

SimScale License Terms

Version: July 2023

1. Scope | General

- 1.1 These SimScale License Terms ("**Terms**") apply to all contracts between SimScale GmbH, Ridlerstraße 31B, D-80339 Munich, Germany ("**SimScale**") and its customers ("**Customers**") to whom SimScale provides Services (as defined below).
- 1.2 These Terms govern each agreement between SimScale and Customer, whether entered into by execution of order forms or other order documents by SimScale and Customer, by completion of any click-through or other online process, by email correspondence or in any other form ("**Agreement**"). These Terms shall form an integral part of any Agreement.
- 1.3 These Terms shall also apply as a framework for future Agreements between Customer and SimScale without SimScale being required to refer to them in each individual case. These Terms shall be deemed to be confirmed by Customer at the latest when Customer accesses the Services or when SimScale provides Additional Services (as defined below).
- 1.4 These Terms apply to the exclusion of all others. Any terms and conditions of Customer which deviate from, conflict with or supplement these Terms shall only become part of the Agreement upon SimScale's prior written confirmation.
- 1.5 Individual agreements made in writing with Customer in specific cases (including ancillary agreements, supplementary agreements and amendments) shall take priority over these Terms.
- 1.6 Where the expressions 'in writing', 'written form' or variations thereof are used in these Terms, this shall mean 'in writing' within the meaning of § 126 German Civil Code. The electronic exchange of copies of documents signed by hand as well as documents signed with a simple electronic signature (such as provided by e.g. DocuSign, Dropbox Sign, or Adobe Sign) shall be sufficient. Unless expressly stated otherwise in these Terms, simple emails shall not be sufficient.
- 1.7 Unless stated otherwise in these Terms, notices and declarations submitted by Customer to SimScale, including but not limited to notices of termination or setting of deadlines, shall be made at least in text form within the meaning of § 126b German Civil Code to be valid (for greater clarity: simple email shall be sufficient) if not stated otherwise in these Terms.

2. Services | Customer Account | Free Plan and Paid Plan | Trial Use

- 2.1 Subject to the terms and conditions of the Agreement, SimScale grants to Customer access to its computer-aided engineering software product, which is offered as software as a service, including any related websites, spaces, services, applications and its application programming interface ("**API**"), as designated in the Agreement (collectively the "**Services**").
- 2.2 In order to be able to use the Services in accordance with these Terms, Customer shall create a dedicated Customer account on SimScale's website ("**Customer Account**"). Customer may choose to receive the Services either with certain limited features under a free plan ("**Free Plan**") or against payment of a License Fee (as defined below) with certain extended features under a paid plan ("**Paid Plan**"), as further specified by SimScale from time to time.
- 2.3 SimScale may, at any time and at its sole discretion, downgrade, limit or otherwise modify and/or partly or fully phase out the Free Plan without replacement. Subject to Clause 17, SimScale shall have no guarantee, indemnity, Maintenance or Support (as defined below) and availability obligations with regard to any Free Plan. Free Plans are not a guarantee of (future) product features of a Paid Plan and should not be relied upon by Customer in making any purchasing decisions.
- 2.4 SimScale may downgrade a Paid Plan to a Free Plan if Customer is in default of any fees due or upon expiry or termination of any Agreement for a Paid Plan.
- 2.5 SimScale may grant Customer access to a Paid Plan free of charge or at reduced License Fees as part of a trial evaluation for a period of time determined by SimScale in its sole discretion ("**Trial Use**"). SimScale may downgrade, limit or otherwise modify the Services provided for Trial Use at any time without notice. Subject to

Clause 17, no guarantee, indemnity, Maintenance or Support and availability obligations of SimScale shall apply to Trial Use. SimScale may immediately revoke and terminate any Trial Use at any time. Subject to the terms and conditions of the Agreement, Trial Use of Services may end and will then automatically transform into a regular Paid Plan.

