

# GENERAL TERMS AND CONDITIONS OF BUSINESS OF SII TECHNOLOGIES GMBH



## 1. General

### 1.1. Area of applicability

The following general terms and conditions of business of SII Holding GmbH (hereinafter referred to as "SII") shall apply to all current and future business relationships, as well as to all contracts which are concluded between SII and the Principal. These shall apply both to SII Technologies GmbH as well as to the following subsidiary companies:

SII Precision Parts GmbH  
SII Systems GmbH

as well as to future companies which are associated with SII in analogue terms in accordance with § 15 of the German Stock Corporation Act (AktG).

### 1.2. Defence clause

The general terms and conditions of purchase shall apply exclusively. Terms and conditions of business of the Principal which deviate from, oppose or supplement these general terms and conditions of purchase shall not be binding on SII. The above provision shall also apply even if no express objection is lodged by SII.

### 1.3. Version

The general terms and conditions of purchase shall also apply as a framework agreement in the respective version for future contracts with the same principal, without SII being required to refer to them in individual cases.

### 1.4. Written form clause

All agreements which are concluded between SII and the Principal in respect of the performance of this contract, as well as declarations and notifications which are to be made in relation to SII following the conclusion of the contract (for example the setting of deadlines, warnings, declarations of rescission) shall require written form. Individual agreements with the Principal shall take priority over these general terms and conditions of purchase.

### 1.5. Statutory regulations

References to the validity of statutory regulations shall only have an explanatory function. Therefore, the statutory regulations shall also apply without such a clarification, to the extent that they are not directly changed or are explicitly excluded in these general terms and conditions of business.

## 2. Conclusion of the contract

### 2.1. Offer and acceptance

The offers of SII shall be non-binding, unless expressly referred to as binding in the offer. Unless SII has expressly stated that the offer is of a binding nature and the potential Principal has submitted a "declaration of acceptance", a contractual conclusion shall not come into existence until the written order confirmation of SII has taken place. Should the "declaration of acceptance" qualify as being an application as defined in § 145 of the German Civil Code (BGB), SII shall be able to accept this within four (4) weeks of the receipt of the declaration. Should the written order confirmation deviate from the application, the order confirmation shall remain decisive, unless the Principal submits an immediate objection.

### 2.2. Subject matter of the contract and contractual documents

The Principal hereby engages SII in respect of the performance of services and/or work and in respect of the delivery of objects in accordance with a contract of purchase /work (the latter hereinafter referred to as "subject matter of the service", the above-mentioned services and delivery of items referred to in abbreviated form as "engineering services") in accordance with the provisions of the individual order. In addition, the following contractual foundations shall be decisive in the order of their naming:

- a) the mutual corresponding written declarations of the Contracting Parties and, to the extent that is present, the specification sheet and CAD guidelines of the Principal, as well as the drawings, images, constructions, plans, measures, weights or other service data made available by it;
- b) the order confirmation of SII; should no order confirmation or mutual written declarations be present, the written order / the engagement of the Principal;
- c) these general terms and conditions of business.

### 2.3. Inspection obligation of the Principal

The Principal shall independently check its technical requirements, such as drawings, calculations and other specifications for defects and inconsistencies within the framework of its specialist knowledge and shall incur liability in respect of these being free from third party property rights.

### 2.4. Self supply reservation

The conclusion of the contract shall take place subject to the correct and timely self supply by the suppliers of SII. This shall only apply to cases in which SII is not responsible for the non-supply, in particular in case of conclusion of a congruent covering order with a supplier. The Principal shall be immediately informed of the non-availability of the services; the consideration in this respect shall be immediately refunded.

## 3. Provision of engineering services, co-operation obligations, reservation of right to make amendments

### 3.1. Quality statements concerning engineering services

Specifications, descriptions, drawings, photographs, illustrations, measurements, weight particulars and other technical information concerning the engineering services, advertising documents and sample books shall only be of a descriptive nature, even if SII makes these available. The statements made therein shall not represent any undertaking concerning a characteristic and shall not represent a quality guarantee as defined in §§ 443, 434 of the German Civil Code (BGB). A sale by sample shall require a separate agreement in accordance with Number 1.4 (written form in line with § 126 BGB) SII does not provide a guarantee that the manufactured products correspond to such or similar products from previous orders.

### 3.2. Co-operation actions - general

The Principal shall properly provide all necessary advance services or other co-operation actions at its own expense, in particular on time. The same shall apply in respect of any vicarious agents of the Principal.

