

# **Simsystems GmbH**

## **General Terms and Conditions**

### **Status: September 2013**

#### **§ 1**

##### **General / Scope**

###### **(1)**

Simsystems GmbH General Terms and Conditions shall apply exclusively.

###### **(2)**

These General Terms and Conditions shall apply for all current and future business relations.

###### **(3)**

Where the purchaser has his own different, conflicting or additional terms and conditions, these shall not form part of the contract, even when simsystems GmbH has full knowledge of them, unless their validity is expressly agreed in writing.

###### **(4)**

The general terms and conditions of simsystems GmbH shall still apply when simsystems GmbH supplies goods to the purchaser without reservation, in full knowledge of the purchaser's terms and conditions which conflict with or differ from the present terms.

#### **§ 2**

##### **Quotation / Quotation documents**

###### **(1)**

Quotations are non binding.

###### **(2)**

By the time the order is completed, if significant increases in the price of raw materials, wages, taxes, social security contributions and / or difficulties due to laws and / or other forms of statutory regulations have arisen, and these can be shown to affect considerably the calculation on which the quotation from simsystems GmbH is based, simsystems GmbH shall be entitled to add an appropriate surcharge.

###### **(3)**

We reserve the right to change specifications and make reasonable changes to form, colour and / or weight. Compliance with technical data or other information / details from catalogues, printed materials, parts lists and / or drawings / sketches etc. shall only be confirmed in so far as specific data, measurements or details are expressly listed in the technical description included with the quotation. A general reference to documents or drawings shall be deemed only to confirm the function.

###### **(4)**

If the order qualifies as a quotation in accordance with § 145 of the German Civil Code (BGB), simsystems GmbH shall accept this within a period of 4 weeks. Acceptance shall either be declared in writing or through provision of the service and notification thereof to the purchaser or through the supply of goods to the purchaser.

###### **(5)**

In the case of obvious errors in the quotation or written order confirmation, simsystems GmbH reserves the right to withdraw from the contract without prejudice to other rights.

###### **(6)**

Completion of the contract is subject to timely delivery to simsystems GmbH from its suppliers, in keeping with the terms of the contract. This shall apply only in cases where non delivery is not attributable to simsystems GmbH, in particular where a congruent hedging transaction is made with simsystems GmbH's supplier. Should simsystems GmbH still be unable to provide the service, the purchaser shall be immediately informed that the service is unavailable. Any outlay on the part of the purchaser shall be reimbursed immediately.

###### **(7)**

simsystems GmbH reserves property rights and copyright on all illustrations, drawings, drafts, models, samples, calculations, estimates and other documents; they shall not be made available to third parties. This shall apply in particular to written documents which are marked "confidential". Such data shall not be disclosed to third parties without express written agreement from

simsystems GmbH. These documents shall be returned to us unrequested free of charge when they are no longer required. The purchaser shall be liable for any loss or damage. These items shall be returned to us at any time upon request. The purchaser shall have no right of retention to these items. The items shall be stored securely and may not be copied without prior written agreement from simsystems GmbH. The above named items and their intellectual contents shall be held by the purchaser in strict confidence, unless they are already in the public domain or enter the public domain through no fault of the purchaser. In the case of items on which we have trademark rights and/or which are protected for us as commercial / company secrets, the purchaser shall only be permitted to use the item in accordance with simsystems GmbH's express conditions, unless specific usage methods are permitted to a third party.

### **§ 3**

#### **Scope of supply**

##### **(1)**

In his order the purchaser shall be obliged to state the individual specification of the respective supply item in accordance with the specific intended application, in consideration of all the relevant technical factors. If this information from the purchaser is missing or incomplete, simsystems GmbH general product information shall additionally apply where necessary.

##### **(2)**

The written order confirmation from simsystems GmbH shall be definitive for the scope of supply. Should the contract be concluded by accepting a time limited quotation from simsystems GmbH, the contents of the quotation from simsystems GmbH shall be definitive for the contents of that contract. Supplementary agreements and changes shall require written confirmation from simsystems GmbH.

##### **(3)**

simsystems GmbH shall not accept the return of packaging used in shipment or any other packaging in accordance with the German packaging regulation, with the exception of pallets. The purchaser shall dispose of the packaging at his own cost.

##### **(4)**

During the delivery period we reserve the right to amend the design or form based on technical improvements and / or legal requirements, provided these do not significantly change the supplied item or

agreed delivery and the amendments are acceptable to the purchaser.

