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# General Terms and Conditions of Q-DAS GmbH

## Sale of standard software

### 1) Scope of Applicability

- 1.1 For any contracts of Q-DAS GmbH (hereinafter referred to as: "Q-DAS") entered into with its contractual partner (hereinafter referred to as: "Customer") regarding the sales of standard software (hereinafter referred to as: "Software Purchase Contract") these General Terms and Conditions shall apply exclusively (hereinafter referred to as: "Terms of Use"), unless otherwise agreed upon.
- 1.2 Q-DAS shall not accept any conflicting conditions or conditions of the customer that deviate from these Terms of Use unless Q-DAS has expressly agreed to such in writing. These Terms of Use also apply if Q-DAS, being aware of conflicting conditions or conditions of the customer that deviate from these Terms of Use, renders the services towards the customer without reservation or accepts payments.
- 1.3 Q-DAS shall communicate to the customer any amendments or additions to these Terms of Use. They are deemed accepted if the customer does not object to them within 30 days in writing. If the customer objects within the 30-day period, the amended and supplemented Terms of Use are still deemed accepted if the customer continues to use the contractual services. Q-DAS will in particular point out such a consequence to the customer when announcing the amendments or additions.
- 1.4 Q-DAS software is only for commercial use. These Terms of Use only apply towards companies in the sense of Section 14 BGB [German Civil Code], legal persons or separate legal entities under public law and to special funds under public law.

### 2) Entering into a Contract

- 2.1 Unless otherwise indicated by us, offers of Q-DAS are non-binding and subject to change.
- 2.2 A legal bond only comes into effect with the written order confirmation by Q-DAS, as well as by the fact that Q-DAS starts rendering its services after having received an order. The customer accepts applicability of these Terms of Use at the latest by accepting the first service rendered by Q-DAS in line with the entered into Software Purchase Contract.

### 3) Subject Matter of the Contract, Scope of Services

- 3.1 Subject matter of the Software Purchase Contract or these Terms of Use is the permanent transfer of the computer program indicated in the Software Purchase Contract or the respective license certificate as executable program including user documentation available online at <http://www.q-das.de> (hereinafter referred to as: "Q-DAS Software") and the granting of the rights of use as described in Section 5. The hardware and software environment within which Q-DAS software is to be used is also set forth in the license certificate. The customer shall receive the respective license certificate at the latest together with the Q-DAS software.
- 3.2 Before entering into the contract, the customer shall ensure that the specifications of the Q-DAS software meets the customer's wishes and requirements. He is aware of the essential features and conditions for operating the software.
- 3.3 Q-DAS provides the customer with a copy of the Q-DAS software on a data carrier or via download as well as with an online version of the associated user documentation for reasons of updating. If the Q-

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DAS software is delivered by way of download, Q-DAS shall provide to the customer the Q-DAS software on its online website (<http://www.q-das.de>) as well as the associated license key. The customer receives the license key only for the use of the Q-DAS software as defined in more detail in the terms of use, the license certificate and the user documentation on hand. For a login into the protected area of its website, Q-DAS may communicate to the customer a user name as well as the associated password (hereinafter referred to as: "Login Data").

- 3.4 The owed quality and functionality of the Q-DAS software results ultimately from the license certificate and the user documentation. Information contained therein is to be seen as specifications of services and not as guarantees. A guarantee is only granted if it was designated as such expressly.
- 3.5 Deliveries and services of any other kind (e.g. installation, parametrization and configuration of the software; training; hardware delivery; software maintenance) are not subject matter of this Software Purchase Contract, but may be agreed upon separately between the parties.
- 3.6 Q-DAS recommends to the contractual partner the permanent entering into of a software maintenance agreement in order to be able to take advantage of the further development of the software.

