

# General Terms and Conditions (GTC)

These contractual terms and conditions regulate the contractual relationships between PlanToBuild GmbH, Kammerratsheide 36, 33609 Bielefeld – hereinafter referred to as "Software Provider" – and the customers of the Software Provider - hereinafter individually also referred to as "Customer" -, which intend to use the electronic platform operated by the Software Provider for their entrepreneurial purposes. This platform, which is accessible via the Internet and will hereinafter be referred to as "PlanToBuild", concerns a project management solution for the construction and construction component supplier industry. It depicts typical processes from this industry integrated into a cloud solution and makes these accessible to various parties involved in projects.

## 1. Contractual object

1.1. During the contractual term the Customer, operating as an entrepreneur, shall receive for entrepreneurial purposes in the sector of the construction and construction component supplier industry the technical possibility and authorisation to access PlanToBuild by means of the Internet and browser as well as to use the functionalities of the platform within the scope of the reached agreement. PlanToBuild currently offers the following functions:

1.1.1. Project planning

1.1.2. Digital building model

1.1.3. Document collaboration

Further details are provided in the **PlanToBuild - Performance specification**.

1.2. PlanToBuild is hosted on one or multiple servers. The point of transfer of services is the connection between the computing centre used and the internet. The Customer is responsible for the connection to the internet, the provision or maintenance of the network connection to the respective computing centre, and the properties and provision of network access components for the internet on the Customer side. Access to PlanToBuild is provided via a browser, using an encryption technology, such as SSL. Further requirements for the Customer to use PlanToBuild (such as browser type / version, add-ons, plugins, software, hardware, internet bandwidth) are regulated in the document **PlanToBuild - System requirements**.

## 2. Services of the Software Provider

2.1. From the agreed time the Software Provider shall make PlanToBuild available for use by the Customer in the agreed scope on one or several central data processing systems. This is not only oriented to the booked scope of package (e.g. maximum number of users, maximum stor-

age space or special functionalities), but in particular also to the **PlanToBuild – Terms of Use**; the Customer agrees with the regulations therein, also in the relationship to it and accepts these in full.

2.2. To the extent generally available on PlanToBuild the Customer can adjust the packages booked by it (e.g. maximum number of users, maximum storage space or special functionalities) during the contractual term, i.e. change the service content for the future. In case of a reduction in the scope of the package this may lead to data losses (e.g. through a reduction in possible projects); the Software Provider will point this out to the Customer in advance on PlanToBuild.

2.3. The Software Provider assures that it will only operate PlanToBuild on data processing systems within the legal territory of the Federal Republic of Germany, in another member state of the European Union or in another contracting state of the Treaty on the European Economic Area and will store the data of the Customer without exception in the Federal Republic of Germany, in another member state of the European Union or in another contracting state of the Treaty on the European Economic Area. The Software Provider is however entitled to change the service locations at its free discretion at all times within the aforementioned countries.

2.4. The Software Provider shall ensure that the data of the individual Customers are administered segregated from one another in such a way that an access to the data by other Customers and other unauthorised third parties is excluded.

Insofar as the scope of functions and services of PlanToBuild includes interfaces to external systems/software, these are standard interfaces. Information obtained through PlanToBuild on external systems, in particular information on possible delivery deadlines or other delivery/product conditions of Fa. Schüco International KG, is non-binding unless it is explicitly designated as being binding. Neither the Software Provider, nor the company Schüco International KG shall assume liability for this purpose.

2.5. Part of the offers of PlanToBuild – in particular in the field of the module "Fault management" – can be the provision/generation of letters to third parties. Such letters are only standardised drafts, to which individual information is added automatically. They neither replace legal advice, nor shall the Software Provider assume liability for the accuracy of its content. The customer adopts such drafts at their own risk and

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responsibility. The Customer is obligated to review in each individual case whether the drafts are suitable for use by it, and to what extent they require prior adaptation by it.

