

## § 1 Validity

(1) All deliveries, services and offers of SIMTEK Präzisionswerkzeuge GmbH (hereinafter: SIMTEK) shall be made exclusively on the basis of these General Terms and Conditions of Business and Sale. These are an integral part of all contracts that SIMTEK concludes with its contractual partners (hereinafter also referred to as „Customer“) for the deliveries or services it offers. They shall also apply in their respective current version to all future deliveries, services or offers to the customer, even if they are not separately agreed again.

(2) Terms and conditions of the client or third parties shall not apply, even if SIMTEK does not separately object to their validity in individual cases. Even if SIMTEK refers to a letter that contains or refers to the terms and conditions of the customer or a third party, this shall not constitute any agreement to the validity of those terms and conditions.

## § 2 Offer and conclusion of contract

(1) All offers made by SIMTEK are subject to change and non-binding, unless they are expressly labelled as binding or contain a specific acceptance period. SIMTEK may accept orders or commissions within ten working days of receipt. An offer may be revoked even after receipt by the other contractual partner if the other contractual partner has not yet sent its declaration of acceptance.

(2) Contracts shall only be concluded by written order confirmation from SIMTEK. The written order confirmation, including these General Terms and Conditions, shall be solely authoritative for the legal relationship between SIMTEK and the customer. This shall fully reflect all agreements between the contracting parties regarding the subject matter of the contract. Verbal promises made by SIMTEK prior to the conclusion of the contract shall not be legally binding and verbal agreements between the contracting parties shall be replaced by the written contract, unless it is expressly stated in each case that they shall continue to be binding.

(3) Additions and amendments to the agreements made, including these General Terms and Conditions of Delivery, must also be made in writing in order to be valid. With the exception of managing directors or authorised signatories, SIMTEK employees shall not be entitled to make any verbal agreements deviating from this.

(4) Transmission by fax or e-mail is sufficient to fulfil the written form requirement; otherwise, transmission by telecommunication, in particular by SMS, is not sufficient.

(5) Details provided by SIMTEK regarding the object of the delivery or service (e.g. weights, dimensions, utility values, load capacity, tolerances and technical data) as well as our representations of the same (e.g. drawings and illustrations) are only approximate, unless the usability for the contractually intended purpose requires exact conformity. They are not guaranteed characteristics, but descriptions or labelling of the delivery or

service. Deviations that are customary in the trade and deviations that occur due to legal regulations or represent technical improvements, as well as the replacement of components with equivalent parts, are permissible insofar as they do not impair the usability for the contractually intended purpose.

(6) SIMTEK reserves the right to make changes to the design, the choice of materials, the specification and the type of construction even after sending an order confirmation, provided that these changes do not contradict either the order confirmation or the specification of the customer in his order. In addition, the customer shall declare its agreement to any further changes proposed by SIMTEK, insofar as these are reasonable for the customer.

(7) Partial and collective deliveries as well as partial and collective invoices are permitted.

(8) Offers submitted in writing by SIMTEK have a validity period of 6 weeks, unless otherwise stated.

(9) For technical production reasons, SIMTEK is permitted to deliver up to 10% more or less of the order volume, but at least 2 pieces, for orders of individually manufactured, coated or customised tools.

(10) Orders placed on call shall be delivered and invoiced by SIMTEK after a period of twelve months, unless otherwise agreed.

(11) SIMTEK reserves the right of ownership or copyright to all offers and cost estimates submitted by it as well as drawings, illustrations, calculations, brochures, catalogues, models, tools and other documents and aids made available to the customer. If the customer is not a commercial intermediary, it may not make these items accessible to third parties, either as such or in terms of content, disclose them, use them itself or through third parties or reproduce them without the express consent of SIMTEK. If the customer is a commercial intermediary, SIMTEK's consent is hereby granted.

## § 3 Prices and payment

(1) The prices apply to the scope of services and deliveries listed in the order confirmations. Additional or special services shall be invoiced separately. The prices are quoted in EURO ex works plus statutory value added tax, customs duties and fees and other public charges in the case of export deliveries. Packaging shall be charged at cost price and shall only be taken back if SIMTEK is obliged to do so by mandatory statutory regulation.

