

IBM International Program License Agreement

Part 1 - General Terms

PLEASE READ THIS AGREEMENT CAREFULLY BEFORE USING THE PROGRAM. IBM WILL LICENSE THE PROGRAM TO YOU ONLY IF YOU FIRST ACCEPT THE TERMS OF THIS AGREEMENT. BY USING THE PROGRAM YOU AGREE TO THESE TERMS. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, PROMPTLY RETURN THE UNUSED PROGRAM TO THE PARTY (EITHER IBM OR ITS RESELLER) FROM WHOM YOU ACQUIRED IT TO RECEIVE A REFUND OF THE AMOUNT YOU PAID.

The Program is owned by International Business Machines Corporation or one of its subsidiaries (IBM) or an IBM supplier, and is copyrighted and licensed, not sold.

The term "Program" means the original program and all whole or partial copies of it. A Program consists of machine-readable instructions, its components, data, audio-visual content (such as images, text, recordings, or pictures), and related licensed materials.

This Agreement includes Part 1 - General Terms, Part 2 - Country-unique Terms, and "License Information" and is the complete agreement regarding the use of this Program, and replaces any prior oral or written communications between you and IBM. The terms of Part 2 and License Information may replace or modify those of Part 1.

1. License

Use of the Program

IBM grants you a nonexclusive license to use the Program.

You may 1) use the Program to the extent of authorizations you have acquired and 2) make and install copies to support the level of use authorized, providing you reproduce the copyright notice and any other legends of ownership on each copy, or partial copy, of the Program.

If you acquire this Program as a program upgrade, your authorization to use the Program from which you upgraded is terminated.

You will ensure that anyone who uses the Program does so only in compliance with the terms of this Agreement.

You may not 1) use, copy, modify, or distribute the Program except as provided in this Agreement; 2) reverse assemble, reverse compile, or otherwise translate the Program except as specifically permitted by law without the possibility of contractual waiver; or 3) sublicense, rent, or lease the Program.

Transfer of Rights and Obligations

You may transfer all your license rights and obligations under a Proof of Entitlement for the Program to another party by transferring the Proof of Entitlement and a copy of this Agreement and all documentation. The transfer of your license rights and obligations terminates your authorization to use the Program under the Proof of Entitlement.

2. Proof of Entitlement

The Proof of Entitlement for this Program is evidence of your authorization to use this Program and of your eligibility for warranty services, future upgrade program prices (if announced), and potential special or promotional opportunities.

3. Charges and Taxes

IBM defines use for the Program for charging purposes and specifies it in the Proof of Entitlement. Charges are based on extent of use authorized. If you wish to increase the extent of use, notify IBM or its reseller and pay any applicable charges. IBM does not give refunds or credits for charges already due or paid.

If any authority imposes a duty, tax, levy or fee, excluding those based on IBM's net income, upon the Program supplied by IBM under this Agreement, then you agree to pay that amount as IBM specifies or supply exemption documentation.

4. Limited Warranty

IBM warrants that when the Program is used in the specified operating environment it will conform to its specifications. IBM does not warrant uninterrupted or error-free operation of the Program or that we will correct all Program defects. You are responsible for the results obtained from the use of the Program. The warranty period for the Program expires when its Program services are no longer available. The License Information specifies the duration of Program services.

During the warranty period warranty service is provided without charge for the unmodified portion of the Program through defect-related Program services. Program services are available for at least one year following the Program's general availability. Therefore, the duration of warranty service depends on when you obtain your license. If the Program does not function as warranted during the first year after you obtain your license and IBM is unable to resolve the problem by providing a correction, restriction, or bypass, you may return the Program to the party (either IBM or its reseller) from whom you acquired it and receive a refund in the amount you paid for it. To be eligible, you must have acquired the Program while Program services (regardless of the remaining duration) were available for it.

THESE WARRANTIES ARE YOUR EXCLUSIVE WARRANTIES AND REPLACE ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

These warranties give you specific legal rights, and you may also have other rights which vary from jurisdiction to jurisdiction. Some jurisdictions do not allow the exclusion or limitation of implied warranties, so the above exclusion or limitation may not apply to you. In that event such warranties are limited in duration to the warranty period. No warranties apply after that period.

