SIMONSWERK GROUP

T&C - SIMONSWERK GMBH GENERAL TERMS AND CONDITIONS FOR THE PURCHASE OF GOODS AND PLACING OF ORDERS FOR SERVICES

(Version: 01.08.2023)

I. General, scope

1. Our General Terms and Conditions ("Terms and Conditions") apply to all contracts concluded from 10 September 2020 onwards regarding the supply of movable goods ("Goods") and/or the rendering of services ("Services") with contractual partners whose relevant business address is in Germany. Obligations undertaken in addition shall have no effect on the validity of these Terms and Conditions.
2. Our Terms and Conditions apply exclusively; we do not recognise any conflicting terms and conditions of the contractual partner or such that differ from our Terms and Conditions or statutory provisions unless we have expressly agreed to their validity in writing. Our Terms and Conditions also apply if we unconditionally accept the contractual partner's performance or unconditionally render our services in the knowledge of conflicting terms and conditions of the contractual partner or such that differ from our Terms and Conditions.
3. Our Terms and Conditions only apply if the contractual partner is an entrepreneur (Section 14 of the German Civil Code, BGB), a legal entity under public law or a special fund under public law.
4. References to the validity of statutory provisions are only made for clarification. The statutory provisions are therefore valid even without such clarification, provided they are not directly modified or expressly excluded in these Terms and Conditions.

II. Quotation, conclusion and content of contract

1. Any purchase orders from us only become effective when we have issued them in writing. The contractual partner must inform us of any obvious errors that are apparent to the contractual partner (e.g. typing or arithmetical errors) or of any incomplete purchase orders including order documents for the purpose of correction or completion before accepting them. If anything with regard to our purchase order is unclear to the contractual partner, the contractual partner is obliged to clarify this with us before conclusion of the contract. For the avoidance of doubt, it should be noted that "Purchase Orders" in these Terms and Conditions covers both our offer to buy Goods and our offer to place orders for the rendering of Services by the contractual partner.
2. Unless a commitment period is expressly contained in our Purchase Order we are bound by our Purchase Order for one (1) week after the date of the Purchase Order. Our receipt of the contractual partner's declaration of acceptance is authoritative for the timely acceptance of our Purchase Order by the contractual partner.
3. Even before the conclusion of a contract, the contractual partner is obliged to inform us in writing if - the Goods and/or Service to be supplied are not exclusively suitable for the use agreed with them or known to them or apparent to them,
- special risks or unusual consequences of damage might be associated with the use of the Goods and/or Service which they are or should be aware of, or
- patents, licences or other third-party property rights might be infringed upon resale of the Goods by us in Germany or internationally.
4. All agreements made between us and the contractual partner at the time of concluding the contract for the purpose of executing the contract are set out in the contract and these Terms and Conditions.
5. We reserve all property rights and copyright to illustrations, drawings, calculations and other documents. This also applies to such written documents which are marked "confidential". The contractual partner requires our express written consent before forwarding them to third parties.

