

# General Terms and Conditions of Sale and Performance of Karl Simon GmbH & Co. KG (including SIMON Sinterlutions GmbH & Co. KG)

(as of January 2024)

## 1 Scope of Application

- 1.1 All - including future - offers, deliveries and other services by us, Karl Simon GmbH & Co. KG (including SIMON Sinterlutions GmbH & Co. KG), for customers listed in para. 1.4 are exclusively based on these General Terms and Conditions of Sale and Performance.
- 1.2 Deviating terms and conditions of the customer or terms and conditions of the customer not included in these General Terms and Conditions of Sale and Performance shall not be recognised unless we have expressly agreed to their validity in text form. Counter-confirmations by the customer with reference to his terms and conditions of business or purchase are hereby rejected.
- 1.3 If provisions deviating from individual conditions of these General Terms and Conditions of Sale and Performance are agreed between us and the customer, the validity of the remaining provisions of these General Terms and Conditions of Sale and Performance shall not be affected thereby.
- 1.4 These General Terms and Conditions of Sale and Performance shall only apply to customers who, at the time of conclusion of the contract, are acting in the exercise of their commercial or independent professional activity (entrepreneurs pursuant to § 14 BGB) as well as to legal entities under public law or a special fund under public law.

## 2 Conclusion of Contract, Custom-made Products, Content of the Contract

- 2.1 Our offer is non-binding.
- 2.2 The customer is bound to an order for a fortnight after we received the order.
- 2.3 Subject to para. 2.4 the contract shall be concluded with our order confirmation in text form (e.g. e-mail or in writing, but no social media or text messages) or with the fulfilment of the order, whichever occurs first. Tacit acceptance of the order is excluded.
- 2.4 When ordering deliveries of goods that are created or adapted according to specific customer requirements ("**Custom-made Products**"), or if something else is expressly agreed with the customer, the contract is concluded when the customer accepts our order confirmation - even tacitly. When ordering Custom-made Products, it may not be possible to produce the exact quantity for production reasons. Therefore, delivery of up to 10% above or below the ordered quantity is permissible as is customary in the industry. The customer shall always pay for the quantity actually delivered.
- 2.5 We reserve the right to make changes and errors with regard to the illustrations and drawings concerning our goods in brochures, advertising material and price lists as well as the data contained therein, e.g. concerning material, dimensions, form, unless they are expressly designated as binding.
- 2.6 Our obligation shall be determined by the agreement in text form on the quality of the goods, if any. Public statements made by another manufacturer of a product sold by us under its brand or statements made by other third parties (e.g. advertising statements) do not define our obligations.
- 2.7 We do not grant the customer any guarantees upon conclusion of the contract unless this is expressly agreed individually and in writing.

### **3 Technical Application Instructions, Information on Product Properties**

- 3.1 Technical application instructions, processing instructions, advice and recommendations which we give verbally and in writing to support the customer or processor are made in accordance with our respective state of knowledge at that time. They are non-binding and do not establish any contractual rights or ancillary obligations arising from the purchase contract, unless expressly agreed otherwise. Our information and recommendations shall in no case release customers and processors from the obligation to satisfy themselves as to the suitability of our products for the respective purpose.
- 3.2 Information about product characteristics does not constitute the assumption of a guarantee of quality or durability unless it is expressly designated as such or agreed as such in an individual contract.
- 3.3 Only those properties that are defined in the specification or drawing or otherwise the parameters specified in the Technical Data Sheets and Safety Data Sheets applicable to the respective product - if available - shall be contractual requirements for the goods. The Technical Data Sheets and Safety Data Sheets are available for download on the website [www.simon.group](http://www.simon.group) or can be requested from us free of charge.
- 3.4 Our products comply with the generally accepted rules of technology as well as those standards, directives, official and statutory regulations which are specified for the respective product in accordance with para. 3.3. We do not accept any further requirements of the customer.

