

Delivery and Service Conditions for Electronic Banking Soft- and Hardware Products of Commerzbank AG

I. Software license

1. Rights of use / copyrights

Upon payment of the agreed licence fee, the Customer acquires a non-exclusive right to use the electronic banking soft- and hardware products of Commerzbank AG ("EB Software Products") specified in the Agreement on Cooperation in the Area of Commerzbank Transaction Services in the following countries of the European Union: Austria, Belgium, Czech Republic, Denmark, Federal Republic of Germany, Finland, France, United Kingdom, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Slovakia, Spain and Sweden.

Licensed use includes complete or partial storage of the licensed programs on memory media that are independent of electrical current, execution of the programs, processing of stored data and creation of further copies of the programs in electrical current-dependent memory media, to the extent this is required for use in accordance with the Agreement. If EB Software Products are used in other countries, the Customer is obliged to check the compatibility of the EB Software Products with national and international rules.

The Customer shall take all measures required for use, in particular obtaining possibly required approvals and complying with reporting duties. EB Software Products may not be used in countries that restrict the use or the import/export of encryption techniques.

The copyrights for the EB Software Products shall remain with the respective creators.

The Bank will deliver the most recent version as of the date of the conclusion of the Agreement. EB Software Products may also be delivered by making them available for download by the Customer.

2. Scope of use, data backup, network licence

The Customer may use the EB Software Products according to the Agreement only on a single data processing system (PC/workstation). The Customer is authorised to create program copies for data backup. Use in a network with several workstations is only permitted if this has been expressly agreed (network licence).

If a network licence has been agreed, the EB Software Products may only be used for the number of workstations specified in the Order Form.

3. Prohibition of copying and passing on EB Software Products

It is not permitted to copy programs for purpose of leasing or selling them or for other reasons. Access to or use of the programs, either in full or in part, by third parties may not be granted for these purposes. The programs may be transferred by a sale if the Customer completely abandons its right of use, deletes all copies of the software from its data storage and destroys any backup copies. The Customer shall notify the Bank thereof and also specify to whom the programs have been sold. In the case of a sale, the Customer is required to impose the obligations agreed to with the Bank on the buyer.

4. Use, revision, alteration

The modules made available may neither be revised nor used for purposes other than electronic banking with the Bank, except for the cases permitted by law (Section 69c ff. UrhG (German law on copyrights)). Individual components of a module made available may only be used in conjunction with the relevant main program. The copyright marks attached to the programmes and to the documentation which indicate the software suppliers' copyrights to the various EB Software Products may not be removed or altered.

5. Duties of care

The Customer is obliged to change provided passwords and other variable security measures immediately upon initial installation of the EB Software and to keep them secret afterwards. The Customer will require its employees who use the EB Software Products to likewise comply with the conditions of the Agreement.

6. Third-party trademark rights

If trademark rights are asserted by third parties, the Customer shall inform the Bank immediately and leave it exclusively to the Bank to defend against such an assertion of trademark rights. If a third party asserts claims against the Customer itself, legal proceedings shall be taken in coordination with the Bank.

II. Installation / provision of services

1. Hardware requirements

The hardware provided by the Customer must meet the requirements stated in the information sheet "Technical requirements for electronic banking software products of Commerzbank AG". If discrepancies exist, the Customer is obliged to inform the Bank of any such discrepancy prior to installation. The Customer must ensure that the hardware is ready-to-operate and that the technical preconditions for operation of EB Software Products are met.

2. Installation; preconditions for installation

The Bank will install the software on the hardware (PC workstation). For this purpose, the Bank may commission third parties who will act as subcontractors. The Customer shall ensure that necessary preconditions for installation that fall in its sphere are met.

3. Provision of services

In addition to the installation of the software products, the Bank may also provide additional services required for maintaining the operational readiness of EB Software Products (provision of services). Such services shall be commissioned by the Customer separately at the conditions specified in the Order Form.

