

Software Maintenance Agreement

Quality First Software GmbH

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1. Contractual Basis

1.1 Preamble

Quality First Software GmbH (QFS) is a company developing and distributing software designed to help in testing and thus enhancing other software.

This Agreement ~~regulates~~ governs the support and maintenance for the products licensed by the customer. ~~Any QFS hereby explicitly object to any counter-confirmation or general terms confirmations referring to the General Terms and conditions~~ Conditions of business of contractual ~~parties~~ partners are hereby explicitly ~~objected to partners~~. The foregoing shall also ~~apply~~ be applicable if ~~the submission of offers~~ submittal or acceptance of offers by contractual ~~parties~~ partners is made ~~making reference~~ subject to the prior ~~ranking~~ applicability of ~~the their own general terms~~ General Terms and ~~conditions~~ Conditions of ~~business~~ Business.

1.2 Assignment of Rights and Obligations

QFS may transfer any of the rights and obligations under this Agreement to third parties at any time and is entitled to use agents for ~~fulfilment~~ fulfillment of QFS' contractual obligations.

2. Content of Services

2.1 Support and Maintenance Services

QFS shall provide the following support and maintenance services for the products licensed by the customer:

- Provision of known error corrections by delivery of available patches via electronic communication and for download via the Internet (www.qfs.de).
- Provision of available minor updates (bundling of several error corrections in one version) for download via the Internet (www.qfs.de).
- Provision of available medium upgrades (version with additional / enhanced functions) for download via the Internet (www.qfs.de).
- Provision of available major upgrades (version with substantially enhanced volume of functions).
- Information via electronic communication (email) when new minor/medium/major updates upgrades are available.

The support and maintenance services listed in this clause 2.1 only comprise the products licensed by the customer, but not any new products of the same product family.

The granting of rights of use and the delivery of the relevant license files for all minor ~~and~~ /medium ~~and~~ /major updates /upgrades shall be limited to the number and type of products, as well as the terms of use thereof, for which this Agreement has been concluded.

2.2 Telephone Support

For the term of this Agreement, QFS shall provide telephone support in the following manner: Queries for specific technical problems and failures are possible at any time. For this purpose, the customer will generally leave a message indicating the exact problem description and a classification in the following priority and error levels:

- Level A: System does not work.

- Level B: System works with limited functions.
- Level C: System basically working. Just errors/problems with specific functions.

QFS ~~ensures the following will show best efforts to provide a qualified response times~~ (via phone or e-mail) ~~within the following time frames:~~

- Level A: Response within the next working day (Monday ~~–~~ Friday, 9 a.m. until 5 p.m. local time).
- Level B: Response within the next working day (Monday ~~–~~ Friday, 9 a.m. until 5 p.m. local time).
- Level C: Response within the working day after next (Monday ~~–~~ Friday, 9 a.m. until 5 p.m. local time).

Exclusively applicable is the local time at the seat of QFS. Exclusively applicable regarding holidays are the legal holidays at the seat of QFS.

2.3 Email Support

For the term of this Agreement, QFS shall provide support via email. The error and priority levels set forth in clause 2.2 above and the response times indicated therein are applicable.

2.4 Subject Matter of Support Services

The subject matter of support services in clauses 2.2 and 2.3 above is the help with installation or operation problems and alleged program errors. Installation services or other support services at the customer's location are not a subject matter of this Maintenance Agreement.

2.5 Service Contract

Due to the complex nature of hardware and software applications, networks and specific configurations with the ~~licensee~~ customer, QFS cannot assume liability for the successful remedy of any error, i.e. despite QFS' best efforts it may occur that errors cannot be rectified in providing the support to the ~~licensee~~ customer. Consequently, all services are provided as a service contract to this effect.