Regardless of any fixed or maximum price which is agreed, the Principal shall bear the costs of the additional expenses incurred as a result of engineering services of SII needing to



be repeatedly provided or being delayed due to delayed, incorrect or incomplete information, improper advance services or other insufficient co-operation actions. Should the co-operation actions not be performed on time, agreed deadlines shall be extended accordingly. SII shall not pay any compensation for damage which was caused by improper co-operation actions. The provision of documentation, documents, hardware and software, as well as all other necessary items for the provision of the engineering services which is owed within the framework of the co-operation action, as well as any necessary delivery and return transportation of an inspection shall be agreed with SII in terms of date and time. Should no collection of the inspection, documents, papers, hardware and software, as well as the necessary items etc. take place following completion of the order, despite a request by SII, the return transportation and sending back can be carried out at the expense of the Principal.

### **3.3. Co-operation obligation of the Principal prior to further use**

The Principal shall be obliged to check the engineering services of SII experimentally for regularity prior to the further use, in particular prior to processing. Minor quality deviations in the nature of the engineering services shall not entitle the Principal to refuse acceptance or bring damages claims. Damage which was caused by the further use of the defective engineering services in breach of the inspection obligation of Sentence 1 shall not be paid for by SII.

### **3.4. Acceptance default**

Should the Principal enter acceptance default, it shall reimburse SII in respect of the additional expenses incurred and, in case of the presence of a culpable breach of obligations, the losses incurred as a result.

Should the Principal request a delayed delivery/provision of the engineering services, SII shall be entitled to charge provision costs, such as warehouse and maintenance expenses to the amount of 0.5 %, however a maximum of a total of 5 % of the contractual price for each commenced month following the agreed delivery time. The Principal shall retain the right to provide proof that no additional expenses or reduced additional expenses were incurred by SII. In return, SII shall return the right to provide proof that higher additional expenses were incurred by it.

### **3.5. Co-operation actions - right of termination**

Should the Principal fail to provide the necessary co-operation actions, should it not ensure the necessary co-operation of the product manufacturer and/or product user which is necessary for the provision of the engineering services, should the information or particulars provided by the Principal, product manufacturer and/or user be unsuitable, incomplete, or should amendment requests require additional work which is not insignificant which has not been taken into account, the additional costs of which will not be borne by the Principal, SII shall be entitled to extraordinary termination of the contract without notice for important reasons, once a reasonable deadline for the creation of appropriate conditions or the payment of the additional costs by the Principal has fruitlessly expired. The Principal shall reimburse the costs which are incurred by SII due to the extraordinary termination.

### **3.6. Statutory regulations**

Should the use of the engineering services be subject to statutory regulations, the Principal shall check and comply

with these. The Principal shall be solely responsible for the use. The Principal shall also be obliged to check the finished product in legal and technical terms. The Principal shall be solely responsible for obtaining all necessary import and export licences, approvals by the customs authorities, permits from the foreign exchange control or other permits which refer to the engineering services at its own expense. The Principal shall also be responsible for keeping these constantly up-to-date.

### **3.7. Changes concerning engineering services**

Should changes to the agreed subject matter of the order be notified, both SII and the Principal shall be entitled to apply for the notified change to the subject matter of the order in writing in relation to the other respective Contracting Party, with the attachment of a justification. SII shall notify the Principal of the cost of the changes, provided that these are foreseeable. The respective other Contracting Party shall provide notification concerning either its agreement to or its rejection of the change application within a reasonable deadline. Rejections must be substantiated.

Changes to construction or form which are due to an improvement in technology or a request by the Principal shall remain reserved during the delivery time, provided that the engineering services are not significantly changed and the amendments are reasonable to the Principal when compared to the subject matter of the order.

### **3.8. Sub-orders, partial deliveries**

SII shall be entitled to issue sub-orders in respect of the provision of the engineering services.

SII shall be permitted to provide partial deliveries, provided that this is reasonable to the Principal.

## **4. Assembly, disposal services**

Should set up and assembly services be included in the scope of the service of SII, the Principal shall provide, at its own expense, the necessary auxiliary personnel, including all personal equipment and clothing, the necessary construction site equipment and objects (for example work tools and lifting devices, cranes), all consumable supplies (for example water and energy) and computing times on a suitable IT system (including a connection to the Internet which corresponds to the size of the project) and similar in this respect.

The Principal shall also bear all of the disposal costs on the construction site connected to the provision of the order for fixed, liquid and gas-forming waste of all types, as well as the ancillary costs of personnel of SII (such as travel and transportation costs, as well as daily allowances). Furthermore, the Principal shall provide suitable and safe accommodation for the SII personnel on the construction site at its own expense, as well as secure storage facilities for clothing, personal equipment, work tools and materials.

Prior to commencement of the assembly work and taking into account a reasonable deadline prior to performance of the order, the Principal shall provide SII with construction site regulations without the need to issue a request. It shall also explain these, following a request by SII. The same shall apply to necessary details and information which are relevant to the proper performance of the order. In particular, this shall include information concerning the locations of completed electricity, gas and water lines or similar facilities as well as



the necessary statistical information and details concerning the quality of the building ground and sub-foundations.

