



# General Terms and Conditions for Software Maintenance of IQDoQ GmbH

## Document Version 2.5, 7 January 2019

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

### 1. Scope

These General Terms and Conditions shall apply to the performance of maintenance services by IQDoQ (hereinafter: "Contractor"). They also apply to future maintenance services 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.

*Application*

### 2. Subject matter of Agreement

- 2.1. The Software license programs which are subject to maintenance, the starting date of the maintenance, the minimum maintenance term and the maintenance fees shall be defined in the Maintenance Certificate. Amendments of the maintenance situation after signature of the Maintenance Certificate (for example expiry or addition of Software license programs subject to maintenance) shall be documented by execution/signature of a new Maintenance Certificate to be signed by both Parties and fully reproducing the current maintenance situation.
- 2.2. The Contractor shall perform maintenance services for the Software defined in the Maintenance Certificate.
- 2.3. In case of conflict between these General Terms and Conditions, the Maintenance Certificate and its Annex "Special Terms and Conditions for Maintenance of third party software", the following shall apply: The terms of the Maintenance Certificate and (if applicable) the Special Terms and Conditions for Maintenance of third party software shall prevail over the terms of these General Terms and Conditions.

*Subject matter of agreement*

2.4. Definitions

Definitions

<u>Term</u>	<u>Definition</u>
<u>Service Times</u>	Times during which the Principal is entitled to request the maintenance and support services agreed.
<u>Error</u>	The Software or documentation lacks a functionality described in the (product) description of the Software or its documentation and the suitability to use the Software in accordance with the contractual agreement is impaired in a more than insignificant way.
<u>Hotfix</u>	Program installing a Bug-fix (successful correction of programming errors) to correct Software errors and leading to temporary correction of an Error.
<u>Reaction Time</u>	Time period between receipt of the Error Message and the first reaction of the Contractor. The Reaction Time shall run during the Service Times only.
<u>Workaround</u>	Temporary remedy of software errors, as a rule without modification of the source code or the object code.
<u>Update</u>	Bundling of several error corrections of the Software in one single delivery (4th position e.g. 5.3.0.1 → 5.3.0.2).
<u>Upgrade</u>	Bundling of several error corrections and minor functional improvements/ adaptations of the Software (3rd position e.g. 5.3.0 → 5.3.1).
<u>Version</u>	Additional and/or amended functions and further adaptations/corrections of the Software (1st and 2nd position e.g. 5.3.1 → 5.4.0 or 5.4.0 → 6.0).

### 3. Maintenance services

Maintenance services

The maintenance services include:

- Hotline
- Error treatment (handling/processing)
- Provision/transfer of:
  - Hotfixes,
  - Updates,
  - Upgrades/Versions
- Delivery of documentation

within the defined service/reaction times.

The maintenance starts with the Version indicated in the Maintenance Certificate. After releasing a new Software Version, the preliminary Version will be maintained for another six months. Until the expiry of the six months period, the Contractor may terminate the Contract with a 30 days prior written notice. The total remuneration of the maintenance services already provided by the Contractor remains unaffected by this. If this right of termination is not exercised, maintenance is extended for an unpredictable period of time at the previously applicable terms.

#### 3.1 Hotline

Hotline

The central Hotline of the Contractor

- will accept Error Messages during the Service Times,
- will document Error Messages including the complete Error handling procedure in a HelpDesk-System,
- will initiate activities of the Contractor,
- will provide a voicemail/answering machine for Error Messages by phone outside the Service Times.

Principal can reach the Contractors Hotline

- by phone: +49 (0)231-5599 111
- by fax: +49 (0)231-5599 555
- by e-mail: [support@iqdoq.de](mailto:support@iqdoq.de)

Contractor reserves the right to change the contact data upon prior notice.

#### 3.2 Service/reaction times

For third party software, the service and reaction times stated in the Special Terms and Conditions for Maintenance of third party software shall prevail.

