

General Terms and Conditions of SCHUHFRIED GmbH

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

I. Offer and order

1. Offers by SCHUHFRIED are non-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 euro ex works Moedling and do not include packaging, customs duties, transport, applicable tax or 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 separately arranged.

II. Delivery

1. SCHUHFRIED makes every effort to keep to the date of delivery so far as lies within our powers. Nevertheless, 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 which the customer must agree to in writing. This extension period shall be at least one month.
2. If, due to a failure on the part of third parties (suppliers etc.) to fulfill their contractual obligations to SCHUHFRIED, SCHUHFRIED is unable, through no fault of its own, to deliver on time the goods ordered, SCHUHFRIED 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. Likewise ruled out are implicit guarantees of the customary market suitability of a product for a specific purpose. No warranty is made that use of the software/cloud provision will be uninterrupted or error-free.

1. Warranty for the Vienna Test System hardware

The warranty period is 24 months.

1. We warrant that upon delivery all hardware is in working order and corresponds to the published specifications. 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 lifespan foreseen 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 or her 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 on the customer's premises. In this case the customer shall bear the travel and transportation costs.

2. Warranty for software/cloud services

The warranty period is 12 months.

1. We warrant that the software corresponds to the program specifications 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:
 - the technical equipment, the customer's network infrastructure or unmet system requirements
 - force majeure
 - tampering by the customer or third parties
 - the networks that are connected to the customer's network
4. SCHUHFRIED does not guarantee that (i) the services will meet customer requirements or expectations, (ii) the services will be uninterrupted, timely, secure or error-free, (iii) any errors in the services will be corrected.

Sections III 1.2. and 1.3. apply accordingly.

IV. Technical support

1. Support staff can be reached by e-mail at support@schuhfried.com, 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. Any additional times are subject to separate agreement.
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

When the customer registers for the provision of a cloud service, different degrees of parallel user access and functions related to digital testing are enabled, depending on the respective license models. The provision of cloud services 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 retains the right to 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, at 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. Whenever possible, SCHUHFRIED shall inform the customer in good time of maintenance times, provided that the customer provides an e-mail address for 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. SCHUHFRIED undertakes to comply with the General Data Protection Regulation (GDPR) of the European Union.

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 performed for the purpose of disaster recovery only.
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 cloud service; retention of data

1. If the provision of a cloud service lapses or expires, the customer continues to have access to all the data entered and collected for up to 3 months after lapse/expiration. 3 months after cancellation of the cloud services, the customer's account will be deactivated. The customer is responsible for securing, prior to deactivation, all data entered and collected. After deactivation of the customer's cloud services, all personal data will be deleted by SCHUHFRIED. Data are not archived and cannot be restored.
2. Once the account is deactivated, the customer can no longer access the cloud service. Purchased but unused test licenses expire; they are not refunded or credited.

6. Billing of cloud services

1. The cost agreed for use of cloud services 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 renewal.
3. 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. Leased VTS - Hardware

1. Leased property

The lessor undertakes to provide the lessee with the Vienna Test System hardware specified in the agreement (standard panel or universal panel). The lessor has the right to provide a different item than specified in the lease agreement if it is functionally equivalent to the item specified in the agreement. The leased item may be a new or a used hardware device.

2. Rent

The lessee is obligated to pay the agreed rental price ("rent") in return for use of the leased item. The respective prices given in the SCHUHFRIED Marketplace apply. Rent must be paid annually in advance.

A lease agreement for the Vienna Test System hardware (standard panel and/or universal panel) can be concluded, extended, or canceled through SCHUHFRIED Marketplace only.

3. Term of lease

The lease begins the day on which the lease agreement is concluded and ends on the contractually agreed date. It is automatically extended for a further twelve months unless canceled. The notice period ends 30 days before the end of the agreed rental period.

The lessee shall send the leased item without delay and in such a manner that the leased item has reached the lessor's premises at the latest 21 days after the end of the lease agreement.

4. Duties of lessee

The lessee undertakes to handle the leased item with care. The lessee shall ensure that the leased item is used properly and operated appropriately by sufficiently qualified personnel.

The lessee shall follow, within reason, instructions on maintenance, care and use of the leased item, in particular the guidance given in the provided instruction manual and documentation. Identification and names of hardware and software, in particular labels, numbers, and markings shall not be removed, altered, or obscured. In general, the lessee is not entitled to make changes to the leased item.

The lessee must notify the lessor in writing of any identifiable defects in the leased item without

delay after inspecting the item. If the lessee fails in such notification, identifiable defects are considered accepted.

Installation/assembly of the leased item is the responsibility of the lessee.

The lessee is not entitled to grant third parties any rights to the leased item. In particular, the lessee is not permitted to sublease the item.

5. Maintenance, repairs, liability

The lessee undertakes to notify the provider of any defects or malfunction without delay. In so doing, the lessee shall, within reason, consider the guidance of SCHUHFRIED on problem analysis and forward to the provider all information necessary for resolving the problem.

SCHUHFRIED warrants to the lessee that the hardware delivered by SCHUHFRIED will be repaired or exchanged free of charge. The customer shall send the hardware device to SCHUHFRIED at his or her own cost and risk. The costs for return to the customer after repairs will be borne by SCHUHFRIED. If repairs prove impossible or uneconomical, the customer will be provided with a replacement hardware device.

Any damage to the hardware device arising from improper handling or insufficient packaging on the part of the lessee will be repaired at the lessee's expense.

The lessee shall make no claims for damages against the lessor, in particular for damages not arising directly from the leased item, unless the lessor has acted with gross negligence.

