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### Section 1 Subject of the Contract

1. Q-DAS<sup>®</sup> has developed software programs that are marketed under the labels **Q-DAS<sup>®</sup>**, **qs-STAT<sup>®</sup>**, **procella<sup>®</sup> My.SPC<sup>®</sup>** and **destra<sup>®</sup>**; these programs are hereinafter referred to as software (product). The Contract partner has learned and tested the functions of the software and found them suitable for his purposes.
2. The following conditions apply between Q-DAS<sup>®</sup> and its Contract partner for the transfer of rights of use to finished software products (hereinafter "software") unless agreed otherwise in writing. On signing the Contract, the Contract partner acquires the non-exclusive, non-transferable and indefinite right to use the software on one (1) individual computer and in one (1) production installation and there in one (1) client (single licence). The software may only be used one computer at any time.
3. If the Contract partner acquires a multiple licence for the software, the number of copies in use must be the same as the number of licences acquired. The software is "in use" on a computer if it is uploaded into the intermediate memory (i.e. RAM) or is stored in a permanent memory (e.g. a hard disk, CD-ROM or other memory device) of this computer. If the likely number of users of the software exceeds the number of licences acquired, reasonable mechanisms or processes must be available to make sure that the number of persons using the software at the same time does not exceed the number of licences. Special forms of multiple use are the works or area licence, which must be agreed separately in each case.
4. The Contract partner receives the software via transfer of a copy of the storage medium on which the software is stored or by means of remote data transmission and also the documentation; if the storage medium and documentation are transferred physically, the Contract partner only acquires title to these but not the title or rights to the software and documentation itself; Q-DAS<sup>®</sup> has the exclusive rights to the software and documentation that is the subject of the Contract irrespective of the form in which they are supplied.
5. The Contract partner is not entitled to make copies of the software and the documentation provided. Nor may he use the software or parts thereof for the purposes of third parties or allow third parties sight of the software or documentation without the consent of Q-DAS<sup>®</sup>.

### Section 2 Service content

1. The right to use the software includes the Contract partner's claim to supply the software and transfer the documentation (user handbook, in electronic form if necessary).
2. Q-DAS<sup>®</sup> transfers the software in installable form together with installation instructions. The Contract partner ensures that the system environment defined by Q-DAS<sup>®</sup>, on which the Q-DAS<sup>®</sup> software can run, is available.
3. If introduction support by Q-DAS<sup>®</sup> is necessary, this, and the training of the Contract partner's employees, must be requested separately. Q-DAS<sup>®</sup> recommends that the Contract partner signs a software maintenance agreement in order to be able to utilise the advantages of the further development of the software.
4. Q-DAS<sup>®</sup> has the right to integrate special developments commissioned by the Contract partner after their implementation into the standard range of the Q-DAS<sup>®</sup> software, in order to make this development available to other users of the software. The Contract partner has no right to any claims whatsoever, financial or otherwise, resulting from those special developments.

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### **Section 3 Purchase price – Payment – Retention of title**

1. Q-DAS<sup>®</sup> invoices the agreed purchase price on delivery; the price is payable immediately.
2. Payments must be made to one of the accounts of Q-DAS<sup>®</sup> free of charge. If the Contract partner is in arrears with his payment obligations, Q-DAS<sup>®</sup> is entitled to charge interest at the rate of 8 percentage points above the base interest rate of the European Central Bank for the portion of his claims in arrears.
3. Bills and cheques are only accepted for the sake of performance; charges for bills and cheques, discount charges, etc., are debited to the Contract partner; payment is only made when the bill or cheque is redeemed and the counter-value is finally credited to the account of Q-DAS<sup>®</sup>.
4. The Contract partners have the mutual right of retention and offset only if the claim is based on this Contract (counter-claims or offset to claims) and the counter-value or offset to claims value are undisputed or legally established.
5. Q-DAS<sup>®</sup> reserves title to the supplies if they are movables (data carriers, documentation, etc.) until all current and future claims of Q-DAS<sup>®</sup> have been paid, including all secondary claims arising from this Contract. The retention of title of Q-DAS<sup>®</sup> lapses when these claims are settled in full.
6. If the Contract partner has not fulfilled his payment obligations to Q-DAS<sup>®</sup> after a delay has occurred and an extension has been granted – with reference to the consequences described in more detail below – he loses the right to use the subject of the Contract (Section 1); he must cease its use after the extension expires and surrender all data carriers, including the back-up or saved copies and the documentation, to Q-DAS<sup>®</sup>. The payment claim of Q-DAS<sup>®</sup> is not affected, claiming of the rights governed by this paragraph by Q-DAS<sup>®</sup> is not deemed to be withdrawal from the Contract. If the Contract partner fulfils his payment obligations later, including interest and costs incurred, his right of use governed by Section 1 is restored. The items surrendered are returned to him, but he must pay Q-DAS<sup>®</sup> the costs likely to be incurred through the reactivation in cash in advance.
7. The arrangements of the preceding paragraph 6 apply accordingly if insolvency proceedings are opened in respect of the Contract partner's assets or an enforcement action has been made against him without success, bills or cheques issued by him are not redeemed or he has sworn an affidavit.

