

TERMS AND CONDITIONS OF SALE

NOTICE: THIS TRANSACTION AND ALL DOCUMENTS PERTAINING TO IT, INCLUDING ANY QUOTATION, PROPOSAL, ORDER CONFIRMATION, ORDER ACCEPTANCE OR INVOICE (COLLECTIVELY, “**SALES DOCUMENTS**”) ARE SUBJECT TO AND CONDITIONED UPON BUYER’S ACCEPTANCE OF THESE TERMS AND CONDITIONS OF SALE (“**TERMS**”).

1. **Acceptance; Additional or Conflicting Terms.** All orders for simatec inc. (“**Company**”) goods, machines or parts (individually, “**Product**” and collectively, “**Products**”) are subject to final acceptance by Company in North Carolina with Company’s Sales Documents and these Terms, and no orders are binding on Company until so accepted. Every contract or order between Buyer and Company for the Products shall be governed by the terms contained in Company’s written quotation, proposal, any subsequent order confirmation and these Terms (the “**Contract**”). The Contract supersedes any prior commercial documents issued by Company. **Company hereby objects to and rejects any additional or different terms or conditions proposed by Buyer or contained in any such correspondence by Buyer, regardless of any knowledge Company may have of such terms, and such terms shall not bind Company.** In no event shall Buyer’s terms apply to, nor shall Buyer’s proposed additional or different terms modify, the Contract unless Company expressly includes the proposed terms in any part of the Contract. If any of these Terms conflict with Company’s quotation, proposal or subsequent order confirmation, the specific terms stated in those documents shall prevail over these Terms. No other terms or changes, modifications, amendments or waivers of any terms in the Contract shall apply to Company unless in writing and signed by an authorized officer of Company. Company may change an order at any time to correct mathematical or clerical errors.

2. Price; Payment.

a. The purchase price of the Products shall be the price stated on the current Company price list when, or on the Sales Document issued by Company on the date that, Company accepts an order and shall be Ex Works Charlotte, NC (Incoterms 2000). Prior to Company’s written acceptance of an order, prices are subject to change by Company at any time, without notice to Buyer. Prices do not include shipping, packing, handling, transportation, customs or in-transit insurance costs or any sales, use, revenue, excise, value-added, privilege or other taxes or governmental charges. Buyer shall be responsible for all such costs, charges and taxes and Buyer shall reimburse Company to the extent Company pays such costs, charges or taxes. All prices are payable in United States Dollars.

b. All invoices shall be paid in full as and when due and are not subject to any set-offs or adjustments. Standard payment terms are net 30 days from the date of Company’s invoice (“**Invoice Date**”) unless otherwise agreed to in writing by Company.

c. If Buyer defaults in making any required payments by such payment’s due date, Buyer shall also be liable for interest on the unpaid balance, that will accrue beginning on the date on which the payment was due, and continue until paid in full, at a rate equal to the lesser of (i) one and one-half percent (1.5%) per month or (ii) the maximum allowed by law. Buyer shall reimburse Company for any costs of collection of past due payments, including, without limitation, reasonable attorneys’ fees which amounts shall also be subject to interest charges. In the event any invoice or payment is not paid as and when due, in addition to assessing interest charges, Company may take any of the following actions: suspend Company’s performance on the contract or any other contracts with Buyer; cancel any order; require Buyer to pay the entire price of any order upfront prior to production, shipment, or delivery; and/or take any other actions or pursue any remedies available to it under applicable law.

3. Delivery.

a. All deliveries of Products are Ex Works Charlotte, NC (Incoterms 2000). All delivery schedules or dates for Products are Company’s estimate only. Company shall not be liable to Buyer for any delay in performance or delivery. All risk of loss of Products shall pass from Company to Buyer upon pick of product by carrier. Company shall not be responsible for any damage to the Products caused by a carrier and Buyer’s sole recourse for such damage shall be against

the carrier. Delivery and performance are conditional on the timely receipt by Company of documents necessary for the completion of the order and any required down payments or periodic payments. Partial deliveries are permissible.

