

## Article I: General provisions

1. The legal relations between the Supplier and the Purchaser in connection with the supplies and/or services of the Supplier (hereinafter referred to as: "Supplies") shall be governed exclusively by these International Conditions of Supply. The Purchaser's general terms and conditions shall apply only if expressly accepted by the Supplier in writing. The scope of delivery shall be determined by the congruent mutual written declarations.
2. The Supplier herewith reserves any industrial property rights and/or copyrights to its cost, estimates, drawings and other documents (hereinafter referred to as: "Documents"). The Documents shall not be made accessible to third parties without the Supplier's prior consent and shall, upon request, be returned without undue delay to the Supplier or destroyed and the latter confirmed upon request if the contract is not awarded to the Supplier. Sentences 1 and 2 shall apply mutatis mutandis to the Purchaser's Documents; these may, however, be made accessible to those third parties to whom the Supplier has rightfully subcontracted Supplies.
3. The Purchaser has the non-exclusive right to use standard software and firmware, provided that it remains unchanged, is used within the agreed performance parameters, and on the agreed equipment. Without express agreement the Purchaser may make one back-up copy of standard software.
4. Partial deliveries are permissible.
5. The term „claim for damages“ used in the present International Conditions of Supply also includes claims for indemnification for useless expenditure.

## Article II: Prices, terms of payment, and set-off

1. The prices are ex works excluding packaging; value added tax shall be added at the then applicable rate as well as other taxes and duties that may be incurred.
2. If the Supplier is also responsible for assembly or erection and unless otherwise agreed, the Purchaser shall pay the agreed remuneration and any incidental costs required, e.g. for traveling and transport as well as allowances.
3. Payments shall be made free Supplier's paying office.
4. The Purchaser may set off only those claims which are undisputed or non-appealable.

## Article III: Retention of title and securing payment

1. The items pertaining to the Supplies ("Retained Goods") shall remain the Supplier's property until each and every claim the Supplier has against the Purchaser on account of the business relationship has been fulfilled.
2. For the duration of the retention of title, the Purchaser may not pledge the Retained Goods or use them as security, and resale shall be possible only for resellers in the ordinary course of their business and only on condition that the reseller receives payment from its customer or makes the transfer of property to the customer dependent upon the customer fulfilling its obligation to effect payment.
3. The Purchaser shall inform the Supplier forthwith in writing of any seizure or other act of intervention by third parties.
4. Where the Purchaser fails to fulfill its duties, fails to make payment due, or otherwise violates its obligations the Supplier shall be entitled to rescind the contract and take back the Retained Goods in the case of continued failure following expiry of a reasonable grace period set by the Supplier. The Purchaser shall be obliged to return the Retained Goods. The fact that the Supplier takes back Retained Goods and/or exercises the retention of title, or has the Retained Goods seized, shall not be construed to constitute a rescission of the contract, unless the Supplier so expressly declares.

## Article IV: Time for supplies; delay

1. Times set for Supplies shall only be binding if all Documents to be furnished by the Purchaser, necessary permits and approvals, especially concerning plans, are received in time and if agreed terms of payment and other obligations of the Purchaser are fulfilled. If these conditions are not fulfilled in time, times set shall be extended reasonably; this shall not apply if the Supplier is responsible for the delay.
2. If non-observance of the times set is due to:
  - a. force majeure, such as mobilization, war, terror attacks, rebellion or similar events (e. g. strike or lockout, epidemic, pandemic);
  - b. virus attacks or other attacks on the Supplier's IT systems occurring despite protective measures were in place that complied with the principles of proper care;
  - c. hindrances attributable to German, Swiss, US or otherwise applicable national, EU or international rules of foreign trade law or to other circumstances for which Supplier is not responsible;
  - d. the fact that Supplier does not receive its own supplies in due time or in due formsuch times shall be extended accordingly.
3. If the Supplier is responsible for the delay (hereinafter referred to as "Delay") and the Purchaser has demonstrably suffered a loss therefrom, the Purchaser may claim a compensation as liquidated damages of 0.5% for every completed week of Delay, but in no case more than a total of 5% of the price of that part of the Supplies which due to the Delay could not be put to the intended use.
4. Any claims for damages by the Purchaser due to delay exceeding the limits set out in No. 3 shall be excluded, even after expiry of any time limit grace period set to the Supplier to effect delivery. This shall not apply to unlawful intent or gross negligence on the part of the Supplier and to the extent that liability cannot be limited or excluded according to mandatory applicable law. The Purchaser may only withdraw from the contract if the Supplier is responsible for the delay in delivery and if a reasonable grace period previously granted to the Supplier has expired without success.
5. At the Supplier's request, the Purchaser shall declare within a reasonable period of time whether it, due to the delayed Supplies, rescinds the contract or insists on the delivery of the Supplies.
6. If dispatch or delivery, due to Purchaser's request, is delayed by more than one month after notification of the readiness for dispatch was given, the Purchaser may be charged, for every additional month commenced, storage costs of 0.5% of the price of the items of the Supplies. The contracting parties to the contract may prove that higher or, as the case may be, lower storage costs have been incurred.

