

## SyMSpace Licence Terms and Conditions

Version dated February 22<sup>nd</sup>, 2024

This Agreement is concluded by and between Linz Center of Mechatronics GmbH, Altenberger Straße 69, 4040 Linz, Austria, registered at the Linz Regional Court – serving as Commercial Court – under commercial register no. 207547 t (hereinafter also referred to as LCM) and the respective licensee (hereinafter referred to as Licensee) and governs the terms and conditions of use of the software suite SyMSpace (hereinafter referred to as SyMSpace) specified herein.

By concluding the respective licence agreement, the Licensee agrees to the below Licence Terms and Conditions. Installation of the software is subject to express agreement with these Licence Terms and Conditions.

### 1. Definitions

#### 1.1 Site Licence

The Site Licence allows usage of the software by any number of users within a company site (multiple company buildings within a 15km radius can be considered one site). The persons entitled to use the software must work for or be employed by the Licensee and predominantly work at the respective company site, but may use the software without geographical restrictions (e.g. including service technicians working internationally or employees working remotely according to a home-office agreement).

#### 1.2 User License

The User License allows usage of the software by a single user who is employed by the Licensee.

#### 1.3 Company/Companies

In these Licence Terms and Conditions, private and public companies, research institutions and other organisations are referred to collectively as *companies*.

#### 1.4 Source Code

The Source Code refers to code in a human-readable programming language that forms parts of the basis for SyMSpace and its libraries and program parts.

### 2. Subject of the Agreement

The subject of the Agreement is the software SyMSpace developed by LCM in the scope acquired by the Licensee. A list of the available editions of SyMSpace and the available service packages, to which different licence terms and conditions of use apply.

#### 2.1 **SyMSpace Open**, software scope:

- SyMSpace Open Center
- SyMSpace Optimizer

#### 2.2 Site License for **SyMSpace Professional**, software scope:

- SyMSpace Professional Center
- SyMSpace Optimizer
- SyMSpace MotorBox
- SyMSpace Cluster Interface

#### 2.3 Site License for **SyMSpace Professional Cluster**, software scope:

- SyMSpace Professional Center
- SyMSpace Optimizer
- SyMSpace MotorBox
- SyMSpace Cluster Interface
- SyMSpace Cluster Server for operating Licensee-owned computing cluster

#### 2.4 Site License for **Support, Update, and WebGUI access package**

- Add-on to SyMSpace Professional or *SyMSpace Professional Cluster*

#### 2.5 User License for **LCM Computing Cluster package**

- Add-on to *SyMSpace Professional* or *SyMSpace Professional Cluster*

### 3. Copyright, intellectual property rights and rights of use

3.1 LCM is the author of all editions of SyMSpace listed in Section 2. In addition, third parties may also own copyright or intellectual property rights to parts of SyMSpace in the form of integrated libraries. The rights of LCM and of any third parties are unaffected and unrestricted by the below rights of use being granted, and the Licensee acknowledges said pre-existing rights to the software.

3.2 Specific terms and conditions of use for the respective edition according to the licence models below:

Following payment of the agreed fee, LCM shall grant the Licensee the non-exclusive, non-transferrable and non-sublicensable right to use the respective edition of SyMSpace in the scope specified below.

#### 3.2.1 **SyMSpace Open**

3.2.1.1 Both private and commercial use is permitted. The *SyMSpace Open* edition is provided free of charge.

#### 3.2.2 **SyMSpace Professional**

3.2.2.1 Use of this edition is only permissible if a duly signed licence agreement has been concluded for *SyMSpace Professional*. The Licensee acquires a Site Licence as defined in Section 1.1 for the company site specified in the licence agreement and thereby acquires the right to use the software for the purposes of its company under these Licence Terms and Conditions;

3.2.2.2 The Licensee is not permitted to disclose any contained Source Code as defined in Section 1.4.

#### 3.2.3 **SyMSpace Professional Cluster**

3.2.3.1 Use of this edition is only permissible if a duly signed licence agreement has been concluded for *SyMSpace Professional Cluster*. The Licensee acquires a Site Licence as defined in Section 1.1 for the company site specified in the licence agreement and thereby acquires the right to use the software for the purposes of its company under these Licence Terms and Conditions;

3.2.3.2 The Licensee is not permitted to disclose any contained Source Code as defined in Section 1.4.

#### 3.2.4 **Support, Update, and WebGUI access package**

3.2.4.1 The Licensee receives updates to the existing software status in the respective *SyMSpace Professional* or *SyMSpace Professional Cluster* edition, usage and installation support, and access to the *SyMSpace WebGUI* if a duly signed license agreement has been concluded for the respective SyMSpace edition and if the yearly fee for the *Support, Update, and WebGUI access package* has been paid.

