SCHAEFFLER

Terms & Conditions

For software licensing and services of Schaeffler Sondermaschinenbau AG & Co. KG

I. Scope and subject matter of the contract

1. These General Terms and Conditions (hereinafter referred to as "GTC") apply to the temporary provision of our data acquisition and evaluation software, with or without customer-specific additional programming (hereinafter referred to as "the Software"), as well as to the provision of care and support services (hereinafter referred to as "the Services").

2. These T&Cs only apply if the customer is an entrepreneur, a legal entity under public law or a special fund under public law. The customer must be an entrepreneur within the meaning of VAT law.

3. Our T&Cs apply exclusively. Any conflicting, deviating, or supplementary terms and conditions of the customer shall not become part of the contract, even if we unconditionally accept orders, provide services or refer to letters from the customer containing the customer's terms and conditions with knowledge of the customer's terms and conditions. We only accept terms and conditions if we expressly agree to their validity in writing.

II. Conclusion of Contract, Formal Requirements

1. Our offers are non-binding and non-binding. All information regarding the availability, pricing, specifications, features and/or characteristics of the Software and Services on our website or in our marketing information is only approximate and non-binding. They do not constitute an offer.

2. The prices quoted in our offer are subject to the proviso that the information, data, or other information on which the offer is based, provided by the customer or discussed with the customer is complete and accurate and remains unchanged.

3. The order placed by the customer shall be deemed to be a legally binding offer to conclude a contract. A mere confirmation of receipt of the order (confirmation of receipt) does not constitute acceptance of the offer by us. Our acceptance is made by declaration in text form (order confirmation), by delivery of the software or by providing our services. Legally relevant declarations and notifications that the customer makes to us after the conclusion of the contract (e.g. deadlines, reminders, notices of defects) must be made in writing in order to be effective. The customer must immediately check our order confirmation for correctness. Any discrepancies between the order confirmation and the order must be reported to us in writing immediately, at the latest within three (3) working days (Monday to Friday) after receipt. Otherwise, the contract is concluded with the content of the order confirmation, including the product specifications to which our order confirmation refers.

4. To comply with the written form within the meaning of these GTC, the transmission of an unsigned electronic document, an unsigned e-mail or the use of an e-sign procedure used by us is also sufficient.

5. The contract for the provision of the Software and/or for the provision of services concluded by order and order confirmation, as well as these T&Cs, which form an integral part of the contract, fully reflect all agreements made between us and the customer regarding the subject matter of the contract. Any verbal agreements made prior to the conclusion of the contract are legally non-binding and shall be replaced in full by the contract unless the parties expressly agree otherwise in writing.

III. Handover and installation of the software

1. The Software is made available to Customer as (i) a copy of the program for use "on-premise", (ii) as a download, (iii) pre-installed with simultaneous purchase of hardware (I-PC) or (iv) as Software-as-a-Service. The selection of the appropriate provision method is the responsibility of Schaeffler Sondermaschinenbau AG & Co. KG.

The organizational and technical installation and configuration of the hardware and/or the software in the operating/system environment of the customer and/or of third parties to whom the customer sells a machine system (hereinafter referred to as "end customer"), in particular the establishment of connectivity and/or interoperability of the software or hardware with the pre-existing IT infrastructure and/or the sensors in machines, is not owed by us and is the sole responsibility of the Customers (installation and configuration), unless otherwise agreed separately. Unless otherwise agreed with us, the customer is solely responsible for ensuring that the other hardware and software environment required for the operation and use of the software, including any necessary interfaces, is set up ready for operation, is available and that error corrections, updates, etc. are imported into the other software by the customer in a timely manner.

Our software must be technically activated before it can be used by us and is always assigned to specific hardware (e.g. industrial PC, virtual machine).

2. The customer receives the software in the machine code. There is no entitlement to the release of the source code.

IV. Copyright and Usage Rights to the Software

1. The software, including new versions of the program (updates and upgrades) is protected by copyright. All rights to this as well as to other documents provided in the context of the initiation of the contract and the execution (e.g. documentation) are exclusively owned by us in the relationship between the parties. This also applies to the results of the services and special programming carried out by us on behalf of the customer.

2. We grant the customer the fee-based, non-exclusive, non-sublicensable, non-transferable and, subject to a deviating individual agreement, limited in time to the period specified in our offer, to use the software in accordance with the following regulations in accordance with the following regulations. The license period begins from the respective agreed time of (i) making it available for download, (ii) making it available as a copy of the program or (iii) from the respective agreed time of use via our server or the servers of third parties.

The right to use the software in accordance with its intended purpose may only be granted by sufficiently qualified employees of the customer or the end customer who are appropriately trained in the use of the software and is permitted exclusively for the customer's own business purposes or for the processing of internal business transactions of end customers in accordance with Section IV.5. A corresponding basic instruction can be ordered from us by the customer for a separate fee. Additional training on the use of the software can also be ordered by the customer for a separate fee.

