

General Terms and Conditions of OPTI-Q GmbH

OPTI-Q GmbH ("Opti-Q") provides its services exclusively on the basis of these General Terms and Conditions ("GTCs").

1. Object

1.1. Opti-Q sells its own software, called Intelligent Checklist (iCL), which currently comprises the components iCL Designer, iCL Filler, iCL Server, and iCL Reporting. Opti-Q also offers services associated with this software as well as general consulting services.

1.2. The scope of products and services provided by Opti-Q is defined by offers from Opti-Q and a contracting party's acceptance of those offers.

1.3. All Opti-Q offers are non-binding until accepted. Cost estimates are also non-binding. Documents such as concepts, service descriptions, demonstrations, cost statements, etc. are only binding if this has been expressly agreed in writing.

2. ICL software

2.1. The software and its program components and graphical components are copyright protected. A contracting party that purchases Opti-Q software by paying a licensing fee receives a non-exclusive, temporally unrestricted, non-transferable usufructuary license for its own use. It installs the software itself, or it can request to have the software installed on its behalf for an additional fee. Unless agreed otherwise in writing, the purchased software package cannot be transferred to other terminals or devices. Every instance of software and content use and commercialization that goes beyond the provisions of the contract—especially distributing, conveying to third parties, and copying—requires prior written consent from Opti-Q.

2.2. The contracting party is only entitled to use the software's existing functionalities. In particular, the contracting party is not entitled to modify the software and its components or have other parties develop them on its behalf. In addition, the contracting party is not entitled to re-sell, let or lend the software or grant third parties such rights.

2.3. If the contracting party separately commissions Opti-Q to adapt or further develop specific components in the software, the contracting party will purchase a similar, non-exclusive usufructuary license for these. In such cases, Opti-Q has the exclusive right to commercialize the adaptation or development in question.

2.4. Opti-Q uses Dox42 plugins and software (see www.dox42.com/products.aspx). If these are absolutely necessary for iCL to function, they will be included with the license purchased in the contract (especially Dox42 Server for Documents or DOX42 Server Enterprise). In such cases, the DOX42 terms of use will apply in addition to the terms of the contract.

3. Maintenance agreement, server use, consulting services

3.1. Opti-Q is continually improving ICL. These software updates will be made available to the contracting party in return for payment of a flat annual fee for maintenance.

Where feasible, Opti-Q will consider suggestions from the contracting party when it improves its software solutions. However, Opti-Q is under no obligation to make specific improvements to ICL.

3.2. In addition, Opti-Q offers the contracting party the option of third-party server services for data management and analysis in return for payment of a flat monthly fee.

3.3. Agreements for maintenance and server use enter into force when the agreement is signed (when the contracting party accepts Opti-Q's offer). These agreements are concluded for a period of one year, and they are extended by one additional year each year when Opti-Q requests and receives payment of the annual fee for the upcoming year from the contracting party.

3.4. Every contracting party has the right to immediately terminate its contract with good cause. Cases in which Opti-Q is entitled to immediately terminate a contract with good cause include:

- When the contracting party infringes on Opti-Q's intellectual property rights
- When the contracting party is no longer able to fulfill the contract, for whatever reason
- When the contracting party continues to be in arrears after two written reminders

3.5. Other services and consulting services provided by Opti-Q will be billed by the hour and invoiced monthly unless agreed otherwise.

4. Duties of the contracting party

4.1. The contracting party is solely responsible for meeting all technical requirements and HR requirements necessary to use the Opti-Q software solution and services. The contracting party bears the costs and risks of providing the infrastructure (hardware, software, etc.) it needs to use the services.

4.2. If the contracting party separately commissions Opti-Q to adapt or further develop the software or to develop specific software components, the contracting party will ensure that it has the necessary, unlimited rights to the information, data and other content that it makes available for this purpose.

4.3. When using the services, the contracting party agrees to comply with relevant statutory provisions and refrain from all types of misuse as well as all actions that endanger and/or negatively impact third parties.

5. Terms of payment

5.1. Unless otherwise agreed, invoices are payable in full upon receipt. One-time costs are payable 14 days after delivery, and running costs are payable each month in advance.

5.2. If the contracting party falls behind with payments, Opti-Q has the right, subject to its right to claim compensation for damage that goes beyond this, to charge interest on arrears of 12% p.a. (5% p.a. for contracts with consumers) plus a reminder fee of EUR 5 for each reminder, as well as the right to claim compensation for all other necessary costs connected with prosecuting the offense.

5.3. Opti-Q has the right to independently modify reoccurring prices, especially those for maintenance agreements and server use. Opti-Q will inform the contracting party of price changes in writing 30 days before the changes take effect. Price changes take effect on the first day of the month following the notification unless the contracting party disputes the changes within four weeks of receiving notification of them. If the contracting party disputes the changes, the contract will end at the end of the following month.

