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

1. Scope of application

These general business 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 GmbH (hereinafter referred to as "lessor") and the lessee.

2. Type and subject of service

2.1 The lessor gives the lessee the right to use the leased object to facilitate their work through procurement of, and planning of and with Schüco products.

2.2 The lessee shall not permit use of the leased object, including all materials supplied with it, to third parties nor leave it with them for any period, nor in particular lease or lend it.

2.3 Responsibility for selecting the leased object (including the resulting performance to be attained from its use) lies with the lessee.

2.4 In the case of an exchange, the new leased object stands in place of the original leased object.

2.5 The lessor is entitled to see the leased object at the site of the lessee during hours of business after giving advanced notice.

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 endorse its proper receipt on the delivery note for the lessor.

3.3 The lessee shall use the leased object in a careful manner and adhere to the maintenance, care and usage recommendations from the lessor.

3.4 The lessee is obliged to ensure, by taking appropriate technical and organisational measures, that the leased object is used for its proper purpose.

3.5 The lessee is obliged at its own expense to protect the leased object against access and impairment by third parties, and the lessee is obliged to inform the leasing company immediately in writing in the case of threatened or actual enforcement measures, distraint, claims under lessor's lien etc., including the bailiff's return with name and address of the creditor. Furthermore the lessee must inform the lessor without delay of any application for enforcement of a judgment and sequestration of the premises on which 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 Where 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 § 69c UrhG. To this end the lessor only gives its agreement to the negotiations listed in § 69c Nr. 1 S. 2 UrhG and required to serve the purpose of this contract. No other rights shall be given 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 not permitted. The lessee does not have the right to pass, change, share, split or edit the leased software and/or the data contained therein and/or associated data, or to combine the leased software 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 the leased software; the only exception shall be for the performance of necessary acts as part of error reporting in accordance with § 69d Abs. 1 UrhG and decompiling to achieve interoperability in accordance with § 69e Abs. 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 law on industrial property and copyright protection) 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 media for computer programs subject to protection under copyright contain a copyright notice informing third parties of this protection. The lessee has no right 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 According to the version of the leased software (standalone installation version or network installation version) the following supplementary conditions shall also apply.

a) The lessee is permitted to use the leased standalone version of the software on any hardware at their disposal. Simultaneous use and storage on more than one piece of hardware is permitted only if the software contract permits multiple use by the lessee and on condition that the quantitative limit of multiple use as stipulated in this contract is adhered to. If the lessee changes hardware, the lessee must delete the software from the hardware used previously if it is 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 located at the site of the lessee, to the loading of software into the main memory and the processing of the software, to the manufacture of a back-up copy, provided this is required to ensure future use (§ 69d Abs. 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.

b) The lessee shall be entitled to use the standalone version of the software within a network on more than one hardware only if expressly authorized to do so according to contract or if he agrees to stop simultaneous use by several users; the lessee shall at any rate ensure by means of appropriate measures that the software be used within the lessee's network only and that no actions be performed which are considered unauthorized within the meaning of this contract.

c) If a network installation version of a software is provided, the lessee of a central hardware (e.g. a server) shall be entitled to install as many copies of the software on the client hardware, i.e. network access authorized hardware as the lessee is authorized to install according to contract stipulations. The lessee agrees to ensure that the number of client hardware on which the software is being installed never be larger than expressly allowed by contract. Any extension of the number of authorized installations shall require a new contractual arrangement between the lessor and the lessee. The installation of the network installation version shall only be allowed on client hardware integrated in the company's internal network of the lessee. Any use or installation on and/or by use of public networks or its making available to the public shall be prohibited. Subpara 4.4. c) shall accordingly apply to any network installation version installed on client hardware.

