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# General Terms and Conditions of Q-DAS GmbH

## Maintenance of Software

### 1) Scope of Application

- 1.1 Subject of these general terms and conditions (hereinafter “**Conditions**”) is the maintenance and support by Q DAS GmbH (hereinafter “**Q DAS**” or “**we**”) of the software (hereinafter “**Q-DAS Software**”) provided to the customer in accordance with the general conditions of use (hereinafter “**Conditions of Use**”).
- 1.2 Any and all contracts concluded by Q-DAS with the customer concerning the services specified in Section 1.1 (hereinafter the “**Contract**”) shall be governed exclusively by these Conditions. We will not accept any of the customer’s terms and conditions which conflict with or deviate from these Conditions unless we have expressly agreed to their application in writing. These Conditions shall also apply if Q-DAS whilst being aware of terms and conditions of the customer which conflict with or deviate from these Conditions performs services without any reservation vis-à-vis the customer or accepts payment.
- 1.3 Q-DAS will notify the customer in writing of any amendments or supplements to these Conditions. They shall be deemed as accepted if the customer does not object in writing within 30 days. If the customer objects within the 30-day period, the amended or supplemented Conditions shall nevertheless be deemed as accepted if the customer continues to use the contractual services. Q-DAS will specifically notify the customer about these consequences upon notification of the amendments or supplements.
- 1.4 All agreements which shall be part of the Contract or which are concluded between Q-DAS and the customer in connection with the performance of the Contract shall be set down in writing. This shall also apply to agreements by which the Contract is subsequently amended.
- 1.5 Should the parties conclude a written Contract concerning the service, such contractual agreements shall have precedence over the Conditions. In such a case, these Conditions shall apply only to areas that are not regulated by such contractual agreements.
- 1.6 These Conditions shall only apply vis-à-vis enterprises as defined by Section 14 German Civil Code (*Bürgerliches Gesetzbuch/BGB*, hereinafter “**BGB**”), legal persons under public law and special funds under public law.

### 2) Inception of Contract; Termination of Contract

- 2.1 Unless otherwise stated by us, the offers made by Q DAS are not binding and subject to alteration.
- 2.2 The Contract between Q DAS and the customer comes into force by order of the customer and by written order confirmation of Q DAS or by the first actual performance of a service by Q DAS. The customer agrees to the validity of these Conditions at the latest with the acceptance of the first Q DAS’s performance in the context of the concluded Contract.
- 2.3 The initial term of the Contract shall be for a period of 12 months from the first day of the month following the time at which the Contract comes into force. The term of the Contract shall be extended by consecutive further periods of 12 months unless the Contract is terminated by Q DAS or the

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customer with a period of three months to the end of the respective contract year. Another offer is not necessary for the extension.

- 2.4 In case of discontinuation of the Q-DAS Software product, Q-DAS has the right to terminate the Contract by giving three months' notice to the end of the month.
- 2.5 The right of each contracting party to extraordinary termination of the Contract for good cause remains unaffected. Good cause shall exist in particular if (a) the customer or its legal representatives or vicarious agents culpably violate their obligations to cooperate despite a written warning with a deadline for remedy issued by Q DAS, or (b) due fees are not paid within 30 days after expiration of a grace period set by Q DAS in writing.
- 2.6 Every termination needs to be in written form in order to take effect.

### **3) Services**

#### **3.1 Scope of Services**

Q DAS renders the following services for the Q-DAS Software referred to in Q-DAS's offer, which are compensated with the flat annual maintenance fee pursuant to Section 4.1 (hereinafter "**Included Services**").