4. **Limited Warranty.** Company warrants to Buyer, for a period of the lesser of (i) 12 months from delivery of the Products or (ii) 24 months from the manufacture of the Products, that the Products will conform to Simatec's then current specifications for such Product(s). This limited warranty excludes all damage to Products caused: (i) during or after delivery; (ii) by normal wear and tear; (iii) by use of the Products under circumstances exceeding Company's specifications or limitations or contrary to any instructions or information contained in any literature or information provided by Company (as supplemented from time to time by Company); (iv) by improper use or installation; (v) by abuse or accident; (vi) by unauthorized repair or alteration; (vii) by improper storage or maintenance; or (viii) by damage caused by natural calamities ("**Limited Warranty**").

5. **Buyer's Limited Warranty Claims.** For any Products which Company determines do not conform to the Limited Warranty, Buyer's sole and exclusive remedy for the Limited Warranty shall be as follows: If the Products are covered by the Limited Warranty, then Company will, in its sole discretion and within a reasonable time, repair or replace the non-conforming Product, or part of the Product, or refund the value of the non-conforming Product, or part of the Product. Upon discovery of a possible non-conformity and prior to the expiration of the Limited Warranty period, Buyer must immediately notify Company in writing of the alleged non-conformity. Failure to notify Company within the Limited Warranty period of a possible non-conformity shall void the Limited Warranty. Buyer shall not return any allegedly non-conforming Product without prior written return shipment instructions from Company. If Company determines that any Products are not covered by this Limited Warranty, then Buyer shall be responsible for Company's charges for inspection, handling, repair or replacement of the Products. This Limited Warranty shall not be deemed to have failed its essential purpose so long as Company is willing and able to repair or replace, or refund the purchase price of, any defective Products or part of the Product.

6. **Limitation of Liability; Exclusion of Damages.** IN NO EVENT SHALL COMPANY'S LIABILITY, WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, EVER EXCEED THE PURCHASE PRICE OF THE PRODUCT AT ISSUE. COMPANY SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE OR SPECIAL DAMAGES, INCLUDING LOST PROFITS, WHETHER ARISING FROM THE SALE OF PRODUCTS, ANY DEFECT IN THE PRODUCTS, ANY NON-CONFORMITY WITH THE LIMITED WARRANTY, ANY USE OR INABILITY TO USE THE PRODUCTS, ANY DELAY IN DELIVERY OR SHIPMENT OF THE PRODUCTS, OR OTHERWISE. **The Contract contains Buyer's sole and exclusive remedies relating to the Contract, a breach of the Contract, the Sales Documents, or the Products, regardless of the theory of recovery.**

COMPANY SHALL NOT PROVIDE, AND SHALL HAVE NO LIABILITY FOR, INSTALLATION OR SETUP OF PRODUCTS.

7. **Insurance.** Buyer shall maintain commercial general liability, personal injury and property damage insurance policies, including wrongful death coverage, with a nationally recognized insurance company and in an amount of not less than \$1,000,000 for each occurrence.

8. **Indemnity.** Buyer shall indemnify and hold Company harmless from and against all damages, liabilities, claims or expenses (including reasonable attorneys' fees) arising out of or relating to: (a) any representation or warranty which Buyer makes regarding the Products that Company does not expressly authorize in writing; (b) any improper selection, application, processing, repackaging, storage, maintenance, installation, setup, use or incorporation of any Products by Buyer; (c) any violation of applicable law by Buyer or its employees or representatives in connection with the Products or this Agreement; (d) Products damaged during or after delivery; (e) damage caused by normal wear and tear; (d) use of the Products under circumstances exceeding specifications or limitations; (e) abuse or accident; (f) unauthorized repair or alteration of the Products; (g) improper storage or maintenance; (h) damage caused by natural calamities; or (i) failure of the Limited Warranty to be made available to retail customers prior to sale. At Company's request, Buyer shall defend Company, at Buyer's expense, against any such claim made against Company.

