

SIMEM GENERAL SALES CONDITIONS (rel 10-2018)

1 Defined Terms

Unless the context otherwise requires:

“Goods” means all goods supplied from time to time to you by SIMEM and your goods delivered to SIMEM for Service.

“SIMEM” means SIMEM S.p.A. and each of its subsidiaries and related parties from time to time and includes any one or more of them or any combination of any of them (whether or not acting jointly and/or severally).

“Service(s)” means any service work, repair, inspection, advice or other services provided to you by SIMEM.

2 Terms of contract

Any Goods or Services supplied to you shall be subject to these Terms unless SIMEM agrees otherwise in writing. If you accept delivery of Goods from SIMEM, or deliver Goods to SIMEM for repairs or servicing, those actions by you will be deemed to be acceptance of these Terms, notwithstanding anything that may be stated to the contrary in your enquiries or your order. These Terms do not apply to any Goods sold to you on hire purchase or leased to you by SIMEM.

3 Price

3.1 The price for Goods and Services will be either as quoted to you in writing or, if no written quote is provided, pursuant to SIMEM's standard charges applying at the time.

3.2 The price quoted refers exclusively to the Goods as described, including any technical characteristics specified.

3.3 Unless otherwise agreed in writing, all freight, insurance, delivery and travel charges will be additional to any price quoted.

3.4 Unless otherwise agreed in writing, any quoted price may be altered prior to delivery of Goods to you, or before completion of repairs or services by SIMEM, if SIMEM's costs fluctuate materially. SIMEM will notify you promptly if this occurs.

3.5 SIMEM may withdraw any quotation before it is accepted and, in any event, any quotation will lapse without notice 30 days after the date it is given.

3.6 VAT, if applicable, and any other taxes, will be payable by you as an additional amount on all prices and charges.

3.7 Where the price quoted includes assembly of Goods on site by SIMEM, that price does not include:

- (a) Foundations, if necessary, including anchorage systems according to the loads supplied by SIMEM;
- (b) Lifting equipment to unload and place the Goods, support platforms and any personnel required to assist SIMEM's technicians;
- (c) Electrical installation, plumbing and pneumatic pipes and lines;
- (d) Electricity and water supplies;
- (e) Any warning signs or systems necessary to prevent access to the area;

(f) The obtaining of any consents required by law in relation to the assembly and construction of the Goods; and

(g) Disposal of waste or packaging material.

4 Payment

4.1 Unless otherwise agreed by SIMEM in writing you must pay for Services within seven days of receipt of SIMEM's invoice relating to those Services.

4.2 Where SIMEM, at its sole discretion, agrees in writing, payment for spare parts may be made on the same terms as Services.

4.3 If full payment for the Goods or Services is not made on the due date, then without prejudice to any other remedies available to SIMEM:

(a) All monies owing to SIMEM shall become immediately due and payable;

(b) SIMEM may cancel or withhold supply of further Goods or Services;

(c) Interest on monies overdue shall be charged on a monthly basis and be calculated at a rate of 2% of the outstanding balance per month, and interest shall continue to accrue both before and after judgment. You shall be responsible for all costs incurred by SIMEM in recovering such monies.

4.4 SIMEM shall have a full right of set-off with respect to amounts owed by you to SIMEM under these Terms, in relation to any monies owed by SIMEM to you howsoever arising. Your obligation under these Terms shall be to pay the full amount owing under these Terms free of all deductions or rights of set off.

5 Ownership and Risk

5.1 Ownership in the Goods shall not pass upon delivery, but shall remain with SIMEM until full payment has been made to SIMEM for those Goods.

5.2 Unless SIMEM has quoted otherwise, risk in respect of the Goods sold shall pass to you when the Goods are delivered to you or your carrier, or the time you pay for the Goods, whichever is the earlier. Risk in the Goods in SIMEM's possession for Service remains with you. When sending Goods to SIMEM, it is your responsibility to insure the Goods, even if SIMEM has arranged the transportation of the Goods.

