



General Terms and Conditions for Work and Services of IQDoQ GmbH

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These General Terms and Conditions for Work and Services relates to the performance of work and services by IQDoQ GmbH, such as the service packages 'Starter' and '5Days2Go'.

1. Scope

These General Terms and Conditions shall apply to the performance of work and services by IQDoQ (hereinafter: "Contractor"). They also apply to future work and services by the Contractor for the Principal insofar as nothing has been expressly agreed to the contrary. Conflicting terms and conditions of the Principal shall not apply even if the Contractor does not expressly disallow them.

Scope

2. Subject matter of the contract

- 2.1. The content and scope of contractual performance is based exclusively on the agreements contained in the individual contract, in particular the Contractor's statement of work.
- 2.2. Both parties are entitled to suggest subsequent changes and additions to the agreed performance (Change Request).
- 2.3. The Contractor will assess change requests from the Principal within a reasonable time and submit a written offer for the change in performance, its remuneration and, where applicable, any necessary adjustment to the timetable or other agreements. The Contractor is entitled to reject a requested change in performance if it is technically impossible or involves an unreasonable outlay. The Contractor may invoice for the cost of assessing change requests at the agreed hourly rates, alternatively at the Contractor's usual hourly rates. Until consent is given by the other party, the Contractor shall continue with performance in accordance with the existing contract.

Scope of services

Change requests

3. Rights of use in relation to work results

- 3.1. With respect to the work results obtained for the Principal and transferred to it in accordance with the contract, the Principal shall, in the absence of a contractual provision to the contrary, have the irrevocable and non-exclusive right, which is unrestricted in terms of time and area to use the work results in order to achieve the purposes pursued by the contract.

Rights of use

- 3.2. Insofar as the Principal obtains, on the basis of an express contractual agreement, an exclusive right of use to the work results, the Contractor shall be entitled to use its own knowledge or that of its employees, used for the purposes of producing the work results, as well as tools and procedures, which are intended or suitable for re-use in the context of other contractual relationships, for the purposes of its own operations. This shall not apply to knowledge which is regarded as a trade or business secret of the Principal. Even where the Principal is granted exclusive rights of use, the Contractor shall remain entitled to keep and use a copy of the software (source code) and documentation for the purpose of subsequent performance within the framework of its warranty for material defects and defects in title.
- 3.3. The Principal shall be entitled to receive the source code for the computer programs which have been individually created for it, and to which it has been granted an exclusive right of use by the Contractor, if and insofar as this source code is in the possession and under the control of the Contractor. The Principal is obliged to use this source code only in accordance with the rights of use which have been granted. The Principal may only disclose the source code to third parties, or otherwise make it available, insofar as this is necessary, according to the circumstances of the individual case, in order to safeguard its own legitimate interests, e.g. in order to secure the future use of the respective computer programs for the aforementioned purposes, by way of maintenance, development or other processing, independently of the Contractor. Otherwise, the Principal is obliged to treat the source code as confidential and must impose the same duty of confidentiality upon third parties to whom it intends to disclose the source code.

Disclosure of source code

4. Freeware, shareware and open source Software

Insofar as the work results contain freeware, shareware or open source software (hereinafter referred to as "OSS"), the Contractor will not invoice the Principal for any remuneration of licence fees in respect of the use of said OSS. The Contractor shall only be liable for defects in OSS in the case of fraudulent concealment. Any additional liability is limited to intent and gross negligence except in the case of loss or damage due to injury to life, body or health. In these cases, the Contractor shall be liable even in the case of a breach of duty caused by minor negligence. In cases of product liability, the Contractor shall be liable in accordance with the German Product Liability Act. **With regard to OSS, the specific conditions of use shall apply which either form part of the documentation or are transferred to it by the Contractor.** At the Principal's request, the Contractor will transfer to it a copy of the source code for the Open Source Software. If and insofar as the provisions in this contract conflict with the OSS conditions, the OSS conditions shall take precedence over all other contractual provisions with respect to OSS.

