

General Terms and Conditions of SCHUHFRIED GmbH

SCHUHFRIED reserves the right to adapt the GTC at any time without any prior announcement. The respectively most current version of the GTC is available at <https://www.schuhfried.com/terms-and-conditions/>

I. Offer and Order

1. Offers by SCHUHFRIED are not binding. Goods and services are invoiced on the basis of the price applicable on the day of delivery.
2. Unless otherwise agreed, prices are in Euros ex works Moedling and do not include packaging, customs duties, transport, applicable tax and other expenses.
3. An order is accepted when our order confirmation is issued or when we execute the order.
4. The scope of SCHUHFRIED's performance does not include installation, adaptations to existing systems, or instruction. If required, installation and training may be specifically arranged.

II. Delivery

1. SCHUHFRIED makes every effort to keep to the date of delivery so far as lies within our powers. The date of actual delivery may vary from the agreed date. We are only in default on delivery after the expiry of an extension period that takes account of the procurement options open to us and is notified to us in writing by the customer. This extension period shall be at least one month.
2. If SCHUHFRIED, through no fault of its own, is unable to deliver the goods ordered on time because third parties (suppliers etc.) do not fulfil their contractual obligations to SCHUHFRIED, SCHUHFRIED GmbH shall be entitled to withdraw from the contract with the customer. In this case, the customer is informed that the ordered product is not available.
3. The customer bears the cost and risk of transportation ex works Moedling. Unless otherwise agreed, goods are dispatched with a carrier of our choice.
4. Claims for damage and loss in transport shall be directed against the carrier only.

III. Warranty

SCHUHFRIED expressly rules out any express or implied warranties other than those set out herein. This also includes implicit guarantees for the customary market suitability of a product for a specific purpose. There is no warranty that use of the software/cloud deployment will be uninterrupted or error-free.

1. Warranty for Devices

The warranty period is 24 months.

1. We warrant that upon delivery all hardware is in working order and corresponds to the notified specification. Our warranty service encompasses the remedying of material defects including the exchange of parts or, at our discretion, the exchange of assemblies or the complete hardware for

technical reasons. The product life provided by the manufacturer is 10 years from the date of production. This date can be found on the nameplate.

2. To make a claim under the warranty the customer shall at his own expense send the hardware to our works in Moedling, Austria. SCHUHFRIED will bear the cost of the return transport. All transportation shall be at the customer's risk. Claims for damage and loss in transport shall be directed against the carrier only.
3. We may by agreement carry out the warranty services at the customer's premises. In this case the customer shall bear the full travel expenses.

2. Warranty for Software/Cloud Services

The warranty period is 12 months.

1. We warrant that upon delivery no software has a defect of material or fabrication. We warrant that the software corresponds to the software specification applicable at the time of delivery. Outside the warranty obligation we do not guarantee any technical maintenance and product-qualitative care of the sold software, in particular tests or trainings, as well as no equivalent replacement for them.
2. The customer shall guarantee the provision of all services according to the concluded agreement.
3. SCHUHFRIED accepts no liability for service disruptions resulting from the following:
 - a. the technical equipment, the customer's network infrastructure or unmet system requirements
 - b. force majeure
 - c. tampering by the customer or third parties
 - d. the networks of TSOs that are connected to the customer's network
4. SCHUHFRIED does not guarantee that (i) the services will meet your requirements or expectations, (ii) the services will be uninterrupted, timely, secure or error-free, (iii) any errors in the services will be corrected.

Section III 1.2. and 1.3. shall apply accordingly.

IV. Technical Support

1. Support staff can be reached by e-mail at support@SCHUHFRIED.at from Monday to Thursday from 8:30 a.m. to 4:30 p.m. and on Friday from 8:30 a.m. to 1:30 p.m. Changes to these times may be agreed at any time; if changes are agreed, the cost of the services will be recalculated.
2. If technical issues occur, the customer undertakes to cooperate to the best of his ability and to provide SCHUHFRIED support with the necessary information. If this is not the case, SCHUHFRIED reserves the right to not continue to work on solving the problem.