2.6 Payments

~~Any and all support and maintenance services under this Agreement shall be compensated for by means of an annual flat rate. The fees are due for payment annually in advance upon invoicing by QFS.~~

3. Securing of Services

3.1 Customer Cooperation

To guarantee the best level of efficiency, the customer commits ~~itself to describe~~ describing the problems as exactly and detailed as possible. Especially all the questions referring to the failure should be answered as ~~accurate~~ accurately as possible. Only the compliance with this obligation to cooperate as an essential contractual performance will enable the provision of all support services in a timely and due manner.

3.2 Limitation / ~~Exclusion~~ Exclusion of Liability

3.2.1 ~~Customer's claims~~ QFS is liable without contractual

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restrictions in accordance with statutory regulations:

~~- for damages or reimbursement of expenses—irrespective of the legal ground—are excluded unless the damage is caused by a wilful or gross negligent act or based on a breach of cardinal obligations by QFS, its representatives or vicarious agents. Cardinal obligations are material obligations compliance with which makes fulfilment of the contract possible in the first place, especially QFS' obligation to supply the software, including the licensing of rights in the software.~~

~~3.2.2 In case of simple negligence a guarantee provided by QFS, its representatives or its vicarious agents, QFS' liability for:~~
~~- for willful misconduct;~~
~~- for damages are limited to the typically occurring damage.~~

~~3.2.3 The limitation and exclusion of liability according sec. 3.2.1 and 3.2.2 are not applicable in case of claims based on the German Product Liability Act. Additionally, those limitations and exclusions are not applicable based on the fact that QFS has fraudulently concealed a defect;~~

~~- for damages resulting in the arising from injury of to life, the body or health of customer caused by an intentional or negligent breach of obligation by QFS or a duty by QFS or otherwise on the intentional or negligent conduct by a legal representative or a vicarious agent of QFS;~~
~~- for damages other than those listed under indent 4 based on intentional or grossly negligent breach of duty by QFS or otherwise on the intentional or wilful breach of obligation grossly negligent conduct by a legal representative or a vicarious agent of QFS. The limitation or exclusion is also not applicable in case of QFS' deceit regarding defects or where QFS has given a guarantee regarding the quality of a product~~
~~- pursuant to the terms of the German Product Liability Act.~~

~~3.2.4 QFS is entitled to invoke 3.2.2 In cases other than those listed in 3.2.1, QFS' liability for negligent breaches of Cardinal Duties by QFS or by a legal representative or agent of QFS shall be limited to such damage which was typical for this kind of business and foreseeable upon the execution of this Agreement. Cardinal Duties shall mean duties which enable the performance of the Agreement i.e. are precondition of the performance of the Agreement and which the customer may therefore rely on. Typical and foreseeable is a damage which QFS has foreseen as a potential consequence of a breach of duties or - taking into consideration the circumstances QFS was or should have been aware of - QFS should have foreseen.~~

~~3.2.3 In cases other than those listed in 3.2.1 and 3.2.2 the liability of QFS for negligence is excluded.~~

~~3.2.4 The plea of contributory negligence on customer's part. Customer (sec. 254 German Civil Code/BGB) remains unaffected. The customer is especially obliged to make backup copies and to provide sufficient and up to date anti-virus protection. Backup copies have to be made regularly and to an extent that is appropriate when considering the usage and the risks, typically once a day in order to ensure restoration of data with reasonable time and effort. In case of loss of data, QFS' liability is limited to the restoration expenses that would have arisen if backup copies had been made regularly and where anti-virus protection had been in place.~~

3.3 Statute of Limitation

2.5 The statute of foregoing provisions regarding the limitation is

~~a) for claims of repayment due to rescission from contract or reduction of purchase price one year after delivery of the software, however for defects orderly notified no less than three months after notification of rescission from contract or of reduction of purchase price has been given;~~

~~b) for other claims for factual or legal defects of the software one year;~~

~~e) for other of liability apply to all contractual and non-contractual claims for damages or reimbursement of expenses two years, starting from the date Licensee has found out about the relevant facts or should have found out without gross negligence.~~

