

# **General Terms and Conditions of FORCAM GmbH, Germany ("FORCAM")**

Last updated: September 2021

## **General Terms and Conditions General Section**

### **1 Scope of Application**

- 1.1 These general terms and conditions ("GTC") exclusively apply to all legal relations between FORCAM and customer ("Customer") which involve (i) the provision and/or modification of software and/or hardware, (ii) the provision of SaaS Services, (iii) consulting services or (iv) care and maintenance services by FORCAM ("FORCAM Deliverables") on the basis of an Individual Agreement between FORCAM and Customer ("Individual Agreement"). Customer is responsible for the accuracy of information sent to FORCAM for the purpose of preparing a quotation.
- 1.2 These GTC – in the respective current version – also apply to all future agreements between FORCAM and Customer without FORCAM having to refer to them in each Individual Agreement. FORCAM will inform Customer about any changes of the GTC.
- 1.3 Conflicting, supplementary and/or deviating terms and conditions of Customer are not applicable, even if FORCAM does not expressly object to their applicability in individual cases, irrespective of FORCAM's knowledge of these conflicting terms and conditions or the unreserved performance of FORCAM Deliverables by FORCAM. FORCAM expressly objects to any form-based reference to Customer's own terms and conditions.
- 1.4 If the Individual Agreements, the provisions of the Special Section and those of the General Section of the GTC contain contradictory provisions, the following priority applies with the preceding provisions taking precedence over the following:
  - Individual Agreement
  - Special Section of the GTC
  - General Section of the GTC

### **2 Definitions**

For the performance of FORCAM Deliverables, the following definitions apply:

- 2.1 "Workstation" means so-called business objects for which data are recorded, processed and stored. Any object set up shall be a Workstation requiring a license. Whether the Workstation is recorded purely manually or (half) automatically shall not be relevant for this purpose. For assembly lines, this shall mean that also for subordinate aggregate objects as Workstations, a duty to pay license fees shall exist, in case a separate operating state, a separate work process, or a product mix is recorded.
- 2.2 "Change Request" shall be an amendment to the scope, type, or duration of the FORCAM Deliverables.
- 2.3 "Third-Party Software" means (i) any and all standardized software products and the corresponding documentation as well as content which were developed for or by companies other than FORCAM and are not FORCAM Software; (ii) any and all new versions (including but not limited to releases, updates, patches, and corrections) of this Third-Party Software and (iii) any and all complete or partial copies thereof.
- 2.4 "FORCAM ASP" means the temporary hosting and operation of FORCAM Software acquired by Customer.
- 2.5 "FORCAM AVV" means the agreement for data processing attached to these GTC as Annex 1.
- 2.6 "FORCAM Hardware" means the hardware specified in the respective Individual Agreement.
- 2.7 "FORCAM SaaS" means the provision of software by way of software as a service (SaaS) by FORCAM as specified in the respective Individual Agreement.

- 2.8 “FORCAM Services” means the services specified in the Individual Agreement.
- 2.9 “FORCAM Software” means any and all (i) standardized software products and the corresponding documentation, which were developed for or by FORCAM or by their affiliates.
- 2.10 “FORCAM Maintenance” means the maintenance services specified in the Individual Agreement.
- 2.11 “IP Rights” mean without limitation all patents and other rights to inventions, copyrights, trademarks, designs and other intellectual property rights, as well as all rights of exploitation and use in connection therewith.
- 2.12 “Modification” means any reworking and/or adaptation of FORCAM Software commissioned by Customer or a third party.
- 2.13 “Software” means FORCAM Software and Third-Party Software which is subject of the respective Individual Agreement.
- 2.14 “FORCAM Documents” consist of all analyses, conceptions, drafts, models, reports, plans, drawings, lists, calculations, data, data structure and other work results produced by FORCAM or FORCAM Software independently of whether they are deemed Confidential Information or are protected by intellectual property rights.
- 2.15 “Working Days” mean the weekdays from Monday to Friday (08:00 to 17:00 CET) with the exception of public holidays in the Federal State of Baden-Württemberg and December 24 and 31.

### **3 Services**

- 3.1 Customer may commission FORCAM with various services, in particular with (i) the provision and/or Modification of Software and/or hardware, (ii) the provision of access to ASP and SaaS services, (iii) consulting services or (iv) with care and maintenance services by FORCAM.
- 3.2 The respective scope of FORCAM Services including any special technical features or other service-specific requirements (collectively referred to as “Special Features”) are specified in the Individual Agreement which refer to these GTC.
- 3.3 FORCAM Services provided in accordance with these GTC and any Individual Agreement shall be used for purposes of the Individual Agreement and these GTC only, as well as in accordance with any applicable local legislation, provisions or regulations. FORCAM is entitled to suspend services unilaterally and immediately, if, in FORCAM's reasonable opinion, the services are used in a manner that could result in liability or other disadvantages for FORCAM.

### **4 Conclusion of the Agreement**

The agreement between FORCAM and Customer becomes effective upon confirmation of the order by FORCAM.

### **5 Customer's Obligation to Cooperate**

- 5.1 Customer supports FORCAM in the provision of FORCAM Services by means of appropriately qualified and trained personnel, in particular in the observance of any necessary provisions of Customer regarding process safety.
- 5.2 Customer provides to FORCAM access to the necessary extent to its IT systems and installations including remote access as determined by FORCAM. Moreover, Customer ensures that all further cooperation services on part of Customer that are necessary for the provision of the agreed services will be provided to FORCAM in a timely and complete manner, and free of charge. In the event that Customer fails to provide the necessary cooperative services, or fails to do so in a timely manner, any resulting cost increases and delays are at Customer's expense and account.
- 5.3 Customer undertakes to carry out data backups on a regular basis, at least on a daily basis, in accordance with the guidelines of the manufacturer of the respective software, or in accordance with recognized principles of data processing, and in any event prior to the commencement of any work by FORCAM on Customer's IT systems. Furthermore, Customer ensures that the IT security of its IT systems complies with the technical industry standards.
- 5.4 Customer designates a contact person to FORCAM for all system-related matters. In the event that the

contact person changes, Customer notifies FORCAM without delay about the name and contact information of the new contact person.

- 5.5 In the event that services relate to a specific hardware or software configuration, Customer undertakes to inform FORCAM in a timely manner of any change in the configuration so that FORCAM is in a position to render the services owed under the contract.
- 5.6 In the event that trainings have been agreed upon as FORCAM Services, Customer make available the appropriate premises and technical equipment after consultation with FORCAM. If a training takes place at another location, Customer will rent the premises and provide the necessary hardware and software on site. In consultation with FORCAM Customer ensures that appropriate training systems are available.

## **6 Subcontractors**

FORCAM is entitled to have contractual services rendered by external employees and/or subcontractors of FORCAM, provided that FORCAM remains the contact person for Customer for order and accounting matters. Any services rendered by an external employee and/or subcontractor are subject to these GTC as if they were provided directly by FORCAM.

