

**SIMCON General Terms and Conditions of Business and Licensing
(as of July 2023)**

A. Scope of application, conclusion of contract

1 Contracting party, subject of regulation

- 1.1 These General Terms and Conditions of Business and Licensing ("**GTC**") shall apply to all existing and future business relations in connection with the transfer and use of software products, furthermore in connection with consulting, training and other services between SIMCON kunststofftechnische Software GmbH, Schumanstraße 18a, 52146 Würselen, Germany ("**SIMCON**") and users of software products or services of SIMCON on the other hand ("**Customer**").
- 1.2 For the transfer and use of existing as well as future software products of SIMCON, which are listed in the order confirmation of SIMCON (see clause 2.1), including possibly supplied hardlocks, necessary files, test examples as well as associated user documentation (hereinafter collectively referred to as "**Soft- ware**") the following terms and conditions of use shall apply in accordance with Part B of these General Terms and Conditions ("**License Terms**"). For consulting, training and other services ordered by the customer from SIMCON the provisions according to part of these GTC ("Terms of Service") shall apply. C of these GTC ("Terms of **Service**") shall apply. In addition, the general provisions pursuant to part of these GTC ("General Terms and Conditions") shall apply to both the license conditions and the service conditions. D of these GTC ("**General Terms and Conditions**").
- 1.3 The present GTC do not regulate the adaptation and further development of the software as well as the software maintenance and servicing by SIMCON. Such services shall be provided on the basis of separately concluded contracts.
- 1.4 These GTC are written in German and English - available on SIMCON's homepage at [https://www. SIMCON.com/en/agb](https://www.SIMCON.com/en/agb) and <https://www. SIMCON.com/gtc>. In case of contradictions between the language versions, the German version shall prevail.
- 1.5 General terms and conditions of the customer are hereby contradicted. They shall not be recognized even if SIMCON does not expressly object to them again after receipt.

2 Conclusion of contract

- 2.1 The contract on which the granting of the license is based ("**License Agreement**"), as well as the contract on which a consulting or service order is based ("**Service Agreement**") shall only be concluded by our written order confirmation. The order confirmation can also be made within the scope of - or implied by - the sending of the ordered software, the making available of the software by way of download, by making the result of the ordered service available or by sending an invoice.

- 2.2 If the customer objects to the inclusion of these GTC in the license or service agreement, in particular if he does not accept the validity of the license terms when loading the software in the RAM of his computer for the first time, SIMCON shall be entitled to withdraw from or terminate the license or service agreement.
- 2.3 Offers of SIMCON do not represent binding contractual offers, but merely an invitation to the customer to submit an offer, to which SIMCON shall be bound in terms of content for a maximum of 30 days.

B. License terms

3 Transfer of the software, rights of use

- 3.1 SIMCON shall provide the customer with a copy of the software on a data carrier to be determined by SIMCON. If the delivery is made by way of download, SIMCON shall make the software available to the customer for download.
- 3.2 The software delivered by SIMCON (program, manual and, if applicable, further documentation) shall be protected by copyright. All rights to the software as well as to other documents provided within the scope of the initiation and execution of the contract shall exclusively belong to SIMCON in the relationship between the contracting parties, unless otherwise provided for in the following provisions on the granting of rights of use to the software. The software contains components as well as modules, the rights to which are held by third party manufacturers and which are partly open source software. The customer was informed of this before the conclusion of the license agreement within the scope of the product description and had the opportunity to take note of the corresponding list of the affected components as well as the license conditions of the open source software.
- 3.3 SIMCON grants the customer a non-exclusive, non-assignable and, subject to para. 6.3 and unless a limited license (software rental) has been expressly agreed upon, to use the software in his business for his own purposes and as described in the license agreement and the manual.
- 3.4 Permitted use includes installation of the software at the installation location on the agreed hardware in accordance with the system requirements described in the license agreement and in the manual, loading into the main memory of the relevant computer, and use in accordance with the agreement as defined in para. 3.3 by the customer (workstation license). Without the express permission of SIMCON the use of the software via remote access to the workstation on which the software is installed is not permitted. The use on several computers or the multiple use on one computer is only permitted if additional licenses have been purchased for the additional computers or the multiple use. Installation on a server that can be accessed by multiple users or use within a network is only permitted if a server or network license has been purchased.
- 3.5 Under no circumstances shall the customer have the right to lease or otherwise license the purchased software, to publicly reproduce or make it accessible by

wire or wireless means, or to make it available to third parties, whether for a fee or free of charge.

