General Sales Conditions of Semcon Germany

1. Scope of Application

As used in these General Sales Conditions ("Sales Conditions"), the term "Semcon" shall mean the Semcon Holding GmbH & Co. KG and all its affiliated companies (Secty 15 et seqq. German Stock Corporation Act, AktG) based in the Federal Republic of Germany. "Customer" in these Sales Conditions shall mean each party contracting with Semcon in an individual case in order to purchase Semcon's products, works and services, as the case may be. Semcon and the Customer are together referred to as the "Parties", and each individually as "Party".

2. General Terms

These Sales Conditions shall apply for all types of agreements made with Semcon as contractor and concerning any kind of service, work or product provided by Semcon (in the following referred to as "Contracts"). Semcon does not accept any contradicting or conflicting terms and conditions of the Customer, even if not expressly rejected in each single case, unless Semcon has expressly approved their validity in writing.

3. Payment

Payment shall be made by remittance to Semcon's bank account in the amount of the invoice. If the Customer has not paid within the agreed payment terms, Semcon shall charge interest for the delay at a rate of 8% per annum, calculated monthly in arrears from the due date of the invoice.

4. Change Requests

Customer change requests and will place a revised offer ("Contra Offers") separately on the basis of the VAT rate applicable on the revised offer.

5. Liability

Semcon shall not be liable for any defect, damage or other consequence following from any fault of the Customer. The obligations of Semcon under the German Act on Labour Leasing (Arbeitnehmerüberlassungsgesetz, AÜG) shall remain unrestricted.

6. Termination

If, due to execution of a Contract, employees of Semcon work at the Customer's premises, the Customer shall have no right to manage and instruct (Dienstleistungsrecht) those employees, except in case of Contracts for Supply of Temporary Workers as set forth in Clause 4.2. Semcon shall be entitled to be assisted by employees of its affiliated companies (Secty 15 et seqq. German Stock Corporation Act, AktG) in order to fulfill the agreed contractual performance, without any further approval of the Customer required.

7. Service Contracts

With regard to Service Contracts (Dienstverträge) for services to be rendered by Semcon, the following rules shall apply:

8. Delivery Dates

All agreed delivery dates for Sales Contracts (Kaufverträge) or Contracts for Work and Services (Werklieferungsverträge) are binding, unless otherwise agreed upon. The delivery date shall be deemed fulfilled if the contractual performance has been timely performed at the premises of Semcon.

9. Force Majeure

In case of Semcon's delay of delivery of goods or works, the Customer is entitled to rescind the Contract or to claim damages in lieu of performance, after an adequate delay of the performance is limited to a maximum of 5% of the agreed net price for the works to be rendered by Semcon. If the delay in performance is limited to a maximum of 5% of the agreed net price for the works to be rendered by Semcon, Semcon shall not be liable for any defect, damage or other consequence following from any fault of the Customer.

10. Claims

If the Customer asserts a claim for damages with regard to delay in performance or in lieu of performance, the liability of Semcon for such damages shall be limited in accordance with Clause 8. Furthermore, damages for delay in performance are limited to a maximum of 5% of the agreed net price for the delayed goods or works under the relevant Contract.

11. Termination

The fulfilment of contractual obligations by Semcon is subject to its undertaking to fulfill the Customer's obligations in due time. All cooperation or other involvement of the Customer (or any subcontractor engaged by the Customer) as agreed or required under the relevant Contract shall be regarded as Customer's obligations in the sense of the aforesaid. This applies in particular to any and all support necessary for the performance of the service to be rendered by Semcon and to the providing of any and all relevant drawings, specifications and other documents or information in due time, completely and free of charge to Semcon.

12. Termination

If and to the extent Semcon is prevented from performing its contractual obligations under a Contract (including not achieving any of the agreed milestones) due to the delay of the Customer (or any subcontractor engaged by the Customer) with any cooperation or other involvement (including refusal of acceptance or partial acceptance of any performance without legitimate reasons).