3. Insofar as the Software is made available as a copy of the Program for "on-premise" use, the Customer is entitled to use the Program copy under a license exclusively on an appropriately authenticated I-PC or Customer hardware authorized by us within the scope of the intended use (collectively "Authorized Hardware"). The removal of the software from the authorized hardware and its upload to another hardware ("hardware move") requires our explicit prior written consent and will take place against payment of a processing fee. After the hardware transfer, the licenses for the former authorized hardware will lose their validity and will continue to be valid unchanged after reactivation for the new authorized hardware.

The right to use the Software as intended is limited to the installation and configuration of the Software within the specified configuration options and its operation on the respective authorized hardware. The customer may reproduce, load, display, run and store the software in the object code to the extent necessary for the intended use. The customer may make a backup copy of the software within the scope of the legal provisions. The copy must be marked as such by the customer.

The Customer is not entitled to make modifications to the Software unless such modifications are necessary for the intended use.

- a) Such a necessity for reworking is given if (i) the elimination of a defect is necessary for the intended use of the software and (ii) we are in default with the correction of the defect, we seriously and definitively refuse to remedy the defect to the customer or we are unable to remedy the defects immediately for other reasons attributable to our area of responsibility.
- b) Notwithstanding the foregoing, a modification is also permissible if (i) it is necessary to resolve compatibility problems in the interaction of the Software with other programs required by the Customer, and (ii) we are unwilling or unable to remedy such in return for a reasonable remuneration in line with the market.
- c) Decomplication of the software is only permissible if the prerequisites and conditions set out in § 69e (1) UrhG are met. The information obtained in this way may not be used or passed on contrary to the provisions of § 69e (2) UrhG.
- d) The customer may not commission third parties who are competitors of us with the measures in accordance with this section IV.3, unless he can prove that the risk of disclosure of important trade and business secrets, in particular the function and design of the software product, is excluded by us.
- e) Unless permitted by mandatory legal provisions and in accordance with the provisions, the Client is not permitted to reverse engineer or to translate back into other forms of code (decompile); the same applies to the translation or disassembly of the software or any other attempt to read the source code of the software.

4. Insofar as we make the Software available to the Customer as Software-as-a-Service under a license for its intended use, the following applies: The license to use the Software as intended may only be exercised by the Customer's or the End Customer's separately authorized individual users. The use of the software is subject to an access and authorization concept communicated to the customer in good time (registration process in our systems with username and password or similar). The software can only be used online. A download of the software is not permitted, even if it is technically possible for the customer to do so; in this case, the prohibitions on use of the software in Section IV shall apply accordingly.

5. The right granted to the Customer to use the Software in accordance with its intended purpose also includes the right to grant End Customers a right to use the Software in accordance with the provisions of this Section IV ("Sublicense"). When granting sub-licenses, the customer may not grant any further rights of use than those agreed in section IV and acquired by the customer in individual cases, whereby this excludes the right to grant further sublicenses by the end customer and the customer is also not authorized to use third parties as sub-sales partners.

The Customer guarantees that the End Customers will comply with the license provisions of these Terms and Conditions and will take all necessary measures in this regard. This includes the conclusion of an appropriate license agreement and the assurance that all technical requirements and conditions of use applicable to the use of the software are also fulfilled in the sphere of the end customer.

Customer shall indemnify us for all damages and indemnify us against all expenses and costs (including legal costs) incurred because of any infringement of our rights in the Software by End Customers or a violation of any legal requirements in the distribution of the Software by Customer to End Customers.

6. Insofar as it is not expressly permitted in these T&Cs or insofar as it is not mandatorily required by applicable law, the Customer is not permitted without our prior written consent in particular not to use the Software or the corresponding rights of use in whole or in part, or any other rights granted to it under these T&Cs (including individual contracts concluded on this basis), use, transfer to third parties, make available to third parties, rent, loan, sell, sublicense or otherwise transfer it.

7. Unless otherwise expressly agreed with us, the customer is prohibited from using the software to compete with us directly or indirectly on the market with a business model like ours. The customer is not authorized to grant sublicenses to intra-group parent companies, affiliates, or subsidiaries (inter-company assignment or business). In case of doubt, the customer will obtain prior written permission from us.

8. The copyright notices, trademarks, serial numbers, and other features used to identify the program/software may not be removed, altered and/or made unrecognizable. The Customer is not entitled to remove or circumvent any existing protection mechanisms of the Software and/or parts of the Software against unauthorized use.

9. We are entitled to revoke the granting of rights under this section in whole or in part if the customer does not make the license payment owed or does not pay it in full despite a reminder and after the expiry of a reasonable payment period. We expressly reserve the right to assert further claims, for damages.

10. Any use of the Software outside of its intended use and/or in violation of the other provisions of this Section IV constitutes an infringement of our intellectual property rights and constitutes a material violation of these T&Cs. In all other respects, Section XVII.2 shall apply. Our further rights, regardless of the legal grounds, remain unaffected by this.