6. Return of the leased item

At the end of the lease, the lessee shall return the leased item completely and in proper condition to SCHUHFRIED at the lessor's premises, SCHUHFRIED GmbH, Hyrtlstrasse 45, 2340 Moedling, Austria. Any rights of retention on the part of the customer are excluded.

If the lessee fails to send the leased item or to send it on time, and if the return has not reached the premises of SCHUHFRIED GmbH in Moedling by 21 days after the end of the lease at the latest, the lessee is considered in default of return, without any notification on the part of SCHUHFRIED being required. In such a case, SCHUHFRIED shall bill the lessee for the leased item at its current list price.

If the leased item is returned not in proper condition, the lessor may bill the lessee for the material and work-time costs required to bring the item into proper condition. If the leased item is not returned completely, it is considered not returned. The lessor's right to claim further damages remains unaffected.

The customer shall bear the costs of disassembly, packaging, and return transport of the leased item.

Return of the leased item in proper condition is considered accepted by the lessor if, upon

timely receipt of the leased item, the lessor does not without delay notify the lessee of identifiable defects, or in the case of other defects fails to make such notification within 14 calendar days of receipt of the leased item at the intended premises.

7. Termination

In principle, the lease agreement made for a fixed term is irredeemable for both parties.

The lessor nevertheless retains the right to terminate the lease for sufficient cause without giving notice, in particular if a) the lessee allows use of the leased item in a manner contrary to contract, or b) if the lessee fails in his or her duties pursuant sec. 4 despite written warning.

8. Written form

There are no agreements outside those made in this contract. Any amendments or additions to this contract must be made in written form. The same applies to the cancellation of the contract as well as to the written form requirement itself.

VII. Test generator

1. Copyright

The client undertakes not to implement in the test generator any third-party media materials protected by copyright or other protections, nor to present such materials using a self-created test. In particular, this includes not only the implementation/presentation of copyright-protected tests and questionnaires, for example by using third-party test items, but also the use of copyright-protected third-party media in a self-created test (whether in the form of image, text, sound or video material). The customer may not implement such media unless the customer has independently procured the required rights allowing the customer to use certain media in the manner intended by the customer. In any case, the responsibility for legally permissible use lies with the customer alone. The customer undertakes, upon request by SCHUHFRIED, to furnish SCHUHFRIED with suitable written proof that the use of third-party media materials on the part of the customer is in fact permissible in the manner the customer intends. The customer warrants that the content created by the customer using the test generator is free from third-party copyrights. In particular, the customer warrants that said content can be input and used into the Vienna Test System by other users.

2. Use

The customer undertakes to prevent any misuse of the test generator. The customer may use the test generator solely for the purpose of creating psychological tests (such as personality questionnaires), knowledge tests (such as assessments of mathematical knowledge) and/or surveys (such as feedback questionnaires). In so doing, the customer must consider legal and cultural aspects relating to the implementation and presentation of tests as applicable in the customer's country. The customer undertakes to use the test generator in line with established professional guidelines on the creation of tests and questionnaires as well as their use, interpretation and evaluation. In particular, this includes aspects such as protecting test respondents' personal rights, data protection and reasonableness of test procedures.

3. Test generator liability

The customer shall indemnify and hold harmless SCHUHFRIED with regard to any and all initial claims by third parties, where those claims are based on the customer neglecting or violating the duties set out herein. In particular, the customer shall also bear the reasonable costs of SCHUHFRIED's defense, at hourly rates of professional legal representation that are customary in the particular market.

SCHUHFRIED makes no warranty for tests or questionnaires created by the customer in the test generator. Further, SCHUHFRIED assumes no liability for the use of such self-created tests or questionnaires, nor in particular for any consequences arising from the use of tests created by the customer. SCHUHFRIED reserves the right to stop the use and presentation of self-created tests if these run counter to the terms and conditions of use.

VIII. Liability

1. Our liability, whatever the relevant 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. In any case, 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, the customer shall assign these claims to SCHUHFRIED or to a third party named by SCHUHFRIED.
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 test and training 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.

IX. 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. The customer further 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 the customer or under the customer's 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 preparing a respondent for the test situation in any way, in particular explaining the item material beyond the necessary and usual instructions at the beginning of a test; in particular, allowing respondents to take the test in whole or in part "for the sake of trying it out" or "to get used to it". 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 the customer 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, customer's 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 the customer 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. Accessing and/or attempting to access 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.

X. Data protection

1. The customer is obligated to comply with all relevant data protection laws and relevant regulations and guidelines, in particular on securing sufficient consent and approval from the individuals tested.
2. The customer is urged to continuously update the 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. SCHUHFRIED is entitled to use anonymized data records, in particular those resulting from the use of the cloud services, and to evaluate these statistically.

XI. 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.

XII. 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.

XIII. Payment

1. Unless otherwise agreed in the offer, 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 nonexclusive right to use the software.
3. In the event of default, we may, even 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 8.58% 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 first payment reminder. For the second reminder EUR 10.00 and for the third reminder EUR 15.00 plus default interest rate shall be charged. 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 readjusted with immediate effect.

XIV. 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 English translation of these General Terms and Conditions are provided as a courtesy only. The German version of these General Terms and Conditions has precedence over the English version in all cases.

XV. Severability

Should individual provisions of this agreement be ineffective or unenforceable or, at some point after concluding the contract, become ineffective or unenforceable, 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 above-mentioned provisions shall apply correspondingly if the contract is shown to have omissions.

Valid from: October 2024