

General software license conditions for permanent and temporary software licenses

1 Subject matter of the agreement

- 1.1. The conditions on hand rule the licensing and maintenance of the computer programs distributed by SQS for the license holder's use. They are integral part of every agreement regarding license and maintenance of standard, customized and individual software by SQS (hereinafter referred to as license agreement). Insofar as the respective individual agreement contains different terms, these take precedence over these general conditions, however, only with regard to the respective individual agreement.
- 1.2. Other services such as consulting during selection of computer programs, installation, customizing and/or instruction and training are not part of the license agreement and require express, separate, written agreement between the parties.
- 1.3. In the absence of other agreements the software is delivered in the current version at time of delivery.

2 Obligation to examine and notify

Regarding all deliveries and services by SQS performed while executing the agreement the license holder accepts an obligation to examine and notify pursuant to § 377 of the German Commercial Code (Handels-gesetzbuch, HGB)

3 Rights of use

- 3.1. With the signature of both parties to a license agreement SQS grants the license holder a non-exclusive internal right of use for themselves beginning with the start date indicated in the license agreement and for the duration stipulated therein regarding the use of the computer programs listed in the respective license agreement plus associated user documentation (in summary called "software"). With an ordering procedure the start date of the agreement is always set for the respectively last day of the month in which the delivery of the software occurs. The respective right of use is limited to the application on the computer(s)

specified in the respective license agreement(s) (intended computer(s)) at the installation location(s) indicated in the license agreement(s) in accordance with the conditions on hand and the specifications and agreements in the respective license agreement; in the event of deviating and conflicting provisions the specifications and agreements of the license agreement take precedence over the present conditions.

- 3.2. A computer program is always licensed in object code.
- 3.3. The software is licensed to the license holder only for their own operation for the processing of their own data. Use beyond that, e. g. using the software to offer data processing services for third parties, providing the software or parts thereof to third parties against payment or free of charge – even if that is executed on the intended computers of the license holder – , granting authority over the intended computers to third parties (facility management) or the installation of the software at a third party's location (outsourcing) requires express, separate, written agreement.
- 3.4. SQS reserves the exclusive right to modify, translate, process and otherwise alter the software. The license holder is only entitled to perform these actions if they are required for the intended use of the software including defect correction when SQS does not offer defect correction at current market terms or the defect correction offered fails due to the same defect or for a directly connected error. However, any further rights of the license holder in accordance with § 69d subsection 1 of the German Copyright Act (Gesetz über Urheberrecht, UrhG) remain unaffected.
- 3.5. The license holder will not attempt to obtain or decode the source code of the software by means of dis-assembly, decompilation, reverse engineering or other procedures. Should information that is required to establish interoperability neither be freely available from the respective user documentation nor any other way the license holder will, in accordance with § 69e of the German Copyright Act (Gesetz über Urheberrecht, UrhG), give SQS an opportunity to provide the license holder upon request with the respective information within a reasonable period of time. However, any further rights of the license holder in accordance with § 69e remain unaffected.

- 3.6. The license holder is not entitled to a right of sale or any other distribution right on the basis of the present conditions or on the basis of a license agreement.
- 3.7. If SQS provides the license holder with additions (e. g. patches, additions to the user manual) within the context of supplementary performance or maintenance or a new version of the software (e. g. update, upgrade) which replaces the versions of the software provided earlier, then these are subject to the conditions of this agreement.

4 Concurrent user license / company license

- 4.1. In the event of a concurrent user and/or company license stipulated in the license agreement the license holder is entitled to let as many resources access the software at the same time as they purchased licenses.
- 4.2. If the license holder uses the software with a concurrent user and/or company license to a higher degree than indicated in their current order (e. g.: allowing additional users), then this realizes a new agreement regarding continuous use. SQS shall charge the license holder with the fee resulting from the price and condition list in effect at the time of the additional use (additional purchase).
- 4.3. SQS is entitled to perform a system measurement of each installation once per quarter of the calendar year to verify use according to agreement directly on site and/or by way of remote data transmission.
- 4.4. SQS is entitled to set up the software in such a way that every system produces the information and transfers it to SQS. The license holder is obligated to support SQS in accordance with the requirements of SQS. Furthermore, the license holder undertakes to generate a measurement record within 4 weeks insofar as requested by SQS. Only the unmodified tools provided by SQS may be used for measuring.
- 4.5. Alternatively SQS may also perform the system measurement by questioning the license holder. In this case the license holder is required to provide SQS on request to a reasonable extent with written information whether the software is used as stipulated in the agreement. The information is to include all information relevant to the verification of the contractual use, e. g. current number of users, installation locations, used modules, platforms as well as modes and serial number of the computer used.

