

**BINDER APT-COM 4**  
**Software License Agreement**

**1. Scope of Application**

- 1.1. This Software License Agreement shall govern the rights granted to Licensee to use the APT-COM 4 Software (hereinafter referred to as the "Software") produced by BINDER GmbH, 78532 Tuttlingen, Germany (hereinafter referred to as "BINDER").
- 1.2. In addition to this Software License Agreement, certain Software components may be subject to specific terms of use which prevail over this Software License Agreement in the event of a conflict in their provisions. Terms and conditions of Licensee deviating from this Software License Agreement do not become part of this Agreement, even in cases where BINDER provides supplies or services without expressly objecting to them.

**2. Subject matter**

- 2.1. The subject matter of this Software License Agreement is the BINDER Software indicated in Art. 1.1.
- 2.2. The Parties agree on the assumption that the Software is protected by copyright law.
- 2.3. BINDER shall provide the Licensee with a copy of the Software on a data medium or electronically (e.g., via download) and shall make a version of the relevant user documentation available to Licensee (e.g., on the BINDER website).
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- 2.5. BINDER will not perform any installation and configuration services.
- 2.6. BINDER is not obligated to provide updates, upgrades, or technical support for the Software.

**3. Grant of Rights to Use**

- 3.1. Third party components, including open source software that BINDER provides to Licensee, either alone or as a component of the Software, are – unless otherwise agreed – primarily subject to the license agreement(s) of the corresponding producer(s), or to any open source license terms and conditions that may apply, respectively; alternatively, and in a supplementary manner, the provisions of this Art. 3 shall apply. Upon request, BINDER shall provide Licensee with these license agreements; in addition, they shall be supplied in the text file "ThirdPartyNotices.txt" in the installation folder.
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- 3.4. Licensee shall make one (1) backup copy of the Software, provided, however, that it is required for safeguarding its future use. Licensee agrees to attach the notice "backup copy" to the above-mentioned backup copy in a clearly visible manner and, in addition, a copyright notice that refers to BINDER.
- 3.5. Pursuant to section 69e of the German Copyright Act (§ 69e UrhG), Licensee has the right to decompile and reproduce the Software, if this is necessary to maintain the interoperability of the Software with other programs. However, this is subject to the condition precedent that BINDER fails to provide Licensee with the necessary information within a reasonable period upon Licensee's request.
- 3.6. Licensee may provide a copy of the Software acquired to a third party for permanent use, provided, however, this Software License Agreement and the documentation are handed over at the same time. In that case, Licensee agrees to fully discontinue its use of the program, to remove all installed copies from its computer, and to delete or return to BINDER all other copies that are stored on other data media, unless Licensee is subject to statutory provisions that require a longer retention period. Upon the request of BINDER, Licensee shall confirm in writing that it has carried out the measures set forth above and, if applicable, it shall explain the grounds for a longer retention period. Furthermore, Licensee agrees to expressly bind the third party that receives the Software from it to compliance with the scope of rights granted pursuant to this Art. 3.
- 3.7. In the event of a use of the Software by Licensee in breach of this License Agreement, BINDER has the right to charge Licensee a lump-sum compensation in the amount of the license fees that would be incurred based on the current rates that BINDER usually charges for the excessive use. Furthermore, Licensee shall, if applicable, bear the reasonable costs for an examination in accordance with Art. 6.2 of this Software License Agreement. BINDER expressly reserves the right to assert further claims.
- 3.8. Characteristics that serve the purpose of program identification (e.g., copyright notices, serial numbers, etc.) shall neither be removed from the Software nor modified.

#### **4. Statutory rights**

- 4.1. BINDER warrants that the Software has the agreed quality and that Licensee may use the Software without infringing on third-party rights. BINDER does not assume any warranty obligations for the work results that Licensee obtains with the BINDER Software, unless this is an express part of the Specifications. Licensee is responsible for reviewing the work results obtained for their accuracy and usability for the intended activities and purposes on its own prior to their use. Licensee is aware that the Software has not been designed, tested, or certified for use in connection with high-risk activities, among others, not for its use in medical life support systems, nuclear power plants, or other areas that require a fail-safe performance.