(2) Insofar as specific prices have been expressly agreed and increases in cost factors such as raw material prices, energy, wages or freight occur after conclusion of the delivery contract, SIMTEK shall be entitled to increase the delivery price to a reasonable extent. If the price increases by more than 10%, the customer may withdraw from the contract by immediate written declaration. If only a part of the delivery is affected, the cancellation shall only be permissible for this part.

(3) Insofar as the delivery contract is based on SIMTEK's list prices and the delivery is to take place more than four months after conclusion of the contract, SIMTEK's list prices valid at the time of delivery shall apply (in each case less an agreed percentage or fixed discount). If SIMTEK takes the customer's change requests into account, the resulting additional costs shall be charged to the customer.

(4) Invoice amounts shall be due immediately and payable within 30 days without deduction, unless otherwise agreed in writing. The date of receipt by SIMTEK shall be decisive for the date of payment. Cheques shall only be deemed payment after they have been cashed. If the customer fails to make payment within 30 days, interest of 9% p.a. shall be charged on the outstanding amounts from the due date; the right to claim higher interest and further damages in the event of default shall remain unaffected.

(5) Offsetting against counterclaims of the client or the withholding of payments due to such claims is only permissible if the counterclaims are undisputed or have been legally established.

(6) SIMTEK shall be entitled to demand advance payment from the customer. Furthermore, SIMTEK shall be entitled to execute or render outstanding deliveries or services only against advance payment or provision of security if, after conclusion of the contract, it becomes aware of circumstances which are likely to significantly reduce the creditworthiness of the customer and which jeopardise the payment of SIMTEK's outstanding claims by the customer from the respective contractual relationship (including from other individual orders to which the same framework agreement applies).

#### **§ 4 Delivery and delivery time**

(1) Deliveries are ex works.

(2) Deadlines and dates for deliveries and services promised by SIMTEK shall always only be approximate, unless a fixed deadline or a fixed date has been expressly promised or agreed. If despatch has been agreed, delivery periods and delivery dates shall refer to the time of handover to the forwarding agent, carrier or other third party commissioned with the transport. The risk shall pass to the customer upon despatch. This also applies in the case of free delivery.

(3) Without prejudice to its rights arising from default on the part of the customer, SIMTEK may demand from the customer an extension of delivery and performance deadlines or a postponement of delivery and performance dates by the period in which the customer fails to fulfil its contractual obligations towards SIMTEK.

(4) SIMTEK shall not be liable for impossibility of delivery or for delays in delivery insofar as these are caused by force majeure or other events unforeseeable at the time of conclusion of the contract (e.g. operational disruptions of any kind, difficulties in the procurement of materials or energy, transport delays, strikes, lawful lockouts, shortages of labour, energy or raw materials, difficulties in obtaining the necessary official permits, official measures or the failure of suppliers to deliver or to deliver correctly or on time) for which SIMTEK is not responsible. Insofar as such events make delivery or performance significantly more difficult or impossible for SIMTEK and the hindrance is not only of a temporary nature, SIMTEK shall be entitled to withdraw from

the contract. In the event of hindrances of a temporary duration, the delivery or performance deadlines shall be extended or the delivery or performance dates shall be postponed by the period of the hindrance plus a reasonable start-up period. Insofar as the Customer cannot reasonably be expected to accept the delivery or service as a result of the delay, it may withdraw from the contract by immediate written declaration to SIMTEK.

(5) If SIMTEK is in default with a delivery or service, or if a delivery or service becomes impossible, for whatever reason, SIMTEK's liability shall be limited to damages in accordance with § 7 of these General Terms and Conditions of Delivery.

#### **§ 5 Place of fulfilment, dispatch, packaging, transfer of risk, acceptance**

(1) The place of fulfilment for all obligations arising from the contractual relationship shall be the registered office of SIMTEK, unless otherwise agreed.

(2) The mode of dispatch and packaging are subject to the dutiful discretion of SIMTEK.

(3) The risk shall pass to the customer at the latest with the handover of the delivery item (whereby the start of the loading process shall be decisive) to the forwarding agent, carrier or other third party designated to carry out the shipment. This shall also apply if partial deliveries are made or SIMTEK has assumed other services. If the dispatch or handover is delayed due to a circumstance whose cause lies with the customer, the risk shall pass to the customer from the day on which the delivery item is ready for dispatch and SIMTEK has notified the customer of this.

(4) Storage costs after the transfer of risk shall be borne by the customer. In the case of storage by SIMTEK, the storage costs shall amount to 0.25% of the invoice amount of the delivery items to be stored per week elapsed. The assertion and proof of further or lower storage costs shall remain reserved.