11. If we provide the customer with a new version of the software (e.g. patches, updates, upgrades, and new releases/versions of the software), for example as part of the warranty or as a support service, all provisions of these Terms and Conditions applicable to the software shall apply accordingly to the use of a new version of the software.

The customer may only pass on the new program versions to end customers after the new program versions have successfully undergone a load test under real conditions in the customer's environment. Unless expressly agreed otherwise in writing, the customer shall bear the costs of the test.

12. Insofar as we create additional programming for the software individually on behalf of the customer (e.g. further usage functions), the customer receives a right of use in accordance with the right of use acquired for the software.

All intellectual property rights to the corresponding additional programming are created exclusively for our benefit. As the rights holder, we are entitled to exploit and use the additional programming without restriction.

Insofar as such an creation of rights in our favor is not possible for legal reasons, the customer hereby irrevocably grants us the exclusive, temporally, materially and spatially unlimited right to use and exploit all additional programming created for the customer free of charge. We are fully entitled to integrate the additional programming as an integral part of the pre-existing software. The above grant of rights also includes the right to edit, modify, reproduce, distribute and exploit of any kind as well as the right to transfer rights of use and to grant sublicenses without limitation in time and content. If the customer is a co-author, he hereby waives his share of the exploitation rights in accordance with § 8 para. 4 UrhG. If employees or vicarious agents of the customer are co-authors, the customer assures that he has acquired all rights of use and exploitation from them and has received a waiver in accordance with § 8 para. 4 UrhG. The above grant of rights applies to the object code and the source code as well as all interim results and documentation, in particular development documentation, created in connection with the additional programming to the software.

V. Care and Support Services

1. Care and support services are provided in the customer's hardware and software environment (hereinafter referred to as the "system environment") after a separate order and order confirmation for the software provided by us.

2. The customer is obliged to provide us with the affected system environment in full before preparing our offer, in particular the hardware, operating system, etc. used.

We provide the services for the software exclusively in the system environment described by the customer and on which our offers are based. If the customer (a) makes changes to the system environment (e.g. replacement or upgrade of the hardware, change of the operating system or the Internet browser used) and thereby restricts or suspends the functionality of the software or (b) if, due to an update of the software, the system environment as originally communicated to us is no longer technically sufficient to enable the functionality of the software without restriction (server capacities, etc.), we are no longer obligated to provide the Services. In this case, the customer's payment obligations are also suspended.

In such a case, we will restore the functionality of the software under the changed system environment by means of appropriate and appropriate adaptation measures by means of separate agreement and for separate remuneration. In this case, the corresponding service contract between us and the customer will continue to apply unchanged after the functionality has been restored. If no agreement is reached between us and the customer regarding the restoration of the software, we and the customer are entitled to terminate the service contract without notice.

If the software is not used under the conditions of use specified to us or has been modified by programming work by the customer or third parties, we will not provide any services.

3. We are entitled, upon informing the Customer, to engage subcontractors to provide the Services.

4. We initially provide the Services for the Software in the software version existing at the beginning of the contract. If we provide updates and/or upgrades for the software, the customer is obliged to install the software accordingly. "Update" in the sense of "update" means updates of the software within a version number (version designations v1.1., v1.2, etc.), for error correction and slight improvements. An "upgrade" is defined as an update of the software over an entire major version number (version designations v1.0, v2.0, etc.).

5. The content of the services results from the service specification "Care and Support Service Schaeffler Sondermaschinenbau AG & Co. KG" as part of our offer. Adjustments to the service specification are only binding on us if they are listed accordingly in our order confirmation.

6. The Services are performed by means of remote access through our access to the customer's system. Access takes place via a connection that is protected against unauthorized access by third parties. The technical details of how to carry out the "Remote Access" will be communicated to the customer together with our offer. The customer is obliged to create the technical conditions required for "remote access" at his own expense and to always maintain them during the term of the service contract.

On-site services at the customer's premises can be provided on a case-by-case basis based on a separate order for additional payment and reimbursement of costs.

7. Services can only be requested by employees of the customer who have been named by the customer to us immediately after order confirmation in text form (e-mail) stating the respective contact details (telephone, e-mail).

8. Subject to other separate agreements, Customer shall not be entitled to the following services under a Service Agreement: (a) individual modifications and enhancements of the Software, (b) services for third-party software, (c) installation and implementation of the Software on Customer's hardware or system environment, (d) instruction and training of Customer's employees, and (e) elimination of errors from Customer's risk area, In particular, errors caused by improper operation or modification of the software, by contamination of software components with computer viruses or other malware, by the use of unsuitable or faulty data carriers or hardware, etc.

VI. Reservation of Rights, Secrecy, Confidentiality

1. We reserve all copyrights and intellectual property rights to all documents, materials and other objects (e.g. offers, catalogues, price lists, cost estimates, plans, drawings, illustrations, calculations, product descriptions and specifications, samples, models and other physical and/or electronic documents and information) provided by us to the customer. Unless otherwise stipulated in these Terms and Conditions or in the contract, the customer may not make the aforementioned items accessible or communicate to third parties as such or their contents, exploit, duplicate or change them without our prior consent. He must use them exclusively for the contractual purposes and, at our request, return them to us in full and destroy (or delete) any existing copies (including electronic ones) insofar as they are no longer required by him in the ordinary course of business and in accordance with statutory retention obligations.

