SIMQ

**General Terms and Conditions (GTC)
Services of Simq GmbH**

Status 07/2022

1. Scope of Application, Contracting Parties

1.1 These General Terms and Conditions apply to the provision of calculation services, software development services and seminar services (seminar events) by Simq GmbH with its registered office in Grafing near Munich, hereinafter referred to as Simq, to its customers.

1.2 The customer's general terms and conditions shall not become part of the contract.

1.3 Simq is entitled to perform the contractual services also by using subcontractors, in particular the following companies: CADFEM GmbH, Grafing; CADFEM Austria GmbH, Vienna; CADFEM Suisse AG, Aadorf; CADFEM Ireland, Dublin; CADFEM Americas, Inc., Farmington Hills (MI); CADFEM Engineering Services India PVT Ltd., Hyderabad; CADFEM Afrique Du Nord s.a.r.l., Sousse.

1.4 The customer does not obtain the contractual services as a consumer, but for the purpose of his commercial or independent professional activity or, in the case of a university, for its purposes.

2. Services of Simq

2.1 The nature and scope of the services to be provided by Simq shall be governed by the contractual agreements (i.e. in the case of an order based on the offer of Simq, in the case of seminar events usually by way of online registration), supplemented by these General Terms and Conditions.

2.2 Simq is free to provide the contractual services in terms of content and time within the framework of the contractual agreements, unless otherwise stipulated in the contract in individual cases. Partial performance is permissible insofar as it is reasonable for the customer.

2.3 Simq is entitled to involve other equally qualified employees or external companies and freelancers in the performance of services instead of the agents named in the contract, unless otherwise stipulated in the contract.

2.4 Scope of Services for Calculation Services:

a) The specifications provided by the customer for the calculation will not be checked by Simq, unless otherwise agreed in individual cases. Simq will inform the customer if the customer's specifications are obviously incorrect, even without a separate review.

b) The contractual calculation services shall be provided to the best of our knowledge and belief and in accordance with the recognized rules of engineering practice using state-of-the-art computer programs. As a rule, the calculation is based on a numerical simulation. The models created for this purpose inevitably and even with the application of all due care customary in the industry never fully correspond to reality. This can lead to discrepancies between the calculation results obtained in this way and the actual properties of the objects under investigation. Therefore, the work results produced by Simq must always be validated by the customer using suitable methods with regard to the requirements placed on the investigated object.

c) The calculation services of Simq also do not replace a proper and comprehensive examination of the manufactured products prior to their use with regard to their suitability for the intended use. Simq does not assume responsibility for the possibility of realization in the production of the examined items or for the achievement of other goals of the customer, unless otherwise specifically agreed in individual cases.

d) The customer bears the risk for the technical and economic usability of the calculation services to be provided by Simq.

e) If Simq also supplies scripts, macros or other software modules in the course of calculation services, the provisions of Clause 2.5 shall apply accordingly.

2.5 Scope of Services for Software Development:

a) Software developments may consist of the new development, further development or adaptation of software.

b) The software development as well as - if contractually agreed - the associated documentation and installation description will be produced in accordance with the contractually agreed requirements. The software including documentation will, at the option of Simq, either be delivered on a data carrier or can be downloaded from an FTP server. The installation of the software as well as an instruction of the customer will only be carried out by Simq if and as far as this is contractually agreed.

c) In addition to providing the software, Simq is only obligated to provide the corresponding source code if and to the extent that this is contractually stipulated. Documentation for the source code will only be supplied if and insofar as this is contractually agreed. In this case, the documentation may be included in the source code (comment lines) if and to the extent that nothing else has been agreed. The source code (including documentation, if applicable) will, at the option of Simq, either be delivered on a data carrier or can be downloaded from an FTP - server.

2.6 Scope of Services for Seminar Events

a) If the subject matter of the contract is the holding of a seminar event, the content, time, place and speaker shall be governed by the respective contractual agreements, in particular the information in the respective seminar description. Simq is, however, entitled to replace the contractually agreed speakers with other equally qualified persons and to make minor changes to the content of the event compared to the contractually agreed content.

b) Simq gives the participants the opportunity to familiarize themselves with the contractually intended contents within the framework of the seminar event. A certain learning success is not promised. c) Seminar documents handed over to the participants as well as hardware and software provided on

loan serve only learning purposes within the framework of the seminar event. The seminar documents are only available upon participation in a seminar.

3. Performance Deadlines

3.1 The completion deadlines are based on the contractual specifications.

3.2 The completion deadlines shall be extended appropriately if and to the extent that the Customer does not provide the cooperation and materials required for the performance of the service at the agreed time, in the required quality and quantity, or within a reasonable period despite being requested to do so.