### **§ 4**

#### **Prices / payment terms**

##### **(1)**

In the absence of any specific agreement, prices shall apply "ex works" Incoterms 2000, including loading inside the factory, but excluding packaging, transport and transport insurance, plus the statutory rate of VAT.

##### **(2)**

Unless agreed otherwise, prices for all supplied goods shall be the list prices valid at simsystems GmbH on the day the invoice is generated (invoice date).

##### **(3)**

Discount shall only be offered by specific written agreement.

##### **(4)**

Unless stated otherwise in the order confirmation/quotation, the net sales price (before deductions) shall be due for payment within 30 days of the date of invoice. If the purchaser defaults on payment, simsystems GmbH shall be entitled to charge interest on the money owed at a rate of 8 percentage points above the annual base interest rate of the European Central Bank. simsystems GmbH reserves the right to provide evidence of and claim for greater losses resulting from default. For his part the purchaser shall have the right to prove a lower level of loss.

##### **(5)**

simsystems GmbH may issue part invoices for part shipments. Payment terms shall run separately for each part invoice.

##### **(6)**

The purchaser shall only be entitled to offsetting rights or rights of retention if his counterclaims are declared legally valid, are undisputed or are recognised by simsystems GmbH. The purchaser shall only be entitled to exercise a right of retention if his counterclaim applies to the same contractual relationship. simsystems GmbH shall be entitled to set payments off against the oldest outstanding debt, notwithstanding the purchaser's settlement terms.

##### **(7)**

If there is a significant deterioration in the purchaser's financial situation after the contract is concluded, or

should simsystems GmbH become aware of an earlier deterioration of the financial situation after the contract is concluded, and this gives rise to serious doubts concerning the purchaser's credit worthiness, simsystems GmbH shall be entitled to demand either payment in advance or a payment bond, at its own choosing. simsystems GmbH shall be entitled to withdraw from the contract if the purchaser fails to comply with this demand.

## **(8)**

Prices shall apply exclusively to delivery and performance within the Federal Republic of Germany.

## **§ 5**

### **Call off orders**

Call off orders shall be taken within the agreed time scales and/or on the agreed dates.

## **§ 6**

### **Delivery period / delayed delivery**

#### **(1)**

At the start of the delivery period specified by simsystems GmbH it shall be assumed that all technical queries have been clarified and the purchaser's obligations have been met in timely and proper manner. In particular this includes any documents to be obtained or produced by the purchaser, such as drawings, descriptions, any permits or approvals to be submitted by the purchaser and any agreed prepayments credited to simsystems GmbH's account. Should any of these prerequisites be missing or should there be any outstanding queries that the purchaser has not yet clarified, the delivery period stated by simsystems GmbH shall be delayed until the purchaser has resolved the outstanding situation.

#### **(2)**

The delivery period shall be deemed to have been met when the supply item has left the factory by the agreed delivery date, or the delivery date stated by simsystems GmbH, or at the latest by the calendar week following this date, or the purchaser has been notified that the item is ready to ship by the calendar week stated in the order confirmation.

#### **(3)**

The delivery period shall be extended appropriately in the event of any unforeseen events beyond simsystems GmbH's control, in so far as such circumstances can be shown to affect the completion or delivery of the item under contract. This shall also apply where such events occur at one of simsystems GmbH's subcontractors. This shall apply in particular in the event of circumstances arising from labour disputes, particularly strikes and lockouts. Delivery delays resulting from the aforementioned circumstances shall not be attributable to simsystems GmbH even if they arise during an existing delay. simsystems GmbH shall notify the purchaser as soon as possible regarding the start and end of such situations.

#### **(4)**

simsystems GmbH shall not be deemed to have defaulted on delivery until the purchaser has set an extension time of 2 weeks in writing, and simsystems GmbH fails to delivery within this extension time.

#### **(5)**

Should simsystems GmbH suffer delivery delays, all compensation claims on the grounds of delayed performance shall be excluded, notwithstanding the purchaser's other rights in the event of slight egligence.

## **§ 7**

### **Cancellation costs**

Should the purchaser cancel an order without justification, where the purchaser has been set an appropriate fulfilment period, simsystems GmbH shall be entitled to claim 10 % of the selling price for the costs incurred in processing the order and for loss of profit, without prejudice to any subsequent claim for greater loss. The purchaser shall reserve the right to prove a lower level of loss. For custom buildt parts on order simsystems GmbH claims full costs.