### **4 Supply of the Customer**

- 4.1 Insofar as the customer provides items for the production of the goods ("**Supply**"), he must deliver these to us on the agreed date or with the agreed lead time. If the goods cannot be produced or cannot be produced completely due to the absence of the Supply, the delivery date shall be extended or postponed in accordance with para. 5.1.
- 4.2 The customer must deliver the Supplies in the agreed quality to the agreed location. Delivery shall be made DDP (Incoterms 2020). The quantity of the Supply determined by us upon receipt shall be decisive.
- 4.3 If the customer delivers Supplies to us in excess of his binding orders or before the agreed delivery date, we shall be entitled to demand reimbursement of the expenses incurred for this (e.g. storage costs). For this purpose, we may demand at least the actual storage costs or, in the case of storage on our own premises, storage costs customary locally.
- 4.4 It is customary in the industry that rejects (e.g. loss of or damage to materials provided) of up to 3% compared to the delivered quantity occur during further processing of the Supply provided. In this respect, the customer shall not be entitled to any claims for material defects or compensation.
- 4.5 The customer shall ensure that the agreed Supply is suitable for the production of the goods and corresponds to the agreed quality. Insofar as the quality of the Supply does not correspond to the agreement and, thus, causes a non-conformity of the goods with the specification, there is no defect of the goods.
- 4.6 Through the processing of the Supply during the production of the goods, the ownership of the provision is transferred to us.

## **5 Delivery Time, Reservation of Self-Delivery in Time, Compensation for Damages due to Delay in Performance**

- 5.1 Delivery periods, times and/or dates ("**Delivery Time**") are expressly stated by us as binding in the order confirmation in text form. In all other cases, information on the Delivery Time is non-binding.
- 5.2 If we are unable to meet a binding Delivery Time for reasons for which we are not responsible (non-availability of the performance), we shall inform the customer of this without delay and, as soon as possible, notify the customer of the expected new Delivery Time. If performance is also not available at the new Delivery Time for reasons for which we are not responsible, we shall be entitled to withdraw from the contract in whole or in part; we shall immediately refund any consideration already paid by the customer. The following in particular shall be deemed to be cases of non-availability of the service in this sense:
  - 5.2.1 delayed self-delivery if we have concluded a congruent covering transaction, neither we nor our supplier are at fault, or we are not obliged to procure in the individual case,
  - 5.2.2 Force Majeure (section 7) as well as official administrative orders based thereon,
  - 5.2.3 viruses and other attacks by third parties on our IT system, insofar as these occurred despite compliance with the usual care for appropriate protective measures.
- 5.3 Delivery Times shall not commence before - or shall be postponed in the event of delayed - provision of the documents and releases to be procured by the customer and the complete clarification of all details of the desired performance and all technical questions by the customer as well as compliance with the agreed terms (e.g. advance payment).
- 5.4 Default of delivery requires a reminder in at least text form with a reasonable deadline set by the customer.
- 5.5 If we are in default with the delivery as a result of simple negligence, the customer shall prove any damage, whereby the liability for damages due to the delay in delivery shall be limited to 0.5% of the price of the delayed delivery items net for each full week of the delay, but not more than 5% of the price of the delayed delivery items net. If the customer claims damages instead of delivery in the aforementioned cases, this claim for damages shall be limited to 10% of the net price of the delayed delivery items. The limitations of liability according to the above sentences 1 and 2 do not apply in the event of a delay due to intent or gross negligence, nor in the event of injury to life, limb or health, nor in the event of a transaction for delivery by a fixed date, i.e. in the event of a transaction in which the contract is to stand or fall with the observance of the fixed time of performance.
- 5.6 In all other respects, the statutory rights of the contracting parties shall remain unaffected, in particular in the event of an exclusion of the obligation to perform (e.g. due to impossibility or unreasonableness of performance and/or subsequent performance).

## **6 Partial Deliveries**

- 6.1 We are entitled to partial delivery and partial performance insofar as the customer has an objective interest in the partial delivery and the customer does not incur any significant additional expense as a result. Partial deliveries are independently billable.
- 6.2 In the event of partial default or partial impossibility, the customer may only withdraw from the entire contract or claim damages for non-performance of the entire obligation if he has no interest in the partial performance of the contract.

