



General Terms and Conditions

1. Scope of Application

- 1.1. The general terms and conditions for sales contained herein (the "Terms") shall apply to all quotations and sales made by TFC Simulatoren und Technik GmbH, a Gesellschaft mit beschränkter Haftung (GmbH) created and existing under the laws of the Federal Republic of Germany, registered at the Local Court in Wuppertal, Germany, under the Company Registration No. HRB 21729, with its Head Office at Bonsfelderstr. 71b-73, 42555 Velbert, Germany (hereinafter "TFC Simulatoren und Technik GmbH") concerning the products and services directly or indirectly supplied by TFC Simulatoren und Technik GmbH (the "Products" and "Services").
- 1.2. The validity of any customer (the "Customer") general terms and conditions, especially Customer's standard terms and conditions of purchase, is herewith expressly refuted.
- 1.3. Deviations from these Terms require the explicit written approval of TFC Simulatoren und Technik GmbH.

2. Offer and Acceptance

- 2.1. The Products and/or Services shall be subject to due ordering (offering) by the Customer and order acceptance by TFC Simulatoren und Technik GmbH in writing. In case TFC Simulatoren und Technik GmbH's order acceptance differs from the offer of the Customer, such acceptance constitutes a new non-binding offer of TFC Simulatoren und Technik GmbH.
- 2.2. An order is a binding offer, which can be confirmed in writing by TFC Simulatoren und Technik GmbH within four (4) weeks. The contract is concluded with receipt of order confirmation by TFC Simulatoren und Technik GmbH.
- 2.3. Scope of delivery and/or performance (hereinafter "subject of the contract") by the TFC Simulatoren und Technik GmbH is determined after the order confirmation and any related technical specifications.

3. Documentation

- 3.1. Any documents such as pictures, drawings, details of weights and dimensions, calculations, etc. that TFC Simulatoren und Technik GmbH has transferred or made available to the Customer shall not be deemed to be a constituent part of the accepted order, unless it is expressly stated by TFC Simulatoren und Technik GmbH that they are included. TFC Simulatoren und Technik GmbH also reserves the right to make changes in the technical concept underlying the subject-matter of the relevant order, if this will not impair the quality and specification profile of the Products and/or Services defined in the order.
- 3.2. All documents remain at the sole property of TFC Simulatoren und Technik GmbH even if the subject of contract is transferred to the Customer. They shall be used confidentially and should be not forwarded to third parties without written agreement by TFC Simulatoren und Technik GmbH and should be returned to TFC Simulatoren und Technik GmbH on their demand.

4. Prices

- 4.1. Prices and charges shall apply exclusively as quoted in TFC Simulatoren und Technik GmbH's order acceptance. All prices shall be understood net and in accordance with the trade term agreed in the contract. Such trade term (hereinafter "Trade Term") shall be interpreted in accordance with the INCOTERMS 2010. Prices are exclusive of any taxes, packaging, loading and freight charges.
- 4.2. Unless quoted as a fixed price for a specific period or agreed otherwise in writing, TFC Simulatoren und Technik GmbH may adjust all prices to the general cost trend (in particular to labor agreements, material and manufacturing costs alteration as well as significant exchange rate fluctuations).

5. Terms of Payment

- 5.1. Payment shall be made no later than twenty (20) calendar days from the date of invoice. All payments shall be deemed to have been effected if and when they have been irrevocably credited for TFC Simulatoren und Technik GmbH's free disposal to TFC Simulatoren und Technik GmbH's bank account.
- 5.2. Failure to pay the purchase price by the due date causes the Customer to be in default without any further reminder by TFC Simulatoren und Technik GmbH.
- 5.3. If any payment due to TFC Simulatoren und Technik GmbH is not received on the due date, without prejudice to TFC Simulatoren und Technik GmbH's other rights at law, TFC Simulatoren und Technik GmbH shall be entitled:
 - a) to cease deliveries to the Customer until all outstanding and due payments arising under the business relationship have been effected, and

b) to claim default interest at the amount of eight (8) percentage point above LIBOR.

- 5.4. The Customer shall not be entitled to retain or set off payments due to TFC Simulatoren und Technik GmbH in respect of counterclaims except such claims are undisputed or legally valid. The Customer is entitled to exercise its retention rights only to the extent such rights are based on the same transaction.
- 5.5. If a substantial deterioration occurs in the financial circumstances of the Customer after the contract has been concluded or if circumstances become known to TFC Simulatoren und Technik GmbH that put at risk payment by Customer in total or in due time, TFC Simulatoren und Technik GmbH may, notwithstanding its other rights provided for by law, refuse to perform its obligations under the contract until full payment of due debts has been effected or Customer has provided sufficient security for debts not yet due.
- 5.6. TFC Simulatoren und Technik GmbH is allowed to fix a time limit in which the customer has to decide to meet performance obligations or to provide security. After the time limit has expired, TFC Simulatoren und Technik GmbH may withdraw from the contract.

