

General Conditions of Business (only applicable to U.S. Users)
S.E.A. – Science & Engineering Applications Datentechnik GmbH

§ 1 General, Scope of Application

- 1.1 The present general conditions of business apply to the business relationships entered into by and between S.E.A. – Science & Engineering Applications Datentechnik GmbH, Mülheimer Str. 7, 53840 Troisdorf, Germany (hereinafter referred to as "S.E.A.") and its customers in the U.S. via the online shop of National Instruments Corporation, Austin, Texas (hereinafter referred to as the "online shop"). The online shop addresses exclusively to customers who are not consumers within the meaning of § 13 BGB (German Civil Code). Enquiries from consumers, if any, must be addressed directly to S.E.A.. There, the consumers can obtain information on whether and on what conditions they will be able to place an order with S.E.A.
- 1.2 These general conditions of business apply in particular to contracts for the sale and/or delivery of movables and software (hereinafter referred to as the "goods"), regardless of whether S.E.A. Datentechnik GmbH manufactures the goods itself or procures them from sub-suppliers (§ 433, § 651 BGB – German Civil Code). The general conditions of business apply in the version valid at the time the customer places an order for the sale and/or delivery of goods, without S.E.A. being under the obligation to point out the application of the general conditions of business again in each individual case.
- 1.3 These general conditions of business apply exclusively. When placing an order with S.E.A., the customer acknowledges and agrees to these general conditions of business in the version valid at the time of the placement of the order.. Deviating, conflicting or supplementary general conditions of business of the customer only become part of the contract if and to the extent that S.E.A. has explicitly agreed to them. The requirement of consent applies in any case, in particular also in the case that S.E.A.– even though it is aware of the general conditions of business of the customer – delivers to the customer without reservation. Specific arrangements made with the customer in an individual case (including supplementary agreements, amendments and modifications) prevail over these general conditions of business. The contents of such an arrangement will be stipulated exclusively in a written agreement or a written confirmation from S.E.A.
- 1.4 If reference is made in these general conditions of business to statutory regulations, such reference is for clarifying purposes only. Even without such a clarification, the statutory regulations apply if and to the extent that these are not modified directly or precluded explicitly by these general conditions of business.

- 1.5 The duties under § 312e subs. 1 clause a no. 1 through 3, clause 2 BGB (German Civil Code) are not applicable.

§ 2 Conclusion of contract

- 2.1 The quotations and offers from S.E.A. are without obligation and subject to change. This applies even in the case that S.E.A. makes catalogues, technical documentation (e.g. drawings, plans, calculations, references to DIN standards), other product specifications or documents (hereinafter altogether referred to as "product specifications") available to the customer, even in electronic form. S.E.A. does not warrant, and is not liable for, that the goods ordered by the customer are mutually compatible and interoperable in the configuration chosen by the customer and can be used together faultlessly; insofar, only such qualities of the goods are deemed guaranteed as are explicitly referred to in writing as "guaranteed qualities" ("zugesicherte Eigenschaften") on the part of S.E.A..
- 2.2 The ordering of goods by the customer is deemed a binding offer for the conclusion of a contract. S.E.A. will inform the customer of the receipt of the order by e-mail immediately, i.e. without undue delay ("unverzüglich") (hereinafter referred to as "acknowledgement of order receipt"). The acknowledgement of order receipt must not be deemed acceptance of the order but can be combined with the acceptance. If not stipulated otherwise in the order, S.E.A. has the right to accept the customer's offer for conclusion of a contract within two weeks from receipt. The offer for conclusion of a contract can be accepted in writing or by e-mail or by provision of the goods for delivery to the customer.

§ 3 Delivery times and default

- 3.1 The time of delivery is specifically agreed between the parties or indicated by S.E.A. upon acceptance of the order. If this is not the case, the delivery time will be approx. two weeks from the conclusion of the contract.
- 3.2 If S.E.A. is not able to comply with the bindingly agreed delivery times for reasons that are not attributable to S.E.A. (non-availability of performance), S.E.A. will notify the customer immediately, i.e. without undue delay ("unverzüglich"), indicating at the same time the presumable new delivery time. If performance cannot be provided within the new delivery time either, S.E.A. will be entitled to withdraw from the contract in whole or in part; S.E.A. will reimburse the consideration - if and to the extent already provided by the customer - immediately, i.e. without undue delay ("unverzüglich"). Non-availability of performance in the aforesaid sense is in particular deemed to comprise the non-timely delivery to S.E.A. itself on the part of a sub-supplier, if S.E.A. has concluded a congruent covering transaction. This is without prejudice to the customer's right to withdraw from the contract according to § 7 of these general conditions of business.

