

## General Conditions of Sale of SIMAR GmbH

(Stand 08/2017)

### 1. Area of Application

1.1 These General Conditions of Sale shall only apply towards enterprises exercising their industrial or independent professional activity and towards legal entities under public law. These General Conditions of Sale shall apply to any and all business relations between SIMAR GmbH (hereinafter referred to as "SIMAR") and the customer, even if not mentioned in subsequent contracts. They shall apply accordingly to work performances and services. In case of work performance, taking of the delivered products shall be replaced by acceptance of work, and in case of services by receipt of the service.

1.2 Any terms and conditions of the customer conflicting with, in addition to, or deviating from these General Conditions of Sale shall not form subject matter of the contract unless SIMAR consented to their applicability in writing. These General Conditions of Sale shall also apply in case SIMAR unconditionally effects delivery to the customer, having knowledge of its conflicting, additional, or deviating terms and conditions.

1.3 Any agreements between SIMAR and the customer made in addition to or deviating from these General Conditions of Sale and entered into for the purpose of performing a contract shall be laid down in the respective contract in writing. This shall apply accordingly for the waiver of this written form requirement.

1.4 Rights exceeding these General Conditions of Sale that SIMAR is entitled to pursuant to legal provisions or other agreements remain unaffected.

### 2. Conclusion of Contract

2.1 Offers quoted by SIMAR are subject to change and nonbinding.

2.2 Illustrations, drawings, specifications as to weight, dimension, performance, and consumption as well as any other descriptions of the products contained in the documents pertaining to the offer shall only be approximate unless expressly specified as binding. They constitute neither agreement nor guarantee as to the characteristics or durability of the products unless expressly agreed as such in writing. The same shall apply with respect to the customer's expectations concerning the characteristics of the products or their use.

2.3 SIMAR reserves all rights of ownership, copyrights, and any other property rights to all offer documents, in particular illustrations, drawings, calculations, brochures, catalogues, models, samples, and tools. Such documents must not be made available to third parties. The customer shall return upon SIMAR's request to SIMAR all offer documents that are no longer necessary in the ordinary course of business. The same shall apply to all other documents, drafts, samples and models.

2.4 Orders are not binding until they have been confirmed by SIMAR within two weeks in a written order confirmation or until SIMAR performs the order, in particular by sending the products. Any order confirmation processed by use of automatic appliances and lacking signature and name is considered a written order confirmation. To the extent the order confirmation contains obvious errors, misspellings, or miscalculations, SIMAR shall not be bound to it.

2.5 SIMAR's non-communication to offers, orders, requests, or other declarations of the customer is only regarded as an approval if it is explicitly stipulated in writing in advance.

2.6 In the event of a significant deterioration of the customer's financial situation, or in case the legitimate application for the opening of insolvency or comparable proceedings against the customer's assets filed by a third party is being denied for lack of assets, SIMAR may rescind the contract in whole or in part.

### 3. Scope of Delivery

3.1 The written order confirmation of SIMAR is authoritative for the scope of delivery. Changes to the scope of delivery by the customer require the written confirmation of SIMAR to be effective. The products are subject to modifications in construction and form to the extent such modifications are customary in trade or lie within the DIN tolerances or are insignificant and reasonable to the customer. This applies accordingly to the choice of materials, the specification, and the construction type.

3.2 Delivery in parts is permissible.

### 4. Time of Delivery

4.1 Delivery periods and dates must be agreed in writing and are non-binding unless specified by SIMAR as binding in advance in writing.

4.2 The delivery period begins when the order confirmation is sent by SIMAR, however not before the customer has provided all documents, approvals, and releases to be provided by it, all technical matters have been clarified, and an agreed down-payment has been received, and the timely and proper delivery of defect-free supply parts. In case of delivery dates the delivery date will be rescheduled accordingly in a reasonable manner provided that such delay in delivery is due to the customer's failure to timely provide all documents, approvals, and releases to be provided by it, to timely clarify all technical matters, to timely make the agreed down-payment available to SIMAR, or to timely and properly, in particular defect-free, deliver supply parts to be delivered by it. All delivery dates and periods are subject to the due and timely fulfilment of all other obligations of the customer.

