

Service Contract Standard Terms and Conditions of Bizerba USA, Inc.

1. SCOPE OF AGREEMENT

- 1.1 These Standard Terms and Conditions for services (these "Terms"), are the only terms and conditions that govern the provision of services by Bizerba USA, Inc. (hereafter referred to as "BIZERBA") on Bizerba devices or regarding Bizerba software (referred to together as a "BIZERBA PRODUCT") shall apply in as far as they are classified as SERVICE CONTRACT TYPES as per Section 4 and not the object of special contract types. Excluded from these Terms are installations, rentals, and repairs outside of these Terms. Special Bizerba conditions apply in those cases. These Terms apply only to the SERVICE CONTRACT TYPE (Section 4) agreed to by Bizerba in the offer or order confirmation and for the BIZERBA PRODUCT specified by BIZERBA in the offer or order confirmation. If the Bizerba device is not a new device, BIZERBA reserves the right to wait to accept the selected SERVICE CONTRACT TYPE dependent on a prior investigation of the device and a general device assessment, which must be coordinated individually with the CLIENT.
- 1.2 These TERMS apply without regard to any deviating business terms or conditions of the CLIENT in as far as these refer to the rendering of services and any application of the terms and conditions of the CLIENT shall be explicitly excluded. Provision of services to the CLIENT does not constitute acceptance of any of the terms and conditions of the CLIENT and does not serve to modify or amend these Terms.
- 1.3 Performance of services which are agreed with BIZERBA in standard form purchase conditions or other terms and conditions of the CLIENT shall continue to apply even if BIZERBA does not expressly contradict the terms and conditions of the CLIENT when these Terms are enforced. BIZERBA shall use reasonable efforts to meet any performance dates specified in the order confirmation, and any such dates shall be estimates only.
- 1.4 Agreements which alter or supplement these Terms, side agreements or other conditions of the CLIENT shall be effective only if they are confirmed in writing by BIZERBA. BIZERBA trade representatives are not authorized to award or approve binding statements or other conditions or modifications by the CLIENT.

2. SERVICES PROVIDED BY BIZERBA

- 2.1 Within the context of these Terms, BIZERBA is only required to provide services in the form of providing troubleshooting, calibrating and maintenance services, depending on the SERVICE CONTRACT TYPE.
- 2.2 The following services are specifically excluded:
 - Registration for verification (excepting Sections 4.10 and 4.11), weights & measures support, verification itself and the verification fees,
 - Maintenance services as well as the rectifying of faults and damage with respect to working with third party software and hardware that are not the BIZERBA PRODUCT,
 - Elimination of faults and damage caused by inappropriate handling or operation by the CLIENT, by third-party interference or by force majeure, for example fire, water damage, excessive moisture, dirt, fluctuations in power, computer viruses, etc.
 - Elimination of faults and damage that are solely caused by using non-original Bizerba parts / wear and tear / consumables (particularly Bizerba thermal receipt paper and labels) or equipment that are not considered equivalent by BIZERBA in its sole discretion,
 - Elimination of faults and damage caused by environmental conditions at the place of installation, by faults and failures of the power supply or the supply of compressed air, or insufficient data connections, defective hardware or other effects not directly attributable to BIZERBA,

- The costs of: (i) WEAR PARTS (device components that, when used properly, lose their ability to function within the life cycle of the device due to typical wear and tear); (ii) ACCESSORIES (additives and agents that are used in the product and in caring for the product and that may be used, additional parts with additional functionality, that are not included in the original scope of delivery); and (iii) CONSUMABLES (materials required for the proper use of the device, and that are consumed during proper use of the device) and their respective installation and disassembly,
 - UPGRADES (upgrading Bizerba software to a version of Bizerba software with expanded functionality),
 - Configuration and customer-specific device settings, interface design,
 - Adjustment or modification of 3rd party software,
 - Technical changes,
 - Cosmetic repairs (including, but not limited to discolorations, scratches or paint damage), installation and disassembly of peripheral devices or adjustments necessary due to the relocation of the original setup of the device,
 - General overhauls,
 - Work required due to relocation or re-installation of the device,
 - Work required resulting from changes in the law or regulation,
 - Assembling and dismantling peripheral devices,
 - Measures to backup data and programs.
- Special agreements can be made with BIZERBA regarding these above-mentioned maintenance services that are excluded from these Terms.
- 2.3 In general, WEAR PART replacements are excluded from contracts except in cases where the WEAR PART has failed prematurely. The determination as to whether a WEAR PART has failed prematurely, will be the sole discretion of BIZERBA.

