

General Conditions of Sale of Spare Parts and Service Assignments

1. GENERAL PROVISIONS; SCOPE OF APPLICATION

- 1.1 All present and future legal relations between Singulus Technologies AG (Singulus) and Customer shall comply with these General Conditions of Sale, unless the wording of the Singulus order confirmation or other associated special terms and conditions of Singulus contain provisions to the contrary. Singulus hereby expressly objects to any other general terms and conditions of Customer. Any direct or indirect reference to Customer's conditions, if any, shall not be construed as Singulus' acceptance of such conditions. Reference to ICC INCOTERMS 2000 shall be construed as reference to the relevant INCOTERM provision in force at the time of conclusion of the individual agreement. In the event of a conflict of the ICC INCOTERMS 2000 and these General Conditions of Sale, the latter shall prevail. Where these General Conditions of Sale refer to goods (hereinafter called spare parts), the respective clause shall apply accordingly to any other obligation assumed by Singulus, in particular to service and other obligations.
- 1.2 The statutory provisions shall apply in addition to these General Conditions of Sale. The application of any terms and conditions of Customer shall be excluded.

2. OFFER

- 2.1 The offers of Singulus shall be non-binding and subject to change. Dates shall only be binding if expressly stated in writing to be binding. Purchase orders without preceding and exactly corresponding offer from Singulus shall have no legal effect.
- 2.2 Data contained in catalogues, brochures and folders, as well as general information in data sheets and drawings accompanying quotations are approximate and non-binding, unless expressly stated otherwise in writing.
- 2.3 Singulus hereby reserves all rights, including title and copyright to cost estimates, designs, illustrations and other documents; such items may only be made accessible to third parties upon the prior written approval of Singulus.
- 2.4 In particular cases, Singulus reserves the right to alter the design and, where there is shortage of raw material or supply parts, to use other materials or parts appropriate for the contractually intended purpose unless otherwise required by overriding concerns of Customer, which are known to Singulus.
- 2.5 Regarding all sales materials and other documents made available to Customer, Singulus reserves the right of ownership and copyright; they must neither be used for other purposes nor copied, reproduced or made available to third parties; they do not confer title nor imply the grant of any licence for reproduction of Singulus' products or parts.
- 2.6 All sales materials and other documents made available to Customer are to be returned to Singulus immediately upon request, or without request if no order is placed with Singulus.
- 2.7 All offers and obligations of Singulus are subject to applicable public permit requirements, including, but not limited to, export trade regulations.

3. PRICES; TERMS AND CONDITIONS OF PAYMENT

- 3.1 Unless stated otherwise, all prices are quoted ex works or manufacturing plant, respectively EXW, ICC INCOTERMS 2000, excluding packing, erection, start-up and service. Packing is charged at cost price.
- 3.2 The minimum order value for spare parts amounts to EUR 100,00. If the order value of the Customer is lower than EUR 100,00, Singulus will charge an additional processing fee in the amount of EUR 25,00 for each order.

