

ICARO Software Maintenance contract: provisions as of 09-2020

Preliminary remark

1. CUSTOMER has acquired ICARO software directly or through a PARTNER and is therefore entitled to use this software (hereinafter: "Contract Software").
2. ICARO hereby offers to take over the maintenance of the contract software in accordance with the provisions of this contract.
3. The contract software includes the unlimited, non-exclusive right to use the (standard) software.

§ 1 Maintenance Services

1. The subject of the following maintenance services according to this contract is exclusively the contract software.
2. In detail, maintenance includes troubleshooting (§ 3), the provision of updates or patches (§ 4) and, once a year, importing the current software version upon request.
3. Not included are other services such as the installation and setting up of other updates or patches, training courses, instructions or the creation, installation and setting up of individual adjustments and updates of training documents / user documentation. Such services may be provided on the basis of a separate commission in accordance with the current ICARO price list or within the framework of a separate support contract.
4. Upon request, ICARO offers ongoing support in accordance with a separate support contract.
5. An existing maintenance contract grants the CUSTOMER free purchase and operation of permanent test installations corresponding to the contract software.

§ 2 Contact Person at the CUSTOMER; Requirements for Error Messages

1. The obligation to rectify errors only exists if the PARTNER or CUSTOMER notify errors through the technical contact person named by him via e-mail [support@icaro.com] or via the ICARO homepage [<https://icaro.com>], stating as precisely as possible (e.g. transmission of a screenshot) the circumstances under which the error occurs and the effects of the error on the running of the contractual software and the operations of the CUSTOMER.
2. Error messages will be received during normal working hours (Mondays to Fridays from 9:00 a.m. to 5:30 p.m. CEST with the exception of statutory public holidays in Bavaria), and in the case of errors that prevent and hinder operations, by e-mailing to support@icaro.com or calling +49 6021 585 1796. ICARO will immediately inform the CUSTOMER of any change in the email address, the Internet address or the phone number.

§ 3 Troubleshooting

1. ICARO properly corrects errors in the contract software reported in accordance with section 2 and adheres to the response times agreed below. Troubleshooting includes diagnosing and resolving the error. The remedy can also be done by showing the CUSTOMER a reasonable possibility of circumventing the error.
2. In order to remedy errors, ICARO will respond to error messages properly transmitted in accordance with § 2 within the following times and take the following measures:
 - a) ICARO will correct program errors which, in the opinion of ICARO, preclude the use of the contractual software in accordance with the contract in its essential basic functions for a more than insignificant period (errors preventing operations). The measures required for this are initiated no later than 2 hours after notification within the regular working hours.
 - b) ICARO will eliminate program errors which, in the opinion of ICARO, make the use of the contractual software in accordance with the contract in its

essential basic functions more than just insignificantly difficult (errors that prevent operations), ICARO will eliminate within the scope of its reasonable possibilities. The measures required for this will be initiated no later than 4 hours after notification within the normal working hours.

- c) In the case of program errors that are neither hindering nor hindering operations, ICARO will, if possible, provide information on how the consequences of such errors can be circumvented with reasonable effort for the CUSTOMER. Such errors are corrected at ICARO's own discretion in the course of the general further development of the software by providing updates or patches.
3. ICARO is not obliged to correct errors that have not been properly reported, as well as errors that have already been corrected in new program versions that were not adopted by the CUSTOMER for no good reason. ICARO is also not obliged to correct errors if the contractual software is used in breach of contract, or has been parameterized or configured by the CUSTOMER or by third parties.

§ 4 Provision of Updates

1. ICARO develops the software components on which the contract software is based at its own reasonable discretion. ICARO takes particular account of changed requirements, for example with regard to system improvements and expansions, an updated system environment, requirements from updated SAP versions and errors reported by users. There is no entitlement to specific features of the contract software (e.g. operating system versions).
2. ICARO informs irregularly about the new functions created in the course of further development on the homepage or via newsletter.
3. Upon request, ICARO will provide the CUSTOMER with updates. These updates are only ever transferred in the object code. The delivery is made by ICARO by making it available for download by the PARTNER / CUSTOMER.
4. When updating from BAPI-Handler version 3 to the current BAPI-Handler version 5 or subsequent versions, the UNICODE license option must be licensed

for all licensed SAP systems.

§ 5 Remuneration

1. At the beginning of the contract, the annual flat fee for maintenance is 20% of the net price of the licenses purchased according to the current price list, without taking into account discounts, crediting of old licenses, etc. If the CUSTOMER acquires additional licenses that are subject to a fee, the maintenance fee increases by 20% of the net price for these additional licenses.
2. The flat-rate remuneration in accordance with Paragraph 1 covers the services in accordance with §§ 2 and 4. Any additional services provided (cf. § 1 Paragraphs 3 and 4) are provided in accordance with the current ICARO price lists..
3. Necessary trips are billed according to the current ICARO price list (see point "Travel expenses").
4. Statutory VAT is always added.
5. The flat-rate remuneration according to Paragraph 1 is to be paid in advance when the contract is concluded for the period up to the end of the next calendar year (minimum contract duration) and thereafter on the first working day of each calendar year for the calendar year in question.

§ 6 Rights of Use

ICARO grants the CUSTOMER non-exclusive and non-transferable rights of use to these programs by providing software programs in accordance with this contract (be it in the context of programming work on the occasion of troubleshooting or the provision of updates). These usage rights exist with the restrictions (e.g. number of connected subsystems or license options).

