

# **General Terms and Conditions of Sale of simatec gmbh**

As of December 2017

## **1. Scope**

### **1.1**

Unless otherwise agreed, the following General Terms and Conditions of Sale (hereinafter referred to as "Conditions") shall apply exclusively to all - current and future - deliveries to customers as defined in Clause 1.2. The terms and conditions of the customer shall not form part of any contract even if we do not expressly exclude them.

### **1.2**

These Conditions only apply to companies within the meaning of Section 14 German Civil Code (BGB), legal persons under public law or special funds under public law (hereinafter referred to as "customers").

## **2. Conclusion and Content of the Contract**

### **2.1**

Our offers are non-binding. Unless otherwise stipulated in the order, the customer is bound by its order for a period of 14 days as from the date of receipt by us. The Contract shall come into effect by way of our written order confirmation or delivery, where we confirm the order in writing or effect delivery within the said time limit.

### **2.2**

Oral ancillary agreements or commitments by our employees which go beyond the content of the written contract or which modify these conditions in such a way that is disadvantageous to us, are only valid where they are confirmed in writing.

### **2.3**

Illustrations, drawings, samples, brochures, videos and photos provided by us, as well as colour specifications, weight specifications and measurements which we make available, only represent approximate values insofar as they are not a) expressly designated as binding or b) essential.

### **2.4**

Our product specifications do not constitute any guarantee.

## **3. Price**

### **3.1**

Our prices are FCA Pforzheim (Incoterms® 2010) net, in euro and exclusive of the cost of packaging and value added tax at the applicable rate.

### **3.2**

In the case of contracts with a time to delivery of more than 2 months or in the case of annual contracts or other framework contracts or price agreements with a duration of more than 2 months (e.g. partial deliveries under call-off orders), we are entitled to adjust the agreed prices accordingly where, following conclusion of the contract, there are major changes in manufacturing costs (particularly in the cost of materials, energy or raw materials or changes due to exchange rate fluctuations between CHF and EURO) and we are not responsible for these changes. Any price increase shall be a maximum of 10%.

## **4. Delivery and Transfer of Risk, Reservation of Own Supply, Partial Deliveries**

### **4.1**

Delivery shall be in accordance with FCA Pforzheim (Incoterms® 2010).

### **4.2**

The risk shall pass to the customer in accordance with FCA Pforzheim (Incoterms® 2010). Where shipping is delayed through no fault on our part, the risk shall pass as soon as we have notified the customer of our readiness for shipping and this shall be so even in the exceptional case that we assume other responsibilities, e.g. shipping costs or shipping, including that performed by our own transport personnel.

### **4.3**

Our delivery obligation is subject to the proviso that we receive correct and timely delivery from our own suppliers, unless we are responsible for the incorrect or late delivery. This proviso entitles us to withdraw from the contract. In this case, claims for damages are excluded.

### **4.4**

Partial deliveries are permitted to a reasonable extent.

## **5. Delivery Period, Delay in Delivery**

### **5.1**

The time to delivery, specified in the order confirmation, or otherwise indicated by us, is approximate and therefore non-binding.

### **5.2**

The time to delivery commences on receipt of the order confirmation but not before clarification of all details relating to order processing and technical issues; the submission of any documents, permits and clearances necessary for delivery, which must be obtained by the customer; and not before the receipt of any agreed down-payment or payment security.

### **5.3**

Time to delivery is deemed to have been complied with where, prior to its expiry, the goods are loaded onto the means of transport provided by the customer. Where dispatch is delayed through no fault on our part, the time to delivery is deemed to have been complied with on notification of readiness for delivery.

#### **5.4**

Requests for changes made by the customer shall extend the time to delivery until we have examined their feasibility and for the period required for implementing the new requirements into the production. Where ongoing production is suspended due to the request for changes, we may give priority to and complete other orders. We are not obliged to keep production capacity free during the period of the delay.

#### **5.5**

In the case of a delay in delivery, our liability for simple negligence shall be limited to 0.5% for each full week of delay, but not exceeding a total of 5% of the net invoice amount for the part of the delivery affected by the delay. This shall be without prejudice to the right to claim damages in lieu of performance pursuant to Clause 10. The customer shall notify us, by no later than conclusion of the contract, of any contractual penalties applicable to its customers.

#### **5.6**

Where dispatch is delayed as a result of circumstances for which we are not responsible, we shall charge for storage at our works at a monthly rate of at least 0.5% of the net invoice amount for the stored delivery.

### **6. Force Majeure**

#### **6.1**

Unforeseen and unavoidable events, and events for which we cannot be held responsible (e.g. operational breakdown due to force majeure, strikes or lockouts, problems in the procurement of material or energy, transport delays, shortages of staff, energy or raw materials, official measures as well as difficulties in obtaining authorisations esp. import or export licences), shall extend the time to delivery by the duration of such events and their effects. This also applies where our own suppliers are subject to such events or where they arise during an existing period of delay.

#### **6.2**

Where the obstruction caused by the event under Clause 6.1 is not purely temporary, both parties to the contract are entitled to rescind. The right to claim damages is excluded in the cases referred to in Clause 6.1.

### **7. Payment**

#### **7.1**

Unless otherwise agreed, payments must be made net, to our bank account, within 30 days of the date of invoice, without any deductions and free of charge. Compliance with the payment deadline is determined by the date on which the invoice amount is credited to our bank account.

#### **7.2**

In the event of default on payment, we will charge interest amounting to 9 percentage points above the base rate, but in any case no less than 10 %.

