General Terms and Conditions

1 Definitions

1.1 SIMA GmbH: the limited liability company SIMA GmbH, with its registered office at Brückenstraße 27 in 63906 Erlenbach a. M., Germany, trading under commercial register number HRB 17452.

1.2 Contractual partner or customer: the other (legal) party of SIMA GmbH to whom an offer has been made, from whom a contract has been accepted and/or with whom a contract has been concluded.

1.3 Parties: Contracting party and SIMA GmbH together.

1.4 Framework contract for services: A contract signed by the Parties within the meaning of *Articles 2* and *3* of these General Terms and Conditions, to which these General Terms and Conditions apply.

1.5 Know-how: all software, documentation and/or other (teaching) materials developed or made available within the scope of the contract, such as analyses, drafts and reports, as well as the corresponding preparatory materials.

1.6 Error: Non-compliance with the specifications communicated and agreed in writing by SIMA GmbH. An error only exists if it can be proven and reproduced by a contractual partner.

1.7 Interoperability: the ability of software to exchange information with other components of a computer system and/or software and to communicate using this information.

1.8 Principal amount: the amount of the price negotiated for the order in question (excluding VAT). In the case of a contract with a term of more than one (1) year, the principal amount shall be set at the sum of the fees negotiated for one year (excluding VAT).

1.9 GERMAN CIVIL CODE: *German Civil Code*.

1.10 Auxiliary persons: Persons within the meaning of *Article 278 BGB*.

1.11 Indirect damage: loss of profit and/or income, (production) losses, costs for or in connection with downtime or delays, fines, (lost) discounts and/or payments from third parties, all in the broadest sense of the word.

1.12 Acceptance Test: means the test which may be carried out by the other party during the Acceptance Test Period to determine whether the Software is free from defects which materially affect its performance in accordance with SIMA GmbH's specifications.

1.13 Working days: Monday to Friday, except on public holidays.

1.14 License: the unique code for activating the software developed by SIMA GmbH.

2 Applicability

2.1 These terms and conditions apply to all offers, cost estimates, invoices, accepted contracts and agreements concluded by SIMA GmbH, in particular for the delivery of products, consulting, the provision of services and the performance of installation, maintenance, repair and/or inspection work.

2.2 SIMA GmbH reserves the right to amend these GTC at any time. The contractual partner will be informed of the changes by e-mail six weeks before the changes come into effect. The customer will receive the new GTC in this e-mail. He is entitled to object to the validity of the new GTC within four weeks of receipt of this e-mail. If the contractual partner fails to object, the amended GTC shall become part of the contract after expiry of the four-week period. SIMA GmbH will expressly point out this period to the contractual partner in the notification of amendment.

2.3 Excluded from the right to amend these GTC in accordance with the previous paragraph are provisions that affect the main performance obligations of the contracting parties and thus significantly change the relationship between the main and counter-performance obligations, as well as other fundamental changes to the contractual obligations that are equivalent to the conclusion of a new contract. An express contractual agreement is required for such changes.

2.4 Deviations from and additions to these General Terms and Conditions shall only be valid if they have been expressly agreed in writing, e.g. in a (written) contract or an order confirmation.

2.5 If these General Terms and Conditions and the Contract contain contradictory terms and conditions, the terms and conditions contained in the Contract shall apply.

2.6 SIMA GmbH expressly rejects the validity of the contractual partner's general terms and conditions.

2.7 The contract, together with these General Terms and Conditions, represents the complete agreements between SIMA GmbH and the contractual partner regarding the provision of the services for which the contract was concluded. SIMA GmbH and the contractual partner expressly accept electronic communication for the conclusion of the contract. All previous agreements or proposals between the parties in this respect are null and void.

2.8 Should one or more provisions of these General Terms and Conditions be invalid or void, the remaining provisions of these General Terms and Conditions shall remain in full force and effect. If a provision of these General Terms and Conditions or of the contract is not legally effective, the parties shall negotiate the content of a new provision that comes as close as possible to the content of the original provision.