## Article V: Passing of risk

1. Even where delivery has been agreed freight free, the risk shall pass to the Purchaser as follows:
  - a. if the delivery does not include assembly or erection, if it has been made available for dispatch. At the request and expense of the Purchaser, the delivery shall be insured by the Supplier against the usual transport risks;
  - b. if the delivery includes assembly or erection, at the day of taking over in the Purchaser's own works or, if so agreed, after a successful trial run.
2. The risk shall pass to the Purchaser from the time of Delay that is the Purchaser's responsibility if dispatch, delivery, the start or performance of assembly or erection, the taking over in the Purchaser's own works, or the trial run is delayed for reasons for which the Purchaser is responsible or if the Purchaser has otherwise failed to accept the Supplies.

## Article VI: Assembly and erection

Unless otherwise agreed in written form, assembly and erection shall be subject to the following provisions:

1. Purchaser shall provide at its own expense and in due time:
  - a. all earth and construction work and other ancillary work outside the Supplier's scope, including the necessary skilled and unskilled labor, construction materials and tools,
  - b. the equipment and materials necessary for assembly and commissioning such as scaffolds, lifting equipment and other devices as well as fuels and lubricants,
  - c. energy and water at the point of use including connections, heating and lighting,
  - d. suitable dry and lockable rooms of sufficient size adjacent to the site for the storage of machine parts, apparatus, materials, tools, etc. and adequate working and recreation rooms for the erection personnel, including sanitary facilities as are appropriate in the specific circumstances; furthermore, the Purchaser shall take all measures it would take for the protection of its own possessions to protect the possessions of the Supplier and of the erection personnel at the site,
  - e. protective clothing and protective devices needed due to particular conditions prevailing on the specific site.
2. Before the erection work starts, the Purchaser shall unsolicitedly make available any information required concerning the location of concealed electric power, gas and water lines or of similar installations as well as the necessary structural data.
3. Prior to assembly or erection, the materials and equipment necessary for the work to start must be available on the site of assembly or erection and any preparatory work must have advanced to such a degree that assembly or erection can be started as agreed and carried out without interruption. Access roads and the site of assembly or erection must be level and clear.
4. If assembly, erection or commissioning is delayed due to circumstances for which the Supplier is not responsible, the Purchaser shall bear the reasonable costs incurred for idle times and any additional travelling expenditure of the Supplier or the erection personnel.
5. The Purchaser shall attest to the hours worked by the erection personnel towards the Supplier at weekly intervals and the Purchaser shall immediately confirm in written form if assembly, erection or commissioning has been completed.
6. If, after completion, the Supplier demands acceptance of the Supplies, the Purchaser shall comply therewith within a period of two weeks. The same consequences as upon acceptance arise if and when the Purchaser lets the two-week period expire or the Supplies are put to use after completion of agreed test phases, if any.

## Article VII: Receiving Supplies

The Purchaser shall not refuse to receive Supplies due to minor defects.