6. Delivery

- 6.1. Delivery shall be effected as agreed in the contract. General Trade Terms shall be interpreted in accordance with the INCOTERMS 2010. Term of delivery is fulfilled with having the Product ready for delivery and Customer being informed.
- 6.2. Unless otherwise agreed, the delivery shall be made "ex works" (EXW), Velbert. If delivery is agreed, TFC Simulatoren und Technik GmbH will redistribute the cost for packaging, loading and freight. TFC Simulatoren und Technik GmbH will take out an insurance policy for transportation, which will be redistributed to the Customer as well. Any damage occurred during transportation has immediately to be announced from the Customer to the forwarder.
- 6.3. Adherence to the lead time shall be subject to clarification of all commercial and technical questions by Parties and Customer having fulfilled in due time all its obligations under the contract. The delivery time will be extended – notwithstanding TFC Simulatoren und Technik GmbH's other rights due to delay of the Customer – by the specific period for which the Customer falls short of its obligations under the contract.
- 6.4. TFC Simulatoren und Technik GmbH is entitled to make partial deliveries provided that this is reasonable for the Customer.
- 6.5. In the event of dispatch being delayed at Customer's request, TFC Simulatoren und Technik GmbH will demand reimbursement of any expenses incurred. If the Products are stored at TFC Simulatoren und Technik GmbH's premises, the storage fee shall amount to 0,5% of the total purchase price per week of storage or part thereof.
- 6.6. If TFC Simulatoren und Technik GmbH delays delivery, the Customer shall be entitled to claim liquidated damages for delayed delivery in so far as it can be proved that the delay has been caused through the fault of TFC Simulatoren und Technik GmbH and that the Customer has suffered a loss as a result of such delay. The liquidated damages shall be 0,3% for each full month of delay, with a maximum liability of 3% of the purchase price corresponding to such part of the Products or Services in delay. TFC Simulatoren und Technik GmbH's liability shall be limited to compensation for typical, foreseeable damages.
Any further liability on the part of TFC Simulatoren und Technik GmbH on account of delay shall be excluded subject to the provisions in clause 10.1.

7. Transfer of Risk

- 7.1. The risk of loss or random deterioration will be transferred to the Customer on date of handover of Products and/or Services from TFC Simulatoren und Technik GmbH to the forwarder.
- 7.2. In the event of delivery being delayed due to circumstances attributable to the Customer, the risk shall be transferred on the date of TFC Simulatoren und Technik GmbH's notification of the readiness for shipment respectively readiness for acceptance.
- 7.3. TFC Simulatoren und Technik GmbH is entitled to contract insurance against storage risk for Products stored at TFC Simulatoren und Technik GmbH at the expense of the Customer.
- 7.4. If Customer delays acceptance of the Product or returns the Product unjustifiably, TFC Simulatoren und Technik GmbH demands compensation. This compensation will be in the amount of 10% of the net contract value, or higher if TFC Simulatoren und Technik GmbH proves a higher cost of damage or lower if Customer proves that no financial damage occurred.

8. Receipt

- 8.1. Without prejudice to its rights under clause 10 of these Terms, the Customer shall take delivery, respectively acceptance, even if the Products and/or Services show minor deficiencies.

9. Retention of Title

- 9.1. Until fulfilment of all claims existing from the entire business relationship between Customer and TFC Simulatoren und Technik GmbH, TFC Simulatoren und Technik GmbH will release Products or Services pro rata as soon their realizable value of the claim exceeds 10%. During current account the securities serve as collateral for the claim.
- 9.2. If a third party acquires rights to the subject of contract, the Customer now cedes all ensuing rights according to the subject of contract to TFC Simulatoren und Technik GmbH. Herewith TFC Simulatoren und Technik GmbH accepts the assignment. The Customer is obligated to inform TFC Simulatoren und Technik GmbH immediately, if distraint, confiscation or any other order of a third party is done with respect to the subject of contract.
- 9.3. Is the Customer in whole or partially in default of payment, exists an excessive indebtedness, stop of payment or bankruptcy, TFC Simulatoren und Technik GmbH is entitled to withdraw from the contract and to demand immediately all still under title retention given subjects of contract to TFC Simulatoren und Technik GmbH's property. TFC Simulatoren und Technik GmbH is as well allowed to immediately enforce all additional rights from retention of title; the same applies to other essential deterioration of Customer's economic conditions. The Customer grants TFC Simulatoren und Technik GmbH and its representatives access to Customer's business premises during daily business hours. TFC Simulatoren und Technik GmbH is entitled to utilize the subject of the contract with diligence of a prudent businessman to satisfy its pending claims from the proceeds. Any retention rights of the Customer are expressly excluded.