- 3.3 Prices shall not include any tax, including VAT (*Umsatzsteuer*), sales, excise, turnover or freight transportation tax or the like, nor any export, import or other duties. These will, to the extent applicable, be additionally charged to Customer by Singulus. The deduction of a discount shall require separate express written approval by Singulus.
- 3.4 Unless stated otherwise, Customer shall reimburse Singulus for reasonable travel and accommodation costs and expenses incurred in connection with the delivery of the spare parts or alternatively with the service assignments.
- 3.5 Unless stated otherwise, Singulus hereby reserves the right to correspondingly modify prices in the event of cost increases in particular due to the conclusion of collective bargaining agreements (increases in wages and employee benefits) or increases in material costs. Evidence of such increases shall be provided to Customer upon request.
- 3.6 Payment shall be made (i.e. irrevocably credited to Singulus' bank account) within 30 days from the date of invoice unless otherwise stipulated. In case of partial shipments Singulus shall be entitled to issue partial invoices accordingly. Unless otherwise stated, payment shall be made in EURO. In case Customer effects payment in any other currency, Singulus will, to the extent possible, exchange such payment in EURO and Customer shall be liable for any shortfall and bank fees arising from such currency exchange.
- 3.7 Payments shall be made exclusively to one of Singulus's accounts and shall be effected free of charges at the due date without any deduction. Fees, expenses etc. being incurred by Singulus accepting bills or cheques upon specific agreement between Singulus and Customer shall be at Customer's expense.
- 3.8 Payment orders, checks, bills of exchange and other cash equivalence shall only be accepted upon separate arrangements and only on account of performance (*erfüllungshalber*) and free of bank charges, fees or other duties and expenses.
- 3.9 Customer shall only be entitled to set-off or retention rights in the event of having counterclaims, which are finally awarded by a court, uncontested or acknowledged by Singulus.
- 3.10 In the event of delay in payment (*Verzug*), Singulus shall without prejudice to any other rights (e.g. statutory default interest) be authorized to demand advance payment for deliveries and performance not yet made and to declare all claims from the business relationship to be due for immediate payment.

4. DELIVERY OF SPARE PARTS

- 4.1 Deliveries shall be made on the dates stipulated in the confirmation. The time of delivery by Singulus shall be subject to (i) the settlement of all commercial and technical questions between the parties and the issuance of all required public authorisations, and (ii) the timely fulfilment of the contractual obligations by Customer and (iii) the timely and proper delivery by Singulus' suppliers. Singulus will notify Customer about any delays in relation to its suppliers as soon as reasonably possible.
- 4.2 Unless agreed otherwise, the spare parts are delivered EXW (ICC INCOTERMS 2000). Partial deliveries are permitted to a reasonable extent.
- 4.3 In case an order is received until 1 pm with request for urgent shipment (same day shipment), Singulus will charge express costs in the additionally amount of EUR 50,00.
- 4.4 Minor defects do not affect Customer's obligation to accept delivery of spare parts; in that respect the delivery period shall be deemed to have been observed.
- 4.5 The processing of orders of exchange parts is subject to availability of these parts, subject to prior sale.

4.6 *Force Majeure*: industrial disputes, riots, terror, administrative measures and any other unforeseen and significant events for which a party is not responsible and which the respective party cannot prevent shall release this party from its duty to perform for the duration of the disruption and in the scope of its effects. If the performance becomes ultimately impossible, the release will also be final. The above shall also apply in the event such circumstances should arise at contractors of the parties. A party shall also not be responsible for the above-mentioned circumstances in the event such arise during an existing delay. The respective party shall inform the other party as soon as possible of the commencement and cessation of such hindrances in important cases.

4.7 To the extent Singulus and Customer have agreed on assembly or service work to be carried out by Singulus, the relevant General Conditions for Assembly of Plants shall additionally apply. They will be available at the regular Singulus contact.

5. **ASSEMBLY, MAINTENANCE AND OTHER SERVICE ASSIGNMENTS**

5.1 The provisions of this Clause 5 shall apply, if, pursuant to an individual agreement, the spare parts delivered by Singulus to Customer, or other equipment, will be assembled, maintained, commissioned, serviced and/or tested by Singulus ("Service Work") at Customer's or, if agreed between Singulus and Customer, a third party's assembly site. This Clause 5 shall apply accordingly if Singulus undertakes to supervise the provision of any of the aforementioned work or services by a third party on behalf of Customer.

5.2 Commencement of the Service Work shall be subject to Customer confirming to Singulus that all required equipment of Customer and Singulus is ready at the assembly site and the Customer has completed all its preparatory work according to the provisions of the individual agreement, so that the Service Work can be started without delay upon arrival of Singulus' service personnel. Singulus has the right to check the assembly site prior to delegation of its service personnel. During the Service Work Customer will take care that the assembly site will remain under proper conditions, enabling Singulus to complete all Service Work without interruptions.