- 2.6. The data entered via PlanToBuild shall be backed up by the Software Provider regularly and in line with the risks, at least however once a day, in order to guarantee the recovery thereof in case of loss of data and information within the meaning of a daily system recovery. Changes to data, whether intentional (such as data recording) or unintentional (such as deleting data) between the backups will not be backed up. Only the Customer is responsible for complying with commercial, professional and tax law retention periods. The scope of performance does not include any longer-term data backup for archiving purposes.
- 2.7. The Software Provider shall endeavour to consistently further develop PlanToBuild. Therefore, the Software Provider is entitled at all times to change user interfaces, functionalities, services and applications provided on PlanToBuild – in particular with regard to layout and design – and to make these newly available. Such further development may also result in restrictions or even the removal of some sub-functions in partial areas of PlanToBuild. If, through a change in service, which has implications on the owed condition of PlanToBuild, legitimate interests of the Customer are affected detrimentally to a substantial extent, then the Software Provider shall notify the Customer of the change at least three months before this becomes effective. In this case, the Customer can object to the change in services within one month after it is disclosed. The objection must be asserted at least in text form. If the Software Provider does not enable the Customer, after its objection, the use of PlanToBuild without delay in the unchanged form, the Customer can terminate the contract extraordinarily within a period of two weeks from the time at which the change in service becomes effective with immediate effect.
- 2.8. An online user help function is integrated into PlanToBuild. In addition, the Software Provider will generally demonstrate and explain individual functions of PlanToBuild to the Customer in videos, which the Customer can call up. Any further claim to user documentation shall be excluded. Insofar as the Customer requests special documentation or training, this will require a separate commission and may be subject to charge.

The Software Provider shall provide general support to the Customer: In case of difficulties in connection with the operation of PlanToBuild, for the diagnosis and the remedy of possible errors a help desk is available to the Customer during the general office hours of the Software Provider. This serves to provide brief advice in case of occurring defects, interferences or other difficulties in connection with the operation, not however the general initial instruction for PlanToBuild. The help desk receives error messages from the Customer and should enable the Customer to independently correct problems/errors or circumvent minor errors but will not replace proper training. The support by the help desk is provided in the first place by email, in individual cases at the discretion of the Software Provider also by telephone. The help desk may only be used by the administrator and by authorised employees of the Customer of whom the names have been announced to the Software Provider. The Software Provider offers corresponding training sessions and possibilities for information. Insofar as not agreed between the Customer and the Software Provider, the training sessions are liable to costs.

## 3. Administrators and users

- 3.1. The Customer shall name an administrator. He shall receive the access to PlanToBuild by means of an identifier and a password to be allocated by the Software Provider. He is entitled to carry out package changes in the name of the Customer pursuant to Subclause 2.2 as well as to allocate authorisations for the use of PlanToBuild in the scope as generally opened by the Software Provider for this purpose on PlanToBuild for employees of the Customer (these employees are hereinafter referred to as "own users") as well as for its partners and employees /authorised agents of the partners and to withdraw these again (these employees/authorised agents are hereinafter referred to as "third party users"). The number of possible users is oriented to the contractual agreement and the booked package. With the first-time allocation of corresponding authorisations, the respective users shall receive an invitation to participate in PlanToBuild from the Software Provider by email combined with the request to register on PlanToBuild. Only after this registration and after their consent to the Terms of Use of PlanToBuild (cf. **PlanToBuild – Terms of Use**) – the administrator also has to consent once to the Terms of Use – the users are entitled to use

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PlanToBuild until the withdrawal of the authorisation by the administrator, at the longest however until the termination of this contract to use. The scope of use for users can be restricted, either based on the general scope of functions in PlanToBuild – especially for external users – or based on the role profiles to be supported by PlanToBuild and relevant settings of the Customer, for instance also with respect to certain content.