##### **3.1.1 Elimination of Errors**

- 3.1.1.1 Q-DAS eliminates errors in the maintained Q-DAS Software and in the documentation provided online, which cancel or substantially reduce the value or suitability for use of the Q-DAS Software intended under the Conditions of Use.
- 3.1.1.2 An error in the Q-DAS Software shall exist in particular if the Q-DAS Software does not fulfil the agreed functions despite proper use, in particular delivers incorrect results, interrupts its run in an uncontrolled manner or otherwise does not function properly, so that the use of the software is impossible or not only insignificantly restricted. The elimination of errors includes the localisation of the error cause, the error diagnosis as well as the elimination of the error, or the bypassing of the error if elimination is not possible with reasonable efforts.
- 3.1.1.3 Q DAS shall only be obliged to eliminate such errors which can be reproduced by Q DAS and which are reported and documented by the customer in the form required by Q DAS pursuant to Section 3.2.1.
- 3.1.1.4 Any errors reported by the customer will be eliminated by Q-DAS within a reasonable period depending on the severity of their consequences for the customer.
- 3.1.1.5 In case of an error that makes the Q-DAS Software incapable of running or leads to the destruction of data, the elimination of errors begins within eight working hours, but no later than the working day following the receipt of the customer's error report by Q-DAS.

##### **3.1.2 Support**

- 3.1.2.1 The customer support in the context of the Contract shall only include support by telephone (hotline) or in written form responding to questions arising from the standard installation or the handling of one of the latest versions of the Q-DAS Software. However, this support shall only be provided to a reasonable extent.

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- 3.1.2.2 The support shall only assist in specific individual questions about the Q-DAS Software. Questions that are subject to manuals or training classes shall not be supported. In addition, questions that are not related to the subject matter of the Contract shall not be supported.
  - 3.1.2.3 The support services are only provided to customers. If customers want to use the support, they must provide their respective customer number.
  - 3.1.2.4 The hotline is available from Monday to Friday from 8 a.m. to 5 p.m. German time (except for national public holidays and public holidays in Baden-Württemberg). The current hotline number is provided by Q-DAS on the Internet homepage [www.q-das.de](http://www.q-das.de).
  - 3.1.2.5 Written inquiries shall be answered by telephone or in writing according to requirements within an appropriate period. They shall generally be sent by email to the email address provided on the Internet homepage [www.q-das.de](http://www.q-das.de).

### **3.1.3 Updates and Upgrades**

- 3.1.3.1 Q-DAS works regularly on changes and improvements of the functions and the running of the software. The changes and improvements made in the course of error correction will be implemented in new versions. During the term of the Contract, Q-DAS will provide the customer with the latest version of the standard version of the Q-DAS Software provided under the Conditions of Use. Included are updates and upgrades in form of minor or major releases. Q DAS will make the updates and upgrades available to the customer via download.
- 3.1.3.2 The customer's right to use the new versions shall be governed by the terms of the Conditions of Use.
- 3.1.3.3 New versions received through maintenance do not increase the quantity of customer's licenses. Customer must uninstall and delete prior installed version of the software (together with and any related license files and materials) upon the earlier of (i) completion of customer's testing of its systems with the new version, or (ii) four months from installation of the new version.

### **3.1.4 Documentation**

The documentation regarding the Q-DAS Software is constantly updated and expanded. Q DAS provides the documentation exclusively on its Internet homepage [www.q-das.de](http://www.q-das.de).

### **3.1.5 Further Services**

- 3.1.5.1 The maintenance fee is calculated based on the assumption that the Included Services shall generally be performed at the Q-DAS headquarters via remote diagnostics and remote maintenance.
- 3.1.5.2 In case remote maintenance is not feasible or Q DAS deems it necessary to carry out an error elimination within the meaning of Section 3.1.1 on-site of the system installation for other reasons, Q DAS shall be entitled to eliminate the error on-site of the system installation. Q DAS reserves the right to invoice the customer in whole or in part for the required time and travel and accommodation costs according to the valid price list, provided the error is not or not exclusively caused by Q DAS, but also caused by incorrect operation or other misconduct of the customer.

## **3.2 Customer's Obligation to Cooperate**

- 3.2.1 The customer shall be obliged to promptly report in writing any possible error occurring in the Q-DAS Software or the documentation. The errors and its circumstances shall be described in a comprehensible way and as precisely as possible. Available documentation that is suitable for the illustration of the error shall be attached, in particular – if possible – a screenshot or a printout which

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shows the errors. If required, the customer shall provide the data causing the error on a data carrier or by email for testing purposes.

