

Terms and Conditions

1. **ACCEPTANCE:** These terms and conditions are the exclusive binding agreement between the parties covering the purchase of the products and services ordered and are accepted by acknowledgment and/or commencement of performance. THIS AGREEMENT CAN BE ACCEPTED ONLY ON THESE TERMS AND CONDITIONS. ADDITIONAL OR DIFFERENT TERMS PROPOSED BY SELLER'S ACKNOWLEDGMENT HEREOF WILL NOT BE APPLICABLE UNLESS ACCEPTED IN WRITING BY BUYER. ACCEPTANCE OF THE PRODUCT OR SERVICES DELIVERED UNDER THIS AGREEMENT SHALL NOT CONSTITUTE ACCEPTANCE OF SELLER'S TERMS AND CONDITIONS. No change, modification or revision of this agreement shall be effective unless in writing and signed by Buyer's duly authorized purchasing representative, or company officer.

2. **PRICES:** Seller warrants that the prices to be charged for products or services identified on the face hereof are not in excess of prices charged to other customers of similar quantities and delivery requirements. In the event of any price reductions during the effective period covered by this agreement which apply to similar products or services, such price reductions shall automatically reduce the unit price of the unshipped products or services not yet rendered by a comparable percentage at the time of the price reduction.

3. **INVOICES:** Payment of invoices shall not constitute acceptance of the product or waiver of Buyer's right to adjustment for errors, shortages, defects in the product or other failure of Seller to meet the requirements of the agreement. Buyer may at any time set off any amount owed by the Buyer to Seller against any amount owed by Seller or any of its affiliated companies to Buyer. Invoices shall be submitted in duplicate.

4. **TAXES AND CHARGES:** All taxes and similar charges shall be stated separately on Seller's invoice.

5. **OVERSHIPMENTS:** Buyer will pay only for maximum quantities ordered and designated for release. Overshipments will be held at Seller's risk and expense for a reasonable time awaiting shipping instructions. Return shipping charges for excess quantities will be at Seller's expense.

6. **PACKING AND SHIPPING:** Unless otherwise specified, when the price of this agreement is based on the weight of the ordered products, such price is to cover net weight of the product ordered only, and no charge will be allowed for boxing, crating, drayage, storage or other packing requirements or any allowance for damage in connection with the foregoing. Unless otherwise specified, all products shall be packed, packaged, marked and otherwise prepared for shipment in a manner which is:

in accordance with good commercial practice,

acceptable to common carriers for shipment at the lowest rate for the particular product, and,

adequate to insure safe arrival of the product at the named destination and for storage and protection against weather.

Seller shall mark all containers with necessary lifting, handling and shipping information and also purchase order number, date of shipment and the name of the consignee and cosigner. An itemized packing sheet, showing purchase order number and item numbers must accompany each shipment unless otherwise specified. Deliveries against this agreement shall not be made in whole, nor in part prior to the date or dates shown hereon, without Buyer's prior written consent.

7. **DELIVERY POINT:** Unless otherwise specifically provided in the PO, the products called for hereunder shall be delivered to Shanghai Simconix at seller's cost.

8. **WARRANTY:** Seller warrants that all products and product components are free from defects in workmanship, material and design, and that the products comply with this agreement and with applicable drawings, specifications, and samples. Seller warrants that all products are of merchantable quality and are fit and suitable for the purpose intended by Buyer. Seller warrants all non-CAPITAL product against defects in material and workmanship for a period of 90 days from the time that Seller's product is placed in complete and full-time operation. Prior testing periods shall not start the running of the 90-day period. Seller agrees to repair the non-CAPITAL product or replace any necessary parts on Buyer's site at no charge to Buyer during the 90-day period. When repairs are required the 90-day period shall be tolled (interrupted) for the repair period. The 90-day period will resume when the non-CAPITAL product is again in complete and full-time operation. All CAPITAL equipment will be warranted for a one (1) year period for parts and labor. As used herein, CAPITAL equipment shall mean equipment or other product with a useful life in excess of six months. The warranty shall begin from date of equipment acceptance in full-time operation (including software). These warranties are in addition to all other warranties, express or implied, and shall survive delivery, inspection, acceptance or payment by Buyer and shall run to Buyer, its successors, assigns, customers and users of its products.

If any products delivered hereunder do not meet the warranties specified herein or otherwise applicable, Buyer may

at its election:

require Seller promptly to correct, at no cost to Buyer, any defective or non-conforming products by repair or replacement, at the location as specified by Buyer, or;

return such defective or non-conforming products at Seller's expense to Seller, and recover from Seller the agreement price thereof. The foregoing remedies are in addition to all other remedies at law or in equity under this agreement, for damages or otherwise and shall not be deemed to be exclusive.