2. The customer and we will keep confidential information received from the other party during the execution of the contract confidential and will exercise the same care as with regard to our own trade and business secrets of similar importance, but at least take an appropriate level of technical and organizational confidentiality measures. Confidential Information means all trade and business secrets of the parties, as well as all physical or oral information and data, such as development plans, product development and design plans, information about hardware, databases, software used or manufactured, source codes and algorithms, and documents or know-how exchanged between the parties in connection with this Agreement.

In the event of any unauthorized access, use, copying, forwarding or other unauthorized activity with respect to the Providing Party's Confidential Information within the receiving party's area of responsibility or becoming known to the receiving party, the receiving party shall promptly notify the transferring party by email and shall promptly take all necessary action and incur costs: to remedy the respective infringement.

The obligation of confidentiality does not apply to confidential information that:

- have been released in writing by the transferring party to the receiving party.
- were lawfully known to the receiving party before they were made available without any obligation of secrecy.
- is or becomes publicly available for no fault on the receiving party, provided that Confidential Information is not deemed to be publicly available merely because only parts of it are or become publicly available.
- the receiving party is lawfully communicated or transferred by a third party without any obligation of confidentiality, provided that the third party - to the knowledge of the receiving party - does not violate any obligation of its own confidentiality when providing the information.
- has been independently developed by the receiving party and without recourse to Confidential Information or in accordance with the exceptions set forth above; or
- are to be disclosed based on a binding administrative or judicial order or mandatory legal requirements, provided that the transferring party has been informed of the disclosure in writing.

The party invoking an exception must prove that the conditions are met.

The obligations under this clause IV.2 shall continue to apply for 10 (ten) years after the termination of the last order concluded between the parties under these T&Cs.

VII. Prices, Invoicing, Reimbursement

1. The Software and/or Services will be made available to Customer at the license and service fees and/or tariffs specified in the Order Confirmation from time to time. Details of our tariff details are part of our offer.

If services are billed according to expenditure, the expenses are recorded in an activity report at the end of the project or work package with the required time expenditure and made available to the customer.

2. The prices are net plus VAT due by law.

The prices are to be paid without deductions and plus VAT due by law, except for withholding taxes, which the customer is obliged by law to withhold from the remuneration to be paid (income tax). The client and we will support each other to ensure that the amount of withholding tax to be withheld by law or by virtue of treaties for the avoidance of double taxation is reduced to a minimum (ideally, to a complete withholding tax exemption). If required by applicable law, the Client will withhold the relevant taxes and remit them to the relevant tax authorities in accordance with the applicable regulations. In this case, the Client will provide us with the original Certificate of Withheld Taxes (Tax Certificate) and assist us in obtaining the refund or credit of the withheld taxes in accordance with the applicable law.

3. The License and Service Fees payable by the Customer shall be due for payment without deductions in accordance with the payment terms on the invoice. We are entitled to demand payment in advance at any time at our own discretion.

4. In addition, the following shall apply to Services:

In the case of a service with an agreed minimum period, we have the right to review the agreed net prices from the second year of the contract, once (1x) per contract year (example: if the term starts on 01.04. of a year, the first contract year runs from 01.04. of the year to 31.03. of the following year) and to increase them with a notice period (by e-mail, letter) of 4 weeks by up to a maximum of 10% each without giving reasons. Notification of the extent of the increase and the resulting new prices owed by the customer will be sent by e-mail or letter.

5. Travel expenses, expenses and, if applicable, accommodation costs for services that we do not provide at our respective place of business will be charged separately. Car journeys will be invoiced according to the offer, journeys by public transport (bus, train, plane) and accommodation costs (local average price category) against proof according to expenditure, expenses/meal allowance according to the applicable maximum tax rates. In addition, for journeys by public transport and accommodation costs, a flat rate of 15% is charged on the respective net value of the costs for the means of transport or the overnight stay for internal expenses.

For travel times, we can charge the full hourly rate of the employees employed. The basis for the calculation is our headquarters in Erlangen.

6. The customer can only set off against our claims with such claims that are undisputed or legally established. It can only withhold payments to the extent that counterclaims arising from the respective contractual relationship are asserted.

7. In the event of default of payment or if, after conclusion of a contract for the provision of the Software or the performance of the Services, it becomes apparent that our claim for payment of the corresponding license or service fees is jeopardized by the customer's inability to perform, we shall be entitled (i) to withhold the relevant deliveries and/or services or to obtain security from third parties (e.g. bank guarantee of a major German bank) for the resumption of delivery and/or performance; and to withdraw from the individual supply contract in accordance with the statutory provisions (§ 321 BGB); or (ii) withdraw from the applicable Agreement with immediate effect and/or terminate the applicable Agreement extraordinarily in writing. In the above-mentioned cases, we are also entitled to unilaterally change the agreed method of payment to advance payment by means of a corresponding notification in text form or to demand security from a third party (e.g. bank guarantee from a major German bank) for the delivery and/or service in question. The statutory provisions on the dispensability of setting a deadline remain unaffected by this in their entirety.

