

GENERAL TERMS AND CONDITIONS– scia Systems GmbH, Version 2014/I

1 Scope of application

1.1. The following General Terms and Conditions shall apply to all orders contracted to scia Systems GmbH (scia Systems). Divergent, contrary, or additional terms requested by the client (Client) shall not form part of the contract without the prior written consent of scia Systems.

1.2. Verbal declarations before or upon conclusion of the contract, which shall in particular include giving of advice and the assurance of properties, shall only be binding if they are confirmed in writing.

1.3. Where the following General Terms and Conditions provide the barring or limitation of damage liability of scia Systems, its legal representatives or agents, such barring or limitation shall not apply to liability for damages from injury to life, body, or health.

2 Quotation

2.1. Documents forming a part of the quotation such as illustrations, drawings, information on consumption, weight, and dimensions, shall only be approximately decisive and shall not be understood as procurement, quality, or service life guarantees to the extent that they have not expressly been termed binding.

2.2. scia Systems shall reserve ownership and copyright to estimates, diagrams, and other documents. They may not be made accessible to third parties. scia Systems hereby agrees only to make plans designated as confidential by the Client accessible to third parties with the Client's approval if the third parties render services for scia Systems on the basis of the said plans. In this case, scia Systems shall impose confidential treatment of the plans on the third party.

3 Scope of delivery

3.1. scia System's written order confirmation shall be decisive for the scope of delivery.

3.2. scia System's quotations shall always be non-committal and can only be effectively accepted by the Client if scia Systems expressly declares that it will be bound by the quotation. In this case, scia Systems' quotation shall apply for the scope of the delivery.

4 Price

4.1. Except as otherwise agreed herein, the prices shall apply "Ex Works", excluding packaging and transport costs. The current Value Added Tax shall be added to the prices.

4.2. Payments shall be due according to the agreed payment schedule. In the absence of a payment schedule, the due date shall be the date stated in the invoice. Payments shall be made without a cash discount and with an indication of the invoice number to the account designated by scia Systems.

4.3. If the Client is in default with a payment obligation from an earlier contract in existence between the contracting parties for longer than 10 days or if the Client stops its payments or if other circumstances impairing the creditworthiness of the Client become known to scia Systems, all invoices open at this point in time shall immediately fall due, notwithstanding further rights of scia Systems and forfeiting any payment period which may have been agreed. In this case, scia Systems shall also be entitled to demand pre-payments or securities. scia Systems shall further be entitled to forbid the resale and the processing of the delivered objects and to demand return or transfer of indirect ownership of the delivered objects at the Client's expense within the limits of the retention of title-clause and mandatory law.

4.4. scia Systems shall be entitled to set off its claims against the Client's claims regardless of the legal ground. This shall also apply if payment in cash for the one party and payment in bills of exchange or other payments for the other party have been agreed upon. Setoff against claims of scia Systems shall only be allowed if the counterclaim is uncontested or if it is the subject of a final court decision. The Client may only exercise a right of retention if its counterclaim is based on the same contractual relationship.

5 Delivery period

5.1. The delivery period shall commence with the dispatch of the order confirmation, but not before the presentation of the documents, approvals, authorisations to be procured by the Client. Except as otherwise agreed herein, the period confirmed in the order confirmation shall be decisive for non-committal quotations, the period stated in the quotation being decisive for committal quotations.

5.2. The delivery period shall be deemed observed if the delivered objects have been handed to the Client pursuant to the delivery clause agreed upon in this respect or if readiness for dispatch has been notified before the expiry of the same period. If no delivery clause has been agreed upon, delivery "Ex Works" (Incoterms in their current version) shall apply.

5.3. The delivery period shall be extended adequately in the event of industrial disputes, in particular, strikes and lock-outs, and also in the event of the occurrence of unforeseen obstructions outside the sphere of influence of scia Systems, insofar as such obstructions can be proven to be of considerable influence on the completion or delivery of the delivered objects. This shall also apply if the circumstances occur with sub-scia Systems. scia Systems shall also not be answerable for the above mentioned circumstances even if scia Systems is in default. The beginning and ending of such obstructions shall be notified to scia Systems by the Client as soon as possible.

5.4. If dispatch is delayed for reasons attributable to the the Client, the Client shall bear the costs incurred by storage, starting one month after notification of readiness to dispatch, at least 0.5% of the amount of the invoice for each month in the event of storage in scia Systems' works. The delay shall not release the Client from the payments becoming due with the original delivery date. This clause shall apply without prejudice to claims for damages. However, scia Systems shall be entitled to dispose of the delivered objects elsewhere provided it has allowed the Client a reasonable period for collection and has notified it of the consequences of substitutive utilisation of the delivered objects after expiry of the period of collection.

6 Rights of use

6.1. The Client shall have the right to use the equipment in his usual course of business. Furthermore, the Client shall have the right to integrate the equipment in his own equipment and to re-sell the equipment to his end customers. Reverse engineering of the equipment whether in whole or in part shall not be permitted. The Client has the right to use the disclosed Know-how only for operation and maintenance of the equipment. All disclosed know-how shall be deemed confidential pursuant to section 7. Any other rights, including, but not limited to, licences on copyright, know-how, inventions made, or intellectual property rights applied for or granted to scia Systems shall not be granted.