3.2.4.2 The Licensee is not permitted to disclose any contained Source Code to the updates as defined in Section 1.4. or to share his personalized access to the SyMSpace WebGUI to third parties.

#### 3.2.5 **LCM Computing Cluster package**

3.2.5.1 The Licensee receives access to the LCM Computing Cluster if a duly signed license agreement has been concluded for the respective *SyMSpace Professional* or *SyMSpace Professional Cluster* edition and if the yearly fee for the *LCM Computing Cluster package* has been paid. The cluster access is personalized for individual users employed at the Licensee.

3.2.5.2 The Licensee is not permitted to share the personalized access to the *LCM Computing Cluster* to other users or third parties.

3.2.5.3 The access to the LCM Computing Cluster is based on the fair use principle. Due to the nature of this shared computing resource, simultaneous requests lead to a reduced number of available nodes. LCM seeks to offer a maximum of available computational nodes to the Licensee but does not guarantee any availability rate.

- 3.2.5.4 In case that continuously high computational loads requested by the Licensee are frequently blocking other cluster users, LCM will contact the Licensee to broker a cluster usage arrangement. LCM reserves the right to revoke the cluster access if no arrangement can be found. In this case, LCM will refund the aliquot annual fee for the *LCM Computing Cluster package* from the time when the access was revoked until the end of the intended year period.
- 3.2.5.5 The Licensee warrants to not execute any code, software, or service on the LCM computing cluster other than SyMSpace or the remote-controlled third party software used by SyMSpace as provided by LCM and to refrain from any modification of the provided software scope beyond the intended use of SyMSpace. LCM reserves the right to immediately revoke the cluster access to the Licensee in case of any violation of this regulation.

### 3.3 General terms and conditions of use for all editions

- 3.3.1 Publication of the software or of parts of the software, such as libraries, components, or models is not permitted.
- 3.3.2 Proprietary notices or markings, logos, licence model designations, serial numbers, labels and/or copy protection mechanisms are not permitted to be removed, modified, decompiled, disguised or suppressed.
- 3.3.3 The Licensee is not entitled to transfer the rights specified herein to third parties or to grant third parties corresponding rights of use. The leasing, loaning, selling, sub-licensing, assignment or transfer of rights to SyMSpace and its respective edition or its libraries is therefore not permitted.
- 3.3.4 LCM owns and retains all rights to, ownership of, and all claims to the software, including all copyright, patents, operating secrets, trade secrets, trademarks and other intellectual property rights.
- 3.3.5 LCM does not transfer any ownership of the software to the Licensee. The Licensee only obtains rights of use to the software in the scope of these Licence Terms and Conditions.
- 3.3.6 LCM is entitled to terminate the licence agreement with immediate effect, without observation of termination rights or notice periods, and thereby to withdraw the rights of use of the Licensee, if the Licensee violates any terms of this Agreement, in particular the intellectual property rights of LCM and/or of third parties.

## 4. Modifications and updates to the software

- 4.1 LCM is entitled, but not obliged, to modify and update the software at its discretion. Whether a separate fee is payable by the Licensee for said modifications/updates depends on the respective licence agreement.
- 4.2 LCM is not obliged to notify the Licensee of any modifications or updates to the software.
- 4.3 The provisions set out in this Section of the License Terms and Conditions apply to any modifications or updates to the software.

