

# GENERAL TERMS AND CONDITIONS

## Siconnex customized solutions service GmbH

### 1. Acceptance of Orders

1.1 Acceptance and performance of purchase orders shall be exclusively subject to the following terms and conditions, unless these are expressly modified in writing by both parties.

These terms and conditions shall also apply for all pursuing orders even if these are not expressly agreed upon anew. General terms and conditions of the Purchaser which are inconsistent herewith shall be inapplicable to the Supplier. Reconfirmation from the Purchaser with reference to his general terms and conditions are herewith deemed not applicable. The Incoterms 2000 shall apply.

1.2 Purchase orders shall only become binding on the Supplier when confirmed by him in writing. The same shall apply to modifications of purchase orders. The Supplier shall, however, be entitled to accept a purchase order by commencing performance without prior order confirmation. Acceptance may be made within a reasonable period after receipt of the order.

1.3 The sales staff of the Supplier shall not be authorized to conclude verbal collateral agreements nor to give verbal assurances beyond the extent of the content of the written Contract.

### 2. Object of Sale

2.1 The object of sale shall finally be determined by the specification in the order confirmation. Slight deviations or technical improvements of the delivered goods shall not constitute a lack of conformity with the contract.

2.2 Drawings, sketches, measurements, weights or other performance ratings shall only be binding if expressly agreed upon in writing.

### 3. Price, Payment Conditions

3.1 The prices and payment conditions specified in the order confirmation shall apply and are valid for thirty (30) days from the date of quotation. In the event that the Purchaser does not receive an order confirmation or such confirmation does not indicate prices, either the list prices of the Supplier effective at the time of delivery or, if no such list prices exist, the prices normally quoted by the Supplier at such time shall apply.

3.2 Prices shall always be understood ex works (EXW) plus delivery and packing costs, taxes and other charges pertaining to the delivery.

3.3 Payments shall be effected in the currency as quoted in the invoice. In the event that the currency stated in the invoice differs from the order confirmation, the Purchaser shall also have the right to effect payment in the currency stated in the order confirmation.

The Supplier is entitled to offset payments against other outstanding amounts – regardless other terms of the Purchaser to the contrary. The Supplier shall inform the Purchaser of the way of offsetting. In the event that costs and interest are already incurred, the Supplier is entitled to offset the payments against those costs, then against the interest and then finally against the actual order item.

3.4 The Purchaser shall not have the right to retain the purchase price or to offset against counter balances, unless such claims have been approved by the Supplier or awarded by final judgement rendered by a court of competent jurisdiction.

3.5 The purchase price shall be – provided that no extended period for payment is granted - transferred to the Supplier's account as specified in the invoice within 30 days of the invoice date, free of costs and without deductions. Default in payment of more than thirty days constitutes a fundamental breach of contract. The Supplier is entitled to four per cent points p.a. above the six months LIBOR without prejudice to any other remedy of the law; the Purchaser is entitled to render proof when the claim on interest incurred is lower, the Supplier, however, shall be permitted to render proof when the claim on interest is higher.

### 4. Delivery, Carriage, Acceptance, Risk Transfer

4.1 The goods shall be delivered EXW (ex works) Supplier's workshop provided that no other delivery terms or another place of delivery is specified in the order confirmation. Carriage of the goods to the Purchaser and related formal requirements shall be dealt with by the Purchaser, unless this is expressly assigned to the Supplier specified in the delivery clause of the order confirmation.

4.2 The time of delivery is specified in the order confirmation. If delivery of the goods is delayed due to force majeure or occurrences that make it - not only temporarily - substantially difficult or impossible for the Supplier to deliver, this applies in particular to strikes, lockouts, official regulations and so forth, even if they shall occur at the sub-suppliers of the Suppliers – the Supplier shall not be held liable even for binding periods of time and deadlines. They entitle the Supplier to postpone the delivery by the duration of the hindrance plus a reasonable time phase or to withdraw either completely or partly from the contract, proportionate with the non-fulfilled part.

4.3 In the event that the hindrance lasts longer than three months, after setting a reasonable extension, the Purchaser is entitled to withdraw from the non-performed portion of contract. If the time of delivery is extended or if the Supplier is released from his obligation, the Purchaser cannot derive any claims for compensation therefrom.