3. Rights of Use | Permitted Users | Use Restrictions

- 3.1 Subject to the terms and conditions of the Agreement, SimScale grants to Customer, during the Subscription Term (as defined below), a non-exclusive, non-transferable, non-sublicensable, world-wide right and license to use the Services ("**License**"). Licenses granted under a Free Plan shall be for non-commercial use only, whereby academic use of the Services requires SimScale's prior written approval (simple email to be sufficient). Licenses granted under a Paid Plan shall be for business purposes only.
- 3.2 The Services are offered as prescribed by the SimScale documentation accessible via SimScale's website (as updated from time to time, "**Documentation**").
- 3.3 Customer may only permit its staff (including its employees and freelancers), outsourcing service providers, consultants or contractors to use the Services (collectively "**Permitted Users**") always provided that (a) Customer has obtained a License for each such Permitted User; (b) Customer procures that such Permitted Users comply with these Terms; (c) Customer remains responsible and liable towards SimScale for all acts and omissions of such Permitted Users; and (d) the Services are used solely for the benefit of Customer.
- 3.4 Customer's Affiliates and their staff (including their employees and freelancers) must not use the Services without SimScale's prior written consent. Upon granting of such consent, Customer's Affiliates and their staff shall be deemed Permitted Users hereunder. "**Affiliate**" means any entity that directly or indirectly controls, is controlled by, or is under direct or indirect common control with SimScale or Customer respectively, or which is a wholly owned subsidiary of SimScale or Customer respectively, whereby 'control' means owning, directly or indirectly, at least fifty-one percent (51%) of the equity securities or equity interests of an entity.
- 3.5 Except as otherwise expressly provided in these Terms, Customer shall not (and shall not permit any third party, including Permitted Users, to) directly or indirectly: (a) sublicense, sell, resell, transfer, assign, distribute, share, lease, rent, outsource, use on a timeshare or service bureau basis, or use in an application service provider or managed service provider environment, or otherwise generate income from the direct use of the Services; (b) copy the Services onto any public or distributed network; (c) decompile, reverse engineer or disassemble any portion of the Services, or otherwise attempt to discover any source code, object code or underlying structure, ideas, know-how or algorithms or other operational mechanisms of the Services, in each case, unless permitted by mandatory statutory law; (d) modify, adapt, translate or create derivative works based on all or any part of the Services (except to the extent expressly permitted by SimScale or authorized within the Services); (e) modify any proprietary rights notices that appear in the Services or components thereof; (f) use the Services outside of the scope of rights as set forth in this Clause 3; (g) scrape, build databases or otherwise create permanent copies of the content of any Services or keep cached copies longer than permitted by the cache header; or (h) use the Services to (aa) store, download or transmit infringing, libelous, or otherwise unlawful or tortious material, or malicious code or malware; (bb) engage in phishing, spamming, denial-of-service attacks or other fraudulent or criminal activity; (cc) interfere with or disrupt the integrity or performance of third-party systems, or the services or data contained therein; (dd) attempt to gain unauthorized access to the Services or SimScale's systems or networks; or (ee) perform, or engage any third party to perform, authenticated or unauthenticated penetration testing, vulnerability assessments or other security assessments on the Services.
- 3.6 Customer shall (and shall procure that Permitted Users shall) not export or re-export, directly or indirectly, any Services or technical data or any copy, portions or direct product thereof in breach of any applicable laws and regulations. In particular, Customer and its Affiliates shall comply with the sanctions imposed by the Federal Republic of Germany, the European Union, the United Nations and with the applicable federal laws of the United States of America, in each case, to the extent that this does not result in a violation of or a conflict with mandatory anti-boycott statutes applicable to Customer and its Affiliates. Customer shall, at its own expense, obtain all necessary customs, import, or other governmental authorizations and approvals.
- 3.7 The Services may be subject to export and/or re-export control laws and regulations of the European Union, the United States, or to similar laws applicable in other jurisdictions. Customer represents and warrants that (a) the Services will not be used from countries to which such export and/or re-export is prohibited by any such laws and

regulations, and (b) that Customer is neither a denied party specified in any such laws and regulations nor listed on any official list of prohibited or restricted parties.

- 3.8 Customer and Permitted Users may only use the Services as prescribed in the Documentation and in full compliance with all applicable laws and regulations.
- 3.9 Although SimScale has no obligation to monitor Customer's and Permitted Users' use of the Services, SimScale may do so and may restrict or prohibit any use of the Services it believes may be in violation of this Clause 3.