(5) The consignment shall only be insured by SIMTEK against theft, breakage, transport, fire and water damage or other insurable risks at the express request of the customer and at the customer's expense.

#### **§ 6 Warranty, material defects**

(1) The warranty period is one year from delivery or, if acceptance is required, from acceptance.

(2) The delivered items shall be carefully inspected immediately after delivery to the customer or to the third party designated by the customer. They shall be deemed approved if SIMTEK has not received a written notice of defects with regard to obvious defects or other defects which were recognisable during an immediate, careful inspection within seven working days after delivery of the delivery item or otherwise within seven working days after discovery of the defect or any earlier point in time at which the defect was recognisable to the customer during normal use of the delivery item without closer inspection, in the manner specified in § 2 (3) sentence 3. At the request of SIMTEK, the rejected delivery item shall be returned to SIMTEK carriage paid. In the event of a justified notice of defects, SIMTEK shall reimburse the costs of the most favourable shipping route; this shall not apply if the costs increase because the delivery

item is located at a place other than the place of intended use.

(3) In the event of material defects in the delivered items, SIMTEK shall initially be obliged and entitled to rectify the defect or make a replacement delivery at its discretion within a reasonable period of time. In the event of failure, i.e. impossibility, unreasonableness, refusal or unreasonable delay of the repair or replacement delivery, the customer may withdraw from the contract or reduce the purchase price appropriately.

(4) If a defect is due to the fault of SIMTEK, the customer may demand compensation for damages under the conditions specified in § 7. SIMTEK shall not be liable for a lack of conformity of the goods if the purchaser was aware of this lack of conformity or could not have been unaware of it when the contract was concluded.

(5) In the event of defects in components from other manufacturers which SIMTEK is unable to rectify for reasons of licence law or factual reasons, SIMTEK shall assign its warranty claims against the manufacturers and suppliers to the customer. Warranty claims against SIMTEK shall only exist for such defects under the other conditions and in accordance with these General Terms and Conditions if the legal enforcement of the aforementioned claims against the manufacturer and supplier was unsuccessful or is futile, for example due to insolvency. For the duration of the legal dispute, the limitation period for the relevant warranty claims of the customer against SIMTEK shall be suspended.

(6) The warranty shall not apply if the client modifies the delivery item or has it modified by a third party and this makes it impossible or unreasonably difficult to rectify the defect. In any case, the client shall bear the additional costs of remedying the defect resulting from the modification.

(7) Any delivery of used items agreed with the client in individual cases shall be made to the exclusion of any warranty for material defects.

#### **§ 7 Liability for damages due to fault**

(1) SIMTEK's liability for damages, irrespective of the legal grounds, in particular due to impossibility, delay, defective or incorrect delivery, breach of contract, breach of duties during contract negotiations and unauthorised action, shall be limited in accordance with this § 7, insofar as fault is involved in each case.

(2) SIMTEK shall not be liable in the event of simple negligence on the part of its bodies, legal representatives, employees or other vicarious agents insofar as this does not involve a breach of material contractual obligations. Material contractual obligations shall be the obligation to deliver the delivery item free of material defects in due time as well as duties of advice, protection and care which are intended to enable the customer to use the delivery item in accordance with the contract or which are intended to protect the life and limb of the customer's personnel or to protect the customer's property from significant damage.

(3) Insofar as SIMTEK is liable for damages on the merits in accordance with § 7 (2), this liability shall be limited to damages which SIMTEK foresaw as a possible consequence of a breach of contract upon conclusion of the contract or which it should have foreseen if it had exercised due diligence. Indirect damage

and consequential damage resulting from defects in the delivery item shall only be eligible for compensation if such damage is typically to be expected when the delivery item is used as intended.

(4) In the event of liability for simple negligence, SIMTEK's obligation to pay compensation for property damage and any further financial losses resulting therefrom shall be limited to an amount of EUR 5 million per claim (corresponding to the current sum insured under the product liability insurance or liability insurance), even in the event of a breach of material contractual obligations.

(5) The above exclusions and limitations of liability shall apply to the same extent in favour of SIMTEK's executive bodies, legal representatives, employees and other vicarious agents.

(6) Insofar as SIMTEK provides technical information or acts in an advisory capacity and this information or advice is not part of the contractually agreed scope of services owed by it, this shall be done free of charge and to the exclusion of any liability.