4.4 As long as the Supplier is liable for the non compliance of binding periods and deadlines or is in default, the Purchaser has the right to claim for compensation for default in the sum of ½ % for every completed week of delay, however, a total of maximum 5 % of the invoice value of the deferred goods. All further claims are excluded, unless the delay is at least attributable to serious gross negligence of the Supplier.

4.5 The Supplier is entitled to partial deliveries at all times unless otherwise agreed upon in writing.

4.6 The compliance with delivery obligations of the Supplier necessitate the punctual and correct compliance of the obligations of the Purchaser.

4.7 If delivery of the goods is delayed by the Supplier due to a breach of obligation by the Purchaser, risk shall pass to the Purchaser once the period has elapsed within which delivery would have been effected according to the contract had such

breach not occurred. If the contract, however, relates to non-identified goods, risk shall only pass once the goods are clearly identified to the contract and the Purchaser has been notified thereof by the Supplier. The Passing of the risk shall occur notwithstanding a fundamental breach committed by the Supplier. In the event of default by the Purchaser, the Supplier is entitled to claim for compensation for the loss and damages incurred.

## 5. Warranty

**5.1 EXCEPT IF ESPECIALLY OTHERWISE AGREED, SUPPLIER UNDERTAKES NO WARRANTY FOR USED GOODS DELIVERED TO PURCHASER, AND THE PURCHASER HEREWITH WAIVES ANY CLAIMS HE MAY HAVE UNDER APPLICABLE LAW.** For new goods, Supplier warrants that the Goods are free of manufacturing or material defects. The warranty period shall be one year from the delivery date.

**DISCLAIMER: IF NOT ESPECIALLY OTHERWISE AGREED; THE SUPPLIER UNDERTAKES NO RESPONSIBILITY FOR MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

5.2 In the event that operation or maintenance instructions of the Supplier are not complied with, or if the goods are modified or parts either replaced or applied in a manner that does not comply with the original specifications, then the warranty shall not apply, unless the Purchaser disproves a substantiated corresponding assertion of Supplier that at least one of these circumstances has led to the defect.

5.3 The Purchaser shall upon receiving the goods immediately notify the Supplier in writing of lack of conformity, at the latest, however, within one week. If - regardless appropriate examination - a lack of conformity of the goods is impossible to find within such period, the Supplier shall be notified in writing without undue delay.

5.4 In the event of a notification from the Purchaser of a lack of conformity of the goods, the Supplier shall demand that upon his discretion and at his expense:

- a) the faulty part or device is sent for repair to the Supplier and afterwards returned to the Purchaser;
- b) the Purchaser keeps the faulty part or device available so that a service technician of the Supplier is assigned to the Purchaser in order to perform repair work.

In the event that the Purchaser requests that the warranty work shall be performed elsewhere as selected by him, the Supplier can comply with such request, whereas the items within the scope of the warranty shall not be charged; working time and travel expenses, however, shall be payable in accordance with the standard rates of the Supplier.

5.5 In the event that the repair work is not successful within a reasonable period of time, the Purchaser is entitled to demand a reduction of the price or cancel the contract.

5.6 A liability for normal wear and tear is excluded.

5.7 Warranty claims towards the Supplier shall solely be claimed by the direct Purchaser and are not transferable.

5.8 The above clauses contain the warranty obligations of the Supplier for the goods and exclude any other warranty claims whatsoever.

## 5.9 SOFTWARE

The following terms and conditions shall apply where Supplier supplies software with goods:

The title to all software (including programs and documentation) furnished by Supplier shall be retained by Supplier.

Said software shall be used only on the specific good(s) with which it was supplied. Use of the software shall consist either of copying any portion of the program from storage units or media into the CPU, or the processing of data with the program, or both. Purchaser agrees to comply with any other restrictions on use of the software which may be promulgated by Supplier and provided with the software.