3. ESTABLISHMENT OF SERVICE CONTRACTS

- 3.1 A contract for a SERVICE CONTRACT TYPE is established upon the written acceptance of a BIZERBA offer or via a written order confirmation (e-mail) from BIZERBA. Such acceptance can take place by BIZERBA's acceptance of the order of the BIZERBA PRODUCT or at a separate documented point in time.
- 3.2 BIZERBA is at liberty to have the services for the respective SERVICE CONTRACT TYPES carried out by special personnel from BIZERBA's own plant or from another BIZERBA-authorized third party (hereafter both instances are referred to as SPECIALIZED PERSONNEL).
- 3.3 BIZERBA reserves the right to carry out partial services.
- 3.4 With regard to the SERVICE CONTRACT TYPES including, but not limited to and more specifically, the Full-Service Contract (Section 4.2) and the Check-Up Contract (Section 4.3), in addition to these Terms, the respective product-specific MAINTENANCE CHECKLISTS are an integral part of the Contract.
- 3.5 The order confirmation is an integral part of Terms, and together with the Terms, shall comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. In the event of any conflict between these Terms, the order confirmation or any other communication by the CLIENT, the Terms shall govern unless the order confirmation expressly states that the terms and conditions of the order confirmation shall control.
- 3.6 These Terms prevail over any of the CLIENT'S general terms and conditions regardless of whether or when the CLIENT has submitted its request for proposal, order, or such other terms. Provision of services to the CLIENT does not constitute acceptance of any of the

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CLIENT'S terms and conditions and does not serve to modify or amend these Terms.