## **§ 8**

### **Default / delay in acceptance**

#### **(1)**

If the purchaser should default in acceptance or breach any other cooperation obligation, simsystems GmbH shall be entitled to claim for any loss incurred, including any additional expenses. In this case, the risk of a random decline or deterioration of the item under contract shall pass to the purchaser at the point at which acceptance was delayed.

**(2)**

If delivery of the item is delayed at the request of the purchaser, the latter shall be charged for the resulting storage costs from the beginning of the month in which the item was notified as ready for dispatch/delivery, at a minimum rate of 0.5 % of the invoice amount, for each month that is started. The purchaser shall reserve the right to prove a lower level of loss, and simsystems GmbH the right to prove a greater loss.

**(3)**

Additionally, after an appropriate period has passed, of which the purchaser has been notified, simsystems GmbH shall be entitled to withdraw from the contract or deliver the supply item elsewhere, and also to deliver to the purchaser in keeping with the contract, after an appropriate, extended period.

**§ 9**

**Place of fulfilment**

simsystems GmbH expressly states that for each delivery for which "ex works" Incoterms 2000 is agreed, the place of fulfilment for the contractual relationship shall be Remshalden, regardless of which simsystems GmbH subsidiary makes the delivery.

**§ 10**

**Transfer of risk**

**(1)**

Unless stated otherwise in the contract documents, delivery shall be "ex works" Incoterms 2000.

**(2)**

This shall still apply if the purchaser is in delay of acceptance.

**(3)**

The above paragraphs shall also apply where part shipments are agreed.

**(4)**

In so far as simsystems GmbH has contractually agreed to assume the shipping costs, delivery or assembly of the item under contract, this shall not affect the above paragraphs regarding transfer of risk.

**(5)**

If shipment of the item under contract is delayed as a result of circumstances attributable to the purchaser, the risk shall be transferred from the day on which the

item became ready to ship; however, simsystems GmbH shall be obliged to arrange insurance at the purchaser's request and cost.

**(6)**

Purchasers shall accept delivery of items, including those that show slight defects, without affecting their rights under § 11, Warranty.

**(7)**

Part shipments shall be permitted.

**§ 11**

**Warranty**

**(1)**

The warranty period shall be 12 months and shall start with the transfer of risk.

**(2)**

In other respects the warranty and liability of simsystems GmbH shall be limited to fulfilment of contract, through remedy or replacement, at simsystems GmbH's discretion. Where a defect is to be rectified, simsystems GmbH shall bear the necessary costs, insofar as these do not increase because the item under contract is located somewhere other than the place of fulfilment. Where additional remedial work is necessary on the end product for legal and commercial reasons and this is made within the scope of fulfilment when combining, mixing or processing, or through any other type of damage repair, simsystems GmbH shall not compensate the cost of this additional work in the proportion which the value of the supplied product bears to the selling price of the end product. This shall also apply where fulfilment is made on end products on which no mixing, combining or processing with other products has taken place or on products on which further processing has been carried out. If measures taken to fulfil the contract should fail, the purchaser shall be entitled to withdraw from the contract. Where the breach of contract is slight, particularly in the case of minor defects, the purchaser shall have no right of withdrawal. The purchaser shall not be entitled to claim a price reduction. Remedial work shall be deemed to have failed after the second unsuccessful attempt, unless the nature of the item under contract is such that further remedial attempts are appropriate and acceptable to the purchaser.

**(3)**

If the purchaser chooses to withdraw from the contract on the grounds of a legal or material defect, following an unsuccessful fulfilment attempt, he shall have no claim to additional damages on account of that defect.

**(4)**

If a defect cannot be rectified and the customer chooses compensation after non fulfilment, the goods shall remain with the purchaser, provided this is acceptable to the purchaser. Compensation shall be limited to the difference between the purchase price and the value of the defective item, after provision of the failed service, or, if the service was provided by a third party, to the price of this service, less any expenses saved. This shall not apply if simsystems GmbH has maliciously caused the breach of contract. Where items are defective, resulting from the combining, mixing, processing or further processing of a faulty product, simsystems GmbH shall not compensate this loss in the proportion which the value of the supplied product bears to the selling price that would have been anticipated for the end product, had the delivery been free from defects.