The Principal shall ensure that on commencement of the work in connection with the performance of the order and during this, the construction site is in such a state that the engineering services can be provided without danger or hindrance to the SII personnel or its vicarious agents.

The Principal shall be responsible for taking all necessary measures against accidents and for the use of hazardous work materials, in particular those which are prescribed by law. In addition, the Principal shall provide suitable notification concerning specific circumstances in its operation or operational processes, should these lead to special compliance obligations on the part of SII. The same shall apply in respect of special local legal regulations. SII shall not be responsible for consequences which are due to non-compliance with accident prevention regulations on the part of the Principal.

SII shall not incur liability for repercussions of the starting current on the electricity network of the central power supply or on electrical equipment or machines which are connected to the said electricity network; the shall not apply if SII or its vicarious agents have committed a culpable breach of obligation in this respect.

Should the assembly or putting into operation be delayed due to circumstances for which the Principal is responsible, it shall bear the costs for downtime and additional time, as well as any additional travel expenses of the personnel of SII or its vicarious agents which become necessary.

## **5. Prices, price adjustments, payment default and threatened incapacity to make payment**

### **5.1. Prices, ancillary costs**

The prices shall be ex factory or ex warehouse. The SII price list in its respectively valid version shall also apply.

The cost of packaging, transportation, transportation insurance, interim storage and/or environmental handling fees, installation and value added tax shall be borne by the Principal. The same shall apply in respect of all official duties (taxes, fees, customs charges) which are incurred under or in connection with the conclusion or performance of the contract outside of Germany. The subject matter of the service shall be insured at the expense of the Principal on its request.

### **5.2. Scope of the calculation**

When calculating prices, it is necessary that the positions which form the basis of the submission of the offer remain unchanged, the any necessary preliminary work has already been fully carried out and that co-operation obligations of the Principal and/or its vicarious agents have been fully fulfilled, so that SII can provide the engineering services without hindrance. The offers of SII shall be based on the descriptions of the Principal, without knowledge of the local position.

### **5.3. Price adjustments in case of changes to the services**

In case of changes to the price of materials, wages, shipping, packaging, necessary certificates or the cost of necessary approval procedures, a corresponding price adjustment shall be reserved in case of contracts with a term of at least twelve (12) months, to the extent that such a price adjustment for

which SII is not responsible takes place between conclusion of the contract and the transfer of risk or acceptance of the engineering services which have been provided, and provided that this does not exceed the scope of 5 % of the contractual price per year (hereinafter referred to as "contractual price change"). Contractual price changes of the respective previous year shall form the calculation basis for the calculation of the current price adjustment in the current year, together with the contract price.

### **5.4. Advance payment**

SII shall be entitled to request a reasonable advance payment at its discretion and to issue partial invoices in sections for services which have been already provided.

### **5.5. Due date, payment default**

The Principal shall enter default in respect of the payment of the remuneration owed at the latest if it fails to make payment within thirty (30) days of the due date and receipt of an invoice or an equivalent payment request. On entering default, the Principal shall be obliged to pay interest on the monetary debt to the statutory interest rate for entrepreneurs/merchants of eight (8) percentage points above the current base rate of interest of the European Central Bank which is set out in § 288 Paragraph 2 of the German Civil Code (BGB).

### **5.6. Discount**

The deduction of discounts shall require a separate agreement. Should the Principal be in arrears concerning the payment of previous services without justification, the deduction of discounts shall be excluded.

### **5.7. Right of retention, setting off**

any setting off shall only be permitted with undisputed or legally recognised claims. The assertion of rights of retention shall only be permitted in cases of undisputed or legally recognised counterclaims; otherwise, the setting off and exercising of the right of retention shall be excluded, in particular if this should be asserted under earlier transactions or transactions other than the ongoing business relationship.

### **5.8. Threatened incapacity to make payment on the part of the Principal**

Should the Principal repeatedly fail to comply with agreed terms and dates of payment, or should substantiated and serious doubts concerning the payment capacity of the Principal exist in other forms, SII shall be entitled to choose at any time between demanding performance versus cash payment, advance payment or the provision of security by means of a surety on the part of the Principal. By means of the said demand, all open claims of SII against the Principal for which payment by instalments was agreed upon or for which a bill of exchange was accepted shall be due for immediate payment. Number 8.2 shall not be affected.

## **6. Reservation of ownership**

### **6.1. General**

SII shall reserve ownership of the subject matter of the service until full payment of the purchase price. SII shall also reserve ownership of the subject matter of the service until all claims under the business relationship, including any future claims, regardless of whether these are under current contracts or agreements reached in the future, have been settled. This shall also apply if individual or all claims of SII have been incorporated in an ongoing invoice and the balance is drawn and recognised.



