



1. Terms and conditions

Terms and Conditions of SIMBERRY, Inc. effective 01.01.2016

§ 1 Scope of Application

The following terms and conditions of SIMBERRY, Inc. ("SIMBERRY") shall govern all sales of hardware and software including testing (sale on trial) as well as services, if and inasmuch as no other written stipulation prevails. They are deemed as agreed upon, unless the Customer objects in writing before closing any business with SIMBERRY.

§ 2 Subject of the Contract, Reservation of Title

2.1 A contract between SIMBERRY and the Customer is binding, when the customer sends an original purchase order for equipment offered by SIMBERRY (per email) or accepts SIMBERRY's offer by signing it and sending it back to SIMBERRY per email. SIMBERRY reserves the right to decline any order placed by the Customer.

If the Customer cancels a submitted order, a restocking fee of 20% of the total order value applies.

Unpaid, un-cancelled orders will be automatically cancelled after 1 month.

However, the order can no more be cancelled if the Customer's payment for the equipment or service has been credited to SIMBERRY's account. If the payment was received by SIMBERRY, the order will be executed.

2.2 The functionality of hardware and software results exclusively from its description in the contract and/or in a pertinent datasheet. Public statements never become part of a contractual product description. Technical changes made by SIMBERRY are permitted inasmuch as they do not unreasonably influence the functionality of the ordered products.

2.3 Any product delivered by SIMBERRY remains SIMBERRY's property, until all and any of SIMBERRY's claims – including future, conditional or accessory claims – have been settled. Transfer of legal title in property takes place only when all such claims have been settled.

The Customer is not entitled to sell, pawn, pledge or assign the goods before full transfer of title. In case any third party seizes or tries to seize the goods, the Customer will indicate SIMBERRY's property to the third party and inform SIMBERRY of the seizure immediately. The Customer is liable for any damage to SIMBERRY in neglect of these obligations.

2.4 If the Customer processes or rearranges the goods subject to a reservation or integrates the same firmly into a system environment, SIMBERRY shall be deemed to be the manufacturer, albeit with no obligation arising thereof to SIMBERRY. If the same are combined with other goods not owned by SIMBERRY, SIMBERRY shall have joint ownership rights to the new object at the ratio between the goods subject to a reservation and the new object at the time of processing or combination.

§ 3 Extended Reservation of Title

3.1 If the Customer acts as reseller, the Customer may sell any goods prior to full transfer of title only if the Customer is not in arrears with its obligations against SIMBERRY

3.2 All Customer's claims arising from resale or from other legal basis related to the object of purchase against third parties (such as insurance claims) including all ancillary rights of such claims are hereby assigned to SIMBERRY by way of security, even where sold goods have been processed or installed prior to full transfer of title. SIMBERRY accepts this assignment. In case of installation the claims assigned shall be limited to the proportionate value of reserved property goods in the final product. As long as the Customer fulfils his payment obligations toward SIMBERRY he is entitled to recover the claims assigned to SIMBERRY for his own account.

On SIMBERRY's demand, at any time, the Customer shall inform SIMBERRY about the conditions of the assigned claims.

§ 4 Terms of Delivery

4.1 Availability

Estimated availability and/or delivery date will be provided in the order confirmation.

Failure to meet the delivery deadline shall not give rise to damages to the customer, nor entitle the customer to withhold payment or cancel pending orders.

Deliveries are made at SIMBERRY warehouse premises, within two to five weeks from the date of the purchase order. Deliveries depend on availability and are processed in the order in which orders are received by SIMBERRY. Where applicable, SIMBERRY will contact the customer, following the reception of the order, to arrange a different time and/or place for delivery.

4.2 Unless specifically agreed otherwise in writing, delivery will be effectuated after full payment. Packing costs are included in the purchase price.



4.3 Transport and risk

Products are sold EX WORKS (INCOTERMS 2010).

