

General Business and Licensing Terms and Conditions for Providing Software (‘General Software Licensing T&Cs’) of BINDER GmbH

The terms and conditions that follow apply to all software programs that we provide to the customer, regardless of whether this takes place on a free-of-charge basis or subject to a charge, and regardless of the way in which the customer obtains the software (by downloading it or obtaining it on a data carrier), provided that the customer is an entrepreneur as defined by Section 14 of the German Civil Code. Any general terms and conditions that the customer may have in place for providing and licensing software shall not be recognized as a rule.

1. Formation and Subject Matter of the Agreement

1.1 BINDER shall grant the customer the right to use one (or more) of the following software programs:

- APT-COM 3 DataControlSystem software (in one of the various editions: Basic, Standard, or GLP) (subject to a charge);
- Free demo version of APT-COM 3 (without the option of storing data);
- BCW Time Program Editor; BCW Week Program Editor (both free of charge);
- MB2 Time Program Editor; MB2 Week Program Editor (both free of charge);
- Any other software programs that BINDER provides to the customer free of charge as a download from the BINDER homepage or in any other way (e.g., via email).

Furthermore, BINDER shall provide the customer with the following items associated with the software program in question: the operating manual (provided one is available for the program), the additional hardware components (if available), and any other associated material (if available – hereinafter referred to collectively as the “**software**”) that the customer has acquired directly from us or from an authorized dealer.

1.2 Service partners of BINDER are also considered to be customers in the context of these general software licensing T&Cs. If a BINDER service partner receives software from BINDER via email or wishes to do so, it must first grant its express written consent to the application of these general software licensing T&Cs. This consent may also be granted via email.

1.3 The customer shall receive the right to use the software in question on acceptance of these terms and conditions of business; at the same time, a licensing agreement shall be formed between BINDER and the customer.

The following shall apply to **software that is subject to a charge** (APT-COM 3): when the data carrier for the APT-COM 3 software is provided, the customer shall receive a registration card which it must complete and return to us. The software licensing agreement between us and the customer shall not be formed until we have received the registration card. Additionally, the customer may not use the software program that is subject to a charge until it has correctly completed and returned the registration card.

The **free-of-charge software** must be downloaded directly from our homepage. In this case, the licensing agreement between us and the customer shall be formed when these terms and conditions of business are accepted by clicking the applicable button when downloading the software program in question.

1.4 **If the customer is unable to consent to the obligations specified in these terms and conditions of business or does not wish to do so, it shall not be entitled to install or use the software. In such cases, the software may be returned to us or to the dealer, depending on where the software was acquired from, and the purchase price reimbursed. However, the purchase price for programs subject to a charge shall only be reimbursed if the seal on the case of the data carrier is intact.**

2. Scope and Extent of License

- 2.1 In the case of software programs that are subject to a charge, the license that is granted relates to the use of the software at one workstation and on one PC (i.e., a single-user license). The license that is subject to a charge is not a network license.
Free software may be used by multiple users on different PCs.
- 2.2 The customer may use both the free-of-charge software programs and the software programs that are subject to a charge with no time limitations; the license shall be granted on a non-exclusive basis in both cases (free of charge and subject to a charge).

3. Installation/System Requirements

- 3.1 The software program and the additional hardware components supplied with it (if applicable) may be installed by either the customer itself or a service station we have authorized. The latter case requires a separate order.
- 3.2 Before the installation commences, a backup copy of the PC must be made.
If the software program and additional hardware (plug-in card and converter) (if provided) have not been installed in accordance with the operating manual supplied or by an authorized service station, we shall accept no liability in the event of software program handling errors or data loss.
- 3.3 The customer's system must meet the requirements outlined in the operating manual for using the software.

4. Hotline

When this software licensing agreement is formed, we shall make a Service Hotline available to the customer. The customer may use the Hotline at any time. We shall make every effort to provide the customer with the best possible advice and support immediately in the event of any problems with the software that is supplied.

5. Updates

The customer may download updates for the acquired software program from our homepage within the scope of this licensing agreement. If required by the customer, we shall supply and install the updates in question in return for a fee.

6. Reproduction Rights

- 6.1 The customer may reproduce the software supplied by us if reproduction is necessary in order to use the program as intended. Examples of necessary reproduction include installing the software program on the mass storage facility of the customer's PC from the original data carrier, and loading the software program to the working memory. The same applies to software programs that are downloaded directly from our homepage.
- 6.2 Additionally, reproduction is permitted for backup purposes. However, only one backup copy may be made and stored. This backup copy must be marked as a backup copy of the software program that has been provided. The above notwithstanding, standard regular (automatic) backups of the hard drive on which the software program is stored and used are permitted.
- 6.3 Any other types of reproduction, including sending the program code to a printer, are not permitted.

- 6.4 If the customer changes the hardware, the software program must be deleted from the mass storage facility of the hardware that has been used up to this point. Simultaneous saving, storing or use on more than one item of hardware is permitted.

7. Decompiling and Program Changes

- 7.1 Retranslating the program code that has been provided into other code formats (decompiling), as well as any other types of reverse engineering of the various manufacturing stages of the software that has been provided, are prohibited.
- 7.2 Removing copy protection or similar protection routines is not permitted as a general rule. The customer may only remove copy protection or the protection routine if the protection mechanism impedes unobstructed use of the program and we are unable to provide a remedy within a reasonable period of time despite a request having been submitted with this in mind. The burden of proof shall be on the customer in cases where the protection mechanism is impeding or preventing unobstructed use.
- 7.3 The customer must not remove or change any serial numbers or any other features that serve to identify the program.
- 7.4 Any warranty shall be rendered void if direct interventions are made in the files of the software that has been acquired.