5. Limitation of Liability

Circumstances may arise where, because of a default on IBM's part or other liability, you are entitled to recover damages from IBM. In each such instance, regardless of the basis on which you may be entitled to claim damages from IBM, (including fundamental breach, negligence, misrepresentation, or other contract or tort claim), IBM is liable for no more than 1) damages for bodily injury (including death) and damage to real property and tangible personal property and 2) the amount of any other actual direct damages up to the greater of U.S. \$100,000 (or equivalent in your local currency) or the charges for the Program that is the subject of the claim.

IBM WILL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, OR INDIRECT DAMAGES OR FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS OR SAVINGS), EVEN IF IBM, OR ITS RESELLER, HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU.

IBM will not be liable for 1) loss of, or damage to, your records or data or 2) any damages claimed by you based on any third party claim.

This limitation of liability also applies to any developer of a Program supplied to IBM. It is the maximum for which IBM and its suppliers are collectively responsible.

6. General

Nothing in this Agreement affects any statutory rights of consumers that cannot be waived or limited by contract.

IBM may terminate your license if you fail to comply with the terms of this Agreement. If IBM does so, your authorization to use the Program is also terminated.

You agree to comply with applicable export laws and regulations.

Neither you nor IBM will bring a legal action under this Agreement more than two years after the cause of action arose unless otherwise provided by local law without the possibility of contractual waiver or limitation.

Neither you nor IBM is responsible for failure to fulfill any obligations due to causes beyond its control.

The laws of the country in which you acquire the Program govern this Agreement, except 1) in Australia, the laws of the State or Territory in which the transaction is performed govern this Agreement; 2) in Albania, Armenia, Belarus, Bosnia/Herzegovina, Bulgaria, Croatia, Czech Republic, Georgia, Hungary, Kazakhstan, Kirghizia, Former Yugoslav Republic of Macedonia (FYROM), Moldova, Poland, Romania, Russia, Slovak Republic, Slovenia, Ukraine, and Federal Republic of Yugoslavia, the laws of Austria govern this Agreement; 3) in the United Kingdom, all disputes relating to this Agreement will be governed by English Law and will be submitted to the exclusive jurisdiction of the English courts; 4) in Canada, the laws in the Province of Ontario govern this Agreement; and 5) in the United States and Puerto Rico, and People's Republic of China, the laws of the State of New York govern this Agreement.

Part 2 - Country Unique Terms

AUSTRALIA: Limited Warranty (Section 4): The following paragraph is added to this Section:

The warranties specified in this Section are in addition to any rights you may have under the Trade Practices Act 1974 or other legislation and are only limited to the extent permitted by the applicable legislation.

Limitation of Liability (Section 5): The following paragraph is added to this Section:

Where IBM is in breach of a condition or warranty implied by the Trade Practices Act 1974, IBM's liability is limited to the repair or replacement of the goods, or the supply of equivalent goods. Where that condition or warranty relates to right to sell, quiet possession or clear title, or the goods are of a kind ordinarily acquired for personal, domestic or household use or consumption, then none of the limitations in this paragraph apply.

EGYPT: Limitation of Liability (Section 5): The following replaces item 2 in the first paragraph of this Section:

2) as to any other actual direct damages, IBM's liability will be limited to the total amount you paid for the Program that is the subject of the claim.

FRANCE: Limitation of Liability (Section 5): The following replaces the second sentence in the first paragraph of this Section:

In such instances, regardless of the basis on which you are entitled to claim damages from IBM, IBM is liable for no more than 1) damages for bodily injury (including death) and damage to real property and tangible personal property; and 2) the amount of any other actual direct damages up to the greater of a) U.S. >100,000 (or equivalent in local currency) or b) the charges for the Program which is the subject of the claim.

GERMANY: Limited Warranty (Section 4): The following paragraphs are added to this Section:

The minimum warranty period for Programs is six months.

In case a Program is delivered without Specifications, we will only warrant that the Program information correctly describes the Program and that the Program can be used according to the Program information. You have to check the usability according to the Program information within the "money-back guaranty" period.