V. Cloud Service Provision

By registering for the provision of a cloud service and signing up for a VTS subscription, different parallel accesses of users and functions related to digital testing are possible, depending on the respective license models. A VTS subscription is always associated with a user account. SCHUHFRIED always communicates via the e-mail address(es) stored in the relevant user account. The customer is

responsible for keeping the e-mail address up to date.

1. Availability

1. Cloud services are usually available 24 hours a day, 7 days a week. SCHUHFRIED may at any time permanently or temporarily suspend, remove or modify the services (or any part thereof) or add new services which will automatically be subject to these terms. By continuing to use the services after such changes, the customer tacitly agrees to the changes.
2. SCHUHFRIED reserves the sole right to suspend or terminate the customer's access if the customer fails to comply with its obligations under these terms of use or if the customer, in SCHUHFRIED's sole discretion, acts in a manner inconsistent with the intent and/or proper use of the cloud services.

2. Maintenance

The system is not available to the customer during maintenance. Maintenance work is normally carried out outside peak hours. SCHUHFRIED shall inform the customer in good time of maintenance times whenever possible. A prerequisite is that the customer provides an e-mail address to the technical support contact during registration.

3. Data Ownership

All data (a) created and/or (b) stored by the customer within the customer's applications and on SCHUHFRIED's servers are the property of the customer and are intended exclusively for use by the customer unless access to such data is authorized by the customer. The customer shall grant authorized SCHUHFRIED employees access to this data and provide access in accordance with SCHUHFRIED's General Terms and Conditions.

4. Data Integrity

1. SCHUHFRIED uses highly developed techniques to ensure the integrity of the data on its servers and thus prevent data loss in the event of hardware failure. Routine backups are only performed for the purpose of disaster recovery.
2. In the event of data corruption, hardware failure or other data loss, SCHUHFRIED will make every effort to recover lost or damaged data from server backups. SCHUHFRIED is not responsible for lost data.

5. Resumption of a VTS Subscription; Retention of Test Taker Data and Test Results

1. If his VTS subscription expires, the customer can continue to use the VTS Cloud Services. The customer continues to have access to all the data he has entered and collected for up to 24 months after the VTS subscription expires. However, tests cannot be performed without a valid VTS subscription. 24 months after cancellation of the VTS subscription, the customer's account will be deactivated. The data collected until the termination of the VTS subscription must be secured by the customer before deactivating his account.
2. Upon deactivation of the account, the customer can no longer access all entered and collected data including evaluations, purchased but unused licenses expire, are not refunded or credited. SCHUHFRIED deletes all data, it is not archived and therefore cannot be restored.

6. Billing

1. The VTS subscription is billed in advance. Any reimbursement is excluded. A reimbursement is also explicitly excluded in the following cases: failure of the services during the subscription period, downgrade, partial use of the services, change of the scope of functions.
2. SCHUHFRIED reserves the right to change the prices of all services at any time. However, price changes do not affect current subscriptions or contracts, but only come into effect with the next contract or subscription renewal.
3. The VTS subscription is automatically renewed for another 12 months unless cancelled by the customer. The cancellation period is 30 days before the end of the VTS subscription. Cancelling your subscription means that you will not be charged for the next billing cycle, but you will not receive any refunds or credits for amounts that have already been charged, which also includes already purchased, but not used licenses, especially those for testing. All renewals are subject to the applicable cloud product continuing to be offered and will be charged for the same period as the previous billing cycle.
4. Cancellation can only be carried out within the VTS Cloud. Other ways of communication, even if in writing, are not legally valid.
5. SCHUHFRIED reserves the right to block a user account permanently or temporarily if provisions of these GTC are violated. SCHUHFRIED alone decides when an infringement has occurred. If a user account is blocked, SCHUHFRIED shall notify the holder of the user account of the block by e-mail.