4. SERVICE CONTRACT TYPES

- 4.1 Repair Service Contract: Within the framework of these Terms, a Repair Service Contract covers any troubleshooting and maintenance (to factory settings), by remote access, of the BIZERBA PRODUCT named in the order document that is required for the basic procedures of the device. Troubleshooting is supported by the use of the required remote support tools or, if required, on site. Within the STANDARD BUSINESS HOURS (Monday to Friday from 8:00am to 5:00pm local time; with the exception of bank holidays, - the United States and any other jurisdiction where BIZERBA's employees and staff are located.), this includes the worked time, preparation and travel time, the travel and business trip costs as well as the use of the remote support tools. The cost of WEAR PARTS are not included in the repair service contract. Rental devices can be provided if available. Specifically excluded are: (i) preventive maintenance; (ii) monitoring; and (iii) the planning of due, contractually agreed calibration appointments as well as CALIBRATION (compliance with error limits in inspection equipment monitoring or the finding of measuring inaccuracies according to NIST standards of the device undergoing testing at the point in time of the rendering of the service, measured with calibrated reference standards and the respective documentation of the measuring results); and (iv) software maintenance and upgrades.
- 4.2 Full-Service Contract: Within the framework of these Terms, the Full-Service Contract covers, by remote access, any troubleshooting and maintenance (to factory settings) of the BIZERBA PRODUCT named in the order document that is required for the basic procedures of the device. Trouble shooting is supported by the user of the required remote support tools or, if required, on site, as well as a preventive maintenance check (preventive maintenance work takes place once a year unless otherwise agreed in writing) in the form of a function check as per the product-specific MAINTENANCE CHECKLIST. Included in Trouble Shooting under the Full-Service Contract is the working time for assembly and disassembly, the use of the remote support tools, the working time, preparation and travel time within STANDARD BUSINESS HOURS, travel costs and expenses. The cost of WEAR PARTS are not included in the Full-Service contract. Rental devices can be provided if available. The Full-Service contract includes software maintenance and updates for licensed software modules. The Full-Service Contract does not include any monitoring and planning of due dates of the contractually agreed calibration appointments and VERIFICATION itself as well as software upgrades.
- 4.3 Check-Up/Preventative Maintenance Contract: Within the framework of these Terms, the Check-Up Contract includes an annual preventive maintenance check plus testing of electrical safety as per local regulations of the Bizerba device named by BIZERBA in the offer or order confirmation. This Check-Up Contract is carried out by working through a product-specific MAINTENANCE CHECKLIST, cleaning and visual inspection as per the MAINTENANCE CHECKLIST and includes the working time, preparation and travel time within STANDARD BUSINESS HOURS, plus travel costs and expenses. Excluded are any repairs, troubleshooting, VERIFICATION, UPDATES and UPGRADES to the FIRMWARE that have been determined necessary by BIZERBA in its sole discretion and any embedded software, SPARE PARTS and their delivery plus assembly and disassembly.
- 4.4 Remote Support Contract: Within the framework of these Terms, the Remote Support Contract entails troubleshooting support by remote access, augmented services or telephone. The specific scope of this service is also defined by the technical parameters of the relevant BIZERBA PRODUCT and may vary depending on the particular BIZERBA PRODUCT concerned. BIZERBA's response time depends on the agreed Service Level. If there exists no written Service Level agreement, the STANDARD BUSINESS HOURS apply. Working and preparation time are included. Excluded are: (i) on-site assignments; (ii) WEAR PARTS and the respective assembly and disassembly; (iii) preventive maintenance; and (iv) UPDATES and UPGRADES of the FIRMWARE, including embedded software. Support of Remote Support by using the Augmented Services app is possible, at the request of the customer, and is subject to charge by BIZERBA.
- 4.5 Operating System Security Contract: The Operating System Security Contract applies to Bizerba devices with Windows and Linux operating systems. In the event of a device failure because of viruses, malware or a hacker attack, these Terms include an investigation as to whether a virus, malware or hacker attack took place (providing access permissions have been granted by the customer), provision of a patch to eliminate the detected security hole, and if required, a subsequent adjustment of the Bizerba device software, development and provision of workarounds if technically possible. Working time is included. Excluded are: (i) communication of security levels of already discontinued operating systems; (ii) execution of workarounds; (iii) general consulting about security topics; (iv) on-site assignments; (v) WEAR PARTS; (vi) CALIBRATION; and (vii) a preventive maintenance check.
- 4.6 Extended Availability Contract: The Extended Availability Contract justifies an on-call technician for the purposes of rectifying faults within a specific time-period defined by the contract, outside of the STANDARD BUSINESS HOURS. In the event of a fault, BIZERBA will exercise its best efforts to respond within an hour if possible, during the contractually agreed time-period. If the fault cannot be rectified on the phone, an on-site assignment can be organized if the CLIENT so requests. The Extended Availability Contract can be enforced no earlier than 10 weeks upon agreement and completion of the site inspection at the CLIENT. Excluded are: (i) WEAR PARTS and their respective assembly and disassembly; (ii) working time; (iii) preparation and travel time for provision of the service; (iv) fault rectification; (v) travel costs and expenses; (vi) preventive maintenance check; and (vii) CALIBRATION.
- 4.7 24/7 Service Contract: The 24/7 Contract justifies BIZERBA's 24/7 availability to rectify faults only in combination with an existing Full-Service Contract under Section 4.2 (also outside of STANDARD BUSINESS HOURS) and the BIZERBA reaction time is one hour if possible. If the fault cannot be rectified on the phone, an on-site assignment can be organized at the CLIENT's request. In the event of on-site fault rectification outside of STANDARD BUSINESS HOURS, BIZERBA requires an assignment fee in the amount of \$200 in addition to the agreed standard payment. The 24/7 Service Contract can be enforced, at the earliest, 10 weeks upon agreement of the contract and completion of the site inspection. Otherwise, Section 4.2 shall apply. Excluded are: (i) CALIBRATION; (ii) and – outside of STANDARD BUSINESS HOURS – execution of preventive maintenance checks; and (iii) UPDATES and UPGRADES of FIRMWARE including embedded software, unless otherwise agreed.
- 4.8 Calibration Contract: Within the framework of these Terms, the Calibration Contract includes: (i) CALIBRATION; (ii) continual monitoring and planning of the due calibration appointments, as agreed in writing in the contract, via prompt notification of the CLIENT of the next, pending calibration appointment; and (iii) organization of carrying out the CALIBRATION on the device expressly and conclusively specified in the contract by BIZERBA. Documentation of the measuring results takes place by creating a protocol as per ISO 9000 and/or according to NIST, depending on the type of record of the calibration result agreed in the contract. Included are: (i) preparation; (ii) working and travel times within STANDARD BUSINESS HOURS; (iii) travel costs and expenses; and (iv) provision of calibrated weights and transportation of them up to 100 pounds,

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unless otherwise agreed. Excluded are: (i) repairs; (ii) preventive maintenance; (iii) inspection of electrical safety and all other on-site assignments; (iv) UPDATES and UPGRADES of FIRMWARE including embedded software; and (v) SPARE PARTS and their respective assembly and disassembly.

4.9 **Calibration Management Contract:** The Calibration Management Contract justifies continual monitoring and planning of due calibration appointments as agreed in writing in the contract via prompt notification of the CLIENT of the next, pending calibration appointment for the devices expressly and conclusively specified in the contract by BIZERBA. Excluded are: (i) CALIBRATION; (ii) repairs; (iii) preventive maintenance; (iv) inspection of electrical safety; and (v) all other on-site assignments, UPDATES and UPGRADES of FIRMWARE including embedded software, SPARE PARTS and their respective assembly and disassembly.