## Article VIII: Defects as to quality

1. The warranty period is 12 months. It begins with the departure of the deliveries ex works or with the agreed acceptance of the Supplies (if any) or, insofar as the Supplier has also assumed the assembly, with their completion. If dispatch, acceptance or assembly are delayed for reasons for which the Supplier is not responsible, the warranty period shall end at the latest 18 months after notification of readiness for dispatch. The warranty shall expire prematurely if the Purchaser or third parties carry out improper modifications or repairs or if the Purchaser, if a defect has occurred, does not immediately take all appropriate measures to mitigate the damage and give the Supplier the opportunity to remedy the defect.
2. The Purchaser shall inspect the Supplies within a reasonable period of time and notify the Supplier of any defects in writ-

ing without delay. If he fails to do so, the Supplies shall be deemed to have been approved. During the warranty period, the Supplier undertakes, at the written request of the Purchaser, at Supplier's discretion to repair or replace as quickly as possible all parts of the Supplier's Supplies which can be proved to have become defective or unusable at the time of the passing of risk as a result of poor materials, faulty design or defective workmanship. After expiry of the warranty period, warranty claims of the Purchaser are excluded. Replaced parts shall become the property of the Supplier, unless the Supplier expressly waives this right. The Supplier shall bear the costs of rectification incurred in his factory. If the repair cannot be carried out at the Supplier's factory, the associated costs, insofar as they exceed the usual transport, personnel, travel and accommodation costs as well as the costs for the installation and dismantling of the defective parts, shall be borne by the Purchaser.

3. Supplier excludes any warranty and liability for damage which cannot be proven to have arisen as a result of poor material, faulty design, non-reproducible software errors or defective workmanship, e.g. as a result of natural wear and tear, poor maintenance, non-compliance with operating instructions, excessive strain, unsuitable operating materials, chemical or electrolytic influences, construction or assembly work not carried out by the Supplier, and as a result of other reasons for which the Supplier is not responsible.
4. For deliveries from sub-suppliers prescribed by the Purchaser, the Supplier shall assume the warranty only within the scope of the warranty obligations of the sub-suppliers concerned.
5. Due to defects in material, design or workmanship, the Purchaser shall have no rights and claims other than those expressly stated in No. 1 to 4.
6. Guaranteed qualities of the Supplies ("Zugesicherte Eigenschaften") must be expressly designated as such. The provisions for material defects according to Article VIII No. 1 to 5 shall apply accordingly.

## Article IX: Industrial property rights and copyrights; defects in title

1. Unless otherwise agreed, the Supplier shall provide the Supplies in the country of the place of delivery only free from third-party industrial property rights and copyrights (hereinafter referred to as "IPR"). If a third party asserts a justified claim against the Purchaser based on an infringement of an IPR by the Supplies made by the Supplier and used in conformity with the contract, the Supplier shall be liable to the Purchaser within the time period stipulated in Article VIII No. 1 as follows:
  - a. The Supplier shall choose whether to acquire, at its own expense, the right to use the IPR with respect to the Supplies concerned or whether to modify the Supplies such that they no longer infringe the IPR or replace them. If this would be impossible for the Supplier under reasonable conditions, the Purchaser may rescind the contract or reduce the remuneration pursuant to the applicable statutory provisions;
  - b. The Supplier's liability to pay damages is governed by Article XII.
  - c. The above obligations of the Supplier shall apply only if the Purchaser (i) immediately notifies the Supplier of any such claim asserted by the third party in written form, (ii) does not concede the existence of an infringement and (iii) leaves any protective measures and settlement negotiations to the Supplier's discretion. If the Purchaser stops using the Supplies in order to reduce the damage or for other good reason, it shall be obliged to point out to the third party that no acknowledgement of the alleged infringement may be inferred from the fact that the use has been discontinued.
2. Claims of the Purchaser shall be excluded if it is responsible for the infringement of an IPR.
3. Claims of the Purchaser are also excluded if the infringement

of the IPR is caused by specifications made by the Purchaser, by a type of use not foreseeable by the Supplier or by the Supplies being modified by the Purchaser or being used together with products not provided by the Supplier.

4. In addition, with respect to claims by the Purchaser pursuant to No. 1 a) above, Article VIII Nos. 6, 7, 10 and 11 shall apply mutatis mutandis in the event of an infringement of an IPR.
5. Where other defects in title occur, Article VIII shall apply mutatis mutandis.
6. Any other claims of the Purchaser against the Supplier or its agents or any such claims exceeding the claims provided for in this Article IX, based on a defect in title, are excluded.