- 3.2. The administrator and the own users are authorised to act towards the Software Provider in the name and by order of the Customer, in particular to submit declarations of intent for the Customer. Their actions and all actions using the login details of the administrator and other own users in conjunction with PlanToBuild shall be accepted by the Customer as their own. The administrator and all users are considered agents of the Customer.
- 3.3. Login details to PlanToBuild shall be treated as strictly confidential by the administrator and users. The Customer must ensure and is responsible for ensuring that their login details are not given to other parties. In the event that third parties gain knowledge of the access data, the Software Provider is to be informed without delay.
- 3.4. A five times false input of access data and a three-month non-use of the access shall entitle the Software Provider to temporarily block the respective access.
- 3.5. The Customer has to inform the Software Provider without delay at least in a text form if an administrator should no longer operate or is operating in its name and by order for the Customer and is to be refused access in future. In this case, the Customer will name a new administrator. Until the blocking of the access of the previous administrator, the implementation of which the Software Provider is obligated to implement within 3 workdays after receipt of the information, he shall continue to be a justified administrator.

## 4. Availability

- 4.1. The Software Provider guarantees in its area of responsibility an availability of the PlanToBuild platform of 98% as an average for the year. Typically, the services of PlanToBuild will be available from Monday through Sunday between 00.00 AM and 12.00 PM (midnight) (7\*24h). However, an annual availability of maximum 5,840 hours (=365 days x 16 hours) is used to calculate the owed level of availability. Furthermore, the regular maintenance window, which lies on weekends and statutory public holidays

between 6.00 AM and 9.00 AM as well as between 10.00 PM and 6.00 AM of the following day shall not fall under the calculation of the availability.

- 4.2. Incidentally, there shall only be an entitlement to the use of the services available on PlanToBuild within the scope of the technical and operational possibilities of the Software Provider. The Software Provider will make an effort to provide an as far as possible interruption-free usability of PlanToBuild. However, occasional restrictions or interruptions may occur due to technical disruptions (such as interruptions of the power supply, hardware and software errors, technical problems in data lines).

## 5. Blockage

- 5.1. The Software Provider can temporarily or permanently block the access to PlanToBuild – for the Customer either in full or only with regard to individual (own/third party) users –, if there are concrete indications that the Customer is breaching or has breached this contract and the general Terms of Use of PlanToBuild and/or applicable law, or if the Software Provider has any other legitimate interest in said blocking. With the decision on a blocking the Software Provider will reasonably take the legitimate interests of the Customer into consideration.
- 5.2. In the event of the temporary or permanent blocking the Software Provider will block the respective access authorisation of the Customer as well as its (own/third party) users and will notify these by email hereof.

## 6. User obligations

To ensure PlanToBuild can work with its many different users, all users, and in particular also the administrators and own and external users (hereinafter, administrators and own/external users of the customer are uniformly referred to as "users") must comply with certain regulations.

### 6.1. General

6.1.1. The Customer has informed itself about the essential functional features of PlanToBuild and bears the risk that the platform shall comply with its wishes and needs; it has to obtain advice with regard to questions of doubt before conclusion of the contract by employees of the Software Provider or by competent third parties.

6.1.2. The Customer shall comply with the instructions issued by the Software Provider for the use of PlanToBuild; it will inform itself at regular intervals on the

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sources of information provided via PlanToBuild as well as on the websites accessible via the internet under [www.plantobuild.online](http://www.plantobuild.online) about current instructions and will take these into consideration when using PlanToBuild.