4.10 **Verification and Check-Up Service Contract:** Verification and Check-Up Service Contract includes: (i) regular inspection of the scales for compliance with the required accuracy limits with calibrated weights; (ii) the cleaning of check-out scales; (iii) registration of new scales after they have been launched on the market with the respective Weights & Measures Office, including provision and storage of the respective documentation as per calibration law; (iv) provision of a contact person for questions from the Weights & Measures Office; (v) monitoring of the validity of the calibration and registration for verification; (vi) accompaniment of the calibration officer by a specialist agent from BIZERBA; and (vii) payment of the verification fees in the event of a repeat appointment as per standard verification. Consideration of changes in calibration law includes: (i) preparation; and (ii) working and travel times. Excluded are: (i) CALIBRATION; (ii) repairs; (iii) SPARE PARTS and their respective assembly and disassembly; and (iv) payment of any incurred calibration fees. Pre-requisite for provision of the service by BIZERBA is the granting of the required authorization by the CLIENT.

4.11 **Verification Management Contract:** The Verification Management Contract includes support in compliance with calibration requirements and covers registration of new scales after they have been launched on the market with the respective Weights & Measures Office, including: (i) the provision and storage of the respective documentation as per calibration law; (ii) the monitoring of the validity of the calibration; (iii) provision of a contact person for questions from the Weights & Measures Office; and (iv) automatic consideration of changes in calibration law. Preparation and working time are included. Excluded are: (i) CALIBRATION; (ii) repairs; (iii) preventive maintenance; (iv) inspection of electrical safety; and (v) all on-site assignments, SPARE PARTS and their respective assembly and disassembly. Pre-requisite for provision of the service by BIZERBA is the granting of the required authorization by the CLIENT.

5. CLIENT DUTIES BEFORE AND DURING PERFORMANCE OF SERVICES

5.1 If The CLIENT claims a service provision or response under these Terms, the CLIENT must: (i) provide all device and license numbers of the affected BIZERBA PRODUCT and keep all device and system-specific documentation materials up to date at all times and to make them available to BIZERBA immediately, within the framework of the services as per the selected SERVICE CONTRACT TYPE, (ii) immediately notify any relocation of the installation site, or changes carried out on the BIZERBA PRODUCTS by the Client or a third party, or any installations, deinstallations, or extensions using devices or software not supplied by BIZERBA, carried out by the Client or a third party, (iii) create and keep the operating and environmental conditions required in order to provide the service, which are described and agreed in the provided operating and instruction manuals, and (iv) ensure unimpeded access to the BIZERBA PRODUCT that is the object of the agreed SERVICE. The CLIENT

must further ensure that machine-readable back-up copies are made of his data regularly, which enable these data to be reconstructed at reasonable expense in case of a loss of data. BIZERBA shall have no liability for any data lost by the CLIENT or for any subsequent damage unless BIZERBA has been found by a court of competent jurisdiction to have been liable of intentional acts or gross negligence in failing to provide suitable qualified personnel and in suitable numbers, coordinated with BIZERBA, during the performance of the service. Such suitable qualified personnel shall follow service-related instructions of SPECIALIZED PERSONNEL. The authority with respect to industrial law to issue directives to the SPECIALIZED PERSONNEL people remains with the CLIENT, and while the SERVICE is being rendered, the CLIENT shall be responsible to support that service by applying suitable measures to avoid an interruption of the rendering of services. The CLIENT must always be responsible for the maintenance of his company, and when required, convey the safety regulations vis a vis SPECIALIZED PERSONNEL.

5.2 If required for provision of the service, the CLIENT is obliged: (i) to provide unimpeded and reliable access to the internet; (ii) to enable access by BIZERBA's site inspections; (iii) to make available information about the respective network settings and/or to acquire the necessary licenses at his own cost; and (iv) to name qualified contacts in the purchase order, who are entitled to avail themselves of the services. The number of contacts will be agreed with BIZERBA.

5.3 The CLIENT ensures that the contact is trained in handling the respective BIZERBA PRODUCT, and provided with software, licensed by third parties for the CLIENT, or otherwise, and should be disclosed to and made available to BIZERBA should BIZERBA need to use or access it.

