General Conditions of Use for Software Products of Q-DAS GmbH

1) Subject of the Contract

1.1 Q-DAS® has developed software programs that are marketed amongst others under the labels **qs-STAT**®, **procella**®, **solara.MP**® and **destra**®; those and other Q-DAS® programs are hereinafter referred to as software (product). The Contract partner has learned and tested the functions of the software and found them suitable for his purposes.

1.2 The following conditions apply between Q-DAS® and its Contract partner for the transfer of rights of use to finished software products (hereinafter "software") unless agreed otherwise in writing. On signing the Contract, the Contract partner acquires one of the following types of licenses:

    (a) Single license (named-user license)
    The Contract partner acquires the non-exclusive, non-transferable and indefinite right to use the software on one (1) individual computer and in one (1) production installation and there in one (1) client (single license). The software may only be used on one computer at any time.

    (b) Concurrent license
    The software is installed on a central server in case of a concurrent license. The Contract partner may connect any number of workstations to the server. However, the number of purchased licenses defines how many users are able to access the software simultaneously. The software is "in use" on a computer if it is uploaded into the intermediate memory (i.e. RAM) or is stored in a permanent memory (e.g. a hard disk, CD-ROM or another storage device) of this computer.

    (c) Plant license
    The plant license is a special kind of concurrent license to support the requirements of bigger organizations. It applies to a maximum of 150 employees in the defined area. The combination of the following metrics are defining the plant licenses: company (same company name and commercial register number), unique address (e.g. street, postcode, city), division / business unit (e.g. transmission, car body, engine), plant (e.g. defined products), workshop (definition of the building(s)). In the specified area the plant license allows for any number of installations.

1.3 The Contract partner receives the software via transfer of a copy of the storage medium on which the software is stored or by means of remote data transmission and also the documentation; if the storage medium and documentation are transferred physically, the Contract partner only acquires title to these but not the title or rights to the software and documentation itself; Q-DAS® has the exclusive rights to the software and documentation that is the subject of the Contract irrespective of the form in which they are supplied.

1.4 The Contract partner is not entitled to make copies of the software and the documentation provided. Nor may he use the software or parts thereof for the purposes of third parties or allow third parties sight of the software or documentation without the consent of Q-DAS®.

2) Service Content

2.1 The right to use the software includes the Contract partner's claim to supply the software and transfer the documentation (user handbook, in electronic form if necessary).

2.2 Q-DAS® transfers the software in installable form together with installation instructions. The Contract partner ensures that the system environment defined by Q-DAS®, on which the Q DAS® software can run, is available.

2.3 If introduction support by Q-DAS® is necessary, this, and the training of the Contract partner's employees, must be requested separately. Q-DAS® recommends that the Contract partner signs a software maintenance agreement in order to be able to utilize the advantages of the further development of the software.

3) Purchase Price – Payment – Retention of Title

3.1 Q-DAS® invoices the agreed purchase price on delivery; the price is payable immediately.

3.2 Payments must be made to one of the accounts of Q-DAS® free of charge. If the Contract partner is in arrears with his payment obligations, Q-DAS® is entitled to charge interest at the rate of above the base interest rate of the European Central Bank for the portion of his claims in arrears.

3.3 Bills and checks are only accepted for the sake of performance; charges for bills and checks, discount charges, etc., are debited to the Contract partner; payment is only made when the bill or check is redeemed and the counter-value is finally credited to the account of Q-DAS®.

3.4 The Contract partner only has a right of retention or set-off if his claims are based on this Contract. The Contract partner may only offset counterclaims against claims of Q DAS® if the counterclaims are undisputed or legally established.

3.5 Q-DAS® reserves title to the supplies if they are movables (data carriers, documentation, etc.) until all current and future claims of Q-DAS® have been paid, including all secondary claims arising from this Contract. The retention of title of Q-DAS® lapses when these claims are settled in full.

3.6 If the Contract partner has not fulfilled his payment obligations to Q-DAS® after a delay has occurred and an extension has been granted – with reference to the consequences described in more detail below – he loses the right to use the subject of the Contract (Section 1); he must cease its use after the extension expires and surrender all data carriers, including the back-up or saved copies and the documentation, to Q-DAS®. The payment claim of Q-DAS® is not affected, claiming of the rights governed by this paragraph by Q-DAS® is not deemed to be withdrawn from the Contract. If the Contract partner fulfils his payment obligations later, including interest and costs incurred, his right of use governed by Section 1 is restored. The items surrendered are returned to him, but he must pay Q-DAS® the costs likely to be incurred through the reactivation in cash in advance.

