

General Terms and Conditions of IQDoQ GmbH for Maintenance Services

1 Scope

These terms and conditions of IQDoQ GmbH for Maintenance Services govern the general maintenance regulations of IQDoQ GmbH and the special maintenance regulations for IQDoQ software products.

For maintenance on complete systems (software and hardware) or single hardware components a separate agreement shall be required. Maintenance regulations for products of other manufacturers have to be put in writing as an annex to the quotation.

If regulations in this terms and conditions and the individual agreements respectively the maintenance certificate are contradictory, the regulations in the individual agreements respectively the maintenance certificate will have priority.

2 Parties and object of the contract

The contracting parties are IQDoQ GmbH as maintenance supplier, hereinafter referred to as Contractor, and the Licensee of the software to be maintained, hereinafter referred to as Customer. Resellers are no customers in the sense of this contract.

The maintenance contract is intended through the provision of advice and the remedying of faults to safeguard the efficient use of the software. The subject of the contract is the maintenance and care of the products described in more detail in the maintenance certificate as an enclosure to the quotation. The maintenance certificate is a material part of the maintenance contract.

3 Maintenance essentials

This maintenance contract applies to all licenses that the Customer has properly purchased or additionally purchases during the term of this agreement / for which the Customer has the appropriate right of use. If further licenses are ordered after the signing of this contract, it is imperative that a new maintenance certificate is to be agreed upon. Enhancement of multiuser licenses requires an additional maintenance certificate, too. Restricting the maintenance to single licenses is not permitted. At the commencement of the obligation to provide the maintenance services the software shall be in original version status.

The Contractor may decline to provide maintenance if, when requested, the Customer cannot prove possession of a valid license or if at the commencement of the obligation to provide the maintenance services the software has been manipulated without the Licensor's consent by the Customer or any third party.

4 Maintenance performance

The Contractor carries out the following services for products that are listed in the maintenance certificate:

- Hotline
- Remote maintenance
- Maintenance at the customer's site
- Troubleshooting and elimination of faults
- Update service

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After releasing a new software version, the preliminary version will be maintained for another 6 months. After that, the Contractor may retreat from any obligations by relinquishing the outstanding payments for the remaining maintenance interval. For the continuation of maintenance of the preliminary version a separate agreement shall be required.

Current technology does not make it possible to produce or operate software in such a way that it will work faultlessly and/or uninterrupted in all applications and combinations. The obligation to remedy faults shall therefore cover all variances between the software's specified operation and how it is actually found to be working. If the Contractor is unable to keep to agreed dates or times due to reasons shown to be beyond its control or other circumstances for which it is not responsible, the parties shall agree upon a reasonable deadline extension.

All maintenance performances are supplied by the Contractor according to the requirements at the installation site or at the Contractor's company. Necessary travel expenses are paid off with the maintenance fee.

4.1 Hotline

The Contractor's central hotline shall take problem reports, shall document these complete with processing history in a helpdesk system and shall initiate the Contractor's activities. If the hotline operator cannot resolve the problem immediately, a member of the support staff shall contact the Customer via call back during hotline and maintenance hours (as per section 5) within a **reaction time of not more than 2 hours**. This individual shall try to restore the functionality of the system via telephone support.

4.2 Remote maintenance

The Customer allows the Contractor to log into the system via remote connection and use diagnostic and software configuration tools to analyze and eliminate the problem.

If the Customer does not allow remote maintenance or it is impossible to carry out this remote maintenance due to reasons (e.g. failure) for which the Customer is liable, the solution time for the elimination of the problem at the Customer's site can not be warranted. In this case, the Customer will have to bear the additional costs for maintenance at the Customer's site and according to the Contractor's actual price list.

4.3 Maintenance at the customer's site

The maintenance at the customer's site is intended to eliminate failures at the Customer's site that cannot be fixed in an acceptable time via hotline support nor via remote support.

- In case of breakdowns with heavy impact on company system operations, the Contractor provides support by sending a technician within **2 workdays** in order to analyze and, if possible, recover from system failure at the Customer's site.
- For minor problems, which do not seriously affect company operations, the Contractor provides support to analyze and eliminate the problem at the Customer's site within **2 weeks**.