4. Changes of the existing computer systems

For purposes of installation or in connection with the provision of services, changes to the already existing hardware or software of the Customer may become necessary. The Bank will explain the changes necessary for installation prior to their implementation. If the Customer agrees to such changes, the Customer assures the Bank that there are no legal obstacles (e.g. restrictions by lessors), that other programs or the hardware itself will not be affected by these changes and that no liability claims will be asserted against the Bank as a result of any damages which may arise.

5. Indemnification

In the event claims are asserted against the Bank by third parties as a result of such changes, the Customer shall indemnify the Bank for these claims if the Customer has culpably breached an obligation to the Bank.

III. Software maintenance

1. Scope of services

If software maintenance is agreed to in the Order Form, the Bank will provide the following software maintenance services:

- delivery of updates, i.e. adjustments and enhancements of the software,
- error analysis and error correction in accordance with clause 3 and 4,
- hotline service in accordance with clause IV.

2. Customer's Duty of Documentation

Error analysis and error correction are premised on the provision by the Customer of information and data material from which the errors can be tracked and/or reproduced.

3. Error analysis of third-party EB Software Products

If the EB Software Products delivered by the Bank contain errors, the Bank may provide subsequent performance at its own choice by either correcting the errors or delivering new software.

For EB Software Products which the Bank pursuant to the Order Form only distributes as a licensee, the Bank is dependent on the manufacturer's support. The manufacturer usually corrects any errors found by releasing updates or correction patches. In consideration of such products, the Bank will inform the manufacturer/licenser of program errors to the extent that they result from the software itself, and will exert its influence to the effect that such errors are removed in the next update.

To the extent this is reasonably acceptable for the Customer, the Customer may be asked to wait for the next update.

4. Error correction for EB Software Products of the Bank

For EB Software Products which are not third-party products, the Bank will document the error, prepare an analysis and endeavour to find a solution to the error. For this purpose, the Bank will provide, at its own choice, temporary error correction options, circumvention solutions or an error correction by means of a correction program (patches) or a new version (update). Patches or updates may also be delivered by means of a Customer download via

remote data transmission from a website specified by the Bank.

5. End of maintenance obligation for old versions

The Bank's obligation to provide maintenance for old software versions ends at the latest twelve months after notification by the Bank that a new software version is available. This shall not apply to the rights relating to defects which the Customer has under operation of the law.

IV. Hotline service

1. Hotline service

In connection with the operation of EB Software Products, the Bank provides support to the Customer by telephone or email through its hotline service. If malfunctions or other problems occur during the use of EB Software Products, the Customer may direct inquiries to the Bank via hotline during the separately specified hours. The Customer may contact the hotline by telephone, telefax or email at the separately specified numbers/email addresses.

2. Duty of examination and cooperation in respect to the hotline service

If the Bank makes suggestions on how to correct malfunctions or other problems via its hotline service, the Customer must prior to implementing such suggestions examine which effects the relevant measures may have on other hardware and software components. If necessary, the Customer must contact the manufacturer of the respective hardware or software.

V. Remote maintenance

If agreed on in the Agreement on Cooperation in the Area of Commerzbank Transaction Services, the Bank may also carry out a respective error analysis or error correction via remote data transmission by establishing a direct communication connection to the Customer's computer (e.g. via modem).

Within the scope of remote maintenance, a technician of the Bank may access the Customer's computer via the telecommunication connection and carry out an error analysis. For this purpose, the Customer must ensure the necessary conditions in its sphere for such access. Particulars in this respect will be separately agreed.

If, in accordance with the statutory regulations, the Bank is not required to correct defects, it is not responsible for error correction but only for analysis of a reported error. Prior to analysis by means of remote maintenance, the Customer is obliged to carry out a data backup and to inform the Bank of any possible conflicts with other systems and stored data.

VI. Training

If agreed in the Agreement on Cooperation in the Area of Commerzbank Transaction Services, the Bank will by means of training measures instruct the Customer's employees in the use of EB Software Products to the extent specified in the Order Form. Particulars regarding group size, number of trainers employed by the Bank, travel costs, expenses and training documentation will be agreed to in the Order Form.