10. Warranty

- 10.1. The Customer shall examine the supplied Products and Services immediately after delivery in order to identify any defects. The Customer shall notify TFC Simulatoren und Technik GmbH in writing within one (1) week of discovery by Customer of such apparent defect. If the Customer fails to provide notification within the exclusion period, the Products and Services shall be deemed to be approved and Customer thus waives its warranty rights hereunder.
- 10.2. In the event of a defect, TFC Simulatoren und Technik GmbH undertakes to first, at its option, repair or replace the defective Products or Services. Product's or Service's repair depends on Customer's payment of reasonable proportion of the remuneration taking into account the defect.
- 10.3. The Customer may within the frame of its statutory rights define a reasonable period for TFC Simulatoren und Technik GmbH - subject to the statutory exceptions - to repair or replace the defective Products or Services and after effectless expiry of such period of time or two (2) fails of supplementary performance by TFC Simulatoren und Technik GmbH, the Customer may rescind the contract. The Customer's right for price reduction shall be excluded. To rescind from the contract is prohibited for the Customer, if the failure is significant, but does not effect operational activities.
- 10.4. Only the Customer is allowed to put in a warranty claim against TFC Simulatoren und Technik GmbH. Assignment of a claim to a third party is not allowed.
- 10.5. The Customer shall not be entitled to any rights as a result of defects that are due e.g. to nonconforming storage, operation, maintenance or excessive or inappropriate use of the subject of the contract, by the use of unsuitable tooling and resources, improper changes, corrective maintenance work and damage to seals in the subject of the contract or by other breach of contractual specifications and product regulations on the Parts and/ or Services of the Customer or a third party.
- 10.6. TFC Simulatoren und Technik GmbH shall not be liable for defects resulting from normal wear and tear.
- 10.7. For defects based on provisions or constructions explicit requested by Customer, TFC Simulatoren und Technik GmbH is not liable.
- 10.8. Liability is also excluded for failure or insufficient backup of databases by the Customer. Failure or insufficient review of programs and data on computer viruses or maintenance of the simulators by the Customer (such as in paragraph 12.3. defined), unusual impacts of any kind (e.g. vibrations of foreign units, intrusion by unauthorized third parties) that are not caused by the TFC Simulatoren und Technik GmbH.
- 10.9. Warranty will be limited to those defects, which become apparent twenty-four (24) months after delivery to the Customer. For Products and Services which are found defective within such period and are replaced or repaired by TFC Simulatoren und Technik GmbH the warranty period shall be extended to twelve (12) months from the date of such repair or replacement. However, the warranty period so extended shall at the latest expire twelve (12) months after the original warranty period has expired.
- 10.10. With regard to claims for compensation and reimbursement of expenses on a defect, clause 10. shall apply.

11. Industrial Property Rights, Defects in Title

- 11.1. In no event shall TFC Simulatoren und Technik GmbH be liable for infringement of patents or any industrial or intellectual or other similar proprietary rights under these terms.
- 11.2. Should other defects in title occur, clause 10. shall apply mutatis mutandis.

12. Limitation of Liability

- 12.1. The Customer shall be solely liable for and shall indemnify and hold harmless TFC Simulatoren und Technik GmbH from and against all liabilities, claims, damages, costs and expenses (including legal expenses and attorney fees) in respect of loss of or damage to the Customer's property and/or injury to or death of the directors, officers, agents or employees of the Customer and/or for any loss or damage caused by the Customer to third parties arising out of, caused by or in any way connected with the use of any Services or Products of TFC Simulatoren und Technik GmbH.
- 12.2. Any liability of TFC Simulatoren und Technik GmbH towards the customer in relation to any of the services or otherwise under these terms (whether arising in contract, tort, delict or other) shall be limited to 10% of the value of the respective product and/ or service under the relevant order.
- 12.3. Disclaimers or restrictions do not apply, to a statutory liability regardless of negligence or fault (according to the product liability law), liability regardless of strict guarantee or liability due to fraudulent concealed defects.
- 12.4. Liability for data loss is confined to the recovery effort, which would have typically occurred for regular backup of the Customer. If the Customer violates his duties according clause 12.3., TFC Simulatoren und Technik GmbH will not be liable for any occurring damages.
- 12.5. As far as TFC Simulatoren und Technik GmbH's liability is excluded or limited under this provisions, this applies also to the personal liability of its employees, representatives or subcontractors.