5.4. If the contracting party is in arrears, Opti-Q has the right, after giving advance notice of at least 14 days, to suspend the contracting party's use of the services until all past-due amounts receivable have been paid.

6. Warranty and liability

6.1. Opti-Q is only required to provide a warranty if the contracting party has fulfilled all of its contractual duties and/or obligations. In order for the contracting party to make warranty claims, it needs to have used Opti-Q's services in accordance with applicable provisions. Improvements outside the warranty period have no legal or factual materiality. Opti-Q can remedy defects itself or through a third party. Opti-Q has the right to choose the type of warranty by itself. Opti-Q declines to accept liability or offer a warranty for the compatibility of its software and/or service with other services and/or software components or hardware components, products, systems or parts thereof, nor for their suitability for a particular purpose, unless it has expressly agreed to this in writing.

6.2. Opti-Q is only liable under compulsory law, and only where there is intention and extremely gross negligence. The contracting party must start proceedings for all compensation claims that Opti-Q has not expressly recognized in writing within 12 months of discovering the damage and informing the liable party, or such claims will expire.

6.3. Any compensation claims made by the contracting party are limited to the sum of license fees in the contract year preceding the damage event. Opti-Q declines to accept any liability for the contracting party's lost earnings and consequential damage.

6.4. Opti-Q declines to accept liability for damage to the contracting party that occurs because of data loss. Opti-Q will take all feasible and reasonable technical steps to protect the contracting party's data. In addition, Opti-Q is not liable to the contracting party for unlawful changes, damage or third-party access to contract information.

6.5. Opti-Q does not guarantee continuous availability of servers and/or continuous access to services, and it does not accept liability for damage suffered by the contracting party in this regard. If Opti-Q is temporarily unable to perform a backup for technical reasons, it will inform the contracting party of this situation via email on request. The contracting party will immediately notify Opti-Q of any malfunctions or defects in the service, including any information about possible causes. Opti-Q will begin to remedy the malfunction without culpable delay, and it will correct the malfunction as quickly as is possible within the scope of its technical and operational capabilities. Opti-Q will inform the contracting party in an appropriate manner and in good time of any disruptions or significant restrictions that are required for it to perform maintenance, essential operational functions, improve the service, or prevent malfunctions.

7. Data security and data protection

7.1. The contracting parties agree to treat all trade secrets as confidential and not to make them accessible to third parties. Trade secrets are defined as information that a contracting party receives while fulfilling the contract and that is designated as such or recognizable as such.

7.2. The contracting party recognizes that Opti-Q is under no obligation to store or keep data available for an unlimited period of time. Opti-Q will store data as long as the contractual relationship is valid and for a period of six months after the contractual relationship ends.

7.3. The contracting party is responsible for observing all provisions of the Personal Data Protection Act in the context of using the services. The contracting party accepts that Opti-Q electronically processes and/or uses for internal purposes customer-specific data that has become known to it as a result of this contract and that Opti-Q may also forward such data to subcontractors for this purpose.

8. Final provisions

- 8.1. These GTCs form an integral part of every contract that Opti-Q concludes. Additional terms or terms that differ from these GTCs are only valid if Opti-Q has expressly recognized them in writing. Opti-Q is not required to dispute the terms and conditions of a contracting party, not even if those terms and conditions stipulate that their own validity is an express clause for the business transaction.
- 8.2. Provided that compulsory law permits, the contracting parties will refrain from disputing the validity of concluded contracts for the purpose of adjusting and/or cancelling them, and/or from invoking claims that these contracts were not validly concluded and/or are unenforceable.
- 8.3. If any individual provisions in these GTCs prove to be invalid, the validity of the remaining GTCs will not be affected. An invalid provision is to be replaced by a valid provision that most accurately reflects the economic sense and purpose of the invalid provision.
- 8.4. Unless stated otherwise in these GTCs, contract changes and additions must be in writing. This also applies to any waiver of this provision requiring the written form.
- 8.5. Opti-Q has the right to independently change the content of these GTCs as long as the change is reasonable, bearing in mind the interests of the contracting party. A contract change is considered accepted if a contracting party has been notified of the change in writing and it does not dispute that change within four weeks of receiving the notification. Opti-Q can transfer its rights and duties arising from this contract to one or more third parties without the consent of the contracting party.
- 8.6. These GTCs are subject to Austrian law, with the exception of the United Nations Convention on Contracts for the International Sale of Goods and non-compulsory reference provisions. The sole forum of jurisdiction is the court having jurisdiction *ratione loci* and *ratione materiae* for Opti-Q's headquarters.