The Contractor can fix the problem by opting for an interim solution to provide the required functionality. A final and durable solution will be worked out and be installed at the Customer's site in a suitable time. Warranty for an operating period without breakdowns cannot be given.

If the Contractor cannot keep the agreed-upon deadlines or times due to a force majeure, which can be proved or due to other circumstances, the periods specified in paragraph 1 will then be extended appropriately.

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4.4 Troubleshooting and elimination of faults

If a problem is assessed as a software fault, the Contractor will have to take the necessary actions to eliminate the problem either with a corrective action or a suitable workaround. Other claims due to defectiveness are excluded. The response time is agreed upon in accordance with the following priority levels P1 to P3:

- P1** The Customer is unable to use the software or the software can be used, but an application cannot perform completely, because of a breakdown. Support will be given **on the same work-day** during normal maintenance times. The Contractor will take all necessary actions to eliminate the failure as soon as possible.
- P2** The Customer is able to use the software, but the functionality is limited and the applications may be restricted. The support action will take place **within 2 workdays**. The aim is to eliminate the problem within 2 weeks.
- P3** All functions of the software can be used, the user interface or user documentation is however incorrect. The acceptance of the user is expected and **a follow-up version** of the software **with corrections** will be delivered in a suitable time.

4.5 Update service

The Customer is granted a non-exclusive and non-negotiable right to use the delivered software and documentation updates without a time limit. The update service covers the software updates resulting from the version planning of the Contractor. The Customer receives from the Contractor released software and documentation updates on data carriers via mail upon request. The right to use for updates is regulated in section 2 of the General Terms and Conditions for IQDoQ License Programs.

The installation of software updates is not part of this service agreement. If system changes are required to operate the updated software (e.g. memory extension, enhanced operating software), the Customer will be responsible for providing the necessary system environment.

5 Problem reporting and maintenance times

Hotline and maintenance times are from Monday to Friday from 8:00 AM to 17:00 PM, excluding nationwide public holidays in Germany. Outside hotline and maintenance times, problems can be announced round the clock to an answering machine. Response and error analysis will take place on the following workday at normal maintenance time. If the Customer requires support beyond this service, a supplementary agreement will be necessary and the service must be ordered according to the contractor's valid service prices.

Problem reporting can be requested as follows

- Phone number +49-231-5599 111
- Fax number +49-231-5599 555
- Email address support@iqdoq.de
- Internet www.iqdoq.de

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6 Maintenance of foreign products and components

Foreign products or components that are distributed by the Contractor or supported in conjunction with this maintenance contract, may have different maintenance conditions and response times. The components concerned are defined in the maintenance certificate. If different or additional regulations apply, they will be defined in the annexes of this contract. The Contractor may transfer maintenance of foreign manufactured products or components to the manufacturer or other subcontractors.

The service and maintenance conditions of the manufacturer are relevant for the maintenance performances. The Contractor can also determine modified maintenance performances in derogation of the performances agreed upon in the maintenance certificate, if the manufacturer for his part modifies his service and maintenance performances as compared with the Contractor.

The Update-Service for the Application Server jBoss contains the transfer of available program updates insofar as they include a workaround or the elimination of software faults. The right to use for jBoss updates is regulated in section 2.5 of the General Terms and Conditions for IQDoQ License Programs.

7 Excluded performances

The following services are not constituent of the maintenance performances:

- Recovery of system failures that result from faulty or improper operation, carelessness of the Customer or third parties.
- Use of software in a non-authorized hardware or software environment. The authorized hardware and the authorized operating system for the appropriate software version can be found in the respective release documentation.
- Maintenance of the software that is different from the one that is specified in the maintenance certificate or other software versions.
- Restart of the software that is related to reinstallation of the system after moving or related to changed environmental conditions.
- Software adaptation to new operating systems or new released foreign software (see section 8).
- Functional software enhancements outside of the Contractor's version planning.
- Installation of updates.
- Support and operation of the system.