4.3 The delivery date respectively period is deemed met if within the delivery period or by the delivery date, the products have left the factory or SIMAR has communicated the shipping readiness or the readiness for dispatch. All delivery dates and periods are subject to due, in particular timely self-supply of SIMAR unless SIMAR is responsible for the reason giving rise to the undue self-supply. In case of undue self-supply, SIMAR is entitled to rescind the contract. SIMAR shall promptly inform the customer in case it exercises its right of rescission and shall return any performances made by the customer.

4.4 In case of delay in delivery, the customer is entitled to rescind the contract after a reasonable grace period which it has set SIMAR upon commencement of the delay in delivery has expired unsuccessfully.

### 5. International Deliveries

5.1 In the event of international deliveries, the customer shall make all necessary declarations and take all necessary measures for the export from Germany and the import to the country of destination towards the competent authorities in due time. The customer shall especially make available all necessary clearance documents and comply with any export control requirements and other restrictions on marketability of the products.

5.2 Delivery is subject to the reservation that no legal impediments because of national or international legal provisions, in particular provisions on export control and embargos or any other sanctions exist.

5.3 Delays due to export controls suspend the agreed delivery times.

### 6. Acceptance

6.1 If a final acceptance has been agreed upon, each party is entitled to demand for partial acceptance. Final acceptance and partial acceptance take place by the signing of a mutually set up acceptance protocol.

6.2 Final acceptance is deemed to have occurred if the customer does not declare acceptance of SIMAR's performance within a reasonable period set by SIMAR without cause or if the customer has taken the products into operation or otherwise uses the products.

6.3 Minor defects do not hinder final acceptance.

### 7. Tools

7.1 Title to the tools procured or manufactured by SIMAR passes to customer only upon full payment of the tool price.

7.2 The customer may demand handover of the tools only after the customer has ordered and paid in full the agreed output quantity.

7.3 SIMAR may otherwise use or dispose of the products if the customer has not placed new orders for a period of time of more than twelve months.

### 8. Prices and Payment

8.1 Unless specific agreements are made to the contrary, all prices apply ex works and are exclusive of shipping and packaging costs, insurance, statutory taxes, customs duties, or other levies. The costs incurred in this context, in particular the costs for packaging and transport of the products, will be invoiced separately. Statutory VAT will be shown separately on the invoice at the statutory rate valid on the day of invoicing.

8.2 Unless a separate agreement is made to the contrary, the delivery price is payable net within 14 days following the invoice date. The day of payment is considered the day SIMAR is able to dispose of the delivery price. If the customer defaults payment, it shall pay default interest of 9 percentage points above the respective base interest rate p.a. Any exceeding claims of SIMAR shall remain unaffected.

#### **9. Passing of Risk**

9.1 The risk of accidental loss and accidental deterioration shall pass to the customer as soon as the products have been handed over to the person effecting transport or have left the warehouse of SIMAR for purposes of shipment. In case the customer collects the products, the risk of accidental loss and accidental deterioration shall pass to the customer upon notification of readiness for collection. Sentences 1 and 2 above shall also apply for partial deliveries or if SIMAR has assumed additional services, e.g., the transport costs or assembly of the products at the customer's site.

9.2 If the customer falls into default in accepting the products, SIMAR is entitled to demand compensation for the damage incurred including possible additional expenses. In particular, SIMAR may store the products at the expense of the customer as long the latter is in default. The costs for storing the products are fixed at a rate of 0.5% of the net invoice value for each commenced calendar week of default. Further claims of SIMAR remain unaffected. The customer is entitled to prove that SIMAR has incurred lower or no costs at all. The same applies if the customer violates any other obligations to co-operate, unless the customer is not responsible therefore. The risk of accidental loss and accidental deterioration of the products shall pass to the customer at the latest at the time the customer falls into default of acceptance. SIMAR is entitled to otherwise dispose of the products after the unsuccessful expiry of a reasonable period set by SIMAR and to supply the customer within a reasonably extended period.

9.3 In case shipping is delayed due to circumstances SIMAR is not responsible for, risk shall pass to the customer upon notification of shipping readiness.