## 6.2. Connection, processing, mixing

Should the subject matter of the service be connected with other items by the Principal, SII shall be entitled to ownership in the new object to the relationship between the invoice value of the subject matter of the service and the invoice value of the new items and the processing value. Should the ownership of SII lapse due to connection, mixing or processing, the Principal shall assign, to SII, the ownership rights in respect of the new item to which it is entitled at the time of conclusion of the contract to the extent of the invoice value of the subject matter of the service and shall store these free-of-charge.

## 6.3. Storage

The Principal shall be obliged to keep the delivered subject matter of the service separate from other stock until payment of all claims under the business relationship and to clearly identify this as the property of SII. In case of a selling on of the subject matter of the service, it shall impose the same obligation on its customer, ensure compliance with this obligation and inform SII of any breaches of the said duties.

## 6.4. Information obligations, entitlement to sell on

In case of seizures or other impairment of the ownership interests, the Principal shall immediately inform SII of such.

The Principal shall immediately inform SII of any third party attacks against the subject matter of the service and the assigned claims. The Principal may only sell the subject matter of the service in the course of normal business dealings on its normal business terms and provided that it is not in default, subject to the claims under the selling on being assigned to SII in accordance with number 6.5 below. The Principal shall not be entitled to any further disposals of the subject matter of the service. The installation of the subject matter of the service in a building or overall facility shall also be deemed to be a further sale.

## 6.5. Assignment of the selling on

The claims of the Customer under the selling on of the goods are hereby now assigned to SII. These serve as a security to the same extent as the subject matter of the service. The same shall also apply to the claim to granting of a debt-securing mortgage in accordance with § 1184 of the German Civil Code (BGB). Should the subject matter of the service be sold together with other delivered items which do not belong to SII, the claim under the selling on shall be assigned in line with the relationship of the subject matter of the service of SII to the other sold item. When selling items in which SII maintain co-ownership shares in accordance with Number 6.2, a part which corresponds to the said ownership proportion shall be assigned to SII. SII hereby accepts the said assignment.

## 6.6. Release of securities

Upon the request of the Principal, SII shall be obliged to release the securities to which it is entitled should the realisable value of its securities exceed the claims to be secured by more than ten percent; SII shall be obliged to select the securities which are to be released.

## 6.7. Insurance

SII shall be entitled to insure the subject matter of the service against all risks at the expense of the Principal, unless the Principal can provide proof that it has taken out the insurance by itself. Should conservation, maintenance and inspection work be necessary, the Principal must have this carried out in good time at its own expense.

## 6.8. Taking back, right of access

Should the Principal enter payment default, also in respect of other future services of SII, or should the Principal enter financial collapse, SII shall be able to rescind the contract and in case of the assertion of damages in lieu of performance, shall be entitled to access the business premises of the Principal and take possession of the subject matter of the service.

## 7. Service and service disruptions

### 7.1. Description of services

SII shall provide the engineering services on the basis of the generally recognised rules of technology that apply at the time of the respective performance, as well as in compliance with the care that is customary in the trade. It is hereby pointed out that it is generally not possible to determine all defects or deviations in respect of the subject matter of the service under all conditions of use. Taking the above fact into account, SII shall provide a guarantee concerning the proper provision and documentation of the agreed engineering services, without providing an undertaking that all product or system defects or deviations can be calculated by SII as a result. Should product or system defects or deviations become known to the Principal during the duration of the contract and warranty period, or should it be aware of such, these must be immediately notified to SII by telephone and in writing.

### 7.2. Sales and work contract

#### 7.2.1. Commencement and duration of the deadline

The delivery deadline shall commence on the sending of the order confirmation. Delivery dates or deadlines shall be deemed to have been complied with if the readiness for dispatch has been notified prior to their expiry or the subject matter of the service has left the factory.

#### 7.2.2. Deadlines, force majeure

The agreed service/delivery dates and the agreed service/delivery deadline shall be agreed in accordance with the expected service capacity of SII. The service/delivery date or the service/delivery deadline shall be reasonably extended, also during a period of default, in case of the presence of force majeure and all unforeseen hindrances which occur following conclusion of the contract for which SII is not responsible, in particular operation disruptions, strikes, blockades or disruption to transportation routes, provided that such hindrances significantly influence the performance and delivery. This shall also apply if the said circumstances occur on the part of distributors, suppliers or subcontractors which are vicarious agents of SII. The start and end of such hindrances shall be notified to the Principal as soon as possible. The Principal may request a declaration from SII as to whether it will rescind the contract, provide performance within a reasonable deadline or whether it intends to deliver. Should SII fail to make an immediate declaration, the Principal shall be entitled to rescind the contract. Damages claims shall be excluded in the above cases.