III. Delivery, lead time, transfer of risk, consequences of default

1. If no other terms of delivery are agreed, Goods will be delivered or Services rendered DDP Incoterms 2020 to the delivery address designated in our Purchase Order, or if no delivery address is stated in the Purchase Order, DDP Bosfelder Weg 5, 33378 Rheda-Wiedenbrück, Germany. If, contrary to Section 3 (1) of these Terms and Conditions, “free buyer’s address”, “delivered on site” or similar is agreed with the contractual partner as the terms of delivery for the Goods, then this clause shall be understood to mean that the delivery is only concluded upon arrival of the Goods at the point of destination, notwithstanding a clear interpretation to the contrary.
2. The delivery time and/or time of service quoted by us in the purchase order is binding. If the delivery time and/or service time is not quoted in the purchase order and has not been agreed elsewhere, the delivery of Goods or Services must be made by the contractual partner immediately in accordance with Section 271 of the German Civil Code unless anything to the contrary emerges from the circumstances.
3. In the event of exceeding the delivery date in the case of a fixed date transaction, contrary to Section 376 (1) second sentence of the German Commercial Code (HGB), there is no requirement for a notification from us that we insist on fulfilment in order to sustain our entitlement to fulfilment. The continuation of our entitlement to fulfilment does not affect our unrestricted right to withdraw in accordance with statutory provisions.
4. Early deliveries and partial deliveries of Goods or Services are not permissible unless we have agreed to them in writing in a specific case.
5. The contractual partner is obliged to inform us in writing without delay if – for whatever reason - they anticipate that they will not be able to meet the agreed delivery times or service times. Such notification does not release the contractual partner from their obligation to deliver Goods or Services on time and does not affect our rights arising from a late delivery of Goods or Services.
6. Without it being associated with a restriction of other notification obligations, the contractual partner must give prior written notice of the delivery of Goods or Services reasonably in advance.
7. If the date on which the Goods or Service must be delivered at the latest can be determined on the basis of the contract then the contractual partner is in default if the Goods or Service have not been delivered by the end of that day without there being a need for us to issue a reminder. The other statutory provisions in accordance with Section 286 (2) no. 2 to 4 of the German Civil Code, subject to which a reminder is not required for default to occur, remain unaffected.
8. In the event of default on the supply of Goods or Services, we are entitled to the statutory rights without limitation, including the right of withdrawal and the right to claim damages instead of performance after the expiry of a reasonable extension without result, unless such extension is unnecessary in accordance with these Terms and Conditions and/or statutory provisions. The provisions in Section 3 (9) of these Terms and Conditions remain unaffected.
9. If the contractual partner is in default, we can - in addition to further statutory rights - demand flat rate compensation of damages caused to us by the default in the sum of 0.5% of the net purchase price of the Goods that have not been delivered or have been delivered late or of the net price of the Service that has not been rendered or has been rendered late for every calendar week or part thereof, however the flat rate may be no more in total than 5% of the net purchase price of the Goods that have not been delivered or have been delivered late or of the net price of the Service that has not been rendered or has been rendered late. We reserve the right to prove that we have incurred higher damages. The contractual partner has the right to prove that lower damages have been incurred or none at all. The flat rate damages in accordance with Section 3 (9) of these Terms and Conditions shall be offset against the claim to damages caused by default.
10. The risk transfers upon delivery of the Goods, or upon acceptance in the case of Services rendered. Unless expressly otherwise agreed, acceptance of Services requires the issue of an acceptance report, which must be signed by us, or another written certificate by us. The issue of an acceptance report is not replaced by us using the Service or a part thereof due to operational needs. If acceptance has been agreed in the case of the delivery of Goods, this will be authoritative for the transfer of risk, contrary to Section 3 (10) first sentence of these Terms and Conditions. Apart from this, in the case of an acceptance of Goods, the statutory provisions of the law on contracts for work and labour also apply accordingly.

11. The contractual partner is obliged to quote our purchase order number and part numbers accurately on all shipping documents and delivery notes, provided these are quoted on our Purchase Order. Shipping notices must be sent to our goods-in department. Every consignment of Goods must be accompanied by a delivery note. The invoice should be sent to us on the date of despatch if at all possible. The delivery note and invoice must contain our purchase order number and part numbers provided these are quoted on our Purchase Order.
12. If hazardous substances within the meaning of the German Hazardous Substances Regulation or Goods where the release of such substances cannot be ruled out during utilisation, are being delivered, then the contractual partner must provide us with all of the data required to prepare the safety data sheet in writing without being asked to do so.
13. If the contractual partner fails to send the information described above in Section 3 (11) of these Terms and Conditions to us properly to the correct office then delays in processing will not be our fault.
14. Should the contractual partner have been authorised by us to do so, the contractual partner will take all reasonable measures to use our extranet restricted access supplier portal. If using our extranet supplier portal, the contractual partner must call up the information on the specifications of the Goods for production, enter scheduled delivery dates and advise us of the despatch of Goods. Upon despatch of the Goods, an accompanying document must be generated from the portal, printed and attached to the delivery note.