VI. Liability

1. Our liability whatever the legal basis is restricted in amount to the individual order value of the delivery in question. We are in particular not liable for lost profit, lost savings, damages arising from claims of third parties against the client, indirect damages and consequential damages or damage to recorded data.
2. To the extent that statutory provisions permit, SCHUHFRIED is not liable for minor or gross negligence whatever the legal basis. Our liability for material gross negligence is limited to foreseeable damage.
3. In the case of software based on material supplied by third parties mentioned in the description as authors or owners of the copyright, our liability is restricted, regardless of the legal basis, to the assignment of our claims against the respective products upon a justified request by the customer.
4. We are not liable for any warranty and/or liability claim if the software and/or hardware does not meet the customer's requirements and/or if the software and/or hardware is not compatible with other software products and/or hardware not developed by us.
5. Claims of any sort must be immediately notified to us by the customer and are not valid otherwise. Notification does not affect the period of limitation.
6. With regard to both cause and extent, we cannot accept product liability unless it is provided for by binding statutory provisions. In particular, product liability for damage to property suffered by an entrepreneur is excluded.
7. The customer shall pursue compensation and indemnification claims arising from product liability in the first instance against our suppliers. The customer shall pursue product liability claims against

SCHUHFRIED only after unsuccessful legal enforcement against our suppliers and only in the event that we are statutorily bound to accept joint liability.

8. In the event that such claims are met by SCHUHFRIED GmbH, the customer shall assign these claims to SCHUHFRIED GmbH or to a third party named by SCHUHFRIED GmbH.
9. The customer shall extend these contractual obligations to persons with whom he has contact in the course of using our products (e.g. contractors for tests and test subjects). The customer shall transfer in full to all users all the liability restrictions and restrictions on use contained in these contractual conditions and shall require such users to transfer these obligations to any further users.
10. The results provided are computer-generated. They are based on the candidate's response behavior and the technical infrastructure, and they depend on the test presentation conditions and on other factors including the candidate's experience, motivation, interest, self-awareness and mental and physical state on the day. In accordance with the APA Standards for Educational and Psychological Testing (2014) and Standard 9.0, it is established that the test user bears ultimate responsibility for evaluating whether the use of a test in a specific setting is justified. The test user must take cultural and legal factors into account when making this decision.
11. SCHUHFRIED therefore cannot accept responsibility for decisions and interpretations made on the basis of the test results and cannot be held liable for the consequences of using them, regardless of how such consequences arise. The test results are confidential and the test user must comply with relevant international and national data protection guidelines and legislation.

VII. Restrictions on use

1. The customer undertakes not to use the supplied hardware and software in a way that contravenes SCHUHFRIED's applicable instructions for use or the ethical directives of the test board (or of a similar institution). The copying of software is permitted only for the purpose of backing up data.
2. The customer undertakes to use the supplied hardware and software only in compliance with the law as it applies at the place of use and with professional regulations and data protection requirements. He also undertakes to comply with import or export conditions that apply to these products and with any restrictions on use imposed by the EU or other countries of origin. The customer agrees that all products purchased from SCHUHFRIED will be used by him or under his direct supervision in a manner that complies with all professional guidelines and standards.
3. The tests may not be used for training purposes. Training means any form of preparation of a respondent for the test situation, in particular explaining the item material, which goes beyond the necessary and usual instructions at the beginning of a test; in particular, allowing respondents to do the test "for the sake of trying it out" or "to get used to it" in whole or in part. It is also forbidden to use information about the tests given by SCHUHFRIED or taken from the manuals to give volunteers tips on how to perform at their best. The restrictions of the previous paragraph apply to all tests distributed by SCHUHFRIED, but not to the training courses. SCHUHFRIED currently sells training courses exclusively under the CogniPlus product name/brand.
4. All persons whom the customer allows to access the supplied hardware and software in any way or to whom he in any way transfers the hardware and software shall be instructed by the customer to comply with the restrictions on use.