VIII. Customer's Obligations

1. The customer shall support us in the provision of the services subject to the contract in accordance with the following provisions with cooperation and provision services.

2. Insofar as the obligations to cooperate and provide do not already result from these GTC, the offer, the order and/or the order confirmation, we will inform the customer in good time, with a reasonable period of time, of the nature, scope, dates and all necessary details of the cooperation and provision obligations to be provided by the customer and request the customer to provide them. The customer fulfils his obligations to cooperate and provide without undue delay and free of charge. This applies to all information that we need for billing purposes for our services.

The customer is solely responsible for the data acquisition and transmission by the authorized customer hardware and ensures that data transmission takes place in the specified data formats and via the specified interfaces. Unless we have contractually taken over the hosting of data for the customer, the customer is also responsible for the storage and backup of the data collected.

3. We may provide support services for compatibility purposes with respect to the Software upon appropriate charge. In this case, in the event of incompatibilities between the software and the existing software and/or hardware environment, the customer is obliged to make reasonable settings/configuration changes to all devices involved to eliminate the incompatibility in accordance with our instructions.

Furthermore, the customer is obliged to make reasonable settings or changes to the configuration in accordance with our instructions to eliminate malfunctions and errors in his system, in particular in the hardware involved, including operating software, if the functionality of the software can be established in this way.

In all cases, the customer is obliged to assist us in troubleshooting and rectification. In particular, the customer grants us sufficient remote access to the software installed at the customer's premises for this purpose. In addition, the customer will also provide our employees with on-site access to the software during the customer's regular business hours, if necessary. On-site visits will only take place with our consent in compliance with the customer's appropriate safety regulations, our corresponding additional expenses (time expenditure for staff, travel costs, expenses, e.g. accommodation costs) are to be reimbursed separately by the customer after our prior notice.

Where necessary, Customer permits us to use premises, hardware, software, and telecommunications facilities to the extent necessary to provide the Services.

4. The Client shall take reasonable precautions if the Software does not work properly in whole or in part. He will thoroughly test the software for its suitability for its intended purpose before using it operationally. He is obliged to protect his data and his IT infrastructure, including the software and I-PCs provided, in accordance with the state of the art, against loss, destruction and against unauthorized access by third parties and to ensure compatibility. At its own expense, the customer is obliged to continuously develop and maintain its system environment in such a way that the software can be operated and used in a fully functional manner, even in an updated version.

5. To the extent that we provide the Customer with access to our systems or the systems of third parties, the Customer shall take the necessary measures to protect and secure access data and passwords from time to time. In particular, the customer ensures that access is only granted by sufficiently qualified, reliable, and appropriately authorized employees. In addition, the customer takes the necessary precautions against access by unauthorized persons or misuse activities.

6. Insofar as we are prevented from providing the services subject to the contract due to the non-contractual provision of the cooperation and provision services, we are not responsible for the resulting defects in performance. Agreed appointments will be postponed to a reasonable extent. The extension is calculated according to the duration of the non-contractual cooperation or provision.

7. At the end of the license period, the customer is prohibited from continuing to use the software. The customer is obliged to immediately delete the software installed on its own hardware (including any backup copies) in their current state. The making and/or retention of copies is expressly not permitted. In the case of transfer of use to third parties, the customer must contractually oblige the third party accordingly. At our request, the customer confirms in writing that he has fulfilled his obligations in full.

8. In connection with the Services, the following obligations of the Customer shall apply:

Within the scope of what is reasonable, the customer shall take all necessary measures to determine, limit and document malfunctions and errors in the software. The Customer shall provide the Contractor with, among other things, system logs and memory statements, affected input and output data, intermediate and test results, and other documents suitable to illustrate the malfunction.

The customer appoints a qualified employee as the person responsible for the system, who is available for all queries and for explanation purposes, in connection with any malfunctions that may occur. In particular, the customer shall ensure that, after reporting a malfunction, the person responsible for the system or his representative can be reached for our queries and suggestions for remediation at least during the service hours, or even outside these hours if a separately agreed emergency service is used. The customer also ensures that a direct exchange between us and the customer-employee during whose use of the contract software a malfunction has occurred is also facilitated as part of the fault analysis.

IX. Time of delivery and performance, delay, force majeure

1. Delivery dates or deadlines that have not been expressly agreed as binding are exclusively non-binding information. The start of an agreed license period is observed when the software is made available to the customer or is ready for use at the customer's premises after commissioning by Schaeffler Sondermaschinenbau AG & Co. KG.