Purchaser may make up to two (2) copies of Supplier-supplied machine-readable software for backup and archival purposes, but shall not copy or duplicate, or permit anyone else to copy or duplicate, in any manner, any physical or magnetic version of Supplier-supplied machine-readable software. Purchaser shall not copy or duplicate any printed materials related to and furnished with Supplier-supplied machine-readable software. Purchaser shall secure and protect the software, and each copy thereof, from unauthorized copying or disclosure.

No licenses or rights are granted except as set forth herein or in Supplier's software or program license agreement. Any license to use Supplier-supplied software may not be assigned by Purchaser without Supplier's prior written consent.

**SUPPLIER DOES NOT WARRANT THAT ANY SOFTWARE IS FREE OF ERRORS OR "BUGS". EXCEPT AS PROVIDED HEREIN, SUPPLIER MAKES NO WARRANTY, EXPRESSED OR IMPLIED, WITH RESPECT TO THE SOFTWARE AND SPECIFICALLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.** In the event any software fails to comply with special warranties given by Supplier, Supplier's sole obligation, and Purchaser's sole remedy, shall be for Supplier to exert its best efforts to correct any such defect and to supply Purchaser with a corrected version within a reasonable time after Purchaser notifies Supplier in writing of the defect.

## 5.10 PROPRIETARY INFORMATION AND TECHNOLOGY RIGHTS

Any documentation, data, or information of any kind supplied by Supplier to Purchaser shall be deemed proprietary to Supplier and treated as confidential by Purchaser. Supplier retains for itself all proprietary rights in and to all Confidential Information. Purchaser shall not disclose, without Supplier's written consent, any Confidential Information to any other person, or use Confidential Information for any purpose other than performing under this agreement. Purchaser shall return all Confidential Information, together with all copies thereof, to Supplier at Supplier's request. The obligations under this paragraph shall survive the cancellation, termination or completion of this agreement. Supplier may, at its sole option, require Purchaser to execute a separate confidentiality agreement acceptable to Supplier as a condition to providing any documentation or data which it considers proprietary or confidential.

Confidentiality Obligations shall not apply to such information that the Purchaser has provably already possessed before disclosure by the Supplier, or been a matter of common knowledge at the moment of their disclosure to the purchaser or has subsequently become known to the public without the Purchaser's cooperation or default legally acquired access to such from third parties not bound by any secrecy obligation whatsoever towards Supplier.

All products, information and technology produced, conceived or otherwise developed by or for Supplier, or as a result of technology furnished by Supplier, shall be the sole property of Supplier, and Purchaser shall have no ownership or other rights in such property. Purchaser agrees to use such products, information and technology only in connection with goods or services furnished by Supplier and otherwise to retain them as confidential in accordance with the provisions above. Purchaser, at its cost, hereby assigns to Supplier all right, title and interest in all inventions, trade secrets, patents, mask works, copyrights, trademarks and other intellectual property developed by or for Supplier in connection with the conception, design, development or manufacture of goods or services and shall fully cooperate with and assist Supplier in perfecting such rights.

The sale of goods or services hereunder by Supplier does not convey any license under any patent, copyright, trade secret or other proprietary right with respect to which Supplier can grant licenses. Supplier expressly reserves all of its rights with respect to such patent, copyright, trade secret and/or other proprietary rights.

## **6. Impediment to Performance, Insolvency, Bankruptcy**

6.1 To the extent that the Supplier is not liable for failure to perform any of his obligations because failure was due to an impediment beyond his control, the Purchaser is not entitled to claim damages or losses nor pursue any other solution for remedy.

6.2 The Supplier shall be held liable for his own suppliers only to the extent that he is responsible for other third parties involved by him in the performance for all or part of the contract.

6.3 If the Purchaser stops or suspends payments, or if a petition to commence an insolvency proceeding is filed or equivalent proceedings provided by the laws applying to his business are initiated, the Supplier may cancel the contract in whole or to the non-performed extent. The same right shall apply if circumstances shall become known to the Supplier which raise doubt on the creditability of the Purchaser.

## **7. Third Party Claims**

7.1 The Supplier shall not assume liability that the goods are free from rights or claims of third parties based on industrial property rights or other intellectual property rights. The Purchaser shall be exclusively responsible to verify any industrial property or other intellectual property rights existing in the country of destination. The Supplier shall inform the Purchaser upon request about the existence of such rights based on industrial property or other intellectual property in the country of destination to the extent known to the Supplier.