Buyer's approval of Seller's product or design shall not relieve Seller of the warranties set forth in this clause. The provisions of this clause shall not limit or affect the rights of Buyer under the clause hereof entitled "Inspection."

Seller shall indemnify and hold Buyer harmless from any loss, claim, damage or expense whatsoever, including reasonable attorneys' fees, that Buyer may incur as a result of any breach of the foregoing warranties.

9. INSPECTION: All products purchased hereunder shall be subject to inspection and test by Buyer to the extent practicable at all times and places during and after the period of manufacture and, in any event, prior to final acceptance. If inspection or test is made by Buyer on Seller's premises, Seller, without additional charge shall provide all reasonable facilities and assistance for the safety and convenience of Buyer's inspectors. No inspection or test shall relieve Seller from responsibility for defects or other failure to meet the requirements of this agreement.

In case any product is defective in material or workmanship, or otherwise not in conformity with the requirements of this agreement, Buyer shall have the right either to reject it, require its correction, or conditionally accept it. Buyer reserves the right to return such conditionally accepted products for credit, within a reasonable period of time after receipt in the event that Buyer determines that such products are unsuitable for its purpose. Any product which is required to be corrected shall be corrected by and at the expense of Seller promptly after notice. Material rejected against this agreement will be rejected for CREDIT ONLY and replacement shipment will require Buyer's authorization. If, after being requested by Buyer, Seller fails promptly to replace or correct any defective product within the delivery schedule, Buyer may:

at its option, by contract or otherwise replace or correct such product and charge Seller the cost occasioned thereby, or; may, without further notice, terminate this agreement for default in accordance with the clause herein entitled "Termination for Default," or; may utilize the defective product and require an appropriate reduction in price.

Notwithstanding any prior inspection or payment hereunder, all products shall also be subject to final inspection and acceptance at Buyer's plant within a reasonable time after delivery.

Buyer may accept or reject shipments in accordance with its established lot inspection procedure. Where rejection of a shipment is appropriately based on Buyer's normal inspection level, and where such rejection endangers Buyer's production schedule by reason of the fact that at least some of the products are necessary to meet such production schedules, then Buyer at its option may charge Seller for the reasonable costs of an above normal level of inspection up to and including 100% inspection of such shipment.

10. SOURCE INSPECTION: Buyer reserves the right to inspect any or all of the materials included in this agreement at Seller's plant. Seller shall provide and maintain an inspection system that is acceptable to Buyer. Records of all inspection work shall be kept complete and available to Buyer during the performance of this agreement and for such further period as Buyer may determine.

11. PAYMENT: All payments will be made on the terms and conditions set forth in the purchase order.

12. CHANGES: Buyer may at any time by written order, and without notice to sureties or assignees, suspend performance hereunder, increase or decrease the ordered quantity, or make changes in any one or more of the following:

Applicable drawings, designs or specifications;

Method of shipment or packing, and/or;

Place of delivery.

If any such change causes an increase or decrease in the cost of or the time required for performance of this

agreement, an equitable adjustment shall be made in a purchase order or delivery schedule or both, and the purchase order shall be modified in writing accordingly. No claim by Seller for adjustment hereunder shall be valid unless given by written notice, accompanied by an estimate of costs, within twenty (20) days from the date of receipt by Seller of the notification change. Failure of Seller to assert a claim within twenty (20) days, as provided above, shall constitute an unconditional and absolute waiver by Seller of any right to make a claim for adjustment. However, nothing in this clause shall excuse Seller from proceeding with the purchase order as changed or amended. Buyer reserves the right to verify claims hereunder and Seller shall make available to Buyer, upon its request, all relevant books, records, inventories, and facilities for its inspection and audit.

13. **TERMINATION FOR DEFAULT:**It is understood and agreed that time is of the essence under this agreement or any extension thereof effected by any change order. Buyer may by written notice terminate this agreement in whole or in part if, in Buyer's sole judgment, Seller fails:

to make delivery of the product or to perform the service within the time specified herein, or,

to replace or correct defective products in accordance with the provision of those clauses hereof entitled "Warranty" and "Inspection" or,

to perform any of the provisions of this agreement or to so fail to make progress as to endanger performance in accordance with the terms hereof, including delivery schedules, or,

if Seller becomes insolvent, admits in writing its inability to pay its debts as they mature, files a voluntary petition in bankruptcy, makes an assignment for the benefit of creditors or in a petition under bankruptcy laws is filed against it.

In the event of termination pursuant to this clause, Buyer may procure upon such terms and in such manner as Buyer may deem appropriate, products and services similar or substantially similar to those so terminated and Seller shall be liable to Buyer for any excess costs occasioned Buyer thereby, provided that in the event Buyer elects to terminate only a portion of this agreement, then in such event Seller shall continue the performance of this agreement to the extent not terminated.

