GENERAL TERMS AND CONDITIONS OF SALE PROFESSIONALS

OUTSIDE METROPOLITAN FRANCE & DOM/TOM

Effective from January 1st 2020

SCOPE

These Terms and Conditions of Sale ("T&Cs") supersede any previous versions of terms and conditions of sales and shall apply to the sale of products ("Products") by SIMU SAS ("SIMU") a french company with a capital of 5.000.000 euros, registered at the Companies Registry of Vesoul, under n°425 650 090, whose registered office is at ZI Les Giraux, 70100 ARC-LES-GRAY, FRANCE to professionals customers importing Products from France to foreign country ("Customers"), as of January 1st 2020. Any order placed with SIMU implies the full acceptation of these T&Cs by the Customer. These T&Cs shall prevail over any contrary conditions included in the Customer's documents (general conditions of purchasing, orders…) which shall have no effect whatsoever unless a specific agreement has been concluded in writing between the Customer and SIMU. These T&C's are systematically communicated to the Customer to enable the Customer to order Products from SIMU. These T&Cs also communicated to any Customer acting as a distributor prior to the conclusion of the annual purchase agreement in accordance with the provision of the article L. 441-7 of the French Commercial Code. No failure of either Party to enforce all or any part of these T&Cs shall be interpreted as a waiver of all or any part of these T&Cs. SIMU reserves the right to modify these T&Cs at any time.

SIMU and the Customer hereinafter collectively referred to as the "Parties" and individually as the "Party".

ORDERS

Any and all orders ("Order") shall be placed by the Customer either in writing, duly signed and stamped by the Customer, or by an exchange of IT data enabling to identify the Customer, or by an Order online in the SIMU e-shop. SIMU reserves the right to refuse any orders received in any other form. For any Order having a value of less than 300 € exclusive of tax, and placed in writing by fax or email to SIMU, SIMU will invoice additional processing fees of 15 € exclusive of tax. All Product sales are complete and final only after SIMU's written and express approval of the Customer's Order. SIMU shall then send to the Customer an acknowledgment of receipt of such Order to the Customer ("Acknowledgment of Receipt"), materially answering Customer's requests. In case of discrepancy between the Order and the Acknowledgement of Receipt, the latter shall prevail. In such case, the Customer may refuse such Acknowledgement of Receipt by sending a written cancellation of the Order within twenty-four (24) hours after receiving the Acknowledgement of Receipt. Otherwise, the sale shall be deemed concluded at the date and under the specific conditions contained in the Acknowledgement of Receipt.

To improve Customer's satisfaction, SIMU requests the Customer to indicate as early as possible any project leading to high-volume Orders.

DELIVERY TIME

The delivery date ends on the day of the availability of the Products ordered by the customer in the premises of SIMU, to the Customer or to the carrier. The Products ordered by the Customer will be delivered within a period described in the offer of dispatch in force for the Customer and communicated upon request. The delivery dates mentioned in the Acknowledgement of Receipt are given as an indication, unless otherwise agreed in writing by the Parties, based on supply and transport possibilities.

The logistic services and the transport costs in effect, can be communicated to the Customer on request to SIMU's sales department.

A delay on delivery of less than six (6) weeks from the delivery date provided in the Acknowledgement of Receipt shall not give rise to any claim of liquidated damages or justify the Order's cancellation.

In any case, SIMU shall not be liable for failure to perform its obligations in case of a force majeure event as defined in the Force Majeure clause set out below. In any case, SIMU shall not be held liable for any delay caused by Customer's failure to perform its obligations.

FORCE MAJEURE

Neither Party shall be liable in event of partial or total nonperformance of any obligation under the T&Cs with by reason of an unforeseeable and insurmountable external event which prevent Parties from performing their obligations and for the duration and within the limit of the effects of said cases and circumstances on said obligations. The occurrence of any event described hereunder shall authorize SIMU to suspend related Orders ipso jure or to postpone its execution, without any indemnity, cost or damages for SIMU.

A force majeure event is notably: war, act of terrorism, strikes, epidemics, disruption of transportation, the lack of raw materials, disruption of SIMU's suppliers, acts or omission of any government, natural disaster, accidents or any event leading to the unemployment of all or a part of SIMU'S premises.

The Party affected by a force majeure event as described above shall, without any delay, informed the other Party of its impossibility to perform its obligations.