5.3 Customer shall provide storage rooms which can be locked, close to the assembly site for the storage of machine parts, tools and other materials of Singulus and a rest room for the Singulus' service personnel with proper light, heating and washing facilities.

5.4 Tools, instruments and other assembly equipment supplied by Singulus remain the sole property of Singulus. The Singulus' service personnel shall be given appropriate assistance by Customer for transport and/or dispatch of assembly and testing equipment.

5.5 All information given by Singulus with respect to the start, duration or time to complete any part of the Service Work is only approximate. Should the Service Work be delayed due to reasons not imputable to Singulus, Customer shall bear all reasonable costs arising out of such delay, in particular for waiting and travelling times of Singulus' service personnel. In case of delays Singulus shall be entitled to redirect the Singulus' service personnel elsewhere.

5.6 Any parts belonging to Singulus' machines and to be assembled by Singulus' service personnel shall remain at Singulus' disposal until the final completion of the Service Work. Singulus shall have the right of disposal over such parts at its reasonable discretion. Singulus shall perform the Service Work in accordance with Singulus' technical and constructional planning including the required procedures of testing and inspection.

5.7 Any assembly of parts not included in Singulus' delivery will only be carried out by Singulus' service personnel with Singulus' express permission. Singulus will carry out these works only at the risk and responsibility of the Customer excluding any warranty on Singulus' side.

5.8 Working time and work performed by Singulus' service personnel at the assembly site shall be confirmed by Customer every week on a printed form supplied by Singulus with a copy to be retained by Customer.

5.9 During the Service Work, Singulus shall not assume responsibility for faults and/or damages which

are the result of any action or omission on the part of the Customer, nor any faults and/or damages not traceable to Singulus' actions.

- 5.10 For the duration of the Service Work, Customer will assist Singulus' service personnel in finding suitable board and lodging near the assembly site.
- 5.11 Customer will inform Singulus' service personnel immediately of all formalities (registrations) to be observed towards the local authorities and of any applicable safety regulations. Unless otherwise agreed, Customer shall be responsible for obtaining local permits, which are required to perform the Service Work, in due time, in particular visa, residence permits and work permits. Furthermore, Customer will assist Singulus' service personnel in dealing with local authorities and obtaining all required permissions. Customer will also represent Singulus' service personnel towards the authorities as requested or necessary.
- 5.12 Customer shall bear, or reimburse Singulus for, any official charges (e.g. taxes, social contributions, fees, duties etc.) levied on Singulus or Singulus' service personnel due to the Service Work provided at the assembly site.
- 5.13 In case of illness, accident or death of Singulus' service personnel, Customer shall inform Singulus immediately. Customer will take care of medical treatment, transportation to the hospital, etc., will bear any cost and expenses in this regard and, if necessary, also the transport back to Germany. Singulus will reimburse Customer for these costs and expenses upon request.

6. CLAIMS BASED ON DEFECTS (WARRANTY CLAIMS)

- 6.1 The claims of Customer based on defects shall require that Customer properly fulfilled its statutory inspection and notification duties and gave Singulus notice of any defects as quickly as possible in writing.
- 6.2 Singulus' liability for defects (*Mängelansprüche*) of the delivered spare parts shall expire 12 months after delivery. This does not apply if Singulus has fraudulently concealed a defect.

Singulus cannot be held responsible for faults or damage arising from normal wear-and-tear, faulty or careless treatment, corrosion, faulty installation or setting into operation by Customer or by a third party, subjection to stresses greater than those prescribed, use of unsuitable materials, inappropriate building condition on part of Customer or any natural or other influence not traceable to Singulus. Excluded are wear parts, consumables and raw materials such as seals, gaskets, fluids or plastic parts.

Singulus' liability is excluded if the maintenance and service instructions set forth in the operating and maintenance manual have not been observed, if and to the extent that any damage was caused by such failure to observe these instructions and if and to the extent Customer does not prove the opposite.

