

These Terms and Conditions of Sale govern exclusively the sale or license of SIMI Products by SIMI or its designated distributors.

Products will be handed over to the carrier or any other person responsible for the shipping of the Products. If special packing or shipping instructions are agreed, charges will be billed separately to Customer.

1. DEFINITIONS

- a) "Products" means hardware, Software, documentation, accessories, supplies, parts and upgrades that are determined by SIMI to be available from SIMI upon receipt of Customer's order. "Custom Products" means Products modified, designed or manufactured to meet Customer requirements. "Special Products" are products that have been modified under mutual agreement to meet Customer requested changes.
- b) "Software" means one or more programs capable of operating on a controller, processor or other hardware Product ("Device"). Software is either a separate Product, included with another Product ("Bundled Software"), or fixed in a Device and not removable in normal operation.
- c) "Delivery" means standard SIMI shipping to and arrival at the receiving area at the "Ship To" address indicated on SIMI's order confirmation.
- d) "Support" means hardware maintenance and repair; Software updates and maintenance; training; and other standard support services provided by SIMI.

2. PRICES

Prices exclude delivery charges, unless otherwise indicated on SIMI's order confirmation and are valid for the period indicated on SIMI's order confirmation or for the applicable sales, use, service, value added or like taxes, unless Customer has provided SIMI with an appropriate exemption certificate for the delivery jurisdiction.

3. ORDERS

- a) All orders are subject to acceptance by SIMI. Customer will specify the Ship To addresses. Orders must specify delivery within one hundred and eighty (180) days from order date.
- b) In the event of any conflict between the order and the order confirmation issued by SIMI, the order confirmation shall prevail, provided that the customer did not reject the order confirmation within seven (7) days after receipt of the order confirmation.
- c) Customer may incur charges for canceling product orders or modifying delivery schedules. Customer is not entitled to cancel an order, after it has been confirmed by SIMI.

4. DELIVERY

- a) SIMI will make reasonable efforts to meet Customer's delivery requirements. If SIMI is unable to meet Customer's delivery requirements, alternative arrangements may be agreed. In the absence of such agreement, Customer's sole remedy is to cancel the order. This Article 4 a) shall apply accordingly to the installation of the Products.
- b) For all products, rescheduling delivery within fifteen (15) working days before the scheduled delivery date is not authorized.

5. SHIPMENT AND RISK OF LOSS

- a) SIMI will ship the Product according to standard commercial practice, unless otherwise indicated in the order confirmation, ex works according to the Incoterms 2000.
- b) Risk of loss and damage will pass to Customer per Incoterms 2000, as applicable, otherwise at that point of time when the

6. INSTALLATION AND ACCEPTANCE

- a) Product installation information is available with Products, on quotations or upon request.
- b) For Products with installation included in the purchase price, acceptance by Customer occurs upon completion of installation by SIMI. For Products without installation included in the purchase price and for Products without required installation, acceptance by Customer occurs upon Delivery and will be presumed unless Customer issues a claim for wrong shipment (products, quantity and address) or damaged Products within 14 days from delivery date. Insofar Customer shall be obliged to conduct inspections of the Products during the aforementioned acceptance period. After acceptance Customer shall only be entitled to assert any warranty or/and any liability claim for hidden defects.

7. PAYMENT

- a) Payment terms are subject to SIMI credit approval. Payment is due upon delivery and/or installation of the Product and/or Software.
- b) SIMI may change credit or payment terms at any time when, in SIMI's opinion, Customer's financial condition, previous payment record or the nature of Customer's relationship with SIMI so warrants.
- c) SIMI may discontinue performance if Customer fails to pay any sum due, or fails to perform under this or any other agreement if, after 10 days written notice, the failure has not been cured.
- d) Title to hardware Products will pass upon full payment by customer.

8. WARRANTY

- a) SIMI warrants hardware Products against defects in materials and workmanship for (1) one year from the date of shipment. This warranty, however, shall only be applicable to direct Customers of SIMI and not to indirect purchasers or users, who have concluded a purchase agreement or any other business relationship with third Parties such as but not limited to SIMI's Distributors. If SIMI receives notice of defects according to Article 6b and within the warranty period, SIMI will, at it's option, repair or replace the affected Products. If SIMI is unable, within a reasonable time, to repair, replace or correct a defect of a Product to a condition as warranted, Customer will be entitled to reduce the Purchase price accordingly or to a refund of the purchase price upon prompt return of the Product to SIMI.
- b) Customer will prepay shipping charges (and will pay all duties and taxes) for Products returned to SIMI for warranty service. For valid warranty claims, SIMI will reimburse Customer for prepaid freight charges and return Products to Customer at SIMI's expense.
- c) The above warranties do not apply to defects resulting from improper or inadequate maintenance; Customer or third party supplied software, interfacing or supplies; unauthorized modification; improper use or operation outside of the Specifications for the product; abuse, negligence, accident, loss or damage in transit, improper site preparation; or unauthorized maintenance or repair.

