Müller-BBM VibroAkustik Systeme GmbH

GTC Software as a Service

1. General / Scope

1.1. These GTC Software as a Service (hereinafter referred to as "**Terms**") shall apply in all cases in which "**we**", Müller-BBM VibroAkustik Systeme GmbH, Helmut-A.-Müller-Straße 1-5, 82152 Planegg, make software available to the customer for use as Software as a Service (SaaS) and shall form an integral part of corresponding offers, order confirmations and agreements, unless we expressly agree otherwise in writing.

1.2. The customer's general terms and conditions shall not apply. Unless we have explicitly agreed in writing, we shall not be bound by any provision of the customer's order or other document that is inconsistent with the provisions of these Terms, whether by providing software, performing services, confirming an order of the customer or otherwise.

2. Order

Unless otherwise agreed, our offers are subject to change. The order by the customer shall be deemed to be a legally binding offer to conclude a contract for the use of the software for a limited period of time (hereinafter "**Contract**"). We are entitled to accept the customer's offer within a period of 14 calendar days by means of an order confirmation.

3. Provision / Subject Matter

3.1. Within the scope of a Software as a Service model, the subject of our services is the software as defined in more detail in the respective Contract (hereinafter: "**Software**"). The quality and functionality to be provided is conclusively regulated in the documentation of the Software.

3.2. The latest version of the Software shall be made available via the Internet by granting access through a browser. A physical transfer of the Software or a transfer of source and object code to the customer is excluded.

3.3. We reserve the right to make changes to the Software and any third-party software and/or open source software used therein at any time, insofar as this does not significantly restrict the functional scope of the Software described in the documentation or otherwise agreed between the parties. In particular, we are entitled to update and further develop the Software at any time and to adapt it to legal requirements, technical developments or to improve IT security. If a change to the Software leads to legitimate interests of the customer being significantly impaired, the customer shall be entitled to terminate the Contract.

3.4. The Software is standard software. We do not owe any adaptation to the individual needs of the customer, unless explicitly agreed otherwise in the Contract.

4. Rights of use

4.1. We or our licensors exclusively own all rights and title to the Software. The customer shall only be entitled to the rights to the Software as set forth in these Terms.

4.2. Provided that the customer has acquired the required licences according to No. 4.5, we grant the customer a simple, non-exclusive, non-transferable and non-sublicensable right to use the latest version of the Software provided by us for the customer's own internal purposes as well as for the internal purposes of the customer's companies affiliated with the customer within the meaning of Sections 15 et seq. AktG (German Stock Corporation Act) by means of browser access in accordance with the provisions of the Contract.

4.3. The granting of the simple right of use is limited in time to the agreed term of the Contract or, if shorter, of the respective licence acquired.

4.4. Unless otherwise agreed between the parties, the customer is not entitled to distribute or otherwise disseminate the Software, to combine it with its own products or products of third parties, to process it, to publish it, to make it accessible to unauthorised third parties or to exploit it commercially in any other way.

4.5. Depending on the scope of the customer's use of the Software and the customer's performance requirements, the customer must obtain corresponding Server Licences, User Licences and/or Automation Licences (together: "**Licences**"). The Licences and corresponding functionalities are specified in the respective Contract. Customer's use of the Software is limited to the functionalities covered by the respective Licences.

4.5.1. Unless specified otherwise in the Contract, basic requirement for all functionality of the Software is at least one Depot Server Licence plus additional server licences depending on the functionalities of the Software the customer intends to use ("**Server Licences**"). The number of Server Licences relates to the performance of the Software. A higher number of Server Licences results in a higher performance of the Software. The scope of the Server Licences are defined in more detail in the respective Contract.

4.5.2. Unless specified otherwise in the Contract, in addition to the Server Licences a corresponding licence per user ("**User Licence**") is required. Each User Licence enables a user to access and use the functionalities obtained with the respective Server Licences. User Licences are available as Daily User Licences or Monthly User Licences. Each "**Monthly User Licence**" entitle one individual user ("**Monthly User**") to use the Software from the activation, i.e. by accessing the corresponding functionality, of the respective Monthly User in the Software until the last day of the then current calendar month ("**Monthly User Licence Term**"). Within a Monthly User Licence Term the Monthly User Licence is not available for other users. After expiration of a Monthly User Licence Term the customer is entitled to assign the Monthly User Licence to the same or any other individual.

