

VAR Agreement for VARCHART

1 Contracting Parties and Effective Date

1.1 Contracting Parties

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Type of Entity

Registered Offices

.....

Represented by

.....

(hereinafter called Reseller) and

NETRONIC Software GmbH

Type of Entity Company with limited liability

Registered Office Pascalstraße 15
52076 Aachen, Germany

Represented by Dr. Andreas Schmitz
(Managing Director)

(hereinafter called NETRONIC)

1.2 Effective Date of Agreement

This Agreement is made as of the day of between the contracting parties.

2 Definitions

2.1 Calendar Quarter

"Calendar Quarter" means the periods January 1 through March 31, April 1 through June 30, July 1 through September 30 and October 1 through December 31.

2.2 Calendar Year

"Calendar Year" means the period from January 1 through December 31.

2.3 Combined Program

"Combined Program" means an integrated software program consisting of (a) a Runtime Version and (b) Reseller's Program.

2.4 Dealer

"Dealer" means a person or entity which does or will obtain a Combined Program from Reseller for sublicensing to End Users.

2.5 Development Version

"Development Version" means a set of materials as specified in Exhibit C.

2.6 End User

"End User" means a person or entity which obtains a Combined Program to use in operating its own business.

2.7 Module

"Module" means a subsystem of VARCHART. The Modules are identified and described in Exhibit A.

2.8 Platform

"Platform" means a combination of a specific type of computer, operating system and window system as reflected in the table in Exhibit A.

2.9 Reseller's Location

"Reseller's Location" means the address of Reseller first stated above.

2.10 Reseller's Program

"Reseller's Program" means the computer software program identified in Exhibit B.

2.11 Runtime Version

"Runtime Version" means the object code software of VARCHART components to be integrated in a Combined Program according to Exhibit A.

2.12 Sublicense

"Sublicense" means the part of sublicense agreement which, under Section 4.3 Reseller must cause each End User or Dealer to enter into.

2.13 VARCHART

"VARCHART" means NETRONIC's library of software components for creating applications with a graphical user interface, as they may be modified by NETRONIC from time to time. The purpose of the VARCHART software components is to graphically display, manipulate and schedule data generated by other software in the form of tree structure, network structures or Gantt diagrams.

3 Legal Situation of the Reseller

The Reseller acts in its own name and for its own account. Reseller will safeguard the interests of NETRONIC with the due diligence of a responsible businessman without being authorized to act in the name of NETRONIC. Reseller intends to market and promote Combined Programs and services for this.

4 Grant of License

4.1 Grant

NETRONIC grants to Reseller a worldwide non-transferable license to use VARCHART (the "License")

- a) only to develop Combined Programs with VARCHART and Reseller's Programs according to Exhibit B
- b) only to reproduce, include and grant Sublicenses for Runtime Versions, each as an integral part of a Combined Program
- c) only to demonstrate use of Runtime Versions as an integral part of a Combined Program and
- d) only to demonstrate Runtime Versions or install Runtime Versions as an integral part of a Combined Program on a trial basis lasting no longer than 90 days.
- e) only to use NETRONIC's trademarks in connection with Reseller's marketing efforts for the Combined Program.

The License is in all respects non-exclusive. Reseller shall have no rights concerning VARCHART other than expressly provided in this Agreement.

4.2 Delivery of Materials

Promptly after both parties sign this Agreement NETRONIC will deliver to Reseller the materials laid down in Exhibit C to use only for purposes stated in this Agreement.

4.3 Sublicenses

Sublicense-Agreements between Reseller and an End User or a Dealer will in view of VARCHART contain at least the following provisions:

The End User will obtain from Reseller a non-exclusive and non-transferable right to use a Combined Program. End User or Dealer must not copy Combined Program nor remove any notice of copyright, trade name, trademark or any other proprietary notice of NETRONIC from a Combined Program.

4.4 Reproduction

Reseller shall have no right to and shall not reproduce any Runtime Version or Module except as an integral part of a Combined Program and in all other respect in accordance with this Agreement. Except as provided in this Agreement Reseller shall not allow any End User, Dealer or other person or entity to reproduce any of the foregoing. Reseller shall have no right to and shall not distribute to any third party any written materials provided by NETRONIC.

4.5 Copy Protection

Reseller shall assure that copy protection programs or functions included in each Combined Program protect the Runtime Versions and Modules at least as broadly and effectively as they protect Reseller's Program. Reseller shall advise NETRONIC in writing of the protection measures included in each Combined Program before granting any Sublicenses.

5 Terms and Conditions of Payment

5.1 License Fees for Development Versions

Reseller shall pay NETRONIC the license fee for the Development Versions as specified in Exhibit D.

5.2 Maintenance and Support Fee

For maintenance and support Reseller shall pay NETRONIC an annual fee as specified in Exhibit D. The maintenance and support fee is due at the beginning of each maintenance period. Each such payment shall be deemed to be fully earned when paid, and shall be nonrefundable.

