Terms and Conditions (GTC)

1. SCOPE

1.1 The contract between S&C and the customer consists of the above order and these Terms and Conditions (GTC). Conflicting terms and conditions of the customer shall not be recognized unless S&C has expressly agreed to them in writing.

1.2 These GTC shall also apply to all future transactions between S&C and customers. These GTC shall only apply to entrepreneurs or legal entities under public law.

1.3 In the event of any discrepancies in content between the order, any written supplementary agreement between the parties and these GTC, the written supplementary agreement shall apply first, the order second and these GTC again third.

2. CONCLUSION OF CONTRACT AND SUBJECT MATTER

2.1 Offers made by S&C are subject to change without notice and are non-binding unless expressly designated as binding.

2.2 The contract is concluded when using the order form by the order of the customer and the confirmation of S&C. Orders can also be placed in text form (for example by sending a signed pdf). Unless otherwise agreed, the customer shall be bound by its order (offer of contract) for a period of two weeks from receipt by S&C. S&C may accept the offer within two weeks after receipt by the customer and order confirmation in text or written form.

2.3 The subject matter of the contract is, on the one hand, the provision of the software specified in the order for a period limited to the term of the contract in return for the agreed remuneration together with the granting of the agreed rights of use as well as associated maintenance and support in accordance with the contract. The respective quality of the software to be provided shall be determined exclusively by the associated standard documentation (user manual) and any express additional agreements between the parties in text or written form.

2.4 The subject of the contract may also include additional services agreed in the order, such as consulting services, training, software adaptations or supplements and other IT services, in each case against the agreed remuneration.

3. SOFTWARE DELIVERY AND INSTALLATION; DELIVERY DATES

3.1 S&C make the software available for the customer by download on its homepage. The customer shall be provided with access information required for the use of the software (in particular license keys or log-in data).

3.2 In addition to the software, S&C shall provide the customer with installation instructions and a digital user manual.

3.3 S&C does not owe any installation or configuration of the software on the customer's systems. This is the sole responsibility of the customer.

3.4 Delivery dates shall be agreed individually between the parties taking into account the respective type of service. Delivery dates shall be extended on the one hand by the period in which the customer is in default of payment and on the other hand by circumstances for which S&C is not responsible and which prevent S&C from delivering or otherwise performing its services.

4. MAINTENANCE AND CUSTOMIZATIONS OF THE SOFTWARE

4.1 S&C is obligated to maintain the contractually agreed quality of the software during the term of the contract. The contractually agreed condition of the software results from the order, the associated user manual and, if applicable, from a supplementary agreement of the parties in writing or text form. In order to fulfil its maintenance obligations, S&C shall carry out any necessary maintenance and repair measures in accordance with the state of the art. Such measures shall include, at S&C's discretion, the provision of upgrades, updates, acceptance of error messages (hotline) and elimination of errors in the software within the scope of the upgrade service or by providing workarounds or information on error elimination.

4.2 Maintenance and support are included in the price, unless otherwise specified on the order form, and (a) will be provided during S&C's normal working hours (Monday to Friday, 08:00 to 17:00 German time, excluding public holidays in Germany) or during the support hours relevant to customer's location (details are available from the S&C sales representative responsible for customer's location and indicated on the order form), and are (b) only for the then-current and immediately preceding version of the software (as a point release, for example 2023.1, 2023.2, etc.).

4.3 In particular, a maintenance obligation shall not exist in the event of incorrect operation of the software contrary to the user manual, an unsuitable system environment, incorrect installation, or improper adjustments or modifications to the software by the customer or third parties. In such cases, the customer shall pay for S&C's support services separately in accordance with the price list.

4.4. Any other maintenance services, such as training, instruction, software installation, verification or installation of third-party programs, service configuration or on-site support, are not part of these maintenance obligations and can only be provided within the scope of S&C's operational possibilities upon separate agreement and for a separate fee according to the price list.