9. **Security Agreement.** Buyer grants Company a continuing purchase money security interest in all Products now or hereafter sold or delivered to it and to the proceeds of those Products (collectively, the "**Collateral**") to secure the full payment of the purchase price of the Products and all other obligations now or hereafter of Buyer to Company. Buyer

authorizes Company to file all financing statements, continuation statements and all other documents necessary or desirable to establish, perfect, maintain, preserve and enforce the security interest in the Collateral.

10. **Confidentiality.** Buyer shall not disclose to any person any confidential or proprietary information, including, but not limited to, illustrations, drawings, models, samples and any information marked confidential (“**Confidential Information**”) that Company provides to Buyer, unless the disclosure is agreed to in writing by Company or the Confidential Information is otherwise generally available to the public. Company retains ownership and control over all intellectual property, including patents, trademarks, and copyrights applicable to or arising out of the Products, as well as the exclusive right to manufacture the Products. No license is granted or implied by these Terms, and Buyer shall not name or designate any Company product information or Products in any process patent application.
11. **Termination.** Without limiting Company’s other rights and remedies available under applicable law, Company may suspend or terminate performance and delivery under the Contract, any order or any other contract with Buyer, if Buyer: (a) makes an assignment for the benefit of creditors, or a receiver, trustee in bankruptcy or similar officer is appointed to take charge of all or part of Buyer’s property; (b) becomes insolvent or files for bankruptcy or has a bankruptcy proceeding filed against it; or (c) fails to perform or observe any of its obligations to Company under the Contract or under other existing or future contracts between Company and Buyer or otherwise, including payment of any purchase price, fees or charges when due.
12. **Setoff.** Buyer shall not have any right of set-off with regard to any amounts owed to Company, regardless of any dispute that may arise between the parties.
13. **Choice of Law, Venue and Consent to Jurisdiction.** North Carolina law, excluding its conflict of laws principles, applies to any dispute or claim relating to the Products or the Contract. The United Nations Convention on the International Sale of Goods shall not apply. The North Carolina General Courts of Justice and the United States District Court for the Western District of North Carolina, shall constitute the exclusive forums for the adjudication of all disputes arising out of or relating to the Sales Documents, the Contract, any dispute under the Sales Documents or the Contract, or to the Products, except with respect to any action instituted by Company for equitable or comparable relief including an action for temporary or permanent injunctive relief, or for an action instituted by Company for recovery of possession of the Products, such as replevin, claim and delivery, attachment or the like.
14. **Limitation on Actions.** Any action or proceeding by Buyer arising out of or relating to the Products will be forever barred unless it is commenced within the earlier of: (a) one year after the claim or cause of action has accrued; or (b) the period prescribed by applicable statute of limitation or repose.
15. **Force Majeure.** With the exception of payment requirements, neither party shall be in default of these Terms, and performance shall be deemed extended, if due to any cause beyond such party’s reasonable control.
16. **Notices.** Any notices delivered under these Terms must be in writing and shall be effective when delivered to a party or when that party refuses delivery.
17. **Assignment.** Buyer may not assign its rights or obligations under the Contract without the prior written consent of Company and any purported assignment without that consent shall be void and of no effect.
18. **No Waiver; Severability.** Any failure by Company to exercise any of its rights under the Contract shall not be construed as a waiver of such rights. In the event any of the provisions of the Contract are held to be invalid by any court of competent jurisdiction, such provision(s) shall be deemed to be severable and the Contract shall then be construed and enforced in accordance with the remaining provisions.
19. **Entire Agreement.** The contract contains the exclusive agreement and understanding of the parties with respect to the subject matter and supersedes all previous agreements between the parties as well as all proposals, oral or written, and all negotiations or discussions between the parties. All terms on any correspondence or other writing from Buyer that attempt to vary or add to the Contract are of no effect. Any addition or modification of the Contract shall only be effective if in writing, which is signed by an authorized officer of each of the parties.