Semcon
General_Sales_Conditions_Semcon_Germany_version_01_2017_neu.doc
Seite 1 von 4
5.1 The agreed delivery dates of Semcon shall be extended accordingly; and

5.2 The Customer shall compensate Semcon for any loss, harm, damage or detriment incurred, including any additional costs as well as any costs of personnel and/or equipment which Semcon has held available for the relevant performance and cannot reasonably use otherwise.

6. Acceptance of Performance; Passing of Risk

6.1 With regard to Contracts for Work and Services (Arbact, Werkverträge, the following shall apply):

6.1.1 The acceptance of any performance or partial performance by the Customer shall be confirmed in Writing by the Customer. It leads to a passing of risk [Geführrübertragung].

6.1.2 Acceptance of partial performance shall be made in particular after achieving an agreed milestone. If the Customer demands further performance by Semcon after a product milestone has been achieved, this shall be deemed to be an acceptance of the prior partial performance.

6.1.3 If the Customer does not expressly accept the performance or partial performance rendered by Semcon, the risk shall from Semcon to the Customer if Semcon has granted an adequate extension period to the Customer to declare acceptance and such period has elapsed, provided that the acceptance is refused without legitimate reason.

6.2 With regard to Sales Contracts (Kaufverträge), the risk shall pass "ex works" legal seat of the Semcon company being the contract partner [EXW, Incoterms 2010], unless expressly otherwise agreed.

6.3 With regard to Contracts for Work and Materials [Werkleistungsverträge], the risk shall pass "ex works" legal seat of the Semcon company being the contract partner [EXW, Incoterms 2010], unless the Contract expressly provides that a performance shall take place of the Customer's premises. In such case, the risk shall pass upon delivery (Übergabe).

6.4 If the Customer is in delay with regard to any acceptance of a performance, each as set forth in this Clause 6. or if it grossly violates any of its support obligations, the risk of accidental loss or deterioration of the object of the performance shall pass to the Customer upon occurrence of such delay respectively such violation.

7. Force Majeure

7.1 In case of Act of God, labour disputes, civil commotion, governmental or official actions and other non-f ozoneable, inescapable and serious events and/or events the Parties shall be temporarly relieved from their obligations during the period of time such events continue and to the extent their liabilities are affected. The afores-stated shall also be applicable in case the Party concerned is already in default. The Parties are committed to give each other the necessary information which may reasonably be expected without delay, and to adjust their obligations in good faith to the changed circumstances.

7.2 In the event that the delay or non-performance of either Semcon or the Customer due to such circumstances not only in a particular case but in general persist continuously for a period of more than three [3] months, either Party shall have the right to terminate the relevant Contract with immediate effect.

8. Defects

8.1 With regard to Sales Contracts [Kaufverträge] and Contracts for Work and Materials [Werkleistungsverträge], the following shall apply:

8.1.1 The Customer shall be obliged to examine goods which have been delivered by Semcon according to its commercial obligation of examination and notification of defects.

8.1.2 If a defect has been found, the Customer shall inform Semcon without undue delay, however, at the latest within [5] days from the date of discovery of such good. In case of hidden defects discovered later, the information must be rendered without undue delay after discovery of such defect. All such information shall be made in Writing [Vertragsform].

8.1.3 The Customer shall only be entitled to claim any rights due to defects of delivered goods if it has properly fulfilled its obligations set forth in Clauses 8.1.1 and 8.1.2.

8.2 With regard to defects under Contracts for Work and Services (Werkverträge), Semcon shall be liable according to applicable law, notwithstanding the limitations set forth in Clauses 8.1 and 10.

8.3 Nothing in these Sales Conditions or in Contracts shall prejudice or limit Semcon's legal rights if the Customer (e.g. by negligent violation of [Verpflichtungen].) unless expressly otherwise agreed. Any such agreement shall be made in Writing [Vertragsform].