TRANSPORT AND DELIVERY

The shipments are carried out by SIMU by any means of transport, taking into consideration the price/performance ratio, except if the Customer organizes his own shipments.

- For deliveries in mainland France:

Delivery will be performed at the Customer's registered address or at the address indicated by the Customer in the Order.

SIMU shall bear the transport costs for all Orders equal to or over 800 € exclusive of tax, and delivered to one single destination in mainland France. Should the Customer requests delivery to different addresses, SIMU will invoice 25 € exclusive of tax, for each extra address (except to the logistics site, production site or officially declared agencies/stores). For any other Order, the transport costs shall be invoiced depending on the weight of the Products shipped. In this case, SIMU's sales department can transmit the prices list for the transport costs, on request. There shall be no transport costs for after-sales Products.

- For deliveries outside mainland France:

The Products are delivered FCA (Incoterms® 2010) SIMU's factory at Gray, France, unless otherwise specified in writing between SIMU and the Customer. SIMU is responsible for exports formalities. SIMU bears all the cost for export clearance and is liable for the fees and taxes imposed by the country in which the Products are delivered. The costs of transport will be borne by the Customer who shall carry out the formalities to the import and pay the related duties and taxes.

The Customer is responsible for inspecting the Products upon delivery. In the event of shortage, damage, loss, theft, or any other defect, it is the Customer responsibility to inform the carrier by registered letter with acknowledgement of receipt, within three (3) working days from delivery, in accordance with article L. 133-3 of the French Commercial Code. A copy of such letter shall be sent to SIMU within the same timeframe. In case of any other conspicuous defects or non-compliance of the Products the Customer shall have to inform SIMU, by registered letter with acknowledgement of receipt, within three (3) working days of the delivery of the Products. No complaint or return of Products shall be taken into consideration, after three (3) working days following delivery, except express consent from SIMU.

SIMU will replace in the shortest possible time and at its own expense, the Products delivered whose failure to comply has been duly proved by the Customer.

RISK TRANSFER

THE RISK FOR LOSS OR DAMAGES TO THE PRODUCTS SHALL PASS TO THE CUSTOMER WHEN DELIVERY OF THE PRODUCTS HAS BEEN MADE TO THE CARRIER. IN CASE THE PRODUCT IS NOT DELIVERED BY CARRIER, THE RISK FOR LOSS OR DAMAGES TO THE PRODUCTS SHALL PASS TO THE CUSTOMER UPON DELIVERY AT SIMU'S PREMISES. THE CUSTOMER THEREFORE HAS NO RECOURSE IN WARRANTY AGAINST SIMU IN THE EVENT OF A DEFAULT OF RECEPTION IN ITS STORES OR PLATFORMS OF THE PRODUCTS SOLD OR IN CASE OF DAMAGE OCCURRING DURING THE LOADING, TRANSPORT OR UNLOADING OF THE PRODUCTS SOLD. IN ANY CASE SIMU CANNOT BEAR THE FINANCIAL COST OF PRODUCTS WHICH HAVE BEEN DEGRADED OR DAMAGED BY CUSTOMER'S CUSTOMERS.

THE CUSTOMER UNDERTAKES TO OBTAIN AND MAINTAIN PROPER INSURANCE CONTRACT FROM A CREDITWORTHY INSURANCE COMPANY COVERING ANY DAMAGES OF THE PRODUCTS

RETURNS

No return of Products shall be made unless expressly authorized by SIMU. All request for return of Products shall contain a copy of the original purchasing invoice of the related Product. A return of Products can give rise to a credit note under the following conditions:

1) Error of SIMU: when the Products delivered to the Customer are not in compliance with the Products listed in the Acknowledgement of Receipt (reference, quantity…) the Customer shall inform SIMU within three (3) working days from the delivery of the Product of such error. SIMU shall then retrieve the Product from the Customer's premises. A credit note with a value of 100% of the net price invoiced, exclusive of tax, of the retrieved Product, shall be established by SIMU, provided that the conditions stipulated in 4, hereafter, are also met.

2) Error of Customer: A return shall be authorized by SIMU provided that a written request is sent by the Customer within five (5) working days from the receipt of the Product and as far as this return relates to an amount exceeding 30 € exclusive of tax, per reference. The Product shall be returned to SIMU at Customer's expenses and risks and within five (5) working days from the date of acceptance by SIMU of such return.