§ 4 Delivery, Prices, Terms of payment

- 4.1 Delivery will be ex works which place is also deemed the place of performance ("Erfüllungsort").
The goods will be delivered to another destination at the customer's request and expense (sale by delivery to a place other than the place of performance – "Versendungskauf"). Unless agreed otherwise, S.E.A will be entitled to choose the mode of delivery itself (in particular as regards the carrier, dispatch route and packaging).
- 4.2 Unless otherwise agreed in the specific individual case, the prices indicated in the online shop at the time of the order are applicable, plus VAT at the statutory rate applicable at the time of invoicing at the place of order.
- 4.3 In the case of a sale by delivery to a place other than the place of performance ("Versendungskauf") as stipulated in § 4 subs. 1, the customer will bear the cost of transport ex works and the cost of transport insurance, if requested by the customer. Customs duties, charges, taxes and other public charges, if any, are borne by the customer. S.E.A will not take back transport packaging or other packaging as specified in the "Verpackungsverordnung" (German Packaging Regulations); the packaging will become the property of the customer.
- 4.4 The purchase price is due and payable at the time of purchase.
- 4.5 The customer is only entitled to set-off if the claims asserted by him – even if these are claims for defects or counter-claims – have been established by final non-appealable court decision or have remained undisputed. The customer is only entitled to retention if the counter-claim is based on the same contract that gives rise to the payment obligation of the customer.

§ 5 Retention of title

- 5.1 S.E.A. retains title to the sold goods until all present and future claims arising out of the purchase contract and an ongoing business relationship (secured claims) have been satisfied in full.
- 5.2 The goods subject to retention of title must not be pledged in favour of, or transferred to, a third party by way of security until the secured claims have been satisfied in full. The customer must notify S.E.A. of any attachment of the said goods by a third party in writing immediately, i.e. without undue delay ("unverzüglich").

- 5.3 The customer has the right to resell and/or process the goods subject to retention of title in the ordinary course of trade. In such a case, the following provisions apply in addition.
- (a) The retention of title pertains to the full value of the items generated by way of processing, mixing or integration of the delivered goods whereby S.E.A. is deemed the manufacturer of these items. If – in the case of processing, mixing or integration with goods belonging to a third party – the property right of the third party is maintained, will share title to, and become co-owner of, the new items in proportion to the invoice values of the goods processed, mixed or integrated. Apart from that, the new items are subject to the same provisions as are applicable to the goods subject to retention of title.
 - (b) The customer already now assigns by way of security the claims against third parties arising out of the resale of the goods or new items to S.E.A.– either entirely or in the amount equivalent to our co-ownership share as defined in the preceding subsection (a); S.E.A. hereby accepts the assignment. The customer's duties specified in subs. 2 apply also with respect to the assigned claims.
 - (c) The customer remains entitled – besides S.E.A.– to collect the claim. S.E.A. undertakes not to collect the claim as long as the customer fulfils his payment obligations, is not in default with payment, no petition in bankruptcy is filed against him and the customer's ability to pay is not impaired otherwise either. If this should be the case, S.E.A. can demand the customer to disclose the assigned claims and the corresponding debtors, provides all information required to collect the claims, hands over the corresponding documents and notifies the debtors (third parties) of the assignment.
 - (d) If the realizable value of the securities exceeds the claims of S.E.A. by more than 10 %, S.E.A. will release securities at its choice at the customer's request.

§ 6 Liability for defects

- 6.1 S.E.A. warrants, for the sole benefit of the customer, that for a period of ninety (90) days from the date the goods shipped to the User (i) the goods will perform substantially in accordance with the accompanying written materials, and – in case software was shipped – (ii) the medium on which the software is recorded will be free from defects in materials and workmanship under normal use and service ('Limited Warranty'). Any replacement good will be warranted for the remainder of the original warranty period or thirty (30) days, whichever is longer.

- 6.2 The Limited Warranty is void if failure of the goods has resulted from accident, abuse, misapplication, improper calibration by the User, third party products (i.e., hardware or software) used by the User which are not intended by S.E.A. for use with the goods, utilization of an improper hardware or software key (if applicable), or unauthorized maintenance of the goods.
- 6.3 The customer's claims for defects are subject to compliance with the customer's statutory duty to inspect the goods and give notice of defects (§ 377, 381 HGB – German Commercial Code). Regardless of the aforesaid duty to inspect and give notice of defects, the customer must give written notice of obvious defects (including delivery of other goods than those ordered - "Falschlieferung" and short delivery) within two weeks from delivery whereby timely dispatch of the notice of defect is deemed sufficient. If the customer fails to duly inspect the goods and/or give due notice of defect, the liability of S.E.A. for the defect that was not notified is precluded.
- 6.4 The customer will only be entitled to claim compensation for damages or reimbursement of useless expenses as is stipulated in § 7; beyond that, all such claims are precluded.