- 4.6. The license holder will grant SQS access to their books and records as well as hardware and software of the license holder in order to verify contractual use. To this effect, SQS will be granted access to the business premises of the license holder at the usual business hours. SQS will treat all information gained in this context as confidential and only make such information accessible to third parties in so far as it is necessary to protect the rights of SQS. The provisions on data protection will be complied with.

5 User documentation

Depending on availability the license holder is provided with the user documentation pertinent to the respective computer program either in printed form, on CD, or as online documentation. Only one (1) copy of the user documentation is included with the delivery of any one computer program. All further copies are to be purchased separately. As a rule, the user documentation is provided in English unless SQS is generally offering a German version on the market.

6 Terms of payment, taxes and dues

- 6.1. The respectively relevant license fees for the software license are defined in the respective license agreement and are immediately due for payment after the invoice has been issued by SQS.
- 6.2. In the event of permanent licensing of the software the license fees will be invoiced as single payment, subject to differing stipulations in the licence agreement.
- 6.3. If the parties agreed on a temporary software license recurring license fees are to be paid during the entire duration of use. This is subject to deviating stipulations in the license agreement. The respective license fees are based on the respective license agreement.
- 6.4. All price quotations in price lists, offers and license agreements are to be understood plus the respectively applicable VAT.
- 6.5. The license holder is responsible for the payment of all current and future taxes in connection with the software license, namely notwithstanding the tax base or the kind of such taxes including but not limited to all turnover or purchase taxes and all taxes on assets that are raised after delivery.

7 Industrial property rights, confidentiality, reference

- 7.1. All industrial property and exploitation rights to the software listed in the respective license agreement including trademark rights as well as possibly existing patent rights shall exclusively belong to SQS. These rights are neither transferred by these license conditions nor by a license agreement.
- 7.2. The software contains trade secrets of SQS which the license holder will treat as confidential and protect from access by third parties. The license holder will arrange for their employees to follow this confidentiality obligation as well.
- 7.3. The license holder does not violate the confidentiality obligation as per section 7.2 when the respective information
 - (1) has become generally known without violation of the confidentiality obligation stipulated in these conditions or
 - (2) has been known to the license holder without a respective confidentiality obligation before they have been granted access by SQS to software or information regarding the software or
 - (3) has been developed independently by the license holder without violation of the confidentiality obligation stipulated in these conditions or
 - (4) has been disclosed to third parties by the license holder with the express, previous, written consent of an authorized representative of SQS or
 - (5) has been legitimately and without violation of a confidentiality obligation on their part made accessible to the license holder by a third party.
- 7.4. The confidentiality obligation on hand remains valid also after termination of the contractual relationship between the parties.
- 7.5. With conclusion of the agreement SQS is entitled to use the company name and/or trade name as well as the company logo(s) of the licence holder or, if applicable, affiliated companies eligible for license for reference purposes free of charge and without additional approval.

8 Surrender, transfer

- 8.1. Surrender, transfer as well as distribution of the software used by the license holder on the basis of the license agreement and the conditions therein is only permissible after express prior written approval by SQS.
- 8.2. Any legitimate surrender or transfer requires
 - (1) that all license and maintenance fees due at the respective time of surrender or transfer have been paid to SQS.
 - (2) that the license holder surrenders the software to the third party including documentation and deletes all installations of their own, including backup copies, and that the license holder confirms the execution thereof to SQS in writing,
 - (3) that the license holder presents a written statement of the third party in which they undertake with SQS to adhere to the terms of use agreed for the software.
- 8.3. These provisions also apply for permanent software license against one-time remuneration, albeit with the stipulation that SQS may only deny the required approval on substantial grounds.