Upon receipt of the Product, a credit note with a value of 100% of the net price invoiced, exclusive of tax, of the related Product shall be established by SIMU, provided that the conditions stipulated in 4, hereafter, are also met. However, SIMU shall not accept any return in case of repeated errors by the Customer.

3) Subject to Clause Risk Transfer above, SIMU may examine, on a case by case basis, the possibility of accepting returns for any other reasons than those provided in 1) and 2) hereunder, as long as the Product is standard and was manufactured within the previous year.

The Product shall be returned at Customer's expenses and risks and within five(5) working days from the date of acceptance by SIMU of such return. Upon receipt of the Product, SIMU reserves the right to fix on a case by case basis the amount of the credit note to be established, provided that the conditions mentioned in 4, hereafter, are also met.

4) Any return is subject to the following cumulative conditions:

a. SIMU's customer service has previously approved the return in writing.
b. a copy of the agreement of return and of the original purchasing invoice of the related Product are attached to the returned Product.
c. the Products are new and undamaged,
d. the Products are returned in their complete undamaged packaging (including leaflets, screws, cardboard and accessories),
e. the Products are not a sub-part of a product,
f. the return does not concern personalized Products or customized Products, except in the case of error of SIMU.

In no case SIMU cannot be imposed:

- the resumption of Products that have not been sold or become obsolete or Products that are degraded or damaged by the Customer,
- to take back the Products of low turnover.

The credit notes established by SIMU shall be valid for a period of one year from their issuance date. Beyond this period, credit notes shall be cancelled. Credit notes are non-refundable but deductible from new Order(s).

PRICES

The SIMU's tariffs are communicated to the Customer on a yearly basis. Prices shall be those in force at the date of the Order (Acknowledgement of Receipt as proof). The prices are exclusive of tax. They are fixed according to the economic situation at the date of the Order. In the event of changes outside of SIMU's control affecting the production cost, such as an increase of raw materials cost, SIMU might have to propose a price change which the Customer undertakes to renegotiate in good faith.

In such case the new tariff shall be communicated to the Customer two (2) months prior to their implementation.

SIMU will refuse systematical and unilateral penalties from the Client and/or automatic deductions on the sales invoice by the Client, if they haven't been given previous written agreement by SIMU.

SIMU cannot be enforced with a clause to automatically obtain better tariff conditions granted to competing undertakings, in accordance with the provisions of article L. 442-6-II-d of the French Code of Commerce.

REDUCTION IN PRICES

Price discounts possibly granted, shall be conditional on real and proportional counterparts and on the timely payment of the sums due to SIMU.

Calculation of the discounts potentially granted by SIMU shall be exclusively based on the sales achieved and paid by the Customer within the related range of Products.

PAYMENT TERMS

SIMU shall invoice the Customer upon Product's expedition. The invoices are payable on receipt to Gray, SIMU's registered office by credit card, transfer, bills of exchange. However, for all new Customers, and in the case of an Order sent by a Customer who has received an unfavorable opinion from SIMU's credit insurance, total payment may be due prior to delivery.

Payment terms may be agreed in writing by SIMU and the Customer. In any case, payment shall be made within sixty (60) working days of the summary invoice date in accordance with the provisions of article L. 441-6 of the French Code of Commerce.

Unless otherwise agreed in writing by the Parties, no discount shall be granted for early payments by Customer.

SIMU reserves the right to defer or terminate the special terms of payment granted to Customer in case of significant change in any of the criteria that justified the granted of the special terms, and for instance the degradation of the Customer's financial situation, the withdrawal of guarantees, late payment, unfair behavior by the Customer towards SIMU.

In addition, in case of unfavorable opinion from SIMU's credit insurance on the Customer, SIMU may require any additional protective measures it sees fit in order to ensure proper performance of the Customer's obligations, such as, but not limited to, down payment or advanced payment of the Order. Payments made by Customer shall apply first to the oldest outstanding debt and then to the interest charges.

Sums owed by SIMU to the Customer shall not be withheld or compensated by Customer for any cause. In any case SIMU should not be required at more expensive payment condition than the one granted to the Customer by SIMU.

OUTSTANDING DEBT

In the event of default of payment on the due date by the Customer:

The Orders in progress and new Orders may be suspended at any time by SIMU. SIMU shall inform the Customer of said suspension. When the situation has been remedied by Customer, SIMU shall send an acknowledgement of receipt, according to the logistic offer in force available upon request to SIMU's sales department.

