

**Simi Reality Motion Systems
Allgemeine Geschäftsbedingungen (AGB)
Stand 2014**

Wir danken für Ihre Bestellung, die wir ausschließlich unter Geltung unserer AGBs annehmen. Diese finden sie hier:

http://www.simi.com/fileadmin/user_upload/Dokumente/Allgemein/Simi_AGB.pdf

Wir weisen außerdem ausdrücklich auf die Gültigkeit unserer Servicerichtlinien bei Auftragsannahme hin. Diese finden sie hier:

http://www.simi.com/fileadmin/user_upload/Dokumente/Allgemein/Simi_Service_Guideline.pdf

§ 1 Geltungsbereich

1. Diese Verkaufsbedingungen gelten ausschließlich gegenüber Unternehmern, juristischen Personen des öffentlichen Rechts oder öffentlich-rechtlichen Sondervermögen im Sinne von § 310 Absatz 1 BGB. Entgegenstehende oder von unseren Verkaufsbedingungen abweichende Bedingungen des Bestellers erkennen wir nur an, wenn wir ausdrücklich schriftlich der Geltung zustimmen.
2. Diese Verkaufsbedingungen gelten auch für alle zukünftigen Geschäfte mit dem Besteller, soweit es sich um Rechtsgeschäfte verwandter Art handelt.

§ 2 Angebot und Vertragsabschluss

Angebote sind freibleibend und unverbindlich. Der Umfang der vertraglichen Verpflichtung ergibt sich aus der Auftragsbestätigung durch Simi. Sofern eine

**Simi Reality Motion Systems
General Terms and Conditions of Sale
(AGB) as of 2014**

We thank you for your order, which we accept subject to the exclusive application of our General Terms and Conditions. These can be found here:

http://www.simi.com/fileadmin/user_upload/Dokumente/Allgemein/Simi_AGB.pdf

We also expressly point out our Service Guidelines applicable to the orders accepted by us. Please find those here:

http://www.simi.com/fileadmin/user_upload/Dokumente/Allgemein/Simi_Service_Guideline.pdf

§ 1 Scope

1. These General Terms and Conditions of Sale are exclusively applicable to contractors, corporate bodies under public law and to special funds under public law within the meaning of Sect. 310 sub-section 1 of the German Civil Code. General terms and conditions of the customer which conflict with or deviate from our General Terms and Conditions will only be accepted by us if we expressly consent to their application in writing.
2. These Standard Terms and Conditions shall also apply to any future business transactions with the customer, provided that they are legal transactions of a similar nature.

§ 2 Offer and Conclusion of Contract

Our offers are subject to change and are non-binding. The scope of the contractual obligations follows the order confirmation of

Bestellung als Angebot gemäß § 145 BGB anzusehen ist, können wir diese innerhalb von zwei Wochen annehmen.

§ 3 Überlassene Unterlagen

An allen in Zusammenhang mit der Auftragserteilung dem Besteller überlassenen Unterlagen, wie z. B. Kalkulationen, Zeichnungen etc., behalten wir uns Eigentums- und Urheberrechte vor. Diese Unterlagen dürfen Dritten nicht zugänglich gemacht werden, es sei denn, wir erteilen dem Besteller dazu unsere ausdrückliche schriftliche Zustimmung. Soweit wir das Angebot des Bestellers nicht innerhalb der Frist von § 2 annehmen, sind diese Unterlagen uns unverzüglich zurückzusenden.

§ 4 Preise und Zahlung

1. Sofern nichts Gegenteiliges schriftlich vereinbart wird, gelten unsere Preise ab Lager von Simi oder ab Werk des Lieferanten und nur für den jeweiligen Auftrag (*Gemäß Incoterms 2010*) ausschließlich Verpackung, Fracht, Installation, Transportversicherung, Recyclingkosten und zuzüglich Mehrwertsteuer in jeweils gültiger Höhe. Kosten der Verpackung und die jeweils gültige MwSt. werden gesondert in Rechnung gestellt.
2. Die Zahlung des Kaufpreises hat ausschließlich auf das auf der Rechnung genannte Konto zu erfolgen. Der Abzug von Skonto ist nur bei besonderer schriftlicher Vereinbarung zulässig.

Simi. Where an order is considered to be an offer pursuant to Sect. 145 of the German Civil Code, we may accept such order within a period of two weeks.

§ 3 Documents Made Available

We shall reserve the copyright of and title to all documents, such as calculations, drawings, etc., which were made available to the customer upon placing his order. The customer shall not disclose these documents to third parties, unless we have expressly consented to such disclosure in writing. If we do not accept the customer's offer within the period set forth under § 2 above, these documents shall be promptly returned to us.

§ 4 Prices and Payment

1. Unless otherwise agreed upon in writing, our prices are quoted exclusively for the respective order ex Simi's warehouse or ex supplier's factory (*in accordance with the Incoterms 2010*), exclusive of packaging, freight, installation, transport insurance, recycling costs, plus value-added tax at the applicable rate. The packaging costs, plus value-added tax at the applicable rate, will be charged separately.
2. The purchase price shall be paid exclusively into the bank account stated at our invoice. A discount may only be deducted if it has expressly been agreed upon in writing.
3. Unless otherwise agreed upon in writing, the purchase price shall be settled by advance payment. In case

3. Der Kaufpreis ist per Vorkasse zu bezahlen, sofern nicht schriftlich eine andere Vereinbarung getroffen wurde. Verzugszinsen werden in Höhe von 8 % über dem jeweiligen Basiszinssatz p.a. (*siehe Anlage 1*) berechnet. Die Geltendmachung eines höheren Verzugschadens bleibt vorbehalten.
4. Sofern keine Festpreisabrede getroffen wurde, bleiben angemessene Preisänderungen wegen veränderter Lohn-, Material- und Vertriebskosten für Lieferungen, die drei Monate oder später nach Vertragsabschluss erfolgen, vorbehalten.

§ 5 Aufrechnung und Zurückbehaltungsrechte

Dem Besteller steht das Recht zur Aufrechnung nur zu, wenn seine Gegenansprüche rechtskräftig festgestellt oder unbestritten sind. Zur Ausübung eines Zurückbehaltungsrechts ist der Besteller nur insoweit befugt, als sein Gegenanspruch auf dem gleichen Vertragsverhältnis beruht.