4. API Access

- 4.1 With regard to Customer's use of the API, the following provisions shall apply in addition to Clause 3.
- 4.2 Access to the API is subject to an express permission that SimScale may grant in the Agreement. Subject to such permission, Customer shall be entitled to access the API to integrate and/or link its software and/or services (collectively, "**Customer Solution**") with the Services as further specified in the Agreement and the Documentation. Customer's use of the API shall at all times comply with the Documentation.
- 4.3 The use restrictions under Clause 3 and SimScale's rights under Clause 3.9 shall apply to the use of the API as well as to the use of other Services through the API. In particular, SimScale may restrict or prohibit any use of the API it believes may be in violation of Clause 3.
- 4.4 Customer owns and shall retain all proprietary rights in and to the Customer Solution. Customer shall ensure that the Customer Solution conforms to the requirements set forth in the Agreement, these Terms and the Documentation.
- 4.5 Customer shall ensure that the Customer Solution remains fully functional in the event that the API or other Services should become unavailable or do not otherwise conform to the Agreement, these Terms and the Documentation.
- 4.6 SimScale may, at any time and at its sole discretion, update, upgrade or otherwise modify the API or phase out older versions of the API. SimScale shall notify Customer thereof within a reasonable period of time. If SimScale introduces an updated, upgraded or otherwise modified version of the API, Customer shall implement such new version into the Customer Solution at Customer's cost within a reasonable period of time following such notification.
- 4.7 On important grounds, SimScale may impose and change limits on Customer's access to the API, including but not limited to imposing rate or traffic limits or temporarily revoking Customer's access to the API.
- 4.8 Upon expiry or termination of the Agreement, Customer shall immediately cease to use the API and delete any cached or stored portions of the Services.

5. Content

- 5.1 Ownership of and responsibility for all designs, analyses, simulations, models, estimations, data and other results uploaded by Customer and/or Permitted Users within the Services or generated by Customer and/or Permitted Users through use of the Services (collectively, the "**Content**") shall fully remain with Customer and/or Permitted Users or its respective owner.
- 5.2 Customer acknowledges that the Content uploaded or generated by Customer or Permitted Users under a Free Plan ("**Community Content**") shall be accessible by third-party users of the Services and visitors of SimScale's websites. Customer grants (and shall procure that Permitted Users grant) to SimScale and any third-party users of the Services and visitors of SimScale's websites the non-exclusive, unlimited (in terms of time, territory and content), sublicensable, transferable, royalty-free and irrevocable right to comprehensively use the Community Content in any known and currently unknown manner, in particular to reproduce, distribute, publish, put on display, recite, perform, present, make available to the public, send, forward or otherwise communicate to the public the Community Content in all media via any way and technique of transmission, regardless of the devices used therefor, and to change, translate, create derivative works from or otherwise rearrange the Community Content. Such right shall also include the right to use and exploit any such changed, translated or otherwise rearranged Community Content and derivative works in the above mentioned manner. SimScale reserves the right to delete any Community Content that has not been accessed or otherwise used by Customer or Permitted Users for more than six (6) months.

- 5.3 Customer acknowledges that the Content uploaded or generated by Customer or Permitted Users under a Paid Plan (“**Professional Content**”) shall not be accessible by third-party users of the Services and visitors of SimScale’s websites unless Customer and/or a Permitted User uses functionality of the Services to share such Professional Content with such third-party users and visitors. Customer grants (and shall procure that Permitted Users grant) to SimScale the non-exclusive, unlimited (in terms of time and territory), sublicensable, transferable, royalty-free and irrevocable right to use the Professional Content for the purpose of performing SimScale’s obligations under the Agreement and of improving and optimizing the Services and specific functionalities thereof, including for bug fixing, testing and rectifying defects as well as for statistical analyses.
- 5.4 Customer represents and warrants that (a) Customer and Permitted Users have sufficient rights to upload and generate any Content; (b) Customer and Permitted Users have sufficient rights to grant to SimScale and any third-party users of the Services and visitors of SimScale’s websites the rights specified in Clauses 5.2 and 5.3; (c) there are no third-party rights, including privacy rights and intellectual property rights which restrict the uploading or generation of any Content by Customer and/or by Permitted Users and the use of any Content by SimScale and any other user of the Services and visitors of SimScale’s websites pursuant to Clauses 5.2 and 5.3; (d) the Content does not contain any viruses, worms, Trojan horses, malicious code or other harmful or destructive content; and (e) the Content does not contain any infringing, libelous, or otherwise unlawful or tortious content.