2. The entitlement to use the software within the framework of the Software-as-a-Service model exists only within the framework of the current state of the art. The software is at least 97% available on a monthly average (excluding maintenance and improvements).

3. Unless expressly excluded, we are entitled to make partial deliveries and partial services.

4. Force majeure and similar unforeseeable events (e.g. strikes, official measures, external events beyond our sphere of influence) entitle us to extend the delivery and service times appropriately. Claims for damages against us are not justified by this.

5. The occurrence of our delay in delivery shall be determined in accordance with the statutory provisions. In any case, however, a written reminder from the customer to our management is required. If the customer suffers damage because of our delay in delivery, he can claim compensation for delay. This shall be 0.5% of the net price for each full week of delay, but not more than 5% of the value of the part of the total service which, because of the delay, cannot be used on time or not in accordance with the contract. The choice of compensation for delay must be made in writing and is binding. With the choice of compensation for delay, the customer's claim for compensation for the damage incurred by him because of the delay in delivery expires. In lieu of compensation for delay, the customer may claim the damage caused by the delay in delivery in accordance with Section XII.

X. Export Control

1. Customer shall comply with applicable export control and sanctions regulations and laws of the European Union (EU), the United States of America (US/US) and other jurisdictions (export control regulations).

Customer shall inform Schaeffler in advance and provide all information necessary for Schaeffler's compliance with export control regulations, if products, technology, software, services, or other merchandise products are ordered from us (Schaeffler Goods) for use in connection with

- (a) a country or territory, person or entity that is subject to EU, US or other applicable export control and sanctions restrictions, or
- (b) the design, development, production, or use of military or nuclear goods, chemical or biological weapons, rockets, space or aircraft applications or delivery systems therefor.

2. The Client acknowledges that:

- a) that we are to be treated as a U.S. person for the purposes of the U.S. Department of Treasury's Office of Foreign Assets Control (OFAC) regulations regarding Iran (ITSR) and Cuba (CACR); and
- b) Therefore, Schaeffler Goods may not be used, delivered, exported, re-exported, sold, or otherwise transferred to such countries or any other country or territory that is subject to restrictions or sanctions of the U.S. Government without the prior consent of the relevant U.S. authorities. This also applies to supplies and services to a natural or legal person that are on a sanctions list of the U.S. government.
- c) that the fulfilment of the contractual obligations by us is subject to the proviso that the applicable export control regulations do not conflict with this. In such a case, we are therefore entitled to refuse or withhold the performance of the contract without any liability to the customer.
- d) that the Customer undertakes to provide the Supplier, at the Supplier's request, with an End-User Undertaking (EUU) identifying the end-use and end-user of the Contract Products. The Supplier shall provide the required wording of the EUU.

XI. Warranty

1. Our warranty for software and services provided is based on the applicable statutory provisions, unless otherwise stipulated in these Terms and Conditions.

2. We warrant that the software licensed by the customer will be substantially of the quality agreed between the parties at the time of the transfer of risk. Unless expressly agreed otherwise in writing, the quality of the software is ultimately determined by the service and product description in accordance with our offer or any documentation provided.

We have no influence on the nature of the data that arises and is collected during the operation of the machines for which the software is used. Prior to data collection, there is no separate check of the content and scope as well as the quality, completeness, reliability and/or correctness of the respective data. The software is intended only as a support or as an aid and cannot replace an independent examination and/or a critical judgement by the customer as to whether and which organizational and technical measures are to be taken regarding the use and operation of the affected machines, systems and production processes.

3. Strict liability pursuant to § 536a (1) of the German Civil Code (BGB) for defects in software that already existed at the time of conclusion of the contract is excluded.

4. The enforcement of claims for defects is dependent on defects being reported in writing within one week of initial detection. Deficiencies are to be reprimanded by a comprehensible description of the error symptoms. The notice of defect is intended to enable the defect to be reproduced. The customer's statutory obligations to investigate and file a complaint remain unaffected.

5. The customer is not entitled to assert claims and rights due to defects if, considering the defect, he has not paid a relatively high part of the remuneration.

6. Claims for defects for both software and services become statute-barred after 12 months, except in the case of intent.

To the extent that we repair the software or parts thereof or replace them within the scope of the warranty, the limitation period for this shall expire at the end of the limitation period for the originally delivered software.

In the event of minor or insignificant defects in the software, we may optionally provide a workaround solution instead of rectification or replacement delivery to remedy the defect and only finally remedy the defect with the prompt, later delivery of a standard update. Slight or insignificant defects are those defects that do not directly or significantly impair the intended use of the software.

During the rectification of defects, the customer's right to reduce the remuneration, to remedy the defect or to cancel the contract is excluded.

If the remedy of a defect that is not only insignificant or not only minor fails several times and the customer cannot reasonably be expected to wait any longer, but the customer is also entitled to reduce the remuneration or withdraw from the contract. A failure to remedy the defect shall be deemed to exist if it is impossible to remedy the defect and we declare this to the customer in writing or if we expressly refuse to remedy the defect to the customer without justification.