6 Liens

All Goods delivered to or in SIMEM's possession for Service are subject to a lien for any sums owing by you to SIMEM for Service performed on the Goods. Where SIMEM retains a lien over any of your Goods and you are more than three months overdue with any monies owing, SIMEM may, without further notice, sell the Goods in such a manner and such terms as it thinks fit and may, from sale proceeds, recover the amounts owing to it for work done, and any expenses of sale..

7 Delivery

7.1 Unless otherwise agreed, you shall be responsible for the cost of and arranging transportation of all Goods. If SIMEM is delivering the Goods to you, it will use its best



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endeavours to see that deliveries are made according to schedule, but shall not be responsible for delivery delays due to causes beyond its control.

7.2 Where you have agreed to take delivery of the Goods from SIMEM's factory and the Goods have not been collected within 60 days of SIMEM's notification to you of their readiness for collection, SIMEM may cancel the sales contract and retain the deposit. If the Goods are not collected within 7 days from the notification of readiness, SIMEM has the right to store the Goods outside. In this case SIMEM cannot ensure constant surveillance and will not be responsible for vandalism, impact of weather or any other kind of damage not due to SIMEM's negligence.

8 Installation and Final Testing

8.1 If installation and/or on-site testing is to be provided by SIMEM, this will be specified in SIMEM's quote for the Goods.

8.2 On-site testing will be performed only by authorised SIMEM technicians.

8.3 Following satisfactory testing, you will be required to sign a test certificate. If you are unable to be present for the testing, the test certificate will be issued by SIMEM and will be implicitly accepted by you.

8.4 Where testing occurs, the warranty period for the Goods will commence from the date of the issuance of the test certificate.

9 Safety on site

9.1 The Buyer is required to supply all necessary Personal Protective Equipments to all the personnel involved into installation, commissioning and supervision and he is also required to fill up the Simem Safety Check list before the organization of the installation and/or commissioning visit of any Simem technician.

9.2 The Buyer is responsible for the construction site and for the general technical supervision of it, including safety formalities, accomplishments and charges. Simem employees are not responsible for any safety matter.

10 Manuals

The following documentation is supplied:

Use and maintenance manuals in electronic format; manuals are supplied in English language as per Simem standard, unless differently agreed; translations from English to the specific language of the installation country have to be done by the Importer (mandatory), as per points 1.7.4 and 1.7.4.1 of European regulation 2006/42/CE

11 Exclusions

Simem supply does NOT include :

11.1 Initial and regular testing and calibration for weighing devices; such kind of activities are at charge of the Buyer, through a local specialized company; Simem declines any responsibility coming from dosing errors due to malfunctioning or errors of calibration of the weighing devices

11.2 Digital displays for weighing devices (unless clearly specified)

11.3 Special versions of flanges on silos loading pipes (flanges to be purchased and installed locally)

11.4 Whatever is not clearly indicated in the offer

12 Warranties

12.1 Except where clause 8.4 applies, SIMEM warrants its own Goods against defects in materials or workmanship for 12 months from the date of commissioning or 18 months from date of advice of goods ready for despatch from Simem factory, whichever comes earlier

12.2 Where SIMEM has incorporated another party's goods in the Goods, that party's warranty will apply to its goods and the details of that warranty will be specified to you by SIMEM in its quote.

12.3 Where requested by SIMEM, suspected faulty parts must be returned to SIMEM at your cost. Where SIMEM supplies a replacement part, it will be supplied ex works SIMEM at no charge to you except that any special packaging costs will be payable by you.

12.4 Costs of removal, disassembly, assembly and installation of such parts are yours.

12.5 You must notify SIMEM of a warranty claim within 48 hours of a fault occurring or of you first becoming aware of it.

12.6 The warranty does not apply to; electrical components and any part subject to wear (such as blades, mixer coatings, drive belts, ropes and moveable bucket rollers).

12.7 Actions under clause 9.3 excluded, if not yet expired, the warranty period shall immediately terminate if the Product is repaired, modified, tampered with and/or disassembled (even partially) by you without written approval from SIMEM or its authorized distributor.

