

**General conditions of business for software, hardware and/or database leasing contracts**  
of Schüco Digital GmbH, Karolinenstraße 1, 33609 Bielefeld

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**1. Scope of application**

These general terms and conditions for software, hardware and/or database leasing contracts apply to the leasing contract for software and/or hardware and/or databases (hereinafter referred to as "Leased Object") agreed between Schüco Digital mbH (hereinafter referred to as "Lessor") and the lessee.

**2. Type and subject of service**

- 2.1** The Lessor grants the lessee the right to use the Leased Object to facilitate their work with, procurement of, planning with and design of Schüco products in accordance with their purpose.
- 2.2** The lessee shall neither transfer nor hand over (for any period of time) and in particular shall neither lease nor lend the provided Leased Object to third parties.
- 2.3** The responsibility for the selection of the Leased Object (including the performance results to be achieved through its use) resides with the lessee.
- 2.4** In the event of an exchange, the new Leased Object will replace the original Leased Object.
- 2.5** The Lessor is entitled to inspect the Leased Object at the lessee's premises during business hours subject to advance notice.
- 2.6** In the event that the software is leased, it can be agreed that the lessee will lease optional add-ons for the software (e.g. packages/modules). These optional add-ons build on one another and can also be leased solely for their technical structure.

**3. Obligations of the lessee**

- 3.1** The lessee is obliged to pay the agreed amount to the Lessor.
- 3.2** The lessee is obliged to accept the Leased Object and must acknowledge its proper receipt on the delivery note for the Lessor. The lessee obtains the software by means of download. In order to obtain a download link and the software key, the lessee must provide an e-mail address to which they have access. The lessee must ensure that they are the only person authorised to access this e-mail inbox.
- 3.3** The lessee shall use the Leased Object in a careful manner and adhere to the maintenance, care and usage recommendations of the Lessor.
- 3.4** The lessee is obliged to ensure by means of appropriate technical and organisational measures that the Leased Object is used in accordance with its purpose.
- 3.5** The lessee is obliged to protect the Leased Object at their own expense against access and impairment by third parties and to inform the Lessor immediately in writing of any threatened or actual enforcement measures, distraint, claims under Lessor's lien etc., and to include the bailiff's return with the name and address of the creditor. The lessee must also inform the Lessor without delay of any application to foreclose on or sequester the property where the Leased Object is located.
- 3.6** The lessee is not authorised to make changes to the hardware. This applies in particular to modifications and installations.

**4. Rights of use and copyright (software)**

- 4.1** If software is leased, the lessee shall have a non-transferable and non-exclusive right for a fixed terminable period to use the software in accordance with the terms of this contract. All rights to the software and the data contained therein remain the property of the Lessor; this applies in particular to rights in accordance with Section 69c of the German Copyright Act (UrhG). To this end, the Lessor only gives its consent to the negotiations listed in Section 69c (1)(2) UrhG and required to serve the purpose of this contract. No additional rights will be granted to the lessee.
- 4.2** Furthermore, all other use of software and/or contents and/or data beyond the use stipulated in this contract is also not permitted. The lessee does not have the right to pass on to third parties, change, share, split or edit the leased software and/or the data contained therein and/or associated data or to combine it with other software and/or data (including modification by add-on programs) or to translate, distribute, resubmit and/or make available, decompile and/or disassemble it; the sole exception to this is the performance of necessary acts as part of error reporting in accordance with Section 69d (1) UrhG and decompiling to achieve interoperability in accordance with Section 69e (1) UrhG.
- 4.3** All rights (in particular all items subject to copyright protection and related protective laws including the right of the database provider and all other rights including the legal status of supplementary protection of rights under competition law) regarding the software, the data contained therein and/or associated content and data, as well as all associated printed information belong solely to the Lessor. Copyright in any software products from other manufacturers made available to the Lessor (e.g. Microsoft, Autodesk, CAD-Plan) remains with these manufacturers. The data storage media for computer programs subject to protection under copyright contain a copyright notice informing third parties of this copyright protection. The lessee is not entitled to modify or remove this copyright notice or to copy the computer programs. The lessee is entitled to copy the programs supplied only if this is necessary for use of the program.
- 4.4** Depending on the version of the leased software (individual installation version or network installation version), the following conditions also apply.