8.4 With regard to defects of title [Rechtsmängel] due to infringement of any third party's Intellectual Property Rights [as defined in Clause 11.1], any liability of Semcon for such defects is expressly excluded, unless caused by gross negligence or intention of Semcon.

8.5 If Semcon is liable for defects of title [Rechtsmängel] due to infringement of any third party's Intellectual Property Rights by the service, work or product rendered by Semcon according to Contract, Semcon shall under the exclusion of any further liability and at its sole discretion

8.5.1 ensure that the Customer may continue to use the relevant service, work or product (e.g. by licensing services or products); or

8.5.2 replace the infringing part with a non-infringing part;

8.5.3 repay the amount attributable to the remuneration which Semcon is entitled to for the infringing part of the service, work or product;

8.6 The Customer shall not be entitled to claim any rights in respect of products or services if and to the extent a defect (including infringement of third party rights) has been caused solely by the Customer.

8.6.1 blueprints, specifications or other specific requirements provided by the Customer;

8.6.2 using the products or services in any other way than intended in the relevant Contract; or

8.6.3 altering products or services without Semcon's assistance or acceptance.

9. Liability

9.1 In all cases, except in case of Contracts for the Supply of Workers [Arbeitnehmerüberlassungsverträge] which are subject to Clause 4.2, the following provisions shall exclusively govern Semcon's liability for damages arising out of a fraudulent concealment of a defect or in connection with a guarantee given by Semcon in relation to the specific characteristics of the service, work or product to be provided.

9.2 Furthermore, if Semcon or any of Semcon's representatives or vicarious agents wilfully or negligently causes personal injury or death, Semcon shall be liable for damages in accordance with the relevant statutory provisions.

9.3 If the Customer claims damages based on intent or gross negligence of Semcon or any of Semcon's representatives or vicarious agents based on any negligent breach of an "essential contractual obligation", Semcon shall also be liable in accordance with the relevant...
statutory provisions. However, in such cases Semcon’s liability shall be limited to the amount of foreseeable and typical damages, unless Semcon acted wilfully or with gross negligence or if any of Semcon’s representatives or vicarious agents acted wilfully. The term “essential contractual obligation” in this context means an essential contractual obligation as specifically described in the relevant Contract, the breach of which endangers attainment of the Contract’s purpose itself. The breach of an essential contractual obligation thus concerns a compulsory obligation, which generally must be fulfilled to enable a due execution of the Contract, and which the other party as contract partner may typically and reasonably expect to be observed.

Furthermore, Semcon shall be liable in accordance with the imperative provisions of the German Product Liability Act [Produkthaftungsgesetz].

In all other respects Semcon’s liability for damages shall be excluded if a Party must immediately be notified of the defect or the damage which is not incurred with regard to the service or works to be performed themselves [such as loss of profit or other pure financial loss to the Customer], and for damage resulting from the breach of incidental obligations based on the Contracts or law [such as a failure to properly care for construction of packaging and instruction regarding handling], and for claims arising from non-contractual liability.

Furthermore, Semcon’s liability shall be excluded if a damage has been solely caused by specifications or requirements provided by the Customer.

9.4 Insofar as Semcon’s liability is excluded or limited, this shall also apply to the personal liability of Semcon’s employees, representatives and vicarious agents.

10. Statute of Limitation

10.1 A claim for supplementary performance of works or products resulting from defects shall fall under a statute of limitation, which begins to run from the time of passing of risk [Clause 6], unless the Customer claims damages for the fraudulent concealment of a defect, or in connection with a guarantee for specific works or products which Semcon granted to the Customer for a longer period of time.

10.2 Rescission and reduction of the agreed price for works or products shall be invalid in accordance with Sect. 218 BGB when a claim for supplementary performance has become time-barred.

10.3 Claims for damages shall fall under the following statute of limitations:

10.3.1 The limitation period is one [1] year.

10.3.2 For claims related to defects of works or products, the limitation period begins to run from the time of passing of risk [Clause 6].