## **7 Customer's Responsibility/Duties**

- 7.1 Customer is solely responsible for the installation, maintenance, testing and operation of systems, services and devices that are not expressly provided by FORCAM as part of the services to be provided by FORCAM. Insofar as it is necessary for the provision of services by FORCAM, Customer shall ensure that any services, devices, cables and/or connections required and ordered by Customer from third parties are available at the time of the provision of services by FORCAM. FORCAM is not liable for delays in the provision of its services due to breaches of this obligation by Customer.
- 7.2 These GTC do not convey to Customer any entitlement to systems and devices of FORCAM, irrespective of whether they are located on the premises of Customer. Customer does not take any action that would lead to any encumbrance in rem or under the law of obligations in respect of the installations or devices used for the provision of services, and, should such an encumbrance nevertheless arise, immediately removes it at its own expense. Customer does not assert any claims to installations or equipment of FORCAM or of third parties of which FORCAM makes use for the performance of the service, or to IP addresses assigned to FORCAM, as the case may be, and does not obtain any rights to such systems, devices or addresses.
- 7.3 In the event that FORCAM installs systems or devices on Customer's premises in order to provide the services, Customer is liable for any loss of or damage to said systems and devices caused by intent, negligence, unauthorized maintenance or any other cause including theft by Customer, its employees or agents or third parties.
- 7.4 Customer is not entitled to repair, alter or manipulate with FORCAM's installations or equipment, to arrange them differently, or to disconnect them without the prior written consent of FORCAM. Nor shall Customer permit any third party to do so. If FORCAM's systems or devices are damaged or lost, Customer (i) reimburses FORCAM for the cost of their repair or replacement within thirty (30) calendar days of receipt of a written request for reimbursement, and (ii) is liable for any direct and consequential damages FORCAM suffers as a result of the loss or damage to its systems or devices. Upon termination of the Agreement or any Individual Agreement for any reason whatsoever, Customer provides FORCAM with access to its premises to enable and facilitate FORCAM's removal of its respective property.

## **8 FORCAM's Duties**

- 8.1 FORCAM can only comply with contractually agreed delivery times or performance times, if Customer provides its support services in a timely and complete manner.
- 8.2 In so far as FORCAM provides support services as part of an Individual Agreement, Customer is in each case able to reach FORCAM via the FORCAM support ticket service and receive the agreed

support services.

- 8.3 FORCAM undertakes to carry out its activities in such a manner that they do not interrupt, impair or disturb the network and system operations of Customer.

## **9 Remuneration and Payment**

- 9.1 FORCAM invoices FORCAM Services immediately after provision of the services or the Software, but monthly at the latest. All invoice amounts are due immediately without deduction and must be paid within two weeks after the invoice date.
- 9.2 If an FORCAM employee has to travel to a place other than the registered office of FORCAM in order to provide FORCAM Services, FORCAM shall be reimbursed the costs and expenses for these travels by Customer. Special reimbursement provisions may be specified in the Individual Agreement for FORCAM Services.
- 9.3 Regarding due and unpaid invoice amounts, FORCAM reserves the right (i) to charge legal interest on all invoiced amounts from the due date determined above until full and final payment of these amounts and (ii) to charge reasonable collection costs incurred for these unpaid amounts including but not limited to reasonable expenses for legal proceedings. Each Party shall be responsible for its own expenses in connection with these GTC, unless otherwise specified in these GTC or an Individual Agreement. FORCAM reserves the right to use an external service provider to collect unpaid invoices.
- 9.4 Unless otherwise prescribed by law or agreed upon the parties, all prices, costs and other amounts payable by Customer under these GTC and any Individual Agreements shall be paid (i) in Euro (EUR), (ii) plus all applicable value added taxes, customs duties and other applicable sales taxes or comparable taxes and duties payable by Customer, and (iii) free of any counterclaims and without deduction or withholding of any amount.
- 9.5 If Customer wants to dispute invoiced service fees in part or in full, Customer shall inform FORCAM in writing within sixty (60) calendar days from the respective invoice date, stating the reasons for disputing the corresponding service fees. After expiry of this period Customer waives all rights to dispute the corresponding service fees and assert claims in this regard.
- 9.6 If Customer and FORCAM determine certain fees for recurring service charges as well as personnel costs in an Individual Agreement, these remain unchanged for at least one (1) year after the beginning of the corresponding service period. To compensate for wage and other cost increases or within the framework of the general increase of the license and maintenance prices, FORCAM may increase the tariffs for the respective recurring performance fees and personnel costs in each year following the performance period, by a maximum of five percent (5%) each time, if Customer is notified at least ninety (90) calendar days in advance.

## **10 Liability**

- 10.1 FORCAM is only liable for damages caused by slight negligence, if these are due to the violation of essential contractual obligations. "Essential contractual obligations" are such obligations (i) the fulfilment of which makes the proper execution of a contract possible in the first place and (ii) on the fulfilment of which the contractual parties may regularly rely.
- 10.2 In cases of paragraph 1 as well as in the case of damages which can be traced back to grossly negligent behavior of a simple vicarious agent (i.e. not a managerial employee or organ), FORCAM's liability is limited to the foreseeable damage typical for the contract.
- 10.3 In cases covered by paragraphs 1 and 2, FORCAM's liability for unforeseeable financial, special or accidental damages, consequential damages, loss of profit, loss of goodwill, capital costs, loss of interest is completely excluded. The mandatory provisions of the Product Liability Act remain unaffected.
- 10.4 Customer's claims for damages in cases covered by paragraphs 1 and 2 become time-barred at the latest after 12 months from the time when the claim arose and Customer obtains knowledge of the damage, and without regard to the origin of the claim and knowledge, at the latest three years after the time of

the damaging event.

- 10.5 Except in cases of the assumption of a guarantee, in case of fraudulent intent or in case of injury to life, health or body, the above limitations of liability including the statute of limitations apply to all claims for damages irrespective of their legal basis (including claims in tort).
- 10.6 FORCAM is only liable for the loss or damage of data or programs to the extent that their loss or damage could not have been avoided even by an appropriate precaution of the Customer in his area of responsibility (in particular through the creation of backup copies at least daily). Any further liability for the loss or damage of data or programs is subject to the other restrictions of this clause 10.
- 10.7 The above limitations of liability apply accordingly in the event of any claims for damages against employees or agents of FORCAM.

## **11 Force Majeure**

FORCAM is not liable for the breach of obligations arising from these GTC or from Individual Agreements which are caused by circumstances beyond the control of FORCAM or arise as a result of such circumstances ("Force Majeure"). This includes, but is not limited to, fire, flooding, cable or wire breaks, lightning strikes, persistent general power outages, changes in applicable laws and regulations, government or military actions, government ordered shutdowns, strikes, pandemics, civil unrest, terrorism and war.

## **12 Service Level and Error Categories**

- 12.1 The service levels shall determine the respective response time depending on the error categories.
- 12.2 "Response Time" means the time between (i) receipt of a fault message in the ticket system of FORCAM with all details requisite for the reproduction of the fault provided by Customer and (ii) the receipt confirmation of the fault message by an employee of FORCAM. If any required details are missing, then billing of the Response Time shall commence upon receipt of the requisite missing details.
- 12.3 The Response Time applies only during Working Days (08:00 to 17:00 CET), and is continued on the following Working Day, if it exceeds one Working Day. For faults of error category 1, a Response Time of 1 (one) hour applies. For faults of error category 2, a Response Time of 5 (five) hours applies. For faults of error category 3, a Response time of 24 (twenty-four) hours applies.
- 12.4 The following error categories apply to determine the respective Response Time, unless otherwise defined in the Special GTC and Individual Agreements. FORCAM makes the assignment to an error category.
  - Error category 1 (urgent; the operating process is interrupted): The affected system is not usable due to a fault in the Software or in the hardware.
  - Error category 2 (high; the operating process is impaired): The functioning of the respective system is impaired due to a fault in the Software or in the hardware or there are malfunctions in the Software or in the hardware.
  - Error category 3 (low; the operating process is not impaired; all other calls): It is possible to work with the affected system, even if not consistently within the stipulated parameters, due to a fault in the Software or in the hardware. Any malfunctions in the Software or hardware can be circumvented.

