

General Sales Conditions of Semcon Germany

1. Scope of Application

- 1.1 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 [Sect. 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".
- 1.2 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.
- 1.3 These Sales Conditions shall also apply if Semcon, being aware of any contradicting or conflicting terms and conditions of the Customer, carries out the order of the Customer without any reservations.
- 1.4 Any modification or amendment of these Sales Conditions must be agreed in Written Form to be valid. "Written Form" in these Sales Conditions shall mean written letter, e-mail, fax letter or posting of data or other electronic transmission within a supplier platform or other electronic B2B application.
- 1.5 These Sales Conditions shall also govern any future Contract between Semcon and the Customer.

2. Offer; Order; Order Documentation

- 2.1 Offers made by Semcon are not binding, unless expressly defined as binding offer by Semcon. A Contract between Customer and Semcon comes into force if and as far as Semcon has expressly accepted the order of the Customer in Written Form.
- 2.2 Verbally placed orders by the Customer are also binding. An order is deemed to have been accepted if, with the knowledge of the Customer and without his objection, fulfilment of such order has started.
- 2.3 The Customer may request modifications of the scope of supply and services at any time. Semcon will check such change requests and will place a revised offer especially stating the impact on prices and delivery dates. Until the Customer unconditionally accepts such revised offer Semcon is not obliged to implement such changes. Delays in the execution of performance and any additional costs resulting from a delayed acceptance of the revised offer are at the Customers expense.

3. Prices; Payment

- 3.1 Unless specified otherwise in Contract, the prices and terms of delivery of Semcon are "ex works" legal seat of the Semcon company being the contract partner of the Customer [EXW, Incoterms 2010], excluding packaging, which will be invoiced separately.
- 3.2 Unless specified otherwise the prices of Semcon do not include VAT. The respective amount shall be calculated separately on the basis of the VAT rate applicable on the date of the performance of the relevant works/supply.
- 3.3 Any discounts shall be agreed in Written Form prior to performance.
- 3.4 Unless specified otherwise in Contract, the agreed price shall be paid [without any reduction] within 20 days after Customer has received the invoice. If the Customer is in delay with payment, Semcon shall have all statutory rights under German Law. In addition, Semcon is entitled to withhold the performance of any works, services and supplies resulting from the business relationship with the Customer until Semcon has received any payments due.
- 3.5 Payment shall be made by remittance.
- 3.6 The Customer is only entitled to set-off in case its counterclaims have been finally adjudicated, have not been contested or if Semcon has expressly accepted them. In these cases the Customer is also entitled to exercise a right of retention, provided that its counterclaim results from the same contractual relationship.

4. Semcon's Performance of Contract Modalities

- 4.1 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 [Direktionsrecht] those employees, except in case of Contracts for Supply of Temporary Workers as set forth in Clause 4.2. Semcon shall be entitled to use employees of its affiliated companies [Sect. 15 et. seqq. German Stock Corporation Act, AktG] in order to fulfil the agreed contractual performance, without any further approval of the Customer required.

- 4.2 With regard to Contracts for Supply of Temporary Workers [Arbeitnehmerüberlassungsverträge], special terms and conditions of Semcon [Allgemeine Geschäftsbedingungen für Arbeitnehmerüberlassung] shall take precedence over these Sales Conditions. Semcon shall not be liable for any defect, damage or other consequences arising from acts or omissions by the Customer. The obligations of Semcon under the German Act on Labour Leasing [Arbeitnehmerüberlassungsgesetz, AÜG] shall remain unaffected.
- 4.3 With regard to Service Contracts [Dienstverträge] for services to be rendered by Semcon, the following rules shall apply:
 - 4.3.1 Clauses 6 and 8 of these Sales Conditions shall not apply.
 - 4.3.2 Semcon shall assign employees of appropriate qualification and experience to perform and fulfil its obligations under the relevant Service Contract. Semcon shall perform the services in a workmanlike manner with professional diligence and skill, in accordance with provisions of the relevant Service Contract.
 - 4.3.3 Semcon shall have no obligation whatsoever for the attainability and/or attainment of any goals of the Customer as well as for the commercial usability of the outcome of the services or any other objective of the Customer.
- 4.4 With regard to all performance under the Contracts, Semcon shall observe the generally acknowledged rules of technology as well as the technical specifications agreed with the Customer.