### **7.3**

The customer can only assert a right of set-off or retention against our claims where its counter-claims are uncontested or have been upheld by a final court judgement. In addition, the customer is only permitted to assert the right of retention insofar as its counter-claim is based on the same contractual relationship.

## **8. Reservation of Title**

### **8.1**

We reserve title to the goods delivered until all payments have been received which arise under the business relationship with the customer. Where there is a current account relationship, the reservation of title extends to the recognised balance.

### **8.2**

The customer is obliged to handle the reserved goods with care and keep them in good condition; in particular it is obliged to insure them sufficiently against loss or damage, at its own expense, for the replacement value. The insurance policy and evidence of payment of the premiums must be submitted to us on request. The customer hereby assigns to us any claims arising under the insurance contract subject to the condition subsequent that title passes. We hereby accept the assignment.

### **8.3**

The customer is entitled to use the reserved goods in the ordinary course of business. In so doing, any treatment or processing of the reserved goods by the customer shall be undertaken on our behalf without involving any obligations on our part. Where the reserved goods are combined with other goods, we shall acquire co-ownership of the new product in accordance with the ratio of the net invoice value of the reserved goods to the other materials.

### **8.4**

The customer is entitled to resell the reserved goods, or the new goods which the customer has manufactured from the reserved goods, in the ordinary course of business.

### **8.5**

The customer hereby assigns to us, in advance and in full, all receivables to which it becomes entitled as a result of the resale or subsequent use of the reserved goods or of the new goods which it has manufactured from the reserved goods.

### **8.6**

The customer is entitled to collect the receivables assigned to us provided it complies with its payment obligations out of the revenue collected.

### **8.7**

Where the customer ceases to comply with its payment obligations, we can revoke the authorisation for further sale and use of the reserved goods and require the customer to disclose to us the assigned receivables and the respective debtors, provide us with all the information necessary to effect recovery, hand over all the accompanying documentation and notify its debtors of the assignment. Redemption of the reserved goods does not constitute rescission of the contract. If we declare rescission of the contract we shall be entitled to sell the goods as we think fit.

### **8.8**

Any attempt to seize or otherwise get hold of the retained goods by third parties must be reported to us without delay. The costs arising as a result of defending such attempt shall be borne by the customer insofar as they cannot be recovered from the third party.

### **8.9**

Where the value of securities exceeds our claims by more than 10%, we shall, at the customer's request, release securities in this regard at our own discretion.

## **9. Liability for defects**

### **9.1**

The customer can only assert any rights based on material defects if it has properly complied with its inspection and notification obligations under Section 377 Commercial Code (HGB) in relation to the delivered goods.

### **9.2**

In the event of a legitimate notification of defects, we will choose either to supply replacement goods or repair the defect. Where subsequent performance fails or additional time for performance under the statutory provisions is unnecessary, the customer may request a reduction in the price or, in the case of a major defect, rescind the contract. In such cases, the customer is also entitled to claim damages in lieu of performance in accordance with Clause 10.

### **9.3**

We will not assume the cost of subsequent performance which arises due to the fact that, following delivery, the purchased item is transported to a location other than the customer's place of business.

### **9.4**

Insofar as the defect arises from a substantial third-party product, we are initially entitled to restrict our liability to the assignment of the claims for liability for defects to which we are entitled vis à vis the supplier of the third-party product, unless satisfaction by way of the assigned claims fails or cannot be obtained for some other reason. In this case, the customer is entitled to the rights under Clause 9.2.

### **9.5**

The infringement of third-party rights only represents a defect where these rights exist in the Federal Republic of Germany.

## **10. General Liability**

### **10.1**

We shall be liable for intent or gross negligence, fraudulent concealment of defects, death, personal injury or damage to health or under the Product Liability Act, in accordance with the law. Where we assume a guarantee, we shall be liable in accordance with any provisions of the guarantee.

## **10.2**

In the case of simple negligence, we are only liable for the breach of a substantial contractual condition, which is one which must be fulfilled in order for the contract to be properly implemented and compliance with which the customer generally expects and is entitled to expect; this liability is limited - in the absence of any provision to the contrary relating to damages for delay under Clause 5.5 - to compensation for foreseeable and customary loss. In all other cases of simple negligence, liability is excluded.

## **10.3**

Claims by the customer for defects shall lapse after 12 months from the passing of risk, other claims after 12 months from the start of the statutory period of limitation.

In derogation from sentence 1 of this Clause 10.3, in the event that we are liable under a guarantee, the guarantee provisions shall apply, and, in the case of our liability for the fraudulent concealment of a defect and claims for damages under the Product Liability Act, as well as for death, personal injury or damage to health and due to the intentional or grossly negligent breach of obligations, the statutory limitation provisions shall apply.

## **11. Packaging**

Our packaging arising in Germany, but not that attributed to the private end-user, can be returned to us at our place of business during the normal hours of business; the customer shall bear the cost of return. Packaging must be returned clean, free of extraneous material and sorted according to type.

## **12. Place of Performance, Jurisdiction, Applicable Law**

### **12.1**

The place of performance for all services under the delivery contracts is our registered office.

### **12.2**

**The place of exclusive jurisdiction regarding all disputes arising from the delivery contract shall be that of our registered office.** We are, however, also entitled to sue the customer in the court with jurisdiction over the customer's registered office.

### **12.3**

German law applies. The UN Convention on Contracts for the International Sale of Goods of 11 April 1980 is excluded.