

TERMS AND CONDITIONS OF USER SOFTWARE

1. GENERAL

1.1 The present license terms apply for user software from SCHMID provided deviating arrangements have not been made for the specific case. Deviating terms of the customer are not valid, even if they have not been expressly rejected for the specific case.

1.2 If the user software is part of a delivery contract for equipment (main contract), then solely the terms of the main contract are valid in place of the following items 5, 8 and 10.

1.3 Collateral agreements and amendments must be in written form in order to be valid.

2. RIGHT OF USE

2.1 SCHMID assigns to the customer a right of use that is non-exclusive, inalienable and unlimited in time for the software programs included in the supplied system. The right of use is limited to the system defined in the contract. Use in other systems having PC control is admissible only with the prior written consent of SCHMID.

2.2 The customer is not entitled to pass on to a third party any software or parts thereof or appertaining documentation and information.

2.3 If the customer replaces the system as a result of reinvestment, the right of use on the system relating to the present contract ceases. In the event of the system being sold and the customer wishing to include the software programs in the sale, this shall require the consent of SCHMID. In the event of sale, the customer shall draw the purchaser's attention to the right of use lacking in the absence of such consent.

3. RIGHTS OF DUPLICATION

3.1 The customer is entitled to make backup copies of the programs under license, as far as is necessary in the course of business. The transmittal of backup copies to third parties is excluded.

3.2 It is inadmissible for printed records, documentation and the like under license to be duplicated without SCHMID's express consent. Duplications shall be marked with SCHMID's copyright annotation.

4. SCOPE OF PERFORMANCE

4.1 The scope of performance and function of the programs under license shall be governed solely by the product specifications applicable upon conclusion of the contract. Any further-reaching agreements subsequent to conclusion of the contract shall be made in writing, shall be subject to scrutiny of the work involved and may lead to an increase in the software and hardware price as well as to deferral of the delivery date.

4.2 Antivirus protection is not part of the scope of delivery. The customer has to provide himself an antivirus protection.

5. DOCUMENTATION

5.1 The customer shall receive the documentation necessary for use, for example a functional description, instructions for use and general information for the operation of the system.

6. ADDITIONAL SERVICES/ SUBSIDIARY OBLIGATIONS

6.1 Unless expressly agreed otherwise between the parties, SCHMID or a third party ordered by SCHMID will install the programs. The customer bears the sole risk for specifying the programs and for their suitability for the applications envisaged by the customer.

6.2 Instruction, training and other technical customer support are not matters covered by these terms.

7. PROPERTY RIGHTS

7.1 SCHMID shall remain the owner of all the rights, particularly the copyright on the programs under license, the appertaining records, documentation and the like, as well as all copies in full or in part made by the customer.

7.2 Any conversion of the programs, even if made only in part, is inadmissible in the absence of the prior written consent of SCHMID. The customer shall draw his employees' attention to SCHMID's property rights in appropriate form.

8. DELIVERY TIME

8.1 Even if SCHMID agrees a delivery date or a delivery period, the term for delivery of the programs shall be deemed to be only approximate and it shall be admissible for SCHMID to exceed the term by a reasonable period, unless SCHMID has given express written confirmation that an agreed delivery date is fixed. In the event of circumstances beyond SCHMID's control, particularly in the event of the customer instructing that changes be made after conclusion of the contract, the delivery term shall be extended by a period that is reasonable and heeds SCHMID's operational capacity.

8.2 Insofar as liability for damages exists due to delay in delivery (cf. item 10), such shall be limited to max. 10% of the value of the software with which SCHMID is behind schedule, to the exclusion of any further claims.

9. WARRANTY

9.1 SCHMID warrants that the programs under license comply with the operational and performance features that are included in the product specification applicable upon conclusion of the contract or were especially agreed. The warranty claims for programs end 12 months after the day on which the programs were handed over to the customer.

9.2 If defects in the programs are encountered during this term, which detract not immaterially from the utility and serviceability, SCHMID will take remedial action free of charge immediately after receiving notification of the defect. Remedial action requires that the impacts of the defect are reproducible, were adequately described by the customer and that SCHMID was notified of the defect without delay.

9.3 For claims duly made in respect of a defect, SCHMID shall honor the warranty either by an appropriate reduction of the purchase price relating to the user software or by rectification at the option of SCHMID. Rectification may also be constituted by supplying a new version or by temporary correction of the defect until such supply.

If SCHMID fails to carry out such rectification on time or in proper form then, after he has granted an additional period of grace the customer shall be entitled to require rescission of the contract or reduction of the royalty, to the exclusion of other warranty claims or other claims for replacement. Such claims shall be limited solely to the software part of any further-reaching contract.

9.4 The customer is responsible for correct data storage. Costs occurring within the scope of warranty works for the restoration of lost data will be borne by the customer, unless the data loss would have occurred also in the case of correct data storage.

9.5 Should it prove subsequent to the customer's notification of a defect that the malfunction is not due to a fault in the program, but to other causes (e.g. application error, hardware defect, current voltage etc.), the customer shall bear the costs SCHMID has incurred in connection with the trouble shooting according to agreed or ordinary rates.

10. OTHER LIABILITY

10.1 Any liability of SCHMID for damages exceeding the provisions in Article 9 shall be excluded insofar as is permitted by law. This shall not apply for damages caused intentionally or by gross negligence or if the fault should concern a cardinal obligation and/or an owner or director of SCHMID in cases of injury to life, body or health, or in cases. The exemption from liability shall moreover not apply in cases in which SCHMID is held liable for personal injury to life, to the body or to health or in case of an infringement of the Product Liability Act (*Produkthaftungsgesetz*).

10.2 In no case SCHMID shall be liable for damage out of character with the contract or for remote consequential damage (e.g. loss or reduction of production, downtime costs, loss of profit, etc.).

10.3 SCHMID shall not be liable if the claims of the third party are based on the customer having carried out unauthorized modifications of the licensed programs or having used them under conditions other than those specified.

11. THIRD PARTY RIGHTS

11.1 SCHMID shall defend the customer against all claims derived from any property right infringement by the contractual use of the programs.

The customer is obliged to immediately notify SCHMID of any third party infringement of property rights that comes to his notice and to surrender any evidence to SCHMID.

12 MISCELLANEOUS

12.1 The place of performance and jurisdiction shall be the place of the registered office of SCHMID.

12.2 The Contract is governed by the laws of the Federal Republic of Germany. The United Nations' Convention on Contracts for the International Sale of Goods (CISG) shall expressly not apply.

12.3 The invalidity of any provision of these terms and conditions does not affect any part of the remaining provisions. The invalid provision will be replaced by one best achieving the economic purpose originally aimed at.

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