



General Terms and Conditions for License Programs of IQDoQ GmbH

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These general terms and conditions of IQDoQ license programs relates to the sale of software licenses of IQDoQ GmbH, such as the information management system 'HyperDoc', die digital personnel file and digital HR 'IQAkte Personal' as well as the digital contract file 'IQAkte Vertrag'.

1. Scope

- 1.1. These general terms and conditions for IQDoQ license programs (IQDoQ will be referred to as "Licensor" in the following) shall apply exclusively. Differing terms shall only apply upon Licensor's express written acceptance.
- 1.2. Unless stated otherwise in writing, quotations are valid for 4 weeks from the quotation date. The license agreement will come into effect upon receipt of Licensee's acceptance of Licensor's unchanged quotation.

Application

Conclusion of contract

2. Grant of Rights

- 2.1. Licensor grants to Licensee a non-exclusive right to use the Software and documentation described in the License Agreement against the one-time payment specified in the License Agreement. Unless stated otherwise in the License Agreement the transferable right is geographically restricted to the European Economic Area.
- 2.2. Licensee shall ensure that the Users use the Software solely in the context of the contractually agreed upon conditions. This applies for both directly and immediately accessing Users as well as Users which have access via an interface.
- 2.3. The right to copy the Software is limited to the installation of the Software on a computer system which is in Licensee's immediate possession and to fulfil the Purpose of Use and a copy thereof which is required for the loading, display, running, transfer or the storage of the Software as well as to the right for an authorized person to make copies for security backup purposes as stated in sec. 69d par. (2) UrhG (German Copyright Act). It is prohibited to remove the copyright as well as registration numbers from the Software.

Rights of use

Copying of IQDoQ-license programs

- 2.4. The Software shall be provided in object code form (byte- or machine code). Licensee is not authorized to modify, interfere with, downgrade, decompile or disassemble the Software without the prior written consent of the Licensor or to create works derived from the Software. Licensee shall not make any different effort to investigate the Source Code or underlying ideas or algorithms of the Software. The Licensee shall not copy, translate or modify any written documents delivered with the Software or create derivative works from such documents. These limitations shall not apply if and to the extent that the modification or determination of the Source Code is essential for obtaining information which is indispensable for establishing the Software interoperability with other independently created programs, provided the Licensor has not provided the required information within a reasonable period of time upon Licensee's prior written request. *Delivery*
- 2.5. In the event the Software contains libraries and software components of other Licensors (including, but not limited to Open Source Software), these Licensors' Terms and Conditions as listed separately in the License Agreement shall apply to the respective software components. *Software components of other Licensors*
- 2.6. Required hardware and software components of other Licensors (including, but not limited to free or Open Source Software) will be named as system requirements within the license agreement and be provided by Licensee. At the request of Licensee, other components may be employed. The parties will enter into a separate agreement concerning this. *System requirements*
- 2.7. Even if the installation of free or Open Source Software (OSS) is effected by the Licensor, any contractual relationship shall directly exist between the originator of the OSS and the Licensee. Therefore the Licensor shall not charge a payment for the use of OSS or license fee to Licensee. Licensee acknowledges that the Licensor neither shall be liable for defects of OSS nor assume any liability according the OSS. *Free or Open Source Software*
- 2.8. Concerning the OSS, Licensee accepts the specific terms of use, which will be either part of the documentation or will be hand out by the Licensor. Licensor shall provide the Licensee a copy of the source code for the Open Source Software upon the Licensee's request. If and to the extent that the provisions of these terms and conditions are inconsistent with the OSS-terms, the OSS-terms shall prevail. *Specific terms of use for OSS*
- 2.9. Licensee shall immediately notify the Licensor of any changes concerning the usage of Software, which have effect on the license fees (e.g. increasing the number of users, files etc. beyond the contractually agreed number). Clause 2.10 sentences 4 and 5 shall apply accordingly. *Changes in usage*
- 2.10. Licensor shall be entitled to check on the authorized use of the Software ("audit"). Licensor will announce the verification of Licensee's Software with a thirty (30) days prior written notice. Licensee is obliged to support the Licensor's audit within reasonable limits and to allow sufficient access to the Software installation and all informations and documents required therefore. The Licensee hereby undertakes to pay the outstanding amount for the Software and the related Software maintenance within thirty (30) days after written request. If the payment did not take place on time, the Licensor is entitled to terminate the Software maintenance and other technical support, the usage rights or the contract extraordinarily. Licensee shall pay all costs arising of his support measures himself. *License audit*