#### 7.2.3. Acceptance, partial acceptance, assumed acceptance

In cases of works contracts, SII shall be entitled to acceptance, both following the attainment of a project stage and shall also be entitled to partial acceptance of the engineering services provided by it, provided that these have been supplied in accordance with the contract. The Principal shall be obliged to accept the engineering services within three





weeks of the written notification of readiness for acceptance, as well as partial services, and shall sign an acceptance protocol which is to be drawn up. Should the Principal fail to accept within the above-mentioned deadline, even though it is so obliged or should no acceptance take place due to reasons which can be attributed to the area of risk of the Principal, the work or partial work shall be deemed to have been accepted at the latest three weeks following notification of readiness for dispatch or putting into use by the Principal, should SII have notified the Principal in the notice of its readiness for acceptance of the consequences of its behaviour.

#### **7.2.4. Assumption of risk**

On delivery of the subject matter of the service, the risk shall be transferred to the Principal on dispatch or collection and/or on entry into acceptance default (Number 3.4). In case of work services, this shall apply accordingly at the time of acceptance or assumed acceptance (7.2.3.).

#### **7.2.5. Defect complaints**

The Principal must raise an immediate complaint in respect of recognisable defects to the delivery of the subject matter of the service which exist at the time of transfer of risk or acceptance and these must be noted in the protocol in case of acceptance. A complaint must be made to SII in respect of defects which are obvious or which can be recognised by means of a simple inspection at the latest within 10 days.

Defects which become subsequently known must be notified to SII immediately following their discovery. The notification of defects must be made in writing.

Further obligations in accordance with § 377 of the German Commercial Code (HGB) shall remain unaffected.

#### **7.2.6. Acceptance obligation**

Engineering services must be accepted by the Principal, even if they demonstrate minor defects.

#### **7.2.7. Supplementary performance**

In case of defects to the subject matter of the service, SII shall, initially according to its own choice, only provide a guarantee by means of supplementary performance (correction or replacement delivery - sales agreement or new manufacture - works contract). The Principal must grant SII at least two opportunities to provide supplementary performance in respect of the same defect. Should the second attempt at supplementary performance also fail within a reasonable deadline, the Principal shall be entitled to the statutory rights. Parts which are replaced in the course of supplementary performance shall become the property of SII. In order to carry out all improvements, replacement deliveries or new manufacture which appear necessary according to the discretion of SII, the Principal shall grant SII sufficient time and opportunity to carry out the necessary measures at its place of business or production location during normal working hours.

#### **7.2.8. Scope of the supplementary performance**

Should a defect be present, SII shall, from the costs of the supplementary performance, bear the expenses connected to the replacement item, including shipping, reasonable costs of dismantling and installation and, should this be reasonable expected according to the circumstances of the individual case, the costs of the necessary provision of the fitters and auxiliary personnel of the Principal. Should the subject matter of the service have been provided abroad or at a location other than that determined in the contract, SII shall be entitled to the place of disproportionate costs in accordance with § 439

Paragraph 3 and § 635 Paragraph 3 of the German Civil Code (BGB). The regulations of Number 7.2.9 concerning consumer recourse shall remain unaffected.

#### **7.2.9. Consumer recourse**

Recourse claims in accordance with §§ 478 and 479 of the German Civil Code (BGB) shall only exist if the claim by the consumer as defined in § 13 of the German Civil Code (BGB) was justified and only to the statutory extent, however not to goodwill provisions agreed with the Principal. These shall be subject to compliance with its own obligations by the party entitled to recourse, in particular compliance with the complaint obligations.

#### **7.2.10. Costs in case of non-presence of a defect**

Should the investigation of a defect complaint lead to the conclusion that no defect is present, SII shall be entitled to demand reimbursement of all expenses, should the Principal have culpably failed to have recognised the non-presence of a defect and should this only concern minor expenses (up to 500 euros).

#### **7.2.11. Statute of limitation**

Material defect claims shall lapse in 12 months; this shall equally not apply in the cases named in § 438 Paragraph 1 Number 2, § 479 and § 634 (a) Paragraph 1 Number 2 of the German Civil Code (BGB). Number 9.10 shall apply in respect of the time limitation of damages claims. § 438 Paragraph 3 Sentence 1 of the German Civil Code (BGB) shall remain unaffected.

#### **7.2.12. Warranty and liability exclusions in case of improper use etc.**

The following shall be excluded from the liability and warranty: In particular, defects and damage which are due to improper use, operating errors and negligent behaviour on the part of the Principal and persons which are attributable to it, the products which arise as a result, in addition fire, lightning strike, explosion or excess voltage connected to the network, incorrect or defective programs, software and/or processing date, as well as improper use or defective replacement of used parts; the Principal shall retain the right to provide proof that the above-mentioned acts, characteristics and events are not of a causative nature to the defect in respect of which a complaint is being made. The warranty shall also lapse in case of interference with the engineering services or other changes during the warranty period by persons other than SII and third parties which are authorised by it.