§ 6 Lieferzeit

1. Der Beginn der von uns angegebenen Lieferzeit setzt die rechtzeitige und ordnungsgemäße Erfüllung der Verpflichtungen des Bestellers voraus. Die Einrede des nicht erfüllten Vertrages bleibt vorbehalten. Die bestätigten Lieferfristen, bzw. Liefertermine beginnen mit dem Tag der Auftragsbestätigung, oder bei Vorkasse mit dem Tag der Bestätigung des Zahlungseinganges

of default, interest in the amount of 8% p.a. above the basic interest rate will be claimed (*see Appendix 1*). We reserve the right to claim higher damage caused by default.

4. Unless fixed prices have been agreed upon, we reserve the right of reasonable price adjustments due to changes in labor, material or distribution costs for shipments effected 3 months after the conclusion of the contract.

§ 5 Set-Off and Right of Retention

The customer shall only have the right to offset such counterclaims which are uncontested or have been awarded to him by final and absolute judgment. The customer shall only have a right of retention if his counterclaim is based on the same contractual relationship.

§ 6 Delivery Period

1. For the commencement of the delivery period indicated by us the customer must have properly fulfilled his obligations in due time. We reserve the right to plead as a defense non-performance of the contract. The confirmed delivery period or delivery date shall commence as of the date of the order confirmation, or in case of advance payment, as of the date of confirmation of receipt of payment by Simi, however not before all particulars concerning the execution of the order have been clarified. Notwithstanding the rights of Simi in case of delay by the customer, the

- bei Simi, jedoch nicht vor Klärung aller Einzelheiten der Ausführung und verlängert sich unbeschadet der Rechte von Simi bei Kundenverzug um die Zeit, die der Kunde im Verzug ist.
2. Kommt der Besteller in Annahmeverzug, oder verletzt er schuldhaft sonstige Mitwirkungspflichten, so sind wir berechtigt, den uns dadurch entstehenden Schaden, einschließlich etwaiger Mehraufwendungen ersetzt zu verlangen. Weitergehende Ansprüche bleiben vorbehalten. Sofern vorstehende Voraussetzungen vorliegen, geht die Gefahr eines zufälligen Untergangs oder einer zufälligen Verschlechterung der Kaufsache in dem Zeitpunkt auf den Besteller über, in dem dieser in Annahme- oder Schuldnerverzug geraten ist.
 3. Wir haften nur im Fall des von uns vorsätzlich oder grob fahrlässig herbeigeführten Lieferverzugs für jede vollendete Woche Verzug im Rahmen einer pauschalierten Verzugsentschädigung in Höhe von 3 % des Lieferwertes, maximal jedoch nicht mehr als 15% des Lieferwertes.
 4. Teillieferungen sind zulässig und mindern den Verzugswert.
 5. Weitere gesetzliche Ansprüche und Rechte des Bestellers wegen eines Lieferverzuges bleiben unberührt.
 6. Die Lieferzeit gilt ab Verlassen des Werks.
- delivery period shall be extended by such period as corresponds to the customer's delay.
2. If the customer is in delay of acceptance or if he is in culpable breach of his duty to cooperate, we shall be entitled to claim compensation of the damage caused to us, including any expenses we may additionally incur. We reserve the right to claim additional damages. If the above requirements are fulfilled, the risk of accidental loss or accidental deterioration of the purchased goods shall pass onto the customer on such date as of which the customer has been in delay of acceptance or in debtor's delay.
 3. We shall only be liable for delay in delivery if such delay has been caused by us with intent or gross negligence, with liability being limited for each complete week of delay to an all-inclusive compensation for delay in the amount of 3% of the value of the goods to be delivered, up to a maximum of 15% of the value of the goods to be delivered.
 4. Partial deliveries are admissible and will reduce the delay value.
 5. The customer's statutory claims and rights regarding delay in delivery shall remain unaffected.
 6. Delivery time is fulfilled when goods leave our factory.
 7. The following delivery times for Simi systems can be expected:

7. Für Simi Systeme gelten die folgenden Lieferzeiten:

Nur Software
→ *drei Wochen*
Aufnahmesysteme mit bis zu 8 Kameras < 0,3 MP@120fps
→ *acht Wochen*
Aufnahmesysteme mit bis zu 8 Kameras > 0,3MP@120fps
→ *zehn Wochen*
Aufnahmesysteme inklusive Analogdatengeräte
→ *zehn Wochen*

§ 7 Gefahrübergang bei Versendung

Wird die Ware auf Wunsch des Bestellers an diesen versandt, so geht mit der Absendung an den Besteller, spätestens mit Verlassen des Werks/Lagers die Gefahr des zufälligen Untergangs oder der zufälligen Verschlechterung der Ware auf den Besteller über. Dies gilt unabhängig davon, ob die Versendung der Ware vom Erfüllungsort erfolgt oder wer die Frachtkosten übernimmt.

§ 8 Haftung

Wir schließen unsere Haftung für leicht fahrlässige Pflichtverletzungen aus, sofern diese nicht Schäden aus der Verletzung des Lebens, des Körpers oder der Gesundheit oder Garantien betreffen oder Ansprüche nach dem Produkthaftungsgesetz berührt sind. Unberührt bleibt ferner die Haftung für die Verletzung von Pflichten, deren Erfüllung die ordnungsgemäße Durchführung des Vertrages überhaupt erst ermöglicht und auf deren Einhaltung der Kunde regelmäßig vertrauen darf. Gleiches gilt für Pflichtverletzungen unserer Erfüllungsgehilfen. Wir schließen ebenfalls Haftung für entgangenen Gewinn und

Software only

→ *three weeks*

Recording systems with up to 8 cameras < 0,3 MP@120fps

→ *eight weeks*

Recording systems with up to 8 cameras > 0,3 MP@120fps

→ *ten weeks*

Recording systems with analogue systems

→ *ten weeks*

§ 7 Passage of risk upon dispatch

When the goods are shipped to the customer as requested by him, the risk of accidental loss or accidental deterioration of the goods shall pass onto the customer upon dispatch of the goods, but no later than upon their leaving the factory/warehouse. This shall apply whether or not the shipment of the goods is effected from the place of performance or regardless of who pays the shipping costs.

§ 8 Liability

We shall not be liable in case of slightly negligent breach of duty, unless such breach of duty involves harm to life, body or health, or concerns warranties or claims pursuant to the German Product Liability Act. However, liability for breach of such duties whose fulfillment is required for the proper implementation of the contract and whose observance the customer may usually rely on shall remain unaffected. The same shall apply to breach of duty by the persons employed in performing our obligations. We are also not liable in case of loss of profit.

§ 9 Privacy Policy

We use the data provided by you for

Umsatz aus.