6.3 In all other respects, the provisions of section 5 above shall apply to partial default accordingly.

## **7 Force Majeure**

- 7.1 “**Force Majeure**” means the occurrence of an event or circumstance that prevents us from performing a contractual obligation if and to the extent that we prove (a) that such impediment is beyond our reasonable control and (b) that the effects of the impediment could not reasonably have been avoided or overcome by us. Impediments within the meaning of lit. (a) include, but are not limited to, wars, civil wars, insurrections, acts of terrorism, piracy, currency and trade restrictions, embargoes, sanctions, official measures and orders, expropriations, supply bottlenecks and shortages of materials, in particular shortages of energy or raw materials, epidemics, pandemics, natural disasters, fires and official orders based thereon, unless the customer proves otherwise.
- 7.2 Insofar as para. 7.1 is fulfilled, we shall be released from the contractual obligation and from any liability for its breach from the time at which the impediment causes the inability to perform and to the extent that the impediment prevents performance, provided that we notify the customer thereof without delay. If the notification is not made immediately, the exemption shall only take effect from the time when the notification is received by the customer. The customer may suspend the performance of its obligations, if any, from the date of the notification.
- 7.3 If the effect of the impediment or event claimed is temporary, para. 7.2 shall only apply as long as the asserted obstacle prevents the fulfilment of our contractual obligation. We will notify the customer as soon as the obstacle in question no longer exists.
- 7.4 We are obliged to remedy the Force Majeure as far as possible and to limit its effects as much as possible.
- 7.5 Notwithstanding the foregoing, we shall be entitled to withdraw from the contract in whole or in part if the Force Majeure lasts for more than 4 weeks from the agreed delivery date.

## **8 Transfer of Risk, Transport, Pallets, Packaging**

- 8.1 In principle, the agreed Incoterms clause shall apply to the transfer of risk and transport. A reference to Incoterms always refers to Incoterms 2020, unless otherwise agreed individually.
- 8.2 Unless otherwise agreed, we always deliver FCA (Incoterms 2020) from the place of delivery specified in the order confirmation.
- 8.3 Pallets shall be invoiced on delivery in accordance with the price list valid at the time, unless the parties have agreed otherwise.
- 8.4 We comply with the applicable statutory regulations regarding the return of sales packaging.

## **9 Cooperation Obligations of the Customer, Default of Acceptance**

- 9.1 If the customer is in default of acceptance (*Annahmeverzug*), fails to cooperate or if delivery is delayed for other reasons for which the customer is responsible, in particular at the customer’s request, the risk shall pass to the customer from the date of notification of readiness for dispatch; however, we shall be obliged to arrange insurance at the customer’s request and expense. The customer’s payment obligations remain unaffected by this.

- 9.2 If para. 9.1 applies, we are also entitled to demand compensation for the resulting damage including additional expenses (e.g. storage costs). For this purpose, we may demand at least the actual storage costs or, in the case of storage on our own premises, storage costs customary locally, beginning with the delivery deadline or – in the absence of a delivery deadline – with the notification that the goods are ready for dispatch.