9.4 The delivered products must be accepted by the customer even if they have minor defects, without this affecting its claims based on defects.

#### **10. Warranty, Defects Liability**

10.1 The rights of the customer to assert claims based on defects presuppose that the customer inspects the delivered products upon receipt, to the extent reasonable also by way of trial processing or trial use, and notifies SIMAR of any apparent defects in writing without delay, however no later than two weeks after receipt of the products. Hidden defects must be reported to SIMAR in writing promptly after their discovery. The customer must describe the defects in writing when notifying SIMAR of them. The assertion of claims based on defects by the customer further presupposes that any and all specifications, statements and conditions shown in the technical instructions, construction manuals, operating manuals, planning and design guidelines, and other documents pertaining to the individual products are complied with during planning, construction, mounting, connection, installation, start-up, operation, and maintenance of the products, in particular that maintenances are duly carried out and evidenced, and that recommended components are used.

10.2 In case the products are defective, SIMAR shall at its own choice render subsequent performance either by removing the defect or by delivering a product free of defects. When rendering subsequent performance, SIMAR shall be obligated to bear all expenses required in this respect, in particular transport, shipping, personnel, and material costs, unless such expenses are increased due to the fact that the products were shipped to a place other than the delivery address. Costs for personnel and material asserted by the customer in this context shall be invoiced at cost price. Replaced parts pass into the ownership of SIMAR and shall be returned to it.

10.3 In case SIMAR is not prepared or able to render subsequent performance, the customer may, without prejudice to any claims for damages or reimbursement of expenses, at its own choice either rescind the contract or reduce the delivery price. The same shall apply in case subsequent performance fails, is unreasonable for the customer, or is unreasonably delayed for reasons attributable to SIMAR.

10.4 The customer's right to rescind the contract is excluded if the customer is unable to return the performance received and (i) this is not attributable to the fact that return is impossible due to the nature of the performance received, or (ii) SIMAR is responsible for it, or (iii) the defect was not revealed until the product was processed or modified. The right to rescind is also excluded if SIMAR is not responsible for the defect and if the customer must compensate the value instead of returning the performance.

10.5 The assertion of claims based on defects is excluded if the defect results from natural wear and tear in particular of wear parts or is due to improper handling, mounting, operation, or storage, or faulty modification or repair of the products performed by the customer or third parties. The same shall apply for defects attributable to the customer and for defects resulting from a technical cause other than the original defect.

10.6 Claims of the customer for reimbursement of expenses instead of claims for damages in lieu of performance are excluded unless a reasonable third party would have incurred such expenses.

10.7 SIMAR does not assume any guarantee, in particular no guarantee of quality or durability, unless otherwise agreed in writing.

10.8 The limitation period for claims based on defects asserted by the customer is one year. To the extent the defective products were used for a building in accordance with their intended use and have caused its defectiveness, or to the extent the defect is building-related, the limitation period shall be five years. This limitation period shall also apply for claims in tort based on a defect of the products. The limitation period begins when the products are delivered. The shortened limitation period shall not apply to the unlimited liability of SIMAR for damages resulting from a breach of a guarantee or from harm to life, physical injury, or harm to health, for intent and gross negligence, and for product liability, or to the extent SIMAR has assumed a procurement risk. Any comment of SIMAR on a claim based on defects asserted by the customer shall not constitute an opening of negotiations on such claim or on the facts giving rise to the claim, provided that SIMAR rejects the claim based on defects to the full extent.

#### **11. Liability of SIMAR**

11.1 SIMAR is liable, without limitation, to pay compensation resulting from a breach of guarantee or injury to body and health. The same applies to deliberate and gross negligence or if SIMAR has assumed a procurement risk. For slight negligence, SIMAR is only liable if substantial obligations are violated which result from the nature of the contract and which are of special importance for fulfilling the purpose of the contract. In case of violation of such obligations, delay and impossibility, SIMAR's liability is restricted to such damage occurring within the scope of the Contract. A compulsory legal liability for product defects remains unaffected.

11.2 The foregoing limitation of liability applies as well for the personal liability of SIMAR's employees, directors, representatives and vicarious agents.