§ 9 Datenschutz

Wir verwenden die von Ihnen mitgeteilten Daten zur Erfüllung und Abwicklung Ihrer Bestellung. Eine Weitergabe Ihrer Daten erfolgt an das mit der Lieferung beauftragte Versandunternehmen, soweit dies zur Lieferung der Waren notwendig ist. Zur Abwicklung von Zahlungen geben wir Ihre Zahlungsdaten ggf. an unsere Hausbank weiter. Eine Weitergabe Ihrer Daten an sonstige Dritte erfolgt nicht. Ihre Daten werden zu Zwecken des langfristigen Supports und der Information über Produktneuheiten und Updates bei uns gespeichert. Wir sichern unsere Website und sonstigen Systeme durch technische und organisatorische Maßnahmen gegen Verlust, Zerstörung, Zugriff, Veränderung oder Verbreitung Ihrer Daten durch unbefugte Personen. Trotz regelmäßiger Kontrollen ist ein vollständiger Schutz gegen alle Gefahren jedoch nicht möglich.

Nach dem Bundesdatenschutzgesetz haben Sie ein Recht auf unentgeltliche Auskunft über Ihre gespeicherten Daten sowie ggf. ein Recht auf Berichtigung, Sperrung oder Löschung dieser Daten.

Bei Fragen zur Erhebung, Verarbeitung oder Nutzung Ihrer personenbezogenen Daten, bei Auskünften, Berichtigung, Sperrung oder Löschung von Daten wenden Sie sich bitte an:

Philipp Ruß

§ 10 Eigentumsvorbehalt

1. Wir behalten uns das Eigentum an der gelieferten Sache bis zur

executing and processing your order. Your data are passed on to the shipping company to the extent this is necessary for shipping your order. For handling payments your payment data may be passed on to our house bank, if required. Your data will not be disclosed to any other third parties. We save your data for the purpose of continuous support and information about new products. We protect our website and other systems through technical and organizational measures against loss, destruction or change of your data or access or disclosure by or to unauthorized third parties. Despite regular monitoring absolute protection against any danger is, however, not possible.

Pursuant to the German Data Protection Act you are entitled to request, without cost, information about the data saved about you and, if required, rectification, blockage or deletion of your data.

For questions about the personal data we have collected about you and how these data are processed or used, and for rectification, blockage or deletion of your data, please contact:

Philipp Ruß

§ 10 Reservation of Title

1. We shall reserve the title to the delivered goods until complete settlement of all claims under the delivery contract. This shall also apply to all future shipments even if such reservation of title is not expressly pointed out for each shipment. We are entitled to recall the purchased goods if the customer acts in breach of the contract. Payments already made will not be refunded.

- vollständigen Zahlung sämtlicher Forderungen aus dem Liefervertrag vor. Dies gilt auch für alle zukünftigen Lieferungen, auch wenn wir uns nicht stets ausdrücklich hierauf berufen. Wir sind berechtigt, die Kaufsache zurückzunehmen, wenn der Besteller sich vertragswidrig verhält. Bereits geleistete Zahlungen werden nicht zurück erstattet.
2. Der Besteller ist verpflichtet, solange das Eigentum noch nicht auf ihn übergegangen ist, die Kaufsache pfleglich zu behandeln. Insbesondere ist er verpflichtet, diese auf eigene Kosten gegen Diebstahl-, Feuer- und Wasserschäden ausreichend zum Neuwert zu versichern (Hinweis: nur zulässig bei Verkauf hochwertiger Güter). Müssen Wartungs- und Inspektionsarbeiten durchgeführt werden, hat der Besteller diese auf eigene Kosten rechtzeitig auszuführen. Solange das Eigentum noch nicht übergegangen ist, hat uns der Besteller unverzüglich schriftlich zu benachrichtigen, wenn der gelieferte Gegenstand gepfändet oder sonstigen Eingriffen Dritter ausgesetzt ist. Soweit der Dritte nicht in der Lage ist, uns die gerichtlichen und außergerichtlichen Kosten einer Klage gemäß § 771 ZPO zu erstatten, haftet der Besteller für den uns entstandenen Ausfall.
 3. Die Be- und Verarbeitung oder Umbildung der Kaufsache durch den Besteller erfolgt stets Namens und im Auftrag für uns. In diesem Fall setzt sich das Anwartschaftsrecht des Bestellers an der Kaufsache an der umgebildeten Sache fort. Sofern die
2. The customer shall treat the purchased goods carefully as long as the title to the goods has not passed onto him. In particular, he shall be obligated to take out, at his expense, insurance for the goods at their replacement value against theft, fire and water damage (NB: only in case of sale of high-priced goods). In the event that maintenance and inspection work is required, it shall be carried out by the customer in due time at his expense. As long as the title to the goods has not passed onto the customer, he shall inform us promptly in writing of any seizure or other execution levied by third parties on the delivered goods. Should such third party not be able to reimburse us for the court fees and extrajudicial costs incurred in filing an action pursuant to Section 771 of the German Code of Civil Procedure, the customer shall be liable to us for the loss incurred.
 3. Any processing or modification of the purchased goods is always made by the customer in our name and on our behalf. The customer's expectancy right to the purchased goods shall continue in such case with regard to the modified goods. If the purchased goods are processed together with other goods not belonging to us, we shall acquire co-ownership of the new goods in proportion of the objective value of the purchased goods to the other processed goods at the time of their processing.
The same shall apply in case of their mixture with other goods. If the mixture is made in a way that the item of the customer is considered to be the main item, it shall be deemed agreed

Kaufsache mit anderen, uns nicht gehörenden Gegenständen verarbeitet wird, erwerben wir das Miteigentum an der neuen Sache im Verhältnis des objektiven Wertes unserer Kaufsache zu den anderen bearbeiteten Gegenständen zur Zeit der Verarbeitung.

Dasselbe gilt für den Fall der Vermischung. Sofern die Vermischung in der Weise erfolgt, dass die Sache des Bestellers als Hauptsache anzusehen ist, gilt als vereinbart, dass der Besteller uns anteilmäßig Miteigentum überträgt und das so entstandene Alleineigentum oder Miteigentum für uns verwahrt. Zur Sicherung unserer Forderungen gegen den Besteller tritt der Besteller auch solche Forderungen an uns ab, die ihm durch die Verbindung der Vorbehaltsware mit einem Grundstück gegen einen Dritten erwachsen; wir nehmen diese Abtretung schon jetzt an.

