

Simac PHI DATA® General Terms and Conditions v13.004

These General Terms and Conditions shall apply to all quotations, orders, order confirmations, agreements, deliveries and invoices of, with and by Simac PHI DATA®. Depending on the nature of the assignment, in addition to the General Terms and Conditions, special conditions shall apply to graphic production and installation assignments, where a deviating and/or more specific definition of the special conditions has preference. When signing the agreement, the customer shall be deemed to know and accept all aforementioned conditions. The application of the customer's General Terms and Conditions is explicitly excluded.

Quotations

Quotations shall remain valid for 30 days.

Quotations, plans and concepts of Simac PHI DATA® shall remain the property of Simac PHI DATA®. It shall not be permitted to disclose these to third parties before or during the performance, nor after the termination of the agreement. In case of a breach of this clause, the Customer shall owe Simac PHI DATA® lump sum damages in the amount of € 50,000, without prejudice to the right of Simac PHI DATA® to claim higher damages if the real amount of the damages is proven to be higher.

Orders

Orders must be placed in writing. Simac PHI DATA® shall confirm orders by means of an order confirmation. The conditions laid out in the order confirmation shall be binding and decisive for the performance of the agreement.

When an order is placed, an advance of 30% must be paid, unless stated otherwise in the quotation.

Orders can no longer be changed once their performance or production has started. Changes to orders before the start of the performance or production may lead to a price adjustment.

Any cancellation must be made in writing before the start of the performance or production. It shall only be valid after written confirmation from Simac PHI DATA®.

In case of a cancellation, the Customer shall owe Simac PHI DATA® lump sum damages in the amount of 20% of the order price, without prejudice to the right of Simac PHI DATA® to claim higher damages if the real amount of the damages is proven to be higher.

Prices and rates

All prices are in euros and excluding VAT, taxes and other government levies, which shall be paid by the customer. For every order, a fixed handling fee of € 50 shall be charged.

Deliveries

Orders with a delivery address in Belgium or Luxembourg shall be delivered under the conditions 'Delivery Duty Paid', VAT, taxes and other government levies excluded. Orders with a delivery address outside Belgium or Luxembourg, on the other hand, shall be delivered 'Ex Works'.

Assembly, installation and/or putting into service are not included in the delivery. The delivery periods stated shall be indicative only and any delays in the delivery shall not give rise to a right to damages, termination of the agreement or a claim for its dissolution. In any case, the term shall only commence after receipt of any advances agreed on and of all necessary technical data and payment guarantees agreed on.

Payment

Unless otherwise agreed by the parties, invoices from Simac PHI DATA® shall be payable at the registered office of the company, without discount and/or set-off, within 10 days from the date of the invoice. In the case of new customers or in case of doubt relating to solvency, Simac PHI DATA® shall at all times be entitled to payment in advance, or to ask for a security, in the absence of which Simac PHI DATA® shall be entitled to immediately and unilaterally terminate the agreement, without prejudice to the right of Simac PHI DATA® to compensation for damage and costs.

In case of non-payment on the maturity date, the unpaid amount shall automatically and without notice of default be increased with interest on arrears in the amount of 1% per month, as well as with lump sum damages in the amount of 10% on the unpaid amount up to € 12,935 and 5% on the unpaid amount above € 12,935, with a minimum of € 75, without prejudice to the right of Simac PHI DATA® to claim higher damages if the real amount of the damages is proven to be higher.

In case of late payment of an invoice, any other amounts due by the customer which have not yet reached their maturity date shall automatically and without prior notice of default become payable.

Any late payment shall automatically and without notice of default entitle Simac PHI DATA® to set off the amount(s) owed against any outstanding debts it may have with the customer.

In case of a breach by the customer, all services already delivered, as well as all costs incurred, shall be invoiced, and the Customer shall owe Simac PHI DATA® additional lump sum damages in the amount of 30% of the remaining price of the order, without prejudice to the right of Simac PHI DATA® to claim higher damages if the real amount of the damages is proven to be higher.

In case of a cancellation or breach, any advances paid shall be set off against the amounts of damages owed.

Purchase agreements

In a purchase agreement, the customer commits to purchasing the entire amount of goods and/or services agreed on. After the end date of the agreement, the remaining goods shall automatically be delivered and invoiced to the customer. Any services that have not been purchased shall be invoiced at 50% in compensation of the costs incurred as a result of the making available of personnel and subcontractors, and loss of income.