5. Contract duration and notice

5.1 The lease begins on receipt of the leased goods by the lessee and ends with the expiry of the agreed lease period.

5.2 If software leasing is the subject of the contract, the contract ends on expiry of the lease period if 3 full months' notice is given. If the contract is not terminated, it is extended for a further contract period These and any other contract periods last for exactly the same length of time as the lease period originally agreed. At the end of the contract period, the contract is extended by a further contract period if it is not terminated with a notice period of 3 months to the end of the preceding contract period.

5.3 If hardware leasing is the subject of the contract, the contract ends on expiry of the lease period if 1 full month's notice is given. If the contract is not terminated, it is extended indefinitely and can then only be terminated with a notice period of 3 full months to the month end.

5.4 Points 5.2 and 5.3 also apply if the customer has agreed 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 the contract without notice on provision of a significant reason. A significant reason is, for example:

a) The lessee is in arrears with its payments for more than 30 days, in particular the leasing payment, and does not pay the arrears within one week of receiving a statement;

b) The lessee is in breach of the conditions set out under point 4;

c) The lessee does not fulfil other contractual obligations in spite of warnings by the lessor, in particular if the lessee continues or tolerates usage of the leased goods in a manner contrary to the conditions of the contract;

d) Circumstances give the lessor cause for concern that the financial circumstances of the lessee have deteriorated or are likely to deteriorate compared with their state at the time the contract was agreed, such that it seems probable that the lessee will no longer be able to completely fulfill its obligations under this contract, in particular 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 regulating proceedings in or out of court are initiated against the assets of the lessee.

5.6 The right of the lessee to terminate without notice for non-compliance with contractual use in accordance with § 543, Paragraph 1, No. 1 of the German Civil Code is excluded.

5.7 Any termination of contract must be submitted in writing.

5.8 After the contract has ended the lessee is obliged to return the leased goods to the lessor. The lessor is responsible for return transport costs. Software supplied, including all copies and associated material, must be returned to the lessor within 10 days. The software installed on the computers of the lessee must be deleted without delay. The lessee shall provide a declaration of deletion if required by the lessor.

5.9 Where software has been leased, after the contract has ended the lessee is no longer entitled to use the leased software.

5.10 Where hardware has been leased, after the contract has ended the lessee is no longer entitled to use the leased hardware.

5.11 Should termination result from behaviour for which the lessee is accountable, the lessee is obliged to pay damages. This also applies if the lessee terminates the contract as a result of the commencement of insolvency proceedings or compulsory winding up of the assets of the lessee. Unless the lessor can prove higher damages or the lessee can prove lower damages, the lessor can claim 50% of the payments which would have become due in the course of the remaining fixed leasing period if the contract had not been terminated, as lump sum compensation for damages. The lessee has the right to prove that no damages whatsoever or lower damages were suffered by the lessor.

6. Remuneration and miscellaneous expenses

6.1 The remuneration amount is stated in the contract agreed.

6.2 Leasing payments are due in advance on the first day of each month.

6.3 The remuneration amount can be increased at the earliest 12 months after agreement of the contract. Further increases can be demanded at the earliest after a further 12 months has expired. The lessee shall receive notice of an increase in the remuneration amount, which becomes effective at the earliest 3 months after receipt of the notice. The increase in the leasing price shall be effective provided that the lessor intends the remuneration amount to be the general list price. Should the provision for an increase in the remuneration amount be fulfilled, the lessee has the right within the notice period to terminate the contract at the earliest at the time when the new prices come into effect, if the increase exceeds 5% of the most recent valid prices.

6.4 If the lessee agrees more than one contract with the lessor relating to the lease of software, the lessor may agree with the lessee a remuneration amount which is less than would otherwise be due for all of the contracts individually. If such a graduated price is agreed, then the remuneration amount for the first contract will be greater than the amount due for the second contract. The amount payable for the third contract will in turn be less than the amount due for the second contract. If a contract is terminated and there is to be no remuneration whatsoever, when a contract with a higher remuneration amount is terminated the leasing contracts with lower remuneration amounts are promoted into the position of the contract with the next highest remuneration amount. For example, if the lessee terminates from its three leasing contracts the contract with the highest payment amount, the second contract in terms of remuneration amount becomes the first and the third becomes the second. When any contract is terminated it is always the lowest repayment amount from all of the contracts agreed that is cancelled.