- 6.1.3. The Customer is obligated to consistently use current anti-virus programs on the local systems it uses to access PlanToBuild, and to take appropriate precautionary measures during the entire contractual term against hacker attacks, viruses and comparable disruptions, which in particular includes always uploading security patches available for the operating system it uses.
- 6.1.4. The Customer consents that PlanToBuild may access its data in order to analyse/correct any errors it reports and within the framework of requested support to the necessary extent, in particular to analyse functional processes and review file structures.
- 6.2. The Customer is fully responsible for content placed by it and its users on PlanToBuild. The Software Provider shall not assume any responsibility for checking the contents for completeness, accuracy, lawfulness, actuality, quality and suitability for a certain purpose.
- 6.3. The Customer declares and guarantees towards the Software Provider that it is the sole holder of all rights to the contents transmitted by its users or, however, is otherwise entitled (e.g. by an effective permission of the holders of the rights), to transmit the contents to the Software Provider, to make these available for use on PlanToBuild and to make these available to its users via PlanToBuild. Therefore, the Customer shall ensure before the transmission of images, plans, drawings, sketches and other information that it is entitled to sufficient rights of use hereto or to the respective files and their making accessible on PlanToBuild does not breach any statutory regulations, good morals and/or rights of third parties. Insofar as the Customer transmits photographs on which persons are visible, they may only be transmitted if the Customer has valid consent from said persons.
- 6.4. The Customer shall indemnify the Software Provider from all claims, which third parties (incl. the third party user) asserts owing to the infringement of their rights through the transmitted contents or owing to the other use of PlanToBuild by the Customer and the third party users/partners against the Software Provider. This indemnification claim shall in particular cover the costs of the necessary legal defence by the Software Provider, including all court and lawyer's costs. The indemnification claim shall not exist if and insofar as the legal violation was not the fault of the Customer or the affected users/partners.
- 6.5. The Software Provider reserves the right to refuse the entry of contents and/or to edit, block or remove contents already entered without prior announcement, insofar as the entered contents themselves have led to a breach of Subclause 6.3 or there are concrete indications for the fact that there will be a serious breach of Subclause 6.3.
- 6.6. The Software Provider shall store and process as technical service provider contents and data for the Customer, which will be made available by it and the users when using PlanToBuild and which are produced when using PlanToBuild. The Customer is obligated not to upload / use any punishable or otherwise illegal content either absolutely or in relation to individual third parties, nor to use any programs including viruses or other malware in conjunction with the software. It shall ensure and is liable for ensuring that all users fulfil these obligations. The Customer shall remain the data controller in relation to personal data, and therefore must always ensure the processing of such data by PlanToBuild is covered by the relevant permissions. The Customer in particular has to ensure that all users have consented to the receipt of emails, which are generated via PlanToBuild – in particular within the scope of the first-time registration and invitation process–, and agree herewith.
- 6.7. Use of the content within PlanToBuild
  - 6.7.1. PlanToBuild and its applications may be used only for the purposes indicated in Subclause 1.1. Any use going beyond this is prohibited. Users may not use the contact data of other users accessible via PlanToBuild for any other purpose except the commercial communication of the Customer, and only to the extent that the other users have consented or to the legally permissible extent.
- 6.8. Interferences in PlanToBuild
  - 6.8.1. Disruptive interferences in PlanToBuild are prohibited. It is in particular prohibited to take measures that would result in overloading PlanToBuild (such as sending mass notifications or messages

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("spam") or would result in an unreasonable disturbance for other users.

6.8.2. Electronic attacks of any kind against PlanToBuild (including all hardware and software used to operate PlanToBuild or against individual users are prohibited.

The following measures, inter alia, are considered such electronic attacks:

- hacking attempts, e.g. attempts to circumvent, overcome or otherwise deactivate security mechanisms of PlanToBuild,
- the use and/or distribution of viruses, worms, Trojans and other damaging files,
- brute force attacks,
- other measures or processes, which intervene and cause a disturbance in PlanToBuild including all hardware and software used for the operation of PlanToBuild and/or may harm the Software Provider or users.

## 7. Compensation

7.1. The Customer shall pay to the Software Provider a monthly remuneration (Service Fee) plus the respectively applicable value added tax, the amount of which depends on the scope of the packages booked by the Customer and is oriented to the agreement reached. Insofar as a change is made to a package according to Subclause 2.2, the amount of the Service Fee will be changed accordingly. If the change in package leads to a reduction in the Service Fee and is this is carried out during an ongoing month, the previous Service Fee shall apply until it ends and the adjusted Service Fee will only apply with the start of the next month. The service fee covers the provision/use of PlanToBuild and support according to Subclause 2.8.