## **10 Prices and Payment**

- 10.1 Prices are subject to VAT at the respective statutory rate.
- 10.2 Invoices are due for payment immediately. Insofar as we grant deviating terms of payment, these shall not apply generally, but only to the transaction referred to. The calendar determination of a payment deadline shall constitute a date giving rise to default.
- 10.3 After the due date, statutory interest on arrears shall be paid until the occurrence of the default. In all other respects, we shall be entitled to the statutory rights in the event of default in payment without restriction.
- 10.4 Even within the framework of an ongoing business relationship, we are entitled at any time, after notifying the customer accordingly, to make further deliveries in whole or in part only against advance payment.
- 10.5 The customer shall immediately check all invoices for correctness and completeness. Objections to an invoice must be raised in text form within one month of receipt. Failure to raise objections in due time shall be deemed to constitute approval of the invoice.
- 10.6 The customer shall only be entitled to set-off rights if his counterclaims are based on the same contractual relationship, have been legally established, are undisputed or have been recognised by us.
- 10.7 The customer is only entitled to exercise a right of retention insofar as his counterclaim is based on the same contractual relationship.
- 10.8 If the customer agrees with us on payment by SEPA corporate direct debit, he undertakes to provide us with the current SEPA forms completed and signed. Collection shall take place on the date stated on the invoice for this purpose. The parties agree that this notification of the date on the invoice shall suffice as notification of the planned debit (prenotification). The customer is obliged to ensure that there are sufficient funds in the designated account.

## **11 Retention of Title, Extended Retention of Title**

- 11.1 We retain title to the products until all claims - including future claims - (including all ancillary claims such as interest) arising from the business relationship with the customer have been settled in full ("**Reserved Goods**").
- 11.2 In the event that advance payment has been agreed, ownership shall already pass to the customer in full upon delivery.
- 11.3 The customer is obliged to treat the Reserved Goods with care, in particular to insure them adequately at replacement value against property insurance risks, in particular fire, storm, hail and burglary damage, at his own expense.
- 11.4 The customer is entitled to resell or further process, including mixing and blending, the Reserved Goods in the ordinary course of business.

- 11.5 The customer already now assigns to us the purchase price, remuneration for work or other claims arising from the resale or further processing or for any other legal reason (e.g. in the case of processing in a factory, in the event of an insurance claim or in the case of unlawful acts) with regard to the Reserved Goods, including the recognised balance from a current account agreement in the amount of the invoice value of the Reserved Goods; we accept the assignment. The assignment of claims in accordance with sentence 1 serves to secure all claims - including future claims - arising from the business relationship with the customer.
- 11.6 The customer is revocably entitled to collect the assigned claims on our behalf in his own name. This collection authorisation can only be revoked if the customer does not properly fulfil his payment obligations. At our request, the customer shall in such a case provide the information on the assigned claims required for collection and make the relevant documents available.
- 11.7 In the event of seizure, confiscation, damage and/or loss of the Reserved Goods, the customer must inform us immediately; a breach of this obligation gives us the right to withdraw from the contract. The customer shall bear all costs which had to be incurred, in particular within the framework of a third-party action, for the successful lifting of a seizure and, if applicable, for a successful recovery of the Reserved Goods, insofar as they cannot be collected from third parties.
- 11.8 The right to resell or process the Reserved Goods and to collect the assigned claims shall expire if the customer suspends payments, files an application to open insolvency proceedings against the customer's assets or if the goods subject to retention of title are seized. Payments received thereafter for assigned claims shall be immediately accumulated in a special account.
- 11.9 We undertake to release the securities to which we are entitled at the customer's request insofar as the realisable value of the securities exceeds the claims to be secured by more than 10% not only temporarily. The aforementioned cover limit of 110% shall be increased by the amount of value added tax to the extent that we are charged with value added tax upon the realisation of the collateral which arises as a result of a delivery by the customer to us subject to value added tax. The customer is also entitled to demand the release of securities if the estimated value of the Reserved Goods is more than 150% of the claims to be secured. The selection of the securities to be released shall be incumbent upon us.
- 11.10 If we have effectively withdrawn from the contract, we shall be entitled to take back the Reserved Goods if the taking back has been threatened with a reasonable period of time. The costs arising from the exercise of the right to take back, in particular for transport, shall be borne by the customer. We shall be entitled to realise the Reserved Goods taken back and to satisfy ourselves from the proceeds thereof, provided that the realisation has been threatened beforehand with a reasonable period of notice. Should the proceeds exceed the outstanding claims from the contractual relationship, this surplus shall be surrendered to the customer.
- 11.11 Insofar as we agree a deferral with the customer or deliver to him despite knowledge of payment difficulties, we waive the extended and prolonged retention of title and deliver under simple retention of title.

