

License Agreement for the Purchase of Software Quality First Software GmbH

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1. Contractual ~~basis~~ Basis

1.1 Preamble

~~WHEREAS~~, Quality First Software GmbH (QFS) is a company developing and distributing software designed to help in testing and thus enhancing other software. A software product of QFS is the program QF-Test. QF-Test is a test tool for Java-programs with a graphical user interface. ~~QF-Test enables an automated-technical test of applications using this technology based on technologies listed on QFS' website.~~

This Purchase Agreement ~~provides/governs~~ the ~~regulations for making permanent sale of~~ QF-Test ~~available~~. ~~We, QFS~~ hereby explicitly object to any counter-confirmations referring to the General Terms and Conditions of Business of contractual partners (Licensee). The foregoing shall also be applicable if submittal or acceptance of offers by contractual partners is made subject to the prior applicability of their own General Terms and Conditions of Business.

1.2 Exchange ~~agreement~~ Agreement

This Agreement shall be the basis for the exchange of services. However, such exchange shall not create any corporate relationship between QFS and the Licensee.

1.3 Assignment of ~~rights~~ Rights and ~~obligations~~ Obligations

QFS may transfer any of the rights and obligations under this Agreement to third parties at any time. Licensee may not assign or sublicense the rights granted under Section 2 below without prior written approval by QFS.

2. ~~Contents~~ Content of ~~services~~ Services

2.1 Granting of ~~license~~ License

QF-Test is software protected by copyright. QFS is entitled to grant to third parties rights of utilization and commercial exploitation to QF-Test. On the basis of this License Agreement, the Licensee shall be granted a non-exclusive right of utilization unlimited in time. Such right of utilization shall be limited to the actually purchased version, which means new versions must have a new license. Moreover, the right of utilization shall be limited to the number of licenses specified in the respective purchase order and the locations and/or networks mentioned therein.

Simultaneous use of QF-Test shall be limited to the number of licenses specified in the purchase order. The use of QF-Test shall be limited to internal purposes of the Licensee. It must not be passed on to any third parties. ~~In any other respect, the license conditions contained on QFS' website (www.qfs.de) and/or transmitted together with the software shall apply.~~

QFS shall make available a free test version to non-registered Licensees. As a rule, the license granted therefore shall be identical with the license for the full version. However, the use of the test version shall be subject to a time limit and may be limited in other ways at the sole discretion of QFS. Furthermore, there is no obligation to provide any manuals, documentation, updates and/or support for the test version.

2.2 Delivery / Installation

QF-Test shall be exclusively distributed on the Internet as downloads. The Licensee shall have full responsibility for the installation and the functioning of the software on the computers and networks operated by the Licensee. QFS is under no

obligation to provide any installation services. ~~By downloading the software, the Licensee explicitly consents to receiving further information about QF-Test and QFS for promotional purposes, including emails. Such consent can be revoked by the Licensee at any time.~~

2.3 Manuals / Documentation

Any manuals and the entire documentation for QF-Test shall be made available as HTML and/or PDF files in German and English. The Licensee has no entitlement whatsoever to be provided the mentioned documentation as hardcopy.

2.4 Updates

QFS is free to make available free-minor updates (bundling of several error corrections in one version) for QF-Test free of cost at its discretion. The Licensee shall not have any entitlement to such updates. The obligations imposed on QFS by statutory warranty regulations shall not be affected by the foregoing (sub-clause 3.1).

New versions of QF-Test will be made available by QFS at its discretion in the form of medium upgrades (version with additional / enhanced functions) or major upgrades (version with substantially enhanced volume of functions) at the conditions indicated at QFS' then current website.

2.5 Support and Maintenance

Support and Maintenance are not subject to this Agreement and have to be agreed between Licensee and QFS separately. QFS/QFS offers a standard Software Maintenance Agreement will apply unless agreed otherwise between the parties individually to that end.

~~2.6 Payments~~

~~The prices listed on QFS' current website as amended from time to time shall be deemed agreed upon for payment. Payments shall become due on the date on which they are invoiced by QFS.~~

3. ~~Securing the services~~ of Services

3.1 Warranty

~~Licensee must check the Product when delivered to Licensee for perfect quality and quantity within eight working days upon delivery.~~

Any defects found ~~thereby or that are obvious~~ must be notified to QFS in writing within a further period of eight working 30 days after detection. The notice of defects must include a description in as much detail as possible. ~~Defects that cannot be found in properly checking as described above must be notified within eight working days of detection observing the notice requirements.~~

~~In case of breach of the obligations to check and notify, the contractual objects are deemed accepted as far as quality and/or quantity are concerned.~~

In case of defective products, QFS is free to decide whether

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it will remedy the defect or supply a product free of defects. QFS is entitled to circumvent a possible defect if the defect as such can only be removed at a disproportionately high expense, if the use of the product in line with its purpose is only insubstantially impaired and if this is reasonable for the Licensee.