IV. Inspection of goods-out by the contractual partner; obligation to inform

1. In order to prevent consequential damages arising from the delivery of defective Goods if at all possible, the contractual partner is obliged to inspect the Goods for defects that are obvious from a proper inspection, before delivery. The contractual partner is obliged to record the results of this goods-out inspection in writing and to send them to us on request.
2. Furthermore, the contractual partner is obliged to attach a test record to the delivery note in which the contractual partner confirms that they have inspected a reasonable random sample of the Goods before despatch for compliance with the agreed dimensions and for conformity of the surface finish and that the inspected Goods are in line with the contract. Section 4 (1) of these Terms and Conditions remains unaffected.
3. If the contractual partner becomes aware after delivery that the Goods are defective, they are obliged to inform us of such defects in writing without delay. This applies even if the defect is not a reason for a tortious and/or product liability related warning or a tortious and/or product liability related recall.

V. Prices, terms of payment and default on payment

1. The agreed price is binding. An increase, for whatever reason, is not permissible unless we have issued our written consent to it. The agreed price includes statutory VAT if this is not shown separately.
2. The agreed price includes the costs of delivery, transportation and packaging that is appropriate for the transportation as well as other incidental costs.
3. The agreed price is payable within 30 calendar days of full delivery of Goods or Services (including any agreed acceptance) and receipt of a correct invoice. If we make the payment within 14 calendar days of the authoritative date in accordance with Section 5 (3) first sentence of these Terms and Conditions, the contractual partner shall grant us a 2% early payment discount on the net amount of the invoice. In the case of a bank transfer, the payment has been made on time if the transfer is made before the expiry of the payment period; the receipt of the payment by the contractual partner is not authoritative.
4. We will not owe interest after due date in accordance with Section 353 of the German Commercial Code.
5. The statutory provisions apply to default on payment.
6. We are entitled to rights of offsetting and retention and the right to defence on the grounds of non-fulfilment of the contract to the extent permitted by law. In particular, we are entitled to withhold due payments for as long as we are entitled to claims from incomplete or defective deliveries of Goods or Services against the contractual partner. Payments are made conditionally and do not affect the contractual partner’s warranty obligations.
7. The contractual partner is only entitled to rights of offsetting and retention if their counter-claims have been determined by a court of law, are undisputed or recognised by us or based on the same contractual relationship.

VI. Defects in quality, defects in title

1. In addition to the defects in quality defined by law, the Goods or Service have a defect in quality if, at the time of the transfer of risk, they
- vary from the agreed quality and/or suitability for use;
- do not meet the statutory and/or other legal requirements, which need to be met if the Goods or Service are made available in Germany;
- the Goods or Service vary from established engineering practice, the applicable rules for product safety as amended, applicable DIN standards and/or applicable EU standards and/or were not manufactured according to their standards, and/or
- are defective within the meaning of the German Product Liability Act.

2. Without it being associated with a limitation of the provisions according to Section 6 (1) of these Terms and Conditions, the Goods must meet the requirements of Regulation (EC) No 1907/2006 concerning the Regulation, Evaluation, Authorisation and Restriction of Chemicals (REACH), in particular. The contractual partner will not deliver any Goods containing substances on the so-called candidate list in accordance with Art. 59 of the REACH regulation. The contractual partner undertakes to inform us in writing without delay if - for whatever reason - any Goods they have delivered contain substances on the candidate list; this applies in particular in the event of extensions or additions to the candidate list. The contractual partner will name the individual substances and inform us of the proportion of the mass as a percentage as accurately as possible.

3. The Goods or Service have a defect in title if, at the time of the transfer of risk, they do not satisfy the requirements of Section 11 (1) of these Terms and Conditions. Apart from this, the nature of defects in title conforms to Section 435 of the German Civil Code for Goods and Section 633 (2) of the German Civil Code for Services.

VII. Inspection for defects - liability for defects

1. The statutory provisions apply to the commercial obligation of inspection and complaints, with the following proviso: We are obliged to inspect the Goods within a reasonable period of time for typical variations of an actual nature with respect to type, quantity, quality and packaging of the delivered Goods. The inspection method is limited to the normal inspection methods at our company. The involvement of third parties is not necessary, nor is an investigation of the chemical composition. A complaint is made on time if it is received by the contractual partner within a period of 10 working days (working days are Mondays to Fridays with the exception of official public holidays at our site), starting from receipt of the Goods or in the case of latent defects from the time they are discovered. The complaint may be made verbally. A complaint from us is not required if the contractual partner knew about or should have known about the defect of the Goods, in particular based on their goods-out inspection in accordance with Section 4 (1) of these Terms and Conditions.