- 3.6 The customer has no right to be provided with the source code of the software.
- 3.7 The customer is entitled to make a backup copy on a data carrier if this is necessary to secure future use. The customer shall visibly affix the note "Backup copy" as well as a copyright notice of the manufacturer to the created backup copy. Manuals may only be copied for internal company purposes. Further copies of the software or individual software modules, for whatever reason and of whatever type, are prohibited.
- 3.8 If the customer uses the software to an extent which exceeds the acquired rights of use qualitatively (with regard to the type of permitted use) or quantitatively (with regard to the number of acquired licenses), SIMCON shall be entitled to demand from the customer the subsequent payment of the license fees which would have had to be paid by the customer if he had acquired corresponding licenses for this additional use. Furthermore, the customer shall pay a contractual penalty for each case of infringement to be determined by SIMCON at its reasonable discretion and to be reviewed by the competent court in case of dispute. The assertion of further claims and rights, in particular for damages, omission or rescission or termination shall remain unaffected.
- 3.9 If a special software protection (hardlock) was supplied, it must be installed on the relevant hardware in accordance with the regulations. The software protection must not be passed on to third parties.
- 3.10 The installation of the software shall normally be carried out by the customer. If the installation of the software by SIMCON is desired by the customer, the costs incurred shall be invoiced to the customer.

4 Obligations of the customer, restrictions of use

- 4.1 The customer undertakes to take all reasonable safety measures before using the software in order to minimize or repair any resulting damage to the data and components of the software otherwise used by the customer in the event that the software does not function properly. In addition, the customer shall protect its systems and data stock against viruses and other forms of malware or ransomware by means of security measures that correspond to the state of the art.
- 4.2 The customer shall ensure that the results to be achieved by the software are not used by him without prior testing and plausibility checks. To this end, the customer shall thoroughly test the software for its usability for the purpose intended by it, in particular with regard to the specific components concerned in each case, before it uses it operationally. Furthermore, he shall regularly back up his data in accordance with the state of the art. He shall ensure that the current data from data files held in machine-readable form can be reproduced with reasonable effort.

- 4.3 All techniques, algorithms and procedures contained in the software as well as all documents received by the customer shall be treated confidentially and may only be made accessible to third parties to the extent that this is absolutely necessary for the use of the software by the customer. The customer shall take reasonable measures to protect the software from unauthorized access by third parties.
- 4.4 Outside the regulatory scope of § 69 e UrhG, the customer is not entitled to reverse engineer, decompile, disassemble or otherwise attempt to capture the source program of the software. It is not permitted to edit, adapt or extend the software or the documentation in any way, to modify it for use on other systems or to translate it into other languages, unless this is expressly permitted under applicable law.
- 4.5 A sale or transfer of the software to third parties is only permitted to the customer if (i) the customer is the owner of a perpetual license to the software, (ii) he transfers his right to use the software to the third party uniformly and completely, (iii) the customer gives up his own use completely and finally and hands over to the third party all original copies of the software as well as deletes the copies and duplicates made by the customer himself, (iv) the third party confirms in writing to SIMCON the compliance with these obligations under full mention of the name and address of the third party and (v) the third party declares to SIMCON in writing his consent to the validity of the license agreement including these GTC between him and SIMCON and acknowledges in writing their contents including the conditions for the further transfer as a regulation also binding for him.