5.4 The CLIENT must ensure that the necessary authorizations, licenses, or sub-licenses are acquired, fully paid and in good standing so that BIZERBA can render its services, to provide the technical prerequisites for remote access, in particular by providing the remote access software specified by BIZERBA, and to activate remote access and provide high-speed data transmission lines to an appropriate extent and at the expense of the CLIENT, to issue remote access rights to BIZERBA and their SPECIALIZED PERSONNEL so as to be able to carry out the service and in the event that the use of audio-visual remote support tools are needed. BIZERBA may only use such authorizations and licenses to the extent that is needed to render the service and provide the respective order processing contract has been concluded.

5.5 If permanent approval for remote access has not been issued by the CLIENT, the CLIENT shall issue approval in each individual case in which the rendering of the service necessitates the approval of remote access at the time of access by BIZERBA or the SPECIALIZED PERSONNEL. BIZERBA or the SPECIALIZED PERSONNEL shall, in each case, provide advance notice of the commencement of remote access to give the CLIENT the opportunity to document and track the measures and to take any required measures (such as data backup for example) in order to monitor the procedure or service.

5.6 Personal data of the CLIENT observed by BIZERBA personnel during remote access shall be immediately returned to the CLIENT, or, deleted with the consent of the CLIENT, as soon as these data are no longer necessary to carry out the services for CALIBRATIONS and verification.

5.7 The CLIENT shall obtain and maintain all necessary licenses and consents and comply with all applicable laws in relation to the selected SERVICE CONTRACT TYPE before the date on which the agreed SERVICE is to begin.

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5.8 If BIZERBA's performance of its obligations under this Agreement is prevented or delayed by any act or omission of the CLIENT or its agents, subcontractors, consultants, or employees, BIZERBA shall not be deemed in breach of its obligations under these Terms, the order confirmation, or otherwise liable for any costs, charges, or losses sustained or incurred by the CLIENT, in each case, to the extent arising directly or indirectly from such prevention or delay.

6. CHANGE ORDERS

6.1 If either party wishes to change the scope or performance of the SERVICE, it shall submit details of the requested change to the other party in writing. BIZERBA shall, within a reasonable time after receipt of such request, provide a written estimate to the CLIENT of: (i) the likely time required to implement the change; (ii) any necessary variations to the fees and other charges for the SERVICE arising from the change; (iii) the likely effect of the change on the SERVICE; and (iv) any other impact the change might have on the performance of the SERVICE.

6.2 Promptly after receipt of the written estimate, the parties shall negotiate and agree in writing on the terms of such change (a "Change Order"). Neither party shall be bound by any Change Order unless mutually agreed upon in writing by all parties.

6.3 Notwithstanding Section 6.1 and Section 6.2, BIZERBA may, from time to time change the SERVICE without the consent of the CLIENT provided that such changes do not materially affect the nature or scope of the SERVICES, or the fees or any performance dates set forth in the order confirmation.

7. FEES, EXPENSES, PAYMENT TERMS; TAXES

7.1 In federal, state, or local governmental authority on any amounts payable by the CLIENT hereunder.

8. INTELLECTUAL PROPERTY

All intellectual property rights, including copyrights, patents, patent disclosures and inventions (whether patentable or not), trademarks, service marks, trade secrets, know-how and other confidential information, trade dress, trade names, logos, corporate names, and domain names, together with all of the goodwill associated therewith, derivative works and all other rights (collectively, "Intellectual Property Rights") in and to all documents, work product, and other materials that are delivered to the CLIENT under these Terms or prepared by or on behalf of BIZERBA in the course of performing the SERVICES, including any items identified as such in the order confirmation, are and shall continue to be owned by BIZERBA. BIZERBA hereby grants the CLIENT a license to use all Intellectual Property Rights free of additional charge and on a non-exclusive, worldwide, non-transferable, non-sublicensable, fully paid-up, royalty-free, and perpetual basis to the extent necessary to enable the CLIENT to make reasonable use of any items identified as such in the order confirmation.

9. CONFIDENTIAL INFORMATION

9.1 All non-public, confidential or proprietary information of BIZERBA, including, but not limited to, trade secrets, technology, information pertaining to business operations and strategies, and information pertaining to customers, pricing, and marketing (collectively, "Confidential Information"), disclosed by BIZERBA to the CLIENT, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential," in connection with the provision of the SERVICES and these Terms is confidential, and shall not be disclosed or copied by the CLIENT without the prior written consent of Service BIZERBA. Confidential Information does not include information that is: (i) in the public domain; (ii) known to

the CLIENT at the time of disclosure; or (iii) rightfully obtained by the CLIENT on a non-confidential basis from a third party.