## **13 Indemnity Obligation**

- 13.1 Each Party shall keep the other Party free from claims of third parties and all expenses (including reasonable expenses for legal proceedings) with respect to any infringement of third party intellectual or industrial property rights caused intentionally or negligently by it.
- 13.2 Customer undertakes to indemnify and hold FORCAM harmless from and against any and all claims arising from Customer's use of the services, and any and all claims by participants, Customers, or end users of Customer which relate to the use of services or functions of services.
- 13.3 FORCAM's obligations under this clause 13 are subject to the restrictions of clause 10.

- 13.4 In all instances where one Party (“Indemnifying Party”) is obligated to indemnify the other Party (“Indemnified Party”) as provided in these GTC, the Indemnified Party shall notify the Indemnifying Party immediately upon becoming aware of the claim, damage, loss, suit or other event (the “Claim”) giving rise to its right to indemnification under this Agreement. The Indemnified Party shall, at the expense of the Indemnifying Party, provide reasonable assistance to the Indemnifying Party in defending the Claim (such as providing copies of documents or witness statements). The Indemnifying Party determines the defense of the Claim, provided that the Indemnified Party is entitled to participate at its own expense with legal counsel of its choice in a secondary role. Any claim-related settlement or agreement reached or entered into by an Indemnified Party requires the prior written consent of the Indemnifying Party, such content not being unreasonably withheld, conditioned or delayed.

#### **14 Term and Termination**

- 14.1 The term of an Individual Agreement between the Parties commences on the effective date and shall end upon termination by either Party in accordance with the provisions of these GTC.
- 14.2 Performance periods commence on the date on which both Parties have concluded the Individual Agreement pursuant to clause 4, unless a different commencement date is expressly stated therein.
- 14.3 Unless otherwise specified in the Individual Agreement or in the provisions of the Special Section of these GTC, an Individual Agreement may be terminated in writing with a notice period of three (3) months to the end of the respective current term. The right of termination for good cause remains unaffected.
- 14.4 An Individual Agreement may be terminated without notice, if a Force Majeure event continues for more than thirty (30) calendar days and to the extent that it affects the performance to be rendered under the respective Individual Agreement.

#### **15 Confidentiality**

- 15.1 “Confidential Information” means, with respect to a Party (the “Disclosing Party”), all non-public confidential information relating to the business of such Party (including any such subcontracted information) including without limitation data containing Customer lists, information about Customers, technical information (including technical layouts and designs, cable assignments, network configurations, etc.), information about price calculations, business secrets, the financial situation, communication with Customers or Customer suggestions, benchmark information, satisfaction surveys or information about corporate planning or business projects and the provisions of these GTC including all Individual Agreements, regardless of whether they are named or marked as confidential. FORCAM and Customer will act in accordance with this clause 15, if they exchange Confidential Information in the sense of these GTC and/or an Individual Agreement.
- 15.2 Excluded from the definition of Confidential Information is such information that (i) was demonstrably and in a legally compliant manner known to the receiving Party (“Receiving Party”) without any confidentiality obligation prior to the time of disclosure; (ii) was independently developed by the Receiving Party without violation of these GTC; (iii) the Receiving Party lawfully received from a third party who was permitted to disclose it without restriction; (iv) is or will be available to the public or in the public domain from the date of disclosure to the Receiving Party without violation of these GTC; or (v) becomes known to the Receiving Party as a result of a legal or regulatory requirement or order, provided that the Receiving Party takes reasonable steps to inform the Disclosing Party in a timely manner so that the Disclosing Party may take legal action against such requirement or order.
- 15.3 Confidential Information is subject to the Disclosing Party's control. Neither these GTCs nor the disclosure of the Confidential Information shall constitute a grant of rights of use of industrial property rights or intellectual property of the Disclosing Party or of its trade secrets or know-how to the Receiving Party, unless the Parties or the GTC expressly provide that such right of use is granted.
- 15.4 The Receiving Party shall (i) keep Confidential Information in strict confidence and (ii) not use such information for any purpose other than performance under these GTC or the Individual Agreement

and/or otherwise disclose it to any third party in any form without the prior written consent of the Disclosing Party.

- 15.5 Excluded from the consent to disclosure are those employees, representatives or third parties who must obtain knowledge of the Confidential Information in order to perform the contractual services or who are obliged to do so in order to comply with the order of an authority and/or a court (“Authorized Recipients”).

## **16 Suspension of Performance**

- 16.1 FORCAM is entitled, with notification to Customer and without prejudice to all rights to terminate the contract, to suspend services, if (i) this is necessary to comply with an official and/or judicial order; (ii) FORCAM has reason to believe that Customer is committing illegal or unlawful acts in relation to the use of the services; (iii) Customer prevents FORCAM from fulfilling a contractual obligation; (iv) Customer is in default of payment of the contractually agreed remuneration for more than twenty (20) calendar days; and/or (v) another provision of these GTC and/or an Individual Agreement entitles FORCAM to suspend all or some of its services.
- 16.2 If services are suspended due to an action or omission on part of Customer, (i) Customer remains equally obliged to pay the respective service fee as if FORCAM had properly provided the service, and (ii) Customer must reimburse FORCAM for any additional fees and expenses incurred due to the suspension and/or continuation of the service.

## **17 Data Protection**

- 17.1 The Parties undertake to comply with the relevant data protection laws to the extent that the legal obligation of the respective Party is sufficient in connection with the contractual relationship between the Parties.
- 17.2 If and insofar as FORCAM processes Customer’s personal data or gains access to Customer’s personal data within the framework of the provision of the contractual services, Parties conclude the FORCAM-AVV.

## **18 Partner**

Affiliated companies of Customer within the meaning of §§ 15 et seq. German Stock Corporation Act (AktG) are entitled, but not obliged to conclude Individual Agreements with FORCAM, which are subject to these GTC. Unless expressly provided otherwise, only the respective affiliated company is entitled to performance under the Individual Agreement.

## **19 FORCAM Documents**

- 19.1 FORCAM holds the exclusive rights and title to the FORCAM Documents. Customer receives a right of use in the FORCAM Documents only when such right is expressly granted in writing. Customer undertakes to hand the FORCAM Documents unsolicited over to FORCAM after use, by no later than upon end of the Individual Agreement. Customer does not have any security right of the lessor or any other right of retention in this regard.
- 19.2 Notwithstanding any rights of use to the FORCAM Documents that may have been granted, Customer does not have any claim to a particular form or structure of the data, or to particular data structures to which Customer has access. FORCAM is entitled to change these at any time.

## **20 Machine Repository**

FORCAM is entitled to store the templates (machine connection configuration templates) as well as machine connection configurations created by Customer within the scope of the contractual use and to use them in anonymous form for further development of products and product content.

## **21 Changes**

FORCAM reserves the right to make changes or additions to these GTC, the Individual Agreements as well as other agreements and procedures concerning FORCAM Services, provided that this appears necessary to FORCAM and Customer is not disadvantaged by this contrary to good faith. FORCAM

will notify Customer of such changes or additions by means of a notification in text form. They are considered approved, if Customer does not object in writing within one month after notification and Customer has been informed in advance about the possibilities of objection and the consequences of the expiry of the objection period.

## **22 Final Provisions**

- 22.1 Customer may only assign or transfer rights or duties after prior written consent of FORCAM.
- 22.2 All legal disputes between the Parties are conclusively decided, to the exclusion of ordinary legal recourse, by the Chamber of Commerce of Bodensee – Oberschwaben), in accordance with its arbitration rules. Default actions and interim relief remain admissible. The place of arbitration is Ravensburg. The number of arbitrators is three. The language of the proceedings is German.
- 22.3 For all legal relationships between the Parties, including all legal disputes between the contracting Parties occurring in connection with the arising and handling of such relationships, the law of the Federal Republic of Germany applies exclusively to the exclusion of any conflicts-of-law provisions and the United Nations Convention on Contracts for the International Sale of Goods.
- 22.4 The specific jurisdiction shall be at Ravensburg, Germany. § 40 para. 2 of the German Code of Civil Procedure (ZPO) is not affected thereby.
- 22.5 If any provision of the GTC and/or any Individual Agreement thereunder is found by a court to be void, waived or otherwise held invalid or unenforceable, the remaining terms, provisions, agreements and restrictions of these GTC and any Individual Agreements thereunder shall remain in full force and effect.