5. RIGHTS OF USE OF THE CUSTOMER

5.1 S&C grants to customer a non-exclusive, non-transferable, non-sublicensable license to download, install and use the software specified in the order form (the **"Software"**) for customer's internal business purposes during the term of the license, subject to (a) the maximum number of concurrent users purchased through the order form, (b) these GTC, (c) any additional third-party software license terms expressly set forth in the software as imposed on S&C by its licensors, and (d) a use solely at the point of use and the location of the License Server, both of which shall be located at customer's registered address to the extent set forth in the order form, unless otherwise specified in the order form.

5.2 S&C does not grant any license to translate, adapt, arrange, change, modify, decompile, disassemble or reverse engineer the software or parts thereof, unless such right results from the order, the user manual or mandatory applicable law. The customer is not entitled to sublet the software, to provide it as a service to third parties (for example as "Software as a Service" or "Application Service Providing") or to make it available to third parties in any other way.

6. COMPENSATION

6.1 The prices and terms of payment for the software and other ordered services are set forth in the order form. All prices stated in the order form are, if applicable (e.g. in case of on-site services), exclusive of S&C's verifiable expenses for transport, travel, accommodation, meals and out-of-pocket expenses incurred by S&C in connection with the performance of its obligations towards the customer. All prices quoted in the order form are further exclusive of any applicable statutory sales tax and any customs duties, if applicable. All amounts due shall be paid by the customer to S&C without deduction or withholding in the currency specified on the order form within 30 days of the date of the invoice, unless otherwise stated on the invoice.

6.2 The parties agree on a value retention for the temporary provision of software in accordance with the following value retention clause: If the consumer price index for Germany published by the Federal Statistical Office on the basis of 2020 = 100 changes compared to the index published for the month of the conclusion of the contract and if the remuneration has remained unchanged for at least one year, either party may demand a corresponding adjustment of the remuneration. The benchmark for this shall be the change in the index, insofar as this corresponds to equity. The change in remuneration shall take effect from the month following the

request for change. This provision shall apply accordingly to any further index change compared to the last change in remuneration. The parties undertake to agree on a supplement to the order in writing or text form without delay to document each change.

6.3   The remuneration shall be invoiced by S&C in advance for the respective contractual period in accordance with the existing agreement with the customer. Default interest shall be charged by S&C in accordance with applicable laws.

7.   DUTIES OF CARE AND COOPERATION AND AUDIT

7.1   The customer shall take appropriate measures to ensure that unauthorized third parties cannot access the software, any backup copies, License Keys, the documentation and any other accompanying materials.

7.2   The customer shall in particular be obligated to store any original data carriers, all existing copies of the software including any backup copy(s) as well as all associated documentation in a place protected from unauthorized access by third parties. The customer shall bear the costs of storage.

7.3   The customer shall further designate a qualified employee trained in the use of the software as contact person for the support and implementation of the services owed by S&C. Any error messages of the software shall be sent to S&C in detail together with a meaningful error description and information on the hardware configuration and system environment. To the extent necessary for the elimination of errors or the provision of other services by S&C, the customer shall grant S&C (remote) access to its systems.

7.4   S&C shall be entitled to verify the contractual scope of use of the software, in particular whether the customer is using the software qualitatively and quantitatively within the scope of the license granted. For this purpose, the customer shall, upon S&C's request, provide information and allow inspection of relevant records and documents as well as allow an audit of the hardware and software environment used by S&C or by an auditing company named by S&C and acceptable to the customer. The inspection may be carried out on the premises of the customer, provided that the business operations of the customer are not unreasonably disturbed thereby. If it turns out that the customer has exceeded his license, the customer shall bear the costs of the audit. Otherwise, S&C shall bear these costs.

8.   WARRANTY

8.1   The customer shall immediately notify S&C of any defects in the software in writing or in text form (cf. Section 7.3).

8.2   S&C is obligated to remedy notified defects of the software within a reasonable period of time. Within the scope of the rectification of defects, S&C shall have the right to choose between rectification and replacement. S&C shall be entitled to remedy defects of the software by means of upgrades or, to the extent reasonable for the customer, workarounds, provided that this does not impair essential functions of the software. The customer shall perform necessary duties to cooperate within the scope of the elimination of defects.