#### **12. Product Liability**

12.1 The customer will not modify the products; in particular, it will not modify or remove existing warnings about risks due to improper handling of the products. In case of breach of this undertaking, the customer shall internally indemnify SIMAR from and against any and all product liability claims asserted by third parties unless the customer is not responsible for the defect causing liability.

12.2 If as a result of the goods having a product defect SIMAR is required to recall the product or issue a product warning, the customer shall give its best efforts to cooperate with whatever action SIMAR deems necessary and expedient and assist SIMAR, particularly with collecting the necessary customer data. The customer shall bear the costs of the product recall or warning, unless the customer is not responsible for the product defect or the ensuing damage under product liability law principles. The foregoing does not affect any further claims of SIMAR.

12.3 The customer will promptly inform SIMAR in writing about any and all risks in connection with the use of the products and any possible defects in the products that become known to it.

#### **13. Acts of God**

13.1 If SIMAR is hindered in the fulfilment of its contractual obligations, in particular in the delivery of the products, by Acts of God,

SIMAR will be exempted from liability for the duration of the hindrance as well as an appropriate starting time without being obligated to pay compensation to the customer. The same applies if it is made unacceptably difficult or temporarily impossible for SIMAR to fulfil its obligations due to unpredictable circumstances or circumstances for which SIMAR is not responsible, in particular due to industrial disputes, official measures, energy shortage or substantial business disruption. This also applies if such circumstances affect sub-contractors and in case SIMAR is in default. This applies also if such Acts of God occur while SIMAR is in default. To the extent SIMAR is released from its obligation to supply, SIMAR will grant back preliminary performances of the customer as may have been made.

13.2 SIMAR is entitled to withdraw from the contract if such a hindrance continues for more than four months and if, as a result of the hindrance, the fulfilment of the contract is no longer in SIMAR's interest. At the request of the customer, SIMAR will declare whether it will take advantage of its right of withdrawal after the expiration of the deadline or if it will supply the products within an appropriate deadline.

#### **14. Retention of Title**

14.1 SIMAR retains title to the delivered products until the purchase price and any and all claims against the customer that SIMAR is entitled to under their business relationship have been fully settled. For the duration of the retention of title, the customer shall handle the products subject to retention with care. It shall in particular sufficiently insure the products subject to retention at its own expense at replacement value against fire, water, and theft damage. The customer shall provide SIMAR upon the latter's request with proof of the insurance policy. The customer assigns to SIMAR, with effect as from today, all claims for compensation in connection with such insurance. SIMAR herewith accepts such assignment with effect as from today. If the insurance agreement does not allow for such assignment, the customer herewith instructs the insurance company to make payments to SIMAR exclusively. Any exceeding claims of SIMAR shall remain unaffected.

14.2 The customer is only permitted to sell the products subject to retention of title in the ordinary course of business. The customer shall not be entitled to pledge the products subject to retention, to transfer them by way of security or to otherwise dispose of them in a way endangering title of SIMAR. The customer shall promptly notify SIMAR in writing of any seizure or any other intervention by a third party, provide all information required, inform the third party of the title of SIMAR, and assist in all measures of SIMAR in order to protect the products subject to retention. To the extent the third party is not able to reimburse SIMAR the judicial and extrajudicial costs for enforcing title of SIMAR, the customer shall reimburse SIMAR the loss sustained by SIMAR in this connection unless the customer is not responsible for the breach of duty.

14.3 The customer assigns to SIMAR, with effect as from today, all claims in connection with the resale of the products with any and all ancillary rights, irrespective of whether the products subject to retention were resold prior or after processing. SIMAR accepts such assignment with effect as from today. If such assignment is not permissible, the customer herewith instructs the third party debtor to make payments to SIMAR exclusively. The customer shall be revocably authorized to collect the claims assigned to SIMAR in trust for SIMAR in the customer's own name. The amounts collected shall be transferred to SIMAR immediately. SIMAR may revoke the customer's authorization for collection and resale for cause, in particular if the customer fails to duly meet its payment obligations vis-à-vis SIMAR, defaults or ceases payment, or if the customer files for the opening of insolvency proceedings or similar debt settlement proceedings against its own assets, or if the justified request for the opening of insolvency or similar debt settlement proceedings against the customer's assets filed by a third party is denied for lack of assets. In case of a blanket assignment by the customer, the claims assigned to SIMAR shall expressly be exempted.