3. Prices and terms of payment

- 3.1. The fees and payment terms are defined in the License Agreement and shall include loading and packaging ex works unless otherwise expressly agreed. Licensee shall bear the costs of delivery, freight insurances, customs, excise tax and value-added tax effective at the time of delivery. *Prices and terms of payment*
- 3.2. Payments are due 10 days after receipt of the invoice without deduction. Licensee shall only be entitled to offset or to exercise a right of retention against claims that have been acknowledged by the Licensor or have been confirmed by final court decision or in the case of a counterclaim from the same contractual relationship.
- 3.3. Licensor shall be entitled to partial deliveries as far as reasonable to Licensee. Such partial deliveries may be charged by invoices for partial delivery, and Licensor shall be entitled to appropriate advanced payments for services. *Partial deliveries*
- 3.4. Additional services are to be refunded in accordance with Licensor's current price lists. *Additional services*
- 3.5. If the Licensee does not pay or does not pay punctually, they must also pay on the outstanding amount, in accordance with § 288 BGB (German Civil Code), interest at nine (9) percentage points above the base interest rate.

4. Supplementary performance (warranty)

- 4.1. Licensor warrants that the Software will basically conform to the Product Specifications when it is used unmodified and in appropriate manner in the specified operating environment. The Product Specifications do not constitute any Guarantee according to § 443 BGB (German Civil Code). The warranty for updates, upgrades and the delivery of new versions shall be limited to the new features of the update, upgrade or new version.
- 4.2. If Licensee requests supplementary performance, Licensor shall be entitled to either repair or replace the Software. Otherwise, the statutory provisions on supplementary performance shall apply. If the defect is not cured within a first time limit and Licensee has set Licensor a reasonable second time limit without success or if two attempts to remedy, replacement deliveries or replacement services are without success or if they could only be implemented at inordinate cost the Licensee may, subject to the statutory prerequisites, at its option withdraw from this agreement or reduce the price and claim damages or reimbursement of costs. Supplementary performance 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 Software is still reasonable to Licensee, Licensor 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.
- 4.3. Licensor may refuse to remedy defects or to deliver replacements until Licensee has paid the agreed fees to Licensor, less an amount which corresponds to the economic value of the defect.
- 4.4. If the defect is caused by the defective products of a supplier and the supplier does not act as Licensor's vicarious agent but Licensor is merely passing on an unchanged third party product to Licensee, then Licensor's warranty shall at first hand be limited to the assignment of its warranty claims against the supplier. The subsidiary warranty of the Licensor shall remain unaffected.
- 4.5. The warranty shall be valid for a period of twelve (12) months upon delivery of the Software for merchants according to the German Code of Commerce.
- 4.6. Licensee shall notify Licensor 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 shall remain unaffected.
- 4.7. Licensee shall reimburse to Licensor any necessary expenses resulting from Licensor's work upon unjustified complaint about defects according to Licensor'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 Software, but from Licensee's sphere of responsibility.
- 4.8. If Licensee is entitled to withdraw from the Agreement due to Licensor's default, Licensee shall declare withdrawal within a period of fourteen (14) days upon occurrence of the respective incident entitling Licensee to withdraw from the Agreement. In case of minor defects claims to withdraw and claims for damages instead of performance are excluded unless Licensor fraudulently concealed the defects.

Features of Product Specifications

Supplementary performance of defects

Warranty

Notices of defects

Licensee's rights

5. Warranty for Defects in Title

- 5.1. Licensor warrants that the Software shall, apart from customary retentions of title, be free from third party rights which prevent the use in accordance with the contract.
- 5.2. Licensor shall defend the Software at its own expense against any third party claims provided that Licensee has informed Licensor immediately in writing about such claims and takes all reasonable measures (authorization, information) to support Licensor adequately. The Licensee shall not be entitled to acknowledge claims of third parties and must leave to the Licensor any disputes including any out-of-court settlements or conduct such cases with the Licensor only by mutual agreement.
- 5.3. To the extent that there are defects in title, Licensor 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 software in such a manner that it no longer infringes the rights of third parties, provided and to the extent that this does not substantially impair the warranted functionality of the software. Licensor shall reimburse Licensee for its necessary refundable costs incurred in the enforcement of legal claims.
- 5.4. If measures according to section 5.3 fail to succeed within a reasonable time limit set by Licensee, Licensee may subject to the statutory prerequisites at its option reduce the price or withdraw from this Agreement and claim damages within the framework the liability limits of Clause 6.
- 5.5. Clauses 4.3, 4.5 and 4.8 shall apply accordingly.