5 No warranty for material data

- 5.1 A material database is also supplied with the CADMOULD software. This database contains information about materials for which an injection molding process can be simulated with this software. The information about the materials and their properties, even if they are marked in the respective data set as comparable with another material (reference materials), are only exemplary and therefore non-binding and represent neither quality specifications nor assurances or guarantees with regard to the materials used by the customer to which the simulation of the software is to refer.
- 5.2 Prior to each simulation using the materials mentioned, the customer must have the manufacturer responsible for this conscientiously check the validity and correctness of the information stored in the material database. Notwithstanding this, it is expressly pointed out that the results from simulations with information laid down via reference materials have a wider confidence interval than results calculated with original data.
- 5.3 Any use of the results of the simulation by the customer shall be entirely at the customer's own risk if the customer
- operates the software incorrectly,
 - implements or uses incorrect material data,

- when using the simulation results, does not take into account the fact that simulated results can regularly show major deviations from real-world results at the current state of the art in simulation technology, which can vary with regard to the processing process, material, component and development stage, as well as the form in which the real-world configuration is represented in the software,
- uses data of reference materials which are approved in principle by SIMCON, but for which no or not all necessary material data are available at the customer,
- uses Simulation results if and to the extent that this was not prudent ex ante from a professional engineer's point of view.

6 License fee

- 6.1 The amount of the license fee payable at once for a perpetual license as well as for a limited license (software rental) in each case - subject to a deviating agreement - payable monthly in advance is to be taken from the order confirmation. Otherwise the generally valid license fees of SIMCON at the time of the order shall apply.
- 6.2 Unless otherwise agreed, the license fee refers to a single CPU and a single-user operation.
- 6.3 The license is provisionally granted for a limited period until the entire license fee has been paid to SIMCON. It shall expire if the customer is in default of payment and SIMCON declares withdrawal or termination. In the event of punctual payment, the license shall be converted into an unlimited license, unless a limited license (software rental) has been expressly agreed.
- 6.4 In case of a license granted for a limited period of time (e.g. limited software rental) SIMCON shall be entitled with regard to the to the license fee to be paid in a certain interval (e.g. monthly or annually) to adjust this at the end of a contractual year for the subsequent period at its reasonable discretion (§ 315 BGB) to the development of the factors relevant for the price calculation. Adjustments shall be made in particular to reflect changes in wage or material costs or changes in economic or legal conditions; price increases customary in the industry shall also be taken into account. Increases in one type of cost may only be used for a price increase to the extent that they are not offset by any declining costs in other areas.
- 6.5 SIMCON shall inform the customer about price adjustments according to clause 6.4 in text form no later than six (6) weeks before they come into force. The adjusted prices shall apply for the first time to contract years commencing with or after the entry into force of a price adjustment. A price increase shall be deemed to have been agreed if the Customer does not terminate the license agreement within a period of 30 days from receipt of the notification as of the end of the current contract year. The customer will be informed of this again separately in the notification.

7 Termination of the license

- 7.1 Unless otherwise agreed, the license agreement is concluded for an indefinite period. In cases of a term-limited license, the agreement will automatically renew. If continuation of the rental is not desired, notice must be given in due time - 3 months prior to the end of the rental period for annual rent, or 2 weeks prior for monthly rent.
- 7.2 Both contracting parties may terminate the license agreement without notice for good cause, in particular if the other contracting party fails to comply with or breaches its obligations under the license agreement, including these GTC, and a grace period of 30 days set in writing has expired to no avail.
- 7.3 Any declaration of withdrawal or termination must be in writing to be effective.
- 7.4 The customer shall be obligated to delete or destroy all copies of the software in his power of disposal including all license keys after termination of the license, irrespective of the legal reason for the termination of the license, and to return any dongles to SIMCON's place of business upon SIMCON's request.