5. Delivery Dates; Delay; Obligation to Cooperate

- 5.1 All agreed delivery dates for Sales Contracts [Kaufverträge], Contracts for Work and Services [Werkverträge] or Contracts for Work and Materials [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.
- 5.2 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 extension period for performance or supplementary performance has been agreed between the Parties in Written Form, and such extension period has elapsed without completion of performance. The Customer is not required to agree an extension period if Semcon is in serious delay, or if a fixed-date purchase [Fixgeschäft according to Sect. 323 para. 2 no. 2 German Civil Code, BGB, Sect. 376 German Commercial Code, HGB] was agreed, or if special circumstances exist that justify an immediate rescission when taking into consideration the interests of both Parties.
- 5.3 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 9. 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.
- 5.4 The fulfilment of contractual obligations by Semcon is subject to the proper fulfilment of 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 agreed contractual obligations of 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.
- 5.5 If and to the extent Semcon is prevented from performing its contractual obligations under a Contract [including non-achievement of agreed milestones] due to 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]:

- 5.5.1 The agreed delivery dates of Semcon shall be extended accordingly; and
- 5.5.2 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.
- 5.6 In any event, the Customer's delay is triggered upon lapse of an adequate extension period granted by Semcon to the Customer to fulfil its obligations to cooperate.
- 6. Acceptance of Performance; Passing of Risk**
- 6.1 With regard to Contracts for Work and Services [Werkverträge], the following shall apply:
- 6.1.1 The acceptance of any performance or partial performance by the Customer shall be confirmed in Written Form by the Customer. It leads to a passing of risk [Gefahrübergang].
- 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 pass from Semcon to the Customer if the Customer uses the performance or partial performance in such a manner that a neutral third person would regard such use as implied acceptance by conduct [konkludente Abnahme].
- 6.1.4 If the Customer expressly refuses to accept the performance or partial performance rendered by Semcon, the risk shall nonetheless pass 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 reasons.
- 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 [Werklieferungverträge], 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 wilfully 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-foreseeable, inescapable and serious events the Parties shall be temporarily relieved from their obligations during the period of time such events continue and to the extent their liabilities are affected. The afore-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 singular cases but in general persists 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 [Werklieferungverträge], 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 [five] business days from the date of delivery of such goods. 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 Written Form.
- 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.
- 8.1.4 Semcon shall, at its own discretion, repair the defect or render a subsequent delivery of new goods. The Customer shall make best efforts to support Semcon in minimising any losses. If Semcon without legitimate reason finally refuses to repair or to render a subsequent delivery, or if such remedies have failed, the Customer may rescind the Contract [with effect of retransfer of all received performances between the Parties] or proportionally reduce the purchase price. Semcon's liability to compensate any damage is ruled solely by Clauses 9 and 10.
- 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 9 and 10.
- 8.3 Nothing in these Sales Conditions or in Contracts shall form warranted properties or warranted life cycles [Beschaffheitsgarantien/ Haltbarkeitsgarantien], unless expressly otherwise agreed. Any such agreement shall be made in Written Form.
- 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; or
- 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:
- 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**
- In all cases, except in case of Contracts for the Supply of Temporary Workers [Arbeitnehmerüberlassungsverträge] which are subject to Clause 4.2, the following provisions shall exclusively govern Semcon's liability for damages, irrespective of whether such liability is based on contractual or non-contractual claims:
- 9.1 Semcon shall be liable in accordance with the relevant statutory provisions 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, or based on a 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 obligation, as specifically described in the relevant Contract, the breach of which endangers attainment of the Contract's purpose itself. The "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.
- 9.4 Furthermore, Semcon shall be liable in accordance with the imperative provisions of the German Product Liability Act [*Produkthaftungsgesetz*].
