

The company: **Vötsch Industrietechnik GmbH**

1. Scope of application

The company named above (hereinafter referred to as “VÖTSCH”) supply computer programs in electronic form such as Simpati and PLC control and visualisation programs (hereinafter Software) to customers (licensees).

The terms and conditions indicated in the following apply exclusively to the granting of usage rights to Software by VÖTSCH. Other general business terms and conditions of the customer shall not apply, unless expressly approved by VÖTSCH (in writing as a minimum requirement).

2. Deliveries and services of VÖTSCH

The scope of delivery is specified in detail by the current product description including additional information in the application documentation. VÖTSCH supplies the Software in the version that is valid at the time of supply or provision. The scope of delivery does not include installation, instruction or training services. The Software is supplied on a data storage device or can be downloaded from a VÖTSCH website at VÖTSCH' discretion. The customer receives rights to the object code of the Software exclusively. It shall not have the right to use or transfer the source code.

Services relating to the support and maintenance of the Software shall be provided by VÖTSCH exclusively on the basis of a separate written agreement.

3. Granting of usage rights

VÖTSCH grants the customer - subject to a divergent individual, written contractual agreement - and subject to the condition precedent of complete and timely payment of the agreed remuneration, the non-exclusive, permanent, irrevocable and irredeemable right to use the software, i.e. in particular to store or load it permanently or temporarily, display or execute it.

Unless expressly agreed otherwise, the usage rights shall be granted exclusively for the country in which the customer has its headquarters. If the customer's headquarters are within the European Union, usage rights shall apply across the EU. The customer may use the software only for the contractually stipulated purpose. Commercial sub-leasing is prohibited. Duplication of the software is permitted only to the extent necessary for use as contractually agreed. The customer may produce backup copies of the software in accordance with its codes of practice to the extent necessary. Backup copies on mobile data storage devices must be identified as such with the copyright notice of the original data storage device applied.

Should the customer transfer its usage rights to a third party, it must impose on this party its duties and obligations from these terms and conditions with respect to the content and scope of the usage rights. Transferring to a third party shall remove the customer's entitlement to use the Software. It must delete any copies it holds of the Software, provided such are not copies produced for backing up in accordance with the terms and conditions.

The customer undertakes not to convert the software to an alternative code form or to make any changes, extensions or otherwise edit the software, except as permissible in accordance with statutory provisions.

Where VÖTSCH provides to the customer extensions to (e.g. patches, extensions to user manual) or new editions of the software (e.g. updates, upgrades) replacing software provided previously ("outdated software"), such are subject to these terms and conditions. Where VÖTSCH provides a new edition of the software, the entitlement of the customer to use the outdated software shall cease, including without the explicit request by VÖTSCH to return the software, once it begins using the new edition in a productive capacity. VÖTSCH, however, shall grant the customer a three-month transition phase in which it may continue using both versions side-by-side. Duplication or alteration of the application documentation is not permissible, subject to the above provisions.

In the case of software products of third party manufacturers sold by VÖTSCH or third party software components implemented by VÖTSCH, the terms and conditions of use of the respective third party manufacturer shall apply to these software packages/components in the first instance.

4. Duty of cooperation of the customer

The customer shall take reasonable precautions to safeguard against software supplied by VÖTSCH failing to operate properly, either partially or entirely. It shall be required to test the Software thoroughly to ensure the absence of defects, its usability for the purpose it intends and in the hardware and software environment provided by it, before putting into operational use. This also applies to software that it receives from VÖTSCH in connection with the provision of maintenance or based on warranty. The customer shall be solely responsible for ensuring the presence or establishment of a serviceable, adequately dimensioned hardware and software environment.

Furthermore, it shall ensure that its data is backed up using the latest systems. It shall ensure that any up-to-date data stored in machine-readable format is reproducible with reasonable effort. The customer shall maintain an IT security concept using the latest available systems, to consist of technical and organisational measures. This shall include in particular appropriate measures to prevent unauthorised third party access to the Software.

The customer must immediately report to VÖTSCH any defects detected. Notifications of defects must include information on the nature of the fault, in the case of software the module in which the fault occurred, and the operations undertaken when the fault occurred. A prerequisite for supplementary performance in accordance with Section 5 is the reproducibility or detectability of the reported defect.

5. Material defects and defects of title

VÖTSCH provides the customer with deliveries and services free of material defects and defects of title. The customer is aware that minor software bugs that do not restrict the usability of the software or which limit its use only to a negligible degree cannot be fully eliminated in software products. Bugs of this nature do not constitute software defects in terms of the warranty. In the case of software, moreover, functional impairments resulting from the hardware and software environment provided by the customer, incorrect operation, defective external data, malfunctions of computer networks or other causes originating from the area of risk of the customer are not considered defects.