C. Terms of service

8 Scope, subject matter

- 8.1 The Terms and Conditions for Services shall apply to all contracts between SIMCON and the customer, which have consulting services, training or other services of SIMCON as their subject matter.
- 8.2 Consulting services include, in particular, the examination of the customer's CAD data on the basis of the customer's project requirements and the subsequent simulation of an injection molding process as well as the preparation of a report with recommendations for action to be taken by the customer. Training services refer to the instruction of the customer's employees in the use of the software. Other services may extend to individual project inquiries or the commissioning of programming work. The concrete scope of the consulting services owed results from the service agreement (see item A.2.1).
- 8.3 Unless expressly agreed otherwise (see in this regard the following clauses 8.4 as well as 13), the performance obligations described in the service agreement shall be pure services. The advice shall be provided to the best of SIMCON's knowledge and exclusively on the basis of the information which the customer brings to SIMCON's attention and makes available. No occurrence of a certain success shall be owed without express promise. Furthermore, without express promise no legal guarantee or other assurance is given with regard to the fulfillment of a purpose pursued by the customer with the service of SIMCON. In particular, SIMCON cannot give any guarantee for the occurrence of a technical or economic success intended by the customer, even if this success has been formulated by the customer in advance as an objective, since the occurrence of this success also depends on further circumstances which may lie outside the sphere of influence as well as the assessment competence of SIMCON.

- 8.4 If a concretely defined performance result is promised on the part of SIMCON, SIMCON shall only be obligated to provide the corresponding services to the extent that these are recorded in writing in the service contract upon conclusion of the contract. The same shall apply to any performance deadlines promised by SIMCON. Subsequent changes of the scope of services shall also require the written consent of both contracting parties in order to be effective, whereby additional expenses incurred by SIMCON in comparison with the original scope of services shall be adequately remunerated. The promise of a certain property or suitability of the delivery/service for a certain purpose as well as the assumption of a guarantee shall only be binding if this is confirmed in writing by SIMCON.
- 8.5 Within the framework provided by the service contract, SIMCON shall perform the tasks assigned to it on its own responsibility. Subject to concrete duties or specifications agreed upon in writing, the customer shall have no authority to issue instructions and shall not be entitled to technical and organizational specifications. However, SIMCON shall always endeavor to take into account requests of the customer.

9 Cooperation of the customer; necessary information; secrecy

- 9.1 The customer shall designate a technically competent contact person who shall provide SIMCON with the necessary information and documents at short notice, designate interlocutors and make decisions or be able to bring about such decisions, and who shall furthermore be authorized to receive the consulting services to be rendered by SIMCON.
- 9.2 The customer shall ensure that SIMCON is provided with all information, documents or other resources necessary for the performance of its activities in a timely manner and that it is informed of all necessary processes and circumstances. This shall also apply to documents, processes and circumstances which only become known during SIMCON's activity. SIMCON undertakes to properly store all business and operational documents made available to it and in particular to ensure that unauthorized third parties cannot inspect them. The documents made available shall be returned to the customer upon request. The obligation of confidential treatment shall not apply to ideas, models, concepts, methods, techniques and other significant know-how as well as to information which was already known to SIMCON at the time of notification by the customer or which becomes known later without connection with the contractual relationship.
- 9.3 In order for SIMCON to meet binding deadlines and dates, it shall rely on the support of the customer. Therefore, the customer undertakes to support the activities of SIMCON required for the performance of services to the best of its ability and to provide all required cooperation services completely and in due time. Insofar as relevant for the object of the services to be rendered by SIMCON as defined in the service agreement, the customer shall in particular
- Inform SIMCON immediately about changes of the infrastructure,

- provide additionally required infrastructure, including in particular remote access, network connections, power supply, workstations, etc.,
- ensure that, should the service provision take place on the customer's premises, access to the premises, the network and all other related components is guaranteed at all times, and to provide a workstation appropriate for the deployment
- as well as, if log-in accounts (registrations) should be necessary for the activities, set them up in advance and inform SIMCON about them.

9.4 If the customer does not fulfill his duties to cooperate or does not fulfill them in due time and if delays or additional expenses arise as a result, any agreed performance deadlines shall be extended and SIMCON shall be entitled to demand an adjustment of the remuneration.

10 Personal

10.1 Subject to a more specific provision in the service contract, SIMCON shall exclusively use employees who are qualified to provide the agreed service for the performance of its contractual obligations.