9 Infringement of industrial property rights

- 9.1. Should the contractual use lead to the effect that third parties file claims regarding infringement of industrial property rights against the license holder the claims of the license holder conform with sections 10 to 13.
- 9.2. The license holder will inform SQS without delay regarding the filing or announcement of such a claim due to maintained violations of industrial property rights, if possible leave all defence and settlement negotiations to SQS and support SQS to required and reasonable extent in legal defence, in particular providing all required information from the area of the license holder at least on request and in due time for the purpose of legal defence.
- 9.3. Without express and written approval by SQS the license holder will not accept the claim of the third party regarding violation of industrial property rights.
- 9.4. To ward of or defend against imminent or claimed violations of industrial property rights SQS will either

- (1) acquire possibly unavailable rights for the license holder so that they can continue the contractual use of the software, or,
- (2) as far as reasonable for the license holder, modify the software in such a way or replace it with a functionally comparable software that a violation of industrial property rights is no longer present, notwithstanding that the contractual application and use of the software is unaffected, or,
- (3) provided that the measures set forth in the previous sections (1) and (2) should not be possible for SQS to such extent as is economically feasible and justifiable, SQS will take back the software. Furthermore, SQS will reimburse the license holder pro rata temporis the license fees paid for this software
 - for permanent software license on the basis of a customary period of use of 5 years,
 - for temporary software license on the basis of the license period stipulated and still remaining after termination of use.

With the return of the software the license holder will, at the discretion of SQS, either return the copies of the respective software listed in the particular license agreement or confirm in writing that they have been destroyed/deleted.

10 Stipulated target condition

- 10.1. Conclusively relevant for the condition of the software delivered by SQS is the specification valid at the time of delivery and available to the license holder prior to conclusion of the agreement. This specification is also described in the user documentation. SQS does not owe any condition of the software beyond this specification. In particular, such an obligation may not be derived from other presentations of the software in public statements or in the advertisement of SQS as well as their employees and/or resellers, unless SQS has confirmed this additional condition explicitly in writing. Insofar as employees of SQS give guarantees prior to agreement conclusion these are only effective when confirmed in writing by the company management of SQS.
- 10.2. Insofar as additional software is surrendered within the context of providing software maintenance services, this software shall demonstrate the condition that is documented in writing in the

additional user documentation provided to the license holder with this software or as supplement to the already previously provided user documentation.

11 Warranty claims

- 11.1. We advise of the fact that it is not possible to develop software in such a way that it is free from defects for all conditions of application. On this qualification SQS warrants that the software is usable in terms of the program description in effect at the time of delivery to the customer and possesses the properties warranted therein. An insignificant limitation of usability shall not be taken into account.
- 11.2. In the event of material defects SQS will initially provide warranty by supplementary performance. To this end SQS will, at their discretion, surrender a new software release to the license holder free of defects or correct the defect; it is also considered defect correction when SQS demonstrates reasonable options to the license holder to avoid the effects of the defect.
- 11.3. In the event of defects of title SQS will initially provide warranty by supplementary performance. To this end SQS will, at their discretion, provide the license holder with a legally irreproachable range of application of the software or of exchanged or modified comparable software.
- 11.4. The license holder is obligated to accept a new software release when the contractual scope of operation remains unchanged and the transfer does not yield significant disadvantages.
- 11.5. Should two attempts at supplementary performance fail the license holder is entitled to set an adequate time limit for defect correction. In this case the license holder has to state explicitly and in writing that, in the event of another failure, they reserve the right to withdraw from the agreement and/or to claim damages.
- 11.6. Should the rectification of defects also fail during the time extension the license holder may withdraw from the agreement or reduce compensation, except in the presence of a significant defect. SQS will pay damages or compensate for futile expenses due to a defect
 - for deliberate intention in full, also for absence of a condition for which SQS accepted a guarantee;

- for gross negligence only in the amount of the foreseeable damage that was supposed to be avoided by the violated obligation;

in other cases: only due to violation of an essential contractual obligation if this jeopardizes the purpose of the agreement. However, always only in the amount of the foreseeable damage. Liability is limited to five times the volume of the licensing fee per claim and may not exceed in total ten times the volume from this agreement;

Furthermore, insofar as SQS is insured against the damages incurred, within the framework of insurance coverage and contingent upon delays due to insurance settlement.

After expiry of the period pursuant sentence 1 SQS may demand that the license holder executes their rights resulting from the expiry of the time limit within two weeks after receiving the request. After expiry of the time limit the option shall pass over to SQS.

- 11.7. If SQS provides services for defect search or correction without being obligated to do so then SQS may demand compensation in accordance with their regular fees. This applies in particular when a defect is not verifiable or not attributable to SQS.
- 11.8. SQS is not liable for defects when the software has been modified without express written permission by SQS. However, the license holder is entitled to demonstrate and substantiate that the modifications are in no way connected to the occurred defect and do not significantly complicate analysis as well as correction of the defect. This arrangement does not imply approval on the part of SQS to such modifications.
- 11.9. The license holder is only entitled to set-off and reduction of the agreed compensation if the claims of the license holder are undisputed or determined by legally binding judicial decision.