4. Wir verpflichten uns, die uns zustehenden Sicherheiten auf Verlangen des Bestellers freizugeben, soweit ihr Wert die zu sichernden Forderungen um mehr als 20 % übersteigt.
5. Für Datensätze, die im Rahmen von Dienstleistungen durch Simi erstellt wurden, behält sich Simi das alleinige Nutzungsrecht der Daten bis zur vollständigen Bezahlung vor. Simi behält ein dauerhaftes eigenes Nutzungs- und Verwertungsrecht nach Übergabe der Daten.
6. Für technische Lösungen, Auswerteroutinen,

upon that the customer assigns to us the proportionate co-ownership and holds the thus created sole ownership or co-ownership in custody for us. As security for our claims towards the customer, the customer shall also assign such claims to us which have arisen to him against a third party from mixing the reserved goods with a real property; we hereby accept such assignment.

4. At the customer's request, we shall undertake to release the securities provided to us to the extent that the realizable value of such securities exceeds the claim to be secured by more than 20%.
5. All data that have been created by Simi within a service of capturing or processing data will stay at Simi's sole right of using them as long as the full order has not been paid. Simi will keep a lifelong right to use the data for themselves.
6. For technical solutions, evaluation routines, calculation templates, reports and other services created on behalf of the client, Simi may reserve the right of unlimited, worldwide ownership, right of use and exploitation right if not otherwise expressly agreed on.

§ 11 Warranty and Notice of Defects, Recourse / Manufacturer Recourse

1. For the customer to be entitled to warranty he must have duly fulfilled his obligations of inspection and

Berechnungsvorlagen, Reports und andere Serviceleistungen, die im Auftrag eines Kunden erstellt werden, behält sich Simi ein uneingeschränktes, weltweites Eigentums, Nutzungs- und Verwertungsrecht vor, wenn nicht explizit anders mit dem Kunden vereinbart.

§ 11 Gewährleistung und Mängelrüge sowie Rückgriff / Herstellerregress

1. Gewährleistungsrechte des Bestellers setzen voraus, dass dieser seinen nach § 377 HGB geschuldeten Untersuchungs- und Rügeobliegenheiten ordnungsgemäß nachgekommen ist.
2. Mängelansprüche verjähren in zwölf Monaten nach erfolgter Ablieferung der von uns gelieferten Ware bei unserem Besteller. Bei dem Verkauf gebrauchter Güter, ist die Gewährleistungsfrist ganz ausgeschlossen. Vor etwaiger Rücksendung der Ware ist unsere Zustimmung einzuholen. Die Kosten der Rücksendung zu Simi sind vom Käufer zu tragen. Die Kosten des Rücktransports zum Kunden werden bei berechtigter Mängelrüge von Simi getragen.
3. Sollte trotz aller aufgewendeter Sorgfalt die gelieferte Ware einen Mangel aufweisen, der bereits zum Zeitpunkt des Gefahrübergangs vorlag, so werden wir die Ware, vorbehaltlich fristgerechter Mängelrüge nach unserer Wahl nachbessern oder Ersatzware liefern.

notification of defects pursuant to Section 377 of the German Commercial Code.

2. Warranty claims shall become statute-barred 12 months from delivery on the customer's premises of the goods supplied by us. In case of sale of second-hand goods, warranty shall be excluded. Our consent must be obtained prior to the return of any goods.
Costs for return of goods to Simi have to be paid by the buyer. Costs of transport back to the customer will be paid by Simi in case of justifiable notice of defect.
3. If despite proper care the delivered goods have a defect which already existed at the time of the passage of risk, subject to receiving a notice of defects in due time we may, at our discretion, remedy the defect or deliver replacement goods. We shall always be given the opportunity of subsequent performance within a reasonable period of time. The right of recourse shall remain unaffected without any reservation.
4. If subsequent performance is unsuccessful, the customer may either rescind the contract or demand a reduction of the price, notwithstanding any damage claims to which he may be entitled.
5. Warranty claims may not be asserted in case of only negligible deviations from the quality agreed upon, negligible impairment of use, natural wear and tear, and in case of damage caused after the passage of risk due to

- Es ist uns stets Gelegenheit zur Nacherfüllung innerhalb angemessener Frist zu geben. Rückgriffsansprüche bleiben von vorstehender Regelung ohne Einschränkung unberührt.
4. Schlägt die Nacherfüllung fehl, kann der Besteller - unbeschadet etwaiger Schadensersatzansprüche - vom Vertrag zurücktreten oder die Vergütung mindern.
 5. Mängelansprüche bestehen nicht bei nur unerheblicher Abweichung von der vereinbarten Beschaffenheit, bei nur unerheblicher Beeinträchtigung der Brauchbarkeit, bei natürlicher Abnutzung oder Verschleiß wie bei Schäden, die nach dem Gefahrübergang infolge fehlerhafter oder nachlässiger Behandlung, übermäßiger Beanspruchung, ungeeigneter Betriebsmittel, mangelhafter Bauarbeiten, ungeeigneten Baugrundes oder aufgrund besonderer äußerer Einflüsse entstehen, die nach dem Vertrag nicht vorausgesetzt sind. Werden vom Besteller oder Dritten unsachgemäß Instandsetzungsarbeiten oder Änderungen vorgenommen, so bestehen für diese und die daraus entstehenden Folgen ebenfalls keine Mängelansprüche.
 6. Ansprüche des Bestellers wegen der zum Zweck der Nacherfüllung erforderlichen Aufwendungen, insbesondere Transport-, Wege-, Arbeits- und Materialkosten, sind ausgeschlossen, soweit die Aufwendungen sich erhöhen, weil die von uns gelieferte Ware nachträglich incorrect or careless treatment, excessive use, inappropriate equipment, defective construction work, improper building site or due to special external influences not provided for under the contract. In the event that the customer or a third party carries out repair work or changes in an improper manner, warranty shall be excluded for such repair work or changes and their consequences.
 6. Claims of the customer with regard to expenses incurred by him in connection with subsequent performance, in particular transport costs, road charges, labor or material costs, shall be excluded to the extent that such expenses are excessive due to the goods supplied by us having subsequently been brought to a place other than the buyer's business premises, unless bringing the goods to such place is in conformity with their intended use.
 7. The customer shall only have a right to take recourse against us to the extent he has not agreed upon warranty rights with his buyer exceeding the warranty rights provided for by law. Paragraph 6 above shall apply analogously to the extent of the customer's right to take recourse against the supplier.
 8. Damage caused to the delivered goods during transport shall not fall within the obligations under warranty. Such damage shall be promptly notified to the carrier and communicated to Simi together with the carrier's confirmation. In the event that such

an einen anderen Ort als die Niederlassung des Bestellers verbracht worden ist, es sei denn, die Verbringung entspricht ihrem bestimmungsgemäßen Gebrauch.