#### **4) Delivery Time and Time of Performance**

- 4.1 Information regarding delivery time and time of performance of service is non-binding, unless these are designated as binding by Q-DAS in writing. Q-DAS may render partial services to the extent that the delivered components may be used by the customer in a reasonable fashion.
- 4.2 To the extent that delivery time and time of performance of service were agreed upon in writing, such shall be extended by the period in which the customer is in default from the contract, and by the period in which Q-DAS through circumstances Q-DAS is not responsible for is prevented from delivery or performance of service and by a reasonable preparatory period after the end of the reason for impediment. These circumstances also include force majeure and labor disputes. Periods are also deemed extended by the period in which the customer fails to cooperate, e.g. does not provide information, does not grant access, does not deliver supplies nor make its employees available.
- 4.3 If the parties to the contract agree upon other or additional services at a later point in time that have an impact on such periods, such periods are extended by an appropriate period.
- 4.4 Reminders and setting deadlines by the customer must be made in writing to be effective. A grace period must be reasonable. A period of less than two weeks is only appropriate in the event of extreme urgency.

#### **5) Granting of Rights**

- 5.1 After full payment of the fee according to the Software Purchase Contract, the customer is granted the non-exclusive right, unlimited in terms of time, for the use of the Q-DAS software in the scope granted 28 March 2019 3 via these Terms of Use and the license certificate. Prior to full payment of the fee, all data carriers as well as potentially delivered user documentation are under reservation of proprietary rights. The permissible use comprises the installation of the Q-DAS software, the loading into the main memory as well as the use by the customer according to the terms of the contract. The number of licenses as well as type and scope of use are determined according to the license certificate. Unless otherwise specified in the license certificate, only one license is sold. The customer is not authorized in any case to further lease or sublicense in any way the purchased Q-DAS software, to publicly reproduce the software or give access to such or to provide the software to third parties free of charge or against payment, e.g. by way of application service providing or as "software as a service." The

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right to the permanent transfer of the purchased Q-DAS software remains unaffected; however, for such, the limitations according to sections 5.4 to 5.7 apply.

- 5.2 The customer is authorized to produce a backup copy if such is required to secure future use. A backup copy is a copy of the computer program that is reserved for cases in which the actual program copy is accidentally damaged or destroyed, is lost and cannot be used any longer for other reasons. The backup copy must not be used as an additional productive system. The customer must label the backup copy with the words "backup copy" and must affix a copyright notice of the manufacturer in a clearly visible fashion. Copies no longer needed must be deleted or destroyed.
- 5.3 Furthermore, the customer is only authorized to copy, process or to decompile the Q-DAS software if this is in principle legally permissible and only if Q-DAS did not grant information required for such to the customer within a reasonable period. For all know-how and information the customer receives in this context about the Q-DAS software, section 3.1 applies. Anytime a third party is included, the customer will provide to Q-DAS a written declaration of the third party that such third party commits directly towards Q-DAS to comply with the rules as determined in section 5 and section 3.
- 5.4 If no maintenance contract exists for the Q-DAS software, the customer shall be entitled to permanently transfer the purchased copy of the Q-DAS software to a third party by handing over the license certificate, these Terms of Use and the user documentation. A transfer may therefore not take place if a maintenance contract exists for the Q-DAS software.
- 5.5 In the event of a permanent transfer of the Q-DAS software to a third party, the customer is obligated to completely abandon the use of the program, to remove all installed copies of the program from his computers and to delete all copies on other data carriers or to transfer them to Q-DAS, unless the customer is legally obligated to store them for a longer period of time. A splitting of purchased license volume packages is not permitted.
- 5.6 In the case of a permanent transfer of the Q-DAS software to a third party, the customer is also obligated to expressly agree with the third party that the latter will observe the scope of the granting of rights in accordance with this section 5.
- 5.7 The customer shall be obligated to inform Q-DAS in writing in advance of the transfer of the Q-DAS software to a third party, including the name and address of the purchaser, and to confirm in writing at Q-DAS's request the complete implementation of the measures specified in sections 5.4 to 5.6 or, if applicable, to explain the reasons for longer storage.
- 5.8 If the customer uses the Q-DAS software to an extent which exceeds the acquired rights of use qualitatively (with regard to the type of permitted use) or quantitatively (with regard to the number of licenses acquired), it shall immediately acquire the rights of use necessary for permitted use. The costs 28 March 2019 4 for this prior unauthorized use shall be an amount equal to 150% of the then current list price. If the customer fails to make such subsequent acquisition, Q-DAS shall assert the rights to which it is entitled.
- 5.9 Copyright notices, serial numbers as well as any other features serving to identify the program must not be removed from the Q-DAS software nor altered.

