

1. Scope of the Conditions

- 1.1. The following General Terms and Conditions of Supply and Payment ("the Conditions") shall apply to all sales of goods and supplies of services (including consulting services) by SimonsVoss Technologies GmbH (hereinafter referred to as "SV").
- 1.2. These Conditions of SV shall apply to the exclusion of any competing or conflicting terms and conditions. In particular, SV does not recognise standard conditions of purchase, business or payment used by the Customer, even if SV should omit to deny same expressly. These Conditions of SV shall apply even if SV should carry out a supply of goods or other services without demur despite having notice of the Customer's competing or conflicting terms of business.
- 1.3. These Conditions of SV shall also apply to all future transactions with the Customer. The Conditions shall apply only vis-à-vis parties acting in the course of a business, public corporations and public-law special funds within the meaning of §24 AGBG (German Standard Terms Act).

2. Contract formation and termination

- 2.1. All contract proposals made by SV are made without obligation and constitute mere invitations to treat. Such a proposal will form the basis of a binding contract only upon SV issuing written confirmation of the Customer's order.
- 2.2. Where an order placed by a customer constitutes an offer within the meaning of §145 BGB (German Civil Code), the offer shall lapse if it has not been accepted in writing by SV within 3 weeks after the receipt thereof by SV.
- 2.3. All terms agreed between SV and the Customer for the purposes of a contract shall be set out in writing in the contract in question.
- 2.4. SV reserves title and copyright in all illustrations, calculations, computations, drawings and other materials and in all documents which are marked "confidential". These may not be disclosed to third parties without the express written permission of SV and are to be kept secret from all third parties. The Customer shall use such documents only for the purposes contemplated by the contract and shall return them to SV of its own accord after the contract has been completely performed.
- 2.5. In the event of a business interruption, not being of short duration, which occurs as a consequence of force majeure, strike, industrial dispute, war, natural disaster, scarcity of raw materials, depletion of raw materials or similar causes, whether occurring at SV or at a third party supplier, SV shall be entitled to avoid a contract which is still executory. SV's contractual obligation to supply is conditional on its own supplies being available at the right time.

3. Scope and execution of order

- 3.1. The scope and execution of the order shall be as set out in the confirmation of order issued by SV.
- 3.2. The Customer shall be liable for the accuracy of all documents which he is required to provide, including in particular drawings, designs and lock specifications. Failure on the Customer's part to provide such documents shall constitute grounds for SV to refuse its own performance pending such compliance.
- 3.3. If the manufacture of goods in accordance with drawings, designs or other instructions supplied by the Customer infringes the intellectual property rights of third parties, the Customer shall indemnify SV and hold it harmless against all claims resulting therefrom.
- 3.4. SV shall be entitled to make delivery by instalments where delivery in a single consignment is not possible under the prevailing circumstances. Separate invoices will be issued in respect of the instalments delivered and these invoices will fall due for payment separately from the balance of the order not yet delivered.

4. Delivery periods and delivery dates

- 4.1. The delivery period or delivery date shall be specified in writing in every case. Where a delivery period is specified, it shall begin to run on the day the confirmation of order is sent off. Delivery periods or delivery dates shall be deemed to have been complied with if at the relevant date the goods have left the factory or warehouse or if the Customer has been advised that the goods are ready for dispatch. In the event of an order subsequently varied by agreement in writing, the delivery period shall be extended or the delivery date deferred by the appropriate number of days. SV reserves the right to deliver by instalments where delivery in a single consignment is not possible under the prevailing circumstances.
- 4.2. In the following circumstances in particular the delivery period shall be extended or the delivery date deferred by the duration of the delay,