## Article X: Conditional performance

1. The performance of this contract is conditional upon that no hindrances attributable to German, Swiss, US or otherwise applicable national, EU or international rules of foreign trade law or any embargos or other sanctions exist.
2. The Purchaser shall provide any information and Documents required for export, transport and import purposes.

## Article XI: Impossibility of performance; adaptation of contract

1. To the extent that delivery is impossible, the Purchaser is entitled to claim damages, unless the Supplier is not responsible for the impossibility. The Purchaser's claim for damages is, however, limited to an amount of 10% of the value of the part of the Supplies which, owing to the impossibility, cannot be put to the intended use. This limitation shall not apply in cases of unlawful intent or gross negligence on the part of the Supplier, but it shall also apply in cases of unlawful intent or gross negligence on the part of Supplier's auxiliary persons.
2. Where events within the meaning of Article IV No. 2 (a) to (c) substantially change the economic importance or the contents of the Supplies or considerably affect the Supplier's business, the contract shall be adapted taking into account the principles of reasonableness and good faith. To the extent this is not justifiable for economic reasons, the Supplier shall have the right to rescind the contract. The same applies if required export permits are not granted or cannot be used. If the Supplier intends to exercise its right to rescind the contract, it shall notify the Purchaser thereof without undue delay after having realized the repercussions of the event; this shall also apply even where an extension of the delivery period has previously been agreed with the Purchaser.

## Article XII: Other liability

All cases of breach of contract and their legal consequences as well as all claims of the Purchaser, irrespective of the legal grounds on which they are based, are conclusively regulated in these International Terms Conditions of Supply. In particular, all claims for damages, reduction of remuneration, cancellation of the contract or rescission from the contract not expressly mentioned are excluded. In no event shall the Purchaser be entitled to claim compensation for damage that has not occurred to the Supplies itself, such as loss of production, loss of use, loss of orders, loss of profit or other direct or indirect damage.

This exclusion of liability does not apply to unlawful intent or gross negligence on the part of the Supplier, but it does apply to unlawful intent or gross negligence on the part of Supplier's auxiliary persons. Furthermore, this exclusion of liability shall not apply insofar as it is contrary to mandatory law.

## Article XIII: Venue and applicable law

1. All disputes, controversies or claims arising out of or in connection to this contract, including its validity, invalidity, breach or termination, shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce (ICC). The

arbitration tribunal shall consist of one or three arbitrators. If the arbitration tribunal consists of three arbitrators, each party shall nominate one arbitrator for confirmation by the ICC. Both arbitrators shall agree on the third arbitrator within thirty (30) days after their appointment. Should the two arbitrators fail to reach an agreement on the third arbitrator within this period, the ICC shall select and appoint the third arbitrator. The seat of the arbitration shall be Zurich, unless the parties agree on another place. The language of the arbitration shall be English.

2. This contract and its interpretation shall be governed by substantive Swiss law, to the exclusion of the United Nations Convention on contracts for the International Sale of Goods (CISG).

## Article XIV: Binding nature of the contract

Should one or more of the above provisions of these International Conditions of Supply be or become entirely or partially invalid or unenforceable, this shall not affect the validity of the remaining provisions. The invalid provision shall be replaced by a legally valid provision which comes as close as possible to the recognisably intended economic purpose of the invalid provision. The same applies in the event that these International Conditions of Supply contain any contractual gap. This shall not apply if it would be unreasonably onerous for one of the parties to be obligated to continue the contract.

Passau, as of 01.01.2024

signed Martin Weber, CEO

### SIMON PROtec Systems GmbH

Medienstraße 8  
DE-94036 Passau  
Tel: +49 (0) 851 988 70-0  
Fax: +49 (0) 851 988 70-70  
Internet: [www.simon-protec.com](http://www.simon-protec.com)  
E-Mail: [info@simon-protec.com](mailto:info@simon-protec.com)

### SIMON PROtec Deutschland GmbH

Behringstraße 11a  
DE-82152 Planegg  
Tel: 0851 / 379 368 0  
Fax: 0851 / 379 368 70  
Internet: [www.simon-protec.de](http://www.simon-protec.de)  
E-Mail: [info@simon-protec.de](mailto:info@simon-protec.de)