#### **7.2.13. Termination in case of work contracts**

Should the Principal terminate the contract without SII being responsible for such, the Principal shall owe the wages in respect of the engineering services which have been provided up until the time of termination.

In addition, SII shall be entitled to further remuneration to the amount of 15 % of the agreed wages for the engineering services which will no longer be provided due to the termination. SII shall be free to claim remuneration to be charged which goes beyond the above in accordance with § 649 Sentence 2 of the German Civil Code (BGB). The Principal shall be permitted to provide proof that SII has actually only provided services to a minor extent and only incurred minor expenses. All payments, including the above-mentioned remuneration, may not exceed the remuneration in case of a contract which has not been terminated.



### 7.3. Service contracts

Regardless of the right of termination without notice, in case of service contracts, the provision that both contracting parties may terminate the agreement by giving notice of 14 days to the end of the month shall apply.

The Principal shall pay for the costs incurred by SII up until the time of termination and which can no longer be avoided due to this contract. All payments, including the abovementioned remainder payment, may not exceed the remuneration in case of a contract which has not been terminated.

Objections concerning the engineering services which have been provided must be immediately asserted in writing, however at the latest within four weeks of receipt, and described in detail. Should no objections be raised by the Principal within four weeks of receipt, the engineering services shall be deemed to have been provided and confirmed in accordance with the contract. Should objections be raised, the Principal shall grant SII the necessary time and opportunity for subsequent performance as is reasonable. Should the Principal fail to do so, SII shall not be obliged to provide subsequent performance.

## 8. Contractual adjustment, termination for important reasons

### 8.1. Contractual adjustment

Should unforeseeable events and hindrances as defined in Number 7.2.2 significantly change the economic significance or the contents of the engineering services, or should these have a significant effect on the operation of SII, the contract shall be reasonably adjusted in good faith. Should this not be economically justifiable, SII shall be entitled to rescind the contract. Should SII wish to make use of the said right of rescission, SII shall provide immediate notification to the Principal as soon as the impact of the event has been identified, also if the service/delivery deadline in accordance with Number 7.2.2 has been extended.

### 8.2. Termination for important reasons

The contract can be terminated without compliance with the period of notice for important reasons by the contracting partners. An important reason for extraordinary termination by SII shall, in particular, be present if the Principal suspends its payments, if a provisional insolvency administrator is appointed, if the opening of insolvency proceedings is applied for against its assets or should the Principal enter financial meltdown.

## 9. Liability

SII shall pay damages exclusively in accordance with the following principles, regardless of legal reason, in particular including liability due to breach of pre-contractual obligations or under the law of torts:

**9.1.** SII shall incur liability to an unlimited amount for losses which are due to an intentional or grossly negligent breach of obligation of SII, its legal representatives or its vicarious agents.

**9.2.** SII shall also incur unlimited liability for injury to life, body or health which is due to an intentional or negligent breach of obligation of SII, its legal representatives or its vicarious agents; the same shall apply in case of assumption of a quality

guarantee, in case of the fraudulent concealment of defects and to liability claims under the German Product Liability Act (Produkthaftungsgesetz).

**9.3.** In addition, SII shall incur liability for losses which are due to the breach, as a result of simple negligence, of an obligation whose compliance is of particular significance to the attainment of the contractual purpose (cardinal obligation).

**9.4.** In the cases outlined in Number 9.3, SII shall be liable up to the agreed amount, maximum up to the occurred damage, which is typical of the contract and was foreseeable at the time of conclusion of the agreement. In addition, the liability shall be limited to 5 million euros per incidence of breach in case of property damage and pecuniary losses. In cases in which the simply negligently caused losses refers to the same breaches, the liability shall be limited to a total of 5 million euros, also if the breaches were committed over several years. The unlimited liability named in Numbers 9.1 and 9.2 shall remain un-affected.

**9.5.** Subject to Numbers 9.1 to 9.3 above, in case of default, SII shall incur liability to pay fixed sum default compensation of 0.1 % of the net order value, however no more than 5 % of the order value for each completed week of default. The Principal shall reserve the right to provide proof of a higher loss. SII shall reserve the right to provide proof that no loss was incurred or the loss was significantly less than the fixed sum.

**9.6.** Should SII be unable to provide the service, the Principal may demand damages, unless SII is not responsible for the impossibility. Subject to Numbers 9.1 and 9.2 above, the damages claim shall however be limited to 10% of the value of the respective part of the subject matter of the service which cannot be used for the intended purpose because of the impossibility. The right of the Principal to rescind the contract shall remain unaffected.