- if the data necessary for the completion of the order are not received by SV in good time;
 - if SV is prevented from fulfilling its obligations by an event of force majeure, strike, war, natural disaster or similar causes – whether occurring in its own factory or at one of its suppliers – which SV was powerless to avert despite exercising all due care, in particular actions taken by the authorities, business interruptions, industrial disputes, delays in the delivery of essential raw materials and supplies or of semi-finished and finished products, or problems with power supply. If as a consequence of such circumstances the supply of the product or service should become impossible or unreasonably onerous, SV shall be relieved of its obligation to supply. Nor can SV be made answerable for events of this kind even if delivery is already overdue at the time they occur. SV shall advise the Customer as soon as possible of the commencement and cessation of any such obstacle to performance.
- 4.3. If delivery has not taken place by two weeks after the delivery date or after the end of the delivery period, as the case may be, the Customer may by notice in writing require SV to effect delivery within a reasonable period of time. If delivery has still not taken place by the end of this additional time the Customer shall be entitled to cancel the contract.
 - 4.4. In the event of a delay in delivery as a result of a breach of contract through wilful default or gross negligence imputable to SV, SV's liability shall be governed by the statutory provisions. Any such default or negligence which is committed by a senior manager, officer or ordinary employee of the company shall be imputed to SV. Other than where the delay and breach of contract are the result of wilful default imputable to SV, its liability in damages shall be limited to the foreseeable loss or damage accruing in the usual course of things.
 - 4.5. In the event of a delay in delivery as a result of the breach of a material contractual obligation through simple or ordinary negligence imputable to SV, SV's liability shall be governed by the statutory provisions. Provided always that its liability in damages shall be limited to the foreseeable loss or damage accruing in the usual course of things.
 - 4.6. In the event of a delay in delivery as a result of the breach of a non-material contractual obligation through simple or ordinary negligence imputable to SV, the Customer shall be entitled to recover liquidated damages in the amount of 1% of the value of the consignment in respect of each full week of the delay but subject to an overall ceiling of 10% of the value of the consignment.
 - 4.7. Liability is excluded where delay in delivery is the result of a breach of a non-material contractual obligation through simple or ordinary negligence on the part of an employee of SV.
 - 4.8. The limitations of liability stipulated in paragraphs 4.4 to 4.7 above shall not apply where the Customer legitimately claims that because of the delay in delivery imputable to SV he no longer has an interest in the performance of the contract, or where the parties have stipulated a fixed time for performance in a commercial contract.
 - 4.9. If a delay in performance endures for longer than 3 months or if performance of the contract becomes impossible, the parties shall be bound to renegotiate the terms of the contract in accordance with the precepts of good faith and fair dealing and having due regard to the changed circumstances. If the parties are unable to reach agreement on new terms acceptable to both sides, SV may terminate the contract without any additional notice required.
 - 4.10. The limitations of liability stipulated in paragraphs 4.4 to 4.7 above shall not apply where the Customer legitimately claims that because of the delay in delivery imputable to SV he no longer has an interest in the performance of the contract, or where the parties have stipulated a fixed time for performance in a commercial contract.
 - 4.11. If the Customer fails to take delivery of the goods on time or to perform any other obligations of his which are prerequisites to the other party's performance, SV shall be entitled to compensation for its resulting loss or damage including any additional costs it may have incurred, without prejudice to any other rights or remedies available to it. In such circumstances the risk of accidental destruction or accidental deterioration of the goods shall also pass to the Customer at the time of his default.
- ## 5. Passing of risk / place of performance
- The place of performance for all deliveries by SV is the warehouse or factory in which the relevant goods are located. Unless otherwise specified in the confirmation of order, delivery is made on an "ex-works" basis. Use and risk shall pass to the Customer at the latest when the goods leave SV's factory or warehouse or when the Customer is notified that the goods are ready for dispatch. The foregoing shall apply even if the parties have agreed on some other form of delivery.
- ## 6. Packaging and transport
- 6.1. The goods will be shipped using a carrier selected by SV. Unless otherwise stipulated in the confirmation of order, delivery will be made on