Freeware, shareware and open source software

5. Remuneration

- 5.1. In the absence of any agreement to the contrary, work and services will be charged, on a work and materials basis, at the hourly rates submitted, alternatively at the Contractor's usual hourly rates, plus the charges and expenses necessary in order to effect performance, in particular travel costs (travelling time, travel expenses, accommodation etc.) and expenses. The same applies to work which falls outside the agreed scope of performance and additional expenditure resulting from incorrect/incomplete information provided by the Principal or unjustified notices of defects, improper use of the system or breaches of duty by the Principal.
- 5.2. In the case of invoicing on a time and materials basis, the Contractor shall account for its hours worked and the travelling time, costs and expenses incurred, at the applicable hourly or daily rates in each case, as well as the materials used, at the prices valid at the time that the work was carried out, together with a brief description of the activity, by way of an activity report (Attachment), at the end of each month – or where the period of work is shorter, at the end of the period. Insofar as the Contractor does not receive a written objection to a properly executed activity report, from the Principal, within five working days, the activity report shall be deemed to have been accepted. Every hour or partial hour shall be charged in accordance with the hourly rate. The Principal is not entitled to call off quotas of less than eight man-hours per day unless this has been expressly agreed or contractual performance requires lower daily quotas. A man-day is eight working hours.
- 5.3. Price details for work which is remunerated on a time and materials basis, are estimates. The quantities forming the basis of an estimate are derived from an evaluation of the extent of the work, carried out in good faith, at the time of conclusion of the contract. They may change as a result of the actual circumstances. Where the Contractor discovers, in the course of performance, that the estimate will be exceeded, it shall notify the Principal of this without delay. In the case of services, the Contractor shall not exceed the quantities forming the basis of the estimated price until it has received the written consent of the Principal. With regard to contracts for work, Section 650 German Civil Code (BGB) shall apply.

Remuneration

Expense-related invoicing

- 5.4. In the case of an agreed fixed price, the Contractor shall invoice for the remuneration pursuant to the payment plan contained in the contract or, if none has been agreed, following completion of performance. In the case of remuneration on a time and materials basis, invoicing shall take place at the beginning of the month following performance or, in the case of a shorter performance period, following completion of performance, provided nothing has been agreed to the contrary. Invoices are due for payment, without deductions, within 10 days after the date of invoice. The Principal is only entitled to exercise a right of set-off or retention against the Contractor where the Principal's claim is undisputed or has been upheld by way of a final court judgement or if it is a counter-claim from the same contractual relationship.
- 5.5. Price details in the offer/contract are net and exclusive of statutory value added tax.
- 5.6. Insofar as the Principal defaults on payment, the outstanding amount shall bear interest at nine (9) percentage points above the base rate applicable in each case. Claims for additional loss are not excluded. The Contractor is also entitled to refuse to effect performance where the Principal fails to settle an overdue invoice despite payment request.

*Fixed-price invoicing**Value added tax*

6. Cooperation between the parties

- 6.1. The Principal is obliged to provide the assistance and make the declarations necessary to effect contractual performance, professionally and within the time limit. Where the Principal defaults on performance of the duties for which it is responsible, the Contractor's duty to effect performance shall be suspended for the period of the default if, without performance of the Principal's said duties, it is impossible or requires unreasonable additional outlay. In addition to the agreed remuneration, the Principal shall reimburse the Contractor for the additional cost incurred as a result, at the agreed applicable daily or hourly rates. Section 643 German Civil Code (BGB) shall remain unaffected. Where a timetable has been agreed, the deadlines shall be postponed according to the duration of the delay.
- 6.2. Where the Contractor is otherwise obstructed in its contractual performance it shall notify the Principal of this. The notification should contain information about the likely duration of the delay. Performance deadlines shall be extended by a reasonable amount insofar as the delay is not caused by the Contractor or its agents.