- d) These terms state the exclusive warranty of the Customer for claims based on defect Products.

9. LICENSES

- a) The Software is owned and copyrighted by SIMI. Customer's license confers no title or ownership and is not a sale of any rights in the Software, its documentation, or the media on which they are recorded or printed.
- b) Customer will not disassemble or decompile the Software without SIMI's prior written consent. Where customer has other rights under statute, customer will provide SIMI with reasonably detailed information regarding any intended disassembly or decompilation. Customer will not decrypt the Software unless necessary for legitimate use of the Software.

10. INTELLECTUAL PROPERTY RIGHTS

- a) Subject to Article 11, SIMI will defend or settle any claim against Customer that Products (excluding Special Products), delivered under these SIMI Terms and Conditions of Sale, infringes a patent, utility model, industrial design, copyright, trade secret, mask work or trademark in the country where Products are used or sold, provided Customer:
 - 1) was not at fault;
 - 2) promptly notifies SIMI in writing; and
 - 3) cooperates with SIMI in, and grants SIMI sole control of, the defense or settlement.
- b) Subject to Article 11 SIMI will pay infringement claim defense costs, settlement amounts and court awarded damages. If such a claim appears likely, SIMI may modify the Product, procure any necessary license, or replace it.
- c) SIMI has no obligation for any claim of infringement arising from:
 - 1) SIMI's compliance with Customer's designs, specifications or instructions;
 - 2) SIMI's use of technical information or technology provided by Customer;
 - 3) Product modifications by Customer or a third party;
 - 4) Product use prohibited by Specification or related application notes; or
 - 5) use of the Product with Products not supplied by SIMI.
- d) These terms state SIMI's entire liability for claims of intellectual property infringement.

11. LIMITATION OF REMEDIES AND LIABILITY

- a) The warranty and liability stipulated in these SIMI Terms and Conditions are the exclusive remedy to which Customer shall be entitled.
- b) To the extent that SIMI is held legally liable to Customer, SIMI's liability is limited to:
 - 1) damages for bodily injury;
 - 2) direct damages to tangible property up to a limit of the order amount;
 - 3) other direct damages for any claim based on a material breach of these Terms and Conditions of Sale, up to a limit of the order amount, or the amount paid to SIMI pursuant to a specific agreement or Purchase Order, for the specific part giving rise to the liability, whichever is less.
- c) In no event will SIMI or its affiliates, subcontractors or suppliers be liable for any of the following:

- 1) damages relating to Customer's procurement of substitute Products or services (i.e., "cost of cover"); or
 - 2) incidental, special or consequential damages, including downtime costs or lost profits.
- d) The limitation of liability set forth in this Article 11 shall not apply in the event the damage occurred during the contractual relationship between the Parties is based on willful misconduct or gross negligence of SIMI.

12. GENERAL

- a) SIMI will not be liable for performance delays or for non-performance, due to causes beyond its reasonable control.
- b) If either party becomes insolvent, is unable to pay its debts when due, files for bankruptcy, is the subject of involuntary bankruptcy, has a receiver appointed, or has its assets assigned, the other party may cancel any unfulfilled obligations.
- c) The Customer may not assign any rights or obligations without prior written consent of SIMI.
- d) Under no circumstances will SIMI provide cost data.
- e) Customer will provide VAT-ID numbers to support VAT exemptions of intra-community supplies where appropriate as governed by national and European legislation and Customer will notify SIMI immediately if the VAT-ID number provided becomes invalid or is changed or amended in any way. SIMI may have to retrospectively charge VAT in the event that VAT has been incorrectly exempted due to Customer failure to notify SIMI of the invalidation or change of VAT-ID number.
- f) Customer who exports, re-exports or imports Products, technology or technical data purchased hereunder, assumes responsibility for complying with applicable laws and regulations, and for obtaining required export and import authorizations. SIMI may suspend performance if Customer is in violation of applicable regulations.
- g) Disputes arising in connection with these SIMI Terms and Conditions of Sale will be governed according to the laws of Germany under the exclusion of the United Nations Convention on Contracts for the International Sale of Goods. The courts of Munich, Germany shall have the exclusive jurisdiction. However, SIMI shall be entitled to commence proceedings before any competent court located at the registered domicile of the Customer or any of its branch offices.
- h) These SIMI Terms and Conditions of Sale together with any written Agreement between the Parties constitute the entire agreement between SIMI and Customer, and supersede any previous communications, representations or agreements between the parties, whether oral or written, regarding transactions hereunder, including Customer's additional or different terms and conditions, express or implied.

Customer's purchase or license of Products will constitute Customer's acceptance of SIMI Terms and Conditions, which may not be changed except by an amendment signed by an authorized representative of each party.