7. The parties agree that liability for defects does not apply if the customer does not fully and timely comply with its obligations to cooperate and responsibilities, unless the customer proves that these circumstances are not the cause of the defect complained of.

8. Claims for defects due to material defects for software provided are excluded if

- a) the Software is modified by the Customer in contravention of the provisions of these GTC, unless the Customer can prove that the defect would have occurred even without the modification made.
- b) the deficiency is due to inappropriate formats or insufficient quality of the data originating from the customer/final customer.
- c) the Software is used in an environment that does not meet the system requirements of the Software and the use is not authorized by us.
- d) the defect was caused by an unauthorized act (including erroneous entries) or omission of a required action, or the software was otherwise used or operated improperly, in particular contrary to our explicit recommendations (e.g., failure to install recommended new program versions or comply with required configurations, or attempts to perform unsupported operations).

- e) the customer fails to immediately notify a defect occurring during the term of the contract and we are unable to remedy the defect due to the omission.

9. If a third party asserts claims against the Customer due to the infringement of existing patents, utility models, designs or copyrights (hereinafter referred to as "Intellectual Property Rights") by the Software, and if the Customer is prohibited from using the Software as a result of an infringement of intellectual property rights caused intentionally or negligently by us, or if such a prohibition is already foreseeable in our opinion, we shall be liable to the Customer as follows:

- a) We shall indemnify the Customer against all claims for damages and the associated legally recoverable costs imposed on the Customer and shall, at our sole option and at our own expense, (i) provide Customer with a right of use for the Software in question or (ii) replace or modify the Software or parts thereof in such a way that the intellectual property right is not infringed and the Software is substantially but still conformable to the contractually agreed nature. If none of the foregoing alternatives is feasible on technically or commercially reasonable terms, we and/or the Customer may terminate the affected License Agreement.
- b) The customer will provide us with appropriate assistance in all mitigation measures.
- c) Our aforementioned obligations only exist if (i) the customer informs us immediately and comprehensively in writing of the assertion or threat of such claims, (ii) all out-of-court and judicial defensive measures and settlement negotiations are reserved to us or are conducted in written agreement with us, (iii) the customer immediately makes available any information requested by us for the assessment of the situation or defense of the claims, and adequate support.
- d) If the customer continues to use the software even though a claim has already been asserted against him due to the infringement of third-party rights, our liability is limited to the situation prior to the assertion of the rights, unless there are other grounds for exclusion.
- e) Claims of the customer are excluded if the infringement of intellectual property rights is caused by the customer's specifications, by an application that is not foreseeable by us or by the fact that the software is modified by the customer or by third parties commissioned by the customer or used together with products not supplied or authorized by us, unless such an infringement of intellectual property rights is also possible without such an application, alteration or such use would have been caused. In these cases, the customer indemnifies us against all claims by third parties due to such infringements of intellectual property rights.

10. The provisions of this Section XI shall also apply in the event of a transfer of the Software by the Customer to the End Customer within the scope of the intended use in accordance with the following additions:

- a) The Customer is solely responsible to its end customers for the installation, configuration, and maintenance as well as the provision of Level-1 and Level-2 support. This includes, but is not limited to, the initial technical review and analysis of problems, the search for problems that have occurred in the past, the identification and provision of available fixes and workarounds, and any necessary on-site support from the customer's employees who are sufficiently qualified and trained to maintain the software. The customer will document the implementation of the measures and, upon request, provide proof of the relevant documents.
- b) If the customer is of the opinion that there is a defect in the software provided to an end customer after the measures have been carried out without success, the customer is entitled to exercise warranty rights in accordance with this section XI.

- c) The assertion of the defect and the communication with us while troubleshooting must always be carried out by sufficiently qualified employees of the customer who are trained in the use of the software. We are not obliged to receive and process inquiries or notices of defects from employees of end customers.
- d) If, after an inspection by us, it becomes apparent that a defect exists, the provisions of this Section XI shall apply with the proviso that we will provide the Customer with a new version of the Software that will remedy the defect and that the Customer will take measures in the form of Level-1 and/or Level-2 support (in accordance with our professional recommendations) himself. We are only obliged to take direct action towards the end customers if the elimination of defects requires measures according to Level 3 support. The parties agree that we have no direct responsibility towards the end customers, that the customer remains the primary contact person for the end customers and that we are not obliged to make free on-site visits to the end customers.

XII. Liability

1. Unless otherwise stated in these GTC, we shall be liable in the event of a breach of contractual and non-contractual obligations in accordance with the statutory provisions.

2. We shall be liable – for whatever legal reason – without limitation to compensation for damages and the reimbursement of futile expenses that are based on an intentional or grossly negligent breach of duty by us or by one of our legal representatives or vicarious agents.