## **General Terms and Conditions Special Section**

The Special Section of the GTC contains provisions for:

- FORCAM ASP (I)
- FORCAM Hardware (II)
- FORCAM SaaS (III)
- FORCAM Services (IV)
- FORCAM Software (V)
- FORCAM Maintenance (VI)

### **I. Special Terms and Conditions for FORCAM ASP**

#### **1 Subject Matter**

- 1.1 Subject matter of this Section is the temporary hosting and operation of FORCAM Software purchased by Customer and provided on systems of FORCAM or Microsoft or another service provider, and the access via the Internet to the infrastructure required for this purpose in a data center (“Defined Infrastructure”).
- 1.2 Any adaptation of FORCAM Software to Customer’s needs is not owed and requires a separate commissioning within the framework of FORCAM Services. The same applies to the maintenance of the FORCAM Software which shall be commissioned within the framework of the FORCAM Maintenance.

#### **2 ASP Services**

- 2.1 ASP Services consist of the provision of Defined Infrastructure and the installation as well as the operation of FORCAM Software acquired by Customer within the framework of the service package chosen by Customer.
- 2.2 FORCAM provides Customer with the operation of FORCAM Software on the Defined Infrastructure within the framework of these GTC and the service package chosen by Customer for the duration defined in the Individual Agreement (“Term”).
- 2.3 At the commencement of the Term FORCAM communicates to Customer the necessary access data for the use of the ASP Services. Customer shall treat the access data confidentially.
- 2.4 Hardware infrastructure & operating. The Defined Infrastructure for ASP is provided in cooperation with Microsoft Azure or another service provider. The associated hardware will be provided on a rental basis.

#### **3 Availability**

- 3.1 FORCAM provides ASP Services for use by Customer at the transfer point. The transfer point is the transition from the Defined Infrastructure to the publicly accessible network.
- 3.2 The availability of the Defined Infrastructure shall be an average (calculated throughout the calendar month) of 99%.
- 3.3 In the event that the Defined Infrastructure is not available to the extent provided for in the agreement, the Service Level Agreements of Microsoft Azure, available at <https://azure.microsoft.com/de-de/support/legal/sla/summary/> apply.
- 3.4 FORCAM shall periodically back up the FORCAM Software and Customer’s data stored on the Defined Infrastructure within the framework of the selected ASP Service package.
- 3.5 Periods in which FORCAM carries out previously announced maintenance work on the Defined Infrastructure or the FORCAM Software, and other planned downtimes, are excluded from the availability pursuant to clause 3.2

#### **4 Malfunctions**

FORCAM provides Customer with a ticket system through which Customer may report malfunctions of the Defined Infrastructure at any time. FORCAM shall process the malfunctions reported by

Customer that occur during the contractual use by Customer. Clause 12 of the General Section of the GTC applies to the processing of malfunctions.

## **5 Customer's Duties**

- 5.1 Customer is entitled to make use of the ASP Services exclusively within the framework of the Individual Agreement and these GTC.
- 5.2 Customer undertakes to keep confidential the documentation material and access data relating to FORCAM Software or the defined environment. In the event of any misuse or suspicion of misuse, Customer immediately informs FORCAM.
- 5.3 Customer ensures that all authorized users of Customer's ASP Services shall be obligated in accordance with Customer's duties.
- 5.4 Customer undertakes to take and continually adapt appropriate security measures, including state of the art virus protection programs, in order to prevent any damage to the defined environment through access by Customer.

## **6 Right of Use**

- 6.1 Customer is entitled to use FORCAM Software only within the framework of the rights of use as set forth in the Individual Agreement and in the Special Section of the GTC for FORCAM ASP and FORCAM Software.
- 6.2 Customer is entitled to use the copy of FORCAM Software made accessible by FORCAM on the Defined Infrastructure via remote data connections. Any transfer for use by third parties is not permitted.

## **7 Remuneration**

Customer owes the remuneration agreed upon in the Individual Agreement. Payment shall be made quarterly in advance without deductions. In all other respects, the provisions of clause 9 of the General Section of the FORCAM GTC apply.

## **8 Termination of Contract**

Upon termination of the agreement Customer is entitled to save its data stored in the Defined Infrastructure by means of a telecommunications connection. After termination of the agreement FORCAM is not obliged to retain or back up any of Customer's data.

## **9 Liability**

In cases covered by clause 10 paragraphs 1 and 2 of the General Section of the GTC FORCAM's liability for all claims for damages or indemnification in connection with FORCAM ASP is limited per claim to 50% of the amount to be paid annually by Customer for FORCAM ASP, but not exceeding EUR 100,000, and per year to 100% of the amount to be paid annually by Customer for FORCAM ASP, but not more than EUR 300,000.

## **II. Special Terms and Conditions for the Provision of FORCAM Hardware**

1. Customer exclusively acquires from FORCAM the FORCAM Hardware specified in the Individual Agreement.
2. FORCAM delivers the FORCAM Hardware together with documentation ex works. Customer bears the risk and costs of delivery.
3. Upon request FORCAM installs the FORCAM Hardware and prepares the hardware for operation. Costs and conditions are set out in Section III.
4. Upon ex-works delivery of FORCAM Hardware, the invoice for the purchase of FORCAM Hardware will be issued.
5. If Customer has acquired maintenance services of FORCAM together with the purchase of hardware,

- then Customer may withdraw from the Individual Agreement for FORCAM Maintenance in the event of a withdrawal from the purchase of FORCAM Hardware.
6. In the event of defects of FORCAM Hardware, FORCAM is entitled to remedy the defect by - at its own choice - subsequent improvement or replacement delivery. Any claims due to defects become statute-barred within twelve (12) months commencing on the day of transfer of FORCAM Hardware to Customer except in the case of fraudulent intent, the absence of a quality guaranteed by FORCAM as well as in the cases of clause 10.5 of the General Section of the GTC. In these cases the statutory regulation applies.
  7. Customer shall examine the delivered hardware with regard to defect without delay, and shall - in the event of a defect - notify FORCAM without delay. If Customer fails to notify, FORCAM Software is deemed to have been approved, unless it is a defect that was not recognizable during the examination. If such a defect becomes apparent subsequently, the notification shall be made without delay following its discovery; otherwise, FORCAM Hardware is deemed to have been approved also in respect of this defect.
  8. In cases covered by clause 10 paragraphs 1 and 2 of the General Section of the GTC FORCAM's liability for all claims for damages or indemnification in connection with FORCAM Hardware is limited per claim to 50% of the amount to be paid by Customer for FORCAM Hardware, but not exceeding EUR 100,000, and per year to 100% of the amount to be paid by Customer for FORCAM Hardware, but not more than EUR 300,000.

### **III. Special Terms and Conditions for SaaS (Cloud Models)**

#### **1 Subject Matter**

- 1.1 Subject matter of this section is the provision of access to FORCAM Software in accordance with the specifications of the Individual Agreement within the framework of SaaS (cloud models) on systems hosted and operated by FORCAM or Microsoft or other service providers ("SaaS Platform").
- 1.2 An adaptation of FORCAM Software to the needs of Customer is not owed.