If a defect is caused by any act or omission of Customer or any third party, Singulus cannot be held liable for such defect. A faulty part is to be put out of action immediately where continuation of its working or its use is likely to be the cause of damage.

- 6.3 Claims of Customer due to defects shall be excluded in the event of immaterial quality defects. An immaterial quality defect shall be deemed to exist in particular in the event the value or fitness for regular use is only insignificantly impaired.

In the event of defects in the delivered spare parts, Singulus may, at its option, either make a substitute delivery or cure the defect (subsequent performance; *Nacherfüllung*). Subsequent performance shall be excluded if this leads to disproportionate costs being incurred by Singulus. Further remedies of the Customer remain unaffected.

- 6.4 If Singulus fails to perform or fails to perform in accordance with the agreement within a reasonable deadline set by Customer and, as a result thereof, Customer would be entitled to withdraw from the

agreement (*Rücktritt*) or to claim damages *in lieu* of performance (*Schadensersatz statt der Leistung*), Singulus may set a reasonable deadline for Customer to declare whether Customer continues to insist on the performance. Until Customer notifies its decision to Singulus, Singulus is under no obligation to perform.

7. LIABILITY

- 7.1 Singulus shall only be liable - regardless of legal grounds - in the event that damage is attributable to the gross negligence or wilful misconduct by Singulus.
- 7.2 In the event Singulus is liable for damages in absence of gross negligence or wilful conduct, Singulus' liability shall be limited to the damage which can be typically expected in the respective situation. In any event, Singulus' liability for consequential damages, punitive damages, loss of profit and/or other indirect damages, shall be excluded.
- 7.3 Damage claims in accordance with the Product Liability Act or based on the loss of life, personal injury or prejudice to health, or in connection with a guarantee shall remain unaffected.
- 7.4 The provisions set out herein shall apply likewise in favour of Singulus' employees.

8. RETENTION OF TITLE

- 8.1 Singulus hereby reserves the title to the spare parts delivered until all payments from the business relationship with Customer have been received. In the event the spare parts are processed, assembled or blended with items not belonging to Singulus, Singulus shall obtain joint title to the new spare parts in the proportion of the invoice amount of the good retained by Singulus to the invoice values of the other materials.
- 8.2 Customer shall be obligated to treat the delivered good with due care until paid for in full as provided in Clause 8.1 above; Customer shall in particular be obligated to sufficiently insure such good against damage by breakage, fire, water and theft at its own cost at replacement value, and to furnish proof of such insurance cover within a reasonable period of time upon request. Singulus shall be entitled to take out such insurance at Customer's expense. Customer is obliged to observe the maintenance and service instructions set forth in the operating and maintenance manual provided to it by Singulus.
- 8.3 Customer must inform Singulus without delay in writing in the event of any pledges or other third-party interference so that Singulus can take any procedural or out-of-court measures Singulus deems appropriate. To the extent that the third party is not in the position to reimburse Singulus for the costs of such action in or out of court, Customer shall be liable for Singulus' loss.
- 8.4 Customer shall be entitled to sell the spare parts in the ordinary course of business; in any event, Customer assigns already now in advance all future contingent receivables from any sale of the good including bills of exchange and cheques in the amount of the invoice value (including value-added tax) in order to secure the respective claims of Singulus hereunder. In the event spare parts to which Singulus holds a joint title are sold, the assignment shall be limited to that portion of the receivables, which corresponds to the portion in joint ownership. Customer shall continue to be entitled to collect such receivables after the claims have been assigned. The authority of Singulus to collect the receivables shall remain unaffected. Singulus shall, however, be obligated to not collect the receivables as long as Customer fulfils its payment obligations from the proceeds received, does not default in payment and in particular, no petition has been filed to commence insolvency proceedings, or payments have not been suspended. In the latter event, Singulus shall be entitled to demand that Customer notify Singulus of the assignment of the receivables and their debtors, provides all information necessary for collection, surrender all related documents and inform the third party of the assignment.
- 8.5 If the retention of title in accordance with the above provisions is invalid under the law applicable at the place where the spare parts subject to retention of title are located, such retention of title shall be replaced with retroactive effect by such means of providing security permitted at the relevant place

which comes closest to the retention of title in accordance with the above provisions; whereby Customer shall cooperate in the taking of all measures which are necessary to establish and maintain such security or a retention of title in accordance with the provisions applicable at the relevant place.