3.7 The arrangements of the preceding paragraph 6 apply accordingly if insolvency proceedings are opened in respect of the Contract partner's assets or an enforcement action has been made against him without success, bills or checks issued by him are not redeemed or he has sworn an affidavit.

4) Use Entitlement

The Contract partner is only entitled to use the software that is the subject of the Contract if the agreed payment (purchase price) for this, including any interest and costs incurred, has been paid in full. Until that time, the right of use granted with the Contract is subject to a suspensory condition.

5) Warranty Claims

5.1 Q-DAS® supplies the software at the development level according to the version number and the resultant scope of services and the corresponding functions according to the State of the Art. The Contract partner knows the software and its capability. The software has been developed considering scientific care and recognized rules of the Art.

5.2 Q-DAS® gives warranty according to the UN Convention on Contracts for the International Sale of Goods. The guarantee period is one year and starts with the transfer/sending of the software and corresponding documentation or the downloading of the software by the Contract partner.

5.3 Within the guarantee period, Q-DAS® will remedy any defects found within a period of their own choice or provide a replacement. As part of the guarantee, any travel costs and expenses incurred because the software was taken to a place after delivery other than the place to which delivery was made according to the Contract partner's instructions, are paid by the Contract partner.

5.4 Q-DAS® is entitled to refuse to remedy defects if this requires disproportionate effort. If the improvement or the replacement delivery fails more than twice, the Contract partner may, at his discretion, require Q-DAS® to reduce the payment or to cancel the Contract.

5.5 Complaints of the Contract partner with regard to obvious defects must be remedied immediately, but within fourteen days at the latest after Q-DAS® has been notified of the finding in writing. Receipt of the written complaint by Q-DAS® determines the timeliness of the notification. If the notification is not received in time, the product is considered as having been approved. The Contract partner carries the full burden of proof for all conditions establishing his claims, in particular for the defect itself, for the time the defect was detected and for the timeliness of the notice of defects.

5.6 Intervention in the software or its components by the Contract partner results in the lapsing of claims on account of defects.

5.7 Claims of the Contract partner for supplementary performance and claims for rescission, compensation or damages arising by reason of a defect shall become statute-barred two years after the beginning of the defects liability period (Section 5, para. 3) if Q-DAS® has not fraudulently concealed the defect. Any other claims shall become statute-barred eighteen months after the beginning of the defects liability period (Section 5, para. 3) if the claims did not arise in the defects liability period; in the latter case, claims shall become statute-barred six months from the date on which the claims arose.

6) Liability

6.1 If, in this Contract, certain properties have been expressly guaranteed in writing, Q-DAS® is liable for the absence of these promised properties. Q-DAS® is only liable for the consequential damage of defects insofar as it is covered by the purpose of the above-mentioned property guarantee. The liability in this respect is limited to typically foreseeable damage. Liability for atypical unforeseeable damage is excluded.

6.2 Q-DAS® is only liable for incapacity if essential contractual obligations are infringed. The liability in this respect is limited to typical, foreseeable damage. Liability for atypical unforeseeable damage is excluded.

6.3 For claims arising from delay and impossibility, Q-DAS® is liable, in terms of reason and amount, without limitation if its legal representatives or managers are guilty of wilful intent or gross negligence. Also, in terms of reason, Q-DAS® is only liable for claims arising from delay and impossibility in the event of a culpable infringement of essential contractual obligations; outside essential contractual obligations, it is only liable in terms of reason for gross culpability of simple agents unless Q-DAS® exempt itself by virtue of commercial usage. In the cases of Section 6, para. 3, sentence 2, in terms of amount, it is only liable for compensation of typically foreseeable damage; however, in these cases, the compensation claim is limited to the amount which the insurer of Q-DAS® has to pay in respect of this claim.

