

General Terms and Conditions (GTC)

(March 2019 version)

1. General information

- a) These General Terms and Conditions of Sale or Rental and Delivery are binding for all deliveries and services (hereinafter referred to as 'Delivery') of simeidis AG ('SAG'). Other terms and conditions of the customer shall only be valid if they have been expressly accepted by SAG in writing, whereby email shall be treated as equivalent to written form (also in the following).
- b) All agreements and legally relevant declarations of the contracting parties must be made in writing to be valid.

2. Offers and contract conclusion

- a) Offers that do not contain an acceptance deadline are non-binding.
- b) The contract is deemed to have been concluded after the customer has received confirmation of the order from SAG.

3. Scope of delivery

- a) The order confirmation and all attachments are authoritative for the scope and execution of the delivery. Deliveries that are not included in the price will be charged additionally.
- b) Changes to the order confirmation may be made by SAG if these effect an improvement.
- c) Brochures and catalogues are not binding without a written agreement. Information in technical documents is only binding if it has been assured in writing.

4. Regulations in the country of destination

- a) The customer must draw SAG's attention to the statutory, official and other regulations and standards relating to the execution of the delivery, operation and accident prevention at the latest when placing the order.
- b) SAG strives to comply with the regulations applicable in the country of destination, e.g. with regard to consumer protection.

5. Prices

- a) Unless otherwise agreed, all sales and rental prices as well as ancillary costs of SAG are in Swiss francs net, ex works (EXW, INCOTERMS 2010). All ancillary costs such as packaging (see clause 10 a below), freight including any returns, insurance, taxes, levies and permits as well as assembly, installation and commissioning shall be borne by the purchaser.
- b) If the costs on which the calculation is based increase between conclusion of the contract and dispatch of the complete delivery, SAG shall be entitled to increase the prices stated in the order confirmation.

6. Terms of payment / ban on offsetting

- a) The payment period is 30 days net as of the invoice date.
- b) Payments are to be made by the customer at the domicile of SAG without any deduction of any kind such as cash discounts, expenses, taxes and fees.
- c) In the event of default in payment, SAG shall be entitled to withhold further deliveries and to demand default interest at the rate customary in the country of the customer from the time of the agreed due date, however at least 5% p.a.
- d) In addition to paragraph 6. lit. c, SAG is entitled to charge the customer an additional CHF 50 as reminder charges for non-payment of the invoice from the second reminder onwards.
- e) The customer is not entitled to withhold due payments or to set them off against alleged counterclaims.

7. Retention of title

- a) SAG retains title to the delivery until the purchase price has been paid in full.
- b) The customer is obliged - both when purchasing and renting the delivery - to take the necessary measures to protect the property of SAG, in particular to inform SAG immediately if the delivery is impounded or the property rights of SAG are otherwise infringed on.
- c) SAG is entitled, with the cooperation of the customer, to have the retention of title entered in the appropriate register.
- d) If there is no possibility of a retention of title comparable to the retention of title under Swiss law at the customer's registered office according to the local law, SAG may, at its own discretion, make a delivery dependent on an advance/down payment, a bank guarantee or a letter of credit in the amount of the total order value.

8. Rights to the software / data protection

- a) SAG retains ownership of the software and its user manual as well as any updates. In this respect, the customer receives a non-exclusive, non-transferable right of use to use the delivered, specific device.
- b) The customer undertakes not to make the software, updates or the user manual accessible to third parties without the prior written consent of SAG and not to reproduce them for his own purposes, except for a backup copy for his own use.

- c) In addition, the provisions of the software license agreement between SAG and the customer applies.
- d) SAG collects personal data of the customer and/or user of the delivery (esp. software) in accordance with the current Privacy Policy of SAG. SAG sporadically evaluates useful results/outcomes from the use of the delivery for the attention of the customer and/or user (incl. anonymous third-party comparison), provided that the customer and the user accept the current data protection provisions of SAG without reservation.