VII. General provisions

1. Fees

The fee for the individual services provided by the Bank will be agreed to in Agreement on Cooperation in the Area of Commerzbank Transaction Services. Material and shipment costs (e.g. for the updates) and on-site service are not included in the fee for the software maintenance payable annually per installation unit.

The Bank is entitled to change the annual fee for the software maintenance and the hotline service with prior written notice of 8 weeks before the end of a month. However, such change is permitted at the earliest 12 months after conclusion of the Agreement. In this event, the Customer is entitled to terminate the contract by written notice within six weeks before the date on which the fee increase would become effective.

2. Termination provisions regarding software maintenance, hotline service and remote maintenance

The agreement for software maintenance, hotline service and remote maintenance is concluded for an indefinite period of time and shall be effective from the date of installation, or, if the Bank does not carry out the installation, from the date of signature of the agreement. The agreement may be terminated at the end of a month with a notice period of 6 months, but not until the expiry of the first year of the agreement. Either party shall be entitled to a right of termination for good cause. In particular, the Bank shall be entitled to terminate this agreement without notice period if the Customer defaults on the payment of fees and this has not been cured within the additional period for payment granted by the Bank. Notice of termination must be made in writing.

3. Warranty

A warranty period of twelve months in respect of the EB Software Products shall start upon the Bank's handing over the data carrier or, in the case of installation, upon acceptance of installation. If defects occur, the Customer may request subsequent performance by the Bank free-of-charge, unless the Customer itself is responsible for the defect. If the notified defects are not corrected by the Bank within a reasonable period of time after receipt of the notice requesting subsequent performance, the Customer may either request a price reduction or rescind the agreement. A claim for damages due to non-performance is excluded. Within the scope of the warranty, the Customer is not entitled to commission third parties with error analysis and correction under the software maintenance agreement and to charge the costs resulting therefrom. In addition to the aforementioned rights, the Customer is entitled to terminate the software maintenance agreement if the Bank fails to perform its obligations within a reasonable time period and despite written request. In this case, the portion of the annual fee relating to the time period after the termination will be reimbursed.

4. Hardware components

To the extent the Customer also acquires hardware components (e.g. chip-card reader, chip card or signature card and signature sticks) from the Bank, the Customer is entitled to request subsequent performance for material defects which may be remedied at the Bank's choice by subsequent correction or new delivery, for a period of one year from the date of delivery of the respective hardware. The Customer may rescind the agreement if the subsequent performance fails or if it is unacceptable to the Customer.

5. Liability by the Bank

The Bank is not liable for damages resulting from breaches of the Agreement unless it has caused the damage intentionally or by gross negligence, or unless it is in breach of obligations material to the Agreement on which the Customer may reasonably rely to a particular degree (cardinal obligations). The Bank is not liable for losses or other damages, including consequential damages, which are caused by actions or omissions of the Customer that are not in accordance with the user manual. In particular, the Bank is not liable for losses and damages caused or facilitated by non-observance of reasonable security measures.

The Bank shall only be liable for damages caused by modified and edited versions of the provided EB Software Products if the Bank has acted culpably and the Customer can prove that the damage would have also been caused likewise if the unmodified basic version had been used. The Bank shall only be liable for the recovery of destroyed data if it has caused such destruction intentionally or by gross negligence, and only if the Customer has additionally ensured that such data may be reconstructed at a reasonable expense from material kept in machine-readable form. In any case, the Bank's liability is limited to ten times the contractually agreed fee, with a maximum limit of EUR 100,000.

6. Miscellaneous

In the interest of proper cooperation, the Bank hereby reserves the right to make changes of a technical or organisational nature, based on a general, standard modification in technical standards, in specifications applicable to the banking industry or in legal or regulatory provisions. With regard to significant technical or organisational modifications beyond this, having a significant impact on the rights and obligations of the Customer or of the Bank, the Bank shall notify the Customer of these modifications at least six weeks before the proposed date on which the modifications are to go into effect. The Customer's consent shall be deemed granted if he/she has not communicated his/her rejection within six weeks of receipt of the notification.