4.5.3. Each "**Daily User Licence**" entitle one individual user ("**Daily User**") to use the Software from the activation , i.e. by accessing the corresponding functionality, of the respective Daily User in the Software until the end of the of the same day, i.e. until midnight following the activation, or at such other time as agreed by the parties ("**Daily User Licence Term**"). Within a Daily User Licence Term the Daily User Licence is not available for other users. After expiration of a Daily User Licence Term the customer is entitled to assign the Daily User Licence to the same or any other individual.

4.5.4. The customer must not simultaneously use the Software with more users than the number of User Licences obtained.

4.5.5. For both, the Monthly User Licences and the Daily User Licences, only employees of the customer or employees of companies affiliated with the customer within the meaning of Sections 15 et seq. AktG (German Stock Corporation Act) or service providers commissioned by the customer are eligible. For the respective users, the customer shall create unique user IDs as well as access data for logging into the Software ("**Access Data**").

4.5.6. The User Licences refer exclusively to direct use by natural persons. Machine use or any use based on other automated data processing procedures via application programming interfaces ("**API**") or other technical means ("**Machine Use**") for the purpose of process automation or in order to provide several persons access to the functionalities of the Software without User Licences being available for each of these persons requires our prior written approval and the necessary licences ("**Automation Licences**"). To acquire an Automation Licence, the customer must provide us with information about the individually intended use. Based on this information we will provide the customer with an offer to obtain the required Automation Licences. The scope of the Automation Licences are defined in more detail in the respective Contract.

4.6. The customer may acquire additional Licences during the term of a Contract. Upon request, we will submit a corresponding offer to the customer. A reduction in the number of Licences during the term is not possible.

4.7. We are entitled to monitor the extent of the customer's use of the Software with regard to the type of use and the number of users. If it turns out that the customer uses (i) the Software by more users than the number of User Licences acquired, (ii) functionalities of the Software for which the customer did not acquire the corresponding Server Licences or (iii) functionalities of the Software by Machine Use without the necessary Automation Licence, the customer is obliged to acquire a sufficient number of additional Licences at the current list price. Claims for damages and injunctive relief remain reserved.

4.8. The customer may at its sole discretion and option provide us with any information, comments or suggestions regarding our business, products, software, services, including any possible creation, modification, correction, improvement or enhancement thereof ("**Feedback**"). In this event, we may at our sole discretion retain and freely use for any purpose, incorporate or otherwise exploit such Feedback without limitation, remuneration of any kind or attribution to the source of the Feedback.

4.9. With the exception of Customer Data and always subject to Sec. 10, we are entitled to collect, analyze and use all data arising from the use of the Software by the customer or the customer's affiliated companies for the purpose of improving, developing and optimizing our products as well as conducting analyses and studies.

5. Cooperation obligations of the customer

5.1. The customer shall ensure a sufficient technical operating and system environment for the proper operation of the Software, which must at least comply with the minimum technical requirements contained in the documentation of the Software (e.g. sufficient internet connection, current browser versions).

5.2. The customer must protect the Access Data transmitted to the customer against disclosure to third parties and keep it confidential in accordance with the state of the art. The customer must ensure that the use of the Access Data only occurs to the contractually agreed extent. Furthermore, the customer is obliged to inform us immediately if there are indications that customer's access to the Software could be misused by third parties.

5.3. The customer is not entitled to publicly disseminate information or evaluations about the functionality or performance of the Software.

5.4. The customer shall test the Software prior to customer's use in productive operation in accordance with the respective current state of the art and in compliance with the usual care required in the course of business. This includes in particular the execution of functional tests, checks for viruses and malware as well as other tests agreed separately in the respective Contract.

5.5. The customer shall take all necessary and reasonable measures to prevent or limit damage caused by the Software. We shall take state of the art measures to protect the customer's data and content which customer stores within our infrastructure or that of our subcontractors in the context of the use of the Software ("**Customer Data**"). Unless otherwise expressly agreed in writing, our obligation to carry out data backups or any other security measures with regard to Customer Data is limited to the performance of daily incremental backups of the Customer Data. Beyond this, customer is solely responsible for the backup of Customer Data, unless the parties have expressly agreed otherwise for an additional remuneration.

