

Service Agreement Terms

Quantec Systems GmbH, Krendelstr. 32, 30916 Isernhagen (hereinafter referred to as “**Quantec**”) and the respective customer named in the Offer (hereinafter referred to as “**Customer**”) each individually hereinafter referred to as a “**Party**” or together as the “**Parties**” herewith agree as follows:

Preamble

Quantec provides IT-services in the wind energy industry.

Customer is an entrepreneur (*Unternehmer*) according to the definition of Sec. 14 German Civil Code (*Bürgerliches Gesetzbuch*) who wishes to procure certain services from Quantec.

1 Definitions and Principles of Interpretation

1.1 Definitions

Confidential Information	Has the meaning as defined in section 10.1
Controller	The Controller as defined in Art. 4 No. 7 GDPR
GDPR	Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016
Interface	The physical handover point up to which Quantec provides its Services; i.e. the router exit of the data centre of Quantec or its subcontractor
Offer	The document provided by Quantec in which Quantec lists the services to be provided and the respective fees
Personal Data	Personal Data as defined in Art. 4 No. 1 GDPR
Referenced Contractual Documents	Any further documents which are referenced in the Offer and according to the Offer shall form a part of the Service Agreement
Service Agreement	The Service Agreement Terms, the corresponding Offer and all Referenced Contractual Documents
Service Agreement Terms	These general terms and conditions applying to the Service Agreement (i.e., this document)

Services

The services in scope of the Service Agreement

1.2 Expressions in English that are followed by a German term in brackets and italics (e.g., *Erfüllungsgehilfe*) shall have the meaning the German term has in German law.

1.3 Insofar as particular clauses or sections do expressly refer to a particular service, such clauses or sections shall apply to the respective service only.

2 Contractual Structure and Norm Hierarchy

2.1 The Service Agreement consists of the following contractual documents:

- The Service Agreement Terms
- The respective Offer
- Referenced Contractual Documents

2.2 In case of conflicts or contradictions between the different contractual documents listed in clause 2.1 the order of precedence shall correspond to the order of the documents in clause 2.1.

2.3 If the Parties wish to deviate from the order of precedence stipulated in sections 2.1 and 2.2. of these Service Agreement Terms the respective clause in the lower-ranking document shall expressly name the corresponding clause in the higher-ranking document from which it deviates.

2.4 General terms and conditions of the Customer do not apply even if Quantec has not expressly objected to them.

3 Scope of Services

3.1 Quantec may provide different Services under the Service Agreement. The Customer can order new Services with a new Offer. Mutual signing of a respective Offer will complete the ordering of Services.

3.2 Quantec will provide the Services described in each Offer.

3.3 Each Offer together with these Service Agreement Terms and all further applicable contractual documents form a separate and binding legal agreement (each a Service Agreement as defined herein). The termination of one agreement does not affect the effectiveness of the other agreements.

3.4 The Parties agree that the scope of Services is conclusively described in the Service Agreement. No additional scope or quality agreement has been concluded; no additional guarantees and assurances have been made by Quantec.

4 Access and Provision of Information

- 4.1 The Customer shall provide all information, software and any data that Quantec requests for the purpose of providing the services upon first request.
- 4.2 To the extent this is necessary to provide the Services, the Customer undertakes to provide any member of Quantec's staff working at the Customer's premises with a suitable and adequate working environment including but not limited to reasonable offices, telephones, stand-alone internet access, materials, equipment, properly functioning PC workstations, computer time and such other facilities.
- 4.3 The Customer shall enable Quantec's staff to enter the Customer's premises and/or to have full access to the Software and Customer's hardware and operating environment at all reasonable times to the extent such access is required for the purpose of the provision of the Services. Quantec shall announce the required access a reasonable time in advance.
- 4.4 To the extent the Customer requires that Quantec's personnel (including its sub-contractors) comply with any site or information security policies, the Customer shall provide such policies beforehand, train the personnel on such policies and in any event provide details of a contact person for questions relating thereto.
- 4.5 The Customer shall ensure it continues to have all consents and license rights in relation to:
- 4.5.1 all hardware and software within its IT environment, including the Software; and
- 4.5.2 to all documents and other materials it is providing to Quantec which Quantec will use to perform the Services.