3 Agreement

3.1 A contract, whatever it is called, is only legally binding after written acceptance by SIMA GmbH.

3.2 Verbal promises and agreements with employees of SIMA GmbH are not binding on SIMA GmbH unless they are accepted by SIMA GmbH in the manner described above.

3.3 The contractual partner may not transfer his rights and obligations arising from a contract to third parties without the prior written consent of SIMA GmbH.

4 Duration

4.1 If the contract relates to the regular or otherwise regular provision of services, it shall be concluded for the period agreed between the parties. If no period has been agreed, a period of one (1) year shall apply. Without prejudice to *Article 20,* the right of the parties to terminate the contract after the expiry of the term *is* excluded.

4.2 Unless either Party terminates the Agreement referred to in *this paragraph 1* by the end of the term of the Agreement by giving three (3) months' notice, this Agreement shall be extended for a period of one (1) year.

4.3 Cancellation within the meaning of this *article* must be made in writing.

5 Right of use

5.1 If SIMA GmbH provides certain software to the other party under the Agreement, the other party is granted only a non-exclusive, non-transferable, non-sublicensable license (1) to use the software and documentation on the designated router and (2) to copy the software and documentation solely for archival or backup purposes, provided that all titles, trademarks and copyright, proprietary and restricted rights notices appear in all such copies and that all copies are subject to the terms of this Agreement.

5.2 Unless otherwise agreed, the right to use the software is only valid for the duration of the contract and the right of use only relates to the use of the software on a router.

5.3 Costs for any updates and upgrades of the software are not included in the contract, unless their provision is expressly part of the agreed services.

5.4 The contractual partner is not entitled to make changes to the software provided by SIMA GmbH in accordance with the contract.

5.5 The contractual partner is not entitled to a copy of the source code of the software and is expressly not permitted to use reverse engineering, decompilation or similar techniques.

5.6 SIMA GmbH may take (technical) measures to protect the software provided. If SIMA GmbH has taken such security measures, the contractual partner is not permitted to circumvent or remove this security.

6 Installation and acceptance

6.1 SIMA GmbH will use reasonable efforts to provide a licensed copy of the software and documentation.

6.2 The installation of the software on the device and the integration into the network architecture shall be carried out by and at the expense and risk of the contractual partner. Insofar as SIMA GmbH is requested to carry out or assist in the installation, the installation shall be carried out at the expense and risk of the contractual partner.

6.3 Prior to acceptance of the Software by the Party, the Party shall have the right to operate the Software within the designated Test Case solely for the purpose of conducting the Software Acceptance Test. Unless the Parties have agreed otherwise, the acceptance test period (i.e. the period in days agreed by the Parties and specified in this section) for the Software shall be seven (7) consecutive calendar days from the activation date of the (test) license. The software shall be deemed to have been accepted by the contractual partner, unless the contractual partner notifies SIMA GmbH (in writing) to the contrary within the acceptance period described above. If SIMA GmbH receives a written notification from the contractual partner during the acceptance test period that the software has not passed the acceptance test, the acceptance date (the day on which the software has successfully completed the acceptance test) shall be extended daily until the date on which the software has passed the acceptance test. Notwithstanding the foregoing, the network shall be deemed to have been fully accepted if and as soon as the contracting party makes use of it for productive or operational purposes before the date of acceptance.

6.4 Acceptance of the software may not be refused for reasons other than those relating to the specifications expressly agreed between the parties. Furthermore, acceptance of the software shall not be refused due to the existence of minor errors which do not reasonably prevent the operational or productive commissioning of the software, without prejudice to SIMA GmbH's obligation to correct these minor errors in accordance with *Article 8,* insofar as this is (still) applicable.

6.5 If SIMA GmbH provides the contractual partner with a test license for evaluation or test purposes (e.g. demo or test versions), the contractual partner's right to use this version is limited to (i) internal evaluation or test purposes and, if applicable, (ii) the period specified by SIMA GmbH. Any productive use is strictly prohibited. The right of use ends automatically at the end of the period specified by SIMA GmbH.