10.2 SIMCON is entitled to use subcontractors.

11 Remuneration

As far as the contracting parties do not make an explicit agreement on the amount of remuneration in the service contract, the general rates of remuneration of SIMCON shall apply, plus statutory value added tax, if applicable, as well as travel expenses.

12 Cancellation

12.1 Unless otherwise stipulated in a service contract, both contracting parties may terminate the service contract with a notice period of 2 weeks to the end of the month. In case of a service result to be rendered by SIMCON in the sense of item 8.4 the statutory provisions shall apply exclusively to the termination on the part of the contractual partners.

12.2 The right of both contracting parties to terminate the service contract extraordinarily in accordance with the statutory provisions shall remain unaffected.

12.3 Declarations of termination must be in writing to be effective.

13 Special provisions in the case of work performance within the meaning of sec. 8.4

13.1 For any work performances or performance results promised by SIMCON within the meaning of item 8.4 the following provisions of clauses 13.2 to 13.4. apply.

13.2 The acceptance of the work performed and delivered by SIMCON shall take place within 1 week after handover at the latest. If SIMCON does not assert any defects preventing acceptance within this period, the work shall be deemed accepted. In

case the customer is in delay with the acceptance the remuneration shall become due immediately.

- 13.3 The customer shall be subject to inspection and complaint obligations analogous to § 377 HGB (German Commercial Code) with regard to the deliveries and services of SIMCON which are the subject matter of the order (cf. clause D.16.1).
- 13.4 Upon acceptance and full payment of the services rendered by SIMCON, the non-exclusive rights of use required for the purpose of use determined according to the service agreement shall pass to the customer. Further rights of use, in particular to duplication, processing, distribution against payment as well as publication shall not be transferred to the customer without express written agreement, provided that no legal exhaustion has occurred with regard to the copyrights concerned.

14 Special provisions for training courses

- 14.1 Training offers of SIMCON are subject to change, non-binding and are subject to availability. The training agreement shall only be concluded upon order confirmation by SIMCON.
- 14.2 The customer agrees that the personal data, in particular e-mail addresses of the persons participating in a training ("**participants**"), communicated when providing the booking data, may be stored and used by SIMCON for the purpose of communication with the participants within the framework of the contractual relationship, with the consent of the participants. The customer shall ensure that this data agreement is admissible under data protection law.
- 14.3 Unless otherwise agreed, the training fee shall be paid in advance upon receipt of the invoice immediately and without deduction.
- 14.4 In the case of on-site training, the customer shall be responsible for the required infrastructure. In particular, the customer shall provide premises of sufficient size as well as workstation computers in the required number and with the required performance, and shall ensure the proper installation of the software to be trained. SIMCON shall separately communicate which concrete infrastructure including peripheral devices and room equipment is required.
- 14.5 Unless expressly agreed otherwise, travel expenses shall be invoiced separately by SIMCON
- 14.6 The documents and presentation of the trainings are confidential information. They are intended solely for the personal use of the participants and may not be reproduced, distributed, published, made publicly available, translated or otherwise processed or used for purposes other than personal use without the prior written consent of SIMCON.

D. General conditions

15. Terms of payment and invoicing

- 15.1 The prices do not include the statutory value added tax. SIMCON shall show this separately in the invoice in the respective statutory amount on the day of invoicing.
- 15.2 In the case of a software license, the license fee shall be due for payment without deduction within 14 days of the invoice date and receipt. In the case of a temporary license (software rental), the license fee payable on an ongoing basis shall be due for payment without deduction immediately upon receipt of the invoice - also in advance for the respective billing period. In the case of services, the invoice is due for payment without deduction immediately after receipt of the invoice.
- 15.3 The customer shall only be entitled to set-off or to assert rights of retention, even if notices of defects or counterclaims are asserted, if the counterclaims have been legally established, acknowledged by SIMCON or are undisputed. The customer shall not be entitled to exercise a right of retention against claims of SIMCON due to another claim not arising from the underlying license or service agreement.

