

1. Scope

1.1 The parties to the Agreement are Quality First Software GmbH (hereinafter also referred to as "QFS") and the Customer.

QFS is a company developing and distributing software designed to help in testing and thus enhancing other software.

The Agreement governs training as well as support services for the software QF-Test (hereinafter also referred to as "the software" or "QF-Test") provided by QFS in exchange for payment.

QFS expressly objects to any counter-confirmations or general terms and conditions of the Customer. The foregoing shall also apply if the Customer submits or accepts offers by stating that its own general terms and conditions shall be incorporated into the Agreement and prevail over QFS' terms.

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

2. QFS' Services

2.1 Training by QFS

2.1.1 General

QFS holds special know-how in connection with QF-Test 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. Both kinds of training are also available as online training (e.g. by webinar). In case of online training, Customer has to provide the technical requirements for participation at Customer's side (hard- and software, internet and telephone connectivity) and has to bear Customer's costs of telecommunication. Additional technical requirements may be specified on QFS' website (www.qfs.de) or in QFS' training offer. In all other respects the following terms for open training and on-site training apply accordingly.

For those classes, QFS uses professional trainers which are qualified both in technical and educational respect.

QFS shall not be 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 Sections 611 subseq. of the German Civil Code.

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 shall 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 shall 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 shall be applicable.

Trainer's or trainers' travelling and hotel expenses shall 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 shall 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 Section 4.1.4. and 4.1.5 shall be 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 shall 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 execution of tests with QF-Test as well as customization and development services related to 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 Section 611 subseq. of the German Civil Code.

Fees for related support services are subject to individual agreement.

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

3. Securing of Services

3.1 Customer's Obligation to Co-Operation in Training

3.1.1 Hardware and Software / Additional Equipment

3.1.1.1 Open Training

In case training is on QFS' premises, each participant shall 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 shall 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 shall 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 shall 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 Customer's Obligation of Co-Operation for Related Support Services

3.2.1 General Obligations

It is the Customer's obligation to take reasonable precautions in the event that a QFS software product does not work properly in whole or in part (e.g. by data backup, fault diagnosis, regular checking of the results). In the absence of an express written notice in individual cases, all persons employed by QFS may assume that the Customer has made backups of all data with which they may come into contact.

It is the Customer's obligation back up his data in accordance with the state of the art, at intervals appropriate to the application, so that he can restore the data with reasonable effort, and to take appropriate technical and organizational measures to protect against malware.

3.2.2 Special Cooperation Services Provided by the Customer for Support Services

It is the Customer's obligation to provide the hardware and software components required for consulting and to ensure their functionality.

3.3 Limitation / Exclusion of Liability

3.3.1 QFS is liable without contractual restrictions in accordance with statutory regulations:

- a) in cases of willful misconduct;
- b) for damages insofar as these are based on the absence of a quality of QF-Test, for which QFS has assumed a guarantee, or on the fact that QFS fraudulently concealed a defect of QF-Test;
- c) for damages arising from injury to life, body or health caused by an intentional or negligent breach of duty by QFS or otherwise on the intentional or negligent conduct by a legal representative or a vicarious agent of QFS;

d) for damages other than those listed under letter c) based on intentional or grossly negligent breach of duty by QFS or otherwise on the intentional or grossly negligent conduct by a legal representative or a vicarious agent of QFS;

e) pursuant to the terms of the German Product Liability Act, the EU General Data Protection Regulation and the German Data Protection Act.

3.3.2 In cases other than those listed in 3.3.1, 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 the 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.

3.3.3 In cases other than those listed in 3.3.1 and 3.3.2 the liability of QFS for negligence shall be excluded.

3.2.4 The plea of contributory negligence (Section 254 of the German Civil Code) shall remain unaffected.

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.

