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Section 1 Scope of the Contract

This Contract between Q-DAS[®] GmbH – herein referred to as Q-DAS[®] - and the Distributor covers only the Q-DAS[®] software products/modules that are explicitly specified in the contract document. Program adaptations, training, manuals and other Q-DAS[®] products are outside the scope of this agreement.

Section 2 Purpose of the Contract

The Distributor purchases and sells the software products or modules covered by this agreement under his own name and for his own account. The Distributor is not entitled to represent Q-DAS[®] in legal transactions.


The Distributor has the right to integrate the software in software products of his own and to re-sell it as an integrated piece of software. Any such integration of Q-DAS[®] products must be clearly and indelibly marked in some appropriate manner. The design of the Q-DAS[®] products themselves must not be changed, and the Q-DAS[®] copyright must be fully respected.

Section 3 Cooperation

1. Q-DAS[®] will provide the Distributor with promotion material in adequate quantity (brochures, price lists etc.). This material remains the property of Q-DAS[®] and must be returned after termination of the Contract, unless it has been used up in fulfilment of its intended purpose.
2. Q-DAS[®] will provide the Distributor with a time-limited trial version licensed merely to him for demonstration purposes and for integration of his software. This version has a limited functional range. This version may not be sold on. It can be made available to sub-contractors only with consent of Q-DAS[®].
3. Q-DAS[®] will supply standard versions for single-user licenses to the Distributor for resale. In these versions, Q-DAS[®] will include a fixed entry of the respective end customer's name.
4. If the Distributor buys a full version for his own usage, he is not allowed to sell this version which is licensed especially to him.
5. Q-DAS[®] undertakes to enter into maintenance contracts with any of the Distributor's end customers that demand such a contract, and to do so in accordance with the applicable Q-DAS[®] conditions and prices. The Distributor will strongly advise the end customer to enter into such a maintenance contract. Q-DAS[®] further undertakes to support the Distributor in the accommodation of individual end user wishes, performance of training etc., in accordance with the relevant price list or, alternatively, industry-standard fees.

Section 4 Terms and Conditions for Dealings between Q-DAS[®] and the Distributor


1. In purchasing the Q-DAS[®] products that are within the scope of this Contract, the Distributor will be granted the contractually agreed discount on the list prices valid at the time the order was placed. The current price list has been attached to this Contract.

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2. Claims of Q-DAS[®] are payable immediately on invoice without deduction. Payments must be made to one of the Q-DAS[®] accounts free of charge. If the Contract partner is in arrears with his payment obligations, Q-DAS[®] is entitled to charge interest at the rate 9 percentage points above the relevant base interest rate for the portion of his receivables in arrears.
3. A Contract partner only has a right of retention as defined in § 273 BGB inasmuch as such retention is based on this agreement. The Contract partner may only offset counterclaims against claims of Q-DAS[®] if the counterclaims are undisputed or legally established.
4. Q-DAS[®] reserves title to all delivered items, so far as they are movables (data carriers, documentation etc.), until payment in full for all present and future claims of Q-DAS[®] including all secondary claims arising from this Contract, has been made. The reservation of title of Q-DAS[®] lapses when these claims are settled in full.
5. Q-DAS[®] informs the Contract partner about changes in the price list either by e-mail, fax or by letter. Acceptance of the price change is deemed to be given if the Contract partner has not refuted the amendment within two weeks from receipt of the information in written form or electronically. If the Contract partner protests within the set period, Q-DAS[®] is entitled to terminate the Contract at the end of the current contractual period without having to observe a period of notice.
6. Sales deals which the Distributor has confirmed to the end customer prior to the publication of the new Q-DAS[®] price list and for which Q-DAS[®] has received an order confirmation from the Distributor within one week of the notification of the price change will be subject to the old price list.
7. Multi-user licenses (plant or area licenses etc.) may only be supplied to end customers as multi-user licenses with the specification that was purchased from Q-DAS[®]. Q-DAS[®] enters the end customer's name in the license. Splitting a multi-user license to serve several ultimate purchasers or sites is not permitted. The area of application of a multi-user license must be specified exactly (organizational unit and location). Any deviation requires the agreement of Q-DAS[®]. The Distributor may only provide a multi-user license to an end customer if he has previously advised Q-DAS[®] of the name/company name and address of the end customer and has demonstrated to Q-DAS[®] that the end customer has undertaken not to pass on or resell the multi-user license to any third party without prior approval from Q-DAS[®].

