Terms and Conditions
for the Use and Maintenance of the BVQ Software
(Free, Entry and Enterprise)

Effective: June 28, 2023

Preamble

SVA System Vertrieb Alexander GmbH, Borsigstraße 26, 65205 Wiesbaden (hereinafter referred to as "SVA"), is one of the leading system integrators in Germany in the area of data center infrastructure. The corporate goal of SVA is to link high-quality IT products from the respective manufacturers with SVA's project know-how. In this context, SVA offers the "Business Volume Qualicision" ("BVQ") software, which is a monitoring, performance analysis and reporting solution for IT infrastructure systems. In addition to the paid full versions BVQ Entry and BVQ Enterprise, the customer has the option of using BVQ Free free of charge. These Terms and Conditions for the Use and Maintenance of the BVQ Software (hereinafter referred to as "GTC") represent the set of rules for the delivery and maintenance of BVQ. Chapter A. contains general provisions that apply to software use and software maintenance. Chapters B. to F. govern the more specific conditions for the different editions and contract types as well as for support and maintenance of BVQ.

A. General provisions

§ 1 Scope and software editions

1. All provisions of these GTCs contain the conditions for the use and maintenance of BVQ that are exclusively applicable between the customer and SVA, insofar as and to the extent that these are not by individual agreements between the parties. SVA concludes contracts exclusively with commercial customers, i.e. entrepreneurs pursuant to art. 14 German Civil Code. SVA does not conclude contracts with consumers pursuant to art. 13 German Civil Code.
2. SVA does not accept terms and conditions of the customer conflicting with or deviating from the present GTCs unless SVA expressly agreed with its validity beforehand.
3. The copyright, trademark rights, patent rights and all other performance and industrial property rights to the software as well as all associated documents, e.g. the user information, are exclusively owned by SVA or the manufacturer of components of the software as the author of the software.
4. No further rights are granted, in particular not the right to edit.
5. The customer can choose between different editions of BVQ Free, Entry and Enterprise, which licenses are described below:

   a. ***BVQ Free***
   BVQ Free includes the entry-level edition with limited functionality. In order to use BVQ Free, the customer must register with SVA. The customer then receives a license key with which the software can be operated. BVQ Free is provided on a loan basis for a period of one year (365 days) free of charge. No support is provided for BVQ Free.

   b. ***BVQ Entry***
   In contrast to BVQ Free, BVQ Entry contains a full version of BVQ that has the essential basic functions. BVQ Entry is provided by way of software purchase or software subscription. At the customer's request, BVQ Entry can initially be provided in a six-week test version (BVQ Entry Demo). After the six-week demonstration phase, BVQ Entry Demo will cease to function.

c. ***BVQ Enterprise***
BVQ Enterprise is the solution for demanding customers who want to use all BVQ functionalities. BVQ Enterprise is provided by way of software purchase or software subscription.

For the BVQ Entry and BVQ Enterprise software, which is made available permanently through purchase, SVA offers a corresponding update service with maintenance and support as additional paid services. Maintenance and support are already included in the price of software subscription.

§ 2 Contract conclusion

1. The placing of an order (hereinafter referred to as "Placing an Order") by the customer always represents a binding offer which SVA can accept within 3 weeks by sending an order confirmation or by delivering the respective goods. When the customer places an order, these and the applicable terms and conditions are deemed to have been accepted by the customer. The contract is concluded on the basis of the SVA offer.
2. The performance characteristics of the respective BVQ edition are finally described in the order confirmation. Previously submitted offers by SVA - especially with regard to technical description, quantity, price and delivery time - are non-binding.
3. If the contract is concluded via the SVA website, the following applies:

   A contract is concluded between SVA and the customer via the website by clicking the "Order" / "Purchase" button or a similarly named button (Placing an Order) and sending the customer a download link. The performance characteristics of the respective BVQ edition are finally described on the product page. A contract is only concluded after the customer has agreed to the GTCs by ticking the box. The customer can download and save these GTC directly as a PDF at any time, especially before the contract is concluded.