**(5)**

Product descriptions issued by simsystems GmbH purely provide details of the product's composition. Similarly, public statements, promotions or advertisements do not represent details of the product's composition in accordance with the terms of the contract. Additionally, product descriptions issued by a manufacturer used by simsystems GmbH purely provide details of the product's composition. Similarly, public statements, promotions or advertisements from the manufacturer do not represent details of the product's composition in accordance with the terms of the contract.

**(6)**

Should the purchaser receive insufficient installation instructions, simsystems GmbH's only obligation shall be to supply sufficient installation instructions and this only if the inadequacy of the installation instructions could prevent proper installation.

**(7)**

The purchaser shall only assert a right to damages on grounds of non fulfilment or withdraw from the contract if simsystems GmbH, despite setting an appropriate deadline, has failed to either correct the problem or supply a replacement within a reasonable time period, or if a replacement or remedy is unacceptable to the purchaser.

**(8)**

To make a warranty claim in accordance with paragraphs 1, 7, the purchaser must report any obvious defects to simsystems GmbH within two weeks of receipt of the goods; hidden defects shall be notified in writing within two weeks of the defect being established.

**(9)**

The purchaser shall be responsible for proving that the defect was notified immediately. The purchaser shall also be responsible for proving that he has not taken any action himself to correct the defect.

**(10)**

The purchaser shall be obliged to document both the defect and any resulting damage, notwithstanding the aforementioned provisions, in accordance with generally accepted technical standards.

**(11)**

simsystems GmbH does not give purchasers any guarantees in the legal sense. This shall not affect manufacturers' guarantees from third parties.

**§ 12**

**Limitations of liability**

**(1)**

Liability through simsystems GmbH presupposes that the purchaser has complied with the operating instructions when using the supply item. The purchaser shall be obliged to provide evidence to this effect.

**(2)**

In the case of negligent breach of duty, simsystems GmbH's liability is limited to the average level of immediate damage that might be anticipated for the type of product and is typical of the type of contract. This shall also apply where the negligent breach of duty is attributable to simsystems GmbH staff, employees, colleagues, representatives and those assisting with fulfilment. Liability is excluded where there is a slightly negligent infringement of inconsequential contractual obligations.

**(3)**

Unless stated otherwise below, further claims from the purchaser are excluded, on whatever legal grounds. simsystems GmbH shall therefore not be liable for damages not arising directly from the actual supply

item; in particular simsystems GmbH shall not be liable for loss of profit or damage to any other assets belonging to the purchaser or a third party, including items produced as a result of combining, mixing, processing and / or further processing.

**(4)**

The exclusion and limitation of liability stated in paragraphs (1) and (2) shall not apply to damages resulting from injury to life, body or health, loss of life, intent or gross negligence. Neither shall the exclusion of liability apply where simsystems GmbH is in breach of an essential obligation (material contractual obligation); in such a case, liability shall be limited to the average level of immediate damage that might be anticipated in a typical contract, in accordance with paragraph (1).

**(5)**

If simsystems GmbH is in breach of an essential contractual obligation, simsystems GmbH's liability to pay compensation in the case of material damage shall be limited to the amount of cover under its public liability insurance, unless the breach is due to gross negligence as a minimum. simsystems GmbH shall grant access to the insurance policy on request. Where the liability of simsystems GmbH is excluded or limited, this shall also apply for the personal liability of salaried personnel, employees, associates, representatives and anyone acting on behalf of simsystems GmbH.

**(6)**

Liability of simsystems GmbH is generally excluded in a case where components other than those manufactured or specified by simsystems GmbH have been built into the supply item, at the purchaser's request. The purchaser shall be responsible for proving that such a modification did not cause the defect on the supply item.

**(7)**

simsystems GmbH shall not be liable for any installation work carried out by the purchaser himself. The purchaser shall be responsible for proving that the installation is correct.

**§ 13**

**Retention of title**

**(1)**

Goods shall remain the property of simsystems GmbH until all claims resulting from a current business relationship have been settled in full. If the purchaser

acts in breach of contract, specially in the case of late payment, simsystems GmbH shall be entitled to reclaim the item under contract. The recovery of an item under contract does not constitute withdrawal from the contract, unless simsystems GmbH specifically expresses this in writing. Where simsystems GmbH files for attachment of the item, this shall always constitute withdrawal from the contract. simsystems GmbH shall be entitled to realise the value of the item once it has been recovered. The proceeds from realisation shall be credited against the purchaser's liabilities – less appropriate realisation costs.