5.6. Upon request of the customer and subject to an additional remuneration, we restore Customer Data to the extent available to us from a daily incremental backup. The customer is not obliged to pay an additional remuneration if we are responsible for the loss of Customer Data.

5.7. The customer is obliged to ensure that the Software is not used in a way that violates applicable law, in particular that Customer Data does not contain any content that violates applicable law or is defamatory or offends against common decency.

5.8. The customer shall check Customer Data for viruses or other malware before using it in the Software and shall take appropriate security measures for this purpose in accordance with the current state of the art.

5.9. The customer shall report defects in the Software to us immediately after discovery.

5.10. When reporting an error, the customer shall observe in detail the symptoms that have occurred, the Software as well as the system and hardware environment and report the error to us in text form without delay, providing any documents and information that is useful for the elimination of the error (e.g. description of the system and hardware environment as well as any simultaneously loaded third-party software).

5.11. The customer shall, insofar as this is necessary for the error analysis, provide us with all necessary data, information and documents within the scope of the error report.

5.12. The customer shall keep all data used or obtained in connection with the Software available in machine-readable form as a backup copy which enables reconstruction of lost data with reasonable effort.

5.13. Insofar as the fulfilment of the cooperation obligations is a prerequisite for our services to be provided, the customer must fulfil these in good time before the provision of the services starts pursuant to the Contract.

5.14. In all other respects, the customer shall reasonably and acting in good faith support the provision of the services.

5.15. If the customer does not fulfil its cooperation obligations, does not fulfil them on time or does not fulfil them in accordance with the Contract, we shall be released from our obligation to perform the services until the cooperation obligations have been fulfilled in full and in accordance with the Contract, insofar as we are dependent on the respective cooperation obligation for the provision of the services. We shall not be responsible for any resulting disruptions in performance. Section 254 BGB (German Civil Code) remains unaffected.

5.16. If the customer breaches his obligations to cooperate, unless the customer is not responsible for this, and if the performance of the service is delayed as a result or if the customer is in default of acceptance, the customer shall bear the resulting additional expenses. Our possible further claims remain unaffected by this.

6. Remuneration

6.1. The remuneration for the use of the Software shall be based on the respective number of licences agreed in the Contract as well as the pay-per-use remuneration agreed in the Contract. The parties shall evaluate the volume of use after the first six months after the start of productive use and, depending on the extent of the volume of use determined, adjust the agreed use-dependent remuneration if necessary.

6.2. The customer is obliged to pay the remuneration agreed in the respective Contract. The remuneration agreed for the use of the Software shall be paid annually in advance, unless otherwise stipulated in the Contract.

6.3. Payments are due 30 days after the invoice date without deduction.

7. Warranty

7.1. A defect of quality in the Software shall only be considered if the Software provided deviates from the documentation or other specification agreed between the parties and the customer can prove these deviations.

7.2. The customer must notify us of the defect of quality immediately and in writing.

7.3. The customer shall have no claims for defects if the defect in the Software arises from an impermissible, unsuitable, or improper use or treatment of the Software by the customer, in particular if such use does not correspond to the usage possibilities described in the documentation.

7.4. If the Software has a defect, we must first be given the opportunity to remedy (*Nacherfüllung*) the defect within a reasonable period of time. The remedy of the defect may also consist in us showing the customer a reasonable workaround solution.

7.5. If the remedy fails, the customer may reduce the remuneration to the extent that the suitability of the Software is reduced due to the defect. If the notice of defect is unjustified, we shall be entitled to demand reimbursement of the expenses incurred by us from the customer.

7.6. Claims for damages by the customer due to defects in the Software remain unaffected. No. 9 of these Terms shall apply.

7.7. Liability for only insignificant reductions in the suitability of the performance is excluded. The strict liability for defects existing at the time of conclusion of the Contract pursuant to Section 536a (1) German Civil Code is excluded.

7.8. Further claims or claims other than those regulated in this No. 7 by the customer against us and our vicarious agents due to a defect of quality are excluded.