4. The place of performance is SVA's registered office in Germany.

§ 3 Delivery dates

1. Delivery periods / delivery dates are only binding if they are confirmed by SVA in writing. The period only begins when the customer has fulfilled his duties of cooperation. Agreed delivery dates are extended by the period for which the customer was in default with his duties of cooperation or payments due.
2. The customer shall take over the licensed material (software and if applicable documentation or information - in electronic form) after notification by SVA that it has been made available. If the customer does not take over the delivery of the license material on the scheduled delivery date or on the scheduled call-off date, SVA can put the customer in default of acceptance by means of an actual offer or written request.
3. Delivery dates / delivery periods are subject to correct, defect-free, complete and timely self-delivery. Events of any kind beyond SVA's control which delay or otherwise impede SVA's delivery or the delivery of the goods (e.g. import or export restrictions imposed by public authorities, mobilization, war, terror, terror warning, pandemic, blockade, strike, lockout, complete or partial cessation of production / restriction of delivery by the manufacturer, etc.) shall release SVA from its obligation to perform for the duration of their effects. If delivery becomes permanently impossible due to such events, SVA shall be entitled to withdraw from the contract as far as it is still unfulfilled. Claims for damages by the customer are excluded.
4. In other cases, in which delivery dates / delivery periods are exceeded, the customer may withdraw from the agreement after the unsuccessful expiry of a reasonable grace

period of at least 30 days which the customer has set SVA. The grace period must be set in writing.

§ 4 Obligations of the customer

1. The customer has informed himself about the essential functional characteristics of the acquired software and the respective editions and therefore bears the risk as to whether the software meets his wishes and requirements.
2. Unless agreed separately, it is up to the customer to install and configure software upon receipt. The customer shall thoroughly test the software for freedom of defects and usability in the existing hardware and software configuration before using it. This applies also to software which the customer receives within the scope of the warranty.
3. Further obligations of the customer, in particular cooperation and provision obligations are specified in the relevant offer.

§ 5 Deliveries with a foreign connection

If SVA provides international services, such services are subject to an export licence and including but not limited to German foreign trade law, knowledge of which the customer is obliged to obtain for themselves. The customer shall ensure that the legal prerequisites for export or transfer are fulfilled and provide proof thereof at SVA's request; this may include but is not limited to export or transport requiring a licence pursuant to US, EU or national export provisions. The customer is advised that export provisions also apply if the information is transferred to a foreign country by communication networks (e.g. by e-mail or file transfer).

§ 6 Remuneration / Offset/ Retention of Title

1. The prices are net prices and do not include packaging, freight, insurance or shipment, any expenses and value added tax.
2. The payable amount is defined in the order confirmation and/or invoice of SVA and is due and payable without deductions within 10 days after receipt of the invoices. Bills of exchange and cheques are not accepted. Transfer costs, discount charges and all other collection costs are at the expense of the customer.
3. If payment is not made within 10 days as of receipt of the invoice, default interest in the amount of nine percentage points above the base interest rate is due. However, SVA is entitled to assert claims for default exceeding such interest.
4. The customer may only assert rights of retention/and or offset against claims which are not related to the costs of remedial of defects or costs of completion with respect to claims which have been established in a legally binding manner, are uncontested or contested but ready for decision or explicitly recognised by SVA. The customer shall only be entitled to a right of retention insofar as it is based on the same contractual relationship.
5. If the economic circumstances of the customer deteriorate significantly, SVA shall be entitled to make all outstanding claims due and payable and to make promised deliveries dependent on an advance payment or the provision of security.
6. SVA retains the title in the delivered license material until any and all requirements of the customer have been fulfilled.

§ 7 Warranty, Guarantee, Duty to give notice

1. The customer will inform SVA immediately and in writing about any defects and provide all information available to the customer which may be useful for the remedy of the defects.
2. If a material or legal defect is present within the scope of legal provisions, the customer is entitled to demand supplementary performance, to withdraw from the agreement

after setting two unsuccessful deadlines for subsequentperformance, to reduce the purchase price or to assert claims for damages in the event of negligence on SVA´s part. Within the scope of supplementary performance, SVA is entitled to subsequent rectification or subsequent delivery at its option.