6.6 The software within the meaning of *this paragraph 5* may be subject to functional limitations; use is at the contractual partner's own risk.

6.7 SIMA GmbH excludes liability in the sense of a guarantee of certain properties when providing a software version in accordance with *this paragraph 5.*

7 Updates

7.1 SIMA GmbH is entitled to change, improve, replace or supplement its software at its own discretion in such a way that the agreed performance in this contract is not impaired.

7.2 The installation and acceptance of an update is carried out in accordance with *section 6.*

8 Elimination of defects

8.1 SIMA GmbH warrants for a period of twelve (12) months from the date of delivery of the software that the delivered software is free from material or coding defects when put into operation and that it works in accordance with the user manual, if applicable. The shortening of the statutory warranty period shall not apply if SIMA GmbH or one of its vicarious agents has fraudulently concealed the defect.

8.2 The contractual partner is aware that software products are constantly being further developed and that errors may occur. Errors do not constitute a defect in the software if the error is not due to an error in the coding of the software at the time of delivery or a defective data carrier of SIMA GmbH.

8.3 If an error occurs during the warranty period during the installation or operation of the software, SIMA GmbH must be notified immediately. SIMA GmbH will then examine the error immediately after receipt of the notification and, in the case of a justified complaint, either make a replacement delivery or remedy the defect. For the purpose of supplementary performance, the contractual partner must provide SIMA GmbH with all necessary information about the previous use and operation of the software and allow SIMA GmbH access to the software on site or via the Internet. Due to the complexity of the software programming, SIMA GmbH has several, at least two attempts at supplementary performance, depending on the type of defect. Subsequent performance is only deemed to have failed if the software does not work properly due to the defect despite the attempts at subsequent performance and the expiry of a reasonable grace period set in writing by the contractual partner.

8.4 Any further warranty, in particular that the software is suitable for the purposes of the contractual partner outside the product specification, is expressly excluded, unless the management or a representative authorized in writing has expressly warranted the specific use or fraudulently concealed the defect.

8.5 If the scripting by the contracting party causes a deviation between the actual and the agreed functionality of the software, this deviation shall not be classified as a software defect. The contracting party shall carry out the scripting at its own responsibility and risk.

8.6 Delivery of the user manual in English is generally permitted.

9 Distribution

9.1 Unless expressly agreed otherwise, the contractual partner may not make the software or the documentation available or distribute it to third parties in whole or in part by assignment, sublicensing or in any other way.

10 License key

10.1 The Contracting Party acquires license keys in order to activate them on a specific router. One (1) license key gives the contracting party the right to use the software for a period of one (1) year.

10.2 Unless expressly agreed otherwise, license keys are valid for a period equal to the original term of the contract. After automatic renewal (see *Article 4*), the validity period of a contract is one (1) year.

11 Payment

11.1 Unless expressly agreed otherwise, the contracting party shall pay for the license key in annual installments.

11.2 Unless expressly agreed otherwise, the contractual partner must pay the invoices sent by SIMA GmbH in advance without deduction or discount. The right of the contractual partner to offset any payments with SIMA GmbH is expressly excluded.

11.3 The contracting party shall notify SIMA GmbH of any complaints about an invoice in detail and in writing within fourteen (14) days of the invoice date. After expiry of this period, the contracting party has forfeited its right of complaint. A complaint does not release the contracting party from its payment obligation.

11.4 SIMA GmbH is entitled to suspend the fulfillment of the contract(s) if the contractual partner does not meet his payment obligations arising from the contract(s), even if deadlines are exceeded, without SIMA GmbH being obliged to pay any compensation.

11.5 If the contractual partner does not pay the amount due within 30 days, he shall pay interest on the amount due at a rate of 9 percentage points above the respective base interest rate from the date of default in accordance with *§§ 286, 288, 247 BGB.* A separate reminder is not required for this.