Section 5 Prices and Terms for Dealings between the Distributor and Third Parties

1. The Distributor is free to determine pricing and conditions towards third parties.
2. However, the Distributor is obliged to ensure for each transaction, be it a single- or multi-user license, that there is an effective agreement ensuring compliance with the current version of the "General Conditions of Use for Software Products". Multi-user licenses may only be passed on as such.

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Section 6 Direct Transactions by Q-DAS®

The Contract is not conclusive and does not substantiate any claim of the Distributor to a contractual territory. Q-DAS® is entitled, without limitation, to sell its software products itself or through third parties. The Distributor is allowed to sell software products competing with Q-DAS® products.

Section 7 Life of the Contract / Termination


1. The Contract is signed for an indefinite period. It can be terminated at the end of each calendar year subject to three months' notice.
2. The right of each party to extraordinary termination, including without notice, for significant reasons, is not affected. Significant reasons would be in particular, but not exclusively:
 - a. a change in the ownership and/or management and corporate conditions of the Contract partner which were not agreed with Q-DAS® beforehand.
 - b. an infringement by the Distributor of the obligations covered by Sections 3 to 5.
 - c. the resale of the software version supplied to the Distributor for test and demonstration purposes (cf. Section 3, para. 2).
 - d. lack of success of the Distributor's activities; an irrefutable presumption of a lack of success is made if the Distributor is unable to sell a single license over a period of one year.
3. Termination must be served in writing; text transmission, fax, e-mail or similar forms of communication satisfy the written form requirement.

Section 8 Contractual Penalty

If the Distributor resells Q-DAS® software falling within the scope of this Contract without putting the end customer under the obligations defined in Section 5, para. 2, or if he passes the software on without sufficient copy protection, or if he fails to comply in some other way with the obligations defined in Sections 3 and 4, the Contract partner hereby undertakes to pay Q-DAS® a contractual penalty of five times the list price of the Q-DAS® software affected by the infringement, the minimum penalty being € 20,000.00. Q-DAS® reserves the right to enforce further claims for damages.


Section 9 Winding up

1. Giving notice and terminating the Contract do not affect individual transactions between Q-DAS® and the Distributor that have taken place under this Contract. Q-DAS® will continue to make deliveries to the Distributor in order to fulfil its delivery duties and to enable the Distributor to conclude business transactions with third parties in the customary manner until such time as the termination of the Contract has come into effect.
2. The Contract partners agree that neither of them is entitled to any indemnity, compensation or other claims in connection with the termination of the Contract. This applies with the exception of claims for damages by a Contract partner, which arise from the other Contract partner having culpably behaved in such a way as to justify termination for cause.

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Section 10 Liability – Limitation