3. SVA's warranty obligation shall not apply in all cases in which defects and other impairments of the services are or may be caused by improper operation of the customer, by interference of the customer (e.g. modification of implementation), by services to be provided by the customer (including but not limited to data and content) or by the present system environment existing at the customer's premises for which SVA is not responsible , as long as and to the extent that the customer does not prove that these are not the cause of the occurrence of the defect. Services of SVA rendered due to an alleged warranty obligation shall be invoiced on a time and material basis.

4. If the inspection shows that there is no defect, SVA shall be entitled to demand reasonable reimbursement of expenses customary in the industry.

5. SVA does not make any guarantees in the legal sense towards the customer.

6. Incomplete or incorrect deliveries and obvious defects of the object of delivery must be reported to SVA immediately but no later than 7 days after delivery and if possible in writing - if reasonable in a form which is understandable for SVA.

§ 8 Statute of limitation

Warranty claims or claims due to negligent breach of duty shall become statute-barred after the expiry of 12 months, unless there is a case of malice or the guarantee for the quality was expressly assumed by SVA; in this case the statutory limitation periods shall apply. The limitation period shall commence upon receipt of the goods, successful acceptance or, in the case of services, upon their provision.

§ 9 Liability

1. SVA's liability for intention, gross negligence, quality guarantees, claims under the German Product Liability Act and injuries of life, body or health is subject to the statutory provisions.

2. In case of simple negligence, SVA is only liable for the violation of essential contractual obligations (so-called cardinal duties ("Kardinalpflichten"), i. e. an obligation that has to be met for the proper performance of the agreement and on the compliance with which the customer regularly relies and may rely on).

3. If SVA violates an essential contractual obligation with simple negligence, the compensation obligation is - unless individually regulated in the relevant order confirmation - limited to the typical foreseeable damage, but always to EUR 50,000.00 per event of damage and to a total amount of EUR 100,000.00 per year. The overall limitation of liability for any and all damages in connection with services rendered towards the customer amounts to EUR 250,000.00. Such claims are subject to a one-year statute of limitations.

4. In cases of simple negligence, SVA is not liable for any indirect damages or consequential damages (in particular loss of profit). The limitation of liability specified here and in subsection (2) and (3) does not apply in case of a liability of SVA under subsection (1).

5. SVA is not liable for the loss of data if the damage would not have incurred in case of proper data backup within the customer's sphere of responsibility. Proper data backup means that the customer backs up its data at least on a daily basis in machine-readable form and thereby ensures that such data can be restored with reasonable efforts. Furthermore, the liability of SVA for the loss of data is limited to the typical recovery expenses which would have incurred in case of proper data backup except for cases of intent and gross negligence.

6. If and as long as a case of force majeure is given, SVA is not obliged to render services. Force majeure relates in particular to strike, war, natural disasters, pandemic, lock-

outs, delays or defaults of supply by suppliers if they are due to an event of force majeure, official or court orders, attacks from the internet and of users of the application itself (e.g. malware, viruses, worms, "denial of service attacks", "Trojan horses") which SVA could not have prevented with the reasonable care according to the circumstances of the case.

7. If and to the extent to which the liability of SVA is excluded, this applies also to the personal liability of the employees, staff members, workers, representatives and vicarious agents of SVA.

§ 10 Indemnification

1. If any claims are asserted against customer due to any (alleged) violation of rights in connection with the contractual use of the software supplied by SVA, SVA undertakes to indemnify the customer from these claims and the reasonable costs of legal defense. However, this indemnification only applies if

   a) the customer notifies SVA in writing of claims asserted against him immediately after becoming aware of them,
   b) SVA´s right to take all defense measures and settlement negotiations remains reserved and
   c) the customer supports SVA in defense or settlement of the claim by providing reasonable assistance.

2. If the use in accordance with the contract is affected by protective rights of third parties, SVA shall be entitled
   a) to either change the contractual services so that they fall out of the protective area but still correspond to the contractual provisions or
   b) to acquire the right to use the Software from the third party.
   If the aforementioned measures cannot be carried out by SVA within a reasonable period of time, the customer can withdraw from the contract or demand a reduction of the remuneration.

3. Without prejudice to the indemnification obligation in accordance with A. § 10 Paragraph 1, SVA is only obliged to pay damages within the limits of A. § 9.