4. Subsequent Changes in Performance

4.1 If the customer has expressed to Simq requests for changes with regard to the agreed service, these can only be taken into account within the framework of a mutually agreed change to the existing contract. The same applies if it becomes apparent after the conclusion of the contract that the execution according to the specifications of the customer cannot be carried out as agreed.

4.2 Simq will agree to a corresponding change in the contract for an appropriate additional fee if the change in performance is feasible and reasonable for Simq under the circumstances. The following procedure is agreed for this purpose: Simq shall, upon receipt of a written request for modification, submit to the customer in writing an offer for the modification of the contract, taking into account the impact of the modification on the agreed schedule and on the remuneration. In doing so, Simq will base its offer on the expected change in the time required compared to the hours calculated for the provision of the originally agreed service. The contents of this offer shall only become part of the contract upon receipt by Simq of a written order from the customer and shall amend and/or supplement the contract, in particular with regard to the service, the time schedule and the remuneration. Page II of IV General Terms and Conditions (GTC) Services of Simq GmbH Status 03/2019.

5. Prices and Terms of Payment

5.1 Customer shall pay the agreed remuneration to Simq when due. All prices and costs are subject to statutory value added tax. Cash discounts are excluded.

5.2 Unless otherwise agreed in the respective contract, the following shall apply: Remuneration is due for payment monthly in the case of service contracts, but no later than upon completion of the service, and upon acceptance in the case of contracts for work and services. Simq may demand advance payments at reasonable intervals already before or during the performance of the activity according to the status of the services rendered in accordance with the contract.

5.3 The customer may only set off claims that are undisputed or have been finally adjudicated and claims that are reciprocal and arise from the same contract. The same shall apply to the assertion of a right of retention.

6. Cooperation Obligations of the Customer

6.1 The customer is obligated to provide Simq with all cooperation services and provisions required on his part for the execution of the contract without undue delay after the assignment. In addition, the customer shall provide all necessary and appropriate information, documents and materials requested by Simq for the performance of the contract.

6.2 The customer shall notify Simq of any problems or difficulties that are apparent to the customer during the performance of the contract.

6.3 The hardware and software provided in seminar events for teaching purposes during the event must be treated with care. Participants are not authorized to install their own software on Simq computers.

7. Notice of Defects and Acceptance

7.1 If Simq is to produce a work product specified in the contract, it is the responsibility of the customer to carefully inspect the delivered work product within two weeks of receipt and to notify Simq of any defects. If the customer fails to inspect and/or notify Simq, the work product shall be deemed to have been approved, unless the defect is one that was not apparent upon inspection.

7.2 The Customer shall be obliged to accept the work result produced in accordance with the contract. The acceptance shall be carried out within two weeks after delivery of the work result by declaration in text form. Acceptance may not be refused due to insignificant defects. The customer's failure to accept the work product within a reasonable period of time set by Simq, although he is obligated to do so, shall be deemed equivalent to acceptance.

8. Rights of Use

8.1 Simq or its licensors shall remain the unrestricted owner of all copyrights and exploitation rights and all other industrial property rights to the items used by Simq for the performance of services. Unless otherwise contractually agreed, Simq shall also remain the owner of all copyrights and other industrial property rights to the contractual work results (software developments, calculation results, etc.) as well as the owner of the rights in and to all inventions arising in the course of the performance of the contract.

8.2 Simq grants the Customer a non-exclusive right to use the work results to be provided under the contract to the extent necessary to achieve the purpose of the contract in accordance with the following provisions. To the extent that the contractual work result is a calculation service, Simq grants the customer an exclusive, transferable right of use to the concrete calculation results (calculation report and, if agreed, model) with the proviso that Simq and its other customers are not thereby prevented from performing calculations in the same field. However, Simq is not entitled to provide or disclose the specific calculation result to another customer for use.

8.3 To the extent that the contractual service consists in whole or in part of a software development, Simq grants the customer a simple right to use such software for the customer's own purposes. The customer is not entitled to transfer rights of use to such work results to third parties or to permit third parties to use such work results. The customer is only permitted to edit, redesign or translate such work results or to produce works dependent thereon if the delivery of the source code is also an object of the contract. The granting of the rights of use to the contractually delivered software development does not grant the customer the right to use the underlying application software. The licensing of the application software is usually carried out within the framework of an independent contract.