- 9.5 In all other respects Semcon's liability for damages shall be excluded. Unless otherwise set forth in Clauses 9.1 to 9.4, Semcon therefore shall not be liable for 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 wrongful advice, care, information, construction of packaging and instruction regarding handling], and for claims arising from non-contractual liability.
- 9.6 Furthermore, Semcon's liability shall be excluded if a damage has been solely caused by specifications or requirements provided by the Customer.
- 9.7 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 limitations of one [1] year from the time of the 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 characteristics of the 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 circumstances giving rise to the claim and the fact 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, to 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 software.
- 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, data and know-how, regardless if independently developed by a Party outside the scope the relevant Contract or acquired by third parties. Semcon and the Customer generally agree that all Background Knowledge of Semcon shall remain property of Semcon and all Background Knowledge of the Customer shall remain property of the Customer.
- 11.4 Semcon grants the Customer a worldwide, perpetual, irrevocable, non-exclusive and non-transferable licence [without the right to copy, change, transfer or sub-licence to third parties] to use the Background Knowledge of Semcon to the extent necessary for the proper use of the subject matter of the Contract, but limited to the scope and the agreed purpose of each relevant Contract on commercial conditions to be agreed upon 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, upon the creation 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.
- 11.7 In case, 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 consultation with the Customer claim the invention[s] without any restrictions according to the German Law on Employees' Inventions [*Gesetz über Arbeitnehmererfindungen, ArbEG*], and
 - against reimbursement of the employee inventor compensation [Sect. 9 ArbEG] and any costs accrued 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, i.e. also lists of parts, circuit diagrams and software source codes and any other documents are and shall remain the sole property of Semcon. Semcon reserves all copyrights. Upon request, however at any event when it is determined that no order will be placed 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 to be one coherent 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 their 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 notify 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 third 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 resold without processing or after 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, does not get into default of payment, no insolvency proceedings have been commenced and there is no cessation of payments. 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 hands 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 subject to retention of title shall also apply to the processed goods.
- 12.7 If the works and products are inseparably united or mixed with other goods that are not Semcon's property, Clause 12.6 shall apply mutatis mutandis, provided that if the respective goods are mixed or united in such a way that the goods owned by the Customer are to be regarded as the principal goods, it shall be deemed agreed that the Customer transfers to Semcon a proportional co-ownership
- 12.8 Semcon shall release any securities held by it if and to the extent that their total value exceeds 110 % of the total value of Semcon's accounts receivable secured by them.

13. Confidentiality

- 13.1 Semcon and the Customer shall each treat as business secrets and shall not disclose, transfer or otherwise make available to any third parties all and any commercial and technical details which they have received from the respective other Party or which they have 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 seqq. 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.
- 13.2 Neither drawings, sketches, models, moulds, samples, stencils and similar items and documents, data in electronic form, tools and other production means nor constructions specifications or any other confidential information provided by Semcon may be forwarded, handed or otherwise be made available by the Customer to any third party, in particular to any competitor of Semcon or to any company affiliated with such competitor or with the Customer [according to Sect. 15 et seqq. AktG]. This shall apply unless Semcon has granted an exemption by giving its express consent in Written Form. Semcon shall not unreasonably refuse such consent if and to the extent it is necessary for the due execution of a project under a Contract. In such case, the Customer shall bind the receiving third parties by a confidentiality agreement reflecting the rules set forth in Clauses 13.1 and 13.2.

14. Termination

- 14.1 Generally, termination of each Contract is subject to the relevant provisions of such Contract and applicable law.
- 14.2 The right to immediate termination for cause remains unaffected. Semcon shall have such right to immediate termination in case

- 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 that to the greatest possible extent 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.