4. The customer's rights pursuant to A. § 10 shall not exist insofar as the infringement of third party property rights is based on the customer's specifications or is due to the fact that the customer has made a change to the Software not approved by SVA, uses the Software contrary to SVA's functional instructions or combines the Software with programs or data processing equipment not approved by SVA.

§ 11 Data Protection and Communication

The contractual partners undertake to carefully fulfil and comply with any and all data protection provisions. If the customer violates these provisions, the customer indemnifies SVA and hold SVA harmless from any and all legal consequences of the violation. If SVA has to process personal data on behalf of the customer, the contractual parties will conclude an agreement about the order data processing in due time before commencement of the relevant activity.

Upon registration, the customer is listed as an existing customer. SVA is therefore entitled to contact the licensee using the e-mail address given in the registration and, in particular, to transmit information and promotional materials on the editions of BVQ. The customer can revoke the consent given in this context at any time.

§ 12 Business and Trade Secrets

The contracting parties undertake to treat as confidential all knowledge of the contracting party's business secrets obtained in the context of the contractual relationship. SVA is entitled to provide the licensed programs with protective measures against improper use.

§ 13 Final provisions, Choice of law, Place of jurisdiction

1. If a provision of this agreement is or becomes invalid, the validity of the rest of the agreement shall remain unaffected. In place of the ineffective provisions, the applicable legal provisions shall apply.
2. This agreement is governed by German law excluding international private law and excluding the UN Convention on Contracts for the International Sale of Goods (CISG), even if one of the contract parties is domiciled in a foreign country.
3. The exclusive place of jurisdiction for all disputes arising from the contractual relationship shall be Frankfurt am Main. Frankfurt am Main is therefore the local and international place of jurisdiction.

B. Software loan - *BVQ Free* / *BVQ Entry Demo*

This chapter B. regulates the loaning of the free edition of BVQ Free as well as the free trial version BVQ Entry Demo by way of loan. Since these are free editions of the BVQ software, their use, warranty and liability are limited.

§ 1 *BVQ Free*

1. The licensee receives the non-exclusive, non-transferable and non-sub-licensable right to use the software, limited to the term in accordance with B. § 4.
2. The provision of BVQ Free does not include any documentation; the licensee can access electronic user information (Wiki) via a SVA website freely available.
3. The customer is entitled to install, load and run the software.
4. The customer is entitled to make backup copies and necessary data backups in appropriate numbers. There is no further right to reproduce the software.
5. A multiple installation by licensee to circumvent the functional limiting parameters is deemed as violation of these license conditions and entitles SVA to terminate this license agreement with immediate effect. With BVQ Free, the capacities of Layer Storage (to 250 TiB), Compute (to 1 TiB RAM) and network (maximum 100 ports) - hereinafter also limit parameters - are limited.

§ 2 *BVQ Entry Demo*

1. Subject matter is the (initially) limited free provision of the BVQ Entry Demo software for a period of six weeks as well as the granting of the rights of use required for its test use.
2. If a different BVQ edition is not ordered from SVA within six weeks after installation whereas the customer then receives a corresponding license key, the demo software will cease to operate; i.e. the installed functions are no longer available.

§ 3 Liability for material defects *BVQ Free* and *BVQ Entry Demo*

1. Since BVQ Free and BVQ Entry Demo are no-cost software for a limited period of time, therefore loaned software, the statutory law on liability for defects in accordance with § 600 ff. BGB as well as the statute of limitations in accordance with § 606 BGB apply.
2. SVA is therefore only liable if SVA has fraudulently concealed a deficiency in the law or a defect in the loaned software; in this case SVA is obliged to compensate the licensee for the resulting damage.

§ 4 Term and Termination

1. For BVQ Entry Demo the right of use on the loaned software begins with customer's installation of the test version and expires automatically six weeks after installation.

2. For BVQ Free, the right of use on the software loan begins with a successful registration of the customer and expires automatically after one year. This loan and thus the usage right **can be terminated** by both the customer and SVA **at any time** during this annual period with a notice period of 30 calendar days. In the event of no termination within this annual period, the software loan and the right to use BVQ Free shall still expire automatically after one year without any notice of termination being required.
3. This agreement may also be terminated by either party without observing a notice period for an important reason. It is deemed that an important reason for SVA to terminate shall be given in particular if the licensee violates the rights of use granted by SVA.
4. Terminations according to paragraphs 2 and 3 must be made in writing (text form, e-mail to suffice).
5. Upon termination, the licensee´s right to use the software shall cease, and licensee shall delete all copies of the software installed on his systems and destroy any backup copies made or hand them over to SVA.