- 8.6 Customer hereby irrevocably grants Singulus the unlimited right to access and trespass Customer's premises for the purpose of enforcing its retained title to the spare parts, in particular in order to collect the spare parts.

9. **TRANSFER OF RISK; PACKAGING**

- 9.1 The risk of accidental damage or accidental loss of the spare parts shall pass to Customer according to the EXW provisions of the ICC INCOTERMS 2000 for EXW-shipments, unless a different INCOTERM provision has been agreed.

- 9.2 No packaging material shall be taken back. Customer shall be obligated to ensure the proper disposal of such packaging at its own expense.

- 9.3 If dispatch of spare parts is delayed by reasons beyond Singulus' control, risk shall pass to Customer upon notice that the spare parts are available for disposal.

10. **SECURITY**

- 10.1 Customer undertakes to keep secret and not to communicate to third parties, in particular to competitors of Singulus, any technical information relating to the hardware, technical documentation and software of the spare parts or any other information, including technical or commercial business secrets, which is either marked confidential or which has to be deemed confidential from the circumstances in which it is provided or which comes to the attention of the other parts (KNOW-HOW). Under the secrecy obligation Customer undertakes in particular:

- not to disclose the KNOW-HOW to third parties, in particular competitors of Singulus by, inter alia, making available plans, flow-charts, specifications, manuals or other documentation containing the KNOW-HOW; and
- not to disclose the spare parts or the way those work in detail to third parties, in particular any competitor of Singulus, by opening them or removing components or otherwise examining or demonstrating them.

Customer will take all appropriate measures to protect the KNOW-HOW from any non-permitted disclosure, distribution and use. Customer will provide only such employees with the KNOW-HOW who work with the spare parts and/or support the Service Work and who need the KNOW-HOW for their work with the spare parts and/or for their support of the Service Work. Before Customer provides its employees with the KNOW-HOW, he will inform the employees that the KNOW-HOW is confidential and he will put them under the same obligation of secrecy pursuant to the provision of this clause as Customer is himself.

- 10.2 The secrecy obligation does not apply to any information of which Customer can prove by written documents, documentation or evidence that it

- was known to Customer at the time of disclosure and was not disclosed to it by a third party in breach of any secrecy obligation, or
- is generally available to the public through no fault of Customer, or
- was received by Customer under no obligation of secrecy from a third party which did not receive it directly or indirectly from Singulus.

- 10.3 Customer is not allowed to copy directly or indirectly the design and lay-out of the spare parts or any part of the spare parts.
- 10.4 Singulus retains all rights in the KNOW-HOW, irrespective of the way it is embodied, for instance in the form of electronical, optical, magnetical or other data storage media, documents, specifications, flowcharts, program-listings.
- 10.5 The secrecy obligation shall survive even if Singulus and Customer have fulfilled all other obligations under the contract
- 10.6 Customer agrees to protect Singulus and its business and expressly agrees that monetary damages would be inadequate to compensate for any breach of Clause 10. Accordingly, Customer agrees and acknowledges that any such violation or threatened violation shall cause irreparable injury to Singulus and that, in addition to any other remedies that may be available in law, equity or otherwise, Singulus shall be entitled to obtain injunctive relief against the breach of this clause or the continuation of any such breach, provided that Singulus clearly demonstrates that damages might occur, without the necessity of proving actual damages.

