

simatec

General Terms and Conditions of Sale and Delivery (GTC 2011)

1. Scope

- 1.1 The present GTC apply to all existing and future deliveries and sales made by simatec. Terms of purchase, general terms and conditions of business or industry provisions contradicting these General Terms and Conditions of Sale and Delivery shall not apply or shall only apply with the prior written consent of simatec.
- 1.2 Should any provision(s) of these General Terms and Conditions of Sale and Delivery be, or subsequently become, invalid or contain an omission/omissions, this shall not affect the legal validity of the remaining provisions. The invalid provision(s) shall be replaced by a provision/provisions which approximate(s) as closely as possible the economic effect of what the parties intended. The replacement provision/provision shall be regarded as if it/they had been in effect from commencement of the agreement between the parties. The same shall apply in the case of any omissions.

2. Offer and acceptance

- 2.1 Offers, technical specifications, pictures and illustrations and price lists of simatec are subject to change at any time. An offer – particularly in the form of a combination of brochure and price list – is deemed to be accepted if the customer communicates acceptance in writing, by telephone, in a personal discussion, by fax or by e-mail. The supplier may confirm acceptance of the offer in writing, by fax or by e-mail. The delivery as such shall also be regarded as confirmation of the order. If the customer wishes to make a change in the order as confirmed, or if he regards the contents of the order confirmation as incorrect, he shall notify the supplier accordingly in writing immediately after the order confirmation is received.
- 2.2 Drafts, drawings and calculations shall remain the property of simatec and may not be copied, duplicated, stored, passed on or made accessible to third parties, or commercially exploited.

3. Prices

- 3.1 Unless specified otherwise in the order confirmation, all prices quoted are net, in Swiss francs, ex works and do not include packaging costs, insurance, customs duties, taxes, fees or charges of any other kind.
- 3.2 If transport and insurance are organised by simatec, the related costs will be billed on the basis of the actual costs incurred.
- 3.3 Taxes, duties and fees of whatever kind shall also be borne by the customer when simatec performs services in advance, in which case simatec shall be entitled to reimbursement.

4. Payments

- 4.1 All payments shall be made including the applicable value added tax, in Swiss francs, within 30 days, net, without deductions of any kind, to the paying agent of simatec. Partial or advance payments and any and all facilitation of payment such as discounts/rebates, early payment incentives, instalments or deferred payments require the prior express written approval of simatec.

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- 4.2 The payment deadline is deemed to have been met if simatec is able to dispose of the funds in question by the stipulated deadline. If the payment deadline expires, the customer is deemed to be in default, without any further request for payment, as of the first day after expiry of the payment deadline, and late-payment interest of 5% shall apply.
- 4.3 If the customer is in default with a payment or has potential liquidity problems, the supplier is entitled to demand advance payment for further deliveries / make delivery contingent upon advance payment, even if other payment and delivery terms were contractually agreed.
- 4.4 If the customer stops payments, or if the customer voluntarily applies for bankruptcy or insolvency proceedings of any kind, or if such proceedings are instituted against the customer by a third party, all claims simatec has against the customer shall become immediately payable.
- 4.5 Payments are to be made even if the supplied goods are defective or are claimed to be defective. Complaints regarding the goods delivered do not release the customer from the obligation to pay on time. Offsetting of any counterclaims the customer may have with the supplier's claims is not permitted. The assignment of claims against the supplier is not permissible.

5. Delivery deadline

- 5.1 The delivery deadlines stated are approximate and non-binding. Adherence to the agreed delivery deadlines presupposes that all technical issues have been clarified and advance and other payments have been made and all other obligations of the customer have been fulfilled.
- 5.2 The agreed delivery deadline commences upon receipt of the order confirmation as accepted by the customer and the prior fulfilment of any obligations incumbent upon the customer such as advance payments, bank guarantees, letters of credit, etc. In the event of the following, the delivery deadline shall be extended accordingly:
 - a. the customer subsequently requests changes in the order;
 - b. other delays occur for reasons for which simatec is not responsible, such as measures instituted on the part of the authorities, permits required after the fact, strikes, delivery delays on the part of the supplier's own suppliers or force majeure;
 - c. advance payments, letters of credit or payment guarantees are not provided in good time or do not correspond to the agreed form; or
 - d. letters of credit or payment guarantees have to be prolonged or altered due to an extension of the delivery deadline.
- 5.3 Liability for damages caused by delays is excluded to the extent permissible by law. Any potential damages due to delay shall be limited to the value of the delivery. Consequential damages due to delay, costs for covering purchases, loss of earnings and losses from interruptions to operations are expressly excluded. A delay in delivery shall not entitle the customer to withdraw from the agreement.

