

General Terms and Conditions of IQDoQ GmbH for Sale of Goods

1 Scope

- 1.1 These terms and conditions of IQDoQ GmbH (in the following 'Supplier') for sale of goods shall apply exclusively. Differing terms shall only apply upon Supplier's express written acceptance.
- 1.2 Unless stated otherwise, quotations are valid for 4 weeks from the quotation date. The sales contract will come into effect upon receipt of Purchaser's acceptance of Supplier's unchanged quotation.

2 Subject Matter of Agreement

- 2.1 Supplier shall deliver the Hard- and Software Products defined in the quotation/ sales contract including documentation (operating and installation instructions) provided by manufacturer. Installation, instruction and establishment of product functionality are additional services subject to remuneration upon mutual agreement.
- 2.2 The product qualities are defined in the product/ technical specifications of the respective manufacturer.
- 2.3 The right to use software products shall be exclusively defined by the License Terms and Conditions of the manufacturer which will be attached to the sales contract. Manufacturer shall retain title and intellectual property rights to the software including documentation and any other works. Purchaser shall be granted the ownership of the physical data carriers containing the software and documentation.
- 2.4 Supplier reserves all rights to cost estimates, designs, programs and other quotation documents, if not otherwise agreed in writing.

3 Prices and Terms of Payment

- 3.1 Purchaser is obliged to pay the remuneration determined in the quotation/ sales contract and the applicable sales tax. Remuneration shall include loading and packaging ex works unless otherwise expressly agreed. Purchaser shall bear the costs of delivery, freight insurances, customs, excise tax and valueadded tax effective at the time of delivery.
- 3.2 Payments shall be due upon receipt of the invoice without deduction, if not otherwise agreed in writing. The Purchaser shall be entitled to offset or to exercise a right of retention against claims that have been acknowledged by the Supplier or have been confirmed by final court decision only. Partial deliveries (which are admissible, if not agreed otherwise) may be charged by partial invoices.
- 3.3 If Purchaser is in default of payment, Supplier shall be entitled to an interest rate of eight (8) percent over the then current basic rate of interest according to § 288 BGB (German Civil Code). Claims for further damages shall remain unaffected.

4 Delivery, Passing of Risk

- 4.1 Delivery dates are estimated dates only if not expressly defined as binding delivery dates.
- 4.2 The place of delivery is Purchaser's address as defined in the quotation/ sales contract, except when another place of delivery has been expressly agreed. Additional costs resulting from delivery to another place as the place of delivery agreed due to Purchaser shall be borne by the latter. §§ 447, 474 BGB (German Civil Code) shall remain unaffected.
- 4.3 Purchaser shall ensure that the products can be delivered and received at the place of delivery as agreed.

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5 Further Obligations of the Purchaser

- 5.1 Purchaser shall ensure the necessary operational conditions before use of the product (computer performance, programs, electric power supply, accommodation, room air conditioning etc.) according to the guidelines, instructions, product description or the technical specifications of the manufacturer.
- 5.2 If Purchaser is a merchant according to the German Code of Commerce (Handelsgesetzbuch), Purchaser shall inspect the products and documentation immediately for completeness and correctness and shall notify Supplier in writing of any defect enclosing a comprehensible description without delay.
- 5.3 If Supplier or Supplier's vicarious agents (including the manufacturer) need to carry out any works at Purchaser's site (on the products), Purchaser shall grant Supplier and/or Supplier's vicarious agents unrestricted access to Purchaser's premises and to the products. Purchaser shall provide Supplier and/or its vicarious agents with the necessary documents, e.g. incident reports, logbooks, electronic or written recording, hardcopies and/or further documents and data which may be necessary for test performance (e.g. data, test cases) and shall timely prepare the appropriate rooms, devices, computer time and staff for purposes of information and support.

6 Reservation of Title

- 6.1 Supplier reserves all rights and title to the products delivered until all claims arising from the business relationship to the Purchaser have been settled, if Purchaser is a merchant as defined above; otherwise Supplier reserves title to the products until full payment of the price. Purchaser shall handle the products with due care, maintain suitable insurance for the products and, to the extent necessary, service and maintain the products. Supplier shall be entitled to withdraw from the Sales Contract and to reclaim the delivered products from Purchaser if Purchaser does not fulfil the obligations arising from this agreement. This shall particularly, but without limitation, apply to Purchaser's default of payment.
- 6.2 Purchaser shall inform Supplier immediately of any distraint or third party interventions in order to enable Supplier to assert/enforce his rights in/to the products.
- 6.3 If the value exceeds the secured claim by more than 20 %, Supplier is obligated to release such securities to which he is entitled upon Purchaser's request.

7 Supplementary Performance (Warranty) for Third Party Products

- 7.1 If the defect is caused by the defective products of a manufacturer, who does not act as Supplier's vicarious agent, but Supplier is merely passing on an unchanged third party product to Purchaser, then Supplier's warranty shall at first hand be limited to the assignment of its warranty claims against the manufacturer. The Supplier assigns his claims against the third party supplier respectively the manufacturer to the Purchaser, who accepts the assignment. Clause 1 shall not apply if the defect is caused by Supplier's breach of contract or improper handling of the manufacturer's product. If Purchaser is unable to enforce his warranty claims against the manufacturer out of court, the subsidiary warranty of Supplier shall revive. Purchaser shall inform Supplier of any warranty claims even if Purchaser asserts his claims against the manufacturer.
- 7.2 Supplier's warranty obligations for his own products and Supplier's subsidiary warranty obligations as stated in section 7.1 above shall be subject to the provisions of section 8. and 9. below.

