

## General Terms and Conditions of SIMA-tec GmbH

### I. Preface/General

1. These terms apply for any current or future legal relationship between SIMA-tec and its customer (companies, legal entities / corporate bodies and/or special incorporations under public law according to § 310 BGB (German Civil Code), as e.g. offers and sales, after-sales and repair service and warranty adjustments. Any verbal side-agreement and additional contract amendment requires the written consent of SIMA-tec. The same applies for guaranteed special qualities regarding the subject matter of the contract / object of purchase.
2. Agreements reached with our personnel and representatives require the written consent by SIMA-tec to come into force. The same applies for any consent expressed by our personnel and representatives as well as for any order placed with our personnel and representatives. Our personnel and representatives have no authority to collect. SIMA-tec cannot be held liable for damages caused by simple negligence by our personnel and representatives.
3. Place of performance and exclusive jurisdiction for both contract parties for any current and/or future pecuniary claims related to this business relation or in connection with the before-mentioned relationship, as well as for any resulting future business relation is the SIMA-tec place of business. The same applies for claims to bills, cheques and other titles as well as to compensation claims.
4. The legal provisions of the German law are applicable for the contractual relationship.
5. The assignment of rights related to this contract is not permissible unless written approval by SIMA-tec has been obtained.
6. SIMA-tec reserves the right for correction and additional charges subject to general errors as well as typing errors and miscalculations.
7. SIMA-tec is entitled to withdraw from the contract in case of force majeure such as e.g. mobilization, war, riots, shutdowns / business disruption, lack of raw material etc. The same is true should the customer fail to meet its financial obligations, or should he be verging on insolvency, or should insolvency or legal or extrajudicial settlement proceedings be established against the customer or should goods supplied to the customer, which legally remain property of SIMA-tec, be garnished or otherwise be claimed by third parties. The customer is not entitled to any claims due to the withdrawal from the contract.
8. Upon all data committed to the customer in context to offer or contract , e.g. charts, layout, calculations, we keep property law and copyright. These data must not be made accessible to third, unless we grant the customer permission in writing.

### II. Prices and Terms of Payment

1. The sales tax is invoiced separately in addition to the stipulated prices.
2. The prices are to be understood ex works (EXW) inclusive loading on site, however exclusive packing. The packing material is charged separately and the return of empties is excluded. Transport insurance charges and freight charges as well as possible customs duties are at the expense of the customer.
3. SIMA-tec is entitled to charge the customer with interest on delayed payment to the amount of the respective bank rates, at least however interest of up to 9% above the base lending rate according to § 247 BGB (German Civil Code) and global handling expenses of 40,00 Euro each demand note according to § 288, Abs.5 BGB. Should the customer be delayed in settling former invoices or with taking delivery of ordered goods, SIMA-tec reserves the right to supply pending deliveries against advance payment only.
4. The terms of payment for export orders, unless otherwise stipulated in written consent, are to be understood either as delivery against irrevocable l/c, cash against documents, cash on delivery or advance payment. The choice of the respective payment arrangement in each single case is made by SIMA-tec for lack of stipulation.
5. The customer is only entitled to balance its adverse claims against SIMA-tec's claims or to file a retaining lien in case its counter claim is undisputed or in any case of a legally binding title. The restriction of the retaining lien towards a merchant is only admissible if the contract is part of the operation of his commerce, furthermore regarding a legal entity under public law or a special property (special assets).
6. In case of allocation of aval, the original document has to be returned within two weeks after delivery and approval without further demand. Charges occurring through delay on customer account.

### III. Retention of Title

1. All items supplied remain property of SIMA-tec until all obligations of the customer under the regulations of the contract have been met in full. The retention of title extends to any current and future claims resulting from this business relationship with the customer, e.g. to claims resulting from repair and maintenance services, from delivery of spare and accessory parts etc. The retention of title is also valid when claims to be hedged are invoiced together with other current claims. In this case the acknowledgement of a balance is ineffective unless SIMA-tec has explicitly renounced from the separate treatment of claims.
2. The resale of the goods supplied under retention of title is only admissible within the framework of a common course of trade. The customer is only allowed to either pledge or deposit the goods as security after the settlement of all his contractual obligations towards SIMA-tec. The customer is obliged to notify SIMA-tec imme-

diately by registered mail return during the (duration of the) retention of title should there be any interventions of creditors, particularly in cases of garnishment of the delivery items. The customer also bears the expenses for the measures to abolish the intervention, particularly the expenses of intervention law suits as far as they cannot be collected by the counterparty. The same is true for any other intervention of third parties.

3. The customer assigns his claims resulting from the resale of the SIMA-tec delivery items, up to the invoiced amount as a precaution, until his obligations, especially the payment of the amount invoiced by SIMA-tec, are met in full. The customer is obliged to communicate name and address of the sub-customer and the amount of the unsettled purchase price on request.

#### **IV. Delivery and acceptance procedure**

1. The goods are supplied in accordance with the performance qualities as confirmed in our order acceptance. SIMA-tec reserves the right for technical modifications of our devices and plants during the delivery period.
2. The delivery period starts with the day of our written order confirmation, however not before the receipt of the documents to be procured by the customer and the receipt of the agreed down-payment. The delivery period is considered as kept when then the delivery item or the notification of the readiness for dispatch leave the SIMA-tec premises by the end of the delivery period. Partial deliveries are admissible. The delivery period will be extended adequately should the customer request a different execution of the delivery item or another delivery item after the conclusion of the contract.
3. The shipment is executed at risk and expense of the customer, i.e. even if, by way of exception, SIMA-tec takes over freight charges and delivery, or if the shipment is arranged from a location other than the place of performance. SIMA-tec takes out transport insurance policies up to the customary level and at the expense of the customer.
4. The customer is obliged to check the shipment for deficiencies and completeness at receipt. SIMA-tec explicitly refers to the examinations and obligations to complain owed according to § 377 HGB (German Commercial Code). The customer is obliged to notify SIMA-tec of possible discrepancies within 3 days after the receipt of the shipment. In case of transport damages/loss in transit the customer is obliged to immediately issue the notice of claim and to send it to SIMA-tec by return.

#### **V. Warranty**

1. Claims due to notice of defects become statute-barred within 12 months after the effected delivery of the ordered goods at the customer's. Any warranty claims are barred regarding the sale of second-hand / used goods. The aforesaid regulations do not apply as far as longer warranty periods are compulsory by law. It is compulsive to obtain written approval by SIMA-tec before a possible re-consignment of the goods.
2. Warranty claims for tear and wear parts (natural wear) as well as for damages due to faulty assembly, faulty or careless handling, operation and excessive strain, for which SIMA-tec cannot be held responsible, are excluded. Warranty is excluded in cases of unauthorized intervention of third parties on the equipment.

#### **VI. Miscellaneous**

1. Should individual contract terms be or become ineffective or feature a deficiency, the remaining terms shall not be affected. Both parties agree to work out, instead of the ineffective regulation, a legally acceptable regulation which comes as close as possible to the economic intent of the ineffective regulation, respectively remedies the deficiency.
2. Customers are added to our reference list which is releases among others on our web site. Disagreement with the publication requires written notification at contract conclusion, latest at approval.