## **12 Security for the Purchase Price in Foreign Business**

- 12.1 If an extended or expanded retention of title pursuant to para. 11.4 to 11.6 is not effective under the law of the place where the Reserved Goods are located, the customer shall not be entitled to resell the Reserved Goods unless it grants us another corresponding means of security and performs the acts required for this purpose.
- 12.2 If a retention of title is not effective at all under the applicable law, the parties will effectively agree on a functionally equivalent means of security.

## **13 Notification of Defects, Rights in the Event of Defects**

- 13.1 The statutory provisions shall apply to the customer's rights in the event of defects of the goods and defects of title, unless otherwise stipulated below.
- 13.2 In the case of supplier recourse in the supply chain with final delivery of the goods to a consumer, the mandatory statutory provisions shall always apply, but only insofar as the customer has not made any agreements with his customer that go beyond the statutory claims for defects. Such claims are excluded if the defective goods have been further processed into a new movable item by the customer or another entrepreneur, e.g. by incorporation into another product.
- 13.3 The customer's claims for defects presuppose that he has fulfilled his statutory obligations to inspect and give notice of defects. In any case, obvious defects must be reported in text form (e.g. in writing or by e-mail) within 5 working days (Saturday is not a working day) from delivery and defects not recognisable during the inspection within the same period from discovery. If the customer fails to properly inspect the goods and/or notify us of defects, our liability for the defect that was not notified or not notified in time or not notified properly shall be excluded in accordance with the statutory provisions.
- 13.4 There is no liability for defects in particular in the following cases:
- unsuitable or improper use,
  - faulty installation or commissioning by the customer or third parties,
  - natural wear and tear,
  - incorrect or negligent handling,
  - improper maintenance,
  - use of unsuitable equipment and/or
  - chemical, electrochemical or electrical influences,
- unless they are caused by us.
- 13.5 If the delivered item is defective, we may initially choose whether to provide subsequent performance by remedying the defect (repair) or by delivering an item free of defects (replacement). The right to refuse subsequent performance under the statutory conditions remains unaffected.
- 13.6 We are entitled to make the subsequent performance dependent on the customer paying the due purchase price, however, the customer may exercise his right of retention in respect of a proportionate part of the purchase price in relation to the defect.
- 13.7 The customer shall give us the time and opportunity required for the subsequent performance, in particular to hand over the rejected goods for inspection purposes or to make the processed or installed goods accessible for this purpose. In the event of replacement, the customer shall return the defective item to us in accordance with the statutory provisions.

- 13.8 We shall bear the expenses necessary for the purpose of inspection and subsequent performance, in particular transport, travel, labour and material costs, if there is actually a defect. Otherwise, we may demand reimbursement from the customer of the costs incurred as a result of the unjustified request for rectification of the defect (in particular inspection and transport costs), unless the lack of defectiveness was not recognisable to the customer.
- 13.9 If the supplementary performance has failed or a reasonable deadline to be set by the customer for the supplementary performance has expired unsuccessfully or is dispensable according to the statutory provisions, the customer may withdraw from the purchase contract or reduce the purchase price. In the case of an insignificant defect, however, there is no right of withdrawal.
- 13.10 Claims of the customer for damages or reimbursement of futile expenses shall also exist in the case of defects only in accordance with section **Fehler! Verweisquelle konnte nicht gefunden werden.** and are otherwise excluded.

#### **14 Third-Party Intellectual Property Rights**

- 14.1 In the case of delivery of goods which we manufacture according to drawings, models or other specifications of the customer, we shall not be liable for the infringement of a third party's intellectual property rights. The customer shall indemnify us against claims of such third parties. Insofar as we make changes to the aforementioned documents without special instructions from the customer, we shall only be liable for the changes made by us in accordance with para. 14.2.
- 14.2 We warrant (*gewährleisten*) that our goods do not infringe on any third-party intellectual property rights in Germany. In the event of the infringement of third-party intellectual property rights, we shall only be liable in accordance with the statutory provisions and only in accordance with section **Fehler! Verweisquelle konnte nicht gefunden werden.** In any case we shall not compensate the customer for lost profit due to infringement of third-party property rights.