### **Section 4 Use entitlement**

The Contract partner is only entitled to use the software that is the subject of the Contract if the agreed payment (purchase price) for this, including any interest and costs incurred, has been paid in full. Until that time, the right of use granted with the Contract is subject to a suspensory condition.

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## Section 5 Warranty claims

1. Q-DAS<sup>®</sup> supplies the software at the development level according to the version number and the resultant scope of supply and the corresponding functions according to the State of the Art. The Contract partner confirms that he is aware that having regard to the present state of software science and technology, it is not possible to make software one hundred per cent free from defects.
2. The Contract partner knows the software and its capability. The software has been developed taking into account scientific care and recognised rules of the Art.
3. The guarantee period is two years and starts with the transfer / sending of the software and corresponding documentation or the downloading of the software by the Contract partner.
4. Within the guarantee period, Q-DAS<sup>®</sup> will remedy any defects found within a reasonable period or provide a replacement. As part of the guarantee, any travel costs and expenses incurred because the software was taken to a place after delivery other than the place to which delivery was made according to the Contract partner's instructions, are paid by the Contract partner.
5. Q-DAS<sup>®</sup> is entitled to refuse to remedy defects if this requires disproportionate effort. If the improvement or the replacement delivery fails more than twice, the Contract partner may, at his discretion, require Q-DAS<sup>®</sup> to reduce the payment or to cancel the contract.
6. Complaints of the Contract partner with regard to obvious defects must be remedied immediately, but within fourteen days at the latest after Q-DAS<sup>®</sup> has been notified of the defect in writing. Receipt of the written complaint by Q-DAS<sup>®</sup> determines the timeliness of the notification.
7. Intervention in the software or its components by the Contract partner results in the lapsing of claims on account of defects.

## Section 6 Liability

1. If, in this Contract, certain properties have been expressly guaranteed in writing, Q-DAS<sup>®</sup> is liable for the absence of these promised properties. Q-DAS<sup>®</sup> is only liable for the consequential damage of defects insofar as it is covered by the purpose of the above-mentioned property guarantee. The liability in this respect is limited to typical foreseeable damage, liability for atypical unforeseeable damage is excluded.
2. Q-DAS<sup>®</sup> is only liable for incapacity if essential contractual obligations are infringed. The liability in this respect is limited to typical, foreseeable damage, liability for atypical unforeseeable damage is excluded.
3. For claims arising from delay and impossibility, Q-DAS<sup>®</sup> is liable, in terms of reason and amount, without limitation if its legal representatives or managers are guilty of wilful intent or gross negligence. Also, in terms of reason, Q-DAS<sup>®</sup> is only liable for claims arising from delay and impossibility in the event of a culpable infringement of essential contractual obligations; outside essential contractual obligations, it is only liable in terms of reason for gross culpability of simple agents unless Q-DAS<sup>®</sup> exempt itself by virtue of commercial usage. In the cases of Section 6 para. 4, sentence 2, Q-DAS<sup>®</sup> is liable, in terms of amount, only for compensation for typical, foreseeable damage; however, in these cases, the compensation claim is limited to the amount that the insurer of Q-DAS<sup>®</sup> has to pay in respect of this claim.
4. For any claims arising from blame-related liability, Q-DAS<sup>®</sup> is liable for its own wilful intent and its own gross negligence in terms of reason and for the full amount; the same applies

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to legal representatives and management employees. Also, in terms of reason Q-DAS<sup>®</sup> is only liable in the event of a culpable infringement of essential contractual obligations; outside the contractual obligations, in terms of reason, it is also liable for gross negligence of simple agents, unless Q-DAS<sup>®</sup> can exempt itself by virtue of commercial usage; in the cases of Section 6 para. 5, sentence 2, Q-DAS<sup>®</sup> is liable, in terms of amount, only for compensation for typical, foreseeable damage; however, in these cases, the compensation claim is limited to the amount that the insurer of Q-DAS<sup>®</sup> has to pay in respect of this claim.