2. We do not owe any inspection of Services. The provisions regarding acceptance under Section 3 (10) second and third sentences of these Terms and Conditions remain unaffected.

3. The statutory provisions apply to our rights regarding defects in quality and defects in title with respect to the delivered Goods or rendered Services, unless otherwise stipulated in these Terms and Conditions; in any case we are entitled to demand, at our discretion, remedy of the defect or the delivery of a new item, or remedy of the defect or production of new work from the contractual partner. If the contractual partner does not meet their obligation for subsequent fulfilment within a reasonable period set by us, we are entitled to remedy the defect ourselves and demand compensation for the necessary expenses and an appropriate advance payment from the contractual partner. We expressly reserve the right of withdrawal, a reduction in price and compensation, in particular the right of compensation in lieu of performance, which we are fully entitled to within the scope of the statutory provisions.

4. An extended deadline for subsequent fulfilment is not required if the contractual partner finally refuses to perform or if certain circumstances prevail which justify the immediate assertion of the claim for damages, having weighed up the mutual interests.

5. An extended deadline is not required before withdrawal, if
- the contractual partner finally refuses to perform, or

- the contractual partner does not bring about the performance by a date specified in the contract or within a period specified in the contract, although performance by that date or within that period is essential to us in accordance with a notification from us to the contractual partner before contract conclusion or on the basis of other circumstances accompanying contract conclusion, or - in the event of a Service not rendered in accordance with the contract, there are special circumstances which justify the immediate withdrawal having weighed up the mutual interests, or
- if the contractual partner refuses subsequent fulfilment due to disproportionate costs, if the subsequent fulfilment has failed or is unreasonable for us.

6. The expenses incurred for the purpose of examination and subsequent fulfilment will be borne by the contractual partner even if it transpires that there were actually no defects. Our liability for damages in the event of unjustified demands for the remedy of defects remains unaffected. However, we are only liable to the extent that we have recognised, or failed to recognise through gross negligence, that there were no defects but still demanded subsequent fulfilment.
7. If the contractual partner is a distributor of the Goods concerned, then they cannot exonerate themselves in accordance with Section 280 (1) second sentence of the German Civil Code if they detected or should have detected the defect on the basis of their inspection obligation with respect to their supplier in accordance with Section 377 of the German Commercial Code, but still delivered the Goods to us.

VIII. Limitation

1. The contractual partner's claims against us lapse in accordance with the statutory provisions.
2. Our claims against the contractual partner on the grounds of the delivery of defective Goods or rendering of defective Services lapse in accordance with the statutory provisions unless otherwise stipulated hereinafter in Section 8 (3) to (5) of these Terms and Conditions. However, the special provision under Section 445 b of the German Civil Code (limitation of recourse claims) remains unaffected in any case - even if this is not mentioned separately hereinafter.
3. Contrary to Section 438 (1) no. 3 of the German Civil Code, the limitation period for warranty claims due to defects in the quality of Goods stipulated therein is three (3) years from the transfer of risk. However, if acceptance is agreed, which goes beyond the acceptance according to Section 433 (2) of the German Civil Code, the limitation period for warranty claims due to the delivery of defective Goods only begins upon acceptance.
4. Contrary to Section 438 (1) no. 3 of the German Civil Code, the limitation period stipulated therein for warranty claims on the basis of defects in title is five (5) years; however, the statutory limitation period for third party claims for restitution in rem in accordance with Section 438 (1) no. 1 of the German Civil Code remains unaffected. Contrary to Section 8 (4) first sentence of these Terms and Conditions, claims arising from defects in title do not lapse in any case provided the third party can still assert the right against us – in particular due to the lack of limitation.
5. The limitation periods under the law on the sale of goods in the case of the delivery of defective Goods or the law on contracts for work and labour in the case of rendering defective Services, including the above extensions, apply – to the statutory extent – to all contractual claims for defects. If we are also entitled to non-contractual claims for damages due to a defect, the standard statutory limitation according to Sections 195, 199 of the German Civil Code applies, unless the application of the statutory limitations including the above extensions leads to a longer limitation period on a case by case basis.