#### **2 SaaS Services**

- 2.1 SaaS Services consist of the provision of the SaaS Platform.
- 2.2 FORCAM grants Customer access to the SaaS Platform within the framework of these GTC for the duration defined in the Individual Agreement ("Term").
- 2.3 FORCAM provides Customer with a hotline service pursuant to clause 3 as well as with a support service pursuant to clause 4.
- 2.4 At the beginning of the Term FORCAM communicates to Customer the necessary access data for use of the SaaS Platform. Customer shall treat the access data strictly confidential.

#### **3 Hotline Service**

As part of the hotline service FORCAM provides Customer with a ticket system through which Customer can report errors of the SaaS Platform at any time (24/7).

#### **4 Support Service**

- 4.1 Within the framework of the support service FORCAM will process the errors reported by Customer that occur during the contractual use of the SaaS Platform by Customer. An error shall be deemed to exist, if the SaaS Platform does not perform the functions described in the documentation, delivers incorrect results, is not available, or does not work in any other manner in accordance with its functions, so that the use in accordance with the agreement is not only significantly impaired.
- 4.2 Within the framework of the support service FORCAM undertakes to limit the cause of the error, to diagnose the error, and insofar as this is possible with reasonable effort, to remedy the error.
- 4.3 Measures within the scope of the support service are provided during support hours. The support hours

are determined by the support plan commissioned by Customer in each case. Measures outside the support hours shall only be carried out on basis of a separate agreement in each individual case and against separate remuneration.

- 4.4 During support hours the applied Response Time for the reported errors in each case depend on the support plan commissioned by Customer whereby errors of error category 3 pursuant to clause 12.4 of the General Section of the FORCAM GTC shall be remedied exclusively within the framework of the regular updates.
- 4.5 Errors are classified by employees of the support service into error categories pursuant to clause 12 of the General Section of the GTC.
- 4.6 If an error cannot be remedied within 8 hours, an escalation procedure shall be initiated, insofar as this is included in the support plan ordered by Customer. This shall not apply to errors of error category 3.
- 4.7 The support services are not provided,
- if Customer uses the SaaS Platform contrary to the terms and conditions;
  - in the event of errors that have been caused by application errors on part of Customer and which could have been avoided by due consultation of the program documentation;
  - in the event of software errors to virus infestation on part of Customer or other external influences for which FORCAM is not responsible;
  - in the event of software errors which are caused by missing hardware by Customer, in the Customer's operating system or in other computer programs.

## **5 Availability**

- 5.1 FORCAM makes the SaaS Platform available for use by Customer at the transfer point. The transfer point is the transition from the SaaS Platform to the publicly accessible network.
- 5.2 FORCAM owes the provision of the SaaS Platform only within the framework of the chosen support plan.
- 5.3 The hosting of the SaaS Platform is subject to an availability of 99% averaged over a calendar month.
- 5.4 The periods during which FORCAM carries out previously announced maintenance work on the SaaS Platform as well as other planned downtimes are excluded from the availability pursuant to clause 5.3. The maintenance work does not exceed the period of 8 (eight) hours per month.
- 5.5 If the SaaS Platform is not available to the extent provided for in the agreement, Customer will receive the following credits for the failed period:
1. availability <99% and > 95%: 10% of the monthly amount paid by Customer for the affected module of the SaaS Platform
  2. availability <95% and > 90%: 25% of the monthly amount paid by Customer for the affected module of the SaaS Platform
  3. availability <90: 50% of the monthly amount paid by Customer for the affected module of the SaaS Platform
- 5.6 A prerequisite for the creation of credit notes is that Customer reports the failure of the SaaS Platform or the respective module via a ticket pursuant to clause 3 immediately after the failure has been determined and documents the period between failure and report within the scope of the report.

## **6 Customer's Obligations**

- 6.1 Customer is entitled to use the SaaS Platform exclusively within the scope of the Individual Agreement and these GTC.
- 6.2 Customer undertakes to keep the documentation materials and access data to the SaaS Platform confidential. In the event of any misuse or suspicion of misuse, Customer shall immediately inform FORCAM.
- 6.3 Customer ensures that all of Customer's authorized users of the SaaS Platform are obliged in accordance with Customer's obligations.
- 6.4 Customer is responsible for the observance of necessary technical requirements and security

precautions for the SaaS Platform. This includes, in particular, a fail-safe Internet connection with appropriate bandwidth, the validity of a comprehensive IT security concept including firewalls on the accessing devices with up-to-date antivirus programs that correspond to the state of the art, and a regular external backup of all uploaded content and data.

- 6.5 Customer shall not make any changes and/or manipulations to the SaaS Platform and the corresponding software. Furthermore, Customer shall not upload any content and data which Customer is not entitled to process and/or upload or process and/or distribute content and data which infringe third party rights and/or violate applicable law.
- 6.6 Customer notifies FORCAM without delay of any disruptions, impairments, and/or any damages in connection with the use of the SaaS Platform. In this connection Customer also takes all reasonable measures to avert or minimize any damage.
- 6.7 In the event that any disruptions, impairments, and/or any damages in connection with the use of the SaaS Platform are attributable to the fact that Customer culpably violates Customer's obligations, Customer bears the sole responsibility for the same. Any liability on part of FORCAM is expressly not assumed.

## **7 Rights of Use**

- 7.1 FORCAM grants Customer a simple, non-exclusive and non-transferable right of use with respect to the SaaS Platform and the corresponding Software for the purposes provided for in the contract.
- 7.2 The right of use in accordance with the above clause relates exclusively to the number of users or Workstations listed in the Individual Agreement. Transfer for use by third parties is not permitted.
- 7.3 Use of the SaaS Platform by Customer for other purposes than those expressly stated in these terms of use is not permitted. In particular, Customer is not entitled to make any changes or interventions to the SaaS Platform and/or to allow unauthorized persons access thereto and/or to reproduce and/or distribute the SaaS Platform or parts thereof. Should Customer violate this provision, FORCAM is entitled to terminate the agreement for good cause.
- 7.4 FORCAM grants Customer the right to use the documents generated within the framework of use of the SaaS Platform for internal purposes. The publication of documents and their distribution to third parties without the prior consent of FORCAM is expressly prohibited.

## **8 Changes, Updates, Upgrades**

- 8.1 Customer is entitled to access the version of the SaaS Platform with the specifications on which the Individual Agreement is based.
- 8.2 FORCAM is entitled to further develop the SaaS Platform, i.e. to change or replace functions and/or to add new functions ("Changes") at any time. In this event, FORCAM updates the SaaS Platform description as necessary. Therefore, Customer is required to read the SaaS Platform description at regular intervals. FORCAM informs Customer in advance of any important Changes.
- 8.3 FORCAM is also entitled, but not obliged to develop and implement Changes of a content-related and/or technical nature, updates and upgrades for the SaaS Platform. In this case, Customer's right of use also extends to the new functions, updates and upgrades.

## **9 Audit**

- 9.1 Customer enables FORCAM to ensure the use in accordance with the agreement, and in particular, the qualitative and quantitative compliance with the rights of use of the SaaS Platform by means of technical measures or appropriate investigations.
- 9.2 Customer undertakes to provide FORCAM with the necessary information regarding the use thereof, and to grant FORCAM access to relevant documents and records. Furthermore, FORCAM is entitled, subject to the observance of a reasonable period of notice, to examine the software and hardware environment that is used, either itself or through an independent third party who shall be bound to professional secrecy, on the premises of Customer during the usual business hours of Customer. FORCAM shall take into consideration the Customer's interests, and shall, in particular, intervene in

the operational processes of Customer only to such an extent as shall be absolutely necessary for the purposes of the inspection.

- 9.3 The costs of the examination shall be borne by FORCAM, insofar as there is no deviation between the actual and the agreed use on part of Customer. Otherwise, Customer bears the costs of the examination.
- 9.4 In the event of a deviation of the actual scope of use from the agreed scope of use, Customer shall re-license any additional use on the basis of the then valid price list of FORCAM for the past, and shall license it for the future.