9.2 The CLIENT agrees to use the Confidential Information only to make use of the SERVICES.

9.3 BIZERBA shall be entitled to injunctive relief for any violation of this Section 9.

10. CONSEQUENCES REGARDING NON-PERFORMANCE OF SECTION 5 DUTIES BY CLIENT.

If the duties set forth in Section 5 are not fulfilled or not fulfilled entirely and timely by the CLIENT, BIZERBA shall not be considered to be in breach of any of its obligations under these TERMS and the CLIENT shall compensate BIZERBA for the time and expenses incurred for work time or waiting time, in accordance with the respectively current price list. The CLIENT shall compensate BIZERBA for any damage incurred by Bizerba due to any violation of the CLIENT'S duties as per Section 5.

11. FORCE MAJEURE

No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached these Terms and/or the order confirmation, for any failure or delay in fulfilling or performing any term of these Terms and/or the order confirmation (except for any obligations of the CLIENT to make payments to BIZERBA hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the impacted party's ("Impacted Party") reasonable control, including, without limitation, the following force majeure events ("Force Majeure Event(s)": (a) acts of God; (b) flood, fire, accident, earthquake, epidemics, pandemics or explosion; (c) war, invasion, hostilities (whether war is declared or not), insurrection, terrorist threats or acts, acts of civil or military authority, riot or other civil unrest; (d) government order, law, or action; (e) embargoes, blockades delays in transportation, limitations on access to or storage of fuel, delays on supplies in effect on or after the date of this Agreement, in effect on or after the date of this Agreement; and (f) national or regional emergency; (g) strikes, labor stoppages, lockouts, differences with workers or slowdowns or other industrial disturbances, (h) and with respect to BIZERBA, infringement claims that cannot be resolved or can only be resolved through payment of royalties or incurrence of other monetary obligations by BIZERBA, or any other cause beyond BIZERBA'S reasonable control; and (i) other similar events beyond the reasonable control of the Impacted Party. The Impacted Party shall give notice within 30 days of the Force Majeure Event to the other party, stating the period of time the occurrence is expected to continue. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. If the Impacted Party's failure or delay remains uncured for a period of 30 consecutive days following written notice given by it under this Section 11, either party may thereafter terminate this Agreement upon 30 days written notice.

12. ACCEPTANCE

12.1 The CLIENT shall accept the SERVICE immediately upon completion or partial completion of the service has been announced. BIZERBA can demand acceptance of partial services.

12.2 Acceptance cannot be refused based on ascertaining a minor fault. Removal of a fault is in accordance with Section 13.

12.3 The SERVICE shall be considered accepted even if, upon expiry of two weeks following the announcement of completion or following commissioning acceptance is not declared.

12.4 With acceptance, the service shall be considered faultless in terms of recognizable defects providing the CLIENT has not reserved the right to assert recognizable defects at acceptance.

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13. WARRANTY FROM BIZERBA

- 13.1 BIZERBA warrants to the CLIENT that it shall perform the Services set forth in Section 4 of this Agreement using personnel of required skill, experience, and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and shall devote adequate resources to meet its obligations under this Agreement.
- 13.2 **EXCEPT FOR THE WARRANTY SET FORTH IN THIS SECTION 13, BIZERBA MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE SERVICES, INCLUDING ANY (A) WARRANTY OF MERCHANTABILITY, (B) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, (C) WARRANTY OF TITLE OR (D) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE.**
- 13.3 Products manufactured by a third party (a "Third Party Product") may constitute, contain, be contained in, incorporated into, attached to or packaged together with the service parts used by BIZERBA. Third Party Products are not covered by the warranty in Section 13.1. For the avoidance of doubt, **BIZERBA MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD-PARTY PRODUCT, INCLUDING ANY (A) WARRANTY OF MERCHANTABILITY, (B) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, (C) WARRANTY OF TITLE, OR (D) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE.**
- 13.4 Upon acceptance of the SERVICE, BIZERBA is not liable for faults. In the event of any supplementary service, Bizerba retains the right to decide whether to rectify the error or re-perform the SERVICE. For CALIBRATION, BIZERBA ensures that the CALIBRATION is carried out properly and that only calibrated reference standards are used, assuming that they are provided by BIZERBA.
- 13.5 The CLIENT is required to inform BIZERBA immediately in writing upon ascertainment of the fault.
- 13.6 There is no warranty if work is improperly carried out, or amendments or work is performed by third parties or by the CLIENT, without previous authorization from BIZERBA. The CLIENT may remove the fault at his own risk only in urgent cases in which the operating safety is endangered or if required to prevent disproportionately large damage or hazards, of which BIZERBA must be notified immediately – or if BIZERBA allows a reasonable period in which to remove the fault to expire.
- 13.7 There is no warranty with respect to faults that result from missing or incorrect specifications from the CLIENT regarding its duties as per Section 5. This limitation applies specifically to information or characteristics related to the ambient conditions, structural substance, chemical, electro-chemical, electro-mechanical, electro-static, electro-magnetic or electrical influences at the place of installation or should the required software licence for the services not have been provided in advance.
- 13.8 The right to warranty for faults in terms of the SERVICE, spare parts and materials shall expire 90 days following acceptance or readiness for acceptance of the SERVICE. The warranty period does not apply to compensation for damages due to gross negligence or intentional violation of duties by BIZERBA or its assistants, or in the event of injury to life, body and health. Section 15 applies for other claims for compensation.

