

# General Terms and Conditions

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## 1. General

- 1.1. silicon systems seifert gmbh (henceforth "Contractor") contracts and renders its services exclusively on the basis of these General Terms and Conditions ("GTC") in the version current at the time of contracting, the offer submitted by it and the purchase contract concluded with an entrepreneur as customer (henceforth "Customer"). The GTC shall therefore only apply to two-sided business transactions. However, the GTC shall not apply to transactions of the Contractor with consumers. The GTC shall also apply if the Contractor uses sub-contractors.
- 1.2. The Customer's general terms and conditions shall not become a contractual component of the business relationship with the Contractor. This is independent of whether the Contractor comments on them and whether or when they are brought to the Contractor's attention.
- 1.3. The GTC of the Contractor shall also apply to all future contractual relationships between the Contractor and the Customer, even if this is not specifically referred to in an offer or main contract.

## 2. Offer and conclusion of contract

- 2.1. Offers of the Contractor shall be valid for the acceptance period stated in the offer. After expiry of the acceptance period, the Contractor shall no longer be bound by the offer. The contract shall be concluded by the written acceptance of the offer by the Customer and its receipt by the Contractor within the acceptance period.
- 2.2. The information contained in catalogs, brochures, data sheets and the like as well as other verbal statements shall only be authoritative if they are confirmed in writing in the Contractor's offer.
- 2.3. The reasonable expenses incurred by the Contractor for drafts, sketches, samples, calculations, simulations, or studies shall be reimbursed immediately and without deduction upon request and invoicing by the Contractor, even if the prospective order is not placed.

## 3. Prices

- 3.1. All prices stated are valid ex warehouse and do not include delivery, insurance, and packaging costs. The aforementioned costs will be charged additionally to the Customer, provided that the corresponding costs have been incurred by the Contractor.
- 3.2. Unless explicitly stated, the prices quoted do not include sales tax and this must be borne by the Customer in addition. Granted discounts, merchandise credits and the like shall be calculated from the sales prices exclusive of sales tax. The Customer shall also bear the full cost of other levies, fees, taxes, incidental expenses, or customs duties applicable to the prices or the delivery.
- 3.3. The calculation and indication of prices are in EURO.
- 3.4. The Contractor shall be entitled to adjust the prices if the order deviates from an overall offer. If the contract is concluded with mutually agreed open prices, the prices of the Contractor applicable on the day of delivery or completion of the delivery shall be decisive and shall be charged.
- 3.5. The Contractor shall be entitled to charge the Customer for the reasonable additional costs due to a delay not attributable to its sphere of influence, in particular when clarifying the prerequisites for the delivery or as a result of overtime, night or Sunday work explicitly requested by the Customer.

## 4. Delivery

- 4.1. Should the delivery of the goods be agreed upon, it shall be brought to account and be at the risk of the Customer. The method of delivery (method of dispatch of the goods and means of transport) shall be determined by the Contractor – in consideration of the interests of the Customer. Delivery shall be made to the delivery address provided by the Customer and within the agreed delivery period. The Contractor shall be entitled to make objectively justified and reasonable changes to the delivery date if special reasons prevent compliance with the delivery deadline in individual cases. The Contractor shall inform the Customer of this without delay.
- 4.2. The delivery period according to the order confirmation shall remain ineffective until clarification of all technical and legal requirements.
- 4.3. The Customer shall be responsible for the proper disposal of the packaging material.
- 4.4. The Customer is obliged to accept the goods at the agreed delivery time. The Customer shall be liable to the Contractor for all expenses caused by its default in acceptance.
- 4.5. The Contractor's delivery obligations shall be suspended insofar as the Contractor is prevented from delivering due to force majeure or other circumstances for which he is not responsible. Operational and traffic disruptions and improper deliveries by subcontractors shall also be considered as force majeure. If delivery becomes impossible due to these circumstances, this shall release the Contractor from its obligation to deliver and perform. If the delivery is delayed by more than three months due to the aforementioned circumstances, both contracting parties shall be entitled to withdraw from the affected part of the delivery in writing within two weeks.
- 4.6. The Contractor shall be entitled to make partial deliveries. In the event of partial deliveries, the Customer shall not incur any additional costs compared to the delivery costs for the overall delivery.
- 4.7. If the Customer has agreed to collect the goods himself, he shall be obliged to collect the goods stored with the Contractor immediately after

- notification by the Contractor, but at the latest within one week, or to have them collected by a third party designated by the Customer. The Customer shall owe the Contractor an appropriate fee for storage after the collection date has been exceeded.
- 4.8. If a bindingly agreed delivery period is exceeded by the Contractor, the Customer may – if the exceeding of the delivery period was caused by gross negligence or intent on the part of the Contractor – withdraw from the contract by setting a grace period of four weeks in writing or, in the case of special-order goods, by setting a grace period of eight weeks in writing. The period of grace commences on the date of receipt of the Customer's notice of withdrawal by the Contractor. Claims for compensation by the Customer due to delayed delivery or in the event of withdrawal are excluded, insofar as legally permissible (cf. clause 8.).
  - 4.9. In the event of a withdrawal from the contract by one of the contracting parties, the Customer shall pay for deliveries or services already provided by the Contractor in proportion to the total scope of delivery. If no delivery has been made by the time of withdrawal, the Contractor shall be entitled to compensation for the reasonable costs incurred in preparing the delivery.