*Service/reaction times*

The Service Times are Monday to Friday, from 8:00 a.m. until 5:00 p.m. MEZ/MESZ except public holidays in Germany. The Reaction Time depends on the Error classes defined below:

<u>Error Class</u>	<u>Reaction Time</u>
<p><b><u>Error class 1: operation-impending Error</u></b>                      The Software cannot be used as a whole or its use is unreasonably and considerably limited.</p>	4 hours
<p><b><u>Error class 2: non-critical operation Error</u></b>                      Important Software functionalities cannot be used and that leads to a more than insignificant limitation of the contractual use.</p>	2 working days
<p><b><u>Error class 3: Other Error</u></b>                      All other Errors.</p>	5 working days

*Error classes*

### 3.3 Problem and error handling

If the Principal reports an Error, the Contractor starts to examine and to handle the reported Error within the Reaction Time. The Error handling includes the identification of the possible cause of the Error, the Error diagnosis and services to support the Error correction, for example delivery of Hotfixes, Workarounds, Updates, Upgrades or new Versions following consultation with the Principal.

*Problem and error handling*

If not otherwise agreed, the Error handling is made by Remote Access Service or via Internet-Access (SSH, RDP) to the Software. On-site services are subject to prior express (written) agreement and are subject to additional remuneration as a rule.

If the Contractor has access to personal data during his performance of maintenance services, both Contract partners will conclude an agreement covering the protection of personal data.

### 3.4 Delivery of Hotfixes, Updates, Upgrades or Versions of Software

The Contractor shall provide the Principal with the Hotfixes und Updates resulting from the Error handling and with new Upgrades and Versions upon official disclosure by the Contractor. Contractor shall inform the Principal of the disclosure of Updates by e-mail or service portal. Upon request, the Principal receives released software and documentation updates on data carriers from the Contractor via mail. If and to the extent the Contractor provides Principal with software programs or other works possibly protected by Copyright laws during the maintenance, the scope of rights to use shall be subject to the license terms applicable for the Software that is under maintenance.

*Delivery of Hotfixes usw.*

## 4. Third party components

- 4.1. Insofar as the Maintenance Certificate concerns third party components or the listed Software license programs contains third party components, reaction times and maintenance services are based primarily on the terms and conditions set by the manufacturer (Annexe to Maintenance Certificate). The Contractor shall be entitled to assign the provision of maintenance services of third party components to the manufacturer or a sub-contractor.
- 4.2. The Contractor will transfer modified Special Terms and Conditions for Maintenance of third party products of the original equipment manufacturer to the Principal (within six weeks). Termination rights, which are provided by the manufacturer in the event of a significant and disadvantageous change to the conditions, the Contractor grants the Principal the same rights.

*Third party components*

## 5. Principal's duties to cooperate

The maintenance and support services are subject to fulfilment of the following duties to cooperate. Partner shall ensure that the End Users accept and comply with the same duties to cooperate in case Partner is not able to fulfil these duties for himself/on his own.

- 5.1. The Software must be used in accordance with the instructions, documentation and information delivered with the Software and in the respectively current Version if not expressly agreed otherwise.
- 5.2. Hotfixes, Updates, Upgrades, Workarounds or new Versions provided by the Contractor shall be applied/installed immediately.
- 5.3. Principal shall ensure regular software and data back-ups, and Principal shall carry out and store complete data back-ups of all system and application data immediately before maintenance measures such as installations or other interventions so that the restoration of these data is possible at any time.
- 5.4. Error Messages shall be made by qualified staff only. They shall be documented (Traces, Logfiles) and described as detailed as possible. Before notification of an Error Message, Principal shall verify that the Error results are not from other system components that are not subject to the Software maintenance.
- 5.5. Principal shall designate one employee who is available as Contractor's contact person for questions that may arise during the maintenance and who is authorised to make statements or take measures immediately (for example test run, applying Hotfixes, Updates or Upgrades).
- 5.6. Principal shall provide the Contractor with an efficient data technical access to the Software (Internet access with a minimum bandwidth of 2 Mbit/s, recommended 10 Mbit/s, e.g. as VPN or Teamviewer access). Principal authorises the Contractor to perform the maintenance services by way of remote maintenance via remote access and provides Contractor with the necessary technical connection at Principal's cost.
- 5.7. The duties to cooperate shall be fulfilled in a qualified and timely manner. If Principal is in default with duties to cooperate Contractor will be entitled to refuse such maintenance obligations that can't be performed or can only be performed under considerable additional efforts or expenses. Additional efforts resulting from Principal's default shall be subject to Contractor's regular hourly rates.