C. Software Purchase

This chapter C. regulates the purchase and perpetual use of the editions of BVQ Entry and BVQ Enterprise acquired through purchase.

§ 1 Software Usage

1. The software may be transmitted - depending on individual agreement defined in the order confirmation - by downloading from the Internet, by data carrier or by sending it electronically to the customer. The provision of the software includes the associated database and documentation - either in printed form or electronically. The description in the user documentation is ultimately decisive for the nature of the software. SVA does not owe any further quality of the software. No further quality of the software can be derived from public statements by SVA or its assistants, especially in advertising.
2. Installation, maintenance or other services are not the subject of the purchase of software and shall be agreed and paid separately.
3. Licensed material is provided in executable form (object code) together with user documentation. A transfer of the source code is generally not owed. The customer is obliged to confirm receipt of the licensed material in writing upon request.

§ 2 Usage and License rights

1. For BVQ Entry and BVQ Enterprise, on full payment of the license fee, SVA grants the customer the non-exclusive, perpetual right to use the software solely for their own business objectives. SVA also grants the customer the same right of use to new versions of the software as part of software maintenance. The granting of further rights of use, disclosure or processing to the customer always requires a separate expressed and written agreement.
2. The customer is entitled to install, load,run the software and use it as intended.
3. The customer is entitled to make backup copies and necessary data backups in appropriate numbers. The backup copies shall be marked must be kept in a location that is protected against unauthorized access by third parties. Backup copies must be explicitly marked as such. There is no further right to reproduce or copy the software.
4. The software provided may only be used to the extent specified in these terms and conditions and any written individual agreements between SVA and the customer; any use beyond this requires the prior expressed and written consent of SVA.

D. Software Maintenance and Support

During the term of this section, SVA will provide software maintenance and support services for the BVQ Entry and Enterprise editions made available through purchase. This section therefore regulates the subject matter and requirements of these services.

§ 1 Maintenance and Support Services

1. SVA provides the customer with the latest versions, releases or updates. customer is authorized to use them in accordance with the rights of use granted under Section C. § 2. Downloads are available on the SVA website, respectively announced to the customer.
2. Newly developed program modules / platforms / options are not subject of this service and require an additional license or license extension.
3. As part of the support, the customer receives support in case of
   a) general questions about installation and use that can be answered quickly, as well as
   b) in the event of software defect.
4. The maintenance services are provided for the latest version of the respective program. The maintenance obligation for the older versions of the respective program ends one year after the new version is made available. The above applies only if it is not unreasonable for the customer to install the update.
5. SVA is available to the customer both by telephone and electronically:
Service request e-mail: ServiceDesk@sva.de
Web portal: http://customercenter.sva.de
Incident processing is carried out by SVA Operational Services. The first reaction with an incident by SVA Operational Services is warranted within 6 hours during business hours (Monday to Friday 8:00 a.m. to 5:00 p.m., except on national holidays). SVA will analyze reported malfunctions and advise the customer on how to circumvent or remedy the malfunction found.

   The telephone number of the SVA 24x7 Operations Center will be made available to the customer after the contract is concluded.

6. SVA may request remote access to the customer's system to provide assistance in analyzing the cause of the problem. The customer remains responsible for the adequate protection of his system and all data contained therein whenever SVA accesses it with his consent.

§ 2 Additional Services

At customer´s request SVA will provide additional services that are related to the software, but are not included in the terms of D. § 1 of these provisions. The remuneration shall be agreed separately, provided that the provision of services is reasonable for SVA. A separate commissioning is required. This applies in particular to:

- On-site services at the customer's premises, insofar as these are not required according to D. § 1;
- Services carried out by SVA at customer´s request outside of SVA's business hours. Business office hours are Monday through Friday from 8:00 a.m. to 5:00 p.m. (CET);
- Services that become necessary due to improper handling of the maintained programs, regardless of whether these were performed by the customer, his vicarious agents or other persons not authorized by SVA;
- Services that become necessary due to force majeure or other circumstances for which SVA is not responsible;

- Services necessary in connection with the installation of an update / upgrade / release acquired by the customer, briefing and training with regard to such release levels;
- Services resulting from changed or new requirements of the customer. These include but are not limited to advising the customer when customizing and creating user software and/or general IT-issues not related to the software to be maintained;
- Services for the implementation or configuration of systems.