6. Customer’s Responsibilities

- 6.1 Customer shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Services at its own cost, including, without limitation, modems, hardware, servers, software, operating systems and networks (collectively, “**Equipment**”). SimScale’s current Equipment requirements (as amended from time to time) may be accessed on SimScale’s website.
- 6.2 Customer shall keep the information in the Customer Account up to date and correct and shall ensure that user identities, passwords and similar access credentials used for accessing the Services are stored in a secure manner and cannot be accessed by third parties and are immediately changed in the event of unauthorized disclosure.
- 6.3 Customer shall be responsible for maintaining the security of the Equipment and the Customer Account. Customer shall be responsible for all uses of the Services under the Customer Account with or without Customer’s knowledge. Customer shall notify SimScale promptly of any unauthorized use or disclosure of any account, user identities, passwords or similar access credentials or any other known or suspected breach of security or misuse of the Services. Without prejudice to any other remedies available to SimScale, Customer shall be liable for any losses or damage incurred by SimScale, where Customer fails to notify SimScale accordingly or delays such notification.
- 6.4 SimScale cannot control the information submitted by Customer or by Permitted Users during their use of the Services and cannot guarantee the accuracy of any such information. SimScale may, without notice or liability, investigate any complaints or suspected violations of the Agreement including these Terms that come to its attention and may take any legal action and/or technical measures that it believes is appropriate, including, but not limited to, rejecting, refusing to post, or removing any Content, or other data, or restricting, suspending, or terminating Customer’s and/or any user’s access to the Services.

7. Limited Warranty

- 7.1 Customer is aware of the essential functionalities and features of the Services. Customer has verified that the specification of the Services as described in the Documentation meets Customer’s needs and wishes. The extent, nature and quality of the Services are determined by these Terms, the Agreement and the Documentation. Any other information or requirements do only form part of the Agreement if and to the extent that SimScale and Customer so agree in writing or if SimScale so confirms in writing. Product descriptions, illustrations, test programs, etc. represent mere service descriptions but do not constitute guarantees or agreements on certain specifications. In order to be valid, an agreement on a guarantee requires the written confirmation from SimScale’s management personnel.
- 7.2 SimScale warrants that the Services provided under a Paid Plan will, in all material respects, conform to the functionality described in the then-current Documentation for the applicable Services version. In case of a breach of this warranty, SimScale shall be required to use commercially reasonable efforts to modify the respective

Services to conform in all material respects to the Documentation, and if SimScale is unable to materially restore such functionality within thirty (30) days from the date of written notice of said breach, Customer may terminate the Agreement upon written notice and, where relevant, receive a pro-rata refund of the unused fees which have been paid in advance (if any) for unused access to the Services. In order to be eligible for the foregoing remedy, Customer shall notify SimScale in writing of any warranty breaches and Customer must have installed and configured the Services in accordance with the Documentation. Any no-fault liability of SimScale for the existence of initial errors under § 536a German Civil Code shall be excluded. Customer's claims for damages for a breach of this warranty are subject to the limitations set forth in Clause 17.

- 7.3 Customer may not obtain any source code of the Services for any reason.

8. Availability | Maintenance and Support

- 8.1 SimScale strives to offer constant availability of the Services but cannot warrant uninterrupted availability thereof. SimScale has no influence on and is not responsible for Customer's internet access or internet connection including its availability, bandwidth or any costs and expenses of Customer associated therewith.
- 8.2 SimScale shall provide Customer with Maintenance and Support for the Services under a Paid Plan to the extent agreed in the Agreement. **"Support"** means SimScale's obligation to respond to Customer's reasonable support requests by troubleshooting issues and providing assistance. **"Maintenance"** means SimScale's obligations related to error resolution, bug fixes and the provision of updates and upgrades made generally available by SimScale in its sole discretion.
- 8.3 Customer shall report any errors exclusively via the email support system offered by SimScale, the support option within the Services or SimScale's help desk telephone number (during normal office hours at SimScale's premises).
- 8.4 SimScale shall keep Customer informed at reasonable intervals and to a reasonable extent on the status of the rectification of an error. SimScale makes no assurances regarding the period of time in which an error may be removed.