8.3   The customer shall not be entitled to assert a reduction in charges by independently deducting the amount of the reduction from the current charge. Any claim of the customer under the law of enrichment to reclaim an overpaid part of the fee due to a justified reduction shall remain unaffected.

8.4   In the event of failure to remedy a defect owed under Section 8.2, the customer shall be entitled to terminate the software license for cause pursuant to Section 543 para. 2 sentence 1 no. 1 BGB (German Civil Code). A failure to remedy the defect shall be deemed to exist in particular if the remedy of the defect is impossible for S&C, if S&C refuses to remedy the defect or if the remedy of the defect by S&C is unreasonable for the customer for other reasons.

8.5   If it turns out that a defect notified by the customer in writing or in text form does not actually exist or is not due to the software but to incorrect operation of the software contrary to the user manual, an unsuitable system environment, incorrect installation, improper adaptations or modifications to the software by the customer or third parties or other circumstances from the customer's sphere of risk, the customer shall reimburse S&C for the expenses incurred for the analysis of the defect and defect rectification in accordance with its price list or proof of expenditure.

8.6   customer's claims for damages and reimbursement of expenses, irrespective of fault, in the case of defects shall be exclusively governed by Section 9 and shall otherwise be excluded.

9.   LIABILITY; INDEMNIFICATION

9.1   S&C shall be liable without limitation:

–   in the event of malice, intent or gross negligence;
–   within the scope of a guarantee expressly assumed by it;
–   for damages resulting from injury to life, body or health;
–   for the breach of a material contractual obligation, which fulfilment is a prerequisite for the proper execution of this contract and on observance thereof the customer regularly relies and may rely ("cardinal obligation"), but limited to the damage reasonably to be expected at the time of the conclusion of the contract;
–   in accordance with the provisions of the Product Liability Act.

9.2   Any further liability of S&C is excluded. In particular, S&C shall not be liable for defects already existing at the time of conclusion of the contract, unless a case of clause 9.1 is given.

9.3   The above liability rules shall apply mutatis mutandis to the conduct of and claims against employees, legal representatives and vicarious agents of S&C.

9.4   S&C warrants to the customer that the software does not infringe any third party rights ("Property Right Infringement"). S&C shall indemnify the customer against all claims of third parties due to infringements of property rights for which S&C is responsible in connection with the contractual use of the software upon first request and shall also bear reasonable costs of a legal defense for the customer. The customer shall inform S&C without undue delay of any claims asserted by third parties. The right to indemnification pursuant to this Section 9.4 shall expire if the customer fails to inform S&C without undue delay of the assertion of claims by third parties, provided that there is no case of unlimited liability pursuant to Section 9.1.

10.   TERM, TERMINATION

10.1   The contractual relationship shall have the contractually agreed term. A contract for the temporary provision of software shall commence on the date specified in the order and shall continue for at least the term specified in the order. Such a contract shall be automatically extended for subscription and annuals by intervals of 12 further months in each case, unless terminated by one of the parties with a notice period of 3 months to the respective end of the current contract term.

10.2   Either party may terminate a purchase order without notice by written notice to the other party if (a) the other party materially breaches any provision of the contract and (if the breach is curable) fails to remedy it within 30 days of written notice.

10.3   The right of both parties to an extraordinary termination without notice for good cause at any time shall remain unaffected. Good cause shall be deemed to exist in particular if S&C or the customer intentionally or negligently violates a material obligation under the existing contract and the terminating party can therefore no longer reasonably be expected to adhere to the contract. Accordingly, S&C shall in particular be entitled to terminate the software rental agreement for cause and without notice if the customer violates the provisions of the software rental agreement regarding the payment of the rent in the amount of at least two monthly amounts and fails to remedy its breach of duty within a reasonable period of time set by S&C.

SCHULLER & Company

10.4   Any termination of contract must be in writing.

11.   RETURN AND DELETION

11.1   Upon termination of the contract, the customer shall be obligated to discontinue the use of the software and to return the software as well as all program copies (including any backup copy) and all documentation, materials and other documents provided to S&C. The customer shall return the software to S&C at its own expense. The return shall be at customer's own expense.