3. In the event of a merely simple or slightly negligent breach of duty by us or one of our legal representatives or vicarious agents, we shall only be liable, subject to a more lenient standard of liability in accordance with statutory provisions (e.g. for care in our own affairs):

- a) – but without limitation – for damages/reimbursement of futile expenses resulting from injury to life, limb, or health.
- b) for damages/reimbursement of futile expenses resulting from the breach of essential contractual obligations. Essential contractual obligations are those obligations, the fulfilment of which makes the proper execution of the contract possible in the first place and on the observance of which the customer regularly relies on and may rely. In this case, however, our liability is limited to the amount of the damage typical of the contract and foreseeable at the time of conclusion of the contract.
- c) in the event of loss of data, only for the damage that would have been incurred even if the customer had properly and regularly backed up the data in a manner appropriate to the importance of the data; if we have taken over the hosting for the customer, liability under the preceding paragraph b) shall apply instead.
- d) The limitations of liability resulting from b) and c) do not apply insofar as we have fraudulently concealed a defect, assumed a guarantee for the quality of the software or hardware or a procurement risk. In addition, any mandatory legal liability, under the Product Liability Act, remains unaffected.
- e) Contractual penalties and liquidated damages that the customer owes to third parties in connection with software or hardware goods supplied by us can only be claimed as damages – subject to all other conditions – if this has been expressly agreed with us in writing or if the customer has expressly informed us in writing of this risk before concluding our contract with him.
- f) The customer is obliged to notify us immediately in writing of any damage and loss for which we must pay or to have them recorded by us.

4. Contractual and non-contractual claims for damages/claims for reimbursement of futile expenses of the customer based on a defect in the software and/or a service shall become statute-barred 24 months after the provision of the software or the provision of the service unless a longer limitation period is mandatorily stipulated in the law. Claims for damages by the customer in accordance with the Product Liability Act as well as if we have fraudulently concealed the defect shall only become statute-barred upon expiry of the statutory limitation periods.

5. Insofar as our liability is excluded or limited in accordance with the above provisions, this also applies to the liability of our organs, legal representatives, employees, collaborators, and vicarious agents.

XIII. Warranty

Information in our (offline and online) catalogues, printed matter, advertising leaflets, other general information and/or offers and order confirmations does not constitute a guarantee at any time. The granting of a guarantee by us must be in writing and expressly stated as such.

XIV. Data protection

1. The parties will comply with the data protection regulations applicable to them in each case. The parties agree that we should not have access to personal data in the performance of contracts – neither in the customer's systems nor in those of the end customers. The customer shall take the necessary measures to ensure that such access is excluded. In the event of system changes, the customer shall check whether this necessitates the processing of personal data or whether the possibility of us accessing such data can no longer be excluded.

2. Insofar as the customer is obliged under this contract to provide us with contact details of his employees, he shall ensure compliance with the data protection requirements for this, in particular he is obliged to document the legal basis for permission.

3. To comply with the data protection requirements, the parties shall, if necessary, conclude an agreement on order processing in accordance with our template.

XV. Termination, Legal Consequences

1. Unless expressly provided for in the order and order confirmation, an ordinary termination of the agreed licenses and/or the ordered services during the specified contract period for the provision of the software or the performance of the services is excluded.

A contract for the provision of Software and Services shall automatically terminate upon expiry of the agreed term.

2. The right of both parties to terminate the contract without notice for good cause remains unaffected. In particular, there is an important reason for:

- (a) if the customer ceases or threatens to cease business operations, insolvency proceedings are filed or opened, or enforcement proceedings are initiated against a customer due to insolvency.
- b) in the event of a breach of a material contractual obligation, if the breach of duty has not been remedied or has not been remedied within a reasonable period of time despite a written warning; no warning is required if the basis of trust for the further performance of the contract has already been shaken by the first breach of duty to such an extent that it cannot be restored (e.g. in the case of an intentional or grossly negligent breach by the customer of the license provisions of these GTC); this

provision does not apply to cases referred to in point IX, as it provides for a specific remedy for the cases in question.

3. Any termination must be made in writing to be effective.

4. For the avoidance of doubt, the parties hereby clarify that the provisions on confidentiality (Section VI), on the Customer's deletion obligations (Section VIII.7), on the rights regarding machine data (Section XIV.) as well as on the protection of the software and rights to additional programming (Section IV.) shall continue to apply after the termination of this Agreement.

XVI. Open Source

The data acquisition and evaluation software contain open-source components. The respective license terms as well as the necessary information and notes are made available in analogue or digital form as part of the provision of the software or via accompanying documentation.

XVII. Final Provisions

1. The law of the Federal Republic of Germany shall apply exclusively. The provisions of the UN Convention on Contracts for the International Sale of Goods do not apply.

2. The place of fulfilment and jurisdiction is Erlangen.

3. Changes and additions to these T&Cs discussed between us and the customer must be made in writing. This formal requirement can only be waived by written agreement. Section II.4 remains unaffected.

4. Should individually provisions of these GTC be or become invalid in whole or in part, this shall not affect the validity of the remaining provisions. The parties already agree if the wholly or partially invalid provision is replaced by an effective provision that comes as close as possible to the economic purpose of the invalid provision.

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