5. The customer is responsible for all damage, expense and costs incurred by SCHUHFRIED as a result of infringement of the restrictions on use by the customer, his employees and other agents or otherwise by persons whom the customer allows to access the supplied hardware and software in any way or to whom he in any way transfers the hardware and software, whether arising from claims of third parties or from official action.
6. If SCHUHFRIED (e.g. in the context of providing cloud services) grants the customer access to its server or to a server operated on its behalf, the customer's access is limited exclusively to use of the software for which the customer has purchased access and to the extent for which the customer has purchased a license.
7. Access and attempted access to other software and data on the server is prohibited. In the event of infringement of this provision the customer is liable for any damage incurred as a result.
8. Unless otherwise stated explicitly and in writing in the purchase agreement, we grant a nonexclusive, spatially and temporally unlimited right to use the test items that we have specifically developed for the customer. This right to use the test does not include the right to edit it (in any way whatsoever). The customer's right to use the test cannot be transferred to third parties except with our prior written consent. SCHUHFRIED retains the unlimited copyright to the test and the unlimited right to use it.

VIII. Data Protection

1. The customer is obligated to comply with all relevant data protection laws and relevant regulations and guidelines. In particular on ensuring sufficient approval from the individuals tested by him.
2. The customer is urged to continuously update his purchased software so that it corresponds to the current state of the art in data protection.
3. If SCHUHFRIED receives personal data from persons who have been tested as part of cloud services or by other means, the provisions of the Austrian Data Protection Act shall apply.
4. Unless expressly prohibited by the customer, SCHUHFRIED is entitled to use anonymized data records, in particular those resulting from the use of the cloud services, and to evaluate these statistically.

IX. Copyright

The customer as well as authorized user(s) hereby acknowledge that the entire content of the test and training software as well as all products and other material available by SCHUHFRIED are protected by copyright.

X. References

1. We are entitled to make reference of the customer's name, company logo and other business-related information for advertising and - in particular on the internet and on our website - to reference existing or former business relations. This agreement is subject to written revocation by the customer at any time.
2. We are entitled to make reference to the customer and if necessary to the author of his works on all advertising media and in all advertising campaigns without entering any obligations for payment claims to the customer.

XI. Payment

1. Unless otherwise agreed in the quotation, the agreed price is payable net, plus all applicable taxes and any additional charges that may be due, within 14 days of invoice date.
2. We retain the title to the goods supplied until the purchase price has been paid in full. In the case of software, the customer does not upon payment acquire the ownership title but only the non-exclusive right to use the software.
3. In the event of default, we may without withdrawing from the contract require the customer to hand over to us all goods supplied by us that have not yet been paid for in full. In the event of default, all our claims against the customer become due for payment and we have the right to withdraw from the contract and to claim damages.
4. A default interest rate of 9.2% above the base rate p.a. and reimbursement of the extrajudicial costs of a collection agency shall be deemed agreed. No expenses will be charged for the 1st reminder, but we will charge € 5.00 each for each further reminder. Our right to make further additional claims remains unaffected.
5. For overdue receivables, we reserve the right to immediately discontinue both paid and unpaid services such as the preparation of offers, deliveries, consulting, training, access to the online portal or IT support. The discontinuation of services, whether already ordered or not, is possible until all overdue receivables owed to us have been settled. Agreed terms of payment can be re-adjusted with immediate effect.
6. Services for product adjustments or product extensions and services such as installation, instruction, or training may be billed to the Customer 45 days after ordering, even if they have not yet been retrieved by the customer. The aforementioned services may be billed to the customer when the Customer does not issue an approval or provide information necessary to provide them with no fault of SCHUHFRIED despite being requested to do so.

XII. Place of Jurisdiction

Sales are governed by Austrian law excluding the UN Convention on Contracts for the International Sales of Goods. The place of performance is Moedling. Payable and enforceable in Vienna. The German version of these General Terms and Conditions has precedence over the English version.

XIII. Severability

Should individual provisions of this agreement be rendered ineffective or unenforceable or rendered ineffective or unenforceable after concluding the contract, the effectiveness of the contract shall otherwise remain unaffected. The ineffective or unenforceable provisions shall be replaced by those effective and enforceable provisions which most closely match the effects of the economic purpose which the contractual parties pursued with the ineffective or unenforceable provision. The abovementioned provisions shall apply correspondingly for the case that the contract is shown to have omissions.

Valid from: 11.2022