10.3.3 For all other claims, the limitation period begins to run from that point in time when the claim arises and the Customer becomes aware of, or should have become aware of, the facts and the risk that Semcon is the debtor of the claim. The limitation period expires at the latest when the maximum period according to Sect. 199 para. 2 and 3 BGB has expired.

10.3.4 Clauses 10.3.1 to 10.3.3 shall not apply, but the statutory limitation periods shall apply to all claims due to gross negligence or intent, claims in connection with a guarantee given by Semcon or with death or personal injury, and to claims under the German Product Liability Act [Produkthaftungsgesetz].

11. Intellectual Property Rights

11.1 “Intellectual Property Rights” shall mean all registered or unregistered, intellectual property rights and similar rights, including trademarks, patents, utility models, designs, copyrights and know-how.

11.2 Semcon is entitled to use the Customer’s trademarks and/or firm name to a reasonable extent for promotion purposes of its own business.

11.3 “Background Knowledge” shall include all Intellectual Property Rights and additionally all information, knowledge and know-how, regardless if independently developed by a Party outside the scope of the relevant Contract or acquired by third parties.

11.4 Semcon grants the Customer a worldwide, perpetual, irrevocable, non-transferable licence [without the right to copy, change, transfer or sub-license to third parties] to use the Background Knowledge of Semcon to the extent necessary for the proper use of the works or products and for the prevention of any expenses arising in connection with a guarantee for specific works or products, provided the Customer agrees not to limit the scope and the agreed purpose of each relevant Contract on commercial conditions to be agreed upon by the parties in each single case.

11.5 The Customer grants Semcon the unrestricted right to use the Customer’s Background Knowledge to the extent necessary in order for Semcon to fulfil its undertakings under each relevant Contract.

11.6 The Customer shall be granted up to a recreation of any working results protected by copyright and without any separate remuneration to Semcon, the irrevocable, exclusive, timely and locally unlimited transferable right to use those working results (including as yet unknown types of use), including but not limited to the reproducing, making available on the internet, developing and modifying of these results.

In use, within the framework of the Contract, Semcon creates any working results including protectable and registrable content Semcon shall inform the Customer thereof without delay – on request of and upon consent of the Customer the Customer claim the invention(s) without any restrictions according to the German Law on Employee’s Inventions [Gesetz über Arbeitnehmererfindungen, ArbEiG], and – against reimbursement of the employee inventor compensation [Sect. 9 ArbEiG] and any costs accured in connection with the registration and maintenance of industrial property rights that might have been registered transfer the invention[s] to the Customer for the Customer’s use without receiving any separate remuneration.

However, by entering into a Contract, the Customer grants Semcon a non-exclusive, otherwise unrestricted right to use outside the scope of the relevant Contract in other projects and agreements, including those with third parties.

11.8 All offer-related pictures, drawings, calculations, data, documentation related thereto (including software source codes and any other documents and shall remain the sole property of Semcon. Semcon reserves all copyrights. Upon request, however at any event when it is determined to be necessary, a written cooperation with Semcon, all such property of Semcon and documentation related thereto must immediately be returned to Semcon.

12. Retention of Title

12.1 Until full payment has been made, Semcon reserves the right of retention with regard to all works and products delivered to the Customer. In this context, all supply of works and products within one Contract shall be deemed as one different transaction, regardless of any agreed milestones.

12.2 If Semcon’s performance under a Contract is invoiced by way of an account current [laufende Rechnung], the retention of title shall remain in force as long as there is a debit balance of the Customer.

12.3 The Customer must handle the works and products with care. In particular, the Customer shall insure, at its own expense, the works and products at a replacement value against fire, water damage and theft. The Customer shall store the works and products in a way that allows a clear distinction from the Customer’s other goods and makes them recognizable as property of Semcon.

12.4 If the works and products are seized in execution or in any other way subjected to a third party’s action, the Customer shall immediately inform Semcon.

