

## **General conditions for the sale and delivery of products and/or performance of activities by Simco Nederland B.V.**

### **1 GENERAL**

1.1 These conditions apply to all offers by and all orders to Simco Nederland B.V., hereafter: "Simco-Ion", for the sale and delivery by Simco-Ion of "goods", and/or to the performance of activities by Simco-Ion, and to all agreements with Simco-Ion with respect thereto.

1.2 The applicability of conditions of the buyer or principal, hereafter "principal", of Simco-Ion is hereby expressly excluded.

1.3 Provisions deviating from these conditions can be invoked by the principal only if and to the extent that these conditions are accepted by Simco-Ion in writing.

### **2 OFFERS, ORDERS AND AGREEMENTS**

2.1 All offers by Simco-Ion are non-binding ("vrijblijvend").

2.2 All orders placed and all offers accepted by the principal are irrevocable.

2.3 Simco-Ion is only bound if and as it has accepted in writing.

2.4 Simco-Ion is entitled to charge the principal for all costs it has made or has to make on behalf of the principal or resulting from a request by the principal prior to the definite placement of the order, even if eventually the order is not placed.

### **3 PRICE AND DELIVERY CONDITIONS**

3.1 Deliveries and prices quoted and agreed by Simco-Ion are ex factory (EXW, Incoterms 2000).

3.2 The costs of packing, packaging, transport or dispatch are for the account of the principal.

3.3 Payment must be made within the period stated on the invoice or, in the absence thereof, within thirty days after the invoice date.

3.4 If the principal does not pay any amount within the agreed period, the principal is in default without prior notice being necessary. All of Simco-Ion's other claims shall then be due and payable and the principal is in regard thereto immediately in default without notice. The principal owes to Simco-Ion interest at the rate of 1.5% per month or part of a month during which the default continues. Guarantee claims do not suspend any payment obligation of the principal.

3.5 All costs in and out of court in connection with the collection of any amounts due by the principal are for his account. The out of court costs are deemed to amount to at least 15% of the amount of the claim.

#### **4 EXECUTION AND DELIVERY TIMES**

4.1 Agreed execution or delivery times start from the moment that Simco-Ion has received all goods, documents and data necessary for the execution or delivery, to be supplied by the principal.

4.2 Simco-Ion is entitled to have its activities performed by third parties.

4.3 Partial deliveries are permitted.

4.4 The principal shall enable Simco-Ion to carry out its work on location without restrictions. The principal shall also, at his own expense, arrange for an accessible and safe working environment in accordance with the applicable regulations and instructions, and for sufficient attendance, light, energy and energy supply points.

4.5 Execution and delivery times agreed with Simco-Ion are estimates only. The principal shall not be entitled to claim damages or to rescind the agreement or to suspend the performance of any obligation towards Simco-Ion. The principal, however, shall have the right to rescind the agreement without indemnification by written notice, if Simco-Ion should not observe a reasonable delivery time notified to Simco-Ion by the principal in writing after lapse of the agreed execution or delivery time.

4.6 Execution and delivery times shall be extended by the time that execution or delivery is delayed by force majeure or by circumstances attributable to the principal.

## **5 RISK AND TITLE**

5.1 The goods sold by Simco-Ion are for the risk and account of the principal as from the moment these goods leave the factory or warehouse, irrespective whether Simco-Ion takes care of the loading, transport and unloading.

5.2 All goods sold and delivered by Simco-Ion remain Simco-Ion's property until such time as the principal has paid in full all and/or previous or later agreements of the same nature that is owed to Simco-Ion in connection with the subject agreement including damages, costs and interest. Until such time, the principal shall upon request of Simco-Ion return all sold and delivered goods to Simco-Ion.

## **6 TAKING, CONTROL, TESTING, INSPECTION**

6.1 The principal shall take and accept the goods when they arrive at the place of delivery. He shall immediately control the quantity, specifications and the absence of defects.

6.2 The principal shall carefully control the activities by Simco-Ion and test the soundness thereof immediately after they have been performed. In the case of work executed in parts the principal shall control and test each part as abovementioned.

6.3 The principal shall without delay cooperate with respect to any inspection or test agreed upon.

6.4 If the principal fails to make use of a possibility to control, to inspect or to test or does not object immediately, the goods delivered or the activities performed shall be deemed approved.

## **7 FORCE MAJEURE**

7.1 Simco-Ion is entitled to invoke force majeure if the performance of its obligations is, in whole or in part, temporarily or not, prevented or impeded by circumstances reasonably beyond its control, including but not limited, to site or building blockades, transport interruptions, strikes, specific work interruptions or work-to-rule slowdowns and lockouts, machine breakdowns, delay in the supply to Simco-Ion of parts, goods or services ordered from third parties, accidents and interruptions of business operations.