8.4 The Customer shall only receive a simple, non-transferable right of use to the source code if and to the extent this is

expressly stipulated in the contract. The customer is entitled to have the source code used by his employees and by third parties commissioned by him, but only for the customer's purposes, whereby the employees and commissioned third parties must first be obligated in writing to maintain the confidentiality of the source code. The customer shall be liable to Simq for any violation of the confidentiality obligations or the rights of use by employees or commissioned third parties as for his own violations.

8.5 The Customer shall not be entitled to rent, lend, sell or otherwise provide access to the contractual work results, with the exception of the calculation results, to third parties for purposes other than use for the Customer or to use them for purposes of third parties in the computer or service center operation.

8.6 The granting of the rights of use is subject to the condition precedent of full payment of the contractually agreed remuneration to Simq. Upon acceptance or delivery, the customer shall receive a provisional right of use. However, if the full payment of the contractual remuneration is not made within a period of 30 calendar days after the due date of the final payment, the provisional right of use shall expire and the customer may not continue to use the work results until full payment has been made.

8.7 Simq is and remains entitled in particular to use the know-how used or gained in the course of the execution of a contract without any restrictions, also for third parties, and to process identical or similar orders with it. The contractual confidentiality obligation remains unaffected by this.

8.8 The customer does not receive any independent rights of use to the software provided for teaching purposes in seminar events, but is only entitled to use it during the event. It is not permitted to copy the software provided by Simq or to copy or download any data from the computers provided by Simq. Seminar documents may only be copied for the customer's internal use.

9. Secrecy

9.1 The parties undertake to treat as confidential the information disclosed to them or becoming known to them by the other party (disclosing party) in the course of the conclusion of the contract and its performance, unless such information is in the public domain, has been developed by the other party itself or later becomes generally known without breach of the duty of confidentiality. The parties shall take all necessary precautions to protect the confidential information from unauthorized access, unauthorized disclosure, accidental disclosure, duplication, dissemination and other unauthorized use. Further legal provisions remain unaffected. To the extent that Simq is entitled to have the contractual services performed by third parties, confidential information may be provided to such third parties for the purpose of performing the contract. Both parties are obligated to ensure that employees and third parties who gain access to the confidential information are subject to confidentiality obligations in writing prior to disclosure that are at least as strict as those set forth above for the parties.

9.2 Simq agrees to keep calculation results strictly confidential and not to disclose or provide them to any other customer.

10. Cancellation, Withdrawal and Cancellation

10.1 Contracts for work and services may be terminated by the customer at any time until completion of the work. In this case Simq shall be entitled to the agreed remuneration, however

Simq must take into account any costs saved as a result of the cancellation of the contract or acquired or maliciously refrained from acquiring as a result of the use of its business elsewhere (§ 649 BGB).

10.2 If, in the case of service contracts, a certain amount of time (fixed time quota) or a contractually fixed duration for the performance of services has been agreed in the contract, the provision under Section 10.1 shall apply accordingly.

10.3 In the case of seminar events, the customer is entitled to withdraw from the contract in writing after conclusion of the contract if he provides a substitute participant who does not claim a further reduction than the participant.

10.4 Simq is entitled to cancel a seminar event if one of the contractually scheduled lecturers is prevented from performing the event and the provision of a suitable replacement lecturer is impossible or unreasonable for Simq. In any case, the event will be cancelled immediately after the reason for the impediment becomes known. Simq is also entitled to cancel the event up to one week prior to the start of the event if the number of registrations received two weeks prior to the start of the event without a request for a reduction is less than the minimum number of participants stipulated in the contract. This does not apply to events for which the contractual partner is required to pay a flat fee regardless of the number of participants. The minimum number of participants is three, unless otherwise specified in the seminar description. Permissible cancellation by Simq constitutes a withdrawal from the contract, in which case Simq is not obligated to provide compensation for futile expenses.

10.5 The right of both parties to terminate for cause shall remain unaffected.

11. Claims due to Material Defects and Defects of Title

11.1 The Customer shall immediately give notice in writing of any material defects and defects of title. Material defects shall be reported by the Customer, stating the exact circumstances under which they occurred and describing the effects of the material defect in detail and in a comprehensible manner. Reference is made to 7.1 of these GTC.

11.2 To the extent that Simq is obliged to provide subsequent performance due to a defect, Simq shall be entitled to provide such subsequent performance either by rectification of the defect or by new delivery at its own discretion. Subsequent improvement may also be effected by delivery of a new version, update, upgrade, patch or release, otherwise also by delivery of equivalent items.

