

General Terms and Conditions for IQDoQ License Programs

1 Scope

- 1.1 These general terms and conditions for IQDoQ license programs (IQDoQ will be referred to as 'Licensor' in the following) shall apply exclusively. Differing terms shall only apply upon Licensor's express written acceptance.
- 1.2 Unless stated otherwise in writing, quotations are valid for 4 weeks from the quotation date. The license agreement will come into effect upon receipt of Licensee's acceptance of Licensor's unchanged quotation.

2 Grant of Rights

- 2.1 Licensor grants to Licensee a non-exclusive, in accordance with 2.2 transferable right to use the Software and documentation described in the License Agreement against the one-time payment specified in the License Agreement. Unless stated otherwise in the License Agreement the transferable right is geographically restricted to the European Economic Area.
- 2.2 Licensee shall be entitled to transfer permanently the Licensed Products and the rights granted herein to third parties no more than once in total, and only upon the transferee's previous written acceptance of these General Terms and Conditions. In addition, Licensee shall provide transferee with all copies of the Software including, where applicable, backup copies, otherwise Licensee shall destroy all copies that have not been passed on. If agreed upon in the License Agreement, Licensee will be entitled to retain one copy for test and archival purposes.
- 2.3 The right to copy the Software is limited to the installation of the Software on a computer system which is in Licensee's immediate possession and to fulfil the Purpose of Use and a copy thereof which is required for the loading, display, running, transfer or the storage of the Software as well as to the right for an authorized person to make copies for security backup purposes as stated in sec. 69 d par. (2) UrhG (German Copyright Act). It is prohibited to remove the copyright as well as registration numbers from the Software.
- 2.4 The Software shall be provided in object code form (byte- or machine code). Licensee is not authorized to modify, interfere with, downgrade, decompile or disassemble the Software without the prior written consent of the Licensor or to create works derived from the Software. The Licensee shall not copy, translate or modify any written documents delivered with the Software or create derivative works from such documents. These limitations shall not apply if and to the extent that the modification or determination of the Source Code is essential for obtaining information which is indispensable for establishing the Software interoperability with other independently created programs, provided the Licensor has not provided the required information within a reasonable period of time upon Licensee's prior written request.
- 2.5 In the event the Software contains libraries and software components of other Licensors (including, but not limited to Open Source Software), these Licensors' Terms and Conditions as listed separately in the License Agreement shall apply to the respective software components.**
- 2.6 Required hardware and software components of other Licensors (including, but not limited to free or Open Source Software) will be named as system requirements within the license agreement and be provided by Licensee. At the request of Licensee, other components may be employed. The parties will enter into a separate agreement concerning this.
- 2.7 Even if the installation of free or Open Source Software (OSS) is effected by the Licensor, any contractual relationship shall directly exist between the originator of the OSS and the Licensee. Therefore the Licensor shall not charge a payment for the use of OSS or license fee to Licensee. Licensee acknowledges that the Licensor neither shall be liable for defects of OSS nor assume any liability according the OSS.

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2.8 Concerning the OSS, Licensee accepts the specific terms of use, which will be either part of the documentation or will be hand out by the Licensor. Licensor shall provide the Licensee a copy of the source code for the Open Source Software upon the Licensee's request. If and to the extent that the provisions of these terms and conditions are inconsistent with the OSS-terms, the OSS-terms shall prevail.

3 Prices and terms of payment

3.1 The fees and payment terms are defined in the License Agreement and shall include loading and packaging ex works unless otherwise expressly agreed. Licensee shall bear the costs of delivery, freight insurances, customs, excise tax and value-added tax effective at the time of delivery.

3.2 Payments are due upon receipt of the invoice without deduction. Licensee shall be entitled to offset or to exercise a right of retention against claims that have been acknowledged by the Licensor or have been confirmed by final court decision only.

3.3 Licensor shall be entitled to partial deliveries as far as reasonable to Licensee. Such partial deliveries may be charged by invoices for partial delivery, and Licensor shall be entitled to appropriate advanced payments for services.

3.4 Additional services are to be refunded in accordance with Licensor's current price lists.

4 Supplementary performance (warranty)

4.1 Licensor warrants that the Software will basically conform to the Product Specifications when it is used unmodified and in appropriate manner in the specified operating environment. The Product Specifications do not constitute any Guarantee according to § 443 BGB (German Civil Code). The warranty for updates, upgrades and the delivery of new versions shall be limited to the new features of the update, upgrade or new version.

4.2 If Licensee requests supplementary performance, Licensor shall be entitled to either repair or replace the Software. Otherwise, the statutory provisions on supplementary performance shall apply. If the defect is not cured within a first time limit and Licensee has set Licensor a reasonable second time limit without success or if two attempts to remedy, replacement deliveries or replacement services are without success, Licensee may, subject to the statutory prerequisites, at its option withdraw from this agreement or reduce the price and claim damages or reimbursement of costs. Supplementary performance may also consist of a new version or a workaround solution. If the defect does not or not substantially impair the functionality and use of the Software is still reasonable to Licensee, Licensor shall be entitled, to the exclusion of further warranty rights, to remedy the defect by delivering a new version or an update as part of its version, update and upgrade planning.

4.3 Licensor may refuse to remedy defects or to deliver replacements until Licensee has paid the agreed fees to Licensor, less an amount which corresponds to the economic value of the defect.

4.4 If the defect is caused by the defective products of a supplier and the supplier does not act as Licensor's vicarious agent but Licensor is merely passing on an unchanged third party product to Licensee, then Licensor's warranty shall at first hand be limited to the assignment of its warranty claims against the supplier. The subsidiary warranty of the Licensor shall remain unaffected.