8. Defects in title / exemption

8.1. Unless otherwise agreed, we are obliged to provide the Software free of intellectual property rights and copyrights of third parties (hereinafter: "**IP Rights**") only in the country of the place of provision. If a third party raises justified claims against the customer due to the infringement of IP Rights by our Software used in accordance with the Contract, we shall be liable to the customer as follows:

8.1.1. We shall, at our own choice and at our own expense, either obtain a right of use for the Software, modify it so that the IP Right is not infringed or replace it. If this is not possible for us under reasonable conditions, the customer shall be entitled to the statutory rights of termination or reduction.

8.1.2. Our aforementioned obligations shall only exist insofar as the customer immediately notifies us in writing of the claims asserted by the third party, does not acknowledge an infringement and all defence measures and settlement negotiations remain reserved for the customer. We shall be entitled to take over the out-of-court and judicial defence against claims of third parties at our own expense. In this case, the customer shall provide us with all information necessary for defence and conduct court proceedings only in agreement with us. We reserve the right to decide on a settlement agreement.

8.1.3. If the customer suspends the use of the Software in order to mitigate damages or for other important reasons, the customer shall be obliged to inform the third party that the suspension of use does not constitute an acknowledgement of an infringement of IP Rights.

8.1.4. In the event of any claims for damages, No. 9 shall apply. The strict liability for defects existing at the time of conclusion of the Contract pursuant to Section 536a (1) German Civil Code is excluded.

8.2. Claims of the customer are excluded insofar as the customer is responsible for the infringement of IP Rights. Claims of the customer are also excluded insofar as the infringement of IP Rights is caused by specific instructions of the customer, by an application that we could not have foreseen, or by the fact that the Software is modified by the customer or used in conjunction with products that are not supplied or authorised by us, or in an unauthorised system environment.

8.3. The limitation period for claims based on defects in title in the Software is 24 months, unless a shorter period is provided for by law.

8.4. The customer warrants that the Customer Data do not violate applicable law, official orders, third party rights or agreements with third parties. The customer shall indemnify us on first demand against claims asserted by third parties on the basis of a breach of this No. 8.4.

9. Liability

9.1. Our liability is limited in all cases of contractual and non-contractual liability for damages or reimbursement of expenses as follows:

9.1.1. We are liable for intent and fraudulent concealment of a defect to the full extent.

9.1.2. In the event of gross negligence, our liability shall be limited to the typical foreseeable damage.

9.1.3. In the event of simple negligence, we are liable only for the breach of essential contractual obligations and limited to the typical foreseeable damage. "Essential contractual obligations" are obligations whose fulfilment enables the proper execution of the Contract and on whose compliance the contractual partner regularly relies and may rely. In all other respects, liability for simple negligence is excluded (without prejudice to No. 9.2).

9.1.4. Insofar as we are liable pursuant to No. 9.1.3 our liability is limited to an amount of EUR 500,000.00 per damage claim and EUR 1,000,000.00 in total under the Contract.

9.1.5. We shall also be liable in the event of the assumption of a quality guarantee, but only in accordance with the respective guarantee conditions.

9.2. The limitations of liability according to No. 9.1 do not apply to personal injury and to liability under the Product Liability Act.

9.3. Insofar as our liability is excluded or limited in accordance with the above provisions, this shall also apply to the personal liability of our executive bodies, legal representatives, employees, staff and vicarious agents.

10. Confidentiality and data protection

10.1. The parties undertake to treat all confidential information, for example of a technical, commercial or organisational nature, of which they become aware in the course of the cooperation as confidential for the duration of the business relationship and for a period of 5 years thereafter and to use it only for contractually agreed purposes. Any separately agreed non-disclosure agreements shall take precedence.

10.2. The confidentiality obligation shall not apply to such persons who are authorised to access such information and are legally or contractually bound to secrecy or in respect of whom the other party has consented to disclosure. Confidential information within the meaning of this provision is information, documents, details and data which are marked as confidential or which by their nature or the circumstances of their disclosure are to be regarded as confidential. Confidential information is in particular the Software, the documentation as well as information on product offers and prices. The term confidential information does not include information that (i) is in the public domain or is or has become generally accessible (unless due to a breach of this agreement by the Informed Party or one of its representatives); (ii) was already lawfully in the possession of the Informed Party without an infringement of a confidentiality obligation before the Informed Party received the information from the Informing Party; or (iii) was received from a third party that is entitled to disclose such information without restriction.