6.4 For any claims arising from blame-related liability, Q-DAS® is liable for its own wilful intent and its own gross negligence in terms of reason and for the full amount; the same applies to legal representatives and management employees. Also, in terms of reason Q-DAS® is only liable in the event of a culpable infringement of essential contractual obligations; outside the contractual obligations, in terms of reason, it is also liable for gross negligence of simple agents, unless Q-DAS® can exempt itself by virtue of commercial usage; in the cases of Section 6, para. 4, sentence 2, Q-DAS® is liable, in terms of amount, only for compensation for typical, foreseeable damage; however, in these cases, the compensation claim is limited to the amount that the insurer of Q-DAS® has to pay in respect of this claim.

6.5 The above liability limitations do not apply to personal injury due to wilful intent, gross negligence, and damage based on the lack of guaranteed properties and also to damage arising from the infringement of the copyrights of third parties or claims arising from mandatory legal regulations of product liability law.

6.6 Q-DAS® is not liable beyond the scope described above.

6.7 The Contract partner is obliged to back up data continuously according to the latest State of the Art, which allows the restoration at any time of the software, and data level that existed before a system crash or other malfunctions. Q-DAS® is not liable for damage caused by the fact that the Contract partner has not performed this data back-up, or not correctly. In this respect, the general conditions for "Data Security" apply in their currently valid version, accessible on www.q-das.com.

6.8 Q-DAS® does not accept any guarantee that the use of the product does not interfere with the protective rights or copyrights of third parties or will not cause any damage to third parties. This does not apply in cases where Q-DAS® is aware of counter-rights or third-party damage or is not aware as the result of gross negligence. Q-DAS® knows of no such rights when the Contract comes into force.

7) Force Majeure

Force majeure events that essentially make the service of Q-DAS® difficult or impossible entitle Q-DAS® to postpone the performance of the contractual obligations by the period of prevention and by a reasonable lead-time. Strikes and similar circumstances that affect Q DAS® directly or indirectly are equivalent to force majeure.

8) Miscellaneous

8.1   If a clause of these conditions is ineffective or becomes ineffective in the future, the Contract and these conditions otherwise remain effective. The Contract partner and Q DAS® hereby agree with an interpretation of the ineffective clause that best reflects the economic aim and purpose of this clause and is effective.

8.2   This Contract contains all the agreements that the contract parties have made considering these "General Conditions of Use for Software Products"; additional or different agreements in respect of this Contract, its cancellation or termination must be made in writing to be effective; text transmission, fax, e-mail or similar forms of communication meet the written form requirement.

8.3   The Contract partner may only assign claims relating to this Contract with the consent of Q DAS®.

8.4   The Contract partners reciprocally have a right of retention or set-off if their claims are based on this Contract and only if their claims are undisputed or legally established.

8.5   These "General Conditions of Use for Software Products" apply exclusively. Order acknowledgments or terms of business of the Contract partners with conditions other than these "General Conditions of Use for Software Products" are not accepted by Q DAS®. The Contract partner accepts the validity of these conditions on acceptance of the first service of Q-DAS® in connection with this Contract at the latest.

8.6   The current "General Conditions of Use for Software Products" of Q-DAS® apply; amendments are published on the Q-DAS® website (www.q-das.com). Q-DAS® will inform the Contract partner about amendments to the "General Conditions of Use for Software Products" either by e-mail, fax or by letter. Changes to the "General Conditions of Use for Software Products" become the content of the existing Contract with the Contract partner unless he refutes the validity of the amended "General Conditions of Use for Software Products" in writing within three weeks after he has been notified about the changes, but three months after the publication of the amended version / changes on the Q-DAS® website at the latest.

9) Place of Performance – Place of Jurisdiction and Governing Law

9.1   The place of performance and the place of jurisdiction for all rights and claims arising from this Contract is Weinheim/ Bergstrasse (Germany). This agreement concerning the place of jurisdiction and performance only applies to merchants, bodies corporate according to public law or separate assets according to public law and contract parties who, after signing the Contract, move their domicile or normal place of residence out of the Federal Republic of Germany or their domicile or normal place of residence is not known at the time when the suit is filed.

9.2   If disputes arise between the parties, the contract partners will try to settle these amicably.

9.3   The law of the Federal Republic of Germany applies exclusively. The regulations of the United Nations Convention on Contracts for the International Sale of Goods (CISG) or any other agreements on the unification of international sale or business transaction are not applicable.