Principal's co-operation obligations

7. Acceptance (contracts for work only)

- 7.1. Where the subject matter of the contract involves the creation of a document (concept, technical specification, study, documentation etc.), the Principal shall inspect it within 5 working days from submission, as regards its clarity, accuracy and completeness according to the statement of work, and indicate acceptance in writing or else issue a written notification of any defects found. The Contractor shall prepare a written report on the acceptance procedure whose accuracy the Principal shall confirm by way of signature. The report shall set out, in full, all defects found and the reasons for any refusal of acceptance. Minor defects shall not give rise to a right to refuse acceptance but must be remedied in accordance with the warranty. The Contractor shall discuss the document with the Principal at the Principal's request. Where the cost of the meeting exceeds the contractually agreed level, the Principal may, following prior notice, be invoiced separately for this by the Contractor at the usual hourly rates. Where acceptance of the document is legitimately refused due to an existing defect, the Contractor shall remedy the reported defect within a reasonable time limit and resubmit it for acceptance. Where the conditions for acceptance have been met, the Principal will then indicate acceptance, in writing, without delay. Where, the contract requires a planning document and, based thereon, the creation of software, the Contractor shall only commence creation of the software after successful acceptance of the planning document.
- 7.2. Where the creation of a software solution forms the subject matter of the contract, the Contractor shall notify the Principal that the work is ready for acceptance (RfA) and jointly with the Principal carry out an acceptance inspection on the basis of an inspection and acceptance plan which has been agreed by the parties. The Principal shall declare acceptance within 15 days after the RfA unless anything different is specified by mutual agreement of the parties. The Principal is only entitled to refuse acceptance due to class 1 defects (see Clause 7.5). Class 2 and 3 defects shall not prevent acceptance of the work but must be remedied in the course of subsequent performance. The Contractor shall prepare a written report on the acceptance procedure whose accuracy the Principal shall confirm by way of signature. The report shall describe all defects found, categorised according to class, and list the reasons for any refusal of acceptance in full. The Contractor shall remedy class 1 defects without delay, inform the Principal of this in writing and, where applicable, resubmit the work for acceptance; where the conditions for acceptance have been met, the Principal will then indicate acceptance, in writing, without delay. Class 2 defects shall be remedied within 6 weeks; class 3 defects within a reasonable time limit.
- 7.3. Where acceptance fails again, the Principal shall be entitled, subject to the conditions contained in Clause 8.8 of these Terms and Conditions, to rescind the contract, provided acceptance has not been unjustifiably refused.

*Acceptance of documents**Acceptance of software solutions*

- 7.4. The Principal shall provide the Contractor with the conditions necessary for implementation of the acceptance inspection, and described in the inspection and acceptance plan, in particular test data, work stations, equipment and test cases (together with details of the purpose, entries and expected system reaction) in good time prior to the start of the acceptance inspection for the purposes of quality control. The Principal is obliged to notify the Contractor, in writing, without delay if, during the acceptance inspection, it becomes aware of divergences from the contractually agreed requirements. Operational use of the software without the prior test phase shall be undertaken at the Principal's own risk. *Principal's co-operation obligations*
- 7.5. Program defects are divided into the following classes: *Classes of program defects*
- Class 1 defect:** The defect means that the system as a whole, or the part of the system submitted for acceptance, cannot be used.
- Class 2 defect:** The defect restricts the use of the system. The defect does not, however, have such a far-reaching effect on the functional capability of the overall work that the system, or the part of the system submitted for acceptance, cannot be used; or suitable measures can be used to bypass the defect in such a way and for such a period as is reasonable.
- Class 3 defect:** all other defects.
- 7.6. Sections 640 (1), sentence 3 and 646 German Civil Code (BGB) remain unaffected. It shall be equivalent to an acceptance where the Principal employs the software in productive operations, after RfA, for a period of at least 6 weeks, in accordance with the contract, unless acceptance is legitimately refused.
- 7.7. Insofar as nothing to the contrary is agreed, definable partial services may be accepted individually in accordance with the regulations of Clauses 7.1 – 7.6. Partial acceptances that have already been declared shall remain unaffected by subsequent acceptance checks for other services. *Partial services*