7.2. Insofar as the parties have not individually agreed otherwise, the Service Fee is due monthly after the end of the respective month and, in fact, for the first time with the provision of access to PlanToBuild. Provision has occurred once the Customer can access PlanToBuild, even if further adjustments have been agreed and are still to be made in response to special Customer requirements or otherwise. The Software Provider is entitled to issue a permanent invoice to the Customer regarding the Service Fee.

7.3. Services commissioned by the Customer (such as training sessions) going beyond the scope of services paid for in Subclauses 7.1 and 2 shall be invoiced on an hourly basis. Insofar as not otherwise agreed, the daily, hourly as well as expense rates of the general price list of the Software Provider shall apply. A daily rate refers

to a work period of 8 hours, whereby compensation must be adjusted if more or less hours are worked (pro rata temporis). Regardless of acceptance, invoices shall always be sent at the end of each month for the services provided during this period.

7.4. The agreed compensation does not include applicable VAT. The Software Provider shall issue a proper invoice to the Customer.

## 8. Term and termination

8.1. The term of this Agreement shall begin upon conclusion, unless the Parties otherwise agree. The Agreement shall be concluded for an indefinite term. The contract can be terminated ordinarily at all times by the Customer with a period of notice of three months and by the Software Provider with a period of notice of six months.

8.2. Furthermore, either Party may terminate the Agreement, without notice for just cause. Just cause exists for the Software Provider in the following cases:

- the Customer is not an entrepreneur or does not use PlanToBuild for entrepreneurial purposes;
- if it becomes recognisable for the Software Provider that its claim for consideration is jeopardised by the lack of solvency of the Customer;
- this contract is opposed by directly applicable economic, trade or financial sanctions or embargos of the European Union or the Federal Republic of Germany or
- this contract is opposed by direct or indirect economic, trade or financial sanctions or embargos of the United States of America.

8.3. All terminations shall require at least text form.

8.4. The Customer is obligated to export its data and files saved on PlanToBuild after terminating the Agreement in every case promptly before the end of the contractual relationship, in particular using the offered download functions, Excel and PDF files. Upon termination of the contract by termination without notice without adhering to a period of notice the Software Provider will enable the Customer the access for a data export, in particular by Excel and PDF files, on PlanToBuild for the duration of 2 weeks beginning from the end of the contract. With the termination of the contract – in the event of a termination without notice after the expiry of a further two weeks– the Software Provider is obligated, however also entitled, to erase the data stocks of the Customer without delay and to destroy all made copies.

## 9. Liability

9.1. The liability of the Software Provider for damages, no matter for what legal grounds, in particular from impossibility, default, deficient or

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false service, breach of contract, breach of obligations with contractual negotiations and illicit act is, insofar as it respectively depends on a fault, limited according to this Subclause 9.

- 9.2. The Software Provider shall not be liable in the event of simple negligence of its bodies, legal representatives, employees or other vicarious agents, insofar as it does not concern a breach of essential contractual obligations. Deemed as essential for the contract are obligations of the Software Provider, the fulfilment of which render the proper execution of the contract possible at all and on the compliance with which the Customer may as a rule depend and rely.
- 9.3. Insofar as the Software Provider pursuant to Subclause 9.2 is fundamentally liable for damages, this liability is limited to damages, which the Software Provider foresaw upon conclusion of the contract as a possible consequence of a breach of contract or which the Software Provider should have foreseen when applying customary care and attention. Indirect damages and subsequent damages resulting from defective services are also only subject to reimbursement insofar as such damages are typically expected in cases of proper use of the services.
- 9.4. In the event of liability for simple negligence the compensation obligation of the Software Provider for property damages and other financial losses is limited to an amount of EUR 25,000.00 per damaging event, even if it concerns a breach of essential contractual obligations.
- 9.5. The aforementioned liability exclusions and limitations shall apply to the same extent for the benefit of the bodies, legal representatives, employees and other vicarious agents of the Software Provider.
- 9.6. The limitations of this Subclause 9 shall not apply to the liability of the Software Provider owing to wilful conduct, for guaranteed characteristics, owing to the injury to life, the body or the health or according to the German Product Liability Act.
- 9.7. The burden of proof for facts, which substantiate a liability limitation or a liability exclusion according to this Subclause 9 shall be borne by the Software Provider.