**(2)**

The purchaser shall be obliged to handle the goods with care: in particular he shall be obliged to ensure these, at his own cost, against fire, water and theft, to the sum of the value when new. If maintenance and inspection work is required, the purchaser shall carry this out regularly and punctually, at his own cost.

**(3)**

The purchaser shall inform simsystems GmbH immediately in writing of any attachments or seizures by third parties. Where the third party is unable to reimburse simsystems GmbH the legal and out-of-court costs of an action in accordance with § 771 of the German Code of Civil Procedure (ZPO), the purchaser shall be liable for any loss incurred by simsystems GmbH. The customer shall be further obliged to inform simsystems GmbH immediately if the goods are destroyed or damaged in any way. The purchaser shall notify simsystems GmbH immediately of any change in possession of the goods or change in his place of business.

**(4)**

The customer shall be entitled to resell the goods within the ordinary course of business. However, any receivables due as a result of any subsequent resale of the goods to a purchaser or third party shall be assigned to simsystems GmbH, to the value of the final invoice amount (including VAT), irrespective of whether or not the goods have been processed prior to the resale. simsystems GmbH shall accept this assignment.

The purchaser shall still be authorised to collect such receivables after assignment. This shall not affect the authority of simsystems GmbH to collect the receivables itself. However, simsystems GmbH shall undertake not to collect the receivables provided the customer meets his payment obligations from the proceeds, does not delay payment and, in particular, is not subject to an application to initiate bankruptcy proceedings or have payments suspended. If this is the case, simsystems GmbH may demand that the

purchaser provides information on the assigned receivables and debtors, including all the necessary details required in order to collect the receivables, provides the associated documentation and informs debtors (third parties) of the assignment.

**(5)**

Processing or restructuring of the goods by the purchaser shall always be carried out in the name of and on behalf of simsystems GmbH. If the goods are processed with other items that are not the property of simsystems GmbH, simsystems GmbH shall acquire joint ownership of the new product in the proportion of the value of the goods to that of the other processed items at the time of processing. For the rest, the resulting product shall be subject to the same provisions applicable to the goods supplied under reservation of title.

**(6)**

If the goods are mixed with other items that are not the property of simsystems GmbH, simsystems GmbH shall acquire joint ownership of the new product in the proportion of the value of the goods to that of the other mixed items at the time of mixing. If the mixture is such that the purchaser's product may be viewed as the main component, it shall be taken as agreed that the purchaser grants simsystems GmbH proportionate joint ownership. The purchaser shall retain the resulting sole/joint property for safekeeping.

**(7)**

The purchaser shall also assign to simsystems GmbH any receivables due from a third party with regard to the incorporation of the goods with a fixed plot of land, as security for the receivables owed to simsystems GmbH.

**(8)**

At the request of the customer, simsystems GmbH shall undertake to release such realisable securities as exceed the outstanding amounts due by more than 20 %; simsystems GmbH shall select which securities are to be released.

**§ 14**

**Special right of termination / embargo regulations / EU anti - terror regulations**

**(1)**

In so far as contractual agreements between simsystems GmbH and the purchaser mean that

simsystems GmbH's supply obligations and the purchaser's payment obligations are in violation of binding national as well as international regulations (e.g. foreign trade regulations of the Federal Republic of Germany, export and embargo regulations of the European Union or other states, in particular the USA, including EU anti-terror regulations), simsystems GmbH shall be entitled to exercise extraordinary termination of the contractual relationship and / or withdraw from the contract.

**(2)**

In this special case the purchaser shall not be entitled to compensation.

**(3)**

It is the responsibility of the purchaser to be aware of any relevant statutory regulations which could make it impossible for simsystems GmbH to fulfil a contract.

**§ 15**

**Final provisions**

**(1)**

All contracts shall be concluded in writing. Supplementary agreements shall only take effect if confirmed by simsystems GmbH in writing.

**(2)**

The law of the Federal Republic of Germany shall apply and supplementary the provisions of the UN-Convention on Contracts for the International Sales of Goods (CISG).

**(3)**

simsystems GmbH's headquarter in Remshalden shall be definitive in all legal disputes between simsystems GmbH and the purchaser.

**(4)**

If individual provisions of this contract, including these general terms and conditions of business, should be unenforceable with the purchaser in whole or in part, the remaining provisions shall continue in full force and effect. The provision that cannot be enforced in whole or in part shall be replaced by a provision whose commercial purpose approaches that of the unworkable provision as closely as possible.