13 Supplier's liability

SIMEM's liability to you

13.1 Subject to clause 13.2, SIMEM's total liability in connection with defective or damaged Goods supplied by it or in relation to the provision of Services is limited at SIMEM's option to:

(a) Replacing or repairing the defective or damaged Goods; or

(b) Re-performing the defective Service; or

(c) Refunding the price paid by you for the defective or damaged Goods or provision of Service.

Exclusion of liability

13.2 SIMEM shall not be liable whether in contract (including under any warranty), tort (including negligence), equity or otherwise:

(a) Where you have altered or modified the Goods, mis-applied the Goods, or have subjected them to any unusual or non-recommended use, servicing or handling;

(b) For loss caused by any factors beyond SIMEM's control;



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(c) For loss of revenue, loss of profits, loss of production, loss of use, loss of contract, loss of business or loss of opportunity, whether arising directly or indirectly, or for any indirect or consequential loss of any kind;

(d) For faults due to normal wear and tear.

(e) In relation to any second-hand Goods supplied;

(f) Where the terms of any written warranty have not been complied with or any operation manual or instructions provided to you by SIMEM has not been complied with;

13.3 Except as set out in clauses 13.1 and 13.2, SIMEM will not be liable to you in contract (including under any warranty), tort (including negligence), equity or otherwise for any loss or damage of any nature under these Terms or in relation to any Goods or Services provided to you.

Time limit for bringing any claim:

13.4 In the event of a short delivery or errors in dispatch which would be apparent by inspection on delivery, SIMEM will accept no liability unless notified by you in writing within three days of delivery.

13.5 You may not make or pursue any claim against SIMEM in relation to the provision of any Goods or Services unless you have given SIMEM written notice of the claim (including full particulars of the grounds on which the claim is based) within:

(a) 1 year of the relevant Good or Service being supplied; or

(b) if the claim relates to a breach of a written warranty expressed for a defined period, that defined period.

14 Intellectual Property

14.1 The intellectual property in all drawings, service manuals, software, technical documents provided to you by SIMEM remains with SIMEM. Such material is provided to you for assembly and use of the product and must not be copied, reproduced or communicated to third parties without prior written approval from SIMEM.

14.2 Any idea, concept, project, model or sample developed by SIMEM in relation to any quote made to you for Goods or Services remains the exclusive intellectual property of SIMEM.

15 General Terms

15.1 Dispute resolution

If a dispute arises, the parties will try to settle it by negotiation before resorting to litigation. Up to 30 days shall be permitted for a negotiated resolution to be reached.

15.2 Cancellation

Once accepted by SIMEM, you may not cancel any order for Goods without SIMEM's written consent. If you do so, in addition to any other rights SIMEM may have, SIMEM may retain any deposit paid. SIMEM shall have the right to cancel any order for Goods which it has accepted if, due to circumstances beyond SIMEM's control, it would be impractical or unreasonable to fill the order, if any information supplied by you is materially incorrect or, if in SIMEM's opinion, a satisfactory servicing or repair cannot be achieved.

15.3 Waiver or variation.

Waiver or variation of these Terms by SIMEM will only be effective if given in writing by an authorised person.

Where SIMEM waives any of these Terms the waiver will not affect SIMEM's rights under these Terms at any later time.

15.4 Changes to these Terms

SIMEM may change these terms of trade at any time by changing or removing existing terms or adding new ones. Any change applies from the time it is published on our web site at SIMEM Website. Such change shall not apply to any sales contract not yet completed.

15.5 Governing law

These Terms will be interpreted in accordance with and governed by the laws of Italy and the jurisdiction will be exclusive of the Court of Verona.

15.6 Privacy

You and any guarantor (if relevant) authorise SIMEM to collect and hold personal information from any source it considers appropriate to be used for the purposes of determining credit worthiness, for communicating promotional activities and product information, for debt collection purposes or for any other related purpose. You further authorise SIMEM to disclose personal information, held by it for the purposes set out above, to any other parties. You have a right of access and may request correction of personal information held by SIMEM about you.

15.7 Electronic Messages

You and any guarantor (if relevant) consent to receiving electronic messages (including commercial electronic messages and promotional electronic messages) from SIMEM from time to time.