11.6 In the event of breach of contract/bankruptcy or default of payment by the contractual partner, SIMA GmbH is entitled to inform a possible third party (in the case of a resale contract) and to carry out a contract takeover by a third party.

12 Acquisition, duration and termination of licenses

12.1 The license can only be obtained digitally by placing an order with SIMA GmbH or SIMA GmbH's partners.

12.2 Unless otherwise agreed and/or specified, a license has a term of twelve months, calculated from the activation date of a license.

12.3 A license is tacitly renewed at the applicable license price for the same period as the current term, unless the customer has terminated the license at least 90 calendar days before the end of the current license period.

12.4 A license termination can only be made in writing or via a web portal provided by SIMA GmbH and must be received by SIMA GmbH at least 90 calendar days before the end of the current license period.

12.5 The license term shall end in any case upon termination of the contract or if the contracting party fails to comply with its obligations under this *Article 11.*

13 End-of-life (termination)

13.1 The software of SIMA GmbH is subject to constant technical progress. In individual cases, this can lead to the software being modified in such a way that the functionality of the software is completely replaced by a new product or a new solution ("successor"). In this case, the software shall be replaced by the successor. The contracting party shall not be entitled to a license for the successor. For the avoidance of doubt, the parties hereby agree that an innovation that merely represents a new release version does not constitute a successor.

13.2 SIMA GmbH will regularly inform the contractual partner about planned changes to the software product portfolio via the Bondix newsletter and via its website. If the software of SIMA GmbH:

13.2.1 is replaced by a successor or

13.2.2 if it is no longer developed further and thus discontinued, SIMA GmbH must announce this measure in writing with a notice period of twelve (12) months ("End of Life").

13.3 The written announcement of the "End of Life" also constitutes the ordinary termination of the software maintenance for the corresponding software at the next possible date. SIMA GmbH will inform the contractual partner in its written announcement about the possibilities of updating or migrating to a current successor.

14 Intellectual property rights

14.1 All intellectual property rights to know-how and/or equipment belong exclusively to SIMA GmbH or its licensors. The contractual partner only receives the rights of use and powers granted in these terms and conditions or in the contract within the limits set by the license.

14.2 The contractual partner is aware that the know-how provided by SIMA GmbH contains confidential information and trade secrets of SIMA GmbH or its licensors. The contractual partner undertakes to keep this know-how secret, not to pass it on to third parties or to put it into operation and to use it only for the purpose for which it was made available. This also includes third parties as well as all persons working in the organization of the contractual partner who do not necessarily have to use the know-how.

14.3 The Contracting Party is not permitted to remove or alter any references to intellectual property - in the broadest sense of the word - from the know-how, including references to the confidentiality and secrecy of the know-how.

14.4 SIMA GmbH can take technical measures to protect the software. If SIMA GmbH has secured the software in this way, the contractual partner is not permitted to remove (attempt to remove) or circumvent (allow to circumvent) this security.

14.5 If SIMA GmbH does not provide a backup copy, the contractual partner has the right to create and maintain a backup copy himself, provided that the license (conditions) permit this and this is technically possible. The backup copy must be an identical copy and must always bear the same markings and information as the original copy.

14.6 If the contractual partner develops software or has it developed by a third party or intends to do so and requires information in connection with the interoperability of the software to be developed and the software provided by SIMA GmbH to establish this interoperability, the contractual partner shall request this information from SIMA GmbH in writing. SIMA GmbH will inform the contractual partner within a reasonable period of time whether it will comply with the request and under what (also financial) conditions this will be done.

14.7 SIMA GmbH shall indemnify the contractual partner against legal claims based on the assertion that know-how developed by SIMA GmbH infringes an applicable property right. The prerequisite for this protection is that the contractual partner informs SIMA GmbH immediately in writing about the existence and the content of the claim in detail, whereby the handling of the case including settlements is completely left to SIMA GmbH. The contractual partner shall provide SIMA GmbH with the necessary powers of attorney and information for this purpose and shall also cooperate fully so that SIMA GmbH can defend itself, if necessary on behalf of the contractual partner, against this action(s).