The following replaces the first sentence of the first paragraph of this Section:

The warranty for an IBM Program covers the functionality of the Program for its normal use and the Program's conformity to its Specifications.

Limitation of Liability (Section 5): The following paragraph is added to the Section:

The limitations and exclusions specified in the Agreement will not apply to damages caused by IBM with fraud or gross negligence, and for express warranty.

In item 2, replace "U.S. >100,000" with "DEM 1.000.000".

The following sentence is added to the end of item 2 of the first paragraph:

IBM's liability under this item is limited to the violation of essential contractual terms in cases of ordinary negligence.

INDIA: Limitation of Liability (Section 5): The following replaces items 1 and 2 in the first paragraph:

1) liability for bodily injury (including death) or damage to real property and tangible personal property will be limited to that caused by IBM's negligence; and 2) as to any other actual damage arising in any situation involving nonperformance by IBM pursuant to, or in any way related to the subject of this Agreement, IBM's liability will be limited to the charge paid by you for the individual Program that is the subject of the claim.

General (Section 6): The following replaces the fourth paragraph of this Section:

If no suit or other legal action is brought, within two years after the cause of action arose, in respect of any claim that either party may have against the other, the rights of the concerned party in respect of such claim will be forfeited and the other party will stand released from its obligations in respect of such claim.

IRELAND: Limited Warranty (Section 4): The following paragraph is added to this Section:

Except as expressly provided in these terms and conditions, all statutory conditions, including all warranties implied, but without prejudice to the generality of the foregoing, all warranties implied by the Sale of Goods Act 1893 or the Sale of Goods and Supply of Services Act 1980 are hereby excluded.

Limitation of Liability (Section 5): The following replaces items 1 and 2 in the first paragraph of this Section:

1) death or personal injury or physical damage to your real property solely caused by IBM's negligence; and 2) the amount of any other actual direct damages, up to the greater of Irish Pounds 75,000 in respect of Programs or 125 percent of the charges for the Program that is the subject of the claim or which otherwise gives rise to the claim.

The following paragraph is added at the end of this Section:

IBM's entire liability and your sole remedy, whether in contract or in tort, in respect of any default will be limited to damages.

ITALY: Limitation of Liability (Section 5): The following replaces the second sentence in the first paragraph: In each such instance unless otherwise provided by mandatory law, IBM is liable for no more than damages for bodily injury (including death) and damage to real property and tangible personal property and 2) as to any other actual damage arising in all situations involving non-performance by IBM pursuant to, or in any way related to the subject matter of this Agreement, IBM's liability, will be limited to the total amount you paid for the Program that is the subject of the claim.

NEW ZEALAND: Limited Warranty (Section 4): The following paragraph is added to this Section: The warranties specified in this Section are in addition to any rights you may have under the Consumer Guarantees Act 1993 or other legislation which cannot be excluded or limited. The Consumer Guarantees Act 1993 will not apply in respect of any goods or services which IBM provides, if you require the goods or services for the purposes of a business as defined in that Act.

Limitation of Liability (Section 5): The following paragraph is added to this Section: Where Programs are not acquired for the purposes of a business as defined in the Consumer Guarantees Act 1993, the limitations in this Section are subject to the limitations in that Act.

PEOPLE'S REPUBLIC OF CHINA: Charges (Section 3): The following paragraph is added to the Section: All banking charges incurred in the People's Republic of China will be borne by you and those incurred outside the People's Republic of China will be borne by IBM.

UNITED KINGDOM: Limitation of Liability (Section 5): The following replaces items 1 and 2 in the first paragraph of this Section:
1) death or personal injury or physical damage to your real property solely caused by IBM's negligence; 2) the amount of any other actual direct damages, up to the greater of Pounds Sterling 75,000 in respect of Programs or 125 percent of the charges for the Program that is the subject of the claim or which otherwise gives rise to the claim.

The following item is added:

3) breach of IBM's obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982.

The following paragraph is added at the end of this Section:

IBM's entire liability and your sole remedy, whether in contract or in tort, in respect of any default will be limited to damages.

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