12 Warranty claims for temporary license of software

- 12.1. For the liability of SQS for material defects and defects of title in the event of temporary software license the provisions of section 11 apply accordingly.

- 12.2. The parties agree that a termination of the license holder due to refusal to grant use pursuant § 543 German Civil Code (Bürgerliches Gesetzbuch, BGB) is only admissible when the offered correction of the defect fails due to the same defect or for defects in direct connection.

13 Limitation period

- 13.1. In the event of permanent software license:

- (1) The limitation period for claims regarding material defects and defects of title begins with the delivery of the software and is limited to one (1) year, provided that SQS did not fraudulently conceal the defect, gave a guarantee for the condition of the software or is accountable for deliberate intention.
- (2) The following applies for claims regarding material defects or defects of title which are based on the fact that the software maintenance services provided in the context of the separately closed software maintenance agreement are inadequate:
 - (a) If the defect corrections, workarounds and new program version delivered by SQS are inadequate at passing of risk to the license holder, the period of limitation for warranty claims of the license holder in this regard will expire in one (1) year starting with delivery, unless SQS has maliciously concealed the defect, caused it with deliberate intention or gross negligence or has accepted a guarantee for the respective condition.
 - (b) Should SQS violate any of their consulting or support obligations as specified in the software maintenance agreement in the context of hotline support, then the license holder's claims arising from this violation shall be time-barred after one (1) year from the end of the year in which the claim became material and the license holder became aware of the conditions justifying the claim and the identity of the party liable or should become aware without gross negligence. By way of exception the statutory period of limitation applies if SQS is accountable for intent or gross negligence.

13.2. In the event of temporary software license:

- (1) The limitation period for claims regarding material defects and defects of title which are based on the fact that either the products supplied, the user documentation provided and/or the software maintenance services to be provided are inadequate is one (1) year and begins at the end of the year in which the claim occurred and the license holder becomes aware of the conditions justifying the claim and the identity of the party liable or should become aware without gross negligence.
- (2) By way of exception the statutory period of limitation applies if SQS is accountable for intent or gross negligence, has maliciously concealed the defect or warranted the respective property.

13.3. In the event of deliberate intention or gross negligence on the part of SQS, in the event of fraudulent concealment of a defect, in the event of personal injuries or defects of title in terms of § 438 section 1 subsection 1a of the German Civil Code (Bürgerliches Gesetzbuch, BGB) as well as in the event of warranties (§ 444 BGB) the statutory periods of limitation apply, just as in the event of claims in accordance with the Product Liability Act. The limitation period pursuant sentence 1 starts with the time specified in § 199 section 1 BGB. It sets in with expiration of the maximum periods set forth in § 199 sections 3 and 4 BGB at the latest.

14 Liability

- 14.1. SQS is liable for deliberate intention, fraudulent intent, gross negligence, missing of a property guaranteed by SQS as well as damages that arise due to injury of life, body or health in accordance with statutory provisions.
- 14.2. SQS is only liable for gross negligence when a significant contractual obligation (cardinal obligation) or significant secondary obligation is violated or a case of impossibility or delay is present. In this case liability is limited to the typical and foreseeable damage.
- 14.3. If the parties stipulated a temporary software license liability of SQS irrespective of culpability for defects already present at the time of agreement conclusion is expressly excluded pursuant § 536 a section 1 of the German Civil Code (Bürgerliches Gesetzbuch, BGB).

14.4. A possibly more extensive liability of SQS in accordance with the Product Liability Act remains unaffected.

14.5. In the event of liability on the part of SQS contributory negligence on the part of the license holder shall be given adequate consideration, in particular in the event of insufficient defect reports or insufficient data backup. Insufficient data backup is also present when the license holder failed to implement adequate security measures to protect individual data or a complete data inventory against external influence (e. g. against computer viruses).

15 Software maintenance

15.1. In the event of a temporary software license software maintenance is a component of the software license and starts and ends at the same time as the software license. Thus, the license holder is entitled to receive software maintenance for the software indicated in the respective license agreement during the entire duration of the temporary license without incurring an additional fee.

15.2. In the event of a permanent software license the license holder is entitled to receive the following maintenance services, provided the same is stipulated in a license agreement and starting with the time indicated in the respective license agreement and for the duration indicated therein. Warranty rights are unaffected by the maintenance services; these can be asserted free of charge in accordance with the provisions of these conditions during the warranty period.