- an “ex-works“ basis. SV shall be under no obligation to obtain transport insurance. If the Customer wishes to have the shipment insured, SV will arrange such insurance on his behalf. The Customer shall be liable for the cost of the insurance.
- 6.2. If the Customer requires proof of delivery, he shall bear the cost of same, subject to a minimum of Euro 30.00, where the goods have demonstrably been received.
- 6.3. Transport packaging and all other packaging materials within the meaning of the Packaging Order (*Verpackungsverordnung*) will not be taken back, except in the case of pallets. The Customer is obliged to arrange for the disposal of all such packaging materials at his expense.
- 7. Notice of defects and warranty**
- 7.1. The Customer shall examine the goods immediately upon delivery (§§377 and 378 HGB (German Commercial Code)) to satisfy himself as to their conformity with the contract in terms of quantity, quality and fitness for purpose. Complaints of defects will be entertained only if written notice of same is given to SV within 10 days after confirmation of receipt or after the defects become apparent. Defective goods shall be submitted or shipped to SV carriage paid.
- 7.2. SV shall be liable for latent defects only if these are not discoverable upon proper inspection and if they are notified, substantiated and proved in writing within 7 days of becoming apparent but not later than 3 months after the goods were shipped.
- 7.3. If the notice of defects is admitted by SV, SV may elect either to repair the defect or to make a substitute delivery at its expense upon the defective goods being returned. In the case of repairs, SV shall be liable for the costs only to the extent of the purchase price.
- 7.4. If the defect cannot be repaired or if it would be unreasonably onerous for the Customer to await further attempts at repair or if the replacement goods are also defective, the Customer shall have the right, at his option, either to avoid the contract or to demand a reasonable abatement of the purchase price. If the product is lacking a guaranteed attribute, SV's liability shall be governed by the provisions of §§463 and 480(2) BGB (Civil Code). The foregoing shall not apply where the purpose of the guarantee only concerned the conformity of the shipment with the contract and did not extend to the risk of consequential loss arising from the defect.
- 7.5. SV's liability shall be governed by the statutory provisions where the Customer claims damages for breach of contract through wilful default or gross negligence. Such misconduct on the part of an officer, manager or ordinary employee of the company shall be imputed to SV itself. Other than in the case of a wilful breach of contract imputable to SV, its liability in damages shall be limited to the foreseeable loss or damage accruing in the usual course of things.
- 7.6. In the event of breach of a material contractual obligation by SV through simple or ordinary negligence imputable to SV, its liability shall be governed by the statutory provisions. Provided always that its liability in damages shall be limited to the foreseeable loss or damage accruing in the usual course of things.
- 7.7. SV's liability is excluded in the case of a breach of a non-material contractual obligation through simple or ordinary negligence on the part of an employee of SV.
- 7.8. In all other cases, SV's liability is excluded. In particular, SV shall not be liable for loss or damage other than in respect of the goods themselves.
- 7.9. The warranty shall not apply to fair wear-and-tear nor to loss or damage occasioned by incompetent or negligent handling or assembly, excessive demands placed on the goods, incorrect equipment, electronic or electrical effects or similar causes.
- 7.10. The warranty period is 2 years as from the passing of risk in the product. This period is a limitation period for actions and also applies to claims for compensation for consequential loss or damage, unless the action or claim is based on tort.
- 7.11. In the case of commission processing and galvanisation of goods, SV accepts no liability for the quality of the material and its fitness for the intended purpose.
- 8. Limitation of liability**
- 8.1. Any further liability in damages beyond that stipulated in Articles 7 and 4 is excluded, irrespective of the cause of action or the remedy sought. The foregoing applies in particular to claims based on pre-contractual fault (*culpa in contrahendo*), “positive breach of contract” and tort.
- 8.2. The statutory liability imposed by the mandatory requirements of the German Product Liability Act (*Produkthaftungsgesetz*) is not affected by this exclusion of liability.
- 8.3. Liability for objective or subjective impossibility of performance is unaffected.
- 8.4. To the extent that SV's liability in damages is excluded or limited, the same shall apply to the personal liability of SV's managers, agents, subcontractors and employees.