14. REMUNERATION

- 14.1 SERVICES from BIZERBA are remunerated by the fixed sum as per the respectively valid price list, providing no other fixed sum or charge based on time and materials has been agreed by BIZERBA.
- 14.2 The agreed fee covers remuneration for the services described in Section 4 of the service, depending on the SERVICE CONTRACT TYPE. Working time refers to the time required by the SPECIALIZED PERSONNEL for providing the service. Travel time is the time taken for the journey to and from the location at which the service is provided. Travel costs and expenses include vehicle costs, hotel accommodation costs, road charges and expenses, including but not limited to the reasonable cost of meals. Time spent waiting due to the CLIENT is an addition to costs; the hourly rates are set forth on BIZERBA'S respectively applicable price list.
- 14.3 The remuneration for the rest of the calendar year is to be paid immediately upon conclusion of the service contract and in advance for the following years for each calendar year by January 31 unless otherwise agreed in the contract. Remuneration for additional services is due upon issue of the invoice.
- 14.4 If the SERVICE becomes impossible because of circumstances caused by the CLIENT, the CLIENT is required to cover the costs of the service incurred up to this point in time to at least 5% of the agreed remuneration.
- 14.5 By its or its representative's signature on the work record, the CLIENT confirms the work time/waiting time and travel time incurred by BIZERBA as well as the use of SPARE PARTS and WASTE PARTS or ACCESSORIES.
- 14.6 Remuneration shall be due upon receipt of the invoice, at the latest within 30 working days following the invoice date providing nothing else has been agreed in writing.
- 14.7 Unless there has been an agreement to the contrary, the service contract fees are net prices exclusive of sales tax. The sales tax shall be charged at the rate applicable in the jurisdiction as of the time when the performance is rendered. If the sales tax rate is changed during the term of the contract, the periods with the respective sales tax rates shall be deemed to have been agreed separately.
- 14.8 BIZERBA may change the service contract fee in line with general price developments by means of a written notification with 6 weeks' notice to the end of the year. If there is an increase in the remuneration, the CLIENT may terminate the contract in writing, regardless of Section 16, with 3 weeks' notice to the date of the increase.
- 14.9 If the CLIENT is in arrears with the payment of the agreed remuneration or if the occurrence of a significant deterioration in the business or pecuniary circumstances of the CLIENT, or if other circumstances exist that impair his creditworthiness, all of BIZERBA'S receivables become immediately due and payable. In such cases BIZERBA shall also be entitled to render performances only against advance payment or providing security for payment, and if the CLIENT is unwilling or unable to satisfy such requirements, BIZERBA may terminate the contract without incurring any liability.

15. COMPENSATION FOR DAMAGES – LIMITATION OF LIABILITY OF BIZERBA

- 15.1 **EXCEPT FOR THE WARRANTY SET FORTH IN SECTION 13, BIZERBA MAKES NO OTHER WARRANTY WHATSOEVER WITH RESPECT TO THE SERVICES PROVIDED UNDER THIS AGREEMENT, WHETHER EXPRESS OR IMPLIED BY LAW,**

Service Contract Standard Terms and Conditions of Bizerba USA, Inc.

COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE.

15.2 **IN NO EVENT SHALL BIZERBA BE LIABLE TO THE CLIENT OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE, PROFIT OR LOSS OF DATA OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT BIZERBA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.**

15.3 BIZERBA'S liability shall extend and apply only in the event of loss and/or damage arising from injury to life, body or health which is caused by BIZERBA'S intentional acts or gross negligence

15.4 Contrary to Section 5, BIZERBA is not liable for breaches of uncommunicated or not correctly communicated safety regulations by the CLIENT. In such a case the CLIENT shall release, indemnify and hold BIZERBA harmless from any and all such claims.