9. Fees | Payment Terms

- 9.1 Customer's right to use the Services in accordance with these Terms and the Agreement under a Free Plan shall be free of charge.
- 9.2 For the right to use the Services in accordance with these Terms and the Agreement under a Paid Plan, Customer shall pay to SimScale a License fee as further specified in the Agreement and/or the Customer Account (**"License Fee"**). The License Fee shall be paid upfront and in full for the entire Subscription Term (as defined below). In addition, Customer may pre-purchase certain computing capacity from SimScale against payment of a non-refundable computing fee as further specified in the Agreement and/or the Customer Account (**"Computing Fee"**).
- 9.3 Customer shall pay to SimScale any fees arising from Customer exceeding the capacity of any Paid Plan as set forth in the Agreement or any other additional fees that may become payable.
- 9.4 In the event that the number of active Licenses in the Customer Account falls below the amount initially ordered by Customer, Customer shall remain obliged to pay to SimScale the full amount of the corresponding License Fees for such Licenses initially ordered.
- 9.5 All fees shall be subject to statutory VAT at the applicable rate. All fees shall be due and payable by Customer within fourteen (14) days of receipt of an invoice from SimScale without discount unless specified otherwise in the Customer Account.
- 9.6 Following notice to Customer in writing (simple email shall be sufficient), SimScale may suspend Customer's access to the Services in accordance with § 320 German Civil Code if payments are not received by SimScale within thirty (30) days of the due date.
- 9.7 Customer may only invoke a right to set-off and assert a right of retention to the extent that its claims have been (a) finally established by a court of law; (b) are uncontested; or (c) acknowledged by SimScale.

10. Additional Services

- 10.1 SimScale may provide additional services to Customer if and to the extent described in the Agreement (“**Additional Services**”). Additional Services may include but are not limited to training and enablement services and/or general consulting services in connection with the use of the Services by Customer and/or Permitted Users. Unless otherwise agreed, Additional Services are services within the meaning of § 611 German Civil Code.
- 10.2 Additional Services will be rendered on a time and materials basis. In addition, Customer shall reimburse SimScale for travel and expenses (at cost) incurred in connection with Additional Services (if any).
- 10.3 Customer agrees to provide reasonable cooperation and information as necessary to permit SimScale to perform Additional Services. SimScale staff shall not be integrated into the operational organization of Customer. Instructions to SimScale staff must not be given by Customer’s staff or representatives but only by SimScale’s representatives. SimScale shall decide in its sole discretion how and where to utilize its resources (including SimScale’s staff) and plan its performances in accordance with the Agreement.

11. Subscription Term | Termination

- 11.1 The term of any Agreement shall initially be twelve (12) months, starting on the date agreed between SimScale and Customer therein. It shall always renew by another twelve (12) months unless terminated earlier in accordance with these Terms (the initial term and any renewal term thereof collectively, “**Subscription Term**”).
- 11.2 SimScale and Customer may terminate the Agreement for convenience with effect to the end of the then current Subscription Term with four (4) weeks’ prior notice. The parties may not terminate the Agreement for convenience with effect prior to expiry of the Subscription Term.
- 11.3 The parties’ right to extraordinarily terminate the Agreement for good cause with immediate effect shall remain unaffected. Good cause entitling SimScale to terminate the Agreement for good cause shall include without being limited to (a) Customer committing a material breach of the Agreement, and such breach not having been cured within thirty (30) days after receipt of a written notice thereof (simple email shall be sufficient); (b) Customer being in default of payment by more than forty-five (45) days; (c) Customer or Permitted Users breaching the use restrictions under Clause 3; or (d) Customer ceasing its due payments or suffering a significant deterioration in its asset situation.
- 11.4 For a period of sixty (60) days following the end of the Subscription Term or following any downgrade of a Paid Plan to a Free Plan pursuant to Clause 2.4, Customer shall be entitled to create backup copies of the Professional Content. Upon expiry of such period, SimScale may delete the Professional Content or restrict Customer’s access thereto. SimScale may retain the Professional Content for the purpose of enabling any future use of the Services by Customer (if any). Clause 5.3 applies.
- 11.5 SimScale or Customer may terminate any Agreement for Additional Services for convenience in accordance with its terms and applicable law.