11.2   If S&C has made the software available to the customer by download, S&C shall be free to waive the return pursuant to Section 11.1 and instead demand that the customer deletes the software and all other program copies and destroy the documentation, any materials and other documents provided. The customer is obliged to comply with this request without delay and to confirm the above deletion in writing. If the customer is obligated by mandatory applicable laws to retain a program copy for testing and reading purposes and can prove this to S&C in a suitable form, the retention of a copy of the software is permissible for a limited period of time for the legally prescribed period. After the expiry of such a period, that copy shall also be deleted in accordance with this clause.

11.3   In all other respects, the customer shall completely and permanently delete all installed copies of the software and any stored documentation from all its servers.

11.4   Unless expressly permitted under this clause, any use of the software after termination of the Agreement shall be prohibited.

12. CONFIDENTIALITY

12.1   Each Party shall keep in strict confidence any technical or commercial know-how and any specifications, documentation, inventions, processes, software code, documents or data which by their nature are confidential or are marked as confidential (collectively "**Confidential Information**") and which are disclosed by one Party (the "Disclosing Party") to the other Party (the "Receiving Party"), its employees, agents or subcontractors. Each Party shall limit the disclosure of Confidential Information to those employees, agents or subcontractors of the Receiving Party who have a need to know such information for the purpose of performing the Receiving Party's obligations to the Disclosing Party under this Agreement and shall ensure that its employees, agents or subcontractors are subject to confidentiality obligations equivalent to those to which the Parties submit to this Agreement.

12.2   The receiving party shall protect confidential information from access by third parties using appropriate technical and organizational measures. Reverse engineering of Confidential Information shall require the prior written consent of the disclosing party.

12.3   The above confidentiality obligations shall remain in force even after termination of the contractual relationship.

13.   DATA PROTECTION

The parties shall comply with applicable data protection law. If required, they shall conclude a commissioned data agreement (Art. 28 (3) GDPR).

14.   FINAL PROVISIONS

14.1   Should one of the provisions of the contract be or become void or unenforceable in whole or in part, or should a loophole in the contract become apparent, this shall not affect the validity of the remaining provisions. It is the express intention of the parties to thereby maintain the validity of the remaining provisions under all circumstances and thus to waive § 139 BGB as a whole. In place of the void or unenforceable provision or in order to fill the gap, the valid and enforceable provision shall be deemed to have been determined with retroactive effect which legally and economically comes closest to what the parties intended or would have intended according to the sense and purpose of the contract if they had considered this point when concluding this agreement or when including the provision. If the invalidity of a provision is based on a measure of performance or time (term or date) stipulated therein, the provision shall be deemed to have been agreed with a legally permissible measure that comes closest to the original measure (replacement fiction). If the replacement fiction is not possible, a provision or regulation in accordance with the content of the preceding sentence shall be made in place of the void or unenforceable provision or to close the gap (replacement obligation).

14.2   Amendments and supplements to the contract including this clause 14.2 must be made in text or written form, unless otherwise specified.

14.3   S&C is entitled to transfer the contract or certain rights and obligations under it to third parties. The customer may transfer the contract and rights and obligations under the contract to a third party only with S&C's prior written consent.

14.4   There are no verbal or written ancillary agreements to the contract.

14.5   Customer acknowledges that the software (and any work product based on the software) may be subject to export/import laws and controls and agrees not to use the software and any related work product in a manner that would result in a violation of any applicable export/import laws or controls. Customer further acknowledges that the software may not be used by any person or entity on any sanctions list of the United Nations, the United States of America, the European Union or the United Kingdom.

14.6   The exclusive place of jurisdiction for all disputes arising from or in connection with the contract shall be the registered office of S&C. S&C shall remain entitled to bring an action at the customer's general place of jurisdiction.

14.7   With regard to all legal relationships arising from the contract, the parties agree to the exclusive application of the law of the Federal Republic of Germany, excluding its conflict of law provisions and the United Nations Convention on Contracts for the International Sale of Goods of 11.4.1980 (UN Sales Convention).

Schuller & Company GmbH 01/08/2023