If this agreement is terminated pursuant to paragraph (a) (IV) Buyer, in addition to any other rights provided herein, may require Seller to transfer title and delivery to Buyer, in the manner, time and to the extent directed by Buyer,

any completed products and,

such partially completed products and material, parts, tools, dies, jugs, fixture, plans, drawings, information, and contract rights as Seller has produced or acquired for the performance of the terminated parts, and,

Seller shall grant Buyer a royalty-free, assignable, non-exclusive license to use and license others to use Seller's designs, processes, drawings and technical data, substantially relating to the quality of the products terminated hereunder.

Seller shall upon direction of Buyer, protect and preserve property encompassed in this paragraph in the possession of Seller. Payment for completed products delivered to and accepted by Buyer shall be an amount agreed upon by both Seller and Buyer. However, such amount shall not exceed the agreement price per unit, and Seller's obligation hereunder to carry out Buyer's direction as to delivery protection and preservation, and shall not be contingent upon prior agreement as to such amount.

If Buyer issues a notice of termination for default, and it is subsequently determined that Buyer's termination under this clause is inappropriate, the termination shall be deemed by Buyer and Seller to have been originally issued under the Clause entitled "Termination for Convenience" and the rights and liabilities of the parties hereto shall in such event be governed by such clause.

Failure of Buyer to enforce any right under this clause shall not be deemed a waiver of any other right hereunder. The rights and remedies of Buyer under this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this agreement.

Seller, however, shall not be in default by reason of any delay in delivery hereunder, if such delay arises out of causes beyond the control and without the fault or negligence of Seller. In the event of an excused delay, Buyer has the option of extending the time of performance to the extent the uncompleted portion of this agreement is not terminated. Seller shall be allocated the products covered by this agreement in quantities not less than the ratio that this agreement bears to the total orders of Seller for the same or similar products at the time of the excused delay. Seller will reasonably notify Buyer of any delay and quantity of products available for Buyer.

14. **TERMINATION FOR CONVENIENCE:** Buyer may terminate work under this agreement in whole or in part at any time by the giving of written notice to Seller specifying the extent to which performance of work is terminated and such termination shall not constitute default. After receipt of such notice and except as otherwise directed by

Buyer, Seller shall stop work under this agreement to the extent specified in the notice of termination. Within thirty (30) days after receipt of the notice of termination, Seller shall submit to Buyer its written termination claim. Failure of Seller to submit its termination claim as provided herein shall constitute an unconditional and absolute waiver by Seller of any claim arising from Buyer's notice of termination.

Seller shall reasonably assess costs for raw materials, work in process and subassemblies as may be included within its termination claim to determine whether or not such items may be used by Seller for the manufacture of associated products or diverted for any other purpose and correspondingly to reduce its termination claim by the value of such items. When settlement has been made, title to any such items determined not usable by Seller and charged to Buyer in the termination claim shall vest in Buyer upon payment of the claim and forthwith be delivered to Buyer at Buyer's expense, under Buyer's shipping instructions.

Standard or off-the-shelf products: Seller's sole claim for standard or off-the-shelf products shall be limited to a reasonable re-stocking charge not to exceed 10% of the purchase price.

Custom products: With respect to custom products, Seller's termination claim shall consist solely of the following:

Completed products accepted by Buyer and not therefore paid for: The sum determined by multiplying the number of such products by the unit price therefore as specified in this agreement, and;

The total of the cost of work in process not to exceed the average unit cost multiplied by the number of units in process; provided, however, that such number of units in process shall not exceed that amount which has been previously placed on a firm release by Buyer.

Such amounts shall not include any costs attributable to Seller's products paid under subparagraph (d)(I) above. The total sum to be paid to Seller under subparagraphs (d)(I) and (II) above shall not exceed the total agreement price reduced by the amount of payments otherwise made and as further reduced by the price of work not terminated under this agreement.

In no event shall Seller be entitled to incidental or consequential damages, costs of preparing claims, costs of tooling or equipment or sales or agents commissions.

Buyer reserves the right to verify claims hereunder and Seller shall make available to Buyer upon its request, all relevant books, records, inventories and facilities for its inspection and audit. In the event Seller fails to reasonably afford Buyer its rights hereunder, then Seller shall be deemed to have relinquished its claim asserted under the provisions of this clause.

14. RISK OF LOSS: Notwithstanding any prior inspections and irrespective of the delivery point named herein, Seller shall bear all risks of loss, damage, or destruction of or to the products called for hereunder until final acceptance by Buyer at destination. Further, Seller shall also bear the same risks with respect to any products rejected by Buyer.

15. WAIVER: The failure of Buyer to enforce at any time any of the provisions of this agreement, or to exercise any election or option provided herein, or to require at any time performance by Seller of any of the provisions hereof, shall in no way be construed to be a waiver of such provisions, nor in any way to affect the validity of this agreement or any part thereof, or the right of Buyer thereafter to enforce each and every such provision.