10.3. The existence of one of the above exceptions shall be proved by the party invoking it.

10.4. If a party is obliged to make confidential information of the other party available to a public body, this party shall be entitled to do so; the other party shall be informed immediately and, if possible, before the information is released to the public body.

10.5. The parties shall impose on their employees and third parties to whom confidential information is disclolsed the same obligations as described in this No. 10, in the case of employees, to the extent permitted by law, also for the time after their employment.

10.6. The parties undertake to comply with the applicable data protection law. Insofar as we should process personal data of the customer on the customer's behalf within the scope of the

provision of services, the parties shall conclude a data processing agreement in accordance with the requirements of Art. 28 GDPR.

11. Updates and Support

11.1. Updates / Service Releases

11.1.1. We provide system maintenance on a regular basis. As part of the system maintenance, we also install updates and service releases of the Software.

11.1.2. The customer is obliged to comply with the technical information in the respective release notes.

11.1.3. We will announce regular maintenance to the customer in text form with a lead time of at least five (5) working days. Unscheduled system maintenance may also be carried out for damage prevention, in the event of imminent IT security incidents or if there are other compelling reasons. During maintenance, there may be impairments on the availability of the Software.

11.2. Hotline support

11.2.1. Our support hotline is available on working days (Monday to Friday) from 9:00 a.m. to 12:00 p.m. and from 1:00 p.m. to 4:00 p.m. (ME(S)Z) under the number +49 89 264860440, with the exception of public holidays in Bavaria as well as 24.12. and 31.12. of a year.

11.2.2. Error reports or other requests can be made by sending an e-mail to pak-support@mbbm-vas.com or calling +49 89 264860440.

11.2.3. Error reports or other requests to our hotline support will only be accepted by a main contact person to be named by the customer. The customer may designate a replacement for hotline authorisation if the main contact person is not available. The contact persons named by the customer must have sufficient knowledge of the Software.

11.2.4. The processing of error reports or other requests shall take place within a reasonable period of time within service hours. In processing the requests, we shall make every technically and economically reasonable effort to find a solution for the customer without delay. The remediation of errors can be carried out by providing an appropriate and reasonable workaround solution.

11.2.5. We inform the client of any changes in the processing status of a request.

11.2.6. General on-site support for the customer is not the subject of our support services. On-site services are to be agreed separately.

12. Term and termination

12.1. Unless otherwise agreed in the respective Contract, the term of the Contract starts with the receipt of the order confirmation and is valid for a period of twelve months ("**Minimum Term**"). Thereafter, the term shall be automatically extended by a further 12 months in each case ("**Extension Periods**"). The Contract may be terminated with three months' notice to the end of the Minimum Term or an Extension Period. Terminations must be made in writing.

12.2. The right of termination for good cause remains unaffected.

12.3. Good cause shall be deemed given, inter alia, if the cloud provider commissioned by us to operate the Software (e.g. AWS) terminates the cloud contract concluded with us for reasons for which we are not responsible. In this case, we shall inform the customer immediately about the unavailability of the cloud provider's service and reimburse the customer immediately for any remuneration already paid for the future period of unavailability.

12.4. From the time the termination becomes effective, the customer's right to use the Software expires. We will delete the customer's data within a maximum of 90 days after the end of the Contract and confirm the deletion upon request. Optionally, the customer may, by separate agreement, acquire a right to continue to use the Software beyond the term of the Contract, limited in time to a maximum of 90 days, but exclusively limited to the purpose of extracting and migrating the customer's data.

13. Special conditions for test licences

13.1. Insofar as we grant the customer the right to use the Software for evaluation or test purposes ("**Test Licence**"), this is limited exclusively to these purposes. Use in productive operation is not permitted. The right is limited to the agreed test period. In the absence of an agreement on the test period, a period of 30 days shall be deemed agreed. The right of use shall end automatically upon expiry of the test period.

13.2. The provision of the Software under a Test Licence is free of charge.

13.3. We shall only be liable for Software provided under a Test Licence for intent and gross negligence, fraudulent concealment of a defect and for injury to life, body and health. The statutory mandatory liability under the Product Liability Act shall remain unaffected. In all other respects, liability is excluded.