## 5. Guarantee

- 5.1 The Licensee is aware of the type, scope, and functionality of the software; accordingly, at the time of handover LCM solely provides a guarantee that the software governed by these License Terms and Conditions is owned by LCM, that LCM therefore has power of disposition over it, and that to LCM's knowledge the software is not subject to intellectual property rights of third parties that limit or exclude contractual use of the software.
- 5.2 The guarantee period is 6 months dating from handover of the software. Any claims must be asserted in writing within that deadline. Furthermore, LCM is only subject to a guarantee obligation if the Licensee notifies LCM of the defect in writing without delay following occurrence of the fault and if:
  - (i) the Licensee provides all documents and information necessary for correcting the fault,
  - (ii) the Licensee or any third parties instructed by the Licensee or for which the Licensee is liable have not interfered with or made any changes to the software, and
  - (iii) the Licensee has verifiably used the software correctly in accordance with LCM's specifications.
- 5.3 The presumption of defects at the time of handover is excluded.
- 5.4 Any right of recourse against LCM is excluded.
- 5.5 LCM assumes no guarantee for attainment of any intended results in connection with use of the software that is governed by these License Terms and Conditions, for any project outcome and/or for any project matter or its actual (commercial) exploitability/usability.

- 5.6 Furthermore, LCM assumes no guarantee and accepts no liability for faults, disruptions, damage or losses that are due to an inadequate configuration or use of SyMSpace for which LCM is not responsible (e.g. configuration of simulation data and parameters) or due to incorrect operation. Any defects due to modified operating system components, interfaces and parameters, data losses, use of unsuitable or faulty hardware, data media etc. are also excluded from the guarantee. There is also no guarantee whatsoever for programs that are subsequently modified by the Licensee and/or by third parties. Furthermore, LCM assumes no guarantee for disruptions, faults or defects that arise due to the Licensee's lack of the relevant legal, tax-related and/or commercial conditions and permissions.
- 5.7 Any modifications, updates, bugfixes to an existing SyMSpace edition will not result in reactivation or resetting of the guarantee of the initial license agreement.
- 5.8 LCM is only obliged to provide the Licensee with updates, patches and bug fixes within 6 months of the order date. LCM shall strive to correct any faults in SyMSpace indicated by the Licensee within a reasonable time period where possible, providing that the fault is reproducible, and that the Licensee provides LCM with adequate information to identify and reproduce the indicated fault. If a fault is due to a specific system setup of the Licensee, rather than to SyMSpace, LCM reserves the right to decide itself whether to modify SyMSpace.
- 5.9 Beyond the provisions of Section 5.8, LCM is not required to maintain the software, provide training or otherwise provide user support.
- 6. Liability, damages and disclaimers**
- 6.1 The rules, restrictions and disclaimers set out in Section 5 above with reference to the guarantee provided by LCM apply equally if the claims of the Licensee are (or could be) based on the legal title of damages or other contractual liability. Beyond that, however, LCM does not assume any liability for damages, including, but not limited to, direct or indirect (consequential) damages or lost profits, guarantees, warranties, product liability or other liability provisions. If LCM is liable under statutory provisions for any damage or losses, LCM's liability is limited to cases of malicious intent or gross negligence and shall strictly not exceed the respective licence fee. The burden of proof in the above cases lies with the Licensee. Since *SyMSpace Open* is provided free of charge, LCM does not assume any guarantee and, in the case of fault, is only liable for gross negligence and malicious intent. For such licences that are provided free of charge, said liability is limited to half the *SyMSpace Professional* licence fee. Unless otherwise agreed herein, any further liability is excluded. Any rights of recourse against LCM are excluded, irrespective of their legal basis. LCM is expressly not liable for any claims asserted by the Licensee's customers or by other third parties. It is expressly noted that this licence provision does not set out any duties of care towards third parties.
- 6.2 Any liability claims against LCM will be time-barred by no later than 6 months following knowledge of the damage or loss.
- 6.3 The mandatory statutory liability for defective products irrespective of fault is excluded from the limitation set out in paragraph 6.1 if a person is injured, killed or suffers injury to health as a result of said products. Rights of recourse are excluded if the damage or loss occurs within the business chain, unless the party entitled to seek recourse provides evidence that the fault was caused in the sphere of responsibility of LCM and was due to gross negligence at minimum.
- 6.4 Claims for compensation for lost profit and claims for compensation of expenses for interruption to operations, recalls, production downtime or indirect damage or losses due to the supply of goods or services that do not conform to the terms of the Agreement are excluded.
- 6.5 In particular, LCM does not assume any liability for faults that may occur in the course of installing or operating SyMSpace or installing updates. That includes, for example, any loss of data, disruptions or interference with other software, and damage to either the hardware required to run SyMSpace or the hardware for which a control was designed using SyMSpace. Furthermore, LCM does not assume any liability whatsoever for any failure or reduced performance of any data centre commissioned by the Licensee (cloud providers etc.) or any damage or losses caused by server overload.
- 6.6 The Licensee is itself responsible for its own ongoing and appropriate data protection.
- 6.7 The Licensee is responsible for implementing its own hardware safety measures to protect the hardware used and to ensure its safe operation.
- 6.8 If any claims of infringement of intellectual property rights are asserted against LCM, LCM shall notify the Licensee without delay. The Licensee shall indemnify and hold LCM harmless in the event of an infringement of third-party intellectual

