

General Terms and Conditions (GTC)

of Qualisys GmbH, Bahnhofstrasse 40, 40764 Langenfeld, Germany – dated: 04/03/2020

1. Area of Application

With regards to the commercial relationship between Qualisys GmbH (hereinafter referred to as "Qualisys") and the client, only the following General Terms and Conditions in their respective valid version at the time of order (see Paragraph 2) shall apply. The current version of the GTC can be obtained from www.qualisys.eu/en/imprint. The client shall acknowledge these conditions on the acceptance of the business relationship. GTC shall also apply to the related information, advice and complaints.

Qualisys provides services exclusively to clients who are deemed to be enterprises by virtue of § 14 Section 1 BGB.

Qualisys does not accept any deviating terms and conditions on the part of the client, even in parts, unless they have been subject to written approval. Any standardised reference to pre-printed terms and conditions of the client is expressly rejected.

In case of ongoing business relations, the provisions of this contract shall also be deemed applicable to all following business, even if Qualisys - in particular in case of orders made by telephone or email - does not expressly invoke them.

2. Conclusion of Contract and Delivery

Qualisys distinguishes between supply contracts for individual data and services ("SUMDAT contracts") and supply contracts for standard data and phrases ("Package contracts").

The client's order presents an offer to Qualisys regarding the conclusion of an agreement. By placing an order, the client declares the acceptance of GTC. Qualisys shall confirm the receipt of incoming orders in written form, via e-mail or letter. The contract is only concluded when the confirmation of order or data (in case of existing contracts) has been received.

Unless other sub-licensing clauses are agreed, the delivery of data to third parties is only allowed in the context of supplied documents related to the clients' products (e.g. in safety data sheets).

Qualisys reserves the right to introduce reasonable technical changes.

Force majeure events that significantly impede or render impossible for a contractual partner the provision of service or fulfilment of obligation entitle the concerned partner to postpone the fulfilment of this obligation by the duration of the impediment and by a reasonable start-up period. Industrial disputes in the companies of the contracting parties or industrial disputes in third companies and similar circumstances that directly or indirectly affect the contracting parties are equivalent to force majeure.

Qualisys may use third parties, in particular affiliated companies, as vicarious agents in fulfilling its delivery and service obligations. The contractual obligations of Qualisys remain unaffected.

3. Prices and Terms of Payment

The price list valid at the time of order shall be applicable unless a special agreement has been made. The beginning of the validity period of the current price list can be obtained from the imprint on Qualisys' website www.qualisys.eu. The price list shall be sent to the client at their request at any time. Qualisys shall announce any changes in prices with regards to running contracts by sending new price lists complying with a period of notice of 3 months at the end of the month.

Invoices are payable net without deductions within 30 days; if this due date passes without any notice, default occurs. In case of a default in payment, Qualisys shall be entitled to charge default interests amounting to 8 percentage points above the respective base lending rate of the ECB. Qualisys expressly reserves the right to claim evidence and raise higher claims for damages caused by delays as well as raise further claims for damages.

Bills of exchange or cheques shall only be accepted if agreed upon and on account of performance and shall only be deemed as payment after their redemption. Qualisys shall not assume any liability for the timely submission. Any discount and collection charges as well as transfer fees shall be borne by the client.

Should the client's payment of an invoice be delayed due to general liquidity difficulties or should the client's financial situation deteriorate significantly after the conclusion of contract, all claims by Qualisys are due. Qualisys is then entitled to make pending deliveries only against provision of security or advance payment or to withdraw from the contract.

If the client delays the payment of at least 30% of two consecutive invoices in a long-term debt relationship and if a deadline set by Qualisys to remedy the situation has elapsed, an important reason for termination in accordance with § 314 BGB occurs and Qualisys is entitled to terminate the contract without any notice period. Alternatively, Qualisys is then entitled to make pending deliveries only against provision of security or advance payment. Qualisys' right to compensation for damage incurred remains unaffected.

4. Offset and Retention Rights

The client shall only be entitled to any set-off of charges if their counterclaims have been established as final and absolute or beyond dispute. The client shall only be entitled to enforce a lien if their counterclaim is based on the same contractual relations.