7.2 The Supplier shall be relieved from any liability under this article, provided that he has not fraudulently concealed such deficiencies.

## **8. Reservation of Title**

Title to the goods is retained by the Supplier until the purchase price of the goods is fully paid. The Purchaser shall take all measures necessary to secure the property of the Supplier or to procure equivalent security rights in the country of his place of business or in any other country of destination and he shall provide related evidence whenever requested by the Supplier. Non-compliance with such obligation constitutes

a fundamental breach of contract. All costs incurred pertaining hereto shall be borne by the Purchaser.

## **9. Undertaking to Co-operate**

The parties mutually undertake to take all reasonable means to achieve the purpose of this contract and to refrain from any adverse acts or omissions.

## **10. Liability of the Supplier**

The Supplier - as well as third persons performing tasks under this contract - are only obliged to compensate damages or losses pursuant to this contract or extra contractually if it deliberately or in circumstances amounting to gross negligence breaches obligations owed to the Purchaser. This shall also apply to claims for compensation for non-performance. All liabilities shall be limited to the loss foreseeable at the time of conclusion of contract. Liability for indirect or consequential losses shall herewith be excluded. In any event, a liability of the Supplier according to the law on products liability and other compulsive regulations emanating from manufacturers liability shall not be affected.

**LIMITATION OF LIABILITY. IN NO EVENT SHALL SUPPLIER'S LIABILITY TO PURCHASER FOR BREACH OF THIS AGREEMENT EXCEED THE PRICE OF THE GOODS OR SERVICES PURCHASED BY PURCHASER UNDER THE RESPECTIVE ORDER.**

## **11. Applicable Law, Arbitration Clause**

11.1 All legal relationship between Supplier and Purchaser shall be governed by Austrian substantive law exclusively, without respect to the conflict of laws provisions thereof. The United Nations Convention of 11<sup>th</sup> April 1980 on Contracts for the International Sale of Goods (UN Sales Convention) is not applicable.

11.2 In the event of disputes arising out of or in connection with the contract, including disputes on its conclusion, effectiveness, amendment or termination, both parties will try to reach an amicable settlement. In the event that the dispute shall not be solved within one month after one party has asked the other to settle the dispute, all legal measures provided by the applicable provisions can be taken; Each party agrees to submit to the jurisdiction of the courts having jurisdiction for the Supplier. The Supplier shall have the right to bring a claim before a court at the Purchaser's principal place of business or at his discretion before any other court being competent according to any national or international law. Should the party claiming the breach of contract prefer a final binding award by an institutionalised arbitration court, the competence of the International Arbitral Centre of the Austrian Federal Economic Chamber, which will decide to the exclusion of the ordinary courts in accordance with its International Arbitration Rules is agreed herewith. If a three-person Arbitral Tribunal is deciding, each party nominates an arbitrator. All arbitrators shall be fluent in English. No arbitrator shall have the same citizenship as the parties. In this event Vienna shall be place of arbitration; the language to be used in the arbitral proceedings shall be English. The party in breach shall pay to the other party all costs incurred from infringement of the contract, especially court and adequate lawyer fees.

## **12. Miscellaneous**

12.1 Communications between the parties shall only be binding if made in writing and in either German or English. Communications may be transmitted by fax or by electronic means. They shall become effective at the time when they reach the recipient or would have reached him under normal circumstances with the means of transmission used. Communications reaching the Supplier on a Sunday or on an official public holiday at the place of his business or on a Saturday shall become effective on the next following working day.

12.2 If individual terms of a purchase order placed on the basis of these Sales Conditions are invalid or unenforceable, these shall be without prejudice to the validity of other terms. In such event, the parties shall replace the invalid or unenforceable term by a valid and enforceable term which shall meet the purpose of the invalid or unenforceable term as closely as possible.

**NOTE: PURCHASER HEREWITH AGREES TO THE EXCLUSION OF ANY LIABILITY OF SUPPLIER RELATED TO THE DELIVERY OF USED GOODS.**

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Purchaser's signature)