inappropriate use by the Customer. The

Customer shall take precautions to ensure appropriate data backup.

9.5. Programmes which are subsequently modified by the Customer's own programmers will not be covered by the Contractor's warranty.

9.6. Insofar as this agreement relates to the modification or use of a current programme, the warranty shall apply to this modification or supplement. The warranty for the original programme will not be reactivated.

10. Liability

The Contractor will be liable for damage insofar as intentional or grossly negligent conduct can be established, in accordance with the statutory regulations. Liability for carelessness is excluded. The Contractor will not be liable for damage caused through inappropriate use by the Customer.

11. Data protection, confidentiality

The Contractor will impose an obligation on its employees to abide by the provisions of the German Law on Data Protection.

12. Concluding provisions

Unless agreed otherwise, the statutory provisions applicable to businessmen under German law alone shall apply, even if the order is fulfilled abroad. It is agreed that all disputes arising hereunder will be settled exclusively before a competent court at the place of the registered office of the Contractor. In cases involving sales to consumers under the terms of the German Law on Consumer Protection the above provisions shall only apply insofar as the Law on Consumer Protection does not specify other mandatory provisions.