5. Warranty

Qualisys expressly points out to the complaint and inspection obligation applicable to merchants in accordance with §§ 377 HGB. Notices of defects do not affect the maturity of the purchase price unless their entitlement has been recognized in writing by Qualisys or has been legally established.

A limitation period of 12 months applies to claims based on warranty for defects. The statutory limitation period applies to claims for damages in the event of malice and gross negligence, as well as loss of life, physical injury and damage to health, which are based on an intentional or negligent breach of duty by Qualisys. The transfer of such claim of the client is excluded.

Qualisys shall initially warrant for defects of goods by choosing a replacement delivery within a reasonable period after second unsuccessful attempt of subsequent performance. Subsequently, the client may in principle choose to reduce the remuneration (reduction) or to cancel the contract (withdrawal).

If the client chooses to withdraw from the contract after the failed subsequent performance, they are not entitled to compensation for the defect and are no longer entitled to use the data supplied. In case of minor defects, the client has no right of withdrawal.

If the client chooses a reduction after the failed subsequent performance, they are entitled to use the data. The reduction is limited to the difference between the purchase price and the value of the defective delivery. This shall not apply in the event the breach of contract was maliciously caused by Qualisys.

6. Malicious Software

The use of data including its download by the client is the sole responsibility of the client. Qualisys' liability for any damage resulting from the use of data (in particular business interruption, loss of profit, loss or manipulation of information and data by third parties or consequential damage caused by a defect) is excluded unless Qualisys, for example, under the Product Liability Act or in cases of malice, gross negligence, the lack of guaranteed properties or due to violation of essential contractual obligations shall be mandatorily liable. However, compensation for the breach of essential contractual obligations is limited to foreseeable damages typical of the contract, provided that there was no malicious intent or gross negligence.

Although Qualisys always applies the latest protective measures to keep the data free of malware, Qualisys cannot guarantee such freedom and does not assume any liability.

7. Limitation of Liability

In case of slightly negligent breaches of duty, Qualisys' liability is limited to direct average damages foreseeable and typical of the type of goods or services. This also applies to slightly negligent breaches of duty by Qualisys' legal representatives or vicarious agents. Qualisys is not liable for slightly negligent breaches of secondary contractual obligations.

Qualisys is not liable for the functionality of communication lines, for power failures or for failures of servers that are beyond Qualisys' control. These limitations do not apply in the event of culpable violation of essential contractual obligations, insofar as the achievement of the contractual purpose is jeopardized, in cases of mandatory liability according to the Product Liability Act, in the event of loss of life, physical injury and damage to health and also not if and insofar as Qualisys' has fraudulently concealed deficiencies in the matter or guaranteed their absence. The burden of proof is governed by legal regulations.

8. Minimum Contract Period, Termination of Contract

The contractual relationship is concluded for an indefinite period, unless a time limit has been expressly agreed upon and confirmed in the declaration of acceptance. If there is no time limit, each contractual partner is entitled to terminate the contractual relationship with a notice period of three months at the end of the month, but at the earliest at the end of the period already invoiced. The notice of termination must be in writing.

For all SUMDAT contracts, a minimum contract term of 24 months shall be applied. In particular, this also applies to each individual data order in the framework of a SUMDAT data supply contract. If data orders or contracts are to be terminated prematurely, Qualisys shall be entitled to charge for the compensation for lost revenue up to the termination of the minimum contract term.

Qualisys announces price increases with three months' notice at the end of the month. The client has a special right of

termination at the time the price increase comes into force for four calendar weeks after the receipt of the notification of price increase.

9. Place of Jurisdiction, Applicable Law

The law of the Federal Republic of Germany applies to all legal relationships between Qualisys and the client. The UN sales law is excluded. Düsseldorf is agreed as the exclusive place of jurisdiction and place of performance.

10. Concluding Provisions

Should any provision of these General Terms and Conditions be or become wholly or partially ineffective, the validity of the remaining provisions remains unaffected. In such a case, the contractual partners are obliged to cooperate in the creation of provisions which legally validly achieve a result that is as close as possible to the ineffective provision.

Any amendments or modifications of the contract shall only become binding if they have been recorded in writing and signed by appropriately authorized representatives of both contractual parties.