## 10. Data privacy

- 10.1. The Customer and the Software Provider will comply with the respectively applicable provisions, in particular the provisions under data protection law valid in Germany and obligate their employees deployed in connection with the cooperation between the Customer and the Software Provider to the data secrecy, insofar

as these have not already been generally obligated accordingly.

- 10.2. If the Customer collects, processes or uses personal data via PlanToBuild then it shall assume responsibility that it is entitled hereto according to the applicable, in particular data protection law provisions and shall indemnify the Software Provider from claims of third parties in the event of its breach.
- 10.3. Details on data privacy law obligations and regulations are provided in the **PlanToBuild - Processing Agreement**, which is considered a component of the contractual agreement. The data privacy law points to be regulated under the law are included there. If data are transferred to third countries, standard data protection clauses shall be considered a component of the contractual agreement in place of said contract.

## 11. Miscellaneous

- 11.1. The Customer may only transfer rights and obligations from or in connection with this contract to third parties after obtaining the written consent of the Software Provider.
- 11.2. An offsetting is only permitted against undisputed claims or claims of the Software Provider which have been declared final and binding.
- 11.3. The General Terms and Conditions of the Customer do not apply. Deviating terms and conditions of the Customer will not be recognised, unless the Software Provider explicitly agrees to their validity in writing.
- 11.4. Amendments and supplements to this Agreement shall require the written form. This also applies to amendments to or revocations of this clause.
- 11.5. The courts of Bielefeld shall have primary jurisdiction over all disputes arising from or in conjunction with this Agreement (including disputes related to its validity).
- 11.6. Only German law shall apply to this Agreement, excluding the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (UN Sales Law).
- 11.7. These General Terms and Conditions refer to the following documents, which are also considered bases of the Agreement.
  - PlanToBuild - Performance specification
  - PlanToBuild - System requirements
  - PlanToBuild - Terms of Use
  - (For administrators / own + external users)
  - PlanToBuild
  - Processing Agreement and TOM

## Contractual terms and conditions for the free month

1. Starting with the day of the first activation of the test access to PlanToBuild the test period will run for one month. The scope of services shall correspond with the details provided by you for the use of the selected workspaces, number of internal and external users as well as the storage capacity.
2. The use of PlanToBuild is free of charge during the test period. A remuneration will not be due. The use of PlanToBuild will merely become liable to costs in the event of a conclusion of a separate contract.
3. The test period shall end prematurely as soon as you conclude a new/separate contract with us before expiry of the test month regarding a cost-based use of PlanToBuild. Otherwise the contractual relationship will end automatically without this requiring a separate termination, after the expiry of the test period.
4. Principally § 8.4 of the General Terms and Conditions shall apply, i.e. there is the possibility and obligation to download the data entered on PlanToBuild during the test period in time. In deviation from § 8.4 of the General Terms and Conditions we will, however, not erase the customer data immediately at the end of the test period, but, in the event that the customer decides to conclude a new (cost-based) contract and would like to continue to use these by means of the old access, we will store these data free of charge for a further period of 90 days. After expiry of this extended storage duration the data will be permanently erased. We will carry out a prior erasure without delay at the request of the customer, which is possible at all times.
5. Incidentally, our General Terms and Conditions shall apply.