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8 Supplementary Performance (Warranty)

- 8.1 Supplier warrants that the products will basically conform to the Product Specifications when they are used in an unmodified and appropriate manner in the specified operating environment. The Product Specifications do not constitute any Guarantee according to § 443 BGB (German Civil Code); they may be classified as an agreement of quality or durability according to § 434 sec.1 BGB if expressly referred to as such or if such agreement is passed on to Purchaser according to section 10.
- 8.2 The warranty for updates, upgrades and the delivery of new versions of software shall be limited to the new features of the update, upgrade or new version.
- 8.3 If Purchaser requests supplementary performance, Supplier shall be entitled to either repair or replace the product. Otherwise, the statutory provisions on supplementary performance shall apply. If the defect is not cured within a reasonable first time limit and Purchaser has set Supplier a reasonable second time limit without success or if two attempts to remedy, replacement deliveries or replacement services are without success, Purchaser may, subject to the statutory prerequisites, at its option withdraw from this Sales Contract or reduce the price and claim damages or reimbursement of costs. Supplementary performance for software 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 product is still reasonable to Purchaser, Supplier 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.
- 8.4 Supplier may refuse to remedy defects or to deliver replacements until Purchaser has paid the agreed fees to Supplier, less an amount which corresponds to the economic value of the defect.
- 8.5 The warranty period shall be twelve (12) months upon delivery of the products for merchants according to the German Code of Commerce (Handelsgesetzbuch).
- 8.6 Purchaser shall notify Supplier 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 statutory obligations of merchants to inspect and notify defects according to the German Code of Commerce (Handelsgesetzbuch) shall remain unaffected.
- 8.7 Purchaser shall reimburse to Supplier any necessary expenses resulting from Supplier's work upon unjustified complaint about defects according to Supplier'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 product but from Purchaser's sphere of responsibility.
- 8.8 If Purchaser is entitled to withdraw from the Sales Contract due to Supplier's default, Purchaser shall declare withdrawal within a period of fourteen (14) days upon occurrence of the respective incident entitling Purchaser to withdraw from the Sales Contract. In case of minor defects claims to withdraw and claims for damages instead of performance are excluded unless Supplier fraudulently concealed the defects.

9 Warranty for Defects of Title

- 9.1 Supplier warrants that, apart from customary retentions of title, the products are free from third party rights which prevent the use in accordance with the Sales Contract.
- 9.2 Supplier shall defend the products at its own expense against any third party claims provided that Purchaser has informed Supplier immediately in writing about such claims and takes all reasonable measures (authorization, information) to support Supplier adequately.

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- 9.3 To the extent that there are defects in title, Supplier 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 products in such a manner that they no longer infringe the rights of third parties, provided and to the extent that this does not substantially impair the warranted functionality of the products. Supplier shall reimburse Purchaser for its necessary refundable costs incurred in the enforcement of legal claims.
- 9.4 If remedies according to section 9.3 fail to succeed within a reasonable time limit set by Purchaser, Purchaser may subject to the statutory prerequisites at its option reduce the price or withdraw from this Sales Contract and claim damages provided other statutory conditions are met.
- 9.5 Sections 8.4, 8.5 and 8.8 shall apply accordingly.

10 Manufacturer's Guarantee

- 10.1 Supplier will pass on manufacturer's guarantees for the product to Purchaser. Purchaser shall sign the guarantee card which may be attached to the product and shall provide Supplier with the signed guarantee card. The scope of manufacturer's guarantee shall be defined in the offer/ sales contract in connection with the guarantee card provisions.
- 10.2 In case of defects which are covered by manufacturer's guarantee, Purchaser shall contact the manufacturer directly and shall comply with all manufacturer's guarantee provisions, e.g. type of failure report, intactness of goods etc.
- 10.3 Purchaser shall inform Supplier immediately of the enforcement of claims against manufacturer and shall keep Supplier informed of manufacturer's handling of the guarantee (guarantee services, rejection).
- 10.4 Supplier acknowledges manufacturer's guarantee provisions in so far as the limitation period begins with Purchaser's knowledge of the defect in accordance with the guarantee provisions, and as the limitation period shall cease to run/ shall be suspended during the performance of manufacturer's guarantee services.

11 Liability

- 11.1 The Supplier shall be liable for claims for damages irrespective of their legal basis as specified below:
- a) The liability of the Supplier for damages that are caused deliberately or roughly negligently by the Supplier 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 Supplier 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 Supplier 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 Purchaser 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.
 - e) In the event of product liability, the Supplier shall be liable in accordance with the German Product Liability Act.

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- 11.2 Each further liability of the Supplier for damage compensation, in particular liability without fault, shall be excluded.
- 11.3 If a damage is due both to the Supplier and the Purchaser, the contributory negligence of the Purchaser must be taken into account.
- 11.4 The Purchaser is responsible for regular backup of his data. If data loss is caused by the Supplier, the Supplier 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.

12 Final provisions

- 12.1 This Sales Contract contains all regulations concerning the object of this Agreement. Additional verbal agreements do not exist. Any modification and addendum to this contract shall be in writing.
- 12.2 The assignment of Supplier's rights and obligations under this Sales Contract, in whole or in part, to third parties is subject to Purchaser'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.
- 12.3 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.
- 12.4 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.
- 12.5 The place of jurisdiction in relation to merchants, public legal entities or public special estates is Bad Vilbel.
- 12.6 **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.**