The Contractor may refuse maintenance performances in total or in part due to circumstances that are not under his control. This applies in particular to actions taken by third parties concerning the products to be maintained or the failure of third parties to perform services that are specified in the maintenance certificate and that are important for the Contractor himself during the execution of the maintenance performance. If these circumstances continue, the Contractor will reduce the maintenance fee for the relevant components. Although the Contractor is not responsible for those services that have failed, he will take adequate actions to find a low-cost replacement.

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8 Maintenance conditions

Maintenance fees for IQDoQ software products are represented as a percentage of the sum of all license fees.

No.	Maintenance performance	Maintenance type
1	Basic amount including free release and version changes Basic amount including the purchase right of new releases and versions without additional remuneration.	V1

As an explanation of the above mentioned maintenance performances, release and version changes are defined as follows:

- A **release change** contains the provision of quality-assured software components as a result of further development of software within a specific version (generally functional enhancements as well as bug fixing). A change from e.g. version 2.2 to 2.3 is referred to as a release change.
- A **version change** contains the provision of quality-assured software components as a result of further development of software across multiple versions (generally new functions as well as new system concepts). A change from e.g. version 2.x to 3.x is referred to as a version change.

Amendments of customer-specific adaptations or further support services for installation and configuration will be charged according to the time and effort at the agreed daily rates.

9 Customer's obligation to cooperate

The Customer undertakes to operate the products properly in accordance with the user manual. It shall be incumbent on the Customer to back up all programmes and data in such a way that in the event of any loss of data these can be restored with reasonable ease. The Customer shall be responsible for backing up data. The Contractor therefore gives no warranty in respect of the volume, contents or consistency of the backed up data.

The Customer will support the Contractor in reproducing faults and, if possible, will provide traces and log files that will allow quick and easy analyzing and troubleshooting. The Customer will provide at his own expense a remote connection (VPN or ISDN) and will allow a remote maintenance for software diagnostics. For on-site-maintenance, the Customer will grant the Contractor unhindered access to his systems during the agreed-upon maintenance times.

Upon signature of the maintenance contract, the Customer shall inform the Contractor of the name of its system administrator. The Customer's system administrator shall be the Contractor's contact in relation to all of its work to be performed as part of the maintenance contract. The Customer shall also be obliged to assist the Contractor as far as possible in both equipment and personnel terms in carrying out the maintenance contract and in individual cases also to enable the contract to be fulfilled outside of its normal business hours. An agreement is to be drawn up in respect of the maintenance time outside of the Customer's normal business hours. Any failure to do this shall not enable the Customer to derive any rights in this respect against the Contractor.

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10 Non-disclosure agreement

The Contractor is committed to keep the Customer data confidential, in particular the data required for the fulfillment of his maintenance obligations during remote maintenance or on-site operations. If customer data needs to be passed on to third parties for error elimination, the Customer will allow this and the Contractor will take third parties under the same obligation to keep that data confidential.

11 Begin, duration and termination of contract

The beginning of the maintenance period is outlined in the maintenance certificate:

- If a minimum duration is agreed upon, the maintenance certificate cannot be terminated before the expiration date. The termination of the maintenance certificate has to be made in writing at least 8 weeks before the expiration date. If no termination takes place, the maintenance certificate will be automatically extended for an indefinite time.
- Maintenance certificates with an indefinite time may be terminated by both contracting parties 8 weeks in advance and to the end of the 12 month period, that starts with the month of beginning of the maintenance period.

The termination of all maintenance certificates means also the termination of this maintenance contract. The maintenance contract can be terminated earlier by mutual agreement of both partners for those system components that are sold or are out of service. Termination of maintenance for foreign products cannot take place earlier than termination of the Contractor's maintenance contract with the original equipment manufacturer.

In case of a price adjustment of more than 6 % per year, the Customer has the extraordinary right to terminate the maintenance contract or the maintenance certificates of the components concerned, 6 weeks in advance and at the end of each quarter of the year.

12 Maintenance Fee and Payment Terms

The maintenance fee is agreed upon in the maintenance certificate. The value added tax is calculated separately at a specific amount. The agreed-upon maintenance fee will be calculated for 6 months in advance and is immediately payable on receipt of the invoice without deduction.

