

## **General Terms and Conditions for Supply and Payment (AGB)**

### **1.0 Interpretation**

#### 1.1 In these Terms:

“BUYER” means the person who accepts the Company’s Written quotation for the sale of the Goods or whose Written order for the Goods is accepted by the Company;

“GOODS” means the goods (including any instalment of the goods or any parts for them) which the Company is to supply in accordance with these Terms;

“COMPANY” means SimonsVoss Technologies Limited (registered in England & Wales under number 5193010);

“CONTRACT” means the contract for the sale and purchase of the Goods;

“TERMS” means the standard terms of sale set out in this document and (unless the context otherwise requires) includes any special terms agreed in Writing between the Buyer and the Company;

“WRITING”, and any similar expression, includes facsimile transmission and comparable means of communication, but not electronic mail.

#### 1.2 A reference in these Terms to a provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

#### 1.3 The headings in these Terms are for convenience only and shall not affect their interpretation.

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### **2.0 Basis of the sale**

- 2.1 The Company shall sell and the Buyer shall purchase the Goods in accordance with the Company's Written quotation (if accepted by the Buyer), or the Buyer's Written order (if accepted by the Company), subject in either case to these Terms, which shall govern the Contract to the exclusion of any other terms subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Buyer. Any quotation is given on the basis that no contract will come into existence until the Company despatches an acknowledgement of order to the Buyer. Any quotation is valid for a period of 2 month only from its date, provided that the Company has not previously withdrawn it.
- 2.2 The Contract will be on these Terms to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document).
- 2.3 These Conditions apply to all the Company's sales and no variation to these Terms shall be binding unless agreed in Writing between the authorised representatives of the Buyer and the Company. Nothing in this Condition will exclude or limit the Company's liability for fraudulent misrepresentation.
- 2.4 No terms or conditions endorsed upon, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or other document will form part of the Contract simply as a result of such document being referred to in the Contract.
- 2.5 The Company's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Company in Writing. In entering into the Contract the Buyer acknowledges that it does not rely on any such representations which are not so confirmed, but nothing in these Terms affects the liability of either party for fraudulent misrepresentation.
- 2.6 Any advice or recommendation given by the Company or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in Writing by the Company is followed or acted upon entirely at the Buyer's own risk, and accordingly the Company shall not be liable for any such advice or recommendation which is not so confirmed.
- 2.7 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Company shall be subject to correction without any liability on the part of the Company.

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### **3.0 Orders and specifications**

- 3.1 No order submitted by the Buyer shall be deemed to be accepted by the Company unless and until confirmed in Writing by the Company's authorised representative.
- 3.2 Each order for Goods by the Buyer from the Company shall be deemed to be an offer by the Buyer to purchase Goods subject to these Conditions.
- 3.3 The Buyer shall be responsible to the Company for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer, and for giving the Company any necessary information relating to the Goods within a sufficient time to enable the Company to perform the Contract in accordance with its terms.
- 3.4 The quantity, quality and description of the Goods and any specification for them shall be as set out in the Company's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Company).
- 3.5 If the Goods are to be manufactured or any process is to be applied to the Goods by the Company in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Company against all loss, damages, costs and expenses awarded against or incurred by the Company in connection with, or paid or agreed to be paid by the Company in settlement of, any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Company's use of the Buyer's specification.
- 3.6 The Company reserves the right to make any changes in the specification of the Goods which are required to conform to any applicable statutory or E.U. requirements or, where the Goods are to be supplied to the Company's specification, which do not materially affect their quality or performance.
- 3.7 No order which has been accepted by the Company may be cancelled by the Buyer except with the agreement in Writing of the Company and on terms that the Buyer shall indemnify the Company in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Company as a result of cancellation.
- 3.8 If the Company agrees to a cancellation of an order by a Buyer after the Goods have been dispatched to the Buyer, the Company shall charge a cancellation fee amounting to 2% of the price of the Goods or £40 (whichever is greater). The Company shall also issue to the Buyer a return material authorisation form (RMA) together with a credit note for the relevant amount taking into account the cancellation fee. The return shipping and administrative costs for the returned Goods shall be the Buyer's responsibility.

Goods may only be returned if unused and undamaged and in their original condition and packaging including bubble wrap and original box. The Company reserves the right to refuse the return of any Goods which are not in their original and resaleable condition in which case the full price of the Goods shall be payable by the Buyer to the Company.