- 3.2.2 In case an employee of Q DAS logs on to the computer network of the customer for remote diagnostics, special agreements shall be made if required according to data protection regulations.
- 3.2.3 The maintenance of the Q-DAS Software according to Section 3.1 can only be guaranteed if the customer uses one of the latest versions that are not older than 36 months counting from their first release by Q-DAS.
- 3.2.4 In addition, the maintenance of the Q-DAS Software according to Section 3.1 can only be guaranteed if the system environment used by the customer meets the respective state of the art (*Stand der Technik*) or was approved by Q-DAS.
- 3.2.5 It is recommended to maintain all purchased Q-DAS Software products.

### **3.3 Exclusion of Benefits**

- 3.3.1 The development of software and the maintenance of hardware shall not be subject of the Contract. Equally, any inquiries concerning the operating system and any other software and/or hardware shall not be subject of the Contract (for example, requests that would be subject of a separate expansion project).
- 3.3.2 Q-DAS shall have no obligation to provide services covered by the Contract if any error of the software is based on the specific customer requirements or on the incorrectness or incompleteness of the customer's information or data.
- 3.3.3 Q-DAS shall also have no obligation to provide services covered by the Contract if any error of the software is based on the circumstance that the customer or a third party has altered, improperly used or repaired or otherwise processed the Q-DAS Software without prior written consent of Q DAS, or the software has not been installed, operated or maintained in accordance with the guidelines and other requirements of Q DAS.
- 3.3.4 In particular, the following services are not part of the Included Services, but can be ordered by the customer for a separate fee according to the currently valid price list:
  - (a) installation of the Q-DAS Software;
  - (b) data transfer (if required);
  - (c) introduction to the Q-DAS Software;
  - (d) training courses;
  - (e) advice at the customer's facility on any question about the use or application of the Q-DAS Software as well as on operating experience and application know-how gained from all users;
  - (f) adaptation of printers, reports and screen masks etc.
- 3.3.5 Any additional services beyond the Included Services must be ordered separately by the customer in writing.

### **3.4 Force Majeure**

- 3.4.1. In case of incidents of force majeure, which substantially aggravate or make it temporarily impossible for Q-DAS to perform its obligations under the Contract, the time for performance of the respective obligation shall be prolonged by the duration of the obstruction and by such period as is required to restore normal working conditions. This shall also apply in case Q-DAS already is in default with its performance.
- 3.4.2. Force majeure means the occurrence of any external, unexpected and unavoidable circumstances, for which Q-DAS is not responsible, such as industrial disputes, interruption of business operations, natural disasters, shortage of raw materials or energy, breakdown of transmission, transportation or energy supply, currency restrictions, official measures, fire, war and insurrection, or other incidents not due to Q-DAS's fault, irrespective of whether they occur in the own business of Q-DAS or in a third party business on which the performance of the respective obligation under the Contract materially depends.
- 3.4.3. Q-DAS shall be obliged to immediately notify the customer of both the occurrence and the cessation of such obstruction.

## **4) Fees; Payment Terms; Default**

- 4.1 For the services of Q-DAS according to Section 3.1, the customer pays an annual maintenance fee. The fee includes all Included Services.
- 4.2 The amount of the maintenance fee shall comply with the respective valid general price list of Q-DAS. The maintenance fee shall be fixed for at least 1 year. Q-DAS shall be entitled to adjust the maintenance fee, particularly in order to meet increased labour and material costs. The price change shall be made with reasonable exercised discretion (§ 315 BGB); however, Q-DAS will take into account the price increase customary in the trade. Q-DAS will notify the customer about such price changes in writing. A price change from the beginning of the next contract year shall be deemed as agreed if the customer does not terminate the Contract to the end of the current contract year within four weeks after receiving the notification.
- 4.3 In case the Contract is interrupted or concluded anew at a later time, the customer shall pay a one-time surcharge in addition to the maintenance fee. The surcharge shall be, in each case referring to the general price list of Q-DAS valid at the time of conclusion of a new maintenance contract:
- (a) in case of conclusion of a new maintenance contract up to 1 month after expiry of the old contract – no surcharge;
  - (b) in case of conclusion of a new maintenance contract between 1 and 3 months after expiry of the old contract – 20% of the annual maintenance fee;
  - (c) in case of conclusion of a new maintenance contract between 3 and 12 months after expiry of the old contract – 100% of the annual maintenance fee;
  - (d) in case of conclusion of a new maintenance contract between 12 and 24 months after expiry of the old contract – 200% of the annual maintenance fee;
  - (e) in case of conclusion of a new maintenance contract between 24 and 36 months after expiry of the old contract – 300% of the annual maintenance fee; and