The lessee is permitted to use a leased individual installation version of the software on any hardware at their disposal. However, simultaneous usage and storage on more than one piece of hardware is only permitted if the lessee is authorised for multiple use as per the contract and is subject to the quantitative restrictions on multiple use specified in the contract. If the lessee changes their hardware, they must delete the software from the existing hardware if they are not entitled to multiple use of the software. The right of use given to the lessee is restricted to the installation of software on hardware in the possession of the lessee, the loading of software into the main memory and the processing of the software, the manufacture of a back-up copy, provided this is required to ensure future use (Section 69d (2) UrhG). Any additional act of copying, saving to files, electronic data processing systems and/or storage media of any type and/or passing on of software and/or content and/or data with the exception of buffering in the main memory as part of the normal access process or to the hard disk of the end user is not permitted without the prior written agreement of the Lessor. The lessee shall also ensure that third parties – regardless of method – cannot access the software and/or content and/or data.

The lessee may only use a leased individual installation version of the software within a network on more than one piece of hardware if they are expressly authorised to do so as per the contract or prevent simultaneous use by more than one user; in each case, however, the lessee shall take suitable measures to ensure that the software is only used in the network of the lessee and that no operations are carried out which breach this contract.

In the event of a network installation version of a piece of software being leased, the lessee may install from a central piece of hardware (for example, a server) as many copies of the software onto client hardware, i.e. hardware authorised for access on the network, at any time as is expressly permitted by the Lessor in accordance with the contract. The lessee must ensure that the number of pieces of client hardware on which the software is installed is never higher than has been expressly permitted in the contract. Any increase in the number of permitted installations will require a new explicit contractual regulation between the Lessor and lessee. Installation of the network installation version is only permitted on client software that has been integrated by the lessee into their own internal company network. It is prohibited to use or install the software on or by means of public networks or to otherwise make it available to the public. Point 4.4. c) applies to any network installation version installed on client hardware.

**5. Term of the contract and notice of termination**

- 5.1** The leasing period begins on receipt of the Leased Object by the lessee and ends with the expiry of the agreed leasing period.
- 5.2** If software leasing is the subject of the contract, the contract ends on expiry of the leasing period. If the lessee continues use after the leasing period has expired, the leasing agreement is not deemed to have been extended. Section 545 of the German Civil Code does not apply. Optional add-ons to enhance the software can be agreed up to one month before the leasing period ends. The minimum leasing period is one month. Optional add-ons can be terminated once the minimum leasing period has elapsed. Optional add-ons which build on one another can only be terminated starting with the highest configuration level downwards. Notice of termination of an optional add-on must be served in electronic form, text form or in writing. All optional add-ons end with the agreed leasing period for the software.
- 5.3** If hardware leasing is the subject of the contract, the contract ends on expiry of the leasing period if one full month's notice of termination is given. If the contract is not terminated, it is extended indefinitely and can then be terminated subject to a notice period of 3 months to the end of the month.
- 5.4** Points 5.2 and 5.3 also apply if the customer has concluded a contract for hardware and software. Different validity periods and notice periods for hardware and software also apply in this case.
- 5.5** The Lessor has the right to terminate without notice for good cause. Good cause is deemed to exist in particular if:
- a) The lessee is in arrears with their payments for more than 30 days, in particular the leasing payment, and does not pay the arrears within one week of receiving a reminder;
  - b) The lessee is in breach of the terms set out under point 4 of these conditions;
  - c) The lessee does not fulfil other contractual obligations despite warnings by the Lessor, in particular if the lessee continues to use or tolerates usage of the Leased Object in a manner contrary to the conditions of the contract;
  - d) Circumstances give the Lessor cause for concern that the financial situation of the lessee has deteriorated or is likely to deteriorate compared with its state at the time the contract was agreed, such that it seems probable that the lessee will no longer be able to completely fulfil their obligations under this contract, in particular the obligation to make punctual leasing payments, in particular when the lessee ceases to make payments, compulsory execution is imposed on the assets of the lessee or when bankruptcy proceedings or other debt settlement proceedings in or out of court are initiated against the assets of the lessee.
- 5.6** The right of the lessee to terminate the contract without notice for non-compliance with contractual use in accordance with Section 543, (1)(1) of the German Civil Code (BGB) is excluded.
- 5.7** Any notice of termination must be made in writing.
- 5.8** Once the contract has ended, the lessee is obliged to return the Leased Object to the Lessor. The lessee bears the costs for return transport. The software installed on the computers of the lessee must be deleted without delay. Upon request by the Lessor, the lessee shall make a declaration regarding the deletion.
- 5.9** Where software has been leased, the usage rights of the lessee expire when the contract ends.
- 5.10** Where hardware has been leased, the lessee is no longer entitled to use the leased hardware when the contract ends.
- 5.11** If termination is due to the conduct of the lessee, the lessee is obliged to pay damages. This also applies if the Lessor terminates the contract as a result of the commencement of insolvency proceedings or judicial composition proceedings against the assets of the lessee. Provided the Lessor cannot prove that a greater extent of damage was incurred or the lessee cannot prove that a lesser extent of damage was incurred, the Lessor can request that damages be paid at a flat rate of 50% of the remaining charges that would have been payable up to the end of the fixed leasing period had the contract not been terminated. The lessee has the right to prove that the damage was not incurred by the Lessor or was only incurred to a minor extent.