5 Fees

- 5.1 The applicable fees are specified in the Offer.
- 5.2 If not stated otherwise in the respective Offer, recurring monthly Service fees may be charged in advance for the respective following months. Service fees based on a time and material basis shall be paid in arrears for each month. However, Quantec may request a down payment of up to 50% of the expected Service fees.
- 5.3 If the Customer terminates the Service Agreement while Quantec is working on a particular work package, a proportionate amount of the fees for such work package is payable.
- 5.4 If Quantec is entitled to payments on a time and material basis, the invoices shall state the description of the respective services provided, the number of the employees and approved Subcontractors involved therewith, the number of working hours or days and the daily rate of each of these members of staff.
- 5.5 The invoiced remuneration shall be due in full within ten (10) calendar days of receipt of an invoice.

6 Warranty

- 6.1 Quantec will provide the Services in a professional and timely manner and in accordance with the specifications set within the Service Agreement.

- 6.2 To the extent Quantec provides Services via a cloud maintained by Quantec, Quantec warrants an availability of 95% per year of such Services.
- 6.3 Customer is obliged to provide Quantec with verifiable documents on the nature and occurrence of deviations from the performance description and to reasonably cooperate in the limitation of errors.
- 6.4 Customer shall assume full responsibility for the procurement, maintenance, overall effectiveness, and efficiency of the hardware and operating environments upon which Quantec shall provide the Services if such hardware and operating environment is not provided by Quantec.

7 Liability

- 7.1 Quantec is liable without limitation for intent (*Vorsatz*) and gross negligence (*grobe Fahrlässigkeit*).
- 7.2 Quantec is liable for slight negligence (*einfache Fahrlässigkeit*) only in case of a breach of an essential contractual obligation (*Kardinalpflicht*) as well as for damages resulting from injury to life, body or health. Essential contractual obligations are such obligations whose observance is necessary to properly perform the Service Agreement including respective Services and which Customer can normally rely on being complied with. In case of a slight negligent breach of an essential contractual obligation, Quantec's liability is limited to the typical foreseeable damage under this Service Agreement.
- 7.3 Customer is responsible for regularly backing up its data according to state of the art principles. In case of a loss of data for which Quantec is responsible, Quantec shall be liable in accordance with the provision 7.2 only if and to the extent that the respective damages could not have been prevented if Customer had undertaken such regular data backups.
- 7.4 The limitations of liability pursuant to this section 7 also apply in favour of the employees, agents or other personnel of Quantec.
- 7.5 Any liability on the part of Quantec for issued guarantees (*Garantien*) – which have to be expressly designated as such in order to be warranties in a legal sense – as well as for claims due to the German Product Liability Act (*Produkthaftungsgesetz*, "**ProdHaftG**"), remains unaffected.
- 7.6 The total liability of Quantec shall be limited to the amount of the annual fees imposed on the client in the respective contract year under all Service Agreements between Quantec and the Customer, however at least EUR 100.000 (one hundred thousand). The Parties agree that this liability cap is reasonable in the light of the services provided and the remuneration to be expected.
- 7.7 All further liability of Quantec is excluded.
- 7.8 Customer is obliged to notify Quantec without undue delay about any damage or tangible risk within the meaning of the above provisions on liability or to have Quantec record such damages so that Quantec is informed as early as possible and may undertake measures to mitigate the damages in reasonable cooperation with Customer.

8 Intellectual Property and Indemnification

- 8.1 Each party will retain exclusive rights in and ownership of its Intellectual Property (*gewerbliche Schutzrechte und Urheberrechte*) existing prior to this agreement or developed during the provision of the Services.
- 8.2 Any Intellectual Property created by either Party under the Service Agreement is and will remain the sole and exclusive property of the developing party.
- 8.3 Notwithstanding the provisions of Sec. 69d Para. 2, 3, 69e of the German Copyright Act (*Urheberrechtsgesetz*, "**UrhG**") Customer is by no means entitled to break-in, decompile, copy, modify or alter any software provided by Quantec or to circumvent its security measures. This includes Customer's obligation to retain unchanged any protection measure such as copyright notices and other legal reservations unchanged as well as to incorporate such protection in all complete or partial copies made by it or provided to it in unchanged form.
- 8.4 If Customer instructs Quantec to create interfaces with third party software or to ensure the interoperability with third party software in other ways, Quantec will act exclusively as instructed by Customer. Customer shall ensure the lawfulness of the respective services. Customer shall indemnify Quantec against any and all third party claims based on an alleged violation of third party intellectual property rights through such services.