5.3 Royalties for Runtime Licenses

Reseller shall pay NETRONIC royalties for the Runtime Versions as specified in Exhibit D.

5.4 Taxes, Postage and Packing

VAT and other taxes or other charges coming into being outside Germany shall be only for Reseller's account.

All expenses for posting and packing will be charged in addition.

5.5 Payments

Payments will be made in Euro. If not specified differently in this Agreement, payments are due without deduction within 21 days after the receipt of NETRONIC's invoice by Reseller.

6 Term

Unless terminated sooner as provided in Section 11, the term of this Agreement shall be the period stated in Exhibit D. The Agreement will expire without notice after this term unless mutually renewed by both parties explicitly.

7 Warranty

7.1 Warranty

NETRONIC warrants to Reseller that during 12 months after the first shipment of a Development Version to the Reseller pursuant to this Agreement, the Development Version and Runtime Versions will function in all material respects according to NETRONIC's user documentation provided that the Development and Runtime Versions are used according to NETRONIC's operating instructions and on equipment for which it is intended and provided such equipment has been properly maintained.

7.2 Claim

To make a claim under Section 7.1, Reseller shall as soon as possible (within 10 days after discovery of the defect) provide NETRONIC with written notice of the alleged defect, documented in hard copy and in machine readable form, with instructions sufficient to enable NETRONIC to reproduce both the claimed defect and the output which results from execution of the code. NETRONIC shall analyze and exert commercially reasonable efforts to correct any actual defect.

7.3 *Remedy*

If a Module in a Combined Program fails to perform as warranted, then NETRONIC shall within 30 days after receipt of the items specified in Section 7.2, at NETRONIC's option exert commercially reasonable efforts to repair the Module or, in the alternative, replace the Development and Runtime Versions containing the Module. Reseller acknowledges and agrees that NETRONIC's only obligation to Reseller shall be to perform the repair or replacement set forth above.

7.4 *Disclaimer*

Further claims of Reseller against NETRONIC relating to warranty are hereby excluded.

8 Maintenance and Support

8.1 *Hotline Service*

Reseller shall have the right to phone/fax/email NETRONIC during NETRONIC's regular business hours to make reasonable inquiries about use of portions of VARCHART in each Development and Runtime Version. NETRONIC shall advise Reseller of one or more phone numbers for this purpose. NETRONIC shall endeavor to respond promptly to such inquiries. Reseller and NETRONIC shall each bear its own phone costs.

8.2 *Maintenance*

NETRONIC's shall maintain the Modules by providing and delivering to Reseller the following:

- New releases of VARCHART modules for Development and Runtime Versions
- Adaptation of VARCHART to new versions of the operating systems specified in Exhibit A
- Bug Fixes
Severe bugs which prevent working with VARCHART for a specific purpose and for which no work-around exists will be fixed in an intermediate release within 30 days. Other bugs will be fixed in the next regular release. Certain types of bug fixes may require that the client makes available test data and/or environment specifications to allow NETRONIC to reproduce the bug.

8.3 *Training*

Obligations of NETRONIC to provide Training for Reseller will be specified by the parties in Exhibit D if necessary.

8.4 *Disclaimer*

Further claims of Reseller against NETRONIC relating to Maintenance and Support are hereby excluded.

9 Liability and Default

9.1 *Liability and Default*

Neither party will be liable for pecuniary loss or consequential damage, such as lost profit, production stoppages or recovery of lost data, except as a result of willful breach of Section 4 "Grant of License" by Reseller.

Either party will only be liable for damages inflicted to the other party caused by recklessness negligence or by intent of the damaging party notwithstanding the legal reason of the liability for damages. However, in any case liability of the harmful party will be limited up to an amount of EUR 50,000.

9.2 *Force Majeure*

Either party will not be liable for any nonperformance or delay caused by any condition or event beyond its reasonable control.

10 Patents and Copyrights

NETRONIC will indemnify Reseller for claims the basis of which is an infringement of a patent or copyright by VARCHART, culpably caused by NETRONIC, and will pay Reseller resulting costs finally awarded, provided that:

- a) Reseller promptly notifies NETRONIC of such claims
- b) Reseller cooperates with NETRONIC in order to defend against such claims and
- c) NETRONIC has sole control of all defenses and related settlement negotiations.

If such claim occurs, or in NETRONIC's opinion is likely to occur, Reseller agrees to permit NETRONIC, at its option and expense, either to procure for Reseller the right to continue using VARCHART or to replace or modify the same so that it becomes non-infringing.

The limitations of liability set forth in Paragraph 9.1 shall not apply to claims for infringement.

The foregoing states the entire obligation of NETRONIC with respect to infringement of patents and copyrights.

11 Termination of the Agreement

11.1 *Premature Termination*

This Agreement may be terminated prematurely, without notice, only for justifiable reason. A justifiable reason can be e.g. any important alteration of juridical structure, the management or the financial situation of the Reseller, which may grossly affect the results NETRONIC could legitimately expect from the execution of the Agreement.