- (1) With an order procedure the start of the software maintenance is stipulated for the first day of the respectively following month with regard to delivery. The duration of the first maintenance period is one (1) year (starting with the date stipulated in the license agreement) if a longer period is not stipulated in the license agreement and can be terminated in writing with a 90 days' notice to the end of the maintenance period. If not terminated in due time the maintenance agreement is extended by one year after the first maintenance period and all following extension periods, respectively.
- (2) The relevant maintenance fee is 18 % of the current list price and is to be paid in advance at the beginning of a maintenance period.

- (3) Software maintenance always refers to the total number of purchased licenses. The license holder always has to keep all installations of the software in maintenance or terminate the software maintenance completely or by module for all installations.

15.3. If the license holder is entitled to software maintenance as per sections 15.1 or 15.2 they receive the following services:

- (1) Delivery of program corrections or workarounds;
- (2) Delivery of the new program versions generally published by SQS within the framework of software maintenance for the respective version of the software;
- (3) Hotline support from Monday to Friday (except on public holidays in North Rhine-Westphalia) from 9:00 to 17:00 (CET) provided by the SQS helpdesk.

The materials surrendered to the license holder in the context of software maintenance or the software surrendered in the same context are subject to the same provisions regarding use and confidentiality as the originally surrendered software.

- 15.4. SQS will exclusively appoint appropriately qualified personnel for the execution of maintenance services.
- 15.5. The software maintenance services are provided exclusively for the standard software. Interfaces and modifications to the software that have been provided in the context of Professional Services are not included even though they may have been provided by SQS. Maintenance of these components may be obtained by additional individual agreement.
- 15.6. Within the framework of software maintenance the license holder is only entitled to maintenance services for the respectively current program version.
- 15.7. The license holder will notify SQS of occurring defects immediately and in the form specified by SQS and also indicate in this notification the characteristics and effects of the defect and the circumstances in which it occurs. Should it transpire that the supposed notified defect is not a defect of the SQS software SQS may submit a separate invoice on the basis of the fees for consulting services applicable at that time.
- 15.8. The liability provisions of sections 10 to 13 accordingly apply to software maintenance services.

16 Contract termination

In all cases of license termination (e. g. rescission, expiration of the agreed contract period or termination) the license holder will return the software to SQS and delete it from all computers where it has previously been used and confirm to SQS in writing that all copies of the software have been deleted. With license termination the license holder is no longer entitled to use the originals of the software or copies thereof.

17 Additional agreements, conditions of purchase

- 17.1. The software license conditions on hand as well as the license agreements based on these conditions conclusively rule the subject matter of the agreement. Alterations or addenda require the written form. All agreements previously made orally or in writing between the parties regarding the subject matter of the agreement mentioned above are replaced taking effect with the date of application of the present general software license conditions; however, the effectiveness of individual agreements on the basis of the old, replaced agreements remains unaffected until they are completed or converted to the present conditions.
- 17.2. Deviating conditions of purchase of the license holder shall not become part of the agreement even if SQS does not expressly object to these conditions.
- 17.3. Commitments deviating from these conditions or a license agreement are only legally binding if they are confirmed in writing by both parties as appendix or addendum to the respective contractual document, i. e. by signature of a respectively authorised representative.

18 License Manager, program key, supervisory duties of the license holder

- 18.1. The computer programs by SQS hold a program key (license file) for protection against illegal use. The program keys required for contractual use are provided to the license holder by SQS for as long as the license holder uses the respective computer

program in accordance with the contractual provisions.

- 18.2. Depending on the respective licensing model the contractual use may require additional installation and application of a separate license administration software (License Manager) which is provided to the license holder on the part of SQS.
- 18.3. Furthermore, the license holder is obligated to supervise the contractual use of the software and to notify SQS without delay of possible deviations from the contractual scope of use.

19 Miscellaneous

- 19.1. Should individual provisions of these software license conditions or of a license agreement be or become invalid, the validity of the remaining provisions shall not be affected.

- 19.2. If one or more provisions of this agreement are invalid, the contracting parties shall agree to a valid term that as closely as possible approximates the commercial intent of the invalid provision.

- 19.3. Court of jurisdiction for any dispute resulting from this agreement or the individual transactions concluded in their execution is the office of SQS. However, every contractual party is also entitled to take the other to their general court of jurisdiction.

- 19.4. The software license conditions on hand as well as the license agreements concluded on the basis of these conditions are subject to the laws of the Federal Republic of Germany with the exception of the not mandatory provisions regarding conflict of laws of the German law and the United Nations Convention on Contracts for the International Sale of Goods.