14.8 If it is irrevocably established in court that the know-how developed by SIMA GmbH itself infringes a property right of a third party, or if, in the opinion of SIMA GmbH, there is sufficient probability of such an infringement, SIMA GmbH will take back the credit note on the acquisition costs and minus an appropriate usage fee or ensure that the contractual partner can continue to use the delivered or a functionally equivalent other product undisturbed, all this according to the assessment of SIMA GmbH. This provision shall only apply if *this clause 14.7* has been complied with.

14.9 The protection clause referred to in *this paragraph 8* shall cease to apply if and to the extent that the infringement in question relates to modifications which the Contracting Party has made to the know-how or which it has had made by third parties.

14.10 Any liability or duty of protection of SIMA GmbH deviating from the above paragraphs for the infringement of industrial property rights of third parties is excluded. This includes the liability and/or protective obligations of SIMA GmbH for infringements caused by the fact that the information is used in a form not modified by SIMA GmbH, in connection with products or software not supplied or provided by SIMA GmbH and/or in a manner other than that for which the information was developed or intended.

15 Liability

15.1 SIMA GmbH shall be liable without limitation: in the event of intent or gross negligence, for injury to life, limb or health, in accordance with the provisions of the Product Liability Act and to the extent of a guarantee assumed by SIMA GmbH.

15.2 In the event of a slightly negligent breach of an obligation that is essential for achieving the purpose of the contract (cardinal obligation), the liability of SIMA GmbH is limited to the amount of damage that is foreseeable and typical for the type of transaction in question.

15.3 SIMA GmbH shall have no further liability.

15.4 The above limitation of liability also applies to the personal liability of employees, representatives and organs of SIMA GmbH.

15.5 A prerequisite for the assertion of claims for damages is that the contractual partner informs SIMA GmbH as soon as possible of the occurrence of the damage. A claim against SIMA GmbH expires one (1) month after the claim has arisen, unless the claim has already been notified to SIMA GmbH by the contractual partner in writing and sufficiently substantiated.

16 Compensation

16.1 The contractual partner shall indemnify SIMA GmbH, its employees and its vicarious agents irrevocably and unconditionally against all claims of third parties in connection with the fulfillment of the contract by SIMA

GmbH, including the costs of legal assistance and other legal costs incurred.

17 Data protection

17.1 SIMA GmbH may process personal data of the contractual partner for the purpose of providing the service and in this case complies with its obligations under the legal provisions on the processing of personal data.

17.2 SIMA GmbH's privacy policy, which is published on the website, applies to the processing of the contractual partner's personal data.

17.3 All personal data processed by SIMA GmbH is processed within the European Union.

18 Force majeure

18.1 Neither party shall be obliged to perform any obligation under the Agreement if it is prevented from doing so by force majeure. Force majeure is understood to mean any circumstance which is not attributable to the actions of the parties, which temporarily or permanently prevents the fulfillment of the agreement and which should not be considered a risk of the parties, either by law or by standards of reasonableness and fairness, and, insofar as it does not already fall under this: Obstacles due to measures, laws or decisions of competent international or national (public) authorities, shortage of raw materials, strike, factory occupation, blockade, embargo, war, riots and equivalent conditions, power failure, failure of (tele)communication lines, fire, explosion, water damage, flooding, lightning and other natural disasters and calamities and extensive illnesses of an epidemiological nature of personnel.

18.2 As soon as a contracting party is confronted with force majeure, it shall inform the other contracting party, unless it cannot reasonably be expected to do so under the given circumstances.

18.3 If SIMA GmbH has already partially fulfilled its obligations at the time of the occurrence of force majeure, SIMA GmbH is entitled to invoice the part already performed separately. The contracting party is obliged to pay this invoice, as this is a separate contract.

18.4 If it is determined that the force majeure situation will last for three (3) months, either party shall be entitled to terminate the Agreement in the meantime without notice. Termination within the meaning of this *article shall be effected* by returning a registered letter with signature.