*Principal's duties to cooperate*

## 6. Exclusions

Contractor is not obligated to perform maintenance services for Errors resulting from

- a) incorrect use or handling, modification, insufficient operating conditions or otherwise resulting from Principal's or a third party's negligence provided that this party is not Contractor's vicarious agent, or resulting from third party products which are not subject to the Software maintenance according to the Maintenance Certificate, or
- b) use of the Software in an environment not complying with the applicable Software compatibility matrix (i.e. Hardware/Software/operating system according to the system requirements for each product).

*Exclusions*

## 7. Additional Services (optional, at cost)

The following services are not included, but may be agreed separately upon consultation subject to remuneration at cost:

- Resumption of Software operation, for example upon change of location, or services/efforts caused by change of environment, as well as adaptations of the Software to new operating systems, application server, databases or to release changes of third party components;
- Measures to ensure compatibility with any other software/computer programs that are not subject to the Maintenance Certificate;
- Installation of Hotfixes, Updates, Upgrades, Versions;
- On-site services.

*Additional services*

## 8. Remuneration

- 8.1. Insofar as nothing has been expressly agreed to the contrary in the Maintenance Certificate, lump-sum maintenance fees are due for payment annually in advance. In the case of invoicing on a time and material 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. 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 in the case of a counterclaim from the same contractual relationship. *Maturity*
- 8.2. The Contractor reserves the right to increase maintenance fees upon eight (8) weeks prior notice, for the first time upon expiration of one year from the start of the maintenance term defined in the Maintenance Certificate. In case of an increase exceeding 10 %, the Principal shall be entitled to terminate the Maintenance Certificate upon four (4) weeks prior notice as of the date when the increase would become effective. *Maintenance fees*
- 8.3. Price details in the offer/Maintenance Certificate are net and exclusive of statutory value added tax.
- 8.4. The Contractor shall be entitled to charge efforts resulting from maintenance services requested by the Principal at the hourly rates and prices valid at the time of the performance if it should turn out that the Contractor was not obligated to perform the requested services and the Principal was aware or was negligently not aware of that.
- 8.5. 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.

## 9. Term, Termination

- 9.1. For third party software the "Special Terms and Conditions for Maintenance of third party software" (Annexe to Maintenance Certificate) shall take precedence over other provisions. Unless otherwise specified in this Annexe, the following provisions apply. *Third party software*
- 9.2. The Software Maintenance Contract shall enter into force upon the signature of the Maintenance Certificate by both parties and is concluded for an indefinite period of time. The Contract can be terminated by either party with a 3-month notice period to the end of a calendar year. *Term*
- 9.3. Upon termination of this Agreement, the maintenance for single Software license programs specified in the Maintenance Certificate will be performed in accordance with this Agreement until the end of the maintenance term defined in the Maintenance Certificate. *Termination*
- 9.4. Upon expiration of the minimum maintenance term, the maintenance term agreed for the Software license programs shall be automatically extended for a subsequent period of one year, except if terminated by one of the Parties in accordance with the termination period agreed. In the absence of any agreement to the contrary specified in the "Special Terms and Conditions for Maintenance of third party software" (Annexe to Maintenance Certificate), the termination period shall be three months from the date of expiry of the minimum maintenance term or the then following extended term. The termination shall become effective as of the end of the month in which the minimum maintenance term or the extended term ends.
- 9.5. The termination of all Software license programs specified in the Maintenance Certificate means also the termination of this Maintenance Contract. The Maintenance Contract can be terminated earlier by mutual agreement of both partners for those system components that are sold or are out of service. Termination of maintenance for third party components cannot take place earlier than termination of the Contractor's maintenance contract with the original equipment manufacturer.
- 9.6. All termination notices shall be in writing. The right to terminate without cause for important reasons shall remain unaffected.