11. SOFTWARE LICENSE

- 11.1 In case the delivered spare parts include software, Singulus hereby grants to Customer the non-exclusive right to use such software in object code form and the related documentation strictly for the purpose of operating and maintaining the delivered spare parts. Customer shall not be entitled to use the software on any other equipment, system or otherwise.
- 11.2 Customer must not copy, edit, compile, decompile, reverse engineer, disassemble or otherwise modify the software, unless permitted under Sections 69d and 69e of the German Copyright Act (*Urheberrechtsgesetz*). Customer shall not remove, delete or in any manner alter copyright notices appearing on the delivered good or on the software and documentation.
- 11.3 Customer's rights in the software shall be limited to those expressly granted hereunder or under the respective individual agreement. Singulus reserves all rights and licenses in and to the software not expressly granted to Customer hereunder or under the respective individual agreement.

12. LIABILITY FOR PATENT INFRINGEMENTS

- 12.1 Unless otherwise indicated by Singulus, the spare parts supplied are to the best of Singulus' knowledge free from any third party rights in the Federal Republic of Germany. Should despite this the spare parts supplied hereunder or part thereof, at the moment of conclusion of contract, infringe a third party patent already granted and published in the Federal Republic of Germany or – if the spare parts supplied expressly comprise a specific process right – infringe on patented process rights for which infringement Customer is held liable by a third party, Singulus shall at its own expense and at its discretion within reasonable time procure for Customer the right to continue to use the spare parts or part thereof or to modify or replace them with non-infringing spare parts or process or to withdraw from the contract. Singulus excludes any additional liability, e.g. for damages, royalties, processes, applications, products or the like. Customer shall be obliged to inform Singulus immediately of any third party's claim of intellectual property rights.
- 12.2 Clause 12.1 above shall not apply, if third-party patents are infringed by a design or specification furnished by Customer. In this case Customer shall use its best efforts to support the defence of Singulus against any claim and indemnify Singulus in case of implementation.

13. MISCELLANEOUS

- 13.1 All agreements concluded between Singulus and Customer for the performance of these General Conditions of Sale of Spare Parts and Service Assignments must be made in writing; this shall also apply to any waiver of this requirement for the written form.
- 13.2 In the event any provision of the written agreements individually arranged upon the conclusion of the

General Conditions of Sale of Spare Parts and Service Assignments or in the individual orders and/or the provisions merely affecting the subject, type, scope, quantity and quality of the contractual deliveries and performances as well as agreements regarding price are or become invalid or impracticable, any invalid or impracticable provision shall be replaced with retroactive effect by the provision which approximates closest in terms of contents and economic intent to the invalid or impracticable provision.

- 13.3 The legal relationship of the parties arising from or related to these General Conditions of Sale of Spare Parts and Service Assignments shall be subject to the laws of the Federal Republic of Germany without recourse to its conflict of laws rules. The uniform UN Law on Sales (CISG) shall not apply.
- 13.4 Customer is not entitled to assign any claims it may have against Singulus.
- 13.5 All disputes arising in connection with these General Conditions of Sale of Spare Parts and Service Assignments or its validity shall be finally settled in accordance with the Arbitration Rules of the German Institution of Arbitration e.V. (DIS) by one arbitrator appointed in accordance with the said Rules without recourse to the ordinary courts of law, or, at the exclusive choice of Singulus, either by the courts of Aschaffenburg, Germany, or any court having jurisdiction over Customer. Both parties agree to accept the decision of the arbitrator as final and binding on them, to the exclusion of all other remedies.
- 13.6 Singulus, or any person determined by it, is entitled to initiate and conduct any above-mentioned form of legal proceedings.
- 13.7 Submission to arbitration pursuant to this clause is without prejudice to the parties' right to seek injunctive relief or seizure or other provisional remedies in a court of any competent jurisdiction.
- 13.8 The language of correspondence and the language used in the settlement of disputes shall be English unless otherwise required by mandatory law. The place of arbitration shall be Frankfurt am Main. The costs of dispute settlement shall be borne in accordance with the respective rules of the German Code of Civil Procedure.