7.2 In the event of force majeure on the part of Simco-Ion, its obligations are suspended. If the force majeure lasts longer than three months, both Simco-Ion and the principal are entitled to rescind the non-feasible parts of the agreement by a written declaration.

## **8 GUARANTEE AND CLAIMS**

8.1 Simco-Ion guarantees the good quality of goods sold and work executed but only to the extent that Simco-Ion, in the event of defects resulting from poor material or construction appearing and notified to Simco-Ion in writing during the guarantee period, shall either repair or substitute, at no cost to the principal, at Simco-Ion's option. Costs made in order to detect the defects and costs of dismantling, removal and/or disassembling of or in connection with the goods and/or work to be repaired or substituted are at the expense of the principal. The same applies to the costs of remounting, closing up or reassembling after execution of the guarantee work.

8.2 The guarantee period is one year after delivery or completion as the case may be.

8.3 Any right under the guarantee lapses if:

- (a) directions or advice given by Simco-Ion with respect to, amongst other things, storage, location, testing, installation, assembly, maintenance and/or use have not been followed precisely;
- (b) the goods supplied or worked on have not been used properly or not for the agreed or usual purpose;
- (c) the principal or a third party without Simco-Ion's permission has carried out work on the goods delivered by Simco-Ion or on the goods worked upon by Simco-Ion;
- (d) the principal has not, has not adequately or has not in time fulfilled any of its obligations pursuant to the agreement.

8.4 With respect to goods or parts of goods supplied to Simco-Ion by third parties, the guarantee obligations of Simco-Ion to the principal shall never exceed the guarantee obligations of such third parties to Simco-Ion. Simco-Ion shall be discharged with respect thereto if it assigns its own guarantee claim towards such third parties to the principal. No guarantee applies to defects in or arising from use or processing by Simco-Ion of substances, parts of goods or materials explicitly prescribed by the

principal.

8.5 No guarantee as meant in this article exists if the principal uses or applies the goods delivered under circumstances which deviate from the customary air humidity or which deviate from other surrounding factors. This also applies if this deviation in use or application was or could have been foreseen and/or a sample or model provided by Simco-Ion at an earlier stage satisfied the requirements and expectations of the principal under the deviating circumstances. Each risk for unsound quality of goods delivered and/or ineffectiveness of such goods delivered under such deviating circumstances shall at all times be for the principal.

## **9. LIABILITY AND INDEMNIFICATION**

9.1 Simco-Ion's liability is restricted to compliance with the guarantee obligations as described in article 8.

9.2 Simco-Ion, therefore, also in the case meant in article 8.5, is never obligated to pay additional or substitute damages. An exception hereto applies only if and to the extent that damages are inflicted intentionally or by the gross negligence of Simco-Ion or its own employees. Simco-Ion's liability for loss of profit, consequential or indirect damages is, however, at all times excluded, except if caused intentionally by Simco-Ion itself or by its managing employees.

9.3 Any liability of Simco-Ion for damages shall be limited to, at its option, either the invoice value of the goods sold or work performed whereby or in connection with which the damage was caused, or, if the damage is covered by an insurance policy of Simco-Ion, the amount actually paid out by the insurer.

9.4 Any claim against Simco-Ion and not recognised by Simco-Ion lapses after twelve months from the time the claim arose.

9.5 Simco-Ion's employees and independent contractors used by Simco-Ion may raise all defences pursuant to the agreement as if they themselves were party thereto.

9.6 The principal shall hold harmless from and indemnify Simco-Ion against all claims by third parties in connection with the execution of the agreement by Simco-Ion, insofar as these claims exceed or differ from claims of the principal pursuant to the agreement.

## **10 INTELLECTUAL PROPERTY**

10.1 The principal shall hold harmless from and indemnify Simco-Ion against each claim by third parties resulting from or in connection with a violation by the principal of industrial or intellectual property rights of those third parties.

## **11 RESCISSION**

11.1 If the principal does not, does not adequately or does not in time perform one or more of its obligations, is declared bankrupt, requests (temporary) moratorium, or proceeds with the liquidation of his business, as well as when his assets are attached in whole or in part, Simco-Ion has the right to, at its option, suspend the performance of the agreement or to rescind the agreement in whole or in part by written notice, without prior notice of default. Simco-Ion shall then be entitled to indemnification with respect to all costs, damages and interests as a consequence of such rescission and all Simco-Ion's claims against the principal shall immediately be due.

11.2 The principal has the right to rescind only if and where articles 4.5 and 7.2 of these conditions so specifically provide.

## **12 DISPUTES AND APPLICABLE LAW**

12.1 All disputes between parties shall be heard exclusively by the competent Rotterdam Court, unless Simco-Ion prefers an otherwise competent Court.

12.2 All relations between Simco-Ion and the principal are subject to Dutch law.

12.3 The provisions of the United Nations Convention on Contracts for the International Sale of Goods, concluded on 11 April 1980 at Vienna, are not applicable to the relations between Simco-Ion and the principal.