13.4. For the Software provided under a Test Licence we do not warrant that the Software will be error-free, permanently functional, or suitable for any particular purpose, or that errors are remedied. Furthermore, we do not warrant that the Software is free from third party rights. The exclusion of warranty does not apply insofar as we have fraudulently concealed a material defect or a defect in title. In this case, we are obliged to compensate the customer for the resulting damage.

13.5. The customer must ensure that the Customer Data processed in the Software within the scope of a test use does not contain any personal data. In addition, we would like to point out that in test environments there is a lower level of protection with regard to data security, so that confidential Customer Data should not be used.

14. Service Level

14.1. Software availability

14.1.1. We will use commercially reasonable efforts to provide the Software with a monthly availability percentage of at least 99.0% at the service transfer point. The service transfer point is the exit of our or our subcontractor's data centre.

14.1.2. Availability is the customer's ability to use the essential functions of the Software. Times of insignificant disruptions shall not be taken into account in the calculation of availability. Regular maintenance windows (e.g. for the installation of updates / service releases) and emergency maintenance windows (e.g. for the elimination of security risks) shall be considered times of availability of the Software. In calculating the availability, non-availabilities of the Software shall also be disregarded (i) which are caused by factors outside our reasonable control, including an event of force majeure or problems of network access as well as comparable problems beyond the service transfer point of the Software; (ii) caused by an act or omission of the customer or a third party; (iii) caused by the customer's equipment, software or other technology and/or a third party's equipment, software or other technology (other than a third party's equipment within our control); or (iv) arising as a result of our temporary suspension of performance under No. 14.1.3 of these Terms and the termination of the right to use the Software under these Terms.

14.1.3. We are entitled to temporarily suspend the provision of the Software in whole or in part after notifying the customer accordingly if the continued use of the Software by the customer on reasonable grounds for which we are not responsible (i) could pose a risk to the security and integrity of the IT infrastructure used in the operation of the Software, (ii) could trigger liability for us or third parties due to an infringement of rights, or (iii) indicates that unauthorised persons are using the Software or that the use of the Software is otherwise unauthorised. For the period of suspension, the customer remains obliged to pay the agreed remuneration, provided that the customer is responsible for the suspension.

14.2. Response times

14.2.1. The classification of the priority of support cases shall be made by mutual agreement between the parties on the basis of the following criteria, whereby we shall have the final decision-making right to determine the priority.

14.2.2. When support cases are reported, they shall be processed within the service times specified in No. 11.2.1 in accordance with the times specified below:

Priority	**Description**	**Reaction time** (target value)
1 (significant impact)	The Software or central functionalities of the Software are not available or are only available to a limited extent, the problem has a significant impact on the operability of the Software and there is no workaround solution with which the significant impact on the operability of the Software can be remedied.	4 hours
2 (moderate impact)	Individual functionalities of the Software are not available or are only available to a limited extent, but the problem only has a moderately severe impact on the operability of the Software, or a workaround solution is available to remedy the significant impact on the operability of the software.	12 hours
3 (low impact)	Individual functionalities of the Software are not available or are only available to a limited extent, but the problem has little or no effect on the operability of the Software.	24 hours

15. Final provisions

15.1. These Terms as well as the Contracts shall be governed by the laws of the Federal Republic of Germany excluding the the UN Convention on Contracts for the International Sale of Goods (CISG).

15.2. The courts having jurisdiction at our registered office shall have exclusive jurisdiction for all disputes concerning rights and obligations arising from these Terms and the Contracts, including their validity. However, we are entitled to sue the customer at his place of general jurisdiction.

15.3. The customer is not entitled to assign rights or claims arising from the Contracts to third parties without our prior written consent.

15.4. Amendments and supplements to these Terms must be made in writing to be effective. This also applies to the amendment of the written form clause.

15.5. The invalidity or unenforceability of one or more provisions of these Terms shall not affect the validity of the remaining provisions of these Terms. The same shall apply in the event that these Terms do not contain a provision that is necessary in itself. The parties shall replace the invalid or unenforceable provision with the legally permissible and enforceable provision that comes closest in economic terms to the meaning and purpose of the invalid or unenforceable provision. If these Terms are incomplete, the parties shall reach an agreement with the content on which they would have agreed within the meaning of these Terms if the loophole had been known at the time of conclusion of the Contract.