13. Utilization of Software

- 13.1. If software is included in the scope of delivery, Customer is conceded a non-exclusive and non-transferable right to use supplied software only with its included documentation. Using the software on more than one system is prohibited.
- 13.2. The Customer is only allowed to copy, revise, translate or convert the object code to the source code as regulated by law (§§ 69a ff. UrhG). The Customer undertakes - in particular copyright notices - not to remove or alter without prior written approval of TFC Simulatoren und Technik GmbH. All other rights to the software and the documentation including the copies remain with TFC Simulatoren und Technik GmbH or the software supplier. The granting of sublicenses is not permitted.
- 13.3. The Customer is obliged to protect against data loss due to computer viruses to the independent and regular backup data. The Customer is also obliged to prevent the unauthorized access of its employees and/ or other third parties on the provided software and accompanying documentation through appropriate arrangements.

14. Force Majeure

- 14.1. In cases of force majeure (such as but not limited to strike, legal lock-out, war, civil unrest, acts of terror, natural disasters, prohibitions on import and export, US-restrictions, shortage of energy and raw materials) and in all other circumstances (including late self-delivery) that are beyond TFC Simulatoren und Technik GmbH's control, even if such event occurs on the part of TFC Simulatoren und Technik GmbH's upstream supplier, and which make shipment impossible or unreasonably difficult for third party forwarder, TFC Simulatoren und Technik GmbH shall be entitled to postpone the shipment for the duration of the event and a reasonable period for restart of its business activities and be freed from the obligation to deliver for such extended period.
- 14.2. If performance of TFC Simulatoren und Technik GmbH's obligations is suspended under this clause for more than six (6) month such period is to be understood as unreasonable and TFC Simulatoren und Technik GmbH may withdraw from the contract in whole or in part.
- 14.3. The Customer shall have no right to compensation in such event of Force Majeure.

15. Insurance

- 15.1. The Customer is obliged to treat the subject of contract with care and proper service. In particular the Customer has to insure this at his own expense against fire, water damage, damage, theft and destruction to the value of a new Product or Service. Hereby the Customer transfers the title to insurance benefits to TFC Simulatoren und Technik GmbH. Herewith TFC Simulatoren und Technik GmbH accepts the assignment. The Customer shall conclude and maintain adequate insurance policies to cover its liabilities under the respective contract with TFC Simulatoren und Technik GmbH. The Customer shall provide certificates of such insurances on request of TFC Simulatoren und Technik GmbH at any time.

16. Confidentiality

- 16.1. Any and all author rights, copyrights, industrial proprietary rights of whatever nature relating to quotations and cost estimates, as well as illustrations, drawings, calculations, brochures, catalogues, patterns, prototypes, tools or any other documentation or means provided by TFC

Simulatoren und Technik GmbH under a binding order shall remain the property of TFC Simulatoren und Technik GmbH.

- 16.2. The Customer shall not make accessible or disclose to any third party, use itself or through any third party or copy the contents of any information or documentation provided by TFC Simulatoren und Technik GmbH under these Terms, in whole or in part, without the prior agreement of TFC Simulatoren und Technik GmbH, save as is obligatory pursuant to any governmental or legal requirement imposed on the Customer. In such event, the Customer having become aware of such a requirement shall inform TFC Simulatoren und Technik GmbH of its obligation to disclose if possible prior to such disclosure. If TFC Simulatoren und Technik GmbH wishes to counter such requirement, the Customer shall assist it in doing so.
- 16.3. Upon reasonable written request of TFC Simulatoren und Technik GmbH, the Customer shall return or destroy and irretrievably delete any confidential information furnished to it by TFC Simulatoren und Technik GmbH and any copy made of it and give TFC Simulatoren und Technik GmbH written notice about such destruction and deletion.

17. Export

- 17.1. The Customer acknowledges that the Products and/or Services to be provided by TFC Simulatoren und Technik GmbH under these Terms may be subject to export control laws and regulations, and any supply or use of such Products and/or Services contrary to such laws and regulations is prohibited.
- 17.2. Customer shall indemnify and hold TFC Simulatoren und Technik GmbH harmless against any losses, damages, fees or monetary sanctions imposed on TFC Simulatoren und Technik GmbH as a result of Customer's failure to comply with any applicable export control law or regulation.

18. Severability

- 18.1. Should any of the above provisions be or become void, illegal or unenforceable, or should they contain a gap, the validity of the remaining provisions shall not be affected.

19. No Assignment

- 19.1. The customer shall not assign, transfer or otherwise deal with any of its rights or obligations arising under its business relation to TFC Simulatoren und Technik GmbH (including the right to receive delivery) without the prior written consent of TFC Simulatoren und Technik GmbH.

20. Governing Law and Arbitration

- 20.1. All disputes arising out of or in connection with the transaction governed by this Terms, shall be finally and conclusively based on this Terms with resort to German law excepting its rules for the conflict of laws and United Nations Convention on Contracts for the International Sale of Goods (CISG).

21. Miscellaneous Provisions

- 21.1. Changes and additions to the contract as well as additional agreements require the written form. This also applies to a waiver of this written form clause.