## **5. Fulfillment and transfer of risk**

- 5.1. In the event of agreed delivery by the Contractor, the risk of loss of or damage to the goods shall pass to the Customer at the time the goods leave the Contractor's sphere (e.g., handover to the logistics partner). In case of self-collection by the Customer, the risk shall pass to the Customer at the time when the Customer collects the goods or when the Customer is in default of acceptance (cf. clause 4.4.).
- 5.2. The place of performance (both for delivery by the Contractor and for payment by the Customer) shall be the Contractor's registered office.
- 5.3. Separate agreements on quality tests or sample goods shall not affect the provisions regarding performance on site and transfer of risk.
- 5.4. All additional services which are necessary for the functionality of the contractual goods, but which are not to be provided by the Contractor according to the order confirmation and the contract, are to be provided by the Customer at its own expense.
- 5.5. Material to be procured by the Customer, regardless of the type, shall be delivered to the Contractor free of charge. Our confirmation of receipt shall not be deemed to confirm that the type and quantity designated as delivered is correct, functional, and free of defects. The Customer is obliged to reimburse the Contractor without delay for the costs and storage expenses associated with the counting and quality inspection upon request and invoicing by the Contractor.
- 5.6. Manuscripts, originals, drafts, sketches, samples, models, films and other documents or goods handed over to the Contractor by the Customer shall be stored by the Contractor exclusively at the Customer's risk. The Contractor shall have no duty of care or custody. The insurance of these goods against any risk whatsoever is the exclusive responsibility of the Customer. The Contractor shall not be liable for damage to or loss of these items, for whatever reason.

## **6. Payment**

- 6.1. Invoicing by the Contractor shall take place immediately after delivery. Payment by the Customer of the amount shown on the invoice must be made in full and without deductions or charges to the Contractor's account stated on the invoice within the payment period stated on the invoice.
- 6.2. In the case of orders comprising several units, the Contractor shall be entitled to invoice after delivery of each individual unit. The Contractor is therefore also entitled to invoice for the delivered goods after each partial delivery (cf. clause 4.6.).
- 6.3. A right of retention of the Customer – in particular due to incomplete delivery, warranty claims or other claims of whatever kind – is excluded.
- 6.4. Payments received by the Contractor from the Customer shall first settle compound interest, then interest and ancillary charges, then pre-litigation costs (such as costs of a lawyer or debt collection agency called in) and then the outstanding principal, starting with the oldest debt.
- 6.5. If there are receivables from different deliveries, the Contractor shall decide on the offsetting of cash receipts.
- 6.6. All claims of the Contractor shall become due immediately if the Customer is in default with the fulfillment of even one payment obligation. In this case, all discounts, or reductions granted by the Contractor shall no longer be eligible. The same shall apply if the Customer suspends payments, is overindebted, the opening of insolvency proceedings is rejected for lack of assets, or circumstances become known which justify reasonable doubts about the Customer's creditworthiness or comparable reasons arise which make it unreasonable for the Contractor to adhere to the contract. If payment in installments has been agreed upon, the Contractor may demand the entire payment of the Customer's outstanding debt (including future installments) in the event of default by the Customer (default of payment). A (qualified) default in payment of the Customer shall independently constitute a reason for the Contractor to withdraw from the contract.
- 6.7. In the event of default in payment or justified concern about the Customer's ability to pay, the Contractor shall have the right, irrespective of legal consequences, to make further deliveries or services dependent on advance payments or securities provided by the Customer.

## **7. Warranty**

- 7.1. The Contractor shall provide a warranty in accordance with the provisions of §§ 922 ff of the Allgemeines Bürgerliches Gesetzbuch (Austrian Civil Code) - ABGB and the concretizations in the following clauses.
- 7.2. The date of transfer of risk shall be deemed to be the date of handover.
- 7.3. The warranty obligation of the Contractor shall not extend to defects attributable to the Customer. The Contractor shall therefore not provide any warranty for defects caused by changes to the goods initiated by the Customer unless the Contractor has given its prior written consent to