property rights due to any behaviour on the part of the Licensee that goes beyond the scope of this Agreement, or due to any changes and/or additions to the software made by the Licensee on its own responsibility – even in connection with third-party deliverables.

- 6.9 The Licensee is liable in the full scope of the relevant statutory provisions for any damage or losses whatsoever incurred by LCM due to a violation by the Licensee of these Licence Terms and Conditions, in particular against the copyright of LCM or any rights (in particular intellectual property rights) of third parties.

## **7. Supplementary terms and conditions for "nightly build" versions**

- 7.1 "Nightly build" versions refer to software whose development has not yet been completed and whose functionality has not yet been tested.
- 7.2 The Licensee expressly acknowledges that each nightly build version of the software is a test product and may contain bugs, faults and other problems that may result in malfunctioning and other disruptions to the system, including, but not limited to, system crashes, system interruptions and data loss. Damage to hardware cannot be ruled out either. The Licensee is alerted to the need to take care and not to rely whatsoever on the performance or functioning of the nightly build version of the software. Nightly build versions are solely provided at the risk of the customer. With the exception of cases of gross negligence and malicious intent, LCM does not assume any liability, guarantee or warranty whatsoever for the functionality, safety/security, marketability or other properties of such nightly build versions.
- Nightly build versions of the software and their documentation are provided to the Licensee in an as-is condition.

## **8. Confidentiality**

- 8.1 Any program parts, files, libraries and documentation marked as confidential elements constitute confidential information. The Licensee shall not disclose said information (irrespective of whether it relates to the software or not) to third parties and shall not make said information accessible to third parties without the prior written agreement of LCM. The Licensee agrees to treat the software with the same care and confidentiality as its own business secrets and operating secrets and with at minimum due professional care.
- 8.2 The confidentiality requirement expressly does not apply to information
- a) that was already publicly known and available at the time that the information was made available or that has subsequently become publicly known and available through no fault of the Licensee,
  - b) that was or is lawfully obtained and disclosed by a third party without violating a confidentiality requirement,
  - c) that was verifiably known to the Licensee in a lawful manner and on a non-confidential basis before it was made available,
  - d) that the Licensee is obliged by mandatory law to disclose in judicial proceedings, authority proceedings or other proceedings.
- The Party that cites an exemption from the confidentiality requirement bears the burden of proof that this confidentiality requirement does not apply to said information.
- 8.3 The confidentiality requirement expressly does not apply to the *SyMSpace Free* edition.

## **9. Severability**

- 9.1 If any provisions of these Licence Terms and Conditions are or become wholly or partially ineffective or unenforceable or if there is a gap in the Agreement, the effectiveness of the other provisions will be unaffected. In that event, the ineffective provision or gap shall be replaced by a provision that comes as close as possible to the commercial purpose and commercial intent of the Parties.

## **10. Written form**

- 10.1 No oral side agreements have been made. Any amendments or additions to this Agreement must be made in written form. That rule also applies to any waiver of the requirement for written form.
- 10.2 The general terms and conditions, purchasing terms and conditions, forms and other provisions of Licensees do not apply.

10.3 The German-language version of these Licence Terms and Conditions shall take precedence if there are any differences of interpretation between the German-language and foreign-language versions hereof.

**11. Applicable law, place of jurisdiction and place of performance**

11.1 This Agreement is solely governed by Austrian law, with exclusion of international conflict-of-law rules. The United Nations Convention on Contracts for the International Sale of Goods expressly does not apply.

11.2 The sole jurisdiction of the relevant court in Linz, Austria, is agreed by the Parties for any disputes that may arise from or in connection with this Agreement. The place of performance is Linz, Austria.