Risk passes at the SIMBERRY warehouse from which the goods are shipped. As a result, transport is at the customer's risk.

4.4 On demand the delivery will be carried out by SIMBERRY. In this case, a global amount for freight costs and transport insurance costs will be charged to the Customer shown separately on the invoice; place of performance then is the registered seat of the Customer or the place of delivery named by the Customer. Additional costs like e.g. for customs will continue to be borne by the Customer.

4.6 Claims upon delivery:

The customer shall inspect the quantity delivered which he purchased pursuant to these general terms and conditions of sale (the "Product") immediately following delivery and shall promptly give the carrier written notice of any damage. In the event that a Product or part of a Product is missing or was damaged by the transportation, the customer shall notify SIMBERRY and the carrier within three (3) days of the date on which the Product was delivered. Failure by the customer to notify SIMBERRY and the carrier shall constitute a waiver of the customer's rights against SIMBERRY. Any other apparent defects of the products shall be notified to SIMBERRY within thirty (30) days from delivery, the Client being barred from any other claims for apparent defects after this time period.

4.7 If the Customer fails to accept the delivery on the date of delivery or if there is a delay beyond the date of delivery, which is attributable to any instruction of the Customer, the Customer shall bear the costs incurred thereby. In particular, SIMBERRY shall be entitled to store the goods at the Customer's expense and to charge 1% of the invoiced amount for each started month of such storage.

§ 5 Terms of Payment

5.1 Invoices are due in full immediately upon receipt by customer of Order Acknowledgement, unless specifically agreed otherwise in writing.

5.2 Deliveries always require advance payment, unless specifically agreed otherwise in writing.

5.3 If the Customer is in default of payment, SIMBERRY shall be entitled to claim default interest at a level of eight percent above the base interest rate. The assertion of any more extensive default damages and other rights shall remain reserved.

5.4 SIMBERRY shall deduct any Entrepreneur Customer payment from outstanding interest first, then from costs and then from the oldest claims.

5.5 The Customer shall only be entitled to setoff, if the counterclaim is undisputed or unappealable.

§ 6 Return of Goods, Cancellation of orders

The return of goods shall be accepted only if the package clearly shows a Return Material Authorization Number ("RMA Number"). SIMBERRY issues the RMA Number on Customer's written request after an examination of the right to return the goods. Returned goods have to be properly packed.

§ 7 Warranty

7.1 SIMBERRY warrants that the object of purchase is free from defects in title at the time of delivery. The period of time for warranty basically is 36 months except used or refurbished equipment which does not come with any warranty unless specifically agreed otherwise in writing.

The period of warranty starts upon delivery of the goods to the Customer, however not later than one week after placing the goods at the disposal at the place of performance. If the Customer mandates SIMBERRY to install the object of purchase, the period of warranty starts upon acceptance of performance.

Should any defect appear, the Customer shall notify SIMBERRY immediately in writing and in such a manner, that SIMBERRY is in a position to determine the sort of defect and possible causes. SIMBERRY must react within 30 calendar days.

Solely the Customer is responsible for obtaining any permit or license necessary for the deployment and use of the goods; he is also incumbent on assuring that the use of the goods does not violate local regulations at the place of use or contracts of the Customer concluded with third parties.

7.2 At its own option SIMBERRY shall first remedy the defect by subsequent improvement or substitute delivery. Such subsequent improvement or substitute delivery may also be made by way of remote maintenance. The Customer shall give SIMBERRY the necessary time and opportunity for remedial action which, to the extent reasonable and given the complexity of the object of purchase, may also be performed several times. To the extent required, the Customer shall assist SIMBERRY in rectifying defects. If efforts for subsequent improvement definitively fail, the Customer – irrespective of possible claims for damages or expenses – shall be entitled reduction of the purchase price.



Such rights shall only extend to defective parts of the respective order, except if the remaining parts of the order are no longer of any interest as a result of these defects.