- the change to the delivery item.
- 7.4. Defects caused by overuse, negligent or improper handling or installation work by third parties are also excluded from the warranty. In particular, the Contractor shall not be liable for damage caused by actions of third parties, atmospheric discharges, overvoltage, and chemical influences. Parts subject to natural wear and tear are also excluded from the warranty. A duty of cooperation and warning on the part of the Contractor is excluded in this context.
  - 7.5. In the case of production according to the Customer's specifications (e.g., by means of sketches or similar), the Contractor shall only be liable for the fact that the produced goods correspond to the Customer's specifications, but not for a specific quality or property. The Customer is responsible for the preparation of corresponding specifications under expert guidance. A duty of cooperation and warning on the part of the Contractor is excluded in this context.
  - 7.6. The Customer must inspect the delivered goods immediately upon receipt and report any defects immediately, but no later than within three days in writing and in detail. In doing so, the Customer is also obligated to visually check the conformity of the goods with the order as well as in accordance with the specified product designations and batch numbers within this period. Hidden defects shall be notified by the Customer in writing within three days of their discovery. If the Customer fails to make this notification of defects, the goods shall be deemed to have been approved. The omitted, delayed or improperly formulated complaint shall result in the loss of the Customer's warranty claims and claims for damages due to defective goods as well as the loss of the right to challenge errors.
  - 7.7. In the event of a justified notice of defect, the Contractor may, at its own discretion, replace or repair the defective goods or defective parts thereof, have the goods sent to the Contractor for repair or grant a reasonable price reduction. From the time of notification of the defect by the Customer, any further disposal of the goods without the Contractor's express consent shall be inadmissible. In case of infringement, the Customer thereby waives any warranty claims against the Contractor.
  - 7.8. If the Contractor decides to carry out the warranty work at the Customer's premises, the Customer shall provide the Contractor with the necessary auxiliary staff, auxiliary materials, and tools free of charge. The Customer shall take all other necessary measures on site to enable the Contractor to carry out the warranty work.
  - 7.9. The Customer is not permitted to return the rejected goods without the prior written consent of the Contractor. In the event of non-compliance, the Contractor shall be reimbursed for all costs arising therefrom. No claims or other legal consequences may be derived by the Customer from acceptance of the returned goods. Likewise, an inspection of the defect by the Contractor shall not give rise to any claims by the Customer or any other legal consequences. The risk of the usability of the goods for a specific purpose or in a specific manner shall be borne by the Customer unless the Contractor has given a written undertaking to the contrary.
  - 7.10. The warranty period is six months. Claims according to § 933b ABGB shall also become statute-barred upon expiry of this period. The warranty period is not extended by work and deliveries subject to warranty.
  - 7.11. The Customer must prove the defectiveness at the time of handover (cf. clause 7.2.). The presumption of § 924 ABGB is thereby waived.

## **8. Compensation / liability**

- 8.1. The Contractor's liability for damages shall require gross negligence or intent and shall be limited to compensation for the direct positive damage caused by the defect. Compensation for loss of profit, consequential damages, indirect damages, or damages to third parties shall be excluded in any case. The liability of the Contractor shall be limited to the amount of the agreed fee for the specific order.
- 8.2. The Customer shall bear the burden of proof that the Contractor is at fault. The Customer's claims for compensation shall become statute-barred after six months from the time when the damage and the damaging party become evident, and in any case after 3 years from the time of handover (cf. clause 7.2.).
- 8.3. The Customer undertakes to pass on this limitation of the Contractor's liability to its customers and to oblige them to pass it on to the end user accordingly, so that the validity of the limitation of liability is guaranteed up to the end user. In case of infringement, the Customer shall indemnify and hold the Contractor harmless against the claims of its customers and their customers.
- 8.4. In the event of non-compliance with any conditions for installation, commissioning, and use (such as contained in operating instructions or data sheets) or the official approval conditions, any compensation by the Customer is excluded.

## **9. Dunning and collection costs / late payment and interest on arrears**

- 9.1. The Customer shall bear all reasonable costs incurred by the Contractor during or after the duration of the contract for the collection of due receivables, in particular with regard to reminders and collection including the involvement of a collection agency or lawyer (at the usual expenses of the Contractor and its agents) or for other extrajudicial and judicial debt collection if the Customer has caused these costs through conduct violating the contract. It is agreed that an expense allowance of EUR 10.- for a first and a second reminder and an expense allowance of EUR 40.- for a third reminder shall be deemed reasonable in any case.
- 9.2. In the event of default and in case of dissolution due to default, the Customer shall owe the Contractor default interest of 9.2% p.a. above the base interest rate (§ 456 UGB) regardless of fault. Other rights of the Contractor arising from the Customer's breach of contract shall remain unaffected. Accordingly, the Customer shall also compensate the Contractor for all damages caused to the Contractor by the default of payment - irrespective of the responsibility for the default of payment.

- 9.3. If the Contractor should be in default of delivery due to gross negligence despite having been granted a reasonable grace period in writing, the Customer may withdraw from the contract.