12. Confidentiality

- 12.1 If SimScale or Customer receive Confidential Information (as defined below), they may only use such Confidential Information to exercise their rights and fulfil their obligations under the Agreement and shall take reasonable measures to avoid unauthorized disclosure or misuse of Confidential Information. They shall not disclose Confidential Information, except (a) to their employees, subcontractors, or professional advisers who have a legitimate need to know the Confidential Information and are legally bound to keep such Confidential Information confidential; (b) to a potential acquirer of its relevant assets, stock, or business under a strict duty of confidentiality, but only to the extent such potential acquirer has executed a term sheet, letter of intent or other similar agreement to negotiate such acquisition; and (c) as required to be disclosed by applicable law, or judicial or other governmental or regulatory order. These Terms and the Agreement constitute Confidential Information of SimScale.
- 12.2 “**Confidential Information**” means any information that is directly or indirectly disclosed or made accessible in connection with the Agreement (a) to SimScale by or on behalf of Customer, or (b) to Customer by or on behalf of SimScale, and which is identified as ‘confidential’ or ‘proprietary’ or which, given the nature of the information or circumstances surrounding the disclosure, should reasonably be understood by the recipient to be confidential or proprietary, but does not include information that the recipient can demonstrate it already rightfully knew or

possessed, becomes public through no fault of the recipient, is received by the recipient from a third party with the legal right to disclose it, or can be shown to have been independently developed by the recipient without reference to the discloser's Confidential Information.

13. Data Privacy

- 13.1 Customer and SimScale shall at all times comply with the requirements of any applicable data privacy and data protection legislation including but not limited to the EU General Data Protection Regulation ("GDPR").
- 13.2 In the event that the Services include the processing of personal data relating to Customer, SimScale processes such data solely as a 'processor' on behalf of Customer who acts as a 'controller', each as defined in any applicable privacy and data protection legislation including but not limited to the GDPR. Where required by such legislation, SimScale shall enter into a written data processing agreement with Customer.

14. Proprietary Rights | Trade Names and Logos | Updates | Use of Feedback

- 14.1 SimScale and its suppliers own and shall retain all proprietary rights, including all copyright, database rights, patents, trade secrets, trademarks and all other intellectual property rights, in and to the Services and any materials provided by SimScale to Customer. With respect to any portions of software included with the Services, which is licensed to SimScale by its suppliers, such suppliers are third party beneficiaries of this Agreement (§ 328 German Civil Code).
- 14.2 SimScale may implement new versions and upgrades of the Services including, but not limited to, changes that effect modifications to the design, operational method, technical specifications, systems, and other functions, etc. of the Services, at any time without prior notice.
- 14.3 Customer agrees that SimScale may refer to Customer by its trade names and logos, and may briefly describe Customer's business, in SimScale's marketing materials and SimScale's website.
- 14.4 Customer may from time to time provide SimScale with suggestions for new features or functionalities of and with feedback regarding the Services. SimScale shall be free to take such suggestions or feedback into consideration. Customer grants to SimScale, without charge, the fully paid-up, perpetual, sublicensable right to exploit such feedback for any purpose.

15. Assignment | Novation

- 15.1 Subject to applicable law, Customer shall not assign any of its rights or obligations under these Terms or under the Agreement without SimScale's prior written consent and any purported assignment in breach of this Clause 15.1 shall be void. SimScale may at its discretion assign, or transfer to third parties any Agreement and/or any associated rights in whole or in part.
- 15.2 Customer shall, at SimScale's request, promptly enter into a novation agreement in such form as SimScale shall reasonably specify in order to enable SimScale to exercise its rights pursuant to this Clause 15.2.