16. Delivery and performance time

- 16.1 Information on delivery periods that have not been expressly agreed in writing are exclusively non-binding information.
- 16.2 Unless otherwise agreed, the delivery time for a software license shall not exceed 14 days after receipt of the order.
- 16.3 For the service, the delivery time specified in the offer or order confirmation shall apply after receipt of the order. With regard to the service, the delivery time shall not begin until all technical questions necessary for processing have been clarified and SIMCON has received all necessary data.
- 16.4 If the customer is in default of acceptance, SIMCON shall be entitled to demand compensation for the damage incurred and any additional expenses. The same shall apply if the customer culpably violates his duties to cooperate. With default of acceptance or debtor's delay the risk of accidental deterioration and accidental loss shall pass to the customer.

17. Warranty

- 17.1 Claims for defects on the part of the Customer presuppose that the Customer, insofar as the Customer is a merchant within the meaning of the German Commercial Code (HGB), has complied with its obligations to give notice of defects pursuant to Section 377 of the German Commercial Code (HGB). Accordingly, the customer shall inspect the software or the results or goods provided to him within the scope of the service contract (hereinafter referred to as "**object**") without undue delay after delivery, insofar as this is feasible in the ordinary course of business, and, if a defect becomes apparent, notify SIMCON without undue delay. If

the customer fails to notify SIMCON, the item shall be deemed to have been approved, unless it is a defect which was not recognizable during the inspection. If such a defect appears later, the notification must be made immediately after the discovery; otherwise the object is considered approved also in view of this defect. For the preservation of the rights of the customer the timely dispatch of the notification shall be sufficient. If SIMCON has fraudulently concealed the defect, it shall not be entitled to invoke these provisions.

- 17.2 SIMCON warrants that the software delivered according to the order confirmation complies with the agreed quality and that its use does not conflict with any rights of third parties, whereby the freedom from defects of title is limited to the country of destination agreed upon by the contracting parties in which the software is to be used and without an agreed country of destination this warranty applies to the country in which the customer has its place of business.
- 17.3 Unless and to the extent not otherwise agreed in writing, the condition of the software shall be exclusively the error-free functioning of the software on the basis of the test examples listed in the documentation supplied.
- 17.4 SIMCON shall not assume any warranty for functional impairments of the software attributable to the sphere of the customer, in particular in case of disturbances of computer networks.
- 17.5 In case of material defects and defects of title SIMCON shall first provide warranty by subsequent performance. In case of material defects, SIMCON shall, at its option, provide the customer with a new software version free of defects or shall eliminate the defect and adapt the application documentation accordingly; elimination of defects shall also be deemed to have taken place if SIMCON shows the customer reasonable possibilities to avoid the effects of the defect. In case of defects of title SIMCON shall at its option provide the customer with a legally flawless possibility of use of the delivered software or a replaced or modified equivalent software.
- 17.6 SIMCON shall be entitled to make the supplementary performance dependent on the fact that the customer has paid the remuneration due to SIMCON. However, the customer shall be entitled to retain a part of the remuneration which is reasonable in relation to the defect.
- 17.7 The customer shall be obliged to accept a new software version within the scope of SIMCON's obligation of subsequent performance if the contractual scope of functions is maintained. The rights of the customer to subsequent performance shall remain unaffected.
- 17.8 If the subsequent performance fails, the customer shall be entitled to set a reasonable grace period for the rectification of defects. In doing so, the customer shall expressly point out in writing that he reserves the right to withdraw from the contract and/or demand compensation in the event of renewed failure. If the rectification of the defect also fails within the grace period, if the reasonable period

to be set by the customer for the rectification of the defect has expired unsuccessfully or if it is dispensable according to the statutory provisions, the customer may withdraw from the contract or reduce the agreed remuneration, if the customer has notified SIMCON in writing in advance. In the case of an insignificant defect, however, there is no right of withdrawal. SIMCON shall pay compensation for damages or reimbursement of futile expenses within the scope of the limits 17 of these GTC. After expiry of the period of grace SIMCON may demand that the customer exercises his rights resulting from the expiry of the period of grace within two weeks after receipt of the demand; after expiry of the period of grace the right of choice shall pass to SIMCON.