**9.7.** Should the loss be covered by an insurance policy which has been concluded by the Principal, SII shall incur liability, subject to Numbers 9.1 to 9.3 above only for the detriments incurred by the Principal which are connected to the settlement of the claim, for example increased insurance premiums or loss of interest.

**9.8.** Otherwise, the liability to pay damages shall be excluded, regardless of the legal nature of the asserted claim. In particular, SII shall not incur liability for non-foreseeable indirect losses and losses connected to loss of profit.

**9.9.** The Principal shall be obliged to provide immediate notification of damage and losses in respect of which SII may incur liability to pay damages and, on its request, to have these collected by SII itself or a third party appointed by it.

**9.10.** Regardless of the statutory limitation period in the cases named in Numbers 9.1 to 9.3, both damages claims and claims connected to measures for the mitigation of losses shall lapse after 12 months. The period of limitation for damages claims in the cases named in § 438 Paragraph 1 Number 2 and § 638 a Paragraph 1 Number 2 of the German Civil Code (BGB) shall be excluded from the aforementioned provision. The statutory regulations concerning limitation shall apply to the expiry of damages claims in accordance with the German Product Liability Act (Produkt-haftungsgesetz).



**9.11.** The above provisions do not entail any change to the statutory burden of proof to the detriment of the Principal.

## **10. Ownership rights, property rights and rights of use**

### **10.1. Results of the engineering services, ownership rights and copyright**

CADON shall retain all ownership rights, copyright and co-copyright in respect of samples, procedures, processes, documentation, programs, calculations, plans, images, drawings and other representations, but also in respect of calculations, cost quotations, product descriptions, usage instructions and all other documents which represent technical and commercial knowledge (hereinafter referred to as "know-how") of SII, regardless of whether these are transferred in physical or non-physical form (hereinafter referred to as "know-how information"). Know-how information shall only be used for the contractual service and shall be returned to SII following completion of the contract. The know-how information and other information designated as confidential by SII may only be duplicated with the prior written agreement of SII.

### **10.2. Transfer of objects for testing and demonstration purposes**

Should SII provide the Principal with items, data carriers, prototypes, CAD models, plans and other objects for testing and demonstration purposes, these shall remain the property of SII and shall be subject to the property rights of the latter. The Principal shall only be entitled to use these for the named purposes.

### **10.3. Confidentiality obligation**

The know-how and the know-how information shall be kept confidential in relation to third parties, also following termination of the contract. The non-disclosure obligation shall only lapse if the know-how has become publicly known or if it was already known to the Principal at the time of conclusion of the agreement, without being caused by a breach of contract.

### **10.4. Inventions**

Should employees of the Principal and SII be involved in inventions which are created during the provision of the agreed service, the Contracting Parties shall reach immediate agreement as to who shall prepare the going patent application expeditiously. The registration of joint inventions shall be then undertaken by both Contracting Parties jointly. One half of the costs incurred shall be borne by each Contracting Party respectively, unless one of the parties receives an exclusive right of exploitation. Should one of the parties no longer be interested in pursuing a property right, it shall offer the other Contracting Party its share for assumption.

## **11. Software**

### **11.1. Rights of use**

The Principal shall receive a non-exclusive and non-assignable, permanent right of use in respect of software, as well as its amendments, additions and extensions and associated documentation which belongs to SII or is subsequently delivered, exclusively for the internal operation of the delivery.

### **11.2. Copyright**

The Principal shall not be entitled to any rights in respect of software and documentation which go beyond Point 11.1 above, in particular, SII shall remain the sole owner of the

copyright. Without the prior written agreement of SII, the Principal shall not be entitled to make the software, documentation and, if applicable, subsequently delivered amendments, additions or extensions accessible to third parties or to change, copy or otherwise duplicate these, unless the duplication takes place for the purpose of creation of a backup copy, which must be identified as such.

### **11.3. Decompiling**

The return translation of the transferred program code into other code forms (decompiling) shall be permitted in accordance with the requirements of §69e of the German Copyright Act (UrhG) for the purpose of creation of the interoperability of independently created software with the contractual software. The interface information which is necessary for the creation of the interoperability can be requested from SII in return for the reimbursement of a minor cost contribution.

### **11.4. Saving, storage and use of the software**

A simultaneous saving, storage or use of the software on more than one hardware unit shall not be permitted. Should the Principal wish to use the software on more than one hardware configuration at the same time, for example by more than one employee, it must purchase the corresponding number of program packages.