## 10. Material defects

- 10.1. Where the Contractor provides the Principal with upgrades, new versions or other services or supplies within the scope of the Contract, the Contractor shall be liable for material defects in the innovations contained therein in accordance with the license terms of the respective procurement contract. *Upgrades, new versions usw.*
- 10.2. Where the software maintenance includes works services (work), the Contractor shall be liable for material defects in the works in accordance with the following sections. *Work services*
- 10.3. 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 *Features according to statement of work*

that the work essentially corresponds to the statement of work. A guarantee must be expressly described as such in writing.

- 10.4. 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*
- 10.5. 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*
- 10.6. 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*
- 10.7. 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.
- 10.8. 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.
- 10.9. 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. *Principal's rights*
- 10.10. In case of claims for damages, Clause 12 shall apply mutatis mutandis.

## 11. Defects in title

- 11.1. Where the Contractor provides the Principal with upgrades, new versions or other services or supplies within the scope of the Contract, the Contractor shall be liable for defects in title in the innovations contained therein in accordance with the license terms of the respective procurement contract. *Upgrades, new versions usw.*
- 11.2. The Contractor shall be liable for defects in title in the maintenance services and works in accordance with the following sections. *Services and works*
- 11.3. 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*
- 11.4. 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*
- 11.5. 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*
- 11.6. Where the removal of defects under Clause 11.5 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 12. *Principal's rights*
- 11.7. In other respects Clauses 10.6 - 10.10 shall apply mutatis mutandis.

## 12. Liability

- 12.1. The Contractor shall be liable for claims for damages or claims for reimbursement of expenses or for reimbursement irrespective of their legal basis as specified below: *Contractor's liability*
- a) The liability of the Contractor for damages that are caused deliberately or roughly negligently by the Contractor or by one of his vicarious agents or legal representatives shall be unlimited.
  - b) In the case of losses arising from injury to life, body or health liability shall be unlimited in its amount, even in cases of a breach of a contractual obligation due to minor negligence on the part of the Contractor or its legal representative or agents.
  - c) This liability shall likewise include damages due to serious misconduct in the organization as well as damages due to lack of guaranteed qualities.
  - d) In the event of a negligent violation of a substantial Contract obligation, the liability of the Contractor shall be limited to the foreseeable damage typically occurring. A substantial Contract obligation in this sense consists of each obligation, which is indispensable for enabling the duly fulfilment of the Contract obligations and on whose observance the Principal relies or may reasonably rely. This applies in particular to the Contractor's obligation to produce a piece of work in accordance with the Contract. The parties agree that the foreseeable, typically occurring damage will not exceed 50.000 EUR or the annual maintenance fees payable in the year where the damage occurred, whichever is higher.
  - e) In the event of product liability, the Contractor shall be liable in accordance with the German Product Liability Act.
- 12.2. Each further liability of the Contractor for damage compensation, in particular liability without fault, shall be excluded. *Liability without fault*
- 12.3. If a damage is due both to the Contractor and the Principal, the contributory negligence of the Principal must be taken into account. *Contributory negligence of the Principal*
- 12.4. The Principal is responsible for regular backup of his data. If data loss is caused by the Contractor, the Contractor shall only be liable for the costs of copying the data for the backup copies and for restoring the data that also would have been lost had the backup of the data been successful. *Data loss*

## 13. Confidentiality, data protection

- 13.1. 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 relationships. *Confidentiality*
- 13.2. 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*
- 13.3. The Contractor is entitled to collect, process or use personal data (that is) if necessary for the performance of the Contract (for example address, contact person) within the scope of the purpose of the Contract. Where the terms and conditions of the supplier or maintenance provider demand information about details such as turnover achieved including individual customer data, the Principal shall authorise the Contractor to process these data. The Principal confirms to fulfil the legal requirements as may be necessary for such use and process of the data by the Contractor.

## 14. Export provision

- 14.1. 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*
- 14.2. 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*
- 14.3. 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*

## 15. Final provisions

- 15.1. 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*
- 15.2. 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*
- 15.3. 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*
- 15.4. The place of jurisdiction with respect to merchants, public legal entities or public special is Frankfurt am Main. *Place of jurisdiction*
- 15.5. 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*