IX. Recourse against suppliers

1. Our rights of recourse in accordance with Section 445 a of the German Civil Code (our recourse against the contractual partner in the event that we have to bear costs within the scope of the subsequent fulfilment with respect to our customers) and Section 478 of the German Civil Code (special provision for entrepreneur's recourse in the event of a purchase of consumer goods) are unrestricted in addition to the claims for defects. In particular, we are entitled to demand precisely the nature of subsequent fulfilment (reworking or replacement delivery) from the contractual partner that we owe our customer on a case by case basis. Our statutory right to choose (Section 439 (1) of the German Civil Code) is not limited by this.

2. Our claims to recourse in accordance with Sections 445a and 478 of the German Civil Code also apply if the Goods have been further processed by us or one of our customers, for example by installation in another product, before their sale to a consumer.

X. Product liability - indemnity - indemnity insurance

1. If the contractual partner is responsible for product damage and/or personal injury then they are obliged to indemnify us against third party claims for damages on first demand to the extent that the cause is in their sphere of control or organisation and they themselves are liable externally.
2. Within the scope of their liability for claims within the meaning of Section 10 (1) of these Terms and Conditions, the contractual partner is also obliged to reimburse any expenses that are incurred as a result of or in connection with a product recall carried out by us. We will inform the contractual partner – wherever possible and reasonable to do so - of the content and scope of the product recall to be carried out and give them the opportunity to comment. Our other statutory claims remain unaffected.
3. The contractual partner undertakes to maintain product liability insurance with a sum insured of at least five (5) million euros per personal injury/material damage claim – lump sum; if we are entitled to further claims for damages these remain unaffected.

XI. Industrial property rights

1. The contractual partner must deliver the Goods or Services free from third party rights. In particular, no patents, licences or other third party property rights may be infringed by the delivery and/or use of the Goods or Services anywhere in the world.
2. If claims are made against us by third parties due to the infringement of third party rights in accordance with Section 11 (1) of these Terms and Conditions, the contractual partner will indemnify us against such claims – without waiving our additional claims for damages. The contractual partner's indemnity obligation relates to all expenses arising for us out of or in connection with the claim made by a third party.
3. This liability and indemnity obligation of the contractual partner does not apply if the Goods or Service were supplied exclusively in accordance with our models, illustrations, drawings, plans or other documents and they do not know or were not required to know that the manufacture of the Goods or rendering of the Service on the basis of our models, illustrations, drawings, plans and/or other documents constitutes an infringement of industrial property rights.

XII. Spare parts

The contractual partner is obliged to have spare parts available for us for the products they have supplied to us for a period of at least ten (10) years after the last delivery of the Goods concerned.

XIII. Provision

1. If we provide parts and/or other materials to the contractual partner, we retain the ownership of them. The contractual partner is obliged to check the parts and/or other materials we have provided for their suitability and to appropriately handle and store them temporarily. They may only use them to render services for us. Their processing or reshaping by the contractual partner is undertaken on our behalf. If our goods subject to the retention of ownership are processed with other items that do not belong to us then we acquire the co-ownership of the new object in the proportion of the value (based on our gross purchase price) in relation to the other processed items at the time of processing.
2. If parts and/or other materials provided by us are inseparably combined with other items that do not belong to us then we acquire the co-ownership of the new object in the proportion of the value of the goods subject to retention of ownership (based on our gross purchase price) in relation to the other combined items at the time of combining. If, on the basis of combining, the contractual partner's item is to be regarded as the principal item, we hereby agree that the contractual partner will transfer co-ownership pro rata.
3. Tools, devices and models which we make available to the contractual partner or which are produced for contractual purposes and are charged to us separately by the contractual partner, remain our property or

become our property. The contractual partner must mark them as our property, store them carefully, secure them against damage of any kind and only use them for the purpose of the contract.