7. Rückgriffsansprüche des Bestellers gegen uns bestehen nur insoweit, als der Besteller mit seinem Abnehmer keine über die gesetzlich zwingenden Mängelansprüche hinausgehenden Vereinbarungen getroffen hat. Für den Umfang des Rückgriffsanspruches des Bestellers gegen den Lieferer gilt ferner Absatz 6 entsprechend.
8. Transportschäden an der gelieferten Ware fallen nicht unter die Gewährleistungspflicht. Solche Schäden sind unverzüglich dem Frachtführer zu melden und Simi mit dessen Bescheinigung mitzuteilen. Wird die Bescheinigung des Frachtführers nicht innerhalb von acht Tagen beschafft, sind Ersatzansprüche seitens des Käufers ausgeschlossen bzw. verfallen. Bei Versand im eigenen Transportmittel von Simi ist unverzüglich entsprechende Mitteilung zu machen.
9. Erweist sich die Beanstandung des Käufers als unberechtigt, so trägt der Käufer alle Kosten, die Simi aufgrund der unberechtigten Reklamationen zur Feststellung und Behebung des angeblichen Mangels entstanden sind oder aufgewendet hat.

§ 12 Produktänderungen

Simi behält sich Produktänderungen jederzeit vor, die die Funktionsfähigkeit nicht

confirmation of the carrier is not produced within a period of 8 days, the buyer's compensation claims shall be excluded or forfeited. In case of shipment by Simi's own means of transport, a corresponding notification shall promptly be made.

9. If the buyer's claim turns out to be unjustified, the buyer shall bear all costs caused to or incurred by Simi in determining or remedying an alleged defect due to such unjustified claim.

§ 12 Product Changes

Simi shall reserve the right to change its products at any time, provided that such changes do not impair the proper functioning of such products.

§ 13 Export / Re-export

1. Simi shall be entitled to refuse the fulfillment of the obligations hereunder if it becomes evident that the fulfillment of the contract infringes German, US or other export regulations.
2. The customer knows that USA and German export control regulations are applicable to the onward sale or resale and licensing of Simi's products and/or technical documentation (software and technical information of any kind). Whether or not the customer informs Simi about the final destination of the products and/or technical documentation supplied by Simi, he shall be responsible for ensuring that such regulations are

beeinträchtigen.

§ 13 Export /Reexport

1. Simi ist berechtigt, die Erfüllung der Verpflichtungen aus diesem Vertrag zu verweigern, sobald sich herausstellt, dass die weitere Erfüllung des Vertrages deutsche, US-amerikanische oder sonstige Exportvorschriften verletzen würde.
2. Dem Kunden ist bekannt, dass US-amerikanische und deutsche Exportkontrollvorschriften auf den Weiterverkauf, Wiederverkauf und die Lizenzierung von Simi-Produkten und /oder technische Daten (Software und technische Informationen jeder Art) Anwendung finden. Unabhängig davon, ob der Kunde Simi über den endgültigen Bestimmungsort der von Simi gelieferten Produkte und/oder technische Daten unterrichtet, obliegt es dem Kunden in eigener Verantwortung für die Einhaltung dieser Vorschriften Sorge zu tragen und gegebenenfalls notwendige Genehmigungen des US-amerikanischen Handelsministerium und/oder andere zuständiger Behörden einzuholen, bevor er solche Produkte, technische Daten bzw. Systeme, die solche Produkte oder technische Daten enthalten, aus dem Land, in welches die Produkte nach diesem Vertrag geliefert wurden, exportiert.

§ 14 Auslandsschulungen

Schulungen im Ausland können nur

observed and, if required, shall obtain the necessary permits of the US Department of Trade and/or other competent public authorities prior to the exportation of such products, technical documentation or systems containing them from the country to which they had been delivered hereunder.

§ 14 Training abroad

Training abroad can only take place if in the country where training should take place no security risk or warnings are known. Security risks can either be named by official sides or as per Simi individual check, if security for own employees cannot in any case be guaranteed. In such case training will take place at Simi headquarter in Germany. Travel costs have to be beard by customer.

§ 15 Miscellaneous

1. This contract and the legal relationship between the parties shall be governed by the law of the Federal Republic of Germany with the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).
2. Place of performance and exclusive jurisdiction for all disputes arising under this contract shall be the place of our registered office, unless otherwise provided for in the order confirmation.
3. Any transfer of the products of Simi to third parties by the customer shall be subject to Simi's prior written

durchgeführt werden, soweit keine Sicherheitsbedenken im Reiseland bestehen die entweder von offizieller Stelle bekannt gemacht sind, oder nach individueller Beurteilung von Simi für eigene Mitarbeiter unzumutbar sind. In einem solchen Fall findet die Schulung bei Simi in Deutschland statt. Reisekosten sind vom Kunden selbst zu tragen.

§ 15 Sonstiges

1. Dieser Vertrag und die gesamten Rechtsbeziehungen der Parteien unterliegen dem Recht der Bundesrepublik Deutschland unter Ausschluss des UN-Kaufrechts (CISG).
2. Erfüllungsort und ausschließlicher Gerichtsstand und für alle Streitigkeiten aus diesem Vertrag ist unser Geschäftssitz, sofern sich aus der Auftragsbestätigung nichts anderes ergibt.
3. Eine Weitergabe von Simi-Produkten durch den Kunden an Dritte ist nur nach schriftlicher Zustimmung durch Simi erlaubt.
4. Die Abtretung der Rechte des Käufers aus diesem Vertrag nebst Anlage ist nur mit Zustimmung von Simi zulässig.
5. Alle Vereinbarungen, die zwischen den Parteien zwecks Ausführung dieses Vertrages getroffen werden, sind in diesem Vertrag schriftlich niedergelegt.
6. Sollten einzelne Bestimmungen dieses

consent.

4. The assignment of the buyer's rights under this contract, including the appendix, shall be subject to Simi's prior consent.
5. All agreements made between the parties for the purpose of executing this contract have been set forth in writing hereunder.
6. In the event that any provisions hereunder should be or become invalid, or in the event of a gap in this contract, this shall not affect the validity of the remaining provisions. The parties shall undertake to replace such invalid provision by a legally valid provision which comes as close as possible to the intended purpose of the invalid provision or which is appropriate to fill the gap.