- (f) in case of conclusion of a new maintenance contract between 36 and 48 months after expiry of the old contract – 400% of the annual maintenance fee.

After 48 months without maintenance, the conclusion of a maintenance contract for the relevant product is no longer possible.

- 4.4 The maintenance fee for the first 12 months of the term of the Contract is based on the price list valid at the time of conclusion of the Contract.
- 4.5 The maintenance fee must be paid annually in advance. It will be invoiced by Q-DAS at the beginning of the respective contract period.
- 4.6 All fees and other charges quoted or charged by Q-DAS are net prices only excluding statutory value added tax.
- 4.7 Unless expressly agreed otherwise, the invoice amount with no deductions is due immediately after receipt of the invoice.
- 4.8 If the customer is in default with its payment obligations, Q-DAS shall be entitled to claim default interest in the amount of 9% p.a. above the respective basic rate of interest (§ 247 BGB). In addition, Q-DAS shall be entitled to suspend the obligations under the Contract until payment has been made in full.

## **5) Rights in Case of Defects**

- 5.1 In case of elimination of errors in the context of the Contract, the customer's claims for defects shall be governed by the provisions of this Section 5.1:
- 5.1.1 If the service is not performed in accordance with the Contract, Q-DAS shall initially be entitled to provide subsequent performance (*Nacherfüllung*). If Q-DAS does not succeed within a reasonable period to provide the contractual performance without any defects and after the express setting and unsuccessful expiry of a further reasonable period of grace by the customer, the customer shall be entitled to reduce the respective maintenance fee or to terminate the Contract in writing without notice. A reasonable period shall normally be a period of at least 14 days.
- 5.1.2 The customer shall not be entitled to eliminate the error itself and demand reimbursement for the necessary expenses.
- 5.2 In case of delivery of a thing in the context of the Contract (in particular upgrades according to Section 3.1.3), the customer's claims for defects shall be governed by the Conditions of Use.
- 5.3 In cases other than those specified in Sections 5.1 and 5.2, Q-DAS shall only be obliged to perform the services carefully and meet the respective state of the art (*Stand der Technik*).
- 5.4 The customer's further legal rights remain unaffected, unless stipulated otherwise in the following Sections.
- 5.5 For claims for damages due to defects, Section 6 shall apply.
- 5.6 A precondition for claims based on defects arising from the Contract is an immediate complaint (*Rüge*) of the defective service toward Q DAS. Obvious defects shall be reported to us in writing within seven working days after delivery of the relevant service, in case of hidden defects after their discovery. The customer enables Q-DAS to examine the service being claimed as defective at any time.



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- 5.7 Claims for defects arising from the Contract shall be excluded, if any defect of services
- (a) is based on the inaccuracy or incompleteness of the information or data of the customer;
  - (b) is based on the fact that the Q-DAS Software was not installed, operated or maintained in accordance with the guidelines and other requirements of Q-DAS; or
  - (c) is based on the fact that the customer or a third party has altered, improperly used or repaired or otherwise processed the Q-DAS Software without prior written consent of Q-DAS; however, the customer shall be entitled to prove that the changes do not make the diagnosis and elimination of an error or the other services substantially more difficult.
- 5.8 The claims for defects expire in 12 months. The limitation period shall begin with the delivery of the relevant service.