8. Material defects (contracts for work only)

- 8.1. The Principal's statutory rights in the case of defects (Section 634 et seq. German Civil Code (BGB)) shall remain unaffected insofar as the following contains no express special provision. The Contractor warrants that the work essentially corresponds to the statement of work. A guarantee must be expressly described as such in writing. *Features according to statement of work*
- 8.2. Where the Principal requires subsequent performance due to a defect, the Contractor is entitled to choose whether to remedy the defect or produce a new piece of work. In the case of software, subsequent performance may also take place by way of delivery or installation of a new program version or a workaround. The Contractor is entitled to carry out such number of attempts to remedy the defects as is appropriate according to the circumstances of the individual case and reasonable for the Principal. *Supplementary performance of defects*
- 8.3. Defects must be reported in writing by way of a comprehensible description of the symptoms of the defect and, as proof, suitable written records, hard copies and such like, so as to allow reproduction of the defect. Statutory inspection and reporting obligations remain unaffected. *Notices of defects*
- 8.4. The limitation period for claims under warranty is 12 months as from acceptance of the work; in the case of an unjustified refusal of acceptance and in the case of Section 646 German Civil Code (BGB), as from completion of the work. Claims due to the fraudulent concealment of a defect are subject to the normal limitation period. *Warranty*
- 8.5. Where a defect is the result of a defective product from a supplier who does not work as an agent for the Contractor, but whose product was delivered unchanged to the Principal, the Contractor's warranty is initially restricted to the assignment of its rights under warranty against the supplier. This does not apply where the defect is the result of improper handling of the supplier's product by the Contractor. Where the Principal is unable to assert its claims under warranty against the supplier, out of court, the subsidiary warranty by way of the Contractor shall remain unaffected. Claims by the Principal under warranty must also be reported to the Contractor without delay even where they are asserted against the supplier.
- 8.6. Changes or additions to the work, which are initiated by the Principal, shall rule out the Contractor's warranty unless the change or addition is proven not to be the cause of the defect. The same applies to defects resulting from improper use or inappropriate operating conditions/facilities on the part of the Principal.
- 8.7. The Contractor may invoice the Principal for the cost of checking unjustified reports of defects, in accordance with its applicable hourly rates.

- 8.8. Where the Principal is entitled to rescind the contract due to default on performance, it must declare its rescission within a cut-off period of fourteen days of the grounds for rescission coming into existence. In the case of minor defects, rescission and the right to claim damages in lieu of the whole performance are ruled out unless the defect was fraudulently concealed. *Rechte des Auftraggebers*

9. Defects in title

- 9.1. The Contractor warrants that the goods and services which it delivers are unencumbered by third-party rights which would prevent their use pursuant to the contract. *Third party rights*
- 9.2. Where third parties assert such rights, the Contractor shall, at its own expense, defend the goods and services against the rights asserted by third parties insofar as the Principal notifies the Contractor of the assertion of such third-party rights, in writing, without delay, grants the Contractor the necessary powers and authorisations and provides it with appropriate and reasonable support. The Principal shall not be entitled to acknowledge claims of third parties and must leave to the Contractor any disputes including any out-of-court settlements or conduct such cases with the Contractor only by mutual agreement. *Principal's obligations*
- 9.3. Where there are defects in title, the Contractor is entitled to choose either to defend/enforce by suitable means the contractual use of the goods and services delivered against the assertion of third-party rights, or to change or replace them in such a way that third-party rights are no longer infringed or third parties no longer assert an infringement. The agreed functionality of the goods and services supplied may not be unreasonably impaired by the defence measures. The Contractor continues to be obliged to reimburse the necessary costs of asserting legal rights incurred by the Principal which are capable of reimbursement. *Supplementary performance of defects in title*
- 9.4. Where the removal of defects under Clause 9.3 does not take place within a reasonable extension of time set by the Principal, the Principal is entitled, subject to the statutory requirements, to choose either to rescind the contract or to reduce the price and claim damages within the framework of Clause 10. *Principal's rights*
- 9.5. In other respects Clauses 8.4 to 8.8 shall apply mutatis mutandis.