VÖTSCH shall not be responsible for software modified unlawfully by the customer, unless the customer can prove that the modification is not the cause of the reported fault. If products or services provided by VÖTSCH are faulty and a corresponding complaint has been made in writing and in good time by the customer, VÖTSCH shall provide replacements or rectify any issues at its discretion. VÖTSCH is to be given the chance to do so within a reasonable time frame of at least 14 working days. In the case of software, rectification in particular may take the course of providing a new program version, or VÖTSCH indicating reasonable methods to circumvent the effects of the fault. The customer must accept the provision of a new program version including if associated with acceptable outlay for adaptation.

Rectification in the case of defects of title occurs by VÖTSCH providing the customer with the means to use the software legally. VÖTSCH in this regard may replace the software product for one of equal value and which complies with contractual provisions, if acceptable to the customer. Should third parties claim against the customer on the basis of property rights, the customer must notify VÖTSCH of this in writing immediately. VÖTSCH shall at its discretion and in consultation with the customer defend against or settle such claims. The customer must not acknowledge third party claims or settle these amicably. VÖTSCH shall defend against third party claims at its own expense and shall indemnify the customer against all necessary costs and losses associated with defending against such action, provided such is not due to conduct on the part of the customer in breach of the terms and conditions. If attempts at rectification fail, the customer shall be allowed to reduce the fee payable or withdraw from the contract. Withdrawal, however, is permissible only if the customer previously and explicitly threatens VÖTSCH with this in writing with a suitable further deadline.

6. Compensation for damages

Unless otherwise stated in the following regulations, VÖTSCH shall be liable in accordance with statutory provisions in the case of the breach of contractual and non-contractual obligations.

VÖTSCH shall be liable for compensation for damages - irrespective of the legal basis - in the context of fault liability in cases of intent and gross negligence. In the case of simple negligence, VÖTSCH shall be liable in accordance with statutory provisions subject to a more moderate standard of liability (e.g. for diligence in own affairs) only

- a) for losses resulting from loss of life, physical injury or damage to health,
- b) for losses resulting from a significant breach of a material contractual obligation (an obligation the fulfilment of which is essential to the proper execution of the contract and which the contractual partner regularly expects and should expect to be complied with); in such cases, however, liability shall be limited to the compensation of predictable, typically occurring losses.

The liability limitations indicated above shall also apply to breaches of duty by or benefiting persons whose culpability VÖTSCH is responsible for in accordance with statutory provisions. The limitations shall not apply if VÖTSCH fraudulently conceals a defect or has assumed a quality guarantee, or to claims of the customer under the Product Liability Act [*Produkthaftungsgesetz*]. Statements on the properties of the Software are to be viewed as descriptive of performance and do not constitute a quality or durability guarantee as defined by Art. 443 of the German Civil Code [*BGB - Bürgerliches Gesetzbuch*].

In the case of data loss, VÖTSCH shall be liable only for losses that would still have occurred had the customer properly backed up data (Section 4).

7. Liability of customer and extraordinary termination

The customer shall be liable to VÖTSCH for all losses incurred by VÖTSCH from the violation of copyright provisions in Section 3.

VÖTSCH shall be entitled to revoke the usage rights granted to the customer if the customer repeatedly exceeds the usage rights granted under Section 3 despite a warning from VÖTSCH or fails to take suitable IT security precautions using the latest systems as defined by Section 4. In this case, the customer shall be obligated to immediately cease use of the original software along with any copies and to destroy these. The customer must send a written confirmation of destruction to the address specified below.

8. Place of jurisdiction and choice of law

The law of the Federal Republic of Germany to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG) applies to all legal relationships between VÖTSCH and the customer based on these terms and conditions.

The parties are aware that the software may be subject to export and import restrictions. In particular, authorisation requirements may exist or usage of the software or associated technologies may be subject to restrictions outside of Germany. The customer is required to adhere to applicable export and import control provisions of the Federal Republic of Germany, the European Union and the USA, and all other relevant regulations. Fulfilment of the contract by the Licensor is subject to the proviso that fulfilment is not impeded by national and international regulations of export and import law or by any other legal provisions.

If the customer is a merchant, public-law special fund or a legal entity under public law, the exclusive place of jurisdiction for all claims resulting from the aforementioned legal relationships shall be the registered office of VÖTSCH; where legal action is taken by VÖTSCH, the general place of jurisdiction of the customer shall also apply.