14.4 Upon request of SIMAR, the customer shall promptly notify the third party debtor of the assignment and provide SIMAR with any information and document necessary for collection.

14.5 In case the customer conducts itself contrary to the terms of the contract, in particular in case it defaults in payment, SIMAR shall, without prejudice to its other rights, be entitled to rescind the contract after a

reasonable grace period set by SIMAR. The customer shall promptly grant SIMAR or its authorized agents access to the products subject to retention and return them. After due and timely notice, SIMAR may otherwise dispose of the products subject to retention in order to satisfy its matured claims against the customer.

14.6 The connection or mixing of the products subject to retention with other products not belonging to SIMAR by the customer shall always be made for SIMAR. Should the products be connected, processed or remodeled together with other objects not belonging to SIMAR, SIMAR shall gain joint title in the new item in the proportion of the value of the delivered products to the other, processed objects at the time of such processing or remodeling. The customer shall keep the new objects for SIMAR. In all other regards, the item created through processing or reconstruction as well as connection or mixing is subject to the same provisions as the products subject to retention.

14.7 In case the realizable value of the securities, taking into account usual valuation adjustments by the banks, exceeds the claims of SIMAR arising from the business relationship with the customer by more than 15%, SIMAR shall at the customer's request be insofar obligated to release the securities the customer is entitled to. The valuation should be based on the invoice value of the products subject to retention and on the nominal value of the claims. The choice of the security to be released is upon SIMAR in each case.

14.8 In case of delivery to other legal systems in which the above provisions of retention of title do not have the same retaining effect as in the Federal Republic of Germany, the customer hereby grants SIMAR a corresponding security interest. The customer will take all further measures that are necessary in this respect to grant SIMAR such corresponding security interest. The customer shall assist in all measures necessary or conducive for the effectiveness and enforceability of such security interests.

#### **15. Confidentiality**

15.1 The parties undertake to keep confidential for a period of five years following delivery and – unless necessary for the business relationship – neither to record, hand on, or use any information that becomes available to them and that is indicated confidential or is in other circumstances identifiable as business or trade secret.

15.2 This confidentiality obligation shall not apply to the extent the information was evidently known to the other Party before commencing the contractual relationship, is common knowledge or public domain, or becomes common knowledge or public domain without the fault of the other Party. The burden of proof is to be borne by the receiving Party.

15.3 By appropriate binding agreements, the parties will ensure that the employees, agents and any other personnel acting on their behalf neither record without authorization nor hand on nor exploit such business and trade secrets for a period of five years following delivery.

#### **16. Final Provisions**

16.1 The customer is only entitled to transfer rights and obligations to third parties after prior written approval of SIMAR.

16.2 The customer is only entitled to setoff counterclaims against payments due if such counterclaims are uncontested or recognized by legally binding judgement. A right of retention may only be claimed if the customer's counterclaim is based on the same contractual relationship.

16.3 The law of the Federal Republic of Germany applies to the legal relations of the customer to SIMAR to the exclusion of the United Nations' Convention on Contracts for the International Sale of Goods (CISG).

16.4 The place of business of SIMAR is the exclusive place of jurisdiction for all disputes resulting from the business relations between SIMAR and the customer. SIMAR is also entitled to take legal action at the place of business of the customer as well as at any other admissible place of jurisdiction.

16.5 Place of performance for all obligations of the customer and SIMAR is the place of business of SIMAR.

16.6 The contractual language English.

16.7 If a clause in this contract is or will become partly or totally ineffective or unenforceable or if there is an omission in this contract, the validity of the remaining clauses will remain unaffected. Instead of the ineffective or unenforceable clause, the effective or executable clause is regarded as agreed which comes nearest to the purpose of the ineffective

and unenforceable clause. In case of an omission, that clause is regarded as agreed which complies with what the parties would have agreed for the purpose of this Agreement had they considered the matter initially.