- 4.2. Licensee shall inspect the Software promptly upon receipt for apparent defects and notify BINDER of defects, if any, without undue delay. Otherwise, the statutory rights (*Gewährleistung*) based on the defects mentioned above are expressly excluded. The same applies accordingly, if a defect of this type should become apparent at a later date. Section 377 of the German Commercial Code (*HGB*) shall apply.
- 4.3. Licensee may only assert claims based on defects that are reproducible or can be described by Licensee in a comprehensible manner. Functional impairments of the Software that are caused by Licensee's hardware or software environment, corrupted data, improper use, or any other circumstances from Licensee's sphere of responsibility shall not be deemed to be defects or errors. Furthermore, BINDER shall be released from its warranty obligations with regard to defects as to quality or defects in title if Licensee has modified the Software without prior authorization, either itself or through third parties, or if the Software has been used in violation of the Agreement (e.g., in another system environment), or in violation of the user documentation, unless Licensee can show that the defect is not related to these circumstances and the error analysis and/or rectification by BINDER is not impaired due to these circumstances.
- 4.4. If a defect as to quality should exist, BINDER initially has the right to subsequent performance, i.e., to subsequently improve the Software in order to rectify the defect or to make a subsequent delivery. The rectification of the defect may also mean that BINDER shows Licensee reasonable options how to avoid the effects of the defect or workarounds. BINDER shall also be deemed to have complied with its duty to subsequently improve the goods and/or services, if updates that include an automatic installation routine are provided to Licensee for download from the BINDER website and if BINDER offers Licensee telephone support in the event that installation problems should arise in connection with its warranty obligations (*Nacherfüllung*/subsequent performance). In the event that the subsequent performance finally fails (after a minimum of two (2) attempts at subsequent performance for each defect), Licensee may claim a reduction of the remuneration or terminate this Agreement in its own discretion. Depending on the complexity of the Software and its technical interoperability with the IT infrastructure of Licensee, more than two (2) attempts at subsequent performance may also be reasonable and Licensee may be expected to accept them. Claims to damages and reimbursement of wasted expenditures due to defects are subject to Art. 5 of this Software License Agreement.
- 4.5. In the event that BINDER performs services in connection with the trouble shooting or rectification of defects without being obligated to do so, it may claim a separate remuneration from Licensee on a time and materials basis based on the then-valid BINDER daily rates. In particular, this shall apply if a defect reported by Licensee cannot be demonstrated or if it is not attributable to BINDER. BINDER is not entitled to remuneration if Licensee shows that it had not realized that no defect existed and that there had been no fault on its part.
- 4.6. In the event of a subsequent delivery, Licensee shall adopt the new software version. In the event of a defect in title, BINDER shall provide Licensee – at the option of BINDER – with a non-infringing way of using the Software or modify the Software in such a manner that third-party rights are no longer infringed upon.
- 4.7. With the exception of damages, statutory claims based on defects as to quality will come under the statute of limitations within one (1) year. If the Software was sold on a data medium, the statute of limitations period begins to run upon the delivery of the Software covered by this Agreement. If the Software is sold via a download from the internet, the statute of limitations period begins to run upon the communication and activation of the login credentials for the BINDER download area. In the event of claims to damages and claims to the reimbursement for

wasted expenditures, the specific provision in Art. 5 of this Software License Agreement shall apply.

- 4.8. The provision of updates, upgrades, and other new Software releases does not affect the warranty obligations with regard to the originally released Software and, in particular, does not result in an extension of the initial warranty period or in the commencement of a new warranty period for the supplied updates, upgrades, or any other revised Software releases.

## **5. Liability**

- 5.1. BINDER shall be fully liable for damages in the event of intentional wrongdoing or gross negligence, for death, bodily injury, or health damage, subject to the provisions of the Product Liability Act, and to the extent that it had granted a guaranty.
- 5.2. In case of negligence, BINDER shall only be liable for a violation of a contractual duty that is of such material importance that the attainment of the purpose of the Agreement would be jeopardized so that Licensee may rightfully rely on compliance with the same (so-called cardinal duty). In these cases, BINDER shall be liable for the foreseeable and typical damage. In these cases, the liability of BINDER for all aggregate damage incidents is limited to the amount of twice the contract volume of the Software acquired.
- 5.3. In the event of a data loss, BINDER will be liable within the limits set forth above, but only for such damage and/or loss culpably caused by it that also would have occurred if a due, i.e., state-of-the-art, backup system, adequate in view of the risk involved, had existed at Licensee's business operations.
- 5.4. Beyond this, BINDER does not assume any other liability.
- 5.5. The foregoing liability limitations also inure to the benefit of the corporate bodies, legal representatives, employees and vicarious agents of BINDER.

## **6. Software protection / audit rights**

- 6.1. Licensee agrees to protect the Software from unauthorized third-party access. It shall take all necessary precautions to this end. In particular, it agrees to store all Software copies at a place that is protected against access by unauthorized third parties.
- 6.2. Licensee agrees to allow BINDER upon the request of BINDER to audit the contractual use of the Software, in particular, regarding its compliance with the contractual scope of use. As part of this audit, Licensee agrees to provide BINDER with information, to allow the inspection of any relevant documents and records, and to grant an opportunity to audit the implemented hardware and software environment. BINDER shall conduct the audit upon prior announcement at Licensee's facilities during its regular business hours, taking the concerns of data protection and the confidential treatment of business secrets of Licensee appropriately into account. Furthermore, BINDER has the right to have the audit conducted by a third party acceptable to Licensee and that is bound to the secrecy duty in the prerequisite manner.

## **7. Final provisions**

- 7.1. Modifications of and amendments to this Agreement must be in writing to be effective. The same applies to a waiver or modification of the mandatory written form. Written documents that are transmitted electronically do not meet the mandatory written form requirement.

- 7.2. This Software License Agreement is governed by German law, and the UN Convention on the Sale of Goods is excluded.
- 7.3. The place of performance is the place of business of BINDER. Exclusive place of jurisdiction for all disputes in connection with this License Agreement is also the BINDER place of business, if Licensee is a business person or a public law legal entity or does not have a general place of jurisdiction in Germany.