Purchase agreement shall mean an agreement in which Simac PHI DATA® and the customer agree to deliver/purchase a certain amount of goods and/or services within a specific period of time, spread out over several deliveries/purchases.

Complaints

In case of a complaint, the customer shall communicate this to Simac PHI DATA® by registered letter at the latest within five working days of the receipt of the first delivery. If the customer fails to receive the goods, the period of five working days shall start on the date of the invitation to receive the goods. In the absence of such invitation, on the date of the invoice. The complaint must contain a detailed and exhaustive list of shortcomings.

If Simac PHI DATA® has not received any complaint within the specified term, this shall mean that the customer accepts the entire delivery. The use or putting into circulation of part of the delivery by the customer shall also mean that the customer accepts the entire delivery. Shortcomings that affect part of the deliveries shall not entitle the customer to reject those deliveries entirely.

If the customer is asked to sign service sheets, the signing of these sheets shall constitute conclusive proof of his acceptance that the services described in those sheets have been performed, and no complaints shall be accepted in respect thereof.

Retention of title

Simac PHI DATA® shall remain the owner of the goods delivered until all obligations under the agreement have been fulfilled and all amounts due have been paid in full. As soon as the customer has the goods in his possession, the risk shall pass to him, and he shall protect the goods against damage.

Warranty and limitation of liability

The warranty on the goods delivered by Simac PHI DATA® shall be limited, where both content and duration are concerned, to the duration of the warranty provided by the manufacturer. For hardware the warranty period shall be one year from delivery. The warranty shall be complied with through repair (i.e. parts and man hours, carry-in, and based on availability of parts and personnel) and if this turns out to be impossible, through replacement with equivalent goods, taking back the flawed products. Depending on the availability of tools, parts and personnel, the customer may have to observe a waiting period.

Simac PHI DATA® shall only be liable in case of intent or gross negligence. In any case, its liability shall be limited to the price of the part of the deliveries that is not accepted, and it shall therefore never exceed the invoiced amount. No indemnity shall be provided against indirect damage, non-pecuniary loss or even other direct damage, including, without limitation, loss of income and profits, loss of customers, loss or damaging of data, loss of contracts, supplementary costs.

If a third party holds Simac PHI DATA® liable for any kind of damage, for which Simac PHI DATA® is not liable by virtue of the agreement with the customer or these General Terms and Conditions, the customer shall hold Simac PHI DATA® harmless and compensate Simac PHI DATA® in full for all amounts it has to pay to third parties.

Simac PHI DATA® cannot be held liable for shortcomings resulting from any kind of force majeure.

Insolvency

Simac PHI DATA® shall be entitled to terminate the agreement with immediate effect without being liable for any damages in case of bankruptcy, suspension of payment, liquidation or reorganisation of a customer by a court. This shall also apply to any other situation where the performance by the customer of his obligations with Simac PHI DATA® is severely threatened and to all events or situations that justify a strong suspicion of the insolvency of the customer, unless the customer provides an indisputable and sufficient guarantee that covers the compliance with all his obligations within 15 days following an invitation to do so by Simac PHI DATA®.

Loyalty clause

The customer undertakes, before and during the performance, as well as after the termination of the agreement, not to disclose any confidential information, of any nature whatsoever, which the customer may have knowledge about as a result of the performance of this agreement. In case of a breach of this clause, the Customer shall owe Simac PHI DATA® lump sum damages in the amount of € 50,000, without prejudice to the right of Simac PHI DATA® to claim higher damages if the real amount of the damages is proven to be higher.

From the signature of the agreement until a year after its termination, the customer shall refrain from hiring or otherwise having work for him any employees of Simac PHI DATA® or its suppliers who are or have been involved in the performance of the agreement in question. For any breach of this provision without prior written permission from Simac PHI DATA® the Customer shall also owe Simac PHI DATA® the lump sum damages mentioned in the previous paragraph, without prejudice to the right of Simac PHI DATA® to claim higher damages if the real amount of the damages is proven to be higher.