**6. Payment and other costs**

- 6.1** The payment amount is stated in the signed leasing contract. Payment for the optional add-ons is made in accordance with the respective agreements made.
- 6.2** The monthly payment is due immediately at the end of each month following receipt of a proper invoice.
- 6.3** The payment amount can be increased at the earliest 12 months after the contract has been signed. Further increases can be demanded at the earliest after another 12 months has expired. The lessee shall receive notice of an increase in the payment amount, which becomes effective at the earliest 3 months after receipt of the notice. The increase in the leasing price can only become effective if the Lessor intends the payment amount to be the general list price. If the prerequisites for an increase in the payment amount are met, the lessee has the right to terminate the contract within the notice period at the earliest when the new prices come into effect, provided the increase exceeds 5% of the most recent valid prices.
- 6.4** If the lessee agrees more than one contract or contract supplement with the Lessor relating to optional software add-ons, the Lessor can agree with the lessee a payment amount which is less than would otherwise be due for these contracts or contract supplements individually. If such a graduated price is agreed, then the payment amount for the first optional add-on will be greater than the amount due for the second. The third optional payment will in turn be less than the second. If a contract or contract supplement for optional add-ons is terminated and there is to be no payment whatsoever, when a contract with a higher payment amount is terminated the contracts or contract supplements for optional add-ons with lower remuneration amounts are promoted into the position of the contract with the next highest payment amount. For example, if the lessee terminates from its three leasing contracts or contract supplements for optional add-ons the contract with the highest payment amount, the second concluded contract or contract supplement in terms of payment amount becomes the first and the third becomes the second. When any contract is terminated it is always the lowest payment amount from all of the concluded contracts or contract supplements for optional add-ons agreed that is cancelled.
- 6.5** The costs for the delivery of the Leased Object are borne by the Lessor.
- 6.6** The lessee is liable for all taxes, fees and any other costs under public or private law that arise as a result of this contract or the possession or use of the Leased Object.

**7. Arrears**

If the lessee is in arrears with a payment due, the Lessor has the right from this point in time and without further notification to claim interest on arrears 8% above the base rate in accordance with Section 247 of the German Civil Code (BGB). The assertion of further damage caused by delay is not precluded by this.