## **10. Retention of title and assignment of receivables**

- 10.1. The delivered goods shall remain the property of the Contractor until payment of all fees owed by the Customer under this contract. Pledging and security assignments of the goods by the Customer are not permitted before payment in full.
- 10.2. The Customer is obligated to handle the delivered goods with care until ownership is obtained through full payment.
- 10.3. If the Customer unjustifiably fails to properly fulfill an essential obligation – in particular its payment obligation – under this contract, the Contractor shall have the right to demand the return of the goods from the Customer at any time and to collect such goods even without the Customer's cooperation and at the Customer's expense. The enforcement of the retention of title by the Contractor shall not constitute a rescission of the contract by the Contractor unless it expressly declares such rescission.
- 10.4. If the delivered goods still owned by the Contractor are seized, confiscated, damaged, or destroyed by a third party, the Customer undertakes to notify the Contractor immediately and to provide the Contractor with all information necessary to enforce the right of ownership. If a third party wishes to access the goods still owned by the Contractor or to assert claims, the Customer undertakes to inform the third party that these goods are owned by the Contractor.
- 10.5. Orders that are executed by the Contractor in partial deliveries constitute a single order, so that the retention of title to all goods from this order only expires upon payment by the Customer of the total fee owed from the order as a whole.
- 10.6. The Customer hereby assigns to the Contractor any claims the Customer may have against third parties as a result of the sale or processing of the Contractor's goods until final payment of the Contractor's claims against the Customer. The Customer undertakes to make this assignment evident in its business books, delivery bills, invoices, etc.
- 10.7. If the Customer is in default of payment to the Contractor, the Customer shall be obliged to segregate any proceeds received from the resale of the goods owned by the Contractor and to hold them for the Contractor.

## **11. Goods, trademark and industrial property rights**

The Contractor shall be entitled to print a company or brand name on the products to be manufactured. In general, the Contractor's goods shall be marked with its brand or company name. If such goods are further processed or mixed with other products, the above marks may subsequently only be used with the prior written consent of the Contractor.

## **12. Industrial property rights and copyright**

- 12.1. The Contractor reserves all rights to the designs, offers, projects, and the associated drawings, dimensional drawings and descriptions used by it. These documents must not be used by the Customer – without the prior written consent of the Contractor – in a manner that goes beyond the content of the contract. In particular, they must not be reproduced or made accessible to third parties. They must be returned to the Contractor immediately upon request. The Customer shall return such documents to the Contractor without being requested to do so and without delay if the order is awarded to another party or does not materialize for other reasons.
- 12.2. The Customer shall indemnify and hold the Contractor harmless from and against any and all claims asserted by third parties arising from infringements of copyrights, ancillary copyrights, other industrial property rights or personal rights in connection as stipulated in this contract.

## **13. Offsetting**

- 13.1. The Contractor shall be entitled to set off between all claims of the Customer, insofar as they are leivable, and all liabilities of the Customer towards it.
- 13.2. The Customer unconditionally and irrevocably waives the right to set off its liabilities against the Contractor.

## **14. Privacy**

The Contractor's data protection declaration with all information on data protection is available online on [www.siliconsystems.at](http://www.siliconsystems.at). At the Customer's request, the Contractor shall send the data protection declaration to the Customer via mail or e-mail without delay.

## **15. Change of address**

The Customer is obligated to notify the Contractor immediately in writing of any changes to its address for service, its residential or business address or its usual place of residence, as long as the present contract has not been completely fulfilled by both parties. Until the notification of a changed address, declarations of the Contractor can be sent with legal effect to the last address notified.

## **16. Assignment of rights**

The Contractor shall be entitled to assign all or individual rights under this contract to third parties. The Customer is considered to agree to such assignment.

## **17. Jurisdiction and applicable law**

- 17.1. For all disputes arising directly or indirectly from this contract – including those concerning its existence or non-existence – the jurisdiction of the court of law in 1010 Vienna, Austria is agreed.
- 17.2. The contract shall be governed by Austrian law to the exclusion of the stipulations of private international law and the UN Convention on Contracts for the International Sale of Goods. Unless otherwise agreed upon in writing, the "INCOTERMS" in the latest valid version shall apply to the interpretation of the contractual clauses used.

## **18. Final provisions**

- 18.1. Any amendment to the contract must be in writing, which also applies to this clause itself.
- 18.2. The language of the contract and the language of communication shall be German or English, at the discretion of the Contractor.
- 18.3. When using or selling the Contractor's goods, the Customer is responsible for compliance with all relevant, legal and official regulations.
- 18.4. If one or more provisions contained in these GTC are or become void or ineffective, this shall not affect the validity of the remaining provisions.

The void or ineffective clause shall be replaced by the clause that comes closest in economic terms to the omitted clause.

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