## **10 Remuneration**

Customer owes the remuneration agreed upon in the Individual Agreement. Payment shall be made quarterly in advance without deductions. In all other respects, the provisions of clause 9 of the General Section of the FORCAM GTC apply.

## **11 Content Rights and Data Protection**

- 11.1 Customer is solely responsible for the uploading and processing of content on the SaaS Platform and ensures that Customer has all necessary rights.
- 11.2 Customer is responsible under data protection law for all personal data that user uploads to the SaaS Platform and/or stores on it, processes and/or makes accessible to third parties. This applies on the one hand to the personal data of Customer's employees and on the other hand to all personal data of contact persons at contractual partners such as general contractors, subcontractors or third parties.
- 11.3 FORCAM as the host of the SaaS Platform processes the personal data as a processor. Therefore, FORCAM and Customer conclude the FORCAM AVV.

## **12 Liability**

In cases covered by clause 10 paragraphs 1 and 2 of the General Section of the GTC FORCAM's liability for all claims for damages or indemnification in connection with SaaS is limited per claim to 50% of the amount to be paid annually by Customer, but not exceeding EUR 100,000, and per year to 100% of the amount to be paid annually by Customer, but not more than EUR 300,000.

## **13 Term and Termination**

- 13.1 Unless otherwise provided for in the Individual Agreement the agreement has a term of three years and is thereafter extended by one further year in each case, unless it is terminated with a notice period of 3 months to the end of the term.
- 13.2 Upon termination of the agreement Customer is entitled to secure Customer's data stored on the SaaS Platform by means of a telecommunications connection. After the termination of the agreement FORCAM is not obliged to retain or back up any of Customer's data.

# **IV. Special Terms and Conditions for FORCAM Services**

## **1 Subject Matter**

Subject matter of this section on FORCAM Services is the provision of services in accordance with the service specified in the Individual Agreement for Customer's project ("Customer's Project"). In all other respects the FORCAM GTC apply.

## **2 Scope**

- 2.1 Prerequisite for the conclusion of an order for the provision of services by FORCAM is the determination of the service to be provided within the framework of the provisions jointly determined with Customer in the Individual Agreement.
- 2.2 FORCAM Services shall be retained by Customer at least thirty (30) days in advance.
- 2.3 Remuneration depends on the skill levels of FORCAM employees in accordance with daily rates. Partial days are fully compensated.

- 2.4 Any FORCAM Services performed outside the Working Days have to be stipulated separately and are compensated in accordance with the Individual Agreement for FORCAM Services.

### **3 Change Request**

Customer may submit a Change Request. FORCAM examines the feasibility of the Change Request and submits an offer to Customer for its implementation. If Customer accepts the offer by returning the countersigned offer, the Change Request becomes binding.

### **4 Skill Levels**

The hourly/daily rates charged for personnel in case of a regular eight-hour day are set forth in the respective Individual Agreement with reference to the levels set forth below:

- 4.1 Skill level 5 - strategy: management and strategy consulting, overall responsibility for the fulfillment of orders and Customer needs, development of innovative overall solution strategies for complex problems, contact person at top management level, business vision, portfolio management.
- 4.2 Skill level 4 - steering manager: responsibility for overall project management, technical and strategic advice to Customers/project managers, conception of new methods and procedures, entrepreneurial project management of complex, global, innovative projects, contract management.
- 4.3 Skill level 3 - senior consultant, senior developer, senior service engineer:
- (i) consulting: project management and technical leadership of project teams, consulting in the conception and implementation of solution approaches, budget and team management, conceptions on project level and development of decision templates, management and planning of projects/subprojects, independent project controlling.
  - (ii) development: cooperation with and management of development teams, conception of solution-oriented development approaches, management and planning of development projects/sub-projects, systems engineering, independent project controlling.
  - (iii) service: guidance of service engineers, service consulting, cooperation with and management of service teams, responsibility for ticket processing, updates and resolution times.
- 4.4 Skill level 2 - consultant, developer, service engineer:
- (i) consulting: analysis of business processes, project team member, organization and development of solutions, knowledge management, module training, quality control in projects, subproject management.
  - (ii) development: cooperation with and leadership of development teams, conception and development of new functions based on development guidelines.
  - (iii) service: responsibility for ticket handling, customization tasks, technical support, service presentations, testing.
- 4.5 Skill level 1 - junior consultant, junior developer, junior service engineer:
- (i) consulting: project team member to analyze and process Customer requests, maintain project management tools, gather information.
  - (ii) development: development team member for creation and Modification of programs in accordance with development specifications, maintaining project management tools, information procurement.
  - (iii) service: acceptance of tickets and qualification, ticket processing under supervision, service team members to carry out machine connections and hardware service, maintenance of project management tools, information procurement.

### **5 Overtime Surcharges**

In addition to the above billing rates, the following surcharges will be assessed:

- Working Days outside of 8 a.m. to 5 p.m.: plus 50%.
- Saturday work from 8 a.m. to 5 p.m.: plus 50%

- Saturday work outside 8 a.m. to 5 p.m.: plus 100%.
- Sunday and holiday work, 24/31/12: plus 150 %.

## 6 Travel Expenses

Travel times and travel expenses will be charged to Customer on a time and material basis. For travel times, half the effort rate based on the corresponding skill level will be applied. The following framework conditions apply:

- (i) Flat rate per kilometer: EUR 0.50/km
- (ii) Rental car: VW Golf or Passat class
- (iii) Flight (flight duration < 6 hours) economy class: actual expenses
- (iv) Flight (flight duration > 6 hours) business Class: actual expenses
- (v) Train, 2nd class: actual expenses
- (vi) Hotel, max. 3 stars: actual expenses
- (vii) Public transportation: actual expenses
- (viii) Taxi and parking fees: actual expenses
- (ix) Incidental expenses: actual expenses

## 7 Invoice

Services are invoiced after they have been provided. In the event of a change in the preliminary conditions for the rates charged, FORCAM reserves the right to adjust them. In all other respects, the provisions of clause 9 of the General Section of the FORCAM GTC apply.

## 8 Customer's Obligations to Cooperate

### 8.1 **Organization** Customer provides the following resources:

- (i) Project manager of Customer with appropriate resources,
- (ii) CIP manager, and
- (iii) contact person from appropriate departments of Customer (e.g. IT, Maintenance and ERP/ SAP), if necessary.

Furthermore, Customer is obliged to create the following framework conditions:

- (i) Customer ensures project acceptance among the affected user groups in the run-up to the project.
  - (ii) Customer ensures transparency and understanding of the relevant project objectives.
  - (iii) Customer ensures that system access is restricted to appropriately authorized persons.
  - (iv) In addition, the obligations of Customer under the General Section of the FORCAM GTC apply.
- 8.2 **Right of Access, Remote Access.** For all IT systems involved in the project, the rights of access and remote access set forth in clause 5.2 of the General Section of the FORCAM GTC apply.
- 8.3 **IT Infrastructure.** Customer provides the necessary IT infrastructure listed in the specification agreed upon in the Individual Agreement (unless specified separately). In particular, it shall be necessary to ensure unhindered access between the IT systems (including technical requirements such as firewalls).
- 8.4 **Machine controls.** Customer ensures the installation and cabling of the hardware components specified in the Individual Agreement for communication with the corresponding machine controls. Customer make available the machine signals specified in the Individual Agreement and reviews and compares the aforementioned signals with the actual machine status prior to the machine connection configuration on part of FORCAM.
- 8.5 **FORCAM Adapter for SAP.** Customer imports the FORCAM adapter into the corresponding SAP target system and provides appropriate support for the adaptation of the FORCAM adapter. For testing purposes Customer provides access to the SAP test system. Furthermore, Customer ensures the design and validation of solutions for the integration of the FORCAM adapter into existing processes and function modules and performs the necessary regression, integration and acceptance tests. The development and implementation of changes to Customer's own programs and SAP standard adaptation are carried out by Customer and are not part of the offer of FORCAM Services. Customer

provides its documentation of existing processes concerned and their mapping in SAP. Customer also provides information on SAP standard adaptation settings.

