

# Training and Support Services Agreement

## Quality First Software GmbH

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### 1. Contractual 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.

These standard terms and conditions (STC) are applicable to QFS' training for QFS' software and related support services by QFS.

We hereby explicitly object to any counter-confirmations referring to the General Terms and Conditions of Business of contractual partners (Customer). 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.

#### 1.3 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 of QFS' contractual obligations.

### 2. Contents of Performance

#### 2.1 Training by QFS

##### 2.1.1 General

QFS holds special know-how in connection with QFS' software products and passes on this know-how in training classes. QFS offers such training both as open training at QFS and as on-site training at Customer's premises.

For those classes, QFS uses professional trainers which are qualified both in technical and educational respect. A change in the person performing the training or a re-scheduling of classes does not entitle Customer to rescind from the contract or to reduce the fee for such classes as long as the change of the person performing training or re-scheduling does not materially affect the content of those classes.

QFS is not obliged to provide a success in those training classes. Success is especially dependent upon participants' previous knowledge and individual effort. Training by QFS is governed by the service provisions of Sec. 611, following German Civil Code (BGB) unless expressly stated otherwise in these standard terms and conditions.

Additionally, QFS' guidelines regarding training which are displayed on QFS' website ([www.qfs.de](http://www.qfs.de)) apply.

##### 2.1.2 Place of Training

###### 2.1.2.1 Open Training

Open training takes place at the place stated in QFS' offer for such training. QFS reserves the right to change the place on short notice, provided such change is reasonable for the participants.

###### 2.1.2.2 On-site Training

Where individually agreed between QFS and Customer, training can also take place at Customer's premises. In this case, Customer will provide adequate rooms.

##### 2.1.3 Payment

###### 2.1.3.1 Open Training

The standard fee as evidenced by QFS' current price list apply. Those fees are per person, without current VAT. Those fees cover documentation, catering during coffee breaks and a certificate of participation. All additional expenses which may be incurred by the participants in connection with training (especially travelling expenses and additional costs for hotels and for additional food and beverages besides coffee breaks) have to be borne by the participant.

###### 2.1.3.2 On-site Training

On-site training on Customer's premises will take place exclusively for such individual Customer. Fees for such training will be individually negotiated between QFS and Customer. If such fees are not agreed individually between QFS and Customer, QFS' current price list is applicable.

Trainer's or trainers' travelling and hotel expenses will be invoiced separately to Customer provided any such expenses are evidenced by receipts.

###### 2.1.3.3 No Reduction in Case of Participation in Part

A participation only in part does not entitle Customer to reduce the fees for open training or on-site training.

###### 2.1.3.4 Time of Payment

Training fees and fees invoiced on a pro rata basis for cancellation according to sec. 4.2. and 4.3 are payable without deduction within 14 days after QFS has invoiced the amounts. In case of Customer having altered its booking or in case of cancellation, any amount that may have been overpaid by Customer will immediately be repaid by QFS.

#### 2.2 Related Support Services

QFS also offers support services related to training either by phone or on Customer's premises. The extent of this support has to be individually agreed between QFS and Customer. Related support services can range from simple support with respect to QF-Test's functionality and operation of QF-Test up to project oriented creation and application of tests with QF-Test. QFS provides these services with best endeavours. QFS is not obliged to provide a success in rendering support. Related support services by QFS are governed by the service provisions of Sec. 611, following German Civil Code (BGB) unless expressly stated otherwise in these standard terms and conditions.

Fees for related support services are subject to individual agreement.

Fees for related support services are payable without deduction within 14 days after QFS has invoiced the amounts.

### 3. Securing Performance

#### 3.1 Customer's Obligation to Co-Operation in Training

##### 3.1.1 Hardware and Software / Additional Equipment

###### 3.1.1.1 Open Training

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In case training is on QFS' premises, each participant has to bring a laptop containing QF-Test software in a current version. In order to avoid delays during training, participant has to install such software prior to participation. Where necessary, QFS will license an appropriate version of QF-Test for the duration of training.

### 3.1.1.2 On-site Training

In case of on-site training, Customer will provide the necessary software, hardware and additional equipment free of charge. Training will place using the most current version of QF-Test for which Customer has obtained a license. Customer will be responsible that all participants have installed this version of QF-Test on their respective computer for the duration of training. Where necessary, QFS will license an appropriate version of QF-Test for the duration of training.

Should during the time of training arise technical problems with respect to Customer's data processing components of hardware or software, Customer will provide technical assistance on Customer's account. Customer guarantees that at least one member of staff who is familiar with Customer's data processing system is available at all times during the time of training to competently answer queries.

### 3.1.2 Previous Knowledge

Should previous knowledge be necessary to follow open training or on-site training, respectively QFS' offer for such training will point this out. Every participant and Customer, respectively, is responsible that each participant has such previous knowledge.