Yours sincerely,

Management Board of Simi Reality Motion
Systems GmbH

Vertrages unwirksam sein, unwirksam werden oder eine Lücke enthalten, so bleiben die übrigen Bestimmungen hiervon unberührt. Die Parteien verpflichten sich, anstelle der unwirksamen Regelung eine solche gesetzlich zulässige Regelung zu treffen, die dem wirtschaftlichen Zweck der unwirksamen Regelung am nächsten kommt, bzw. diese Lücke ausfüllt.

Mit freundlichen Grüßen,

Geschäftsleitung der Simi Reality Motion
Systems GmbH

Simi US Motion Inc. Terms and Conditions of Sale

We thank you for your order, which we accept subject to the exclusive application of our Terms and Conditions of Sale. These can be found here:

http://www.simi.com/fileadmin/user_upload/Dokumente/Allgemein/Simi_AGB.pdf

We also expressly point out our Service Guidelines applicable to the orders accepted by us. Please find those here:

http://www.simi.com/fileadmin/user_upload/Dokumente/Allgemein/Simi_Service_Guideline.pdf

Simi US Motion Inc. ("Simi") distributes high- end image-based Motion Capture and Analysis Systems for movement and behavior analysis. Simi systems are high-speed camera-based systems using state of the art industrial image processing technology. The mission of Simi is to develop high-end image-based movement analysis technology with a clear focus on the user friendliness. The products and applications range from top research facilities to practical applications in daily activities. The solutions of Simi are tailored to the Customer's needs. Simi fosters a very close cooperation with their customers.

Simi is offering for sale their products and equipment (collectively and individually, the "Product(s)") identified herein, subject to the following terms and conditions (the "Terms and



Conditions" or the "Agreement"). The Terms and Conditions set forth the legally binding terms with respect to the purchase of the Product(s). The Customer (as identified by Customers of the Product(s) and/or services offered by Simi) ("Customer"), in consideration of the mutual covenants, agreements and provisions set forth herein and hereon, hereby agrees that the purchase of the Product(s) offered by Simi shall be subject to and in accordance with the following terms and conditions:

§ 1 Orders for Product(s), Applicability

All Customer order(s) for Product(s) shall be subject to these Terms and Conditions and, if applicable, an authorized quotation issued by Simi. Such order(s), if accepted by Simi, shall have significance as a reference document only. The parties hereby agree that these Terms and Conditions shall govern and control the relationship between Simi and the Customer, that the terms and conditions contained herein shall supersede the terms and conditions contained in a Customer-issued order, and that any deviation from these Terms and Conditions needs to be expressly agreed upon in writing by Simi and the Customer. Simi reserves the right to refuse orders in its sole discretion, or to accept such orders on a separate contract form, or to limit the types and amounts of the Product(s) ordered. Acceptance of or payment for any of the Products constitutes Customer's agreement to these Terms and Conditions.

§ 2 Prices

Prices for the Product(s) shall be the then current prices for such Product(s) in effect at the time of acceptance of an order by Simi's or in accordance with an authorized and valid Simi quotation.

Prices are exclusive of all charges or levies of any nature including all federal, state, municipal or other governmental excise, sales, use, occupational or like taxes now in force or enacted in the future and, therefore, are subject to an increase in amount equal to any tax Simi may be required to collect or pay upon the sale or delivery of Product(s) purchased. If a certificate of exemption or similar document is required in order to exempt the sale from sales or use tax liability, Customer will obtain and furnish evidence of such exemption at time of placement of order.

All prices are subject to adjustment on account of changes in specifications, quantities, shipment arrangements, and the like or the inclusion of terms and conditions which had not been part of any valid price quotation issued by Simi.

§ 3 Payment

Unless otherwise specified by Simi in writing, payment terms shall be prepayment. The purchase price shall be paid exclusively into the bank account stated at our invoice. A discount may only be deducted if it has expressly been agreed upon in writing.

Unless otherwise agreed upon in writing, the purchase price shall be settled by advance payment. In the case of late payments, Simi shall be entitled to charge interest as follows: two and a half percent (2.5 %) or the legal statutory rate, whichever is higher, on all amounts due more than forty-five (45) days.



The obligation of Simi to deliver the Product(s) or otherwise perform hereunder shall be subject to the then current credit terms and policies as established by Simi from time to time, unless fixed prices have been agreed.

§ 4 Shipment

The risk of loss, title in and right of possession of the Product(s) and responsibility for all transportation expenses shall pass to the Customer upon delivery to the carrier.

Subject to Simi's right to stop shipment of Products already in transit, such carrier shall thereafter be deemed to be acting for Customer regardless of the carrier used or the freight terms.

Shipment will be made "best way," either prepaid or collect, as requested by Customer. If Customer requests prepaid shipment, actual charges incurred shall be billed and shall be due and payable to Simi in accordance with Simi regular payment terms. Simi will not assume any liability in connection with such shipment, nor shall any carrier be its agent.

All shipping dates quoted or otherwise agreed to by Simi are estimate only. Simi will use its reasonable efforts to meet scheduled dates, but assumes no liability for failure to do so.

In the event that an order remains in Simi's warehouse for more than 14 days, Simi has the right at its sole discretion to either: (i) deliver product to Customer and invoice Customer, or (ii) charge a restocking fee of 25% of the invoiced price and sell the Product(s) to third parties. Any extension beyond the fourteen (14) day period specified herein shall require the express written consent of Simi.

Deliveries are always made under retention of title. Simi retain a right of possession of the goods until Customer makes full payment of all claims arising from the business relation with Customer.

§ 5 Force Majeure

Simi shall not be responsible for delays or non-performance directly or indirectly caused by governmental regulations or requirements, acts of God, unavailability of materials, work stoppages, slowdowns, boycotts or other causes beyond Simi reasonable control. In the event of delay due to any such cause, time for delivery shall be extended for a period of time equal to the duration of the delay, and Customer shall not be entitled to refuse delivery or otherwise be relieved of any obligations hereunder, or have any claims against Simi.

The Customer acknowledges and knows that certain US and German export control regulations are applicable to the onward sale or resale and licensing of Simi Product(s) and/or other competent public authorities prior to the exportation of such products, technical documentations or systems containing them from country to which they had been delivered hereunder.