Safety

The customer shall inform Simac PHI DATA® in writing of all safety regulations that apply at the site and in the buildings of his company before the arrival of an employee of Simac PHI DATA®. Simac PHI DATA® cannot be held liable for failure to comply with regulations that have not been notified, or have been notified late. The customer shall hold Simac PHI DATA® harmless against any claim from third parties resulting from the failure to comply with this clause.

Validity

If any part or any clause of the conditions of this agreement is found to be invalid or unenforceable, for whatever reason, this shall not affect the legal validity of the remaining parts or clauses, and these shall continue to apply. Each such part or clause shall be replaced by a provision that as far as is legally permissible comes closest to what the parties strived for in the respective part or clause.

Changes

Simac PHI DATA® shall be entitled to change its General Terms and Conditions at any time. The changed conditions shall apply to all deliveries of goods and/or services that take place after the change.

Applicable law and jurisdiction

The agreements between Simac PHI DATA® and the customer shall be governed exclusively by Belgian law. Any disputes arising from or relating to the agreement may, at the claimant's choice, be heard exclusively by the courts of Brussels, and, if applicable, by the Justice of the Peace of the district of Meise, or by the court of the district where the defendant is established.

Special conditions for graphic products and services

These special conditions shall apply to all services provided and all sales for/of graphic products and services, including consumables for use in thermal, laser, line and matrix printers, etc.

Design, printing and other proofs

The customer shall be under the obligation to carefully check the design, printing and other proofs provided by Simac PHI DATA® for errors and shortcomings, and return these with reasonable speed after having approved or corrected them. Simac PHI DATA® shall not be liable for any deviations, errors or shortcomings in proofs that have been approved or corrected by the Customer.

Deviations

Deviations between the delivered products, on the one hand, and the original design, calculation, draft or model, or the design, printing or other proof, on the other hand, shall not constitute a valid reason for rejection of the delivery, discount, dissolution of the agreement or damages, if these are of little significance. A representative sample from the delivered products has to prove whether the deviations throughout the whole of the delivery can be considered to be of little significance. Deviations which, considering all circumstances, can reasonably be assumed to have no or negligible influence on the value of use of the products, shall irrefutably be deemed to be of little significance.

The following deviations shall also be tolerated:

- a delivery of up to 10% more or less than the amount ordered; this difference will be calculated and invoiced at unit price;

- a margin of 8% more or less of the micrometric thickness of the consumable;
- slight differences in colour, purity, smoothness, satin finish, appearance and gluing, e.g. between the front and back of the sheet, and even if these differences appear within the same delivery or production.

Protection of intellectual property rights

The Customer guarantees Simac PHI DATA® that the performance of the agreement, or the reproduction or dissemination of the materials provided by the Customer (e.g. copies, designs, drawings, models, graphic materials, data storage media, etc.), as the case may be, will not lead to a breach of intellectual property rights of third parties. In any case, the Customer shall hold Simac PHI DATA® harmless against all possible claims from holders of such rights against it.

In case of doubt regarding the validity of intellectual property rights of third parties, Simac PHI DATA® may suspend the performance of the services agreed on until there is complete clarity concerning the rights in question.

Unless expressly agreed otherwise in writing, Simac PHI DATA® alone shall retain all copyrights to its original creations (e.g. copies, designs, drawings, models, graphic materials, data storage media, programmes, data files, etc.), including those that are created specifically in the framework of the agreement with the customer. As a result, these creations or substantial parts of their design may not be reproduced, regardless of the manner and purpose, without prior written permission from Simac PHI DATA®.

The customer is granted a non-exclusive right to use the material created by Simac PHI DATA® in the framework of the agreement. This right shall be limited to a normal use of the material, excluding any right of reproduction.

Notifications from third parties (hardware manufacturers & software vendors)

1. Notification about manufacturers 'product usage' information collection.

Certain products may include software to collect information about how, and under what conditions, the product is used and functions, including without limitation information describing use of the touch panel, the keyboard, docking events, system up and down time, backlighting use, and peripheral utilization. This information may be used for any purpose by the manufacturer and its affiliates, including research and analytics to improve Product functionality and optimize customer use. No end-user identifiable data will be provided to any third party.

2. Notification about Software License Agreements.

The software (application and system software) that is supplied to customers is mostly license based. By installing, activating or using the software the customer agrees to be bound by the Software License Agreement of the manufacturer and the software suppliers.

Manufacturer and software vendor license agreements are available on request.