## **6) Remuneration; Payment Terms; Default**

- 6.1 The customers shall pay the purchase price as agreed in the Software Purchase Contract.
- 6.2 The customer is obligated to pay in advance unless expressly otherwise agreed upon.

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- 6.3 Unless expressly otherwise agreed upon, the invoice amount is due without deduction immediately after issuance of the invoice to the customer.
  - 6.4 All fees and other amounts cited or collected by Q-DAS are in principle without sales tax.
  - 6.5 If the customer is in default regarding payment obligations, Q-DAS is authorized to apply default interest in the amount of 9 percent above the currently applicable base interest rate of the European Central Bank for the portion of receivables still outstanding.

## **7) Customers Obligation to Cooperate**

- 7.1 It is the responsibility of the customer to ensure the functionality of the working environment of the program. The customer shall also take precautions in the event that the program does not work properly in whole or in part (e.g. by data backup, emergency planning).
- 7.2 The customer is obligated to follow the operating instructions and other instructions of Q-DAS.
- 7.3 The customer undertakes to inform Q-DAS immediately in writing of any errors that may occur in the Q-DAS software. In this context, the error and its circumstances shall be described in an understandable way and as accurately as possible. In addition, existing documents suitable for illustrating the error must be enclosed, in particular - as far as this is possible - a screen printout or a printout of the document containing the error. If necessary, the error-causing data shall be made available on data carriers or by email for testing purposes.
- 7.4 The customer is obligated to take appropriate measures to protect the Q-DAS software as well as the license key and, if applicable, the access data for online access from unauthorized third parties. In particular, all copies of the Q-DAS software as well as the license key and any existing access data must be kept in a protected place.

## **8) Contractual Penalty**

In the event of violation of either Section 5 or 3 Q-DAS is authorized to assert a contractual penalty for each violation in the amount of up to three times the agreed upon purchase price for the QDAS software. The increased license fee, which is due for exceeding the permitted use according to section 5.8, is credited against this contractual penalty. However, the contractual penalty shall in any 28 March 2019 5 case amount to at least EUR 10,000. The right to prove greater damage is reserved. The right of QDAS to demand an injunction against the infringement remains unaffected.

## **9) Warranty**

- 9.1 Q-DAS warrants the agreed quality of the Q-DAS software - or, in the absence of an agreement, guarantees for its normal use - and that no rights of third parties conflict with the use of the Q-DAS software in accordance with the contract.
- 9.2 The customer must inspect the Q-DAS software immediately upon receipt for obvious defects and inform the seller of these immediately if such defects are given, otherwise warranty for these defects is excluded. The same shall apply if such a defect becomes apparent later. Section 377 HGB [German Commercial Code] shall apply.
- 9.3 In the event of a material defect, Q-DAS shall initially be entitled to subsequent performance, i.e. at its own discretion to remedy the defect ("subsequent improvement") or to make a replacement delivery. Within the scope of the replacement delivery, the customer shall, if necessary, adopt a new version of the software, unless this leads to unreasonable impairments. In the event of defects in title, Q-DAS

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shall, at its own discretion, provide the customer with a legally flawless opportunity to use the Q-DAS software or modify it in such a way that no rights of third parties are infringed.

- 9.4 Q-DAS is entitled at its own discretion to provide the remediation at the customer's premises or by remote access. Q-DAS also fulfills its obligation to remedy defects by making updates with an automatic installation routine available for download on its website and by offering the customer phone support to solve any installation problems that may arise.
- 9.5 The customer's right to reduce the purchase price or to withdraw from the contract at his discretion in the event that any repair or replacement delivery fails twice remains unaffected. A right of withdrawal does not exist in the case of insignificant defects. If the customer claims damages or compensation for futile expenses, Q-DAS shall be liable according to section 10.
- 9.6 Q-DAS may demand additional costs from the fact that the Q-DAS software was modified, used outside the specified environment or was incorrectly operated.
- 9.7 Q-DAS may demand reimbursement of expenses if there is no defect. Section 254 BGB [German Civil Code] shall apply accordingly.
- 9.8 With the exception of claims for damages, warranty claims based on material defects lapse after 12 months. The limitation begins with the delivery, i.e. in the case of sale on a data carrier with the delivery of the Q-DAS software, in the case of sale by download from the internet after notification and activation of the license key or, if applicable, the login data for the download area. Claims for damages and compensation for futile expenses shall be governed by the provisions of 10.