§ 6 Limited Warranty

All Products offered by Simi are warranted to the original Customer of the Product(s)



("Customer") to be free from defects in workmanship and materials for a period of six (6) months from the date of installation but no longer than twelve (12) months from the date of shipment per Simi records. During the term of the warranty, Simi will replace any Product(s) or part(s) thereof which prove to be defective in material, software and analysis systems. A replacement will not be made for damage due to misuse, abuse, neglect, accident, or improper installation. A replacement will not be made for any damage incurred during the shipping process.

Simi is not responsible for, and will not pay, any labor charges, damage incurred during installation, repair, or replacement, damage incurred to other related part(s), injuries, loss of income, incidental and consequential damages, damages or any other loss whatsoever connected therewith.

WARRANTY TERMS

A. Enforcement of Warranty

Notice

The Customer shall notify Simi in writing of any defects in the Product(s) that the Customer has detected and requires to be corrected under this Warranty. Such notice shall be made without delay, but in any case within ten (10) days of and during the term of the Warranty. The notice shall contain a description of the defect and a description of the probable cause of it if available.

Remedy

If, after Simi has conducted appropriate tests and inspections as determined by Simi - at their sole discretion - the Product(s) or a part thereof is found to have defects that fall within this Warranty, exclusive remedy shall be made, at the sole option and discretion of Simi, by either repairing the defects or faults, or by supplying the respective correct Product or part of the Product to the Customer. Either Simi or Simi US Motion or the Customer or a third party shall perform repairs, at Simi's sole discretion.

B. Precondition for Warranty Handling

This Warranty is given on the condition precedent that the Product(s) is in all respects erected, operated, handled, serviced and maintained properly and is running under normal operating conditions as determined by Simi.

Exclusions

Excluded from the Warranty are, and Simi shall have no responsibility for damages of any kind as a result of one of the following events: the repair and replacement of the Product(s) or any part thereto due to normal wear and tear, vandalism, accidents, negligence, or otherwise without any fault of Simi; repairs, alterations or adjustments to the Product(s) performed or originated by the

Customer or any third party without Simi's prior written consent; unreasonable use, misuse, abuse, accident, alteration, modification, reengineering, neglect, lack of maintenance, or use



after the Product(s) is significantly worn. The Warranty described above applies only to Products manufactured by Simi.

Report of Date of Installation

The Customer shall notify Simi in writing of the exact date of installation of the Product(s); this obligation shall constitute another condition precedent for this Warranty.

C. Defective Part(s)

Transportation

The Customer shall bear the cost and risk of transport of defective Product(s) or any part thereof to Simi facility, while Simi shall bear the cost and risk of transport of repaired or replacement Product(s) or any part thereof to the port of destination. Simi will pay for the ocean/ground freight using the same method of transportation and port of destination than for the original shipment. Simi will not be responsible for additional duties charged for bringing a shipment of "warranted item" into any country and Simi will not refund duties already paid by the Customer for the defective Product(s) or any part thereof.

Defective Part(s) and their Return

At Simi request, defective part(s) replaced in accordance with this Warranty shall be placed at the disposal for inspection and analysis of Simi service personnel. Any defective part(s) shall not be returned without authorization of Simi; instead, Simi will determine at its sole discretion whether the defective part(s) will be returned to Simi or disposed of.

D. Payments due by the Customer

Monies Due

Any monies due to be paid by the Customer to Simi shall be paid in full, and Simi shall credit the Customer for any warranty claims separately, if necessary.

Deductions

Should the Customer make any deductions, Simi shall forthwith be discharged from the performance of its obligations under this Warranty until the Customer has paid Simi such deduction in full.

E. Collections

Should the need arise to employ professional collection agents and/or attorneys to effect payment of any monies due under any portion of this Agreement, all such costs incidental to collection, including court costs, reasonable attorney fees, through any appeal necessary, will be borne by the Customer/Customer.

F. Other Exclusions

All claims beyond those allowed in these Terms and Conditions for any loss or damage from whatever cause arising, including damage to the Customer's property, shall be excluded and hereby waived by the Customer unless such claim is made based on intentional bad acts or gross negligence by the owner, officers, or executives of Simi. In such case, damages shall be



limited to those that are reasonably foreseeable as a result of the intentional bad acts or gross negligence.

THE WARRANTIES SET FORTH IN THIS SECTION ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES WHETHER STATUTORY, EXPRESSED OR IMPLIED, AND THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR USE AND ALL OTHER WARRANTIES ARISING FROM THE COURSE OF DEALING OR USAGE OF TRADE ARE HEREBY EXCLUDED. THE REMEDIES PROVIDED HEREIN ARE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES FOR ANY FAILURE BY SIMI TO COMPLY WITH ITS WARRANTY OBLIGATIONS. CORRECTION OF THE NONCONFORMITIES IN THE MANNER AND FOR THE PERIOD OF TIME PROVIDED HEREIN SHALL CONSTITUTE COMPLETE FULFILLMENT OF SIMI'S OBLIGATIONS REGARDING DEFECTIVE PRODUCT(S), WHETHER THE CLAIMS BY THE CUSTOMER ARE BASED IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE) OR OTHERWISE.

§ 7 Intellectual Property

Simi may discontinue, without liability, delivery of Product(s) if, in its opinion and sole discretion, their use constitutes, or may create the risk of, patent, copyright, trademark or trade secret infringement.

Simi makes no warranty against patent, copyright, mask work, trademark or trade secret or other infringement by Product(s) if designed to Customer's specifications, or if used in combination with non-Simi supplied equipment or devices, and if a claim, suit or action is based thereon, Customer shall defend, indemnify and hold harmless Simi therefore.

§ 8 Limitations of Liability; Exclusive Remedy

Simi will not be liable to Customer under this Agreement, whether in contract, in tort (including negligence) under any warranty or otherwise for any special, indirect, incidental or consequential loss or damage, or loss of profits or revenues even if Simi has been advised of the possibilities of such damages. The remedies set forth in Sections 6 and 7 this Agreement are exclusive, and Simi's liability for damages to the Customer for any cause whatsoever, including performance or nonperformance by Simi or Product(s) provided hereunder, regardless of the form of the action, under any warranty or otherwise will be limited to the remedies provided therein.

§ 9 Confidential Clause

The Customer agrees to hold Confidential Information, including but not limited to calculations, drawings, etc., which were made available to the customer upon placing his order, in confidence in accordance with the terms of this Agreement. The Customer shall exercise at least the same degree of care as he uses with regards to his own Confidential



Information, but in no event less than reasonable degree of care, in protecting the Confidential Information of Simi.