The Contractor has the right to change maintenance fees to an amount that covers the real expenses and requirements, 6 weeks in advance and at the end of each quarter of a year. However, this adjustment of fees can be exercised at the earliest at the end of the minimum run-time period agreed upon in the maintenance certificate.

The Customer may offset invoices with claims against the Contractor only if these are undisputed or have been deemed valid by court order. Should the Customer fall into payment arrears, the outstanding amount shall be subject to interest from the due date at the statutory level. The Contractor's maintenance obligations shall lapse if payment is over 30 days in arrears.

If work is done at the Customer's request outside of the contractually agreed maintenance hours, the Contractor shall bill this at the then prevailing service prices and conditions. Should it subsequently transpire that no maintenance matters as per the maintenance certificate and the terms of the maintenance contract existed for the Contractor's rendered services, the work rendered plus any expenses are to be paid for separately at the Contractor's standard service prices.

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13 Interruptions in Service

If the Contractor sees that he is getting to be hindered in properly carrying out the work he has taken on, he shall indicate this to the Customer without delay and inform the latter of the likely duration of said hindrance. Completion deadlines shall be extended commensurately if the hindrance (including any hindrance caused by the failure of the Customer to provide due cooperation or to do so on time) is beyond the Contractor's control. In such event, the Contractor may, after reminding the Customer of the work to be done, set a revised deadline with a threat to stop providing maintenance and then decline to do any further work. The Contractor shall then be due the contractual fee less any saved costs.

Should the Customer become entitled to cancel the contract due to interruptions in the service, it shall be required to explain any such cancellation within a fourteen-day cut-off period of the grounds justifying this presenting themselves.

14 Liability

Apart from claims asserted against the supplier of Third Party Software according to Section 5 of this article, the Contractor shall be liable for damages regardless of the legal basis of such claims as specified below. The Contractor shall be:

- a) fully liable for damages resulting from intent or gross negligence of the Contractor or one of Contractor's vicarious agents or legal representatives.
- b) fully liable for damages resulting in loss of life, personal injury, or illness due to the negligent breach of duty or an intentional breach of duty by the Contractor or one of Contractor's legal representatives or vicarious agents.
- c) fully liable for damages due to serious organizational misconduct as well as damages due to lack of expressly warranted qualities.
- d) liable limited to the amount of the foreseeable damage typically occurring in the event of a negligent violation of a substantial contractual obligation. A substantial contractual obligation means each obligation, which is indispensable for the duly performance of the contract and on whose observance the customer relies or may rely, in particular Contractor's duty to remedy software defects as agreed in the contract.
- e) liable in accordance with the German Product Liability Act which shall remain unaffected.

Contractor's liability for damages according to section 1 of this article shall constitute the Contractor's sole and exclusive liability; in particular liability without fault shall be excluded.

If damage is due both to Contractor and to the customer, Customer's claims shall be reduced accordingly.

The customer is responsible for regular backup of his data. If data loss is caused by the Contractor, the Contractor shall only be liable for the costs of copying the data, of backup copies and of restoring the data that also would have been lost had the backup of the data been carried out duly.

The Contractor's liability for software manufactured by external suppliers (Third Party Software) shall be limited to the good order and condition of the data media and any manuals. In particular, but without limitation, Contractor shall not be liable for the content, the accuracy (in terms of error-free) or the functionality of third party software. Warranties, if any, will be made by the external supplier only.

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15 Final provisions

The basic agreement and the contract annexes render the contents of the reached agreements completely. Verbal special agreements do not exist.

The Contractor is entitled to transfer the fulfillment of his obligations totally or partly to a third.

Any modification and supplement to this agreement as well as a termination of the contract shall be in writing. This applies also to a renouncement of this writing clause.

If individual clauses of the present contract become ineffective, then the validity of the contract will remain in all other parts unaffected. Invalid clauses have to be jointly replaced by others, which are suitable for the business interests of the contracting parties. The same thing applies to contractual loopholes.

The place of jurisdiction in relation to buyers, public legal entities or public special estates is Bad Vilbel.

In case of legal disputes that are related to the present contract, they will be governed by the laws of the Federal Republic of Germany. Any reference to foreign laws in accordance with the principles of the Private International Law is excluded.