## **10) Liability**

- 10.1 Q-DAS assumes no liability for the correctness and completeness of the customer's data. Any liability for the technical or economic suitability of the Q-DAS software for the needs of the customer is excluded.
- 10.2 In all cases, Q-DAS's liability for damages - regardless of whether they arise from contractual or noncontractual claims - shall be governed exclusively by the following provisions.
- 10.3 In the event of fraudulent concealment of defects in a service and assumption of a guarantee for the success of a service, in the event of intent or gross negligence, in the event of injury to life, limb or health and in the event of culpable breach of essential contractual obligations, Q-DAS shall be liable in accordance with the statutory provisions. The same shall apply insofar as the mandatory provisions of the Product Liability Act apply.
- 10.4 However, in the event of a non-intentional or grossly negligent breach of material contractual obligations, Q-DAS's liability for damages shall be limited in amount to foreseeable, typically occurring damage. In any case, the liability per contract year is limited to twice the amount of the purchase price paid by the customer for the Q-DAS software affected by the damage.
- 10.5 In the event of loss of data, Q-DAS's liability under the foregoing provisions shall be limited to that expenditure which is necessary and reasonable for the recovery of the data in the case of proper data backup by the customer.
- 10.6 Otherwise, the liability of Q-DAS for damages is excluded. Unless otherwise provided for in the above provisions, Q-DAS shall therefore not be liable for damages that have not occurred to the Q-DAS software itself (e.g. loss of profit or other pure financial losses of the customer), nor for claims for damages arising from the violation of ancillary obligations arising from an obligation or the law (e.g.

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incorrect advice or clarification, instructions regarding handling) and for claims arising from noncontractual liability.

- 10.7 Insofar as the liability of Q-DAS is excluded or limited, this shall also apply to the personal liability of the employees, representatives and vicarious agents of Q-DAS.
- 10.8 Claims for damages according to section 10 lapse in 12 months. The limitation period begins at the point in time at which the claim has arisen and the customer has become aware or could have become aware of the circumstances giving rise to the claim and the fact that Q-DAS is the debtor of the claim. It ends at the latest with expiration of the statutory maximum periods of Section 199 Subsections 2 and 3 BGB [German Civil Code]. However, the statutory limitation provisions shall apply to all claims based on gross negligence, warranty, fraudulent intent as well as personal injury and claims under the Product Liability Act.

## **11) Force Majeure**

- 11.1 Events of force majeure which make it significantly more difficult or temporarily impossible for Q-DAS to provide services under the contract shall extend the time for performance of the respective obligations by the duration of the impairment and by the time required for normal working conditions to be established. This shall also apply if Q-DAS is already in default with its performance.
- 11.2 Force majeure shall be deemed to exist if external, unforeseen and unavoidable circumstances occur for which Q-DAS is not responsible, such as labor disputes, operational disruptions, natural disasters, scarcity of raw materials or energy, failure of transmission services, means of transport or energy supply, currency restrictions, official measures, fire, war and riots or other events that occur through no fault of Q-DAS, irrespective of whether they occur at Q-DAS's place of business or at an external place of business on which the respective contractual performance depends.
- 11.3 Q-DAS is obligated to inform the customer immediately of the occurrence and end of such impairment.

## **12) Offsetting; Right of Retention**

- 12.1 The customer shall only be entitled to the right to offset if his counterclaims have been legally established, are undisputed or acknowledged by Q-DAS. In these cases, the customer is also entitled to exercise a right of retention insofar as his counterclaim is based on the same contractual relationship.

## **13) Transfer to Third Parties**

- 13.1 Q-DAS shall also be authorized to transfer the rights and obligations arising from the Software Purchase Contract in whole or in part to third parties at any time. All rights and obligations of the customer remain unaffected by this. The customer agrees to such a transfer already when entering into the Software Purchase Contract. In the event of the transfer of the contract, Q-DAS shall inform the customer of this circumstance and of his right to terminate the Software Purchase Contract by written notice given to QDAS within one month of receipt of the notice. The customer may transfer claims against Q-DAS to third parties only with the written consent of QDAS. The right to the permanent transfer of the purchased Q-DAS software remains unaffected; however, the limitations according to sections 5.4 to 5.7 apply.



