

Standard Terms and Conditions of Purchase

1. The Supplier's quotation or offer must precisely reflect the enquiry and must expressly draw attention to any points that deviate from the enquiry. Quotations and offers must always be free of charge for SIMONA. Only written and signed purchase orders shall be valid. Any orders placed in a different form shall not be binding until a written purchase order has been issued. All prices shall be deemed fixed prices, without any supplementary claims and free of any proviso. Every purchase order must be acknowledged in writing immediately, indicating the binding delivery date. We reserve the right to cancel purchase orders if they have not been acknowledged within a reasonable time and by no later than 10 days after the purchase order has been sent out. In accepting our order, the Supplier expresses its agreement with these Terms and Conditions of Purchase. Any terms and conditions of the Supplier which differ from these Terms and Conditions shall only be binding if we have expressly agreed to them in writing. Insofar as any different terms should be contained in the acknowledgement, they are hereby expressly rejected. The acceptance of the Supplier's consignment or service shall not be construed as any form of agreement with the Supplier's terms and conditions. In the case of business operations, these Standard Terms and Conditions of Purchase shall also govern all future business relations between the Parties. Amendments, side agreements or additions to this Agreement or to future agreements shall require our written acknowledgment.
2. Delivery shall generally be made free domicile. If we agreed to pay the freight charges, these shall be no higher than the charges we would have paid for the consignment to be sent by rail. The consignments may be no larger or smaller than those ordered.
3. An agreed delivery date shall form an integral part of the contract. If an agreed delivery date is not complied with, we shall have the right to rescind the Agreement in part or in full or to claim damages due to non-performance, as we may choose, without setting an extended deadline or granting a period of grace and without prejudice to any further statutory rights that we may have. The Supplier may only cite our failure to provide necessary documents that we were obliged to supply or to make any payments agreed if the Supplier has sent us a reminder in respect of such documents or payments and these have not been forthcoming. Force majeure, industrial disputes, unrest or any other circumstances which are not our fault and which disrupt our production or that of our customers shall release us from any duty to accept goods or to pay damages as long as such circumstances prevail and to the extent of their effect. If applicable, we shall be obliged to immediately notify the Supplier that the disturbance has come to an end.
4. If we become aware of circumstances in relation to the Suppliers which give us serious grounds to doubt whether our order will be processed in a manner deemed proper, we shall have the right to rescind the Agreement without paying any compensation in respect of the deliveries that are still outstanding.
5. Details concerning performance or any other details concerning technical, physical, chemical, mechanical or other characteristics or concerning DIN, VDE or any other standards as well as general standards agreed by contract shall be considered as guaranteed qualities.
6. Invoices may not be sent with the goods. Second and third copies must be clearly identified as such. If an invoice is received so late that payment cannot be made within the agreed time, this period of time shall be extended by the amount of time needed to properly process the invoice. In the absence of any other agreement, the following terms of payment shall apply: within 14 days of the receipt of the invoice with a 3% cash discount or 30 days without deductions. The time allowed for payment, however, shall not commence before the receipt of the goods. All payments shall be made subject to our rights in the event that defective goods should be delivered. If notice of defects has already been given at the time that payment becomes due, we shall have the right to withhold payment. Any assignment to third parties of the Supplier's claims under the Agreement shall only be permissible if we have given our written consent. Collection by third parties shall not be permitted. It shall only be possible to set off claims against our claims under the business relationship if the Supplier can set off a claim that has been recognised through a final judgment by a court of law or if the claim is one that we have expressly acknowledged. The same applies to the enforcement of rights of retention. The Supplier undertakes not to make any counterclaim if we enforce claims by taking legal action.
7. The consignment must correspond to the recognised state of the art and be in compliance with accident prevention regulations. Confirmation that the goods have been received shall not mean the exclusion of complaints about defects in quality or quantity that are found after the receipt of the goods. The setting of terms and conditions for acceptance (e. g. AQL) shall not limit liability for breach of warranty. Compliance with terms and conditions for acceptance shall not affect liability for breach of warranty. Setting aside provisions outlined in the German Commercial Code relating to the examination of goods, we shall be obliged to give notice of any defects found during the inspection of incoming goods, during processing or due to the analysis of complaints within 10 working days. The warranty period shall be one year after the passage of risk or after acceptance (Section 640 of the German Civil Code – BGB) in as far as the statutory period is not longer. The warranty period shall be extended by the time that elapses between the date of the complaint and the date that the defect is rectified. If replacement parts are delivered, a new warranty period shall start to run for these parts.

If these are important parts, a new warranty period shall start to run for the entire consignment. If an acceptance test has been agreed, the obligations under the warranty shall not commence until the acceptance test has been completed in full and confirmed by us in writing. Claims under the warranty shall not be affected by the results of any acceptance test. If claims for compensation are made against us due to defects in the goods or services, we shall have the right to take recourse for a period of 2 years as from the date of delivery or the date of the service. In the case of any defects in the goods or the service we shall have the right to claim rescission, a reduction in price, subsequent improvement, a gratuitous substitute consignment or damages on grounds of non-performance, as we may choose. This shall not affect the statutory liability for consequential damage caused by defects. In urgent cases or if the Supplier should be late in carrying out a subsequent improvement or in supplying a substitute consignment that is free of defects, we may rectify the defects ourselves at the Supplier's expense or cover our requirement for goods that are free of defects elsewhere and shall have the right to use the services of other companies to perform the Supplier's contractual obligations. This shall be performed at the Supplier's expense. In addition, the Supplier shall be liable for all damages directly or indirectly caused by the defective nature of the goods. If it should be necessary to examine the goods item-for-item because a consignment is defective, the Supplier shall bear the costs thus incurred.

8. The Supplier guarantees that the goods supplied shall be free of the rights of third parties. In accepting the order, the Supplier undertakes to indemnify us against legal claims made by third parties, both at home and abroad, in respect of the goods to be supplied and that may arise on the basis of domestic or foreign patents, utility models, copyright or other rights. This shall also include the costs of litigation, damages and any conversion and reconstruction work.
9. Documents that we provide to the Supplier, such as samples, drawings, models or similar documents, must be returned to us free of charge and of the Supplier's own accord as soon as they are no longer needed in order to execute the order. They may not be made accessible to third parties. No copies may be made unless we have given our written consent. The Supplier shall be liable for all damage that we suffer due to a breach of any of the aforesaid obligations.
10. We shall only be liable for deliberate or grossly negligent acts on the part of our officers and executives. We shall not be liable for the acts of other vicarious agents.
11. The place of performance for all deliveries and payments is 55606 Kirn, Federal Republic of Germany.
12. In as far as the Supplier is a merchant within the meaning of Section 24 AGBG, the place of jurisdiction shall be 55566 Bad Sobernheim, Federal Republic of Germany, if the value in dispute means that the case is adjudicated by the local court (Amtsgericht); if the value in dispute means that the case is adjudicated by the provincial court (Landgericht), the place of jurisdiction shall be 55543 Bad Kreuznach, Federal Republic of Germany. However, we shall also have the right to bring an action against the Supplier at the Suppliers's place of residence.
13. This Agreement shall be exclusively governed by German law. The UN Sales Convention (CISG) shall not apply.
14. If any of the aforesaid terms should be completely or partially void, this shall not affect the validity of the remaining terms nor of the Agreement as a whole.

(01/2005)