## **9 SAP Delivery Items FORCAM Adapter for SAP**

- 9.1 Providing the FORCAM adapter by means of transport files for import into the target SAP system.
- 9.2 Support the design and validation of solutions to integrate the FORCAM adapter into the existing SAP environment.
- 9.3 Adaptation of FORCAM adapter in SAP and connection to the Factory Framework or FORCE.
- 9.4 Support integration testing between FORCAM adapter and Factory Framework or FORCE.
- 9.5 Prepare FORCAM adapter customization guide and service description.
- 9.6 Training “IDOC Management” according to training documents.
- 9.7 Provision of documentation of any enhancements made.

## **10 Service Packages**

- 10.1 FORCAM offers special service packages for the support of Customer’s IT system, which shall be ordered separately by Customer. Subject matter of the service packages shall be the services described in the respective service package.
- 10.2 **Exclusion of Services:** The following services are not provided under the service packages:
  - availability and data backup
  - software Modifications/developments as well as installation and commissioning of new software versions
  - updates to a new version free of license fees (e.g. version X to version Y)
  - elimination of errors caused by interventions of Customer or a third party or by improper use of the system
  - elimination of errors that are not based on a defect of the Software for which the Individual Agreement was concluded
  - provision of the source code or parts thereof
- 10.3 **Other frame conditions:** Shortfall or excess of support periods specified in the service package:
  - Days not used expire at the end of each year.
  - If the service contingent specified in the service package is exceeded, the excess service will be billed according to the standard service rates
- 10.4 **Availability:** Support services can be called on Working Days (8:00 a.m. to 5:00 p.m. CET).
- 10.5 **Term and Terms of Payment:** The flat fee payable under the service package is payable annually in advance and is automatically renewed for one year on January 1, unless the agreement has been duly terminated in due time. The notice period for support services is three months to the end of a year.

## **11 Liability**

In cases covered by clause 10 paragraphs 1 and 2 of the General Section of the GTC FORCAM’s liability for all claims for damages or indemnification in connection with FORCAM Services is limited per claim to 50% of the amount to be paid annually by Customer for FORCAM Services, but not exceeding EUR 100,000, and per year to 100% of the amount to be paid annually by Customer for FORCAM Services, but not more than EUR 300,000.

## **V. Special Terms and Conditions for the Provision of FORCAM Software**

- 1 **Subject Matter.** Subject matter of the Special Terms and Conditions for the Provision of FORCAM Software is the provision of the Software specified in the Individual Agreement (“Standard Software”) to Customer and the granting of the necessary rights to use the Standard Software. In the event that Customer desires the services of FORCAM Maintenance, a separate agreement shall be concluded.

2     **Provision.** FORCAM makes available to Customer the Standard Software in an object code as download. FORCAM hands over to Customer the license key required for the download. The Standard Software includes associated documentation material (in particular operating instructions, descriptions, manuals, file overviews, record descriptions, and other material).

3     **Rights of Use.**

3.1   Customer is only entitled to use the Standard Software within the framework of the license of use granted and in accordance with the provisions of these GTC.

3.2   Upon full payment of the agreed fee or remuneration FORCAM grants to Customer for the agreed period of time a non-exclusive and non-transferable right to use the Standard Software for its operational purposes.

3.3   Insofar as Third-Party Software forms a part of the Standard Software, the terms and conditions of the granting of rights of use to the Software designated in the Individual Agreement as Third-Party Software are set forth in the third-party license terms and conditions attached to the Individual Agreement.

3.4   The right of use pursuant to the foregoing clause 3.2 exclusively refers to the copy of the Standard Software provided by FORCAM for the number of installations on servers and Workstations of Customer specified in the license certificate. The transfer for use by third parties is not permissible.

3.5   Customer is entitled to use the Standard Software only within the scope of rights of use granted. In particular, Customer is not entitled to reproduce Standard Software, unless this is absolutely necessary for its correct use. Under no circumstances is Customer entitled to lease or otherwise sublicense the Standard Software, to make it available or accessible to the public via a line or via radio signals, or to make it available to third parties against payment or free of charge.

3.6   Customer is not entitled to decompile or reproduce the Standard Software in deviation from the requirements of applicable laws (such as copyright law).

3.7   If Customer exceeds its rights of use granted to it under this clause, such use shall be subject to the corresponding fee set forth in the Individual Agreement. If no fee has been agreed for the type of usage overrun, Customer owes damages.

3.8   Customer may use the Standard Software on another system, if the central system on which the Standard Software is installed fails and this disrupts the course of business in Customer's company. However, the total number of permissible copies of Standard Software may not be exceeded.

4     **Audit**

4.1   Customer enables FORCAM to ensure the use in accordance with the agreement, and, in particular, the qualitative and quantitative compliance with the rights of use of the Standard Software by means of technical measures or appropriate investigations.

4.2   Customer undertakes to provide FORCAM with the necessary information regarding the use thereof, and to grant FORCAM access to relevant documents and records. Furthermore, FORCAM is entitled, subject to the observance of a reasonable period of notice, to examine the software and hardware environment that is used, either itself or through an independent third party who shall be bound to professional secrecy, on the premises of Customer during the usual business hours of Customer. FORCAM shall take into consideration the Customer's interests, and shall, in particular, intervene in the operational processes of Customer only to such an extent as shall be absolutely necessary for the purposes of the inspection.

4.3   The costs of the examination shall be borne by FORCAM, insofar as there is no deviation between the actual and the agreed use on part of Customer. Otherwise, Customer bears the costs of the examination.

5     **Warranty**

5.1   Customer undertakes to examine the Standard Software for obvious errors immediately upon receipt, and to inform FORCAM about all errors without delay. Otherwise, any warranty for such errors is excluded. The same applies in the event that such an error should subsequently become apparent.

Section 377 of the German Commercial Code applies.

- 5.2 FORCAM is entitled to remedy any defects initially by means of rectification or subsequent delivery. In the event that the rectification or subsequent delivery fails twice, Customer is entitled to choose either (i) to reduce the agreed remuneration appropriately, or (ii) to withdraw from the Individual Agreement. In this case FORCAM is liable for claims for damages and reimbursement of futile expenses in accordance with the provisions of clause 10 of the General Section of the FORCAM GTC.
- 5.3 A defect exists, if the Standard Software does not have the quality agreed upon in the offer, so that the use of the Software is impaired in a manner that is not merely insignificant.
- 5.4 Technical data, specifications and performance data in public statements, in particular in advertising material, are not considered quality specifications. The functionality of Software is based on the description in the user documentation and the supplementary agreements made in this regard. These specifications shall not be deemed to be guarantees within the meaning of Section 443 of the German Civil Code (BGB).
- 5.5 Claims for defects become statute-barred after twelve months.
- 5.6 FORCAM does not provide any warranty for errors in the Standard Software,
- which have been caused by application errors on part of Customer and which could have been avoided, if the program documentation had been carefully consulted; this also applies in the event of non-existent or insufficient backup measures;
  - due to virus attack or other external influences for which FORCAM is not responsible, such as fire, accidents, power failure, etc.;
  - which are based on the fact that the Standard Software has been used in an operating environment other than that approved by FORCAM, or which shall be attributable to defects in the hardware, the operating system, or the software of other manufacturers;
  - which are based on the fact that the Standard Software has been modified by Customer or third parties autonomously.
- 5.7 FORCAM may refuse to remedy the defect or to provide subsequent performance, if Customer did not report the defect together with a comprehensible description of the symptoms of the defect by handing over written or electronic records without delay following the discovery thereof.
- 5.8 In the event of the occurrence of defects within the meaning of clause 5.3, Customer undertakes to make available to FORCAM all information necessary for the analysis of the defect and for the subsequent performance, and to grant FORCAM or the persons commissioned by FORCAM unrestricted access, at the discretion of FORCAM directly and/or by means of remote data transmission, to the Standard Software and to Customer's system on which said software is installed. An error report shall contain information as to the nature of the error, the application in which the error has occurred, and the work that has been performed in order to eliminate the error.
- 5.9 In the event that FORCAM undertakes, at Customer's request, an analysis of the error, and if it turns out that there is no defect that FORCAM is obligated to remedy, FORCAM is entitled to invoice Customer for the corresponding expenditure on basis of the hourly rates of FORCAM as valid from time to time.