5. The above liability limitations do not apply to personal injury due to wilful intent, gross negligence and damage based on the lack of guaranteed properties and also to damage arising from the infringement of the copyrights of third parties or claims arising from mandatory legal regulations of product liability law.
6. Q-DAS<sup>®</sup> is not liable beyond the scope described above.
7. Claims of the Contract partner for non-performance and also existing claims for withdrawal, price reduction or compensation on account of a defect lapse, if Q-DAS<sup>®</sup> has not maliciously hidden the defect, two years after the beginning of the guarantee period (Section 5 para. 3). Other claims lapse eighteen months after the beginning of the guarantee period (Section 5 para. 3), if claims did not arise before then; in the latter case, already existing claims will become invalid six month after their emergence.
8. The Contract partner is obliged to back up data continuously, ensuring the restoration at any time of the software and data level that existed before a system crash or other malfunctions. Q-DAS<sup>®</sup> is not liable for damage caused by the fact that the Contract partner has not performed this data back-up, or not correctly, if Q-DAS<sup>®</sup> has clarified the need for and the scope of data back-up.
9. Q-DAS<sup>®</sup> does not accept any guarantee that the use of the product does not interfere with the protective rights or copyrights of third parties or will not cause any damage to third parties. This does not apply in cases where Q-DAS<sup>®</sup> is aware of counter-rights or third party damage, or is not aware as the result of gross negligence. Q-DAS<sup>®</sup> knows of no such rights when the Contract comes into force.

## Section 7 Force majeure

Force majeure events that essentially make the service of Q-DAS<sup>®</sup> difficult or impossible entitle Q-DAS<sup>®</sup> to postpone the performance of the contractual obligations by the period of prevention and by a reasonable lead-time. Strikes and similar circumstances that affect Q-DAS<sup>®</sup> directly or indirectly are equivalent to force majeure.

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### Section 8 Miscellaneous

1. The law of the Federal Republic of Germany applies exclusively. If, for reasons of the Conflict of Laws, the application of a non-German legal system should come into consideration; by signing the Contract incorporating these “General Conditions of Use for Software Products”, the Contract partners agree to the exclusive application of the law of the Federal Republic of Germany.
2. If a clause of these conditions is ineffective or becomes ineffective in the future, the Contract and these conditions otherwise remain effective. The Contract partner and Q-DAS<sup>®</sup> hereby agree an interpretation of the ineffective clause that best reflects the economic aim and purpose of this clause and is effective.
3. The Contract concluded between the Contract partners including these “General Conditions of Use for Software Products”, contains all the agreements that the contract partners have made; additional or different agreements in respect of this Contract, its cancellation or termination and all explanations regarding its validity or an issue must be made in writing to be effective; text transmission, fax, e-mail or similar forms of communication meet the written form requirement.
4. The Contract partner may only assign claims relating to this Contract with the consent of Q-DAS<sup>®</sup>.
5. Order acknowledgements or terms of business of the Contract partners with conditions other than these “General Conditions of Use for Software Products“ are not accepted by Q-DAS<sup>®</sup>. The Contract partner accepts the validity of these conditions on acceptance of the first service of Q-DAS<sup>®</sup> in connection with the signed Contract at the latest.
6. The current “General Conditions of Use for Software Products“ of Q-DAS<sup>®</sup> apply; amendments are published on the website of Q-DAS<sup>®</sup> ([www.q-das.de](http://www.q-das.de)). Q-DAS<sup>®</sup> will inform the Contract partner by E-mail of the changes made to the “General Conditions of Use for Software Products“; these changes become the content of the existing Contract with the Contract partner unless he refutes the validity of the amended “General Conditions of Use for Software Products“ in writing within three weeks after receipt of the E-mail, not later than three months after the publication of the revision / amendment on the Q-DAS<sup>®</sup> website.

### Section 9 Place of Performance – Place of Jurisdiction

1. The place of performance and the place of jurisdiction for all rights and claims arising from this Contract is Weinheim/ Bergstrasse (Germany). This agreement concerning the place of jurisdiction and performance only applies to merchants, bodies corporate according to public law or separate assets according to public law and contract parties who, after signing the Contract, move their domicile or normal place of residence out of the Federal Republic of Germany or their domicile or normal place of residence is not known at the time when the suit is filed.
2. If disputes arise between the parties, the contract partners will try to settle these amicably.