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### **4.0 Price of the goods**

- 4.1 The price of the Goods shall be the Company's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in the Company's published price list current at the date of acceptance of the order. All prices quoted are valid for 2 months only or until earlier acceptance by the Buyer, after which time they may be altered by the Company without giving notice to the Buyer.
- 4.2 The Company reserves the right, by giving Written notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Company which is due to any factor beyond the control of the Company (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Company adequate information or instructions.
- 4.3 Except as otherwise stated in the Company's Written quotation or in any price list of the Company, and unless otherwise agreed in Writing between the Buyer and the Company, all prices are given by the Company on an ex works basis, and where the Company agrees to deliver the Goods otherwise than at the Company's premises, the Buyer shall be liable to pay the Company's charges for transport, packaging and insurance.
- 4.4 The price is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to the Company.
- 4.5 The cost of pallets and returnable containers will be charged to the Buyer in addition to the price of the Goods, but full credit will be given to the Buyer provided they are returned undamaged to the Company before the due payment date.

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### **5.0 Terms of payment**

- 5.1 Subject to any special terms agreed in Writing between the Buyer and the Company, the Company may invoice the Buyer for the price of the Goods on or at any time after delivery of the Goods, unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods, in which event the Company shall be entitled to invoice the Buyer for the price at any time after the Company has notified the Buyer that the Goods are ready for collection or (as the case may be) the Company has tendered delivery of the Goods.
- 5.2 The Buyer shall pay the price of the Goods (without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Buyer) within 30 days of the date of the Company's invoice, and the Company shall be entitled to recover the price, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer. The time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.
- 5.3 If the Buyer fails to make any payment on the due date then, without limiting any other right or remedy available to the Company, the Company may:
- 5.3.1 cancel the contract or suspend any further deliveries to the Buyer;
  - 5.3.2 appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Company) as the Company may think fit (notwithstanding any purported appropriation by the Buyer); and
  - 5.3.3 charge the Buyer interest (both before and after any judgment) on the amount unpaid, at the rate of 5 per cent per annum above Barclays Bank base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

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### **6.0 Delivery**

- 6.1 Delivery of the Goods shall be made by the Buyer collecting the Goods at the Company's premises at any time after the Company has notified the Buyer that the Goods are ready for collection or, if some other place for delivery is agreed by the Company, by the Company delivering the Goods to that place.
- 6.2 Any dates quoted for delivery of the Goods are approximate only and the Company shall not be liable for any delay in delivery of the Goods however caused. Time for delivery shall not be of the essence of the Contract unless previously agreed by the Company in Writing. The Goods may be delivered by the Company in advance of the quoted delivery date on giving reasonable notice to the Buyer.
- 6.3 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Company to deliver any one or more of the instalments in accordance with these Terms or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.
- 6.4 If the Company fails to deliver the Goods (or any instalment) for any reason other than any cause beyond the Company's reasonable control or the Buyer's fault, and the Company is accordingly liable to the Buyer, the Company's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods.
- 6.5 If the Buyer fails to take delivery of the Goods when they are ready for delivery, or fails to give the Company adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Company's fault) or the Company is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations then, without limiting any other right or remedy available to the Company, the Company may:
- 6.5.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
  - 6.5.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.

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### **7.0 Risk and Retention of title**

7.1 Risk of damage to or loss of the Goods (including for loss or damage caused by the Company's negligence) shall pass to the Buyer:

7.1.1 in the case of Goods to be delivered at the Company's premises, at the time when the Company notifies the Buyer that the Goods are available for collection; or

7.1.2 in the case of Goods to be delivered otherwise than at the Company's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Company has tendered delivery of the Goods.

7.1.3 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Terms, the property in the Goods shall not pass to the Buyer until the Company has received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by the Company to the Buyer for which payment is then due.

7.3 Until such time as the property in the Goods passes to the Buyer, the Buyer shall

7.3.1 hold the Goods on a fiduciary basis as the Company's bailee;

7.3.2 store the Goods (at no cost to the Company) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property;

7.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;

7.3.4 maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Buyer shall produce the policy of insurance to the Company; and

7.3.5 hold the proceeds of the insurance referred to in condition 7.3.4 on trust for the Company and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.

7.4 Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold), the Company may at any time require the Buyer to deliver up the Goods to the Company and, if the Buyer fails to do so forthwith, the Buyer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.



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- 7.5 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Company, but if the Buyer does so all moneys owing by the Buyer to the Company shall (without limiting any other right or remedy of the Company) forthwith become due and payable.
- 7.6 The Buyer may resell the Goods before ownership has passed to it solely on the following conditions:
- 7.6.1 any sale shall be effected in the ordinary course of the Buyer's business at full market value; and
- 7.6.2 any such sale shall be a sale of the Company's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale.
- 7.7 The Buyer's right to possession of the Goods shall terminate immediately if:
- 7.7.1 the Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or a resolution is passed or a petition presented to any court for the winding up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or
- 7.7.2 the Buyer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe/perform any of his/its obligations under the Contract or any other contract between the Company and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or
- 7.7.3 the Buyer encumbers or in any way charges any of the Goods.
- 7.8 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.