- 8.5. The Client undertakes to carry out regular functional tests with regard to our products. These are to be carried at least once a year or at shorter intervals, depending on the Client's risk assessment regarding the use of products. It must be ensured that the persons who install, operate, set or maintain our products have received SimonsVoss training before their orientation and receive such training on a regular basis. We accept no liability for malfunctions of our products, irrespective of whether they concern claims for rectification or compensation, if the Client is unable to prove that they have carried out the aforementioned tests within the required time periods and that they have undergone the relevant training. We also accept no liability if our products are handled or used incorrectly, that is to say, not in accordance with our instructions, particularly operating instructions, manuals and product data sheets.
- 8.6. Irrespective of the foregoing we shall not be liable for whatsoever indirect and consequential damages such as, but not limited to, loss of profit and production, body injuries, loss of property, whatsoever damages resulting from criminal acts committed by persons in spite of our products or having manipulated these. We expressly exclude our liability for whatsoever direct or indirect damages resulting from malfunction of our products especially but not limited to loss of property, loss of profit and/or production, body injury, fire, fire brigade and police operation effort.”
- 9. Prices**
- 9.1. All prices are binding and are quoted ex-works or ex-warehouse, as the case may be. They are exclusive of value added tax, at the rate prevailing on the day of calculation, and other extra charges, such as the costs of packaging, transport, assembly etc., for which the Customer shall additionally be liable.
- 9.2. The prices shall apply for 2 months as from the confirmation of order. If a delivery period of longer than two months is stipulated, SV reserves the right to pass on to the Customer by way of price increases any subsequent increases in the cost of supplies, manufacturing, delivery, assembly etc., including costs arising due to changes in the law (e.g. an increase in the rate of value added tax).
- 10. Terms of payment**
- 10.1. Unless otherwise agreed, all invoices shall be settled within 30 days after the date of invoice without deductions of any kind. The Customer shall be deemed in default if outstanding accounts have not been discharged by 30 days at the latest after receipt of the relevant invoice or other payment notice. If the Customer has failed to comply with the terms of payment stipulated in respect of purchases effected during the previous two years, SV shall be entitled to supply the Customer only on the basis of cash on delivery or payment in advance.
- 10.2. Payment by bill of exchange will be accepted only by arrangement and only subject to the instrument being honoured. All expenses arising in connection with this mode of payment, including without limitation collection and discounting costs, will be charged to the Customer and will fall due immediately. Bills of exchange will be accepted without any guarantee of proper presentment and protest. SV expressly reserves the right to reject bills of exchange. Other forms of money order and cheques will be accepted by SV unless otherwise intimated.
- 10.3. In the case of overdue payment – including where an extension of time has been accorded – interest will be charged at a rate of not less than 2% above the base rate for the time being in force and in any case not less than 5%, without prejudice to SV's possible entitlement to a higher amount of compensation in a given case. Nothing in this paragraph shall exclude any other rights and remedies which may be available to SV in the event of overdue payment.
- 10.4. The Customer may exercise a right of set-off only if his counterclaims have been conclusively determined by a court of law or are not in dispute or have been accepted by SV. The Customer shall have a right to withhold payment only if his counterclaim is founded on the same contractual relationship and is not in dispute. SV shall be entitled to exercise rights of set-off and retention to the extent permitted by law.
- 10.5. If the terms of payment are not observed or if SV subsequently becomes aware of circumstances calculated to diminish the creditworthiness of the Customer, all amounts owing to SV shall become immediately due and payable, irrespective of the maturity date of any bills of exchange which may have been accepted and credited. SV shall in that case be further entitled to make all outstanding supplies of goods or services subject to payment in advance or the furnishing of security. If payment in advance or security is not tendered upon demand or by the