§ 7 Limitation of Liability and no other warranties

- 7.1 The entire liability of S.E.A., its distributors, service providers and suppliers (including its and their directors, officers, employees, and agents) is set in these general conditions. To the maximum extent permitted by applicable law, in no event shall S.E.A. and its distributors, service providers and suppliers (including its and their directors, officers, employees, and agents) be liable for any damages, including, but not limited to, any special, direct, indirect, incidental, exemplary, or consequential damages, expenses, lost profits, lost savings, business interruption, lost business information, or any other damages arising out of the use or inability to use the goods, any technical support services relating to the goods, or related hardware even if S.E.A. or its distributors, service providers and suppliers has been advised of the possibility of such damages. The User acknowledges that the applicable fees and prices reflect this allocation of risk.
- 7.2 If the foregoing limitation of liability is not enforceable because the goods, the services, or the hardware is determined by a court of competent jurisdiction in a final, non-appealable judgment to be defective and to have directly caused bodily injury, death, or property damage, in no event shall S.E.A.'s liability for property damage exceed the greater of \$50,000 (U.S.) or the fee paid for the goods.
- 7.3 **EXCEPT AS EXPRESSLY SET IN THESE LICENSING TERMS, NO OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED ARE MADE WITH RESPECT TO THE GOODS OR SERVICES, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR**

NON-INFRINGEMENT. THERE ARE NO OTHER WARRANTIES THAT MAY ARISE FROM USAGE OF TRADE OR COURSE OF DEALING. S.E.A., AND ITS DISTRIBUTORS, SERVICE PROVIDERS AND SUPPLIERS DO NOT WARRANT, GUARANTEE, OR MAKE ANY REPRESENTATIONS REGARDING THE USE OF OR THE RESULTS OF THE USE OF THE GOODS OR SERVICES IN TERMS OF CORRECTNESS, ACCURACY, RELIABILITY, OR OTHERWISE AND DO NOT WARRANT THAT THE OPERATION OF THE GOODS OR SERVICES WILL BE UNINTERRUPTED OR ERROR FREE.

§ 8 Special conditions for the distribution of software

- 8.1 As to the distribution of software via the online shop, the conditions of use or the licensing conditions that are provided separately for such purpose by S.E.A. or the manufacturer of the software and that stipulate the rights and duties of the customer, S.E.A. and the manufacturer of the software in connection with the use of the software purchased by the customer (hereinafter referred to as "licensing terms") apply in addition to these general conditions of business. The licensing terms applicable to the software will be made available to the customer as a hard copy or electronic file upon delivery of the software at the latest. With the unsealing but in no case later than with the installation of the software, the customer acknowledges and agrees to the licensing terms applicable to the software. The purchase does not imply the acquisition of rights in the software going beyond those stipulated in the prevailing licensing terms on the part of the customer. All copyrights and other rights in the software, its contents and supplementary documentations are reserved.
- 8.2 The software is provided to the customer in the online shop either on a data carrier (CD or DVD) or is made available to him for download, according to the product specification. If the customer purchases the software on a data carrier, he will acquire title to the tangible data carriers upon payment of the purchase price and delivery of the software to the customer. When making the software available to the customer, S.E.A. will communicate to the customer, along with the acceptance of the order under § 2.2, access data and a link to a protected internet page where the customer can download the software. The software downloaded there is usually not fully operable at first but can be activated in the unrestricted full version acquired by the customer in the online shop after installation by entering a licence code provided to the customer by S.E.A. in writing or by e-mail.
- 8.3 The customer has the right to make backup copies of the delivered data carriers and the software exclusively for personal use.
- 8.4 If an internet connection is required for the use of the software sold by S.E.A., such internet connection and the installation of the software possibly required to use the internet connection will be procured by the customer at his expense. The customer is responsible for that the technical requirements to be fulfilled on his part for the use of the software are

actually complied with - in particular as regards the hardware to be applied, the necessary operating system and the internet connection, if required - whereby the instructions given by S.E.A. as to the software acquired by the customer must be observed by the customer. All rights to make technical modifications are reserved and S.E.A. will notify the customer of such modifications in due time. If the software is advanced or modified by S.E.A. (e.g. in the case of updates), it is up to the customer to take the measures required for the adjustment of the software and hardware used by him. The customer has no right to claim that the advanced or modified software versions must be executable with the customer equipment; claims of the customer for defects under § 6 remain unaffected.

§ 9 Choice of law and Place of jurisdiction

- 9.1 These general conditions of business and all business relationships between S.E.A. and the customer are subject to German law with the exception of all international and supranational (conventions and) regimes including in particular UN Sales Law. The prerequisites and effects of a retention of title under § 5 are subject to the law of the state of situs of the goods if and to the extent that the choice in favour of German law agreed between the parties is inadmissible or invalid under the lex situs. With respect to Sec. 6 and Sec. 7 of these Licensing Terms, Sec 10.1 does not apply.
- 9.2 If the customer is a merchant in terms of the "Handelsgesetzbuch" (German Commercial Code) or a legal entity under public law or a special fund under public law ("öffentliches Sondervermögen"), the exclusive – and even international – place of jurisdiction for all disputes arising directly or indirectly out of the contractual relationship is Cologne. However, S.E.A. is also entitled to sue the customer at the place of general jurisdiction ("allgemeiner Gerichtsstand") applicable to him.

§ 10 Miscellaneous

- 10.1 Declarations of legal relevance and notices to be given after the conclusion of the contract require written form to be valid. The written form requirement in terms of these general conditions of business is also deemed observed if transmission is made by facsimile.
- 10.2 If a provision of these general conditions of business is invalid, the validity of the remaining provisions hereof will remain unimpaired.