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## **14) Confidentiality**

- 14.1 The contracting parties undertake to treat as confidential all items (e.g. software, documents, information) that are legally protected or contain company or trade secrets or are designated as confidential, and which are received or become known to one party by the other contracting party before or during the execution of the contract, even after the end of the contract. Items exempt from this obligation are items,
- (a) which were demonstrably already known to the recipient when the contract was entered into or which subsequently become known to third parties, without such infringing any confidentiality agreement, statutory provisions or official orders;
  - (b) which are publicly known at the time the contract was entered into or are subsequently made publicly known, unless this is based on a breach of this contract;
  - (c) which are required to be disclosed by law or by order of a court or authority. To the extent permitted and possible, the recipient subject to the disclosure obligation will give the other party prior notice and the opportunity to take action against the disclosure.
- 14.2 The contracting parties shall keep and secure these items in such a way that access by third parties is excluded.

## **15) Data Protection; Compliance with License Terms**

- 15.1 Q-DAS will handle personal data that becomes known to Q-DAS in connection with the performance of the contract in accordance with all applicable data protection regulations. The customer undertakes to observe all applicable data protection regulations.
- 15.2 Q-DAS has a legitimate interest in preventing software piracy. At Q-DAS's request, the customer shall enable Q-DAS to verify the proper use of the Q-DAS software and compliance with the license terms ("Audit"). To this end, the customer shall provide Q-DAS with information, grant access to relevant documents and records and enable Q-DAS to check the software environment used. Q-DAS may carry out the inspection at the customer's premises during the customer's regular business hours or have it carried out by third parties who are bound to secrecy. Q-DAS will ensure that the customer's business operations are disturbed as little as possible by the on-site inspection. Q-DAS also reserves the right to check electronically whether the software used by the customer is an original version of the Q-DAS software ("Check"). Such an inspection can take place, for example, by automatic transmission of suitable system data triggered by the Q-DAS software or by Q-DAS requesting the customer to transmit a specific system file to it. Q-DAS shall not charge the customer any costs for the audit or inspection; however, claims of Q-DAS due to a violation of the license terms determined by the audit or inspection shall remain unaffected.
- 15.3 The parties declare that the processing of personal and other data ("Data") in connection with the audit is necessary to safeguard the legitimate interests of Q-DAS and does not outweigh the interests or fundamental rights and freedoms of third parties. As a precaution, the customer declares his consent with the collection and processing of data required for the audit. If, in connection with the audit, the consent of a natural person (in particular the customer's employees) to the processing of their personal data should become necessary, the customer shall support Q-DAS in obtaining such consent.

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**16) Miscellaneous**

- 16.1 Amendments of and additions to this contract must be made in writing to be effective. The written form requirement may only be waived in writing. In order to comply with the written form, transmission in text form, in particular by fax or email, is also sufficient, unless otherwise stipulated in these General Terms and Conditions.
- 16.2 The parties are aware that the Q-DAS software may be subject to export and import restrictions. In particular, there may be obligations to obtain permits, or the use of the software or associated technologies abroad may be subject to restrictions. The customer shall comply with the applicable export and import control regulations of the Federal Republic of Germany, the European Union and the United States of America as well as all other relevant regulations. Performance of the contract by QDAS is subject to the proviso that there are no obstacles to performance due to national and international regulations of export and import law or any other statutory regulations.
- 16.3 The laws of the Federal Republic of Germany apply exclusively while excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG).
- 16.4 Place of fulfillment and exclusive place of jurisdiction for all disputes arising from this contract and its execution shall be Weinheim/Bergstraße, Germany. However, Q-DAS is authorized to bring an action against the customer before the court responsible for the customer's place of business.
- 16.5 Should a provision of this Software Purchase Contract including these Terms of Use be or become invalid as a whole or in part, both parties to the contract are obligated to replace the invalid provision with a valid one that comes closest to the purpose of the contract intended by both parties in a permissible fashion.