- 17.9 If SIMCON renders services in troubleshooting or fault elimination without being obligated to do so, it shall be entitled to demand the reasonably necessary and reasonable remuneration for this in accordance with its usual rates, insofar as the expenditure was caused by the customer. This shall apply in particular if the defect claimed by the customer cannot be proven or cannot be attributed to SIMCON. Likewise, the customer shall reimburse SIMCON for any necessary and reasonable additional expenses incurred as a result of the customer's breach of his duties to cooperate.
- 17.10 If third parties claim rights to the delivered software that prevent the customer from the contractually granted use, the customer shall immediately inform SIMCON thereof in writing and comprehensively, namely by handing over documents of the third party addressed to the customer in this regard. SIMCON shall be entitled to defend the alleged claims out of court and in court against the third party on its own and the customer shall authorize SIMCON to take appropriate steps for this purpose in its own name. If the customer is directly claimed against by the third party, he shall coordinate with SIMCON in detail with regard to the extrajudicial and judicial defense of the alleged claims, namely the customer shall not make any declarations to the detriment of SIMCON such as an acknowledgment or a settlement without prior consent of SIMCON. In case of justified claims of third parties, SIMCON shall be obliged to defend the claims at its own expense and to indemnify the customer against all reasonable costs and damages associated with the defense of the claim, unless these are based on conduct of the customer in breach of duty.
- 17.11 The customer may derive rights from other breaches of duty on the part of SIMCON only if he has notified SIMCON thereof in writing and has granted SIMCON a reasonable period of grace for remedy, which has expired unsuccessfully. This shall not apply insofar as a remedy cannot be considered due to the nature of the breach of duty. For damages or reimbursement of futile expenses, the limits set out in section 17 of these General Terms and Conditions shall apply.

18. Liability

- 18.1 The liability of SIMCON shall be determined in accordance with the statutory provisions, however, in accordance with the provisions set forth in the following clauses 17.2 to 17.6 and limitations regulated in the following clauses.
- 18.2 SIMCON's liability shall be unlimited in accordance with the statutory provisions in cases of (i) intent or gross negligence, (ii) at least negligently caused injury to life, body or health, (iii) fraudulent conduct, (iv) statutory mandatory liability (e.g. under the Product Liability Act) or (v) in case of liability for the absence of guaranteed characteristics.
- 18.3 In other cases than those mentioned in clause 17.2 SIMCON shall be liable in the event of a breach of an essential contractual obligation (obligation, the fulfillment of which enables the proper performance of the contract in the first place and on the observance of which the customer regularly relies and may rely) to the amount of the foreseeable, typically occurring damage. In the case of defect-related claims for damages, liability in this case shall be limited to the contractually agreed and paid remuneration. In all other cases, the liability in this case shall be limited to € 100,000 per case of damage, in total to a maximum of € 250,000 from one contract; beyond this, insofar as SIMCON is insured against the damage incurred, within the scope of the insurance coverage and subject to the condition precedent of the payment of the insurance compensation.
- 18.4 SIMCON shall be liable for the loss of data and programs and their recovery only insofar as this loss could not have been avoided by reasonable precautionary measures of the customer, in particular by regular making of backup copies of all data and programs.
- 18.5 Any liability for the usability or usability of the software provided by SIMCON or of a work to be created or result to be delivered by SIMCON shall be excluded or limited, if and to the extent that the occurrence of the damage could have been avoided if the customer had first performed a reasonable test in a suitable test environment.
- 18.6 In other than the numbers shown in paras. 17.2 to 17.5 the liability of SIMCON shall be excluded. This shall also apply to any liability of SIMCON for employees, workers, legal representatives and vicarious agents or any other person acting on behalf of SIMCON as well as any liability of these persons themselves.