6.2. The Client shall receive, in accordance with the contractual provisions or, if such provisions were not agreed on, to the extent essential to operate the equipment, the source code of the applications as is reasonable for service and technological progress of the delivered objects. The source code shall be handed over to the Client exclusively for the purposes of maintenance of the delivered object and necessary software adaptations through modifications or addition of functions, if applicable. The Client shall keep the source code in a safe place. Handing over of the source code of generally applicable standard functions and for additionally purchased software shall be excluded in any case.

6.3. Unless otherwise agreed in writing, the Client shall not pay any royalties or fees for the licence granted under section 6.1.

7 Confidentiality

7.1. The contracting parties shall for the duration of the contract and for a period of five years after its termination not make accessible to third parties information of a technical or commercial nature disclosed to each other and declared to be confidential. This shall not apply to information known or generally accessible to the other contracting party or to the public, or information which becomes known or generally accessible to the public after disclosure without any involvement or fault on the part of the other contracting party, or correspond to information disclosed or made accessible to the other contracting party by an entitled third party, or independently developed by an employee of the other contracting party not in possession of the information disclosed.

7.2. Third parties within the meaning of this provision shall not include subcontractors of scia Systems if these have been entrusted with a part of the services by scia Systems within the context of the assignment and if they have been placed under an obligation of confidentiality.

8 Passage of risk and acceptance

8.1. Risk shall pass to the Client upon dispatch of the delivered objects, even if part deliveries are made or scia Systems has also taken on additional services, e.g. the costs of dispatch or transport and erection. The consignment shall be insured by scia Systems against risks stated by the Client at the latter's request and expense.

8.2. If dispatch is delayed for reasons attributable to the Client, risk shall pass to the Client from the day of readiness for dispatch. Nevertheless, scia Systems shall be obliged to effect the insurances requested by the Client at the latter's request and expense.

8.3. Objects delivered shall not be returned by the Client without prejudice to the Client's warranty claims, even if they are defective. Part deliveries shall be admissible.

9 Retention of title

9.1. The delivered objects shall remain scia Systems' property until complete payment of all claims of scia Systems against the Client existing upon conclusion of the present contract or arising from the present contract or arising at a later point in time, on any legal grounds. However, retention of title shall not exclude the Client's right to sell and process the objects in the ordinary course of business as long as the Client is not in default. Pledging and assignment for security shall not be permitted.

9.2. In the event of resale of the delivered objects, regardless of whether it is admissible or not, the Client shall here and now assign to scia Systems all claims and rights against the Client's customers arising from this resale, up to the amount of the value of the resold objects. scia Systems hereby accepts this assignment. The Client shall be entitled to collect the assigned claims as long as scia Systems does not withdraw this right from the Client. In any case, the Client shall transfer the amounts collected to scia Systems immediately to the extent that scia Systems' claims are due for payment.

9.3. In the event that the ownership of scia Systems to the equipment lapses through combination, commingling, or processing it is already hereby agreed that the ownership to the combined object created in such a case shall, until full payment of the agreed fee, be proportionally assigned (invoiced value) to scia Systems.

9.4. The Client shall keep the objects the title of which has been retained by scia Systems free of charge for scia Systems. Upon request by scia Systems, the Client shall be obliged to have the conditional objects insured against the customary risks at its own expense.

9.5. In the event of interventions by third parties against the conditional objects, the Client shall make reference to scia Systems' retention of title and notify the latter without delay.

10 Liability

10.1. The liability of scia Systems, its legal representatives and agents in the case of violation of obligations and tort shall be limited to intent and gross negligence. Only in case of violation of essential contractual obligations (cardinal obligations) scia Systems, its legal representatives and agents shall also be liable in case of slight negligence. In any case, liability shall be limited to the foreseeable, contractually typical damages. scia Systems shall in no case be liable for consequential or indirect damages such as loss of profit or increased production costs. The foregoing limitations shall not apply for damage caused intentionally. Liability according to the German Product Liability Act remains unchanged.

10.2. Should scia Systems neither fulfill the performance as agreed upon nor do so at the time due nor in the manner agreed upon, then the client may only demand compensation in lieu of performance if the client has unsuccessfully set an appropriate deadline for the performance by scia Systems including the statement that it would otherwise reject acceptance of the performance after the passing of that deadline.

11 Warranty

11.1. Minor deviations customary in the trade and not essentially impairing the useful value of the delivered objects shall not entitle the Client to any claims to warranty or replacement.

11.2. Should the equipment delivered by scia Systems prove to be defective, then scia Systems shall first be given the opportunity to supplementary performance - depending on the nature of the equipment, the defect, and other circumstances also repeatedly - either by means of remedying the defect or substitute delivery.