9 Data Protection

- 9.1 Customer will ensure that Quantec will not process Personal Data for which Customer or a third party are the Controller when providing the Services.
- 9.2 If the Parties at a later point determine that Quantec must process Personal Data for which Customer or a third party are the Controller to provide the Services, the Parties will take the necessary measures to fulfil the applicable requirements under data protection law. Quantec is under no obligation to provide any Services until such requirements are fulfilled.

10 Confidentiality

- 10.1 For the purposes of this Agreement "**Confidential Information**" shall include but not be limited to software, including all specifications, any documents including but not limited to the terms and conditions of the Service Agreement, all information concerning either party's technical operations including, without limitation, computer systems, equipment, and facilities, and either Parties' financial, business, and commercial information. Confidential Information shall not include information that is or comes in to the public domain or is independently created or obtained by a Party other than where such resulted from a disclosure by a third party in breach of confidentiality obligations.
- 10.2 Each Party agrees that it shall not sell, transfer, publish, disclose, display, or otherwise make available to third parties the Confidential Information of the other Party without prior written consent of such other Party. Each Party agrees to secure and protect Confidential Information and to take appropriate action by written agreement with its employees, agents, and/or subcontractors with permitted access to such Confidential Information to satisfy its obligations hereunder.

- 10.3 This section 10 imposes no obligations with respect to information which (a) was in a Party's possession before receipt from the respective other Party; (b) is or becomes a matter of public knowledge through no fault of the Party receiving the information; (c) was rightfully disclosed to the Party by a third Party without restriction on disclosure; or (d) is developed by the Party without use of the Confidential Information as can be shown by documentary evidence.
- 10.4 Each Party may make disclosures to the extent required by law or court order, provided the Party makes commercially reasonable efforts to provide the Party which provided the Confidential Information with notice of such disclosure as promptly as possible and uses diligent efforts to limit such disclosure and obtain confidential treatment or a protective order and has allowed the Party which provided the Confidential Information to participate in the proceeding.
- 10.5 Each Party further agrees that it shall promptly notify the other as soon as it becomes aware of any breach of confidentiality obligations pursuant to a Service Agreement and give the other Party all reasonable assistance in connection with investigation of the same. Each Party shall use its best efforts to assist the other in identifying and preventing any unauthorised use or disclosure of any portion of Confidential Information. Neither Party shall disclose any Confidential Information of the other to any third party unless it has (a) obtained the prior written consent of that Party and (b) provided that the third party has executed a confidentiality and non-disclosure agreement directly with the other Party.
- 10.6 Obligations and undertakings relating to confidentiality and non-disclosure, whether contained in this clause or elsewhere in the Service Agreement, shall survive five (5) years after the termination of the Service Agreement.

11 Term and Termination, Ordering and Cancellation of Services

- 11.1 If no term is stated in the Offer, the Service Agreement is concluded for an indefinite period commencing on the date of the completion of the mutual signing.
- 11.2 If not stated otherwise in the respective Offer, either Party can terminate the Service Agreement at any time with a notice period of one (1) month to the end of a calendar month.
- 11.3 The right of both Parties to terminate this Agreement for good cause shall remain unaffected. Good cause for termination exists, in particular, if:
- 11.3.1 Customer's outstanding payments amount to at least one month's fees; or
- 11.3.2 insolvency proceedings have been opened regarding the assets of Quantec or Customer, or the opening of such proceedings is imminent.
- 11.4 Terminations must be declared in writing (e.g. email) (*Textform*). The same applies to cancelling of individual Services.
- 11.5 Quantec shall refund Customer proportionally, if fees were paid in advance.

12 Miscellaneous

- 12.1 The Service Agreement supersedes all prior and contemporaneous discussions and agreements, both written and oral, among the Parties with respect to the subject matter of the Service Agreement and constitutes the sole and entire agreement among the Parties with respect to such subject matter.
- 12.2 Amendments, supplements and additions to the Service Agreement shall only be valid if they have been agreed upon in writing (*Schriftform*) between the Parties.
- 12.3 The Service Agreement is subject to German law, excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG) and the German conflict of law provisions.
- 12.4 Exclusive legal venue for all disputes arising from or in connection with the Service Agreement is Isernhagen (District Court (*Landgericht*) of Hannover).
- 12.5 If any provision of the Service Agreement is or becomes invalid, the validity of the remaining provisions of the Service Agreement shall not be affected thereby. The Parties are obliged within reason to replace the invalid provision in good faith by another permissible provision with similar economic results, provided that this does not cause a significant change to the contents of the Service Agreement.

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