§ 7 Material and Legal Defects; Performance Disruptions

1. ICARO guarantees that the programs made available on the basis of this maintenance contract are not affected by material defects that more than insignificantly restrict the use of the programs in accordance with the contract, and that third-party rights do not allow the use of these programs in accordance with the contract affect.
2. ICARO provides - in the case of material defects only after a written notice of defects within the meaning of § 377 HGB of Germany - the guarantee through supplementary performance, whereby ICARO can choose between remedying defects and defective new delivery of the programs provided on the basis of this contract. The troubleshooting can also be done by showing the CUSTOMER reasonable workarounds.
3. If the subsequent performance finally fails after a period of reasonable length to be set by the CUSTOMER / PARTNER in writing, which must give ICARO the opportunity to make at least two rectification attempts, the CUSTOMER / PARTNER can request a reduction in the maintenance fee or prematurely terminate the contract if continuation of the contract is unreasonable for him as a result of the failure of the supplementary performance. The CUSTOMER / PARTNER can only demand compensation under the legal requirements and only to the extent that liability is justified in accordance with § 8.
4. If ICARO does not provide any other service under this contract or not as contractually owed, the CUSTOMER / PARTNER can set ICARO in writing a reasonable deadline for the proper provision of the service. If the provision of the service finally fails within this reasonable period, the regulations in paragraph 3 apply accordingly.

§ 8 Liability

1. ICARO is liable for damage, regardless of the legal reason, including tort, only in accordance with the following provisions:
 - a) In the case of willful intent and gross negligence, ICARO has unlimited liability in accordance with the statutory provisions.
 - b) In other cases of negligent action, ICARO is only liable if an obligation is violated, the fulfillment of which enables the proper execution of the contract in the first place and on whose compliance the CUSTOMER / PARTNER can regularly rely (so-called cardinal obligation), limited to the contract-typical and foreseeable damage.
2. ICARO is not liable for loss of data if and to the extent that the loss of data could have been avoided by taking reasonable data backup measures on the part of the CUSTOMER.
3. ICARO's liability for personal injury, assumed guarantees or in accordance with the Product Liability Act of Germany remains unaffected by the above liability restrictions and exclusions.

§ 9 Data Protection

In the event that ICARO receives access to personal data as part of the maintenance, any processing of such data takes place on behalf of the CUSTOMER / PARTNER in accordance with the relevant data protection regulations of Germany for data processing.

§ 10 Subcontracting Relationships

1. ICARO may commission carefully selected and suitable external service providers as subcontractors.
2. ICARO will, if required by data protection law, oblige subcontractors to

maintain data protection and confidentiality.

3. ICARO will inform the CUSTOMER / PARTNER about the involvement of sub-contractors and changes to subcontracting relationships.
4. ICARO is responsible for any negligence of engaged subcontractors as well as for its own negligence in accordance with the exclusions and limitations of liability agreed in § 8.

§ 11 Confidentiality

1. The contractual partners treat all information of the respective contractual partner that has become known to them in connection with this contract and which are designated as confidential or which by their nature requires confidentiality, including any personal data transmitted or made accessible by the CUSTOMER or PARTNER, strictly confidential this information will not be passed on to third parties unless this contract contains any deviating regulation.
2. The only information that is excluded from the obligation is such:
 - a) were already publicly known prior to receipt by the disclosing party or became public knowledge afterwards without breaching this agreement,
 - b) were already known to the recipient without restrictions before receipt by the disclosing party,
 - c) was received by the recipient from a third party lawfully and without breach of confidentiality obligations,
 - d) were disclosed by the disclosing party to a third party without imposing confidentiality obligations,
 - e) have been developed or found out independently by the recipient,
 - f) must be disclosed by the recipient on the basis of statutory provisions or official or court orders, if and to the extent that the recipient notifies the disclosing party, as far as possible, of this before disclosure and the latter

has given the opportunity within a reasonable period of time Oppose disclosure officially or in court.

3. The contractual partners will inform employees and any subcontractors who have been involved who have access to information within the meaning of Paragraph 1 of the content of this confidentiality obligation and oblige them to maintain confidentiality.
4. The confidentiality obligation still applies after the contract has ended.

§ 12 Term and Termination

1. The contract runs for an indefinite period.
2. Each contractual partner can properly terminate the contract with a notice period of 3 months to the end of each calendar year, but for the first time at the end of the minimum contract period in accordance with § 5 (5).
3. The right to extraordinary termination in accordance with the statutory provisions remains unaffected.
4. Terminations are only effective if they have been declared in writing.

§ 13 Severability Clause

Should any provision of this contract be or become ineffective or should the contract be incomplete, this shall not affect the validity of the rest of the contract. The ineffective provision is deemed to be replaced by a provision that comes closest to the meaning and purpose of the ineffective provision in a legally effective manner. The same applies to any contractual loopholes.

§ 14 Written Form, Applicable Law, Place of Jurisdiction

1. Changes or additions to this contract must be made in writing to be effective. This also applies to the agreement to deviate from this written form requirement. Sending documents by fax or e-mail is sufficient for the written form requirement; this applies to all cases in which the written form is required in this contract, with the exception of the declaration of ordinary or extraordinary terminations.
2. The contract is subject to German law to the exclusion of the UN sales law.
3. The exclusive place of jurisdiction is Aschaffenburg. ICARO can also take legal action at other legally permissible places of jurisdiction.