11.3. Should scia Systems reject supplementary performance or if supplementary performance cannot be achieved or the client cannot reasonably be expected to accept supplementary performance, then the Client may either terminate the contract or demand reduction of the fee owed (reduction) or damages. The right to termination may be exercised only in case of a serious defect. Such right lapses if the Client does not declare the termination of the contract within 14 days after receiving notification of rejection or failure of supplementary performance or at the latest 14 days after the date at which it is recognised that the client cannot reasonably be expected to accept supplementary performance. scia Systems shall pay damages only under the further conditions of Section 10.1 and, if scia Systems has rejected supplementary performance, Section 10.2 shall apply also.

11.4. In the case of an infringement of third party intellectual property rights scia Systems shall only be liable if such rights apply in the Federal Republic of Germany, if the Client uses the equipment in a manner consistent with the contract, if a court decision based on infringement by the client of third party intellectual property rights is rendered against the Client, and if the Client has immediately notified scia Systems in writing of the claims asserted by such third party. Supplementary performance under Section 11.2 will be carried out by scia Systems by either obtaining a contractual authorisation for the Client's use or by modifying the equipment that the relevant third party intellectual property rights are no longer infringed.

11.5. For products delivered to scia Systems by sub-scia Systems', scia Systems' liability shall be limited to assignment of scia Systems' warranty claims against these sub-scia Systems'. If the third party fails to satisfy the Client's justified claims, scia Systems itself shall be liable under warranty as stipulated in these general conditions.

11.6. No warranty shall be assumed for damage caused by unsuited or improper use of the delivered objects, faulty assembly or commissioning by the Client or third parties, improper interferences with the delivered objects by the Client or third parties, natural wear and tear, faulty or negligent treatment, the use of unsuitable operating equipment and replacement materials, faulty preparation of construction by the Client or unsuitable building ground provided by the latter and are also such damage arising from chemical, electrochemical or electrical influences for reasons not attributable to scia Systems.

11.7. Claims due to defects shall be statute-barred in accordance with the provisions of Section 12.

12 Statutes of limitation

12.1. To the extent permitted by the applicable law, Client's claims for breach of duty and tort shall be statute-barred within 12 months.

12.2. Should acceptance of the Services is agreed upon, the statute of limitations on claims due to defects pursuant to Section 12.1 shall commence upon acceptance, otherwise upon completion of performance of the Services.

12.3. Statutes of limitation shall be suspended by negotiations between the contracting parties of claims or of circumstances giving rise to claims. Such suspension shall end if one of the contracting parties has not complied within four weeks with the request of the other contracting party to continue negotiations.

13 Force Majeure

13.1. In the case of unforeseen occurrences, which can be proven to be of considerable influence on the performance of the scia Systems or the Client, the party affected shall notify the other party of such occurrences in writing without delay. The affected party shall describe such occurrence in detail and state the contractual obligations which it cannot perform or only perform with delay as a result. The contracting party in question shall not be liable under any legal ground for such delay or force majeure. Force majeure shall include all unforeseen occurrences which - even if they were foreseeable - are outside the sphere of influence of the affected party and the effects of which on the performance of the contract cannot be prevented by reasonable efforts of the affected party, including, but not limited to, general lack of materials, unrest, riot, uprising, lock-outs, lightning, blockades, embargoes, epidemics, earthquakes, landslides, fire, wars (declared or not), warlike situations, lack of port and unloading capacity, military or civilian coups d'état, storm, rebellions, government orders, revolutions, lack of raw materials, sabotages, shipwreck, severe transport accidents, strikes, storm tides, typhoons, tumults, flooding and natural catastrophes of all natures.

13.2. If the Client's or scia Systems' performance is delayed by force majeure or if its performance is interrupted thereby, the affected party shall be granted a suitable extension of time limits and/or other adaptation of the contract, about which the parties shall come to an agreement.

13.3. Force majeure shall not entitle a party to terminate the contract, unless the parties have agreed otherwise, especially if the force majeure situation cannot be objectively expected to end in reasonable time. However, if the occurrence exceeds a period of 6 (six) months, each contracting party can terminate the contract by giving written notice. After notice has been given, the contracting parties should meet once more in order to examine the possibility of a continuation of the contractual relationship, taking the occurrence into account. If no agreement is achieved within one (1) month of receipt of the notice, the termination shall be effective. In this case, the Client shall reasonably reimburse scia Systems for works and services already rendered.

13.4. The provisions of the present section shall also apply if force majeure affects sub-scia Systems'.

14 Miscellaneous

14.1. If any term or provision of these General Conditions (or any part thereof) are held by any Court of competent jurisdiction to be illegal or unenforceable, such term or provision or part shall to that extent be deemed severable and shall be replaced by a provision the economic intention of which corresponds as far as possible to that of the ineffective provision. The validity and enforceability of the remainder of these conditions shall not be affected.

14.2. This contract shall be governed by and construed in accordance with the laws of the Federal Republic of Germany. The United Nations Convention on the International Sale of Goods (CISG) shall not apply.

14.3. Place of performance and venue for all disputes shall be scia Systems' seat, insofar as the Client is a merchant, public law legal entity, or public law special assets. scia System's right to sue the Client at its seat shall not be affected.