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### **8.0 Warranties and liability**

- 8.1 Subject to the following provisions the Company warrants that the Goods will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for a period of 24 months from the date of their initial use or 24 months from delivery, whichever is the first to expire.
- 8.2 The above warranty is given by the Company subject to the following conditions:
- 8.2.1 the Company shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer;
  - 8.2.2 the Company shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Company's instructions (whether oral or in Writing), misuse or alteration or repair of the Goods without the Company's approval;
  - 8.2.3 the Company shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment;
  - 8.2.4 the above warranty does not extend to parts, materials or equipment not manufactured by the Company, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Company.
- 8.3 Subject as expressly provided in these Terms, and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 8.4 A claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified to the Company within ten days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused, and the Buyer does not notify the Company accordingly, the Buyer shall not be entitled to reject the Goods and the Company shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.
- 8.5 Where a valid claim in respect of any of the Goods which is based on a defect in the quality or condition of the Goods or their failure to meet specification is notified to the Company in accordance with these Terms, the Company may replace or repair the Goods (or the part in question) free of charge or, at the Company's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price), in which case the Company shall have no further liability to the Buyer.

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- 8.6 Except in respect of death or personal injury caused by the Company's negligence, or liability for defective products under the Consumer Protection Act 1987, the Company shall not be liable to the Buyer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for loss of profit or for any indirect, special or consequential loss or damage, costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Company, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods (including any delay in supplying or any failure to supply the Goods in accordance with the Contract or at all) or their use or resale by the Buyer, and the entire liability of the Company under or in connection with the Contract shall not exceed the price of the Goods, except as expressly provided in these Terms.
- 8.7 The Company shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Company's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Company's reasonable control. Without limiting the foregoing, the following shall be regarded as causes beyond the Company's reasonable control:
- 8.7.1 Act of God, explosion, flood, tempest, fire or accident;
  - 8.7.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;
  - 8.7.3 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
  - 8.7.4 import or export regulations or embargoes;
  - 8.7.5 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Company or of a third party);
  - 8.7.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery;
  - 8.7.7 power failure or breakdown in machinery.

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### **9.0 Indemnity**

- 9.1 If a claim is made against the Buyer that the Goods infringe or that their use or resale infringes the patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person, then unless the claim arises from the use of a drawing, design or specification supplied by the Buyer, the Company shall indemnify the Buyer against all loss, damages, costs and expenses awarded against or incurred by the Buyer in connection with the claim, or paid or agreed to be paid by the Buyer in settlement of the claim, provided that:
- 9.1.1 the Company is given full control of any proceedings or negotiations in connection with the claim;
  - 9.1.2 the Buyer shall give the Company all reasonable assistance for the purposes of any such proceedings or negotiations;
  - 9.1.3 except pursuant to a final award, the Buyer shall not pay or accept the claim, or compromise any such proceedings without the consent of the Company (which shall not be unreasonably withheld);
  - 9.1.4 the Buyer shall do nothing which would or might vitiate any policy of insurance or insurance cover which the Buyer may have in relation to such infringement, and this indemnity shall not apply to the extent that the Buyer recovers any sums under any such policy or cover (which the Buyer shall use its best endeavours to do);
  - 9.1.5 the Company shall be entitled to the benefit of, and the Buyer shall accordingly account to the Company for, all damages and costs (if any) awarded in favour of the Buyer which are payable by, or agreed with the consent of the Buyer (which consent shall not be unreasonably withheld) to be paid by, any other party in respect of any such claim; and
  - 9.1.6 without limiting any duty of the Buyer at common law, the Company may require the Buyer to take such steps as the Company may reasonably require to mitigate or reduce any such loss, damages, costs or expenses for which the Company is liable to indemnify the Buyer under this clause.

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### **10.0 Insolvency of buyer**

10.1 This clause 10 applies if:

10.1.1 the Buyer makes a voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or

10.1.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or

10.1.3 the Buyer ceases, or threatens to cease, to carry on business; or

10.1.4 the Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.

10.2 If this clause applies then, without limiting any other right or remedy available to the Company, the Company may cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

### **11.0 Assignment**

11.1 The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.

11.2 The Company may assign the Contract or any part of it to any person, firm or company.

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### **12.0 General**

- 12.1 The Company is a member of the group of companies whose holding company is SimonsVoss Technologies AG, and accordingly the Company may perform any of its obligations or exercise any of its rights under the Contract by itself or through any other member of its group, provided that any act or omission of any such other member shall be deemed to be the act or omission of the Company.
- 12.2 A notice required or permitted to be given by either party to the other under these Terms shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 12.3 No waiver by the Company of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 12.4 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.
- 12.5 If any provision of the Contract is held by a court or other competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the Contract and the remainder of the provision in question shall not be affected.
- 12.6 The Contract shall be governed by the laws of England, and each party irrevocably agrees to submit to the exclusive jurisdiction of the courts of England over any claim or matter arising under or in connection with this agreement.