9. Delivery period

- a) The delivery period begins only after the contract has been concluded and all technical issues have been completely resolved, including the existence of the necessary official or other formalities.
- b) The delivery period shall be appropriately extended if
 - the information required for the execution of the delivery is not received by SAG on time or if it is subsequently amended by the customer;
 - agreed payment deadlines are not met, letters of credit are opened too late or necessary import licenses or other official authorizations are not received by SAG on time;
 - there is force majeure (point 13).
- c) SAG does not accept any liability for delivery delays. Any delays in delivery do not permit a withdrawal from the contract.

10. Delivery, transport and insurance

- a) Packaging:
 - aa) for purchases: unless otherwise agreed, SAG shall invoice the packaging separately and shall not accept any packaging back.
 - bb) for leases: Unless otherwise agreed, this is so-called reusable packaging which the customer must return to SAG at the end of the agreed rental period of his delivery. The equivalent value of the reusable packaging will be invoiced to the customer with the order confirmation. If the customer returns the delivery and the reusable packaging to SAG completely and without defects upon expiration of the agreed rental period, the remaining equivalent value of the reusable packaging declared in the offer or order confirmation will be refunded to him within a further 30 days subject to offsetting against any counterclaims. If SAG does not receive the delivery and the reusable packaging completely and without defects at the end of the agreed rental period, the equivalent value of the reusable packaging shall automatically be forfeited to SAG (compensation).
- b) All deliveries are made at the risk of the customer. To the extent legally permitted, SAG excludes all liability for damages arising in connection with the transport of the delivery, even if the damage was caused by SAG's auxiliary personnel. Any insurance against (transport) damage of any kind is the responsibility of the customer.
- c) SAG must be notified in good time of any special requests regarding shipping and insurance. The transport takes place according to INCOTERMS 2010.

11. Inspection and acceptance of the delivery

- a) Notices of defects related to the transport must be sent by the customer to the last carrier immediately upon receipt of the delivery or the shipping documents.
- b) The customer must inspect the delivery within 10 days of receipt and immediately notify SAG in writing of any detectable defects, otherwise the delivery shall be seen as approved.

12. Warranty and liability for defects

- a) SAG guarantees that its deliveries are free from manufacturing and material defects. Only those properties are guaranteed which are expressly designated as such in the order confirmation or in the corresponding user manual.
- b) Should the delivery or parts thereof be defective (within the meaning of section 12 lit. a) by the end of the warranty period of **two years** from shipping or not correspond to the properties guaranteed in writing, SAG shall, at its own discretion and at the written request of the buyer, replace the delivery or parts thereof, remedy the defect within a reasonable period or take back the delivery and reimburse the buyer for the purchase price minus a reasonable compensation for the use of the delivery.
- c) The warranty claim expires prematurely if the customer or third parties carry out improper modifications or repairs themselves or if the customer, after a defect has occurred, does not immediately take all suitable measures to minimize the damage and gives SAG the opportunity to remedy the defect.
- d) The provisions of SAG's software license agreement concluded with the customer shall apply in addition to any software shipped or included.
- e) The warranty rights in case of rental of the delivery are governed by art. 259a para. 1 lit. a or b OR (removal of the defect or proportionate reduction of the lease rate).

- f) To the extent permitted by law, SAG rejects any further liability or warranty vis-à-vis the customer, including but not limited to liability for indirect or consequential damages (such as loss of (electronic) business data, loss of profit or business interruption) or the granting of further rights as described in this section 12.

13. Force majeure

- a) In cases of force majeure, there shall be no breach of contract or obligation to pay damages and any delivery periods shall be extended accordingly.
- b) Force majeure is an external, extraordinary and unforeseeable event that cannot be prevented by the due diligence of the affected party, such as fire, storm, earthquakes or other natural catastrophes, traffic accidents, taking of hostages, wars, riots, strikes or other labor disputes, epidemics, considerable operational disruptions, delayed or defective delivery of the required raw materials, semi-finished or finished products, official measures or omissions.

14. Court of jurisdiction, applicable law

- a) The parties agree on St. Gallen, Switzerland as the court of jurisdiction. However, SAG shall be free to sue the customer at his place of business.
- b) The entire legal relationship between the parties shall be governed exclusively by Swiss law, excluding the conflict-of-law rules of international private law and in particular the UN Convention on Contracts for the International Sale of Goods (CISG).

simedis AG

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