16. Indemnity

- 16.1 Without prejudice to any other liability of Customer under contract or statutory law, Customer shall defend, indemnify and hold harmless, at its expense, SimScale and its Affiliates, its employees, subcontractors, suppliers and resellers against any third party claim to the extent such claim arises from or is made in connection with a breach of Clause 3 or Clause 6 or otherwise from Customer's use of the Services, and Customer shall pay all costs and damages finally awarded against SimScale by a court of competent jurisdiction as a result of any such claim.
- 16.2 SimScale must promptly provide Customer with notice of any claim that SimScale believes is within the scope of the obligation to indemnify, provided, however, that the failure to provide such notice shall not relieve Customer of its obligations under this Clause 16, except to the extent that such failure materially prejudices Customer's defense of such claim. SimScale may, at its own expense, assist in the defense if it so chooses, but Customer shall control the defense and all negotiations related to the settlement of any such claim. Any such settlement intended to bind SimScale shall not be final without SimScale's written consent, which consent shall not be unreasonably withheld, conditioned or delayed.

- 16.3 SimScale agrees at its expense to defend Customer against (or, at SimScale's option, settle) any third-party claim to the extent such claim alleges that the Services infringe or misappropriate any patent, copyright, trademark, other intellectual property right or trade secret of a third party, and SimScale shall pay all reasonable costs and damages finally awarded against Customer by a court of competent jurisdiction as a result of any such claim. In the event that the use of the Services is, or in SimScale's sole opinion is likely to become, subject to such a claim, SimScale, at its option and expense, may (a) replace the applicable Services with functionally equivalent non-infringing technology; (b) obtain a license for Customer's continued use of the applicable Service; or (c) where relevant, immediately terminate the Agreement in whole or in part and provide a pro-rata refund of the License Fees that have been paid in advance for the applicable Services (beginning on the date of termination). SimScale's foregoing indemnity obligation shall not apply: (i) if the Services are modified by Customer or by any third party for which Customer is responsible; (ii) if the Services are combined with other non-SimScale products, applications, or processes, but solely to the extent the alleged infringement is caused by such combination; or (iii) to any unauthorized use of the Services. Customer's rights under this Clause 16.3 shall be Customer's sole remedy with respect to any claim of infringement of third-party intellectual property rights and trade secrets.

17. Limitation of Liability

- 17.1 SimScale shall be unrestrictedly liable for (a) injury to life, body or health caused by SimScale, its legal representatives or assistants in performance; (b) damage caused intentionally or with gross negligence by SimScale, its legal representatives; (c) damage caused intentionally by SimScale's assistants in performance not mentioned in (b); (d) damage resulting from the absence of any guaranteed characteristics; and (e) claims under the German Product Liability Act.
- 17.2 SimScale shall be liable for damage resulting from the breach of its primary obligations hereunder by SimScale, its legal representatives or assistants in performance. Primary obligations are such basic duties which form the essence of the Agreement, which were decisive for the conclusion of the Agreement and on the performance of which Customer may rely. If the breach of such primary obligation was caused (a) through simple negligence by SimScale, its legal representatives or executive staff; or (b) through simple or gross negligence by SimScale's assistants in performance not mentioned in (a), then SimScale's ensuing liability shall be limited to the amount which was foreseeable by SimScale at the time the respective Service was performed.
- 17.3 Subject always to Clauses 17.1 and 17.2, SimScale shall not be liable for damage resulting from the breach of non-primary obligations through (a) simple negligence of SimScale or its legal representatives, or (b) simple or gross negligence of SimScale's assistants in performance not mentioned in (a).
- 17.4 SimScale shall be liable for loss of data only up to the amount of typical recovery costs which would have arisen if proper and regular data backup measures had been taken by Customer.
- 17.5 Subject always to Clause 17.1, SimScale's total liability arising out of or in connection with these Terms and the Agreement, whether in contract or tort or otherwise shall in no circumstances exceed a sum equal to one hundred and fifty percent (150%) of (a) the total License Fees (plus any fees for Additional Services) paid or payable by Customer in the twelve (12) months preceding the event which gave rise to the liability, or (b) an amount equaling twelve (12) times the monthly License Fees (plus any fees for Additional Services) paid or payable by Customer in the month of the event which gave rise to the liability, whichever is higher.
- 17.6 Neither SimScale nor Customer shall be liable for any failure or delay in performance to the extent that such failure or delay is caused by force majeure, i.e., causes beyond their reasonable control and occurring without their fault or negligence.
- 17.7 Any other liability of SimScale not covered in this Clause 17 shall be excluded on the merits.
- 17.8 Customer agrees and acknowledges that the Services offer an engineering simulation platform that analyzes data uploaded by Customer and provides simulation capabilities relating to, for example, solid mechanics, fluid dynamics and thermal analyses, as the case may be. As a consequence, SimScale is not responsible for (a) the correctness, completeness, integrity and accuracy of any data transmitted to SimScale or uploaded into the Services by Customer; (b) any Content as defined in Clause 5.1; (c) any conclusions drawn by Customer or any third party from any simulation, calculation, modeling or other process or operation executed by the Services or by Customer using the Services; (d) the technical, scientific, legal and commercial feasibility of any project, product and undertaking of Customer or any third party; and (e) the economic and financial viability of any project, product and undertaking of Customer or any third party.