1. In the event of any consequential damages, for whatever legal reason, Q-DAS[®] is only liable in the event of wilful intent or gross negligence, unless the claims result from a slightly negligent infringement of essential contractual obligations. In these cases, the liability is limited to the typical, foreseeable damage and to twice the license fee without VAT at the most. Liability for atypical or unforeseeable damage is excluded.
2. Q-DAS[®] is liable for incapacity only if essential contractual obligations are infringed. The liability in this respect is limited to typical, foreseeable damage and to twice the license fee, without VAT, at the most. Liability for atypical or unforeseeable damage is excluded.
3. For claims arising from delay and impossibility, Q-DAS[®] is liable without limitation in terms of reason and amount if its legal representatives or managers are guilty of wilful intent or gross negligence. Also, in terms of reason, Q-DAS[®] is only liable for claims arising from delay and impossibility in the event of culpable infringement of essential contractual gross negligence of simple agents, unless Q-DAS[®] can exempt itself from this by virtue of commercial usage. In the cases of Section 10, para. 3, sentence 2, Q-DAS[®] is only liable in terms of amount for compensation of the typical foreseeable damage; however, in these cases, the compensation claim is limited to the amount that the insurer of Q-DAS[®] has to pay for this claim; if the insurer has no subrogation obligation, the claim is limited to € 25.000,-. Liability for atypical or unforeseeable damage is excluded.
4. For any claims arising from culpability-based liability, Q-DAS[®] is liable in terms of reason and full amount in the event of its own wilful intent and own gross negligence; the same applies to legal representatives and management employees. Also, in terms of reason, Q-DAS[®] is only liable for culpable infringement of essential contractual obligations, outside essential contractual obligations; it is also liable in terms of reason for gross negligence of simple agents, unless Q-DAS[®] can exempt itself from this by virtue of commercial usage. In the cases of Section 10, para. 4, sentence 2, Q-DAS[®] is only liable in terms of amount for compensation of typical, foreseeable damage; however, in these cases, the compensation claim is limited to the amount that the insurer of Q-DAS[®] has to pay for this claim; if the insurer has no subrogation obligation, the claim is limited to € 25.000,-. Liability for atypical or unforeseeable damage is excluded.
5. The above liability limitations do not apply to personal injury based on wilful intent, gross negligence, and damage based on the absence of guaranteed properties or damage arising from the infringement of the copyrights of third parties or for claims arising from mandatory legal regulations of product liability law.
6. Q-DAS[®] is not liable for damage that could have been avoided by correct data back-up. In this respect, the general conditions for “Data Security” apply in their currently valid version, accessible on www.q-das.de.
7. Q-DAS[®] is not liable beyond the scope described above.
8. Any claims of the Contract partner arising from this agreement, in particular for non-performance or compensation, lapse twelve months after their occurrence.

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Section 11 Miscellaneous

1. Should a clause of the agreement be ineffective or become ineffective in the future, the Contract otherwise remains effective; the Contract partner and Q-DAS[®] hereby agree to an interpretation of the ineffective clause which best reflects the economic aim and purpose of this clause and is effective.
2. This Contract contains all the agreements that the contract partners have made taking into account these "OEM Software License Conditions"; additional or different agreements in respect of this Contract, its cancellation or termination and all declarations referring to its effectiveness or validity must be made in writing to be effective; text transmission, fax, e-mail or similar forms of communication meet the written form requirement.
3. The Contract partner can only assign claims on this Contract with the consent of Q-DAS[®].
4. The Contract partner only has a right of retention or set-off if his claims are based on this Contract (counterclaim or set-off claim). The Contract partner may only offset counterclaims or set-off claims against claims of Q-DAS[®] if the counterclaims are undisputed or legally established.
5. These "OEM Software License Conditions" apply exclusively. 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[®]. The Contract partner accepts the validity of these conditions on acceptance of the first service of Q-DAS[®] in connection with this Contract at the latest.
6. The current "OEM Software License Conditions" of Q-DAS[®] apply; amendments are published on the Q-DAS[®] website (www.q-das.de). Q-DAS[®] will inform the Contract partner about amendments to the "OEM Software License Conditions" either by e-mail, fax or by letter. Changes to the "OEM Software License Conditions" become the content of the existing Contract with the Contract partner unless he refutes the validity of the amended "OEM Software License Conditions" in writing within three weeks after he has been notified about the changes, but three months after the publication of the amended version / changes on the Q-DAS[®] website at the latest.

Section 12 Place of Performance – Place of Jurisdiction and Governing Law

1. If disputes occur between the parties, the Contract partner will try first of all to settle these amicably.
2. The place of performance and jurisdiction for all rights and claims arising from the 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, following signing of the Contract, move their domicile or usual place of residence out of the Federal Republic of Germany or whose domicile or whose normal place of residence is not known at the time when the suit is filed.
3. The law of the Federal Republic of Germany shall apply exclusively. The regulations of the United Nations Convention on Contracts for the International Sale of Goods (CISG) or any other agreements on the unification of international sale or business transaction are not applicable.