### 3.2 Obligation of Co-Operation for Related Support Services

It is Customer's obligation to provide the software and hardware necessary for related support services and to ensure full functionality of such.

### 3.3 Limitation/Exclusion of Liability

3.3.1 Customer's claims 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 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.

3.3.2 In case of simple negligence by QFS, its representatives or its vicarious agents, QFS' liability for damages are limited to the typically occurring damage.

3.3.3 The limitation and exclusion of liability according sec. 3.3.1 and 3.3.2 are not applicable in case of claims based on the German Product Liability Act. Additionally, those limitations and exclusions are not applicable for damages resulting in the injury of life, the body or health of Customer caused by a negligent breach of obligation by QFS or a negligent or wilful breach of obligation by a 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.

3.3.4 QFS is entitled to invoke contributory negligence on Customer's part. 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.

### 3.4 Intellectual Property Rights

#### 3.4.1 Rights on the Software

QFS is copyright holder and holder of any resulting rights therefrom such as protective rights, rights of usage and exploitation in any and all materials capable of copyright made available by QFS to Customers and / or participants in connection with training. The software provided by QFS must especially not be taken away or duplicated in full or in part. The same applies in case of QFS' support services related to training.

#### 3.4.2 Rights on Materials

QFS holds any and all intellectual property rights in and to the training materials, especially in view of translation and duplication. The training material must not in any way be modified, copied or passed on in whole or in part without QFS' prior written consent. The same applies to material handed out during related support services by QFS.

## 4. Execution of Agreement

### 4.1 Training

#### 4.1.1 Open Training

The contract for open training is concluded by Customer's registration and QFS' confirmation of registration. These standard terms and conditions and the guidelines regarding training are integral part of QFS' training offer. Registrations will be dealt with in order of receipt by QFS. Deadline for registration lapses one week prior to begin of training.

#### 4.1.2 On-site Training

The contract for on-site training is concluded by Customer's acceptance of QFS' offer. These standard terms and conditions and the guidelines regarding training are integral part of QFS' training offer.

#### 4.1.3 Number of Participants

The minimum number of participants is indicated in QFS' offer for training. Should the minimum number not be reached at the time of the deadline for participation (Sec. 4.1.3), QFS is entitled to cancel the training in accordance with Sec. 4.3.3.

#### 4.1.4 Altered Booking

##### 4.1.4.1 Open Training

Altered booking is free of charge provided notification of such is done by Customer at least 10 days prior to start of the booked open training. Participant having altered its booking and having paid the training fee will receive a voucher entitling Customer to participate in another open training (substitution). The validity of the voucher is one year, starting with the date the originally booked training took

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place.

In case altered booking takes place less than 10 days prior to start of the booked open training, 50% of the original fee will be charged. This 50 % charge can not be used for setting-off with fees incurred for later open training classes.

#### 4.1.4.2 On-site Training

Altered booking in case of on-site training is possible any time. In case Customer will alter booking, Customer will have to reimburse QFS' actual and evidenced expenses (especially cancellation fees for travelling and hotels).

#### 4.1.5 Cancellation

##### 4.1.5.1 Open Training

Should a participant be unable to attend open training, a substitution person designated by participant is allowed to participate at no additional cost. The participant continues to be bound by the contractual obligations entered into vis-à-vis QFS.

In case of cancellation without designation of a substitute at least 10 days prior to start of the booked open training, 50% of the original fees will be charged. In case of cancellation without designation of a substitute within 10 days prior to start of the booked open training, the fee will be payable in full.

##### 4.1.5.2 On-site Training

Cancellation of an on-site training is possible any time. Customer will have reimburse QFS' actual and evidenced expenses (especially cancellation fees for travelling and hotels).

##### 4.1.5.3 Cancellation by QFS

QFS is entitled to cancel training courses in case of reasons beyond QFS' control which would make it impossible for QFS to provide such training courses, especially in case where one or more trainers are unable to perform the services without QFS' fault. The same right applies where the minimum number of participants is not reached at the time of deadline for booking such training. In case of cancellation by QFS, QFS will inform Customers and the participants, respectively, immediately. Any and all fees paid for the training course thus cancelled will be reimbursed. QFS will not pay participant's costs which are related to such cancellation (e.g. cancellation fees for travelling and hotels) provided the reasons for cancellation are beyond QFS' control.

#### 4.2 Related Support Services

The agreement of related support services is concluded by Customer's confirmation of QFS' support offer. The standard terms and conditions contained in this document are part of QFS' offer.

### 5. General provisions

#### 5.1 Choice of law and venue

This Agreement shall be governed exclusively by German law. Should German law make reference to foreign jurisdictions, this reference is excluded. The applicability 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' discretion, to bring charges forward also at the other party's seat of business in cases stated in this paragraph.

#### 5.2 Written form and simple text without signature

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.