XIV. Export regulations, supplier's declaration

1. Where applicable, the Goods may also be destined for (re-)export. Therefore, the contractual partner will provide us with all of the necessary information and paperwork to allow classification of the Goods in accordance with the applicable export regulations of the European Union and the Federal Republic of Germany. If the Goods are subject to US (re-)export controls on the basis of information known to the contractual partner or if this is conceivable, then this should be noted on the delivery note accordingly, stating the relevant classification. On request, the contractual partner must provide all of the information which we request from the contractual partner to meet the (re-)export regulations without delay.
2. Contractual partners from the European Community shall issue a supplier's declaration for Goods with preferential origin. For Goods which are not of preferential origin (Goods from third countries), the contractual partner shall state the customs tariff number and country of origin of the delivered items.

XV. Secrecy

The contractual partner is obliged to keep secret the written and verbal information that we disclose to them in connection with this contract and/or which they become aware of elsewhere. The secrecy obligation relates in particular to data, drawings, manufacturing notes and any other information, which is expressly marked confidential or similar or is reasonably regarded as requiring secrecy on the basis of its content. The contractual partner is forbidden to reconstruct our products or objects by means of observation, examination, dismantling, testing or other similar procedure and obtain, utilise or copy the confidential information embodied therein (so-called reverse engineering). The secrecy obligation no longer applies if the contractual partner proves that the information requiring secrecy was already known to them before disclosure by us or if this information becomes public knowledge during the term of the contract without this being caused by a breach of contract by the contractual partner.

XVI. Non-assignment clause

Notwithstanding Section 354a of the German Commercial Code, the contractual partner is not authorised to assign their claims arising out of the contractual relationship to third parties.

XVII. Contractual partner's retention of title

1. We become the owner of the Goods or Service upon their delivery.
2. However, if, contrary to Section 17 (1) of these Terms and Conditions, the transfer of ownership of the Goods or Service by the contractual partner to us is conditional upon full payment of the purchase price, then the retention of title ceases upon payment of the price for the delivered Goods or rendered Service at the latest and the retention of title only has the effect of a simple retention of title. However, in this case, we are nevertheless entitled to resell the Goods in the ordinary course of business even before payment of the purchase price; we will assign the receivables resulting from the resale, which we remain authorised to collect, to the contractual partner who hereby accepts the assignment.
3. All other forms of retention of title are excluded, in particular expanded or assigned retention of title or retention of title extended to further processing.

XVIII. Compliance with the Supplier Code

The contractual partner undertakes to comply with our "Supplier Code" (last revised on 30 April 2020) and the rules contained therein. We will provide our "Supplier Code" to the contractual partner on request.

XIX. Place of fulfilment, choice of law and place of jurisdiction

1. The place of delivery results from Section 3 (1) of these Terms and Conditions. The place of payment and fulfilment for all other obligations arising out of the contract with the contractual partner, including the rendering of subsequent fulfilment services and restitution resulting from a withdrawal, is 33378 Rheda-Wiedenbrück.

2. The law of the Federal Republic of Germany applies to these Terms and Conditions and the contractual relationship between us and the contractual partner, with the exclusion of the UN Convention on Contracts for the International Sale of Goods.
3. If the contractual partner is a businessman within the meaning of the German Commercial Code, a legal entity under public law or a special fund under public law, the exclusive place of jurisdiction for any disputes arising directly or indirectly from the contractual relationship is our registered office at 33378 Rheda-Wiedenbrück. However, we are also entitled in any case to take legal action at the contractual partner's general place of jurisdiction. Higher-ranking statutory provisions, in particular with respect to exclusive powers, remain unaffected.

XX. Miscellaneous

1. Should any provisions in these Terms and Conditions be or become wholly or partially ineffective, the remaining provisions will remain effective.
2. Neither a person's signature in their own hand nor an electronic signature is required to comply with the written form. Notifications by means of fax or email meet the written form requirement.
3. Personal data required for processing transactions is stored and treated as confidential, taking into consideration the applicable data protection regulations.