15.5 BIZERBA is not liable for the functioning of the CLIENT'S entire plant, unless otherwise agreed in writing.

15.6 BIZERBA is not liable for conduct of the personnel or assistants provided by the CLIENT, unless such conduct is a result of an incorrect instruction by BIZERBA.

15.7 BIZERBA is not liable for injuries to the property rights of third parties due to a violation of the obligation of the CLIENT to cooperate as per Section 5, above. In such cases the CLIENT shall release, indemnify and hold BIZERBA harmless from any and all claims, costs and expenses.

15.8 The exclusion and limitation of liability of BIZERBA shall not apply: (i) in those cases where, in the event of defects in the delivered articles, there is liability under the Uniform Commercial Code ("UCC") [[or Unites States Product Liability Law]] for damage to persons or for damage to property affecting privately used items; (ii) for liability resulting from the assumption of a guarantee for the condition of an article; and (iii) on grounds of malicious or intentional concealment of a defect.

15.9 BIZERBA shall have no liability in the case of incorrect installation by the CLIENT or a third party, whose conduct is not directly attributable to BIZERBA, incorrect handling, non-observance of the operating manual, normal wear or defects in the system environment (e.g., third-party hardware or software).

15.10 Bizerba is entitled to withdraw or declare invalid a test report, based on ISO 9000 or NIST, that it has issued if it is subsequently discovered that the grounds for issuance are no longer given, unless compliance with the issuing conditions can be ensured and verified by the CLIENT. BIZERBA may request in advance that the CLIENT provide BIZERBA with such a statement. The CLIENT cannot make a claim for compensation in the event of such withdrawal or revocation unless BIZERBA has acted intentionally or with gross negligence.

16. CONTRACT DURATION, TERMINATION AND ADJUSTMENTS

16.1 The duration of the contract depends on the term of the contract agreed in writing by the CLIENT and BIZERBA. If the duration is not agreed, the contract runs for an undefined period and can be terminated by giving 3 months written notice. If the BIZERBA PRODUCT used by the CLIENT can no longer be serviced or is no longer within the support period, BIZERBA can partially terminate the contract or offer the CLIENT an UPGRADE or replacement product at the CLIENT'S cost. Termination can be limited to individual PRODUCTS.

16.2 In addition to any remedies that may be provided under these Terms and the order confirmation, BIZERBA may terminate these Terms with immediate effect upon written notice to the CLIENT, if the CLIENT: (i) fails to pay any amount when due under the order confirmation; (ii) has not otherwise performed or complied with any of the terms and conditions of these Terms or the order confirmation, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization, or assignment for the benefit of creditors.

16.3 If future changes to regulations, laws or directives relevant to the BIZERBA PRODUCTS necessitate additional services being provided to the CLIENT by BIZERBA, the parties shall negotiate in good faith a settlement on adjusting the respective agreements. The services to be carried out by BIZERBA will not be extended automatically simply as a result of statutory changes.

17. SEVERABILITY

If any provision hereof shall be deemed invalid, void, or unenforceable by a court of competent jurisdiction, this contract shall be construed as though such provision does not appear herein. Any such finding shall not affect the validity of any other provision.

18. APPLICABLE LAW AND JURISDICTION

These Terms and Conditions shall be governed, construed and interpreted, and all rights of the parties determined in accordance with the laws of the State of Maryland, excluding its conflicts of laws principles, as if wholly performed in the State of Maryland. Jurisdiction and venue shall be in the Superior Court of Maryland, Harford County. **THE UNITED NATIONS CONVENTIONS ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS DOES NOT APPLY TO THESE TERMS AND CONDITIONS OR THE DOCUMENTS RELATED THERETO AND IS HEREBY EXPRESSLY DISCLAIMED BY THE SELLER AND THE PURCHASER.**

19. RETENTION AND SETOFF

The CLIENT shall not withhold payments due BIZERBA on account of counterclaims that are not based on this contractual relationship, nor to offset claims disputed by BIZERBA or not yet effectively established. In the event of claims based on a dereliction of duty by BIZERBA arising from this contractual relationship, the CLIENT'S reciprocal rights shall remain unaffected.

20. DATA PROCESSING FOR OWN PURPOSES

The CLIENT gives BIZERBA its consent to gather, process and use its contact data for the purpose of handling the contractual relationship and cultivating the commercial relationships with the CLIENT until such consent is revoked in writing. Contact data comprises the business-related contact information that is made accessible for BIZERBA by the CLIENT, especially names, occupational titles, business addresses, business telephone and fax numbers, and e-mail addresses of employees of the CLIENT.