6.5 The lessor is responsible for the delivery costs of the leased object.

6.6 The lessee must bear all taxes and charges as well as other costs under public or private law arising out of this contract or through possession or use of the leased object.

6.7 The lessor shall insure the hardware, which is part of the leased object, at his own expense against the risks of destruction, loss or damage by fire, theft and flood. The lessee is obliged to report any such cases of damage to the lessor immediately and to provide all required information to enable the lessor to report the damage to its insurance company. The lessee is liable for damages to the lessor as a result of delayed reporting by the lessee of an event of loss.

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 arrears interest 8% above the base rate in accordance with §247 of the German Civil Code. This does not preclude recovery of additional compensation on default.

8. Warranty against defect

8.1 The lessee is aware that software programs are developed in accordance with the current state of technology and can never be quite free from functional irregularities, therefore it is impossible to give an unrestricted guarantee of functional capability without errors. 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 all cases 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 using the software, its content and data is not a substitute for expert planning and advice.

8.2 The lessee must inform the lessor of the defect 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 (among other things, 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, as preferred, use either its own personnel to undertake repairs, engage a suitable third party or exchange the appliance or defective component. In the case of an exchange, the new leased object stands in place of the original.

8.4 Defects in the leased software, including manuals and other documentation, shall be rectified within an appropriate time by the lessor after the lessee has notified the lessor of the defect. The claim by the lessee for rectification of a defect is dependent upon the defect being identified and reproduced. A defect shall be rectified as the lessee prefers by repair free of charge, by replacement or by the supply of a modified version. The lessee shall not be obliged to accept a new version if it does not wish to do so because the version deviates significantly from the contracted version. When a new software version is supplied, the previous version must be removed or returned on demand. Should the new version of the leased software received by the lessee have more functions or performance features than the contracted version (increased performance), the lessee shall be obliged to pay agreed compensation only if the lessee will make use of the increased performance. There is no obligation to make use of the additional features.

8.5 The warranty claims of the lessee shall not extend to software that the lessee has modified or that the lessee has not installed in the agreed system environment; the lessee must prove that this use is not the cause of the reported defect. The right of the lessee to make a claim under the guarantee shall become void if the lessee carries out or commissions modifications or enhancements to the hardware without the consent of the lessor, therefore the defects in question must be proven not to have been 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 lessee fulfils the legal requirements to do so.

8.7 Operating resources (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, printheads 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 without notice. The lessee shall also be entitled to demand a reduction in leasing interest instead. The scope of liability specified in 9 applies to a claim for compensation.

9. Liability

9.1 The liability of the lessor in accordance with § 536 a, Section 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 event of loss of life, personal injury or harm to health;
- In the event of liability in accordance with product liability law;
- In the event of violation of significant contractual obligations in place of damages that could typically be expected; the maximum typical damages that could be expected are 5,000.00 euros.

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 data storage medium that they receive may contain additional software than 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. No maintenance and/or support will be provided for the additional software unless agreed otherwise in writing.

11. Infringement of industrial property rights

The lessee will 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 setoff 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. Written form

No subsidiary agreements have been made. Amendments and supplements to the contract must be made in writing. Any renunciation of this written requirement must be made in writing.

14. Salvatory clause

Should one or several conditions of this contract be ineffective, this does not affect the effectiveness of the other conditions of this contract. The parties pledge in such a case to agree a new condition which comes as close as possible to the economic intention of the invalid condition and which the parties to this contract would have agreed if they had been aware of the ineffective status of the original condition.

15. Jurisdiction/Applicable law

The legal venue and place of fulfilment for all obligations under this contract or in connection with this contract is Bielefeld. German law applies exclusively. UN purchasing law does not apply.