**8. Liability for defects**

- 8.1** The lessee is aware that software programs are developed in accordance with the current state of the art and can never be quite free from functional irregularities, therefore it is impossible to guarantee full functional capability. Consequently, claims under warranty can be accepted only in the case of severe defects in the Leased Object. The lessee will take suitable precautions in the event that the software does not work as it should, either in full or in part. Moreover, given the large amount of information in the leased databases and despite careful processing and checking, errors can sometimes occur. No guarantee can therefore be made for the accuracy of the content and data.  
The lessee and Lessor agree that use of the software, its content and data is not a substitute for expert planning and advice.
- 8.2** The lessee must inform the Lessor of defects without delay following their discovery stating the information known and necessary for identifying the defect. Within the bounds of reasonable expectation, the lessee must undertake measures that simplify finding the defect and its causes. The lessee assumes the responsibility of the Lessor for diagnosis and maintenance work that is necessary as a result of reasons for which the lessee is accountable (including inappropriate use, use of unsuitable additional programs or additional devices, modifications or enhancements carried out by the lessee).
- 8.3** Should the hardware leased by the lessee break down, the Lessor shall use either its own personnel to undertake repairs, engage a suitable third party or replace the device or defective component within a suitable timeframe, whichever is preferred. Where the device is replaced, it will take the place of the original Leased Object.
- 8.4** The Lessor will rectify any defects in the leased software including manuals and other documentation within a suitable timeframe once the lessee has notified the Lessor of the defect. The claim by the lessee for rectification of a defect is dependent on the defect being able to be identified and reproduced. The defect will be rectified free of charge as the Lessor sees fit; either through a repair, a replacement delivery or the delivery of an updated version. The lessee is not obliged to accept a new version if it does not wish to do so because the new version deviates significantly from the specifications agreed in the contract. When a new software version is supplied, the previous version must be removed or returned on request. Should the new version of the software received by the lessee have more functions or performance features than the contracted version (increased performance), the lessee will be obliged to pay an agreed amount only if the lessee intends to make use of the increased performance. There is no obligation to make use of the increased performance.
- 8.5** The warranty claims of the lessee do not extend to software that the lessee has modified or that the lessee has not used in the agreed system environment; unless the lessee proves that this use is not the cause of the reported defect. The right of the lessee to make a claim under warranty will become void if the lessee carries out or commissions modifications or enhancements to the hardware without the consent of the Lessor, unless it can be proven that the defects in question were not caused either wholly or partly by such modifications.
- 8.6** Should the lessee be accountable for the defect, the Lessor can demand damages in conjunction with the right to terminate the contract, provided that the legal requirements to do so have been met.
- 8.7** Operating materials (e.g. toner or ink, paper etc.) are not the subject of this leasing contract. Accessories associated with the Leased Object (e.g. cables, protective hoods etc.) and other parts subject to wear (e.g. keyboards, print heads etc.) are not part of this guarantee. Where required the objects listed in sentence 1 will be invoiced separately to the lessee.
- 8.8** Should the Leased Object still be non-operational 14 working days after the Lessor has received notification of a defect, for reasons not attributable to the lessee, or the lessee has no interest in continuing the contract as a result of this defect, the lessee has the right to terminate the contract in writing without notice. The lessee will also be entitled to demand a reduction in leasing interest instead. The framework of liability defined under point 9 will apply to any claim for damages.

**9. Liability**

- 9.1** The liability of the Lessor in accordance with Section 536 (a)(1) of the German Civil Code for compensation of damages for defects of the Leased Object present at the time of signing the contract (warranty liability) is excluded.
- 9.2** The Lessor is liable for damages as follows:
- In the event of deliberate acts and gross negligence, in the full amount;
  - In the event of loss of life, personal injury or harm to health, in the full amount;
  - In the event of liability in accordance with product liability law, in the full amount;
  - In the event of violation of essential contractual obligations in place of damages that could typically be expected; the maximum typical damages that could be expected is €5000.00. An essential contractual obligation exists for obligations whose fulfilment enables the correct execution of the contract in the first place or on whose observation the lessee depends and may depend.
- 9.3** The customer is obliged to store data properly in order to fulfil its obligation to reduce damages.

**10. Additional software**

If the lessee concludes a software leasing contract, the download by means of which they receive the software may contain additional software to that which is leased. In this case, the lessee is permitted to use this additional software free of charge in accordance with the conditions under point 4 until the Lessor prohibits this and/or the leasing contract regarding the leased software is terminated. As the software is used free of charge, liability for damages is limited to intent and gross negligence. Unless otherwise agreed in writing, no maintenance and/or support will be provided for the additional software.

**11. Infringement of property rights**

The lessee shall inform the Lessor immediately if a third party asserts claims on the grounds of an alleged infringement of its rights or takes corresponding action.

**12. Limitation of the rights of set-off and retention**

The lessee waives the right of retention against the Lessor, in so far as this is not based on this contractual relationship, and the lessee waives the right to offset, unless the claims of the lessee have been established without dispute or with legal force.

**13. Place of jurisdiction / applicable law**

Bielefeld is the court of jurisdiction and place of fulfilment for all obligations arising from or in connection with this contract. German law applies exclusively. The United Nations Convention on Contracts for the International Sale of Goods does not apply.