

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.

Subject of the Agreement is QFS's paid services relating to the maintenance (Section 2.1) and the support (Section 2.2) for the products licensed by the Customer.

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 fulfillment of QFS' contractual obligations.

2. QFS' Services

2.1 Maintenance Services

QFS shall provide the following maintenance services for the products licensed by the Customer by providing new program versions:

- 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 when new program versions (i.e. minor updates as well as medium or major upgrades) are available.

The support and maintenance services listed in this Section 2.1 only comprise the products licensed by the Customer, but not any new products of the same product family. QFS is entitled to provide the new program versions within the standard release stream of its products at its own discretion.

The granting of rights of use and the delivery of the relevant license files for all new program versions shall be limited to the number and type of products, as well as the terms of use thereof, for which the Agreement has been concluded. The Customer receives the rights of use to the respective new program version to the extent that he has received them on the basis of the license agreement for the version licensed for the first time.

Claims of the Customer arising from a license agreement due to a defect of a licensed product are neither excluded nor limited by the claim to the provision of maintenance services.

2.2 Support Services

2.2.1 Telephone Support

For the term of the Agreement, QFS shall provide telephone support for the products licensed by the Customer within the agreed support times in the following manner:

Queries from the Customer for specific technical problems and failures are possible at any time. A prerequisite for QFS services is that the Customer has left a telephone notification with QFS, which contains a precise description of the problem and a categorization 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.

A qualified response from QFS (via phone or e-mail) will be provided within the following support times:

- 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.

2.2.2 Email Support

For the term of the Agreement, QFS shall provide support via email for the products licensed by the Customer within the agreed support times. The error and priority levels set forth in Section 2.2.1 above and the response times indicated therein are applicable.

2.2.3 Subject Matter of Support Services

The subject matter of support services in Sections 2.2.1 and 2.2.2 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 the Agreement.

Due to the complex nature of hardware and software applications, networks and specific configurations with the 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 Customer.

Claims of the Customer arising from a license agreement due to a defect of a licensed product are neither excluded nor limited by the claim to the provision of support services.

3. Warranty, Liability, Copyright

3.1 Rights of the Customer in Case of Defects of New Program Versions (Maintenance Services According to Section 2.1)

3.1.1 The Customer is entitled to rights due to a defect in new program versions in accordance with the legal provisions of the law on sales unless otherwise agreed.

3.1.2 In the event of a material defect of a new program version, QFS is initially obliged and entitled to repair (i.e. eliminate the defect) or replace (i.e. provide a new defect-free program version) at its discretion, which QFS will determine within reasonable period of time. The remedy of the defect may also consist in QFS showing the Customer contractual and reasonable possibilities to avoid the effects of the defect, insofar as the defect itself can only be remedied with disproportionate effort and the intended use of the respective software product, for which the new program version was provided, is thereby only insignificantly impaired.

3.1.3 In the event of a defect in title of a new program version, QFS shall be entitled and obliged, at its discretion, which QFS will determine within a reasonable period of time, to first remedy the defect by providing a legally non-contestable possibility of use of the new program version or of a replaced or modified equivalent new program version. The Customer shall adopt the new program version if the contractual scope of functions of the software product for which the new program version is provided is maintained and the adoption is reasonable.

3.1.4 If subsequent performance pursuant to Section 3.1.1 or Section 3.1.2 has finally failed, or if a reasonable period to be set by the Customer for this purpose has expired unsuccessfully twice due to the same defect, or if the setting of such a period is dispensable under the statutory provisions, the Customer may, in accordance with the statutory provisions, terminate the Agreement extraordinarily or reduce the remuneration appropriately. The object of the possible reduction right is the remuneration owed within the framework of the Agreement.

3.1.5 QFS's liability for damages and futile expenses is limited in accordance with Section 3.3.

3.1.6 Obligations of the Customer:

a) It is the Customer's obligation to inform himself about the essential functional features of QFS's software products and their technical requirements. He bears the risk of whether the respective QFS software product meets his wishes and requirements. In the event of doubt, he may seek advice from QFS employees or expert third parties before concluding the Agreement.

b) It is the Customer's obligation to create and maintain the necessary system requirements for the use of QFS software products in his area of responsibility at his own expense, in particular to provide the necessary hardware, third-party software and internet connection.

c) It is the Customer's obligation to take reasonable precautions in the event that a QFS software product does not function 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 and providing services on behalf of QFS to the Customer may assume that the Customer has made backups of all data with which they may come into contact.

d) It is the Customer's obligation to 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.

e) It is the Customer's obligation to use QFS software products in accordance with the applicable current manuals or documentation.

f) It is the Customer's obligation to download and install new program versions for the purpose of remedying any defects after information by QFS, unless this is neither possible nor reasonable for the Customer.

g) It is the Customer's obligation not to make or have made changes and/or repair attempts on software products of QFS without the prior written consent of QFS, unless the Customer is entitled by law to make changes to the respective software product of QFS.

h) It is the Customer's obligation to state in his notice of defect a description of the defect in question which is as detailed as possible and, in particular, to state the work steps which led to the occurrence of the defect, its effects and the appearance of the defect.

i) It is the Customer's obligation to support QFS in identifying and remedying defects, to provide or print out help information at QFS's request and to support error analysis and remedial work by providing any further information as well as to provide immediate access to the documents from which the detailed circumstances of the occurrence of the defect arise.

3.2 Customer's Rights in the Event of Non-Contractual Provision of Support Services (Section 2.2)

3.2.1 The Customer shall be entitled to rights in the event of the provision of support services not in accordance with the Agreement in accordance with the statutory provisions of the law on sales, unless otherwise agreed upon.

3.2.2 QFS's liability for compensation for damages and futile expenses is limited in accordance with Section 3.3.

3.2.3 Responsibilities of the Customer:

a) Section 3.1.6 shall apply mutatis mutandis.
b) To reach the best level of efficiency, the Customer commits to describing the problems as exactly and detailed as possible. Especially all the questions referring to the failure should be answered as accurately as possible. Only if the Customer fulfils these obligations as essential contractual obligations, QFS is able to provide its services timely and properly as far as they depend on the provision of the respective obligation of the Customer.

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 a new program version for which QFS has assumed

a guarantee, or on the fact that QFS fraudulently concealed a defect of a new program version;

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 Section 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 Section 3.3.1 and 3.3.2 the liability of QFS for negligence shall be excluded.

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

3.3.5 The foregoing provisions regarding the limitation of liability shall 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 Copyright

QFS shall be entitled to the copyright as well as any proprietary, use and commercial exploitation rights resulting thereof to any and all materials capable of being protected by copyright that are made available to the Customer under the Agreement. Any granting of rights shall be made exclusively in the form agreed upon in the applicable license agreement.

4. Performance of the Agreement

4.1 Commencement

The initial term of the Agreement is one year. It commences on the day the first invoice for services under the Agreement has been issued by QFS.

4.2 Termination with Notice

Each party may terminate the Agreement with effect from the end of the initial term by observing a notice period of three months to the end of the respective month.

In the absence of termination in due form and time, the Agreement shall be renewed for further one year's periods each time.

After expiry of the initial term, each party may terminate the Agreement at any time to take effect by the end of the month by giving three months' notice.

4.3 Termination for Good Cause

The parties' right to terminate the Agreement for good cause shall remain unaffected Unless otherwise agreed, the statutory provisions (Section 314 of the German Civil Code) shall apply.

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 sentence 1 shall be the respective registered office of QFS in the event of actions brought by a Customer within the meaning of sentence 1 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, or facsimile). The same applies to modification of this Section; 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.