#### **15 IP and IT Protection**

- 15.1 We are certified in accordance with ISO 27001 and in this respect protect the data processed by us to an extent corresponding to the due diligence of a prudent businessman. Liability for IT breach shall only be considered if the customer proves that we have culpably breached our duties of care. We reject any further requirements regarding IT security in the customer's General Terms and Conditions.
- 15.2 The illustrations, description, price lists, samples, drafts or drawings ("**Information**") provided by us to the customer may neither be copied nor made accessible to third parties in any other way. The customer may not use the Information to manufacture items himself or have them manufactured by third parties without express agreement with us. The customer shall protect the Information from unauthorised access by third parties by protecting its IT infrastructure in accordance with the due care of a prudent businessman.
- 15.3 The above para. 15.2 shall not apply to any information which can be proven to be generally known or published at the time of disclosure, to be part of general expert knowledge, to be the general state of the art or to be already individually known to the customer; the customer shall inform us of such prior individual knowledge in text form without undue delay.



- 15.4 The obligations pursuant to para. 15.2 shall cease to apply insofar as and as soon as, after the time of disclosure, the Information becomes public without a violation of para. 15.2 by the customer, the Information is made known to the customer individually by third parties without these third parties breaching a confidentiality obligation with regard to the Information, the customer perceives or develops the Information by itself independently of the Information, we disclose the Information to the public in text form, or the customer must disclose the Information in accordance with mandatory statutory provisions. In the latter case, the customer shall inform us of the disclosure obligation without undue delay.
- 15.5 A culpable breach of the above obligations obliges the customer to pay a reasonable contractual penalty of up to EUR 50,000.00 for each breach of obligation, waiving the plea of continuation of the breach. The exact amount shall be determined by us in each individual case at our reasonable discretion (*billiges Ermessen*) and may be reviewed by the competent court in the event of a dispute. This agreement shall not affect the right to assert a higher damage claim against the customer; the contractual penalty shall be offset against the damage to this extent.

## **16 Limitation of Liability**

- 16.1 Insofar as nothing to the contrary arises from these General Terms and Conditions of Sale and Performance, including the following provisions, we shall be liable in accordance with the statutory provisions in the event of a breach of contractual and non-contractual obligations.
- 16.2 We shall be liable for damages - irrespective of the legal grounds - within the framework of fault-based liability without limitation in the event of intent and gross negligence as well as in the event of mandatory statutory liability irrespective of fault, in particular in accordance with the Product Liability Act and in the event of guarantee liability.
- 16.3 In the event of simple negligence, we shall only be liable, subject to a milder standard of liability in accordance with statutory provisions (e.g. for care in own affairs),
- 16.3.1 for damages arising from injury to life, limb or health without limitation,
- 16.3.2 for damages arising from the not insignificant breach of a material contractual obligation (an obligation the fulfilment of which is a prerequisite for the proper performance of the contract and the observance of which the contractual partner regularly relies on and may rely on); in this case, however, our liability shall be limited to compensation for the foreseeable, typically occurring damage. In any case we shall not compensate for lost profit, loss of production, downtime costs and other indirect damages.
- 16.4 Insofar as we are liable pursuant to para. 16.3.2 our liability for damages is limited to the amount covered by our insurance in the amount of EUR 5 millions. In the event that, from the customer's point of view, a higher damage is to be expected, we can take out higher insurance cover at the customer's request and expense.
- 16.5 The provisions resulting from para. 16.3.2 shall also apply in the event of breaches of duty by or in favour of persons for whose fault we are responsible in accordance with statutory provisions.
- 16.6 The limitation of liability in the event of delays in delivery pursuant to para. 5.5 remains unaffected by this.