## **6) Claims for Damages**

- 6.1 Q-DAS shall have no liability for the accuracy and completeness of the customer's data. A liability for the technical or economic suitability of the Q-DAS Software with respect to the needs of the customer shall be excluded.
- 6.2 In all cases, regardless of whether contractual or non-contractual claims, Q DAS's liability for damages shall be governed exclusively by the provisions of the following Sections.
- 6.3 Q DAS shall be liable in accordance with the statutory provisions in case of fraudulent concealment of defects of services, the assumption of a guarantee for the result of a service, intention or gross negligence, injury to life, body or health as well as culpable violation of essential contractual obligations. Q-DAS shall also be liable in accordance with the imperative provisions of the German Product Liability Act (*Produkthaftungsgesetz*). However, if a breach of essential contractual obligations is not caused by intention or gross negligence, Q DAS's liability for damages shall be limited to foreseeable, typically occurring damages.
- 6.4 Provided that Q-DAS is liable in accordance with the above Sections, any liability per contract year shall be limited to the amount of the maintenance fee that the customer has paid for the Q-DAS Software affected by the damage for the contractual year in which the damage occurred.
- 6.5 In case of loss of data, Q-DAS's liability in accordance with the above Sections shall be limited to such expenses that would be necessary and reasonable for the recovery of the data if the customer has made data backups in due manner.
- 6.6 Apart from that, any liability of Q-DAS for damages shall be excluded. Unless otherwise stated in the above Sections, Q-DAS shall therefore not be liable for damages which do not affect Q-DAS Software itself (for example, loss of profit or other pure financial losses of the customer), as well as claims for damages arising from the violation of secondary obligations resulting from obligatory relation or law (for example, faulty advice or explanation, instruction regarding the handling) and claims arising from non-contractual liability.
- 6.7 If Q DAS's liability is excluded or limited this shall also apply to the personal liability of Q DAS's employees, representatives and vicarious agents.
- 6.8 Claims for damages according to Section 6 expire in 12 months. The limitation period shall commence from the date in which the claim arose and the customer obtained knowledge or could have obtained knowledge of the circumstances giving rise to the claim and the fact that Q-DAS is the obligor of the

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claim. The limitation period ends at the latest with the expiry of the statutory maximum periods of Section 199 para. 2 and 3 BGB. However, for all claims due to gross fault or personal injuries, the statutory limitation periods shall apply.

## **7) Set-Off; Right of Retention**

The customer shall be entitled to set-off only if its counterclaims have been legally established as final and absolute, have not been disputed or have been recognized by Q DAS. In these cases, the customer shall also be entitled to exercise a right of retention insofar as its counterclaim is based on the same contractual relationship.

## **8) Vicarious Agent; Transfer to Third Party**

8.1 Q-DAS shall be entitled to engage vicarious agents at any time to fulfil the Contract in whole or in part.

8.2 Q DAS shall also be entitled to transfer rights and obligations under the Contract at any time in whole or in part to third parties. All rights and obligations of the customer remain unaffected. The customer agrees to such a transfer already by conclusion of the Contract. In the case of the transfer of the Contract, Q DAS will notify the customer about this transfer and of its right to terminate the Contract by written notice to Q-DAS within one month from receipt of the notification.

8.3 The customer may assign claims under the Contract only with the consent of Q-DAS.

8.4 The customer shall immediately notify Q DAS in writing of any sale of shares or any other changes of ownership as well as any sale or lease of its business. The same applies to any change in the legal form, company name or address of the customer. Costs and damages incurred by Q DAS due to a breach of this notification obligation shall be borne by the customer.

## **9) Data Protection**

We will treat personal data that we have or will become aware of in connection with the implementation of the Contract in accordance with all applicable data protection regulations. The customer shall comply with all applicable data protection regulations.

## **10) Miscellaneous**

10.1 The sole place of jurisdiction for all disputes in connection with the Contract and its performance is Weinheim/Bergstraße; Q DAS is however entitled to bring an action against the customer at the court competent for the customer's headquarters.

10.2 The place of performance shall be Weinheim/Bergstraße, unless otherwise stipulated in these Conditions or the respective Contract.

10.3 The legal relationship between the parties shall be governed by the law of the Federal Republic of Germany.

10.4 If any one provision of the Contract including these Conditions should be or prove to be invalid in whole or in part, both parties to the Contract undertake to replace the invalid provision with one that comes closest in a permissible manner to the contractual purpose that both parties intended.