~~At the latest, the statutes of limitation are applicable when the maximum time given in Sec. 199 German Civil Code has lapsed.~~

~~The statutes of limitation by law are always applicable in case of claims for damages or reimbursement of expenses based on the German Product Liability Act, for damages resulting in the injury of life, the body or health of the Licensee which are caused by a negligent breach of obligation by against QFS or a negligent or wilful breach of obligation by a representative or a vicarious agent regardless of their legal grounds and accordingly to the liability of QFS. These statutes of limitation by law are also applicable in case of QFS' deceit regarding defects or where QFS has given a guarantee regarding the quality of a product to compensate futile expenses.~~

~~QFS' rectification of defects for the software does not inhibit the statutes of limitation nor do these statutes of limitation start anew in case of such rectification.~~

3.3.4 Copyright

~~QFS is shall be entitled to the copyright as well as the any proprietary, utilization and commercial exploitation rights, rights of use and commercialization resulting thereunder thereof to any and all the materials capable of being protected under by copyright, which materials are provided within the frame of support and maintenance services that are made available to the customer under this Agreement. The Any granting of rights is shall be made exclusively in the form agreed upon in the license agreement. Any infringements violations of copyright shall be prosecuted brought before the court by QFS in terms of both under civil and criminal law.~~

4. Performance of the Agreement

4.1 Commencement and End

This Agreement is concluded with the acceptance of the Software Maintenance Agreement by the customer. The base term is one year and commences on the date on which the Agreement is invoiced by QFS.

4.2 Termination with Notice

Termination by the end of the base term is possible by giving three months' notice in writing to take effect by the end of the respective month. In the absence of termination in due time, the Agreement shall be renewed for further one year's

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periods each time. Termination upon the expiration of the base term is possible at any time by giving three months' notice in writing to take effect by the end of the respective month.

4.23 Termination for Good Cause

~~This Agreement can be terminated by QFS. The parties' right to terminate this agreement for good cause if it cannot be reasonably expected to wait until statutory termination of the Agreement remains unaffected. A good cause for QFS is possible due present, especially - but not limited to the fact that~~

~~- if~~

~~- the customer has committed a severe breach of the contractual covenants~~

~~- and the consequences of such breach, especially pecuniary damages, have not been remedied without undue delay and without the need for an explicit request in this respect;~~

~~- or the consequences of the breaches of the Agreement cannot be remedied due to their nature~~

~~- and termination for good cause has been notified no later than within three months of the date on which the party suffering the breach got reliable knowledge thereof.~~

5. General Provisions

5.1 Choice of Law and Venue

This Agreement is exclusively governed by German law. Should German law make reference to foreign jurisdictions, this reference is excluded. The application of the UN Sales Convention is explicitly excluded.

In case the parties are merchants, legal entities under German public law or special assets under German public law, the exclusive venue ~~for both parties~~ shall be QFS' seat of business. The same applies in case one party does not have a legal domicile in Germany. It is ~~in QFS' at QFS'~~ discretion to bring charges forward also at the other party's seat of business in cases stated in this paragraph.

5.2 Written Form

Any modifications of and/or amendments to this Agreement, as well as all other statements of legal import of both parties, shall only take effect if made in writing or simple text without signature (e.g. email, or facsimile). The same applies to modification of this clause; abandoning the formal requirement requires an agreement in writing or simple text without signature.

5.3 Interpretation of the Agreement

If any of the provisions of this Agreement should be or become invalid, ineffective or unenforceable, that will not affect the effectiveness of the remaining provisions. The same applies to ~~omissions in individual provisions and/or parts of these General Terms and Conditions of Business. In such a case the parties shall replace the cancelled or incomplete provision by another, legally effective provision meeting the purpose of the cancelled provision to the largest extent possible, any gaps in individual provisions and/or parts of this Agreement.~~