(7) The limitations of this § 7 shall not apply to SIMTEK's liability for intentional or grossly negligent behaviour, for guaranteed characteristics, for injury to life, limb or health or under the Product Liability Act.

#### **§ 8 Retention of title**

(1) The goods delivered by SIMTEK to the customer shall remain the property of SIMTEK until all claims have been paid in full. The goods as well as the goods covered by the reservation of title that take their place in accordance with this clause shall hereinafter be referred to as reserved goods.

(2) The customer shall store the reserved goods free of charge for SIMTEK.

(3) The client is entitled to process and sell the reserved goods in the ordinary course of business until the realisation event occurs. Pledges and transfers by way of security are not permitted.

(4) If the reserved goods are processed by the customer, it is agreed that the processing shall take place in the name and for the account of SIMTEK as manufacturer and SIMTEK shall directly acquire the ownership or - if the processing takes place from materials of several owners or the value of the processed item is higher than the value of the reserved goods - the co-ownership (fractional ownership) of the newly created item in the ratio of the value of the reserved goods to the value of the newly created item. In the event that no such acquisition of ownership should occur at SIMTEK, the customer hereby transfers his future ownership or - in the above-mentioned ratio - co-ownership of the newly created item to SIMTEK as security. If the reserved goods are combined or inseparably mixed with other items to form a uniform item, and if one of the other items is to be regarded as the main item, SIMTEK shall, insofar as the main item belongs to it, transfer the co-ownership of the uniform item to the customer on a pro rata basis in the ratio specified in sentence 1.

(5) In the event of resale of the goods subject to retention of title, the customer hereby assigns by way of security the resulting claim against the purchaser - in the case of SIMTEK's co-ownership of the goods subject to retention of title, in propor-

tion to the co-ownership share - to SIMTEK, which accepts the assignment. The same shall apply to other claims that take the place of the reserved goods or otherwise arise with regard to the reserved goods, such as insurance claims or claims arising from unauthorised action in the event of loss or destruction. SIMTEK revocably authorises the customer to collect the claims assigned to SIMTEK in its own name. SIMTEK may only revoke this direct debit authorisation in the event of realisation.

(6) If third parties seize the reserved goods, in particular by attachment, the customer shall immediately inform them of SIMTEK's ownership and inform SIMTEK of this in order to enable SIMTEK to enforce its ownership rights. If the third party is not in a position to reimburse SIMTEK for the judicial or extrajudicial costs incurred in this connection, the customer shall be liable to SIMTEK for this.

(7) SIMTEK shall release the goods subject to retention of title as well as the items or claims replacing them upon request at its discretion, insofar as their value exceeds the amount of the secured claims by more than 50%.

(8) In the event of breach of contract by the customer - in particular default of payment - SIMTEK shall be entitled to demand the return of the reserved goods. Cancellation of the contract is not required for this.

## **§ 9 Final provisions**

(1) The place of jurisdiction for any disputes arising from the business relationship between SIMTEK and the customer shall be the registered office of SIMTEK as the exclusive - also international - place of jurisdiction, provided that the customer is a merchant within the meaning of the German Commercial Code, an entrepreneur pursuant to Section 14 of the German Civil Code, a legal entity under public law or a special fund under public law. Mandatory statutory provisions on exclusive places of jurisdiction shall remain unaffected by this provision.

SIMTEK is neither willing nor obliged to participate in dispute resolution proceedings before a consumer arbitration board in accordance with the German Consumer Dispute Resolution Act (VSGB). Our offer is not aimed at consumers within the meaning of § 13 BGB.

(2) The relationship between SIMTEK and the customer shall be governed exclusively by the law of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG) shall not apply unless otherwise stipulated in these Terms and Conditions.

(3) Insofar as the contract or these General Terms and Conditions contain loopholes, those legally effective provisions shall be deemed to have been agreed to fill these loopholes which the contracting parties would have agreed in accordance with the economic objectives of the contract and the purpose of these General Terms and Conditions if they had been aware of the loophole.

### **Note on data protection:**

The customer acknowledges that SIMTEK processes data from the contractual relationship in accordance with Art. 5ff., in particular Art. 5b, 5c and 5f. of the General Data Protection Regulation for the purpose of data processing. Further details are set

out in our separate information on data protection.