Late payment penalties shall apply on each payment due from the due date of payment as printed on the invoice. Interest charges shall be equal to ten percent (10%) of the late payment amount exclusive of tax. They are payable immediately.

Interest charges shall be calculated as follows:

*Interest charges = (rate **x** late payment amount exclusive of tax) **x** (number of overdue days **/ 356**)*

Under the Directive 2011/7/EU of the European Parliament, and the French Decree n°2012-1115 of October 2, 2012, SIMU shall be entitled to a fixed amount of forty Euros (40 €) to compensate for recovery costs per unpaid invoice and shall also be entitled to claim compensation for all remaining reasonable recovery costs.

The sale may be automatically cancelled at any time, after written notice by SIMU to the Customer stating that SIMU declares the wish to exercise this clause, and without any requirement to fill in any legal formalities.

No unilateral deduction by the Customer shall be considered by SIMU. In such circumstances, the debt will be considered outstanding. The Products delivered and unpaid shall be returned to SIMU at the Customer's expenses.

All down payments made may be retained as damages for the cancellation of the sale and wear and tear of the Products;

The remaining payment, including invoices not yet due, shall become immediately payable without prior formal notification.

The outstanding deliveries may be withheld until full payment of the said Products is made to SIMU.

The Customer shall authorize access to his premises by SIMU, SIMU's employees or transporter, possibly with a judicial officer, to draw up a complete inventory of the Products in stock and to recover the unpaid Products.

RESERVATION OF OWNERSHIP

SIMU SHALL RETAIN OWNERSHIP OF ALL PRODUCTS UNTIL COMPLETE PAYMENT BY CUSTOMER IS MADE TO SIMU. PAYMENT SHALL ONLY BE DEEMED EFFECTIVE WHEN CASHED IN BY SIMU. IN THE EVENT OF NON-PAYMENT BY THE CUSTOMER OF ALL OR PART OF THE PRICE OWED, SIMU SHALL REPOSSESS THE PRODUCTS DELIVERED TO THE CUSTOMER.

IF THE CUSTOMER SOLD PRODUCTS SUBJECT TO RESERVATION OF TITLE, THE CUSTOMER WILL UNDERTAKE TO INFORM SIMU OF THE IDENTITY OF THE SUBSEQUENT BUYERS AND SIMU CAN CLAIM AGAINST THE SUBSEQUENT BUYERS THE PRICE OF THE PRODUCTS UNPAID BY THE CUSTOMER, WITHOUT PREJUDICE TO ANY OTHER RIGHT SIMU MAY BE ENTITLED TO.

HARSHIP

In case of an unforeseeable financial or material circumstances (the "Unforeseeable event") related to the sale by SIMU of Products covered by the T&Cs, resulting in the execution of any of the Parties obligations to become excessively expensive, the Parties undertake to renegotiate in good faith the term of their agreement. During the negotiation, the Parties will suspend their respective obligations related to the sale of the Products concerned by the Unforeseeable event. If parties fail to reach an agreement, they would have to mutually agree to terminate the agreement. By agreeing with the T&Cs, the Parties decide to expressly exclude the application the article 1195 of the French Civil Code.

INFORMATION ON THE PRODUCTS

The information and photos printed on catalogues, brochures and leaflets are given as an indication and are not binding upon SIMU and not contractual. They may be modified at any time. SIMU fulfills its obligation of information about the Products in the datasheets, configuration manuals and Product leaflets. It is under Customer's responsibility to inform its own customers about the conditions of installation (including configuration), conditions of use of the Products and the safety measures to be taken, by adapting and completing the information provided by SIMU, to the customer's Products and its type of customers.

SIMU reserves the right at any time to modify the Product as well as the related technical and commercial information and documentation.

WARRANTY AND AFTER SALES SERVICE

The contractual guarantee that SIMU proposes for the Products is annexed to the T&C's and is also detailed in the price catalogue intended for professional Customers, will be sent to the Customer on request, and is also available on SIMU's website www.simu.com. This express guarantee is exclusive of any other warranties, legal or not, including the legal liability for hidden defects or the suppliers and manufacturers civil liability, provided for in Articles 1245 to 1245-17 of the French Civil Code. SIMU guarantees the Product against all defects of material or manufacturing acknowledged by SIMU during the entire contractual warranty period indicated in the effective price catalogue and in the conditions and limits of use set by SIMU in the Product leaflets or any other documentation or information intended for professional Customers. This guarantee only includes the reparation or replacement (at SIMU's option) of the Product acknowledged defective after inspection, by SIMU, excluding compensation for any other prejudice whatsoever. Outside the scope of application of this contractual guarantee, SIMU shall provide an after-sales service for its Products, by quotation.