end of a reasonable additional period specified by SV, SV shall be entitled to terminate the contract without prejudice to any further rights or remedies available to SV.

11. Reservation of title

- 11.1. The goods supplied (“the reserved goods”) shall remain the property of SV until payment in full – in the case of payment by cheque or bill of exchange until collection on same – of all SV’s outstanding accounts arising from the contractual relationship with the Customer.
- 11.2. The Customer shall be obliged to take proper care of the goods supplied; in particular he shall be bound to keep them insured in their full replacement value at his expense against the risks of fire, water damage and theft. In the case of goods requiring maintenance or inspection, the Customer shall carry out such maintenance or inspection on time and at his expense.
- 11.3. The Customer shall have the right to resell the goods in the ordinary course of business. In the event of such resale, the Customer here and now assigns to SV to the extent of the value of the reserved goods (invoice amount plus VAT) all claims and all ancillary rights accruing to him as against his purchasers arising out of such resale.
- 11.4. If the Customer adapts or processes the reserved goods, he shall be deemed to do so as SV’s agent, without however any obligations being incurred by SV in consequence thereof. If the said goods are processed with other goods title to which has also been reserved by the suppliers thereof, SV shall acquire, as of the time of such processing, joint ownership of the new products resulting therefrom in proportion to the purchase price agreed between SV and the Customer (invoice amount plus VAT) relative to the corresponding purchase price of the other goods concerned. In addition, the new product resulting from the processing shall be subject to the same stipulations as the reserved goods.
- 11.5. If the reserved goods are inseparably mixed with other goods, SV shall acquire, as of the time of such mixing, joint ownership in the new product resulting therefrom in proportion to the value of the reserved goods (invoice amount plus VAT) relative to the other goods included in the mixture. If goods belonging to the Customer make up the bulk of the mixture, it is hereby agreed that the Customer will assign title to the resulting product proportionately to SV. The Customer shall be bound to preserve the said title for SV.
- 11.6. The Customer assigns to SV by way of security for SV’s claims against the Customer the claims accruing to the Customer arising from the combination of the reserved goods with landed property.
- 11.7. The Customer is bound to notify SV immediately in writing of any third party interference with the goods which are subject to reservation of title and the rights assigned to SV. If the third party is unable to defray SV’s costs of bringing an action under §§771 ZPO (Code of Civil Procedure), the Customer shall be liable for any expense incurred by SV under this heading.
- 11.8. SV shall be entitled at any time to require goods to which SV has title or joint title to be delivered up if SV comes to doubt that the Customer’s will discharge its accounts or if the Customer is in breach of his obligations. Repossession of the goods by SV shall not constitute termination of the contract, unless SV expressly so declares in writing. Seizure by SV of the goods sold shall in all cases constitute a determination of the contract. SV shall be entitled to resell the goods upon repossessing same. The proceeds of such resale shall be set off against the Customer’s liabilities – after deduction of the reasonable expenses of the resale.
- 11.9. The Customer shall be obliged to perform all necessary acts and to issue all documents required under the law in order for the reservation of title to become effective or for any other security interest to be created or maintained in favour of SV.
- 11.10. If the realisable value of the items furnished as security for SV’s claims should exceed the value of the said claims by more than 10%, SV will, at the Customer’s request, release security items of its choosing to the extent of the amount by which the realisable value of the said items exceeds the value of the claims secured by more than 10%.

12. Liquidated damages

- 12.1. In the event of the Customer failing to perform the contract, he shall be liable to pay SV liquidated damages equal to 20% of the agreed price, without prejudice to any further rights or remedies available to SV. The quantum of damages payable shall be increased or reduced accordingly where SV or the Customer can show that the extent of the actual loss or damage was greater or less, as the case may be.

- 12.2. In the case of goods produced in accordance with the Customer’s instructions, SV shall in every case be entitled to compensation for the full amount of its loss or damage.

13. Severability

If any provision of these Conditions or of any other agreement shall be deemed to be invalid, illegal or unenforceable, the validity, legality, and enforceability of the remaining provisions of these Conditions or of the other agreement shall not in any way be affected or impaired thereby. Invalid provisions shall be replaced with valid provisions calculated to give effect to the intention of the parties.

14. Governing law, interpretation and submission to jurisdiction

- 14.1. All legal relationships between SV and the Customer arising in connection with the formation, performance or completion of this contract, whether founded on contract, tort or otherwise, shall be governed exclusively by the domestic substantive law of the Federal Republic of Germany in force as of the time of formation of the contract. The application of the United Nations Convention on Contracts for the International Sale of Goods is excluded.
- 14.2. This contract and these Conditions shall be construed in all respects in conformity with the substantive law of Germany. The German language version shall form the sole basis for the construction, application and interpretation of these Conditions.
- 14.3. The courts of Munich shall have exclusive jurisdiction over all legal disputes arising between SV and the Customer, including actions on cheques and bills of exchange. However, SV shall have the right to sue the Customer in the courts of the latter’s place of business.
- 14.4. SV and the Customer agree that where the Customer does not have an establishment in Germany, service of process shall be effected by registered mail or by any other method permitted under the applicable law. Both parties undertake not to contest the jurisdiction of the court if process is served by such means in any matter arising in connection with this contract and these Conditions.

Valid from June,1 2015.