11.3 If the subsequent performance or the type of subsequent performance chosen by Simq is unreasonable for the customer, the customer shall immediately notify Simq in writing.

11.4 The Customer shall cooperate to a reasonable extent in the search for and analysis of a material defect and its cause and, in particular, allow Simq to examine the items, provide all necessary and relevant information and allow inspection of the documents from which more detailed circumstances of a notified defect could arise.

11.5 Claims and rights due to a defect shall become statute-barred within one year from the statutory commencement of the limitation period. This shall not apply insofar as longer periods are prescribed by law in accordance with § 438 para. 1 no. 2 b) BGB (items which have been used for a building in accordance with their customary manner of use and have caused its

defectiveness), § 634a para. 1 no. 2 BGB (works the success of which consists in the provision of planning or supervisory services for buildings) and § 479 BGB (recourse claims).

11.6 For claims based on the Product Liability Act as well as in cases where Simq or its vicarious agents have fraudulently concealed a defect or have caused a defect intentionally or by gross negligence, or have caused an injury to life, body or health, or insofar as a guarantee of quality given by Simq is sufficient, the statutory provisions on liability and limitation in case of defects shall remain unaffected. The regulations regarding the suspension of expiration or the recommencement of time limits also remain unaffected.

11.7 Clause 12 shall apply to claims for damages and reimbursement of expenses in the event of defects.

12. Liability

12.1 Simq shall only be liable for damages, irrespective of the legal basis, if these are caused by intent or gross negligence or the intentional or negligent breach of essential contractual obligations, the fulfillment of which makes the proper execution of the contract possible in the first place and on the compliance with which the contractual partner may regularly rely. In the case of simple negligence, the liability of Simq is limited to the foreseeable damage typical for the contract. Simq shall only be liable for consequential damage caused by a defect in case of intent or gross negligence; the legal claims of the customer for compensation of the damage caused by the delay in remedying the defect shall remain unaffected. The above liability regulations also apply accordingly to the liability for compensation of futile expenses.

12.2 The aforementioned limitations and exclusions of liability shall not apply to damages resulting from injury to life, body or health for which Simq is responsible as well as to liability under warranties and under the Product Liability Act.

12.3 The above provisions shall also apply in favor of Simq's employees and subcontractors.

13. Export regulations

Software products and technical know-how in connection with these software products are subject to the applicable export regulations of the buyer country as well as those of the respective manufacturer country. With regard to the contractual services, the customer is obligated to comply with all applicable legal provisions of the Federal Republic of Germany, the European Union and the United States of America that restrict the sale, delivery, export or transit of goods, software, technology and technical support or related trade and brokerage transactions (e.g. country and personal embargoes).

14. Patient-Specific Data and Simulations

14.1 If the service ordered by the customer consists of a patient-specific simulation, the customer undertakes to inform the patients about the planned use of their data for the performance of simulations in accordance with the medically relevant points before forwarding the patient data to Simq, to document this information and to obtain the written consent of the patients for the forwarding of their data to Simq. Simq will only accept and process data from patients if it has received prior written consent from the patients.

14.2 With regard to the fact that patient-specific simulations created by Simq may also be used for surgery or therapy planning, Simq expressly points out that simulations never fully correspond to reality, even if all due care customary in the industry is applied. The customer is aware that FEM simulation is an approximation method and can never represent reality. This is especially true for patient-specific simulations, as uncertainties arise in these simulations due to numerous assumptions. It is therefore mandatory that the work results produced by Simq be validated by the customer using suitable methods with regard to the requirements placed on the object under investigation. Reference is made to No. 2.4 b) of these GTC.

14.3 The decision as to which operation or which therapy is to be applied is always the responsibility of the physician. Simq expressly does not provide any specifications as to which operations or therapies should be used.

15. Miscellaneous, Place of Jurisdiction and Applicable Law

15.1 The Customer's claim to provision of the contractual service is not assignable.

15.2 Should any provision of the contract or of these General Terms and Conditions be or become invalid, the legal validity of the remaining provisions shall not be affected thereby.

15.3 If the customer is a merchant, a person under public law or a special fund under public law, the courts at the registered office of Simq shall have local jurisdiction for all disputes arising from or in connection with this contract. Exclusive statutory courts of jurisdiction remain unaffected by this provision. The place of performance for both parties is the registered office of Simq. Notwithstanding the foregoing, Simq shall always have the right to bring any dispute before the court having jurisdiction over the customer's place of business.

15.4 The legal relations in connection with this contract shall be governed by the laws of the Federal Republic of Germany, excluding the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 and excluding the German conflict of laws rules.