LIABILITY

SIMU shall under no circumstances be held liable or engaged in any way, if it is not demonstrated that the Products have been installed and used in respect of the instructions and limits of use indicated by SIMU, and in compliance with the existing standards and the state of the art, for motorizing or automating appropriate Products like blinds, roller blinds, shutter blinds, gates and garage doors. Neither Party shall be liable for any indirect damage suffered by the other Party, such as lost of turn over, loss of income loss of clients, loss of orders, any commercial disruption or loss of profit. SIMU shall indemnify the Customer only for duly proved direct damages.

Either Party shall perform its obligations under the Order(s) in compliance with the applicable laws and undertakes to respect anticorruption and money laundering applicable laws.

EXPORT CONTROL

The importation and resale of the Products by the Customer are carried out under its sole liability, and shall in anyway constitute a violation of the laws and regulations in force in the country of importation of the Products. It is the Customer's responsibility to bear all costs associated to make the Products, their accessories and packaging compliance with the importation country's laws and regulation. The Customer is liable for the sales, marketing and distribution of the Products in the country of importation which it undertakes to carry out in full compliance with the laws and regulations in force in that country. Under no circumstances will SIMU be liable for any failure or violation of the laws and regulations in force in the country of importation as a result of the importation and / or distribution and / or marketing of the Products in that country. The Customer undertakes to indemnify SIMU, its subsidiaries and / or any other entity belonging to SIMU's Group against all claims, convictions, penalties, losses and expenses resulting directly or indirectly from the violation or breach of the laws in force in the country of importation causing by the Products, their introduction, distribution and marketing in that country.

No Party shall be liable to the other Party for any indirect damages, such as, in particular, loss of turnover, loss of operation, loss of anticipated savings, loss of customers, loss of orders. SIMU will only indemnify the customer for the perfectly justified direct damages. The customer shall not be entitled to a lump sum indemnity simply because a product has been recalled by SIMU or has been returned to the latter.

Warning about products for « PROFESSIONNALS »: SIMU alerts the Customer that the Products ordered from SIMU's professional catalogue are intended for professional manufacturers, carpenters, assemblers or installers. Said Products shall accordingly be installed by professionals of home automation and non-residential buildings. The Customer shall ensure that Products are sold to said professionals. Otherwise, SIMU alerts the Customer that it may engage its responsibility for insufficient advice or lack of information in case of defective installation. Customer agrees to defend, indemnify and hold harmless SIMU against any claims arising on this ground.

USE OF TRADEMARK

SIMU's trademarks and any other trademark used by SIMU shall remain SIMU's property. SIMU retains all intellectual and industrial property rights concerning the Products, their representation, designation, pictures and all technical documentations. The use of SIMU's trademark or any other trademark used by SIMU, by the Customer, requires previous written agreement by SIMU, unless otherwise provided by law. In case of authorized use by Customer, it shall comply with SIMU's Use Charter.

PROCESSING OF PERSONNAL DATA

SIMU may collect and process Personal Data provided by the Customer's representative for the purpose of completing and performing the Product Order related to the commercial relationship between SIMU and the Customer and for compliance with applicable legal and regulatory obligations to which SIMU is subject. SIMU has implemented procedures in order to comply with applicable laws and regulations on protection of personal data. In compliance with said laws and regulations, the Customer's representative has the right to access his personal data, and to request their rectification, deletion and limitation of his Data processing. He may also request the right to portability. The Customer's representative can exercise his rights on his personal data by writing to service@simu.com with a copy of his ID. Finally, he can file a complaint with the National Commission for Data Protection and Liberties. For more information, the Client is invited to consult SIMU's privacy policy on personal data, accessible at simu.com.

GENERAL

These Conditions have been drafted in French and in English. In any case, the French version of these Conditions shall prevail.

APPLICABLE LAW, COURT OF JURIDICTION

The Conditions and the relations between the Parties shall be construed, governed, interpreted and enforced exclusively in accordance with the Laws of France. In case of any dispute arising from or in connection with the performance of these Conditions and related Order(s) or agreement(s), the dispute shall be settled by the Tribunal of Commerce of Dijon.