7.3 If the remedy of defects or replacement of the goods is not effectuated as provided in 7.2 or if such provision is not possible, the Customer is entitled, at his option, to reduce the purchase price or to resign from the contract.

7.4 Excluded from warranty shall be in particular defects being attributable to improper use, assembly or putting into operation by the Customer or any third party or resulting from normal wear and tear, faulty or negligent handling, unsuitable operating media, improper storage including climatic, chemical or any other influences, or combination with third-party products. This shall also apply to defects caused by the Customer's non-observance of maintenance guidelines handed over with the object of purchase or made known to him by SIMBERRY.

7.5 Unless stipulated in a separate written agreement, SIMBERRY does not warrant for the interoperability of the hardware or software with third-party network components.
This shall apply in particular to billing systems, signaling protocols and management systems.

7.6 SIMBERRY does not warrant for the compatibility of the objects purchased with earlier product versions delivered by SIMBERRY, especially where the Customer has failed to take precautions to keep his network components (hardware and software) up to date in accordance with SIMBERRY's standards.

7.7 If it is found during SIMBERRY's investigation that the given case does not come under warranty, the Customer shall compensate SIMBERRY for the work carried out until such time including expenses (in particular costs of materials and traveling expenses).

§ 8 SIMBERRY's Liability

8.1 SIMBERRY is liable to the Customer for damages caused by SIMBERRY, its representatives or auxiliary persons with willful or gross negligence, which are based on loss of life or physical injury, for which the product-liability law provides mandatory liability, as well as if SIMBERRY has assumed liability for the condition of the object of purchase or if SIMBERRY has maliciously concealed a defect.

8.2 In case of slight negligence, SIMBERRY, including its representatives or vicarious agents, shall be liable only if it breached an essential contractual duty (cardinal obligation). SIMBERRY shall also be liable for the impossibility of performance, which SIMBERRY is answerable for. In any such cases, however, SIMBERRY shall be only obligated to provide compensation for the damage typically incurring. In case of a breach of other non-cardinal obligations in slight negligence, the liability of SIMBERRY shall be excluded. This applies in particular to cases of data loss and other indirect and consequential damages as well as loss of profit.

8.3 As an essential contractual obligation the Customer assumes to secure data (e.g. CDRs) in regular intervals adequate for the application, billing data at least hourly, in order to ensure that these data can be restored with reasonable effort. Should a loss of data occur as a result of the responsibility of SIMBERRY, SIMBERRY shall bear liability for restoration only to the degree of the effort required if the Customer had secured the data as mentioned above, insofar as liability is not excluded by aforesaid regulation.

8.4 Insofar as the Customer is entitled to claim damage compensation according to subparagraphs 1 to 3, these claims prescribe with the termination of the limitation period for warranty claims pursuant to § 7.

§ 9 Disposal

After the end of use the Customer undertakes to return the SIMBERRY products to SIMBERRY at his own expense stating the RMA Number "WEEE2006" or to dispose of the delivered goods at his own expense. The Customer insofar releases SIMBERRY from its obligations and any third-party claims in this regard. The same shall apply if the Customer passes the goods on to a third party.

§ 10 Assignment

For assignment of its rights and duties under the purchase contract the Customer shall require SIMBERRY's prior written consent.

§ 11 Data Protection

The use of personal data of the Customer shall be in accordance with the applicable laws and regulations.

§ 12 Choice of Law and Jurisdiction

In so far as the Customer is an Entrepreneur Customer, exclusive forum having jurisdiction over any dispute out of or in connection with these General Terms and a contract hereunder shall be Hillsboro, Oregon USA. Exclusively Washington county, Oregon, United States of America law applies. The provisions of the UN Sales Convention (CISG) shall be excluded.

§ 13 Severability Clause

The legal invalidity or ineffectiveness of a clause shall not affect the validity of the remaining clauses. The invalid or ineffective clause will be replaced by a valid clause that comes closest to the intended economic meaning and the contractual purpose.