### **11.5. Protection against unauthorised access**

The Principal shall be obliged to prevent unauthorised third party access to the software, the original data carriers and the documentation by means of suitable measures. The delivered original data carriers, as well as backup copies must be stored in a location which is secured against third party access. The Principal shall release SII from losses which are caused due to a breach of this obligation. The employees of the Principal must be emphatically informed of the compliance with the contractual terms at hand, as well as of copyright laws.

## **12. Data protection, secrecy**

### **12.1. Consent to data processing**

SII shall be entitled to gather, process and use data concerning the Principal under or in connection with the business relationship for the purpose of fulfilment of this contract, taking the German Federal Data Protection Act (Bundesdatenschutzgesetz) into account, regardless of whether the said data originates from the Principal itself or from third parties. This notice replaces the notification in accordance with the German Federal Data Protection Act (Bundesdatenschutzgesetz) which states that personal data concerning the Principal is saved and further processed by means of an IT system.

### **12.2. Confidentiality**

The Principal shall neither use, notify to third parties or otherwise disclose the confidential information of SII. For the purpose of this provision, the following are not third parties: Employees, vicarious agents of the Principal, subcontractors and legal/tax advisors, provided that the said persons require the information for the purpose of fulfilment of the contract at hand, as well as auditors or other persons or corporations who possess a statutory right or such an obligations to receive such confidential information.

Any information concerning the other business relationships of principals of SII shall also be defined as confidential information. This shall also include information concerning its



bank accounts, finances, transactions or its other business matters of which the Principal becomes aware in the course of fulfilment of the contract. In addition, information which concerns the agreement or the subject matter of the contract and which is designated as confidential or which could be reasonably considered as confidential, as well as programs, project materials and the subject matter of all reports, recommendations, advice or tests which are transferred to the Principal or which are carried out by the Principal due to its contractual obligations shall also be designated as confidential.

The Principal shall take all reasonable measures to prevent unauthorised publications or disclosures of confidential information or documents.

The Principal shall ensure that its employees, vicarious agents and subcontractors are aware of the above confidentiality obligation and that they personally undertake in writing to comply with the confidentiality and non-forwarding provisions; on request, the Principal shall provide SII with a copy.

#### **12.3. Prohibition of enticement**

SII has invested a great deal in the recruitment, training and further development of its personnel, as the quality of the staff of SII represents its greatest asset. The solicitation or attempted enticement of the employees of SII represents a serious breach of the contractual obligation of the Principal to consider the rights, legal assets and interests of SII which is stated in § 241 Paragraph 2 of the German Civil Code (BGB).

During the contractual term and for a period of six months following termination of the contract, the Principal shall be obliged not to poach and appoint any employees or freelancers of SII by itself or via a third party, regardless of whether this is initiated by the employee or the Principal. For each case of breach of this obligation, the Principal shall pay a fixed compensation sum of half of the annual gross salary of the employee which has been enticed. For its part, SII shall be obliged not to entice employees of the Principal.

### **13. Closing provisions**

#### **13.1. Rights of instruction**

SII shall be solely responsible for the right of instruction of its vicarious agents and employees, in particular the induction, instruction and supervision, even if the order is performed at the premises of the Principal. The right of the Principal to issue order related performance instructions which concern the work results in individual cases shall not be affected thereby.

#### **13.2. Non-assignability**

The Principal shall not be permitted to assign its rights and claims under this contract to third parties without the express agreement of SII.

#### **13.3. Place of performance**

The place of business of SII, Augsburg, Germany, shall be the place of performance for all engineering services and services under the business relationship, unless otherwise agreed.

#### **13.4. Place of jurisdiction**

The place of jurisdiction for all disputes in connection with this contract shall be Augsburg, Germany. SII shall be entitled to also bring a lawsuit at all competent places of jurisdiction for the Principal. Should the Principal not be headquartered in a Member State of the European Union, the following arbitration

agreement shall apply in place of the above agreement concerning the place of jurisdiction:

All legal disputes under or in connection with this engagement shall be finally settled in accordance with the Arbitration Ordinance of the International Chamber of Trade and Commerce by three arbitrators to be appointed in accordance with this arbitration agreement. The arbitration proceedings shall take place in Augsburg, Germany in the German language.

#### **13.5. Applicable law**

The law of the Federal Republic of Germany shall exclusively apply to all legal relationships between SII and the Principal, to the exclusion of the provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

#### **13.6. Written form (extended)**

All amendments and additions to the subject matter of the contract and this principal must be made in writing to take effect. This shall also apply to the effectiveness of the wavering of the written form clause and/or the written form requirements in individual cases.

#### **13.7. Severability clause**

Should any individual clauses of this contract be or become ineffective, the effectiveness of the remaining provisions shall not be affected thereby. The contracting partners shall be obliged to replace the ineffective provision by a clause which comes as close as possible to it in economic terms.

#### **13.8. Date/status**

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