Third party rights

Licensee's obligations

Supplementary performance of defects in title

Licensee's rights

6. Liability

- 6.1. The Licensor shall be liable for claims for damages, for reimbursement of expenses or indemnification, irrespective of their legal grounds, as specified below: *Licensor's liability*
- a) **The Licensor's liability for damages that are caused intentionally or by gross negligence of the Licensor or by one of his agents or legal representatives shall be unlimited.**
 - b) In the case of losses arising from injury to life, body or health, the Licensor's liability shall be unlimited. This also applies for breaches of contractual obligations due to slight negligence of the Licensor or its legal representative or agents.
 - c) The Licensor's liability shall likewise be unlimited in case of severe organizational negligence as well as for damages due to lack of guaranteed qualities.
 - d) In the event of a negligent breach of a substantial contractual obligation, the Licensor's liability shall be limited to the foreseeable damage typically occurring. A substantial contractual obligation within the aforementioned meaning is an obligation which is indispensable for the proper fulfilment of the contractual obligations and on whose observance the Licensee relies or may reasonably rely. This applies in particular to the Licensor's obligation to perform the agreed service or execute the agreed work as specified in the contract. The parties agree that the foreseeable, typically occurring damage will not exceed 50.000 EUR or the contract value, whichever is higher. In the event of product liability, the Licensor shall be liable in accordance with the German Product Liability Act.
 - e) In the event of product liability, the Licensor shall be liable in accordance with the German Product Liability Act.
- 6.2. Each further liability of the Licensor for damage compensation, in particular liability without fault, shall be excluded. *Liability without fault*
- 6.3. If a damage is caused both by the Licensor and the Licensee, the contributory negligence of the Licensee must be taken into account. *Contributory negligence of the licensee*
- 6.4. The Licensee is responsible for regular backup of his data. If data loss is caused by the Licensor, he shall only be liable for the costs of reinstating the data for the backup copies and for restoring the data that also would have been lost if the Licensee had executed regular and appropriate backups. *Data loss*

7. Export provision

- 7.1. Because of the currently applicable provisions in particular the German Foreign Trade Act, the German and the European Foreign Trade and Payment Regulations, the EG Dual-Use Regulation as well as the US Re-Export Law deliveries may be subject to a delay or the fulfillment of this contract may be prohibited, which is outside of the Licensor's control. Insofar the Licensor is legally required to obtain the necessary approvals for cross border deliveries, this contract shall be concluded subject to the condition precedent that these approvals are granted. If any necessary approval is not or not duly granted by the responsible authority, Licensor shall not be liable for any resulting damages or other claims. *Cross-border deliveries*
- 7.2. In the case of cross-border deliveries, the Licensee shall bear any customs duties, fees and other payments, unless stated otherwise in the License Agreement. *Customs duties, fee or similar*
- 7.3. If Licensee exports, imports or otherwise transfers products provided under this Agreement, the Licensee will be responsible for complying with the relevant Export Control Regulations and Procedures, in particular the US Re-Export Law, and for the verification of Third-Party Purchaser according to the EG Anti-Terror Law and the EG Dual-Use Regulation. Licensee confirms that Licensee is not located in a country or belongs to an organization that is subject to trade control sanctions and further agrees that Licensee will not retransfer the products to any such person, organization, institution or country. *Export Control Regulations*

8. Secrecy, Data Protection

- 8.1. The parties undertake to treat in confidence all confidential information of which they become aware in the course of implementing this contract and to use such information only for the contractually agreed purposes. Confidential information as defined by this provision is information, documents, details and data that are designated as confidential or which by their nature are to be regarded as such. The exception to this shall be confidential information that was publicly accessible at the time of disclosure or which subsequently becomes publicly accessible or which has been disclosed to the recipient contracting party by a third party without a confidentiality obligation or which was in the possession of or known to the recipient contracting party at the time of disclosure or which has been developed by the recipient contracting party independently of the confidential information. The duty of confidentiality shall continue for two years after the end of the contractual relationships. *Secrecy*
- 8.2. The parties undertake to observe the statutory provisions relating to data protection and to impose upon their employees the duty to comply with these provisions. The Principal shall require their employees to uphold confidentiality of any personal data according to Art. 4 (1) GDPR (General Data Protection Regulation). *Data Protection*

9. Final provisions

- 9.1. This Agreement contains all regulations concerning the object of this Agreement. Additional verbal agreements do not exist. Any modifications and/or addenda to this Agreement shall be in writing. *Additional agreements*
- 9.2. 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. *Act of God*
- 9.3. 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. *Incomplete provisions*
- 9.4. The place of jurisdiction in relation to merchants, public legal entities or public special estates is Frankfurt am Main. *Place of jurisdiction*
- 9.5. **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.** *Laws*