4.5 The warranty shall be valid for a period of twelve (12) months upon delivery of the Software for merchants according to the German Code of Commerce (Handelsgesetzbuch).

4.6 Licensee shall notify Licensor in writing about defects enclosing a comprehensible description of the error symptoms, reasonably evidenced by written recordings, hard copies or other documents demonstrating the defects. The notification of the defect should enable the reproduction of the error. The

General Terms and Conditions for IQDoQ License Programs

statutory obligations of merchants to inspect and notify defects according to the German Code of Commerce (Handelsgesetzbuch) shall remain unaffected.

- 4.7 Licensee shall reimburse to Licensor any necessary expenses resulting from Licensor's work upon unjustified complaint about defects according to Licensor's current price list for services. Complaints shall be deemed unjustified if it turns out that either a defect did not exist, or that the defect did not result from the Software, but from Licensee's sphere of responsibility.
- 4.8 If Licensee is entitled to withdraw from the Agreement due to Licensor's default, Licensee shall declare withdrawal within a period of fourteen (14) days upon occurrence of the respective incident entitling Licensee to withdraw from the Agreement. In case of minor defects claims to withdraw and claims for damages instead of performance are excluded unless Licensor fraudulently concealed the defects.

5 Warranty for Defects in Title

- 5.1 Licensor warrants that the Software shall, apart from customary retentions of title, be free from third party rights which prevent the use in accordance with the contract.
- 5.2 Licensor shall defend the Software at its own expense against any third party claims provided that Licensee has informed Licensor immediately in writing about such claims and takes all reasonable measures (authorization, information) to support Licensor adequately.
- 5.3 To the extent that there are defects in title, Licensor is entitled at its option to either take legitimate measures to remove the third party rights which impair the contractual use of the software or to remedy the enforcement of such claims, or to change or replace the software in such a manner that it no longer infringes the rights of third parties, provided and to the extent that this does not substantially impair the warranted functionality of the software. Licensor shall reimburse Licensee for its necessary refundable costs incurred in the enforcement of legal claims.
- 5.4 If remedies according to section 5.3 fail to succeed within a reasonable time limit set by Licensee, Licensee may subject to the statutory prerequisites at its option reduce the price or withdraw from this Agreement and claim damages.
- 5.5 Clauses 4.3, 4.5 and 4.8 shall apply accordingly.

6 Liability

- 6.1 The Licensor shall be liable for claims for damages irrespective of their legal basis as specified below:
 - (a) The liability of the Licensor for damages that are caused deliberately or roughly negligently by the Licensor or by one of his vicarious agents or legal representatives shall be unlimited.
 - (b) In the case of losses arising from injury to life, body or health liability shall be unlimited in its amount, even in cases of a breach of a contractual obligation due to minor negligence on the part of the Licensor or its legal representative or agents.
 - (c) This liability shall likewise include damages due to serious misconduct in the organization as well as damages due to lack of guaranteed qualities.
 - (d) In the event of a negligent violation of a substantial contract obligation, the liability of the Licensor shall be limited to the foreseeable damage typically occurring. A substantial contract obligation in this sense consists of each obligation, which is indispensable for enabling the duly fulfilment of the contract obligations and on whose observance the Licensee relies or may reasonably rely. The parties agree that the foreseeable, typically occurring damage will not exceed 50.000 EUR or the contract value, whichever is higher.

General Terms and Conditions for IQDoQ License Programs

- (e) In the event of product liability, the Licensor shall be liable in accordance with the German Product Liability Act.
- 6.2 Each further liability of the Licensor for damage compensation, in particular liability without fault, shall be excluded.
- 6.3 If a damage is due both to the Licensor and the Licensee, the contributory negligence of the Licensee must be taken into account.
- 6.4 The Licensee is responsible for regular backup of his data. If data loss is caused by the Licensor, the Licensor shall only be liable for the costs of copying the data for the backup copies and for restoring the data that also would have been lost had the backup of the data been successful.

7 Final provisions

- 7.1 This Agreement contains all regulations concerning the object of this Agreement. Additional verbal agreements do not exist. To be valid, amendments to this Agreement must be in writing.
- 7.2 The assignment of Licensor's rights and obligations under this License Agreement, in whole or in part, to third parties is subject to Licensee's prior consent which shall not be unreasonably withheld. Affiliated Companies according to §§ 15 ff. of the German Stock Corporation Act (AktG) shall not be considered as third parties under this Agreement.
- 7.3 Any Act of God making the performance of a service (except payment) or of an obligation substantially more difficult or impossible shall entitle the affected party to postpone the performance of such duty or obligation by the duration of such interference and by a reasonable start-up time. Any labour dispute in the parties' business facilities of third parties and similar circumstances the parties are indirectly or directly affected by shall be deemed equivalent to an Act of God.
- 7.4 Any invalidity of any provisions of these terms and conditions or of any individual agreement entered into on their basis shall not affect the validity of any other provision hereof or thereof. In such a case, the parties shall cooperate in creating provisions the economic result of which comes as close as possible to the economic result of an invalid provision in a manner valid under law. The above shall apply accordingly to incomplete provisions.
- 7.5 The place of jurisdiction in relation to buyers, public legal entities or public special estates is Bad Vilbel.
- 7.6 **All individual agreements entered into under these terms and conditions shall be governed by the laws of the Federal Republic of Germany exclusive of the UN law on sales (CISG United Nations Convention on Contracts for International Sale of Goods, dated April 11, 1980). Remittal to foreign law according to the principles of private international law (IPR) is excluded.**