§ 3 Renumeration

1. The annual maintenance fee is specified in the respective offer.
2. The renumeration applies regardless of whether and/or how often services are used. Additional services according to § 2 shall be paid separately according to incurred effort.

§ 4 Usage Rights

1. SVA keeps title and all exclusive rights of use and exploitation of any work results created by SVA in the context of the provision of the contractual services (e.g. copyrights, patents, utility models or designs).
2. In the absence of a separate agreement for such work results created by SVA, the customer receives non-exclusive rights of use limited to the contractually intended purpose. A further granting of usage, disclosure or processing rights to the customer always requires a separate expressed written agreement.

§ 5 Term and Termination

1. Unless an initial term or subsequent term has been agreed on separately, the agreement on software maintenance may be terminated to the end of the respective contract year, otherwise at the end of the agreed initial term or subsequent term observing a notice period of 3 months. If there is no termination, the software maintenance is extended by a further contract year.
2. The right for extraordinary termination for good cause shall remain unaffected.

E. Software subscription with Maintenance and Support

Chapter E. regulates the terms and conditions for the use of the BVQ Entry and BVQ Enterprise versions provided by way of software subscription.

§ 1 Software Usage

1. The software may be transmitted - depending on individual agreement defined in the order confirmation - by downloading from the Internet, by data carrier or by sending it electronically to the customer. The provision of the software includes the associated database and documentation in electronic form. The description in the user documentation is ultimately decisive for the nature of the software. SVA does not owe any further quality of the software. No further quality of the software can be derived from public statements by SVA or its assistants, especially in advertising.
2. Installation, maintenance or other services are not the subject of the software subscription and shall be agreed and paid separately.
3. Licensed material is provided in executable form (object code) together with user documentation. A transfer of the source code is generally not owed. The customer is obliged to confirm receipt of the licensed material in writing upon request.

§ 2 Usage and License rights

1. For BVQ Entry and BVQ Enterprise, on full payment of the license fee, SVA grants the customer the non-exclusive right to use the software solely for the duration of the respective contractual term for their own business objectives. SVA also grants the customer the same right of use to new versions of the software as part of software maintenance. The granting of further rights of use, disclosure or processing to the customer always requires a separate expressed and written agreement.
2. The customer is entitled to install, load, run the software and use it as intended.
3. The customer is entitled to make backup copies and necessary data backups in appropriate numbers. Backup copies must be explicitly marked as such. The backup copies must be kept in a location that is protected against unauthorized access by third parties. There is no further right to reproduce or copy the software.
4. The software provided may only be used to the extent specified in these terms and conditions and any written individual agreements between SVA and the customer; any use beyond this requires the prior expressed and written consent of SVA.

§ 3 Software Maintenance and Support

The subscription fee includes SVA's services for software maintenance and support, as described more detailed in Chapter D.

§ 4 Renumeration

The annual subscription and maintenance fee specified in the respective offer.

§ 5 Term and Termination

1. Unless an initial term or subsequent term has been agreed separately, the agreement on software subscription and maintenance may be terminated to the end of the respective contract year, otherwise at the end of the agreed initial term or subsequent term observing a notice period of 3 months. If there is no termination, the software subscription and maintenance agreement is extended by a further contract year.
2. The right for extraordinary termination for good cause shall remain unaffected.

F. *BVQ Enterprise Demo* - Proof of Concept (Support)

In order to give the customer the opportunity to test the BVQ Enterprise version in detail, SVA may provide the BVQ Enterprise software solution to the customer as a proof of concept for a certain test period, with SVA taking care of the customer accordingly. The details shall be agreed on by an individual agreement.

The term as well as the commercial conditions shall be specified in the respective offer. Since this is solely a test version that has not been customized and implemented, the software must be used only in a test environment, not in a productive environment.

The regulations on BVQ Entry Demo in Chapter B. apply accordingly.