## **6 Remuneration**

Customer undertakes to pay a one-time fee for the provision of Standard Software. The amount of remuneration is determined in the Individual Agreement. Insofar as applicable, the terms and conditions of remuneration in accordance with clause 9 of the General Section of the FORCAM GTC also apply.

## **7 Withdrawal**

Insofar as Customer has entered into an agreement with FORCAM concerning the maintenance of the Standard Software at the same time, Customer is entitled to withdraw from the Individual Agreement

regarding FORCAM Maintenance in case Customer withdraws from the agreement concerning the transfer of the Software.

## **8 Liability**

In cases covered by clause 10 paragraphs 1 and 2 of the General Section of the GTC FORCAM's liability for all claims for damages or indemnification in connection with FORCAM Software is limited per claim to 50% of the amount to be paid by Customer for FORCAM Software, but not exceeding EUR 100,000, and per year to 100% of the amount to be paid by Customer for FORCAM Software, but not more than EUR 300,000.

## **VI. Special Terms and Conditions FORCAM Maintenance**

**1 Subject Matter.** Subject matter of this section on FORCAM Maintenance for Customers is the maintenance of Software specified in the Individual Agreement ("Standard Software") for Customer's use.

### **2 Scope**

- 2.1 A precondition for FORCAM Maintenance shall be the maintenance of the IT systems (hardware and Software) of Customer on which the software is used by qualified personnel trained by FORCAM. The IT systems have to meet the respective requirements communicated by FORCAM.
- 2.2 FORCAM Maintenance is limited to sufficiently licensed software. The software to be maintained must comply with the associated product specifications regarding the system and environmental prerequisites.
- 2.3 FORCAM Maintenance encompasses exclusively the maintenance services in accordance with the Individual Agreement for FORCAM Maintenance.
- 2.4 Optional maintenance services can be booked by way of an Individual Agreement and shall be compensated separately depending on the scope ordered by Customer.
- 2.5 FORCAM is not obligated to render FORCAM Maintenance services which are triggered by causes not included by FORCAM Maintenance. FORCAM is entitled to bill such services separately.
- 2.6 FORCAM grants Customer, with respect to software that is transmitted in the course of FORCAM Maintenance, the same rights that Customer has received with respect to FORCAM Software.
- 2.7 The Parties enter into a separate agreement for any Third-Party Software.
- 2.8 FORCAM Maintenance shall be entered into for an indefinite period and shall be billed for the first time upon the delivery of the Software to Customer. The Parties are entitled to terminate the FORCAM Maintenance at any time with a notice period of three (3) months to the end of the year. The right to terminate for cause remains unaffected.
- 2.9 Content of FORCAM Maintenance pursuant to this section are
  - (a) the elimination of program errors in the software, even after the expiration of the warranty period,
  - (b) the transmission of software corrections (patches),
  - (c) the transmission of new software versions (following further development or the elimination of errors) with installation instructions (no installation by FORCAM) to Customer,
  - (d) updates, free of license fees, to a higher release status (e.g. from version 5.X to 5.Y). These updates also include major releases, i.e. releases in the context of which essential functionalities are replaced by new functionalities.
- 2.10 Not included in the FORCAM Maintenance are
  - (a) software adaptation/development as well as installation and launch of new software versions,
  - (b) license-free and/or free updates to a new generation or a new software product. A new generation is identified by the product name and generation number (e.g. "Factory Framework 4" to "Force 5"). New generations refer to fundamental changes to the software calculation logic, database

fundament, or system architecture and are not compatible with previous generations.

- (c) elimination of errors caused by interventions of Customer or a third party or improper use of the system,
  - (d) elimination of errors that are not caused due to a defect in the software for which the Individual Agreement has been concluded, or
  - (e) transfer of the source code or parts thereof.
- 2.11 Debugging within the scope of warranty for the Standard Software is not a subject matter of FORCAM Maintenance.
- 2.12 FORCAM carries out major releases twice a year. The respective version of the FORCAM Software following the execution of a major release shall be continuously further developed and maintained by FORCAM for a period of 24 months in each case. Customer ensures that FORCAM receives the respective current configuration, complete and correct, and that this information remains up-to-date during the term of the contract.

### **3 Maintenance, Remote Access**

Customer grants FORCAM all necessary rights to access Customer's systems (e.g. via VPN) or to enter Customer's premises during normal business hours, insofar as this is necessary, within the framework of maintenance. Customer and FORCAM conclude the FORCAM AVV for the maintenance access by FORCAM.

### **4 Error Categories, Response Times and Responsibilities**

- 4.1 The classification of errors in the FORCAM Software are governed exclusively by the error categories set forth in clause 12 of the General Section of the FORCAM GTC. The classification of errors according to error category is carried out by FORCAM.
- 4.2 The Response Times for faults of error categories 1 and 2 are determined in accordance with the Response Times set forth in clause 12 of the General Section of the FORCAM GTC. The Response Time for faults of error category 3 is in the sole discretion of FORCAM.
- 4.3 The service desk for 2nd and 3rd level support of the FORCAM FORCE™ IIoT solution will be provided by FORCAM.
- 4.4 Customer is responsible for the service desk for other system-related components (e.g. operating system, database, network).

### **5 Remuneration**

- 5.1 For FORCAM Maintenance Customer pays the remuneration set forth in the Individual Agreement.
- 5.2. In case of services which FORCAM renders on the occasion of FORCAM Maintenance, but which are not subject matter of FORCAM Maintenance, Customer remunerates FORCAM in accordance with FORCAM's price list as amended from time to time, which Customer may inspect at FORCAM's premises at any time. The prerequisite for the claim to remuneration is that FORCAM has rendered the services at Customer's request.

### **6 Liability**

In cases covered by clause 10 paragraphs 1 and 2 of the General Section of the GTC FORCAM's liability for all claims for damages or indemnification in connection with FORCAM Maintenance is limited per claim to 50% of the amount to be paid annually by Customer for FORCAM Maintenance, but not exceeding EUR 100,000, and per year to 100% of the amount to be paid annually by Customer for FORCAM Maintenance, but not more than EUR 300,000.

### **7 Termination**

- 7.1 FORCAM is entitled to discontinue maintenance services or to terminate the agreement for good cause without notice, if (i) Customer is in arrears with the performance of its payment obligations and fails

to meet its obligations, despite the setting of a reasonable deadline and the issuing of a reminder, (ii) interventions have been made in the Software by Customer or by third parties or persons, or (iii) the software product in question is transferred to another computer system (insofar as this shall constitute a violation of the provisions of the license agreement).

7.2 Termination is also possible for individual software modules of FORCAM overall solution.

7.3 The right to termination for good cause without notice remains unaffected for each Party.