If remedy of defect fails within a reasonable period, or if it proves abortive again after a further reasonable period of grace set by Licensee, or if QFS declares in writing that it relinquishes the remedy of the defect, then Licensee is entitled to the further legal warranty rights, including but not limited to the reduction of the purchase price or the rescission from this license agreement.

~~QFS is entitled to circumvent a possible defect if the defect as such can only be removed at a disproportionately high expense, and if the use of the product in line with its purpose is not substantially impaired.~~

QFS is no longer obligated to provide warranty if changes to the ~~products~~ product or attempts to repair the product have been made by Licensee without ~~the express~~ prior written approval ~~of~~ by QFS. Licensee is entitled, however, to explain and prove that such changes and/or attempts of repair are in no connection with the occurred defect, and do not substantially complicate the analysis as well as the removal of the defect. Exclusion of warranty does not extend to changes to which Licensee is entitled - especially in view of self-help - provided such changes have been done professionally and are documented traceably.

Licensee will support QFS in analyzing and removing the defect, prepare and/or print supporting information on QFS' request, as well as provide further information, if any, to support analysis and removal works, and grant immediate access to the documents revealing further details of the occurrence of the defect.

~~In case the product contains any defects, which were not avoidable due to the existing technical standards at the time of acceptance of this contract and QFS is able to prove this fact in a suitable way, warranty is excluded.~~

3.2 Limitation / Exclusion of Liability

~~3.2.1 Licensee's claims~~ QFS is liable without contractual 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 by QFS, its representatives or its vicarious agents, QFS' liability for a guarantee provided by QFS:~~
~~- for wilful 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 life, the~~

~~body or health of Licensee 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 Licensee 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 Licensee's part (sec. 254 German Civil Code/BGB) remains unaffected.~~ The Licensee 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.

~~3.2.5 The foregoing provisions regarding the limitation of liability apply to all contractual and non-contractual claims for damages against QFS regardless of their legal grounds and accordingly to the liability of QFS to compensate futile expenses.~~

3.3 Statute of Limitation

~~The statute of~~ 3.3.1 Without contractual limitation is

~~a) the statutory provisions apply for~~
a) Licensee's claims of repayment against QFS in case of liability 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;

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

~~against QFS in case of QFS' deceit regarding defects or~~

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~~where QFS has given a guarantee regarding the quality of a product;~~

~~c) for other 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 due to supplier's recourse when the maximum time given in finally delivering to a consumer (Sec. 499479 German Civil Code has lapsed:~~

~~The statutes of limitation by law are always applicable in case of /BGB);~~

~~d) Licensee's claims for damages or reimbursement of expenses based on the German Product Liability Act, for damages:
- based on an intentional or grossly negligent breach of obligation by QFS or an otherwise intentional or grossly negligent conduct of a representative or a vicarious agent of QFS;~~

~~- resulting in the injury of life, the body or health of the Licensee which are caused by an intentional or negligent breach of obligation by QFS or a-an otherwise intentional or negligent or wilful breach of obligation by conduct of a representative or a vicarious agent 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:~~

~~- based on the quality of a product. German Product Liability Act.~~

3.3.2 In cases other than those listed in 3.3.1, the limitation period for claims of the Licensee due to defects of the goods is one year after delivery of the software.

3.3.3 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.

3.4 Copyright

QFS shall be entitled to the copyright as well as any proprietary, utilization and commercial exploitation rights resulting thereof to any and all materials capable of being protected by copyright that are made available to the Licensee in connection with the granting of license. Any granting of rights shall be made exclusively in the form as described in sub-clause 2.1 above. Any violations of copyright shall be brought before the court by QFS both under civil and criminal law.

4. Performance of the Agreement

This Agreement shall take effect on the acceptance of the present License Agreement by the Licensee. A license file limited to two months will be transmitted with the ordered product. Once full payment has been made, a license file unlimited in time will be transmitted.

5. General ~~provisions~~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' sat 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~~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 any gaps in individual provisions and/or parts of ~~these General Terms and Conditions of Business. In such a case, the parties shall by common consent replace such cancelled or incomplete provision by another provision with legal effect coming closest to the purpose of the cancelled provision.~~ this Agreement.