The Customer shall instruct his Authorized Representatives of this obligation under this Agreement. The Customer shall be responsible for any breach of this Agreement by his Authorized Representatives. At Simi's request, all Confidential Information in the possession of the Customer shall be promptly returned to Simi or destroyed. Confidential Information means any (material) nonpublic information disclosed to the Customer whether orally, in writing, through any means of communication, by or on behalf of Simi.

The Customer shall not disclose these documents to third parties, unless Simi has expressly consented to such disclosure in writing.

§ 10 Health Insurance Portability and Accountability Act (HIPAA)

In case information, which is subject to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104- 191, is used by the Customer or forwarded to third parties, the Customer shall inform Simi whether any compliance rules of the Health Insurance Portability and Accountability Act (HIPAA) also apply to Simi.

§ 11 Limitation of Reengineering

The Customer will not (i) work around any technical limitations in the Product(s) or (ii) rent, lease, lend, sell, redistribute the Product(s) or any parts of it, or (iii) copy, exploit, modify, create any derivative work of, or include in any other software, the Product(s) or any parts of it, or (iv) either directly or indirectly unbundle or repackage the Product(s), decompile, disassemble, decipher, reverse engineer, reengineer or otherwise attempt to derive source code or the underlying ideas, algorithms, structure or organization from the Product(s) or directly or indirectly permit any of the Customer's employees/personnel to unbundle, repackage, decompile, disassemble, decipher, reverse engineer, reengineer or otherwise attempt to derive source code or the underlying ideas, algorithms, structure or organization from the Product(s), except as specifically authorized in writing by Simi.

§ 12 Product Changes

Simi reserves the right to change its products at any time, provided that such changes do not impair the proper functioning of Product(s).

§ 13 Cancellation or Postponement by Customer

Orders accepted by Simi cannot be cancelled or shipments postponed except by written notice to Simi. In the event that Customer cancels or postpones an order(s) or any part thereof, Simi's standard cancellation or postponement charges will apply.

§ 14 Cancellation or Postponement by Simi

Should Simi become aware of circumstances or otherwise be caused to anticipate that Customer will not render performance, or should Simi have doubts as to Customer's creditworthiness, Simi may suspend any outstanding deliveries resulting from any existing agreement with Customer or to make said deliveries only upon cash with order or by Credit Card. If Customer fails to meet such a request within a reasonable period of time, Simi may cancel the Agreement and demand damages.

§ 15 Training abroad

Training abroad can only take place if in the country where training should take place no security risk or warnings are known. Security risks can either be named by official sides or as per Simi individual check, if security for own employees cannot in any case be guaranteed. In such case training will take place at Simi headquarter in Germany. Travel costs have to be beard by customer.

§ 16 Data obtained during analysis services from Simi

All data that have been created by Simi within a service of capturing or processing data will stay at Simi's sole right of using them as long as the full order has not been paid. Simi will keep a lifelong right to use the data for themselves.

§ 17 Default

A. Any of the following will constitute an act of default hereunder. Customer:

- i. Is or becomes insolvent or a party to any bankruptcy or receivership proceeding or any similar action affecting the financial condition or property of Customer and such proceeding has not been dissolved within 30 days;
- ii. Makes a general assignment for the benefit of creditors;
- iii. or ceases doing business in the normal course.

B. In the event an act of default shall occur, Simi shall have the right to and may elect any or all of the following remedies which shall be cumulative and not exclusive:

- i. Declare the particular order out of which the default arises to be immediately terminated;
- ii. Declare, at its option, all charges incurred but unpaid relative to the order to be immediately due and payable; Exercise any or all remedies specified in this Agreement or any supplement associated herewith; and
- iii. Pursue each and every remedy available at law or in equity.



§ 18 Governing Law

This Agreement and any order accepted hereunder shall be governed by and interpreted, construed and enforced in accordance with the laws of the State of California, exclusive of its conflict of laws provisions.

§ 19 Arbitration and Venue

Except as provided below, the parties agree to submit any disputes relating to this Agreement and the purchase of Product(s) for final resolution and determination to arbitration, applying the American Arbitration Association Rules for Commercial Disputes. The proceedings shall be held in Los Angeles, California, be in English, and any award shall be enforceable in any court of competent jurisdiction according to the laws of the state of California unless the nature of the dispute is suitable to injunctive relief thereby affording a party the right to pursue redress in court without proceeding to arbitration. Any dispute arising under this Agreement that cannot be arbitrated as provided herein shall be brought only in a court of competent jurisdiction in Los Angeles County, California, USA, with the parties waiving any defense of venue or personal jurisdiction.

§ 20 Assignment

Customer shall not delegate any duties or assign any rights or claims under this Agreement without Simi's prior written consent, and any such attempted delegation or assignment shall be void and constitute an act of default according to section 15.

§ 21 Compliance with laws

Customer, this Agreement and all Product(s) purchased hereunder are subject to all laws, regulations, orders or other restrictions that may now or hereafter be imposed by the government of the United States or any agency thereof, including but not limited to all regulations relating to the sale, export, re-export or redistribution of equipment.

§ 22 General

If any of the provisions of this Agreement are found invalid or unenforceable under any applicable statute or rule of law, such provisions are, to that extent, deemed omitted, but this Agreement and the remainder of its provisions shall otherwise remain in effect.

No provision of this Agreement shall be deemed waived, amended or modified by either party, unless such waiver, amendment or modification is in writing and signed by the parties. The waiver of one default under this Agreement shall not be deemed a waiver of subsequent or similar defaults.

Each order under this Agreement shall be treated as a separate contract and default by either party arising out of a particular order shall not constitute or be deemed to constitute a default



of any other order or this Agreement itself. No lawsuit, regardless of form, arising out of this Agreement may be brought more than two years after the cause of action occurs.

THESE TERMS AND CONDITIONS SHALL SUPERSEDE AND TAKE PRECEDENCE OVER ALL PROPOSALS, CUSTOMER PURCHASE ORDERS OR ANY OTHER WRITTEN OR ORAL COMMUNICATIONS BETWEEN THE PARTIES, EXCEPT AS OTHERWISE PROVIDED HEREIN. RECEIPT BY THE CUSTOMER OF PRODUCT(S) HEREUNDER SHALL BE DEEMED CONCLUSIVE EVIDENCE OF CUSTOMER'S AGREEMENT THAT THE PURCHASE, USE AND POSSESSION OF PRODUCT(S) ARE GOVERNED EXCLUSIVELY BY THESE TERMS AND CONDITIONS.

Yours sincerely,

Management Board of Simi US Motion Inc.