11.2 *Termination by Registered Letter*

Notice of termination must be given by registered letter.

11.3 *Effects of Termination*

On the effective date of termination or expiration of this Agreement:

- b) All invoices and other debts, obligations and liabilities of Reseller to NETRONIC shall automatically become due and immediately payable;

- b) Reseller shall immediately stop and thereafter refrain from using NETRONIC's trademarks and trade secrets, all materials loaned to Reseller pursuant to Section 4.2 and all other materials provided by NETRONIC insofar as this material is not required for software maintenance of Reseller's end users. Reseller may not reproduce, include and grant any further Sublicenses for Runtime Versions, each as an integral part of a Combined Program.
- c) NETRONIC shall have no further obligation to provide any goods or services to Reseller, regardless of when such goods or services were or would be requested or ordered.
- d) Termination of this Agreement shall not discharge any obligation or liability incurred by Reseller before or after termination.

11.4 *Disclaimer*

No claims for compensation can be lodged by reason of the termination of the Agreement.

12 **Reports and Audits**

12.1 *Reports of Reseller*

By the 30th day after the end of each Calendar Quarter Reseller shall deliver to NETRONIC a written report stating

- the number of Combined Programs delivered to End Users and to Dealers during the Calendar Quarter;
- Reseller's installation identification number or equivalent identification;
- calculation of royalty due to NETRONIC on account of each Sublicense in accordance with Exhibit D.

12.2 *Audits*

- a) To verify the accuracy of Reseller's reports made pursuant to Section 12.1, help assure Reseller correctly accounts for and calculates royalties due to NETRONIC and complies with Reseller's other obligations, NETRONIC shall have the right, through an authorized public accountant NETRONIC selects, to audit Reseller's accounting records, files and other documents the authorized public accountant deems relevant to verify the parts of Reseller's reports and calculations that are disagreed. Reseller shall cooperate with NETRONIC and any public accountant or other representative retained by NETRONIC in any such audit. NETRONIC shall have the right to conduct an audit once per year. NETRONIC shall provide at least one week's notice, in writing, of each audit and each audit shall be conducted during normal business hours.
- b) If any audit discloses an understatement or underpayment of royalties then Reseller shall, within 10 days after receipt of the audit report, pay NETRONIC the amount due. If the understatement exceeds 3% of the royalty actually due for any period covered by the audit then Reseller shall also reimburse, immediately on demand, all NETRONIC's audit costs and shall pay NETRONIC a service charge on account of late payment of such amounts at the rate 1-1/2 percent per month (18 percent per year) from the date originally due until paid.

13 Trade Secrets

Reseller and NETRONIC will not, even after the expiration of the Agreement, use or communicate to third parties any trade secrets which they may have in any way learnt through their activities under this Agreement.

14 Prohibition to assign the Agreement

Without the mutual agreement of the parties this Agreement or parts hereof will not be assignable.

15 Governing Law

This Agreement will be construed under and governed by the UN Law On The International Sale Of Goods. Reseller hereby confirms, that the provisions of this Agreement are in compliance with the mandatory domestic law of the Reseller.

16 Severability

If all or part of any provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement shall remain in effect.

For Reseller:

For NETRONIC:

Date

Date

by

by

Exhibit B

Reseller's Program, Combined Program and VARCHART-Modules to be Integrated

<u>Name of Reseller's Program</u>	<u>Name of Combined Program</u>	<u>VARCHART Modules to be integrated</u>
.....
.....

<u>Name of Combined Programs</u>	<u>Description of Combined Programs</u>
.....
.....

For Reseller:

For NETRONIC:

Date:

Date:

by

by

Exhibit C

Materials to be delivered for a Development Version

Object Code Software	- VARCHART components according to the Modules for a Platform as specified in Exhibit A of this Agreement
Documentation	For all VARCHART modules to be delivered: - User Guide and Reference Manual on paper as well as on CD ROM - Help on CD ROM
Sample Configurations	Sample configurations for the VARCHART modules as specified in Exhibit A

For Reseller:

Date:

by

For NETRONIC:

Date:

by

If the projected volume of Runtime licenses is reached according to actual sales of Combined Program before the end of the Term, further Runtime Licenses can be purchased at the same price as before.

If the projected volume of Runtime Licenses is not reached and a surplus of Runtime Licenses paid but not sold remains after the Term stated above, then this surplus will be credited for an extended term as paid but not yet sold.

Upgrades to higher volume groups can be made at any time during the Term and the better royalty per Runtime License will apply from the Quarter on in which the upgrade has been made.

Invoicing Address

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Key Contact at Reseller

..... Phone:
..... Email:

Key Contact at NETRONIC

..... Phone:
..... Email:

For Reseller:

For NETRONIC:

Date:

Date:

by

by