6. Transfer of benefits and risk

- 6.1 Benefits and risk shall pass to the customer when the delivery leaves the supplier's works. Transport shall be at the cost and risk of the customer, including when transport is organised by simatec.

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- 6.2 In the event of late pick-up of the goods from the supplier's works by the carrier responsible for transport, the benefits and risk shall be deemed to pass to the customer upon notification that the goods are ready for shipping as of a given date.

7. Retention of title

- 7.1 The goods delivered shall remain the property of simatec until payment of all current and future amounts due to simatec from the business relationship with the customer or with companies affiliated with the customer are received in full.
- 7.2 Unless agreed otherwise in writing with customers domiciled in Switzerland, simatec shall be entitled to have the retention of title entered in the applicable register at the place of debt enforcement of the customer without further notification or consent of the customer. Customers domiciled abroad expressly declare their agreement that equivalent debt enforcement actions be undertaken in the event there is a risk of payment default.
- 7.3 The customer is not permitted to pledge nor to transfer or assign by way of security either the goods subject to retention of title or claims in lieu of goods. In the event of an imminent pledge of the goods subject to retention of title or any other action involving third parties that would be detrimental to our rights, the customer shall notify simatec immediately.
- 7.4 In the event of conduct in breach of the contract, in particular in the case of payment default, simatec shall be entitled to repossess the goods. In agreeing to these General Terms and Conditions of Sale and Delivery, the customer consents unconditionally to this right of repossession. Repossession of the goods shall only represent a termination of the contract if simatec gives written notification of such termination. All costs in connection with repossession shall be borne by the customer.

8. Examination and notice of non-conformity

- 8.1 Immediately after receipt, the customer shall thoroughly check the delivery for completeness and for material and functional fitness and notify the supplier without delay, but no later than 10 days after receipt, in writing of any defects in the goods, providing sufficient substantiation of the claim. The obligation of examination and notice of non-conformity shall not be confined to obvious external defects. The notice of non-conformity shall contain an exact description of the supposed defects; any available supporting documentation or materials are to be included. The customer must not return the goods to the supplier without the supplier's express consent.
- 8.2 Obvious defects are to be communicated to simatec immediately; otherwise the products shall be deemed to be free of defects in all respects and the delivery will be regarded as having been accepted. If hidden defects later become apparent, notification of non-conformity shall be made as soon as the defect is discovered; otherwise it too will be regarded as having been accepted. simatec may refuse to honour warranty claims if it is not notified of defects promptly and completely.

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9. Warranty

- 9.1 Unless specified otherwise below, the warranty shall comply with the applicable provisions of law.
- 9.2. simatec undertakes to deliver the contractually agreed goods in the agreed amount and quality. simatec offers no guarantee that the goods will be suitable for the intended purpose.
- 9.3 The warranty period for lubricant applicators is two years from manufacture and for tools and electronic devices three years from delivery.
- 9.4. The supplier's warranty and product liability are limited to the extent permitted by law. In particular, defects and failures for which the supplier is not responsible are not covered by the warranty, e.g. normal wear and tear, force majeure, improper assembly or operation (operating, maintenance and installation errors), tampering by the customer or third parties, overloading or excessive use, use of inappropriate materials, tools etc., and extreme environmental influences. The supplier gives no guarantee for products supplied by third parties or semi-finished goods or for the conformity of the products with the standards and requirements of industry associations or public or private law at the place of delivery or final destination.
- 9.5 If the delivery proves to be defective and the supplier is obligated to honour the warranty, the supplier shall under all circumstances be entitled to make a substitute or additional delivery and shall be granted an appropriate period of time in which to do so. The supplier is also entitled to accept reduced payment equivalent to the diminished value of the delivered goods or to subsequently correct the defects in the product. All further claims by the customer in connection with the defective goods are excluded, in particular compensation for damages, additional costs, lost earnings, consequential damage, cancellation of the contract and third-party claims. Substitute performance by a third party at the cost of the supplier is also excluded.

10. Applicable law, jurisdiction

- 10.1 Substantive Swiss law shall apply exclusively. Application of the United Nations Convention on Contracts for the International Sale of Goods (Vienna Convention, CISG) is excluded.
- 10.2 The exclusive place of performance and place of jurisdiction for all disputes between the customer and supplier arising in connection with this agreement shall be the place of the registered office of simatec in Wiedlisbach (Wangen an der Aare, CH-3380). However, simatec shall also have the right to take legal action against the customer before the court having jurisdiction at the customer's domicile or before any other court of competent jurisdiction. The registered office of simatec shall also be the place of debt enforcement if the customer is domiciled abroad.