18. Applicable Law | Jurisdiction

- 18.1 These Terms and any Agreement as well as any issues, disputes or claims arising out of or in connection therewith shall exclusively be governed by the laws of the Federal Republic of Germany excluding its conflict of laws provisions. The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply.
- 18.2 The venue of jurisdiction for all disputes arising out of or in connection with these Terms and any Agreement shall be Munich, Germany.

19. Entire Agreement | Severability | Changes | Revision

- 19.1 The Agreement including these Terms represents the entire agreement between Customer and SimScale in respect of its subject matter and supersedes and extinguishes all prior negotiations, arrangements, understanding, course of dealings or agreements made between the parties in relation to its subject matter, whether written or oral.
- 19.2 Should any provision of the Agreement including these Terms be or become ineffective or invalid in whole or in part, the effectiveness and validity of the other provisions shall not be affected. Such ineffective or invalid provision shall be replaced by a provision which comes as close as legally possible to what the parties would have agreed, pursuant to the meaning and purpose of the original provision and of the Agreement if they had recognized the ineffectiveness or invalidity of the original provision. If the ineffectiveness or invalidity of a provision is based on the determination of a certain level of performance or a certain time (deadline or fixed date), such ineffective or invalid level or time shall be replaced by the level or time which comes as close as legally possible to the original level or time. The foregoing shall also apply to any possible omission in the Agreement including these Terms that was not intended by the parties.
- 19.3 Valid amendments or supplements to any Agreement must be made in writing. The same shall apply to any agreement to deviate from or cancel this requirement of written form.
- 19.4 SimScale may amend and/or update these Terms for existing Agreements with future effect from time to time and as necessary for technical, economic or legal reasons provided that this would neither constitute a change affecting the basis of the legal relationship between SimScale and Customer nor is equivalent to the conclusion of a new contract. Any revision of these Terms shall be announced to Customer in text form (simple email shall be sufficient) no later than six (6) weeks before their proposed effective date. Customer may either approve or object to the revision before their proposed effective date. The revision shall be deemed approved by Customer, unless Customer objects to the revision before their proposed effective date. SimScale shall expressly inform Customer thereof in the respective announcement. SimScale may amend and/or update these Terms for future Agreements at any time for any reason without notice.

20. Miscellaneous

- 20.1 The person signing or otherwise accepting the Agreement including these Terms for Customer represents that they are duly authorized by all necessary and appropriate corporate action to enter into the Agreement on behalf of Customer.
- 20.2 SimScale may retain subcontractors, including third-party software suppliers, for the performance of any of its obligations under these Terms and any Agreement.
- 20.3 Neither these Terms nor any Agreement between SimScale and Customer shall create any agency, employment, joint venture, partnership, or any company of any other kind between SimScale and Customer. No transfer of employees within the meaning of the German Transfer of Employees Act shall take place.

SimScale GmbH
Local Court of Munich HRB 201813
June 2023