10. Liability

- 10.1. The Contractor shall be liable for claims for damages, for reimbursement of expenses or Indemnification, irrespective of their legal grounds, as specified below: *Contractor's liability*
- The Contractor's liability for damages that are caused intentionally or by gross negligence of the Contractor or by one of his agents or legal representatives shall be unlimited.
 - In the case of losses arising from injury to life, body or health, the Contractor's liability shall be unlimited. This also applies for breaches of contractual obligations due to slight negligence of the Contractor or its legal representative or agents.
 - The Contractor's liability shall likewise be unlimited in case of severe organizational negligence as well as for damages due to lack of guaranteed qualities.
 - In the event of a negligent breach of a substantial contractual obligation, the Contractor'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 services and on whose observance the Principal relies or may reasonably rely. This applies in particular to the Contractor'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 Contractor shall be liable in accordance with the German Product Liability Act.
- 10.2. Each further liability of the Contractor for damage compensation, in particular liability without fault, shall be excluded. *Liability without fault*
- 10.3. If a damage is caused both by the Contractor and the Principal, the contributory negligence of the Principal must be taken into account. *Contributory negligence of the Principal*
- 10.4. The Principal is responsible for regular backup of his data. If data loss is caused by the Contractor, he shall only be liable for the costs of reinstating the data from the Principal's backup copies and for restoring the data that also would have been lost if the Principal had executed regular and appropriate backups. *Data loss*

11. Confidentiality, data protection

- 11.1. The parties undertake to treat as confidential all confidential information which becomes known to them as a result of the implementation of this contract and only to use it for contractually agreed purposes. Confidential information within the meaning of this provision is information, documentation, details and data which are designated as such, or which, by their nature, must be regarded as confidential. Excluded from this is only confidential information which was in the public domain at the time of its disclosure or which entered the public domain thereafter, was disclosed to the recipient by a third party without a duty of confidentiality, was already in the possession of, or known to, the recipient at the time of disclosure or was developed by the recipient independently of the confidential information. The duty of confidentiality shall continue for 2 years after the end of the contractual relationship. This doesn't apply to personal data according to Clause 11.2, which the parties shall keep confidential indefinitely. *Secrecy*
- 11.2. The parties undertake to comply with the statutory provisions on data protection and impose a duty to comply with these provisions on their employees. The Contractor shall place its employees under an obligation to uphold confidentiality of any personal data according to Art. 4 (1) GDPR (General Data Protection Regulation). *Data protection*

12. Termination

- 12.1. The termination of contracts for work and services is permitted subject to the statutory provisions and legal consequences (Sections 621, 649 German Civil Code (BGB)). Both parties are entitled to terminate the contract with immediate effect for good cause. *Termination*
- 12.2. Notice to terminate must be in writing.

13. Export provision

- 13.1. 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 Contractor's control. Insofar the Contractor 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, Contractor shall not be liable for any resulting damages or other claims. *Cross-border deliveries*
- 13.2. In the case of cross-border deliveries, the Principal shall bear any customs duties, fees and other payments, unless stated otherwise in the Agreement. *Customs duties, fees or similar*
- 13.3. If Principal exports, imports or otherwise transfers products provided under this Agreement, the Principal 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. Principal confirms that Principal is not located in a country or belongs to an organization that is subject to trade control sanctions and further agrees that Principal will not retransfer the products to any such person, organization, institution or country. *Export Control Regulations*

14. Final provisions

- 14.1. 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*
- 14.2. 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*
- 14.3. 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*
- 14.4. The place of jurisdiction with respect to merchants, public legal entities or public special is Frankfurt am Main. *Place of jurisdiction*

- 14.5. 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*