## **17 Customer's Rights of Withdrawal and Termination Outside Warranty for Defects, Assignment**

- 17.1 The customer may only withdraw from or terminate the contract due to a breach of duty that does not consist of a defect if we culpably violated a contractual duty.
- 17.2 A free right of termination of the customer (in particular according to § 648 BGB) is excluded. In all other respects, the statutory requirements and legal consequences shall apply.
- 17.3 The customer is not entitled to assign claims against us, in particular claims for damages.

## **18 Statute of Limitation**

- 18.1 In the case of supplier recourse in the supply chain of a consumer goods purchase, in the case of statutory strict liability, in particular under the Product Liability Act and in the case of guarantee liability, the statutory limitation period shall apply.
- 18.2 In the case of damages arising from injury to life, limb or health based on a negligent breach of duty by us or an intentional or negligent breach of duty by our legal representative or vicarious agent, in the case of other damages, which are based on an intentional or grossly negligent breach of duty by us or on an intentional or grossly negligent breach of duty by our legal representative or vicarious agent, as well as in the case of damages which are based on an intentional or negligent breach of material contractual obligations under the respective contract by us or our legal representative or vicarious agent, the statutory warranty period shall also apply.
- 18.3 In all other cases, the limitation period for liability for material defects shall be one year from transfer of risk.
- 18.4 Subject to the foregoing paras. 18.1 and 18.2 claims for damages in tort shall become statute-barred after one year from the date of knowledge or grossly negligent ignorance of the circumstances giving rise to the claim and of the person liable to pay compensation.

## **19 Deterioration of Assets and Creditworthiness**

- 19.1 If the customer's assets deteriorate after the conclusion of the contract, we shall be entitled to perform outstanding deliveries and services only against provision of security. If the customer is not able to provide the required security within a reasonable period of time, we shall be entitled to withdraw from the contract.
- 19.2 The same shall apply if facts become known to us after conclusion of the contract which give rise to justified doubts about the solvency or creditworthiness of the customer, unless the customer can prove that these facts were already known to us at the time of conclusion of the contract or should have been known to us if the necessary care had been exercised.
- 19.3 In the aforementioned cases, we shall be entitled to initially credit payments of the customer against the most recent claims, despite payment instructions to the contrary, and waive the extended and/or prolonged retention of title with crediting in the case of the associated goods subject to retention of title. We will inform the customer of this and bear the interest disadvantage.
- 19.4 Furthermore, we are entitled in the above cases to prohibit the further processing and resale of the Reserved Goods (section 11) and to revoke the collection authorisation in accordance with para. 11.6.

## **20 Compliance**

- 20.1 We have committed ourselves to a Code of Conduct, the current version of which can be found in the download area of our homepage <https://www.simon.group/> or requested from us free of charge. We will comply with the requirements of any supplier code of the customer to the extent that it is consistent with our Code of Conduct.
- 20.2 We observe the applicable human rights and environmental requirements of the Supply Chain Act (*LkSG*). However, this does not give rise to any claims against us on the part of the customer, nor do we recognise any further-reaching claims on the part of the customer, in particular in General Terms and Conditions of Purchase, unless we have signed a corresponding agreement.

## **21 Place of Performance, Venue and Applicable Law**

- 21.1 The place of performance for deliveries and payments is always our registered office.
- 21.2 If the customer is a merchant, a legal entity under public law or a special fund under public law or if the customer or the customer's branch concluding the contract has its registered office outside the Federal Republic of Germany, the exclusive place of jurisdiction for all disputes arising from the contractual relationship shall be at our registered office. The same shall apply if the customer does not have a general place of jurisdiction in Germany, relocates his registered office, place of residence or habitual abode outside Germany after conclusion of the contract or his registered office, place of residence or habitual abode is not known at the time the action is brought. However, we are always entitled to sue the customer at his general place of jurisdiction.
- 21.3 The law of the Federal Republic of Germany shall apply to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).
- 21.4 Should any provision of these General Terms and Conditions of Sale and Performance be or become invalid, this shall not affect the validity of the other provisions.