19. Limitation

- 19.1 Subject to the following clause 18.2 any warranty claims of the customer shall become statute-barred after expiry of one year from delivery or provision (and notification of the customer thereof) of the software; the same period shall apply to claims of the customer against SIMCON arising from other breaches of duty.
- 19.2 Claims for damages by the customer pursuant to sec. 17.2 as well as claims resulting from defects of title on the basis of which a third party may demand the

surrender or deletion of the software from the customer shall become statute-barred exclusively in accordance with the statutory provisions.

20. Audit Law

- 20.1 SIMCON has a legitimate interest in the prevention of software piracy and shall therefore be entitled to verify the proper use of the software, in particular whether the customer uses the software qualitatively and quantitatively within the scope of the licenses acquired by him ("**Audit**"). For this purpose the customer shall provide SIMCON with information, grant access to relevant documents and records as well as allow an inspection of the hardware and software environment used. SIMCON shall be entitled to conduct the Audit on the Customer's premises during the Customer's usual business hours or to have it conducted by third parties bound to secrecy. SIMCON shall ensure that the business operations are disturbed as little as possible by the activity on site.
- 20.2 Each contracting party shall bear the costs of the audit incurred by it. This shall not affect claims of SIMCON due to a violation of the license agreement or the license conditions by the customer determined in the course of the audit. If the violation leads to SIMCON having a claim for additional license fees or claims for damages exceeding a value of 2.5% of the license fees paid by the customer (in case of time-limited licenses (software rental) of the license fees paid per year by the customer), the customer shall also bear the reasonable costs of the audit.
- 20.3 If the customer, within the scope of the concluded license or service agreement, has reserved an audit right on his part with regard to the business operations of SIMCON, clause 19.2 shall apply accordingly.

21. Compliance; extraordinary right of withdrawal and termination

- 21.1 Customer warrants in general and especially during the term of the License Agreement as well as the Service Agreement that it will comply with all applicable laws, ordinances and regulations, including (but not limited to) all anti-corruption laws.
- 21.2 The contracting parties confirm that they have not committed and/or will not commit any prohibited acts, either directly or indirectly, in connection with the conclusion as well as the execution of the contracts concluded between them and will not do so in the future. Prohibited acts include promising, offering or granting as well as requesting or accepting an improper advantage or benefit in order to influence actions in an improper manner.
- 21.3 The customer warrants that he will not use the software for purposes that violate applicable laws.
- 21.4 If SIMCON ascertains that the customer repeatedly and despite prior warning violates the obligations pursuant to clauses 20.1 to 20.3 SIMCON shall be entitled to immediate extraordinary termination of the contractual relationship existing with the customer.

22. Reference

- 22.1 The customer shall grant SIMCON free of charge the right to indicate the customer as a reference without limitation in time and space. For this purpose, SIMCON shall be granted the right to use the customer's logo or trademark as a reference, in particular on SIMCON's homepage, for an unlimited period of time and territory. In this respect SIMCON shall coordinate with the customer.
- 22.2 If SIMCON uses the logo or trademark of the customer, SIMCON shall safeguard the customer's interest in the integrity of the marks.
- 22.3 The foregoing rights shall not apply if the customer expressly objects to such use no later than at the time of its declaration of intent to conclude the contract.

23. Other provisions

- 23.1 The license agreements and/or service agreements concluded between the contracting parties, including these GTC, constitute the final, exclusive and comprehensive agreements with regard to the contractual relationships and take precedence over all previous and concurrent agreements between the contracting parties.
- 23.2 Amendments and supplements to the license or service agreement must be made in writing. This also applies to the amendment or cancellation of this clause.
- 23.3 Insofar as the written form is required in these GTC for declarations or agreements, electronic documents in text form also fulfill the written form requirement.
- 23.4 Place of performance and place of jurisdiction shall be the registered office of SIMCON (Würselen near Aachen). However, SIMCON shall also be entitled to sue the customer at the latter's place of business or branch office.
- 23.5 The relations between the contracting parties shall be governed exclusively by the law applicable in the Federal Republic of Germany. The application of the UN Convention on Contracts for the International Sale of Goods is excluded. SIMCON shall not participate in dispute resolution proceedings before a consumer dispute resolution body.