16. PATENTS, TRADEMARKS, TRADE NAMES, TRADE SECRETS, COPYRIGHTS, ROYALTIES, AND ENCUMBRANCES: All products supplied including products designed to Buyer's specifications, must be free from claims of others with respect to royalties, rights in patents, trademarks, trade names, trade secrets and copyrights, and mechanics liens or other encumbrances or charges. Seller agrees to indemnify and hold harmless Buyer against all claims, demands, costs and actions for actual or alleged infringements of rights in any of the foregoing in the use, sale or resale of said products.

17. BUYER'S PROTECTION IN CONNECTION WITH WORK DONE AT ITS PLANT: Seller shall take such steps as may be reasonably necessary to prevent personal injury or property damage during any work hereunder that may be performed by any employees, agents, or subcontractors of Seller at Buyer's plant, and Seller shall indemnify, hold harmless and defend Buyer from and against all loss, liability, liens, claims and damages arising from or caused directly or indirectly by any act or omission of such agents, employees or subcontractors of Seller, and Seller shall maintain such insurance against public liability and property damage, and such Employee's Liability and Compensation Insurance as will protect Buyer against the aforementioned risks and against any claims under any Workmen's Compensation and Occupational Disease Acts.

18. NON-DISCLOSURE OF CONFIDENTIAL MATTER AND PUBLICITY: Products purchased to Buyer's specifications or drawings shall be held in the strictest of confidence in the absence of Buyer's prior written authorization. Such specifications, drawings, samples or other data furnished by Buyer, and any and all copies or

extracts thereof, shall be treated as CONFIDENTIAL INFORMATION by Seller, shall remain Buyer's property and shall promptly returned to Buyer upon request. Any publicity regarding this agreement (pictures, descriptions, notice of award or samples thereof) is prohibited except with Buyer's written approval.

19. ASSIGNMENT AND SUBCONTRACTORS: No right or obligation under this purchase agreement (including the right to receive monies due hereunder) shall be assigned by Seller, and Seller shall not enter into any substantial or critical subcontracts without the prior written consent of the Buyer. Any purported assignment without such consent shall be null and void and Buyer shall not be obligated to recognize any claim from Seller resulting from any subcontract not previously consented by Buyer.

20. BUYER-FURNISHED PROPERTY: All tools or other materials furnished by Buyer for use in their performance of this agreement shall remain the property of Buyer, shall be used by Seller in the performance of this agreement only, in accordance with the requirements of the agreement relating to such use, and shall be returned to Buyer when requested upon completion or termination of the agreement to the extent not previously delivered to Buyer. Seller agrees to exercise reasonable care in the safeguarding and preservation of all Buyer-furnished property and assumes all responsibility for loss, damage or destruction while such property is within its possession or control.

21. SPECIAL TOOLING: If special tooling used in the performance of this agreement has been charged to this agreement, or to this agreement and other orders placed by Buyer, title to such special tooling shall vest in Buyer, at the option of Buyer. Such tooling is to be used only in the performance of such purchase orders unless otherwise approved by Buyer. Seller agrees that it will follow normal industrial practice in the identification and maintenance of the property control records on all such tooling, and will make such records available for inspection by Buyer or the federal government at all reasonable times. After the termination or completion of such Order(s) and upon the request of Buyer, Seller shall furnish a list of such tooling in the form requested and shall make such tooling available for disposition by Buyer.

22. CHANGES IN PROCESS OR METHOD OF MANUFACTURING: Seller agrees that it will not invoke changes in process or method of manufacturing during the term of this agreement without Buyer's written consent. Seller further agrees that any contemplated changes in process or method of manufacturing will be submitted to Buyer in sufficient time to give Buyer a reasonable opportunity in which to evaluate such changes.

23. APPLICABLE LAW: This agreement shall be governed by the Contract Law of People's Republic of China. Any action or proceeding brought by either party hereto arising out of or relating to this agreement shall be brought to the court located in Shanghai Simconix's Registration Location and both parties consent to the in personal jurisdiction of such courts for such purpose.

24. ATTORNEY'S FEES: In any action between the parties to enforce any term or provision of this agreement, the prevailing party shall be entitled to recover expenses, including reasonable attorney's fees, incurred in such action.

25. FORCE MAJEURE: Neither Buyer nor Seller shall be responsible for failure to execute this Agreement due to causes beyond its control, including, but not limited to, fire, flood, earthquake, explosion, accident, acts of public enemies, labor disputes, transportation embargoes, acts of federal government, judicial action, or acts of God. The affected party shall promptly notify the other party of the impossibility of performance, and should non-performance extend beyond ninety days, either party may terminate this Agreement.