18.5 SIMA GmbH accepts no liability for direct and/or indirect damages, costs and/or losses incurred by contractual partners and/or third parties that are directly and/or indirectly caused by or in any way related to the state of force majeure on the part of SIMA GmbH.

19 Non-solicitation clause

19.1 It is acknowledged that both parties (including their Affiliates) have expended considerable time, effort and expense in hiring, training and retaining their employees and subcontractors in connection with the provision of products and services to be provided under this Agreement. In consideration thereof, each party expressly agrees that it will not, without the prior written consent of the other party and subject to payment of agreed compensation to the other party, directly or indirectly solicit or cause to be solicited for employment any employees or subcontractors ("Employees") of the other party who are or have been engaged on a full or part-time basis in activities related to the performance of the Agreement during the term of the Agreement and for a period of 24 months thereafter. In addition, each Party agrees not to directly or indirectly solicit or employ any person who has been employed by the other Party in the last 24 months without the prior written consent of the other Party.

20 Export regulations

20.1 Software of SIMA GmbH may be subject to the export control laws, standards, regulations, restrictions and national security checks of Germany, the European Union and/or the United States of America.

The contractual partner is obliged to observe possible restrictions that may result from these measures and, if necessary, to obtain the necessary authorizations independently. The contractual partner shall indemnify SIMA GmbH against all consequences resulting from a breach of this provision.

21 Termination of the agreement

21.1 SIMA GmbH is entitled, without prejudice to its other statutory rights and without being obliged to pay damages, to terminate the contract by written declaration or, if the contract was concluded electronically by e-mail, with immediate effect and without judicial intervention and thus to deny the contractual partner access to the software if:

21.1.1 The contracting party applies for or receives a moratorium, files for bankruptcy or is declared bankrupt or offers a composition outside of bankruptcy, or part of its assets are seized.

21.1.2 The contracting party ceases to operate, decides to liquidate, otherwise loses or transfers its legal personality or merges its business.

21.1.3 The Contracting Party culpably fails to comply with its obligations under the Agreement after due notice of default, which provides for a period of 14 calendar days to remedy the default.

21.1.4 The contracting party includes a competing product in its portfolio without the prior approval of SIMA GmbH.

21.2 Upon termination of the contract, for whatever reason, SIMA GmbH shall be entitled to full payment of the remaining fee until the end of the agreed contract term and shall not be obliged to repay any fees already paid to the contracting party.

21.3 The other party is in breach of the law if it: breaches any obligation under the contract and/or these terms and conditions; declares bankruptcy, applies for or obtains a moratorium on payments or applies for or obtains statutory debt rescheduling, transfers the operation or control of its business, loses its legal personality or dissolves or is wound up.

21.4 In the case *referred to in this paragraph 1,* SIMA GmbH shall have the right to terminate the agreement unilaterally, without notice and without judicial intervention, without SIMA GmbH being obliged to pay any compensation, including the right to full compensation of all its direct and/or indirect damages.

21.5 If the contracting party has already received performance under the agreement at the time of the dissolution *referred to* in *this article*, this performance and the associated obligation(s) shall not be subject to rescission. Amounts invoiced and/or delivered by SIMA GmbH prior to dissolution in connection with what it has already performed and/or delivered in execution of the agreement shall continue to be subject to the undiminished due date in the previous sentence and shall be immediately due and payable at the time of dissolution.

22 Applicable law and disputes

22.1 This contract shall be governed exclusively by German law to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods of April 11, 1980 (UN Sales Convention).

22.2 The contractual partner may neither offset claims of SIMA GmbH against counterclaims nor exercise a right of retention, unless claims of the contractual partner are recognized by SIMA GmbH or have been legally established.

22.3 For all disputes arising from the offer, the contract and/or the agreement or any other agreement to which these terms and conditions apply, the competent court at the registered office of SIMA GmbH shall have jurisdiction.

These General Terms and Conditions (GTCs) are a translation of the original and legally binding Allgemeine Geschäftsbedingungen (AGB).