12.5 The Customer is entitled to resell the works or products in the ordinary course of its business. However, by entering into a Contract, it herewith assigns to Semcon all claims against its customers or others parties arising from the resale up to the amount of the invoice [including value added tax] under the relevant Contract, regardless of whether the works and products have been paid for or still remain subject to processing. Semcon herewith accepts such assignment. The Customer remains entitled to collect such claims. Semcon’s competence to collect the claim remains unaffected. However, Semcon undertakes not to collect
the claim as long as the Customer fulfils its obligations to pay from the collected proceeds of resale. Should any such circumstances occur, however, Semcon is entitled to demand that the Customer disclose the assigned claims and the respective debtors. makes available to Semcon all information necessary for collection of the claims, and handles over the relevant documents and notifies the third-party debtors of the assignment.

12.6 Any processing or transformation of the works and products by the Customer is always undertaken for Semcon’s account. If the works and products are processed together with other goods that are not Semcon’s property, Semcon shall have co-ownership of the new processed object with a share in proportion to the value of the works and products [amount of the invoice including value added tax] against the value of the other processed goods at the moment of processing. The Customer shall store the processed goods, whether Semcon owns them fully or partially, without remuneration from Semcon. In relation to all other aspects, the provisions applicable to works and products under the respective Contract or otherwise be made available by the Customer or otherwise become aware of due to their business relationship, if and as long as such information is not obvious or in the public domain. The companies affiliated with Semcon (according to Sect. 15 et seq. AktG) engaged by Semcon under the relevant Contract shall not be deemed to be third parties in that sense. Copying of any information shall only be permitted within the frame of the operational needs and the applicable statutory rules regarding Intellectual Property Rights.

13. Confidentiality

13.1 Semcon and the Customer shall each treat as business secrets and shall not disclose, transfer or otherwise make available by the Customer or otherwise become aware of due to their business relationship, if and as long as such information is not obvious or in the public domain. The companies affiliated with Semcon (according to Sect. 15 et seq. AktG) engaged by Semcon under the relevant Contract shall not be deemed to be third parties in that sense. Copying of any information shall only be permitted within the frame of the operational needs and the applicable statutory rules regarding Intellectual Property Rights.

14.2.1 Insolvency proceedings have been commenced on the Customer or there is a cessation of payments;

14.2.2 of a direct or indirect infringement of the provisions in Clause 13 by the Customer;

14.2.3 of Customer’s delay of acceptance or lack of cooperation after elapse of an extension period, according to Clause 5.6;

14.2.4 Customer’s continuing delay with payment if an adequate extension period set by Semcon has elapsed; or

14.2.5 Any other delay of the Customer after an adequate extension period set by Semcon has elapsed.

14.3 In each case of justified termination with immediate effect based on important reasons, the Customer shall pay to Semcon the agreed remuneration plus any additional expenses and expenditures, minus any expenses and expenditures which Semcon will not incur due to the early termination.

15. General Provisions

15.1 Should any provision of these Sales Conditions or of any Contract between Semcon and the Customer be or become invalid or unenforceable, all other provisions shall remain unaffected. The Parties are obliged to replace each unenforceable or invalid provision by a new provision which comes as close as possible to the purpose of the original provision. If a new provision reflects the legal and economic purpose of the original provision, the same applies in case of a gap in these Sales Conditions or a Contract.

15.2 Unless expressly otherwise agreed, the laws of Germany under the exclusion of its conflicts of laws provisions shall apply to these Sales Conditions and each Contract between Semcon and the Customer. The Convention of the United Nations on Contracts for the International Sale of Goods of 11 April 1980 (”CISG”) shall not apply.

15.3 Place of performance shall be the place of business of Semcon, unless expressly otherwise agreed.

15.4 The ordinary courts at Semcon’s place of business shall have exclusive jurisdiction for all disputes and claims arising from or relating to any Contract and its implementation. However, at its choice, Semcon shall be entitled to file an action against the Customer at the ordinary court at the Customer’s place of business.