8. Reselling and Subleasing

- 8.1 The customer may sell or give away the acquired software program, including the operating manual and any accompanying materials, to a third party on a permanent basis if the third party in question declares its consent that these agreement terms and conditions shall continue to apply to it.

In the event that the software program is passed on, the customer must hand over all copies of the program, including any existing backup copies, to the new user or must destroy any copies that are not handed over. Passing on the software program shall mean that the customer no longer has the right to use it. Furthermore, the customer shall undertake to comply with the responsibility to inform pursuant to Clause 8 below.

- 8.2 The customer may not sublease the acquired software, including the operating manual and any other accompanying materials, to third parties for profit-making purposes. The customer may loan the software (i.e., provide it at no charge) if the third party declares its consent that these agreement terms and conditions shall continue to apply to it and if the customer hands over all copies of the program, including any existing backup copies, to the third party or destroys any copies that are not handed over. During the period over which the software is being provided to the third party, the customer shall not have the right to use the program itself.
- 8.3 The customer may not provide the software to third parties on this basis if there is a reasonable suspicion that the third party in question is in violation of the agreement terms and conditions; in particular, if there is a suspicion that the third party is making prohibited reproductions.

9. Responsibility to Inform

In the event that the customer resells the software, it shall notify us of the name and the full address of the buyer in writing, provided that the buyer is an entrepreneur as defined by Section 14 of the German Civil Code.

10. Warranty

- 10.1 **The following applies to software programs that are subject to a charge:** Any defects in the software that is supplied shall be resolved by us or our service stations within the warranty period of 24 months from the software's purchase date (the date of the dealer's invoice or the BINDER invoice shall be decisive in this case).

We shall only provide warranty cover in cases where the customer has registered the program in question with us (see Clause 1.2 above).

Handling errors caused by the software program or the additional hardware components being installed incorrectly and not in accordance with the operating manual shall be excluded from the warranty. Additionally, we shall provide no warranty cover in cases where the defect that is the subject of the complaint relates to an accident, to misuse or to incorrect use of the program. As well as this, we shall provide no warranty cover for defects that arise as a result of a failure to adhere to the specified hardware requirements or in the event that incompatible system drivers of other hardware components are used.

There shall be no entitlement to defects being resolved at the site. We may choose to resolve the defect at your site or to have the customer return the defective goods to us. In the latter case, we shall bear the costs for the return, provided that the defect arises within the warranty period.

- 10.2 In the case of defects that are covered by the warranty conditions, the defect shall be resolved in the form of either repair work at no charge or a replacement delivery, at our discretion.
- 10.3 If it is not possible to resolve the defect within a reasonable period of time or if the repair work or replacement delivery is considered to have failed for other reasons, the customer may demand a reduction in the charge or may withdraw from the agreement, at its discretion. Repair work or a replacement delivery shall only be considered to have failed if we have been granted sufficient opportunity to perform the repair work or the replacement delivery and these actions have failed at least twice, or if the repair work or a replacement delivery is impossible, or if there is reasonable doubt concerning the chances of success, or if an unacceptable situation arises for any other reason.
- 10.4 We cannot provide warranty cover for free-of-charge software programs; however, in the event of a defect arising, we shall support the customer to the best of our ability in identifying and resolving the defect.

11. Obligations to Inspect and to Give Notification of Defects

The following obligations apply exclusively to software that is subject to a charge:

- 11.1 The customer must inspect the supplied software that is subject to a charge, including the operating manual and any other materials, within 5 working days of the software program being installed, particularly with regard to the completeness of the documents that are included and the functionality of the programming options described in the operating manual.
- Any defects that are identified or able to be identified during this process must be reported to us in writing within a further 5 working days. This notification of defects must contain a description in which every effort has been made to provide details of the defects.
- 11.2 Any claims for defects that cannot be identified during the correct inspection process described above must be asserted against us in writing within 5 working days of the defects being discovered and in compliance with the notification requirements.
- 11.3 In the event that the obligations to inspect and to give notification of defects are disregarded or violated, the software that is supplied shall be deemed approved in consideration of the applicable defect.
- The software program must be installed no more than 24 months after the software has been purchased. We shall provide no further warranty cover beyond this period.

12. Liability

- 12.1 We shall accept liability pursuant to the relevant legal provisions, provided that any damage compensation claims asserted by the customer are based on willful intent or gross negligence. In this respect, the actions of our representatives or vicarious agents must be attributed to us. Provided that no agreement violations as a result of willful intent are attributed to us, our liability for damage compensation shall be limited to damage of a foreseeable, typical nature.
- 12.2 Furthermore, we shall accept liability pursuant to the relevant legal provisions if we violate an obligation that is considered material in respect of fulfilling the agreement; in such cases, liability for damage compensation shall also be limited to damage of a foreseeable, typical nature.
- 12.3 Liability arising from culpable injury to life, limb, or health shall remain unaffected; the same applies to mandatory liability pursuant to the German Product Liability Act or manufacturer's liability regulations.
- 12.4 Any liability beyond this shall be excluded.

13. Legal Venue and Applicable Law

- 13.1 If the customer is a merchant as defined by the German Commercial Code, the location of our business headquarters (Tuttlingen, Germany) shall be the legal venue for any disputes arising from this agreement.
- 13.2 German substantive law shall apply exclusively to this agreement, to the exclusion of the United Nations Vienna Convention on Contracts for the International Sale of Goods (CISG) from 1980.

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