3.4 Intellectual Property Rights

3.4.1 Rights on the Software and Other Protectable Materials and Services

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, including QF-Test, made available by QFS to Customers and / or participants in connection with training. The software provided by QFS may only be used within the scope of the training. Any use beyond this requires the written consent of QFS, in particular the permanent or temporary reproduction, in whole or in part, the editing and decompilation, any form of distribution as well as the public distribution including the making available to the public of the software or of reproductions. The same shall apply to support services provided by QFS.

In the event that protectable work results are achieved by QFS within the scope of agreed adaptation and development services, e.g. copyright-protected work such as computer programs within the meaning of § 69 a UrhG (German Copyright Act), the resulting property rights, rights of use and exploitation shall belong exclusively to QFS. QFS shall grant the customer simple rights of use to these adaptations and development services to the extent (in terms of space, time and content) that the customer has obtained rights of use to QF-Test in accordance with the purchase, rental or other usage agreement concluded between QFS and the customer.

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 shall apply to material handed out during related support services by QFS.

4. Performance of the Agreement

4.1 Training

4.1.1 Open Training

The Agreement for open training by QFS is concluded by Customer's effective registration and QFS' confirmation of registration. The Terms for Training and Support Services Agreement shall be integral part of QFS' training offer. Registrations shall 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 Agreement for on-site training is concluded by customer's acceptance of QFS' offer. The Terms for Training and Support Services Agreement shall be 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 (Section 4.1.1), QFS is entitled to cancel the training in accordance with Section 4.1.5.3.

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 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 may 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

The Customer may cancel any on-site training any time. However, the Customer shall reimburse QFS' actual and evidenced expenses (in particular but not limited to cancellation fees for travelling and hotels).

4.1.5.3 Cancellation by QFS

QFS shall be 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 shall apply 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 shall inform the Customer and the participants, respectively, immediately. Any and all fees paid for the training course thus cancelled shall be reimbursed. QFS shall not be obliged to pay Customer's resp. participant's costs which are related to such cancellation (e.g. cancellation fees for travelling and hotels) provided that the reasons for cancellation are beyond QFS' control.

4.2 Related Support Services

Related support services are provided on the basis of the Terms for Training and Support Services. The Terms for Training and Support Services shall be an integral part of QFS's offer.

5. General Provisions

5.1 Choice of law and venue

5.1.1 The Agreement shall be exclusively governed by German law to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG) and to the exclusion of the rules of private international law.

5.1.2 The exclusive place of jurisdiction for all disputes arising out of or in connection with the Agreement between QFS and a Customer who is a merchant, a legal entity under public law or a special fund under public law shall, at QFS's discretion, be the respective registered office of QFS or the respective registered office of the Customer. Notwithstanding the first sentence, the exclusive place of jurisdiction for disputes within the meaning of the first sentence shall be the respective registered office of QFS in the event of actions brought by the Customer within the meaning of the first sentence against QFS. If the Customer is neither a merchant nor a legal entity under public law nor a special fund under public law and if he also has no general place of jurisdiction in Germany, the exclusive place of jurisdiction for disputes within the meaning of sentence 1 shall also be the respective registered office of QFS. Mandatory statutory provisions on exclusive places of jurisdiction including Section 689 para. 2 of the German Code of Civil Procedure shall remain unaffected by sentences 1 to 3.

5.2 Written Form and Text Form

Any modifications of and/or amendments to the Agreement shall only take effect if made in writing or simple text without signature (e.g. email). The same applies to modification of this clause; abandoning the formal requirement requires an agreement in writing or simple text without signature. Deviating individual agreements shall prevail. Legally relevant declarations and notifications which the Customer makes to QFS after conclusion of the Agreement in relation to the Agreement must also be made in writing or in text form in order to be effective.

5.3 Interpretation of the Agreement

If any of the provisions of the Agreement should be or become invalid, ineffective or unenforceable, it shall not affect the effectiveness of the remaining provisions. The same shall apply to any gaps in individual provisions and/or parts of the Agreement.