

GENERAL TERMS AND CONDITIONS
SYMMEDIA SP/1
PLUG&WORK BOX SMART

1 SUBJECT OF THE CONTRACT

1.1

The customer acquires from symmedia the symmedia SP/1 Plug&Work Box smart (hereinafter referred to as "hardware"). including the corresponding firmware and documentation under the terms and conditions of this contract as well as the associated user documentation in printed or printable form. The specification for this device ("Data Sheet symmedia SP/1 Plug&Work Box smart") is available to the customer and is part of this contract.

1.2

The correct selection, number and dimensioning of the ordered hardware is the responsibility of the customer and is his sole risk. symmedia carries out selection consultations upon separate order of the customer and at separate conditions.

2 DELIVERY, INSTALLATION, HANDOVER

2.1

The customer shall bear the transport costs ex works symmedia.

2.2

The delivery date is regulated in the order confirmation. Delivery is made either by shipment ex works or warehouse or by acceptance by the customer at symmedia. In the case of shipping, symmedia will either deliver or ship the hardware to the agreed delivery location itself or through third parties (manufacturers or shipping companies). The shipment is at the expense and risk of the customer.

2.3

Changes to the delivery date must be recorded in writing. If a strike affecting the delivery due date, force majeure, or any other event (over which the supplier has no influence) delays the delivery, the delivery date shall be postponed accordingly.

2.4

If the service owed by symmedia is not available due to unforeseeable circumstances or circumstances for which symmedia is not responsible (e.g., due to work stoppages, operational disruptions, transport obstacles, official measures - in each case also with upstream suppliers - as well as non-timely self-delivery), symmedia GmbH is entitled to withdraw from the contract if it

informs the customer immediately of the non-availability. In this case the purchase price will be refunded to the customer immediately.

2.5

The assembly and installation of delivered devices by symmedia as well as the instruction and training of operating personnel is not part of this contract.

3 SOFTWARE/GENERAL PUBLIC LICENSE

3.1

symmedia points out that an open-source software (OSS) is installed as operating system of the delivered devices. The operating system of the hardware is based on the Linux distribution "CentOS" (<https://www.centos.org>).

3.2

symmedia delivers the devices only pre-configured, i.e., with the operating system already installed. symmedia itself does not grant the customer any rights to this operating system, neither directly nor indirectly. The manufacturer(s) of the operating system have rather released its transfer and its use by the customer under certain conditions defined in more detail below:

3.3

Customer's use of the operating system is permitted only in compliance with the license terms of the "General Public License" versions 2 ("GPL V.2") issued by the Free Software Foundation, 51 Franklin Street, Suite 500, Boston, MA 02110-1335, USA, for the licensing of free software.

3.4

The customer has read and accepted the authoritative, original English version of the GPL V.2, available at <http://www.gnu.org/licenses/gpl-2.0.html> as well as <http://www.gnu.org/licenses/gpl.html> as well as from the German version, at <http://www.gnu.de/documents/gpl-2.0.de.html>. The above versions of the "General Public License" are thus an integral part of this agreement.

4 ACCEPTANCE, WARRANTY, FUNCTIONAL TEST

4.1

The customer shall inspect the hardware immediately after delivery, insofar as this is possible in the ordinary course of business, and, if a defect becomes apparent, shall notify us thereof without delay.

If the customer fails to do so, the hardware shall be deemed to have been approved, unless the defect was not recognizable during the inspection.

4.2

If such a defect is discovered later, the notification must be made immediately after discovery, otherwise the hardware shall be deemed approved also in view of this defect.

4.3

To preserve the rights of the customer, it is sufficient to send the notification in time.

4.4

A defect of the hardware exists if it does not have the agreed quality at the time of transfer of risk or if it is not suitable for the contractually agreed use. There is no defect if the customer himself or a third party has interfered with the hardware without the prior written consent of symmedia and the defect occurred after the interference with the hardware, unless the customer proves that the defect of the hardware is not due to the interference.

4.5

The claims for defects are subject to a limitation period of one year.

4.6

In case of occurrence of defects symmedia is obligated to remedy the defect or to deliver a replacement (supplementary performance). symmedia will bear all expenses necessary for the purpose of supplementary performance, in particular transport, travel, labor, and material costs.

4.7

The customer may only assert claims for subsequent performance if a reasonable portion of the agreed remuneration has already been paid in relation to the scope and severity of the defect in the hardware.

4.8

The supplementary performance is considered to have failed after the second unsuccessful attempt. If the supplementary performance fails or if symmedia is not willing or able to do so, the customer is entitled to withdraw from the contract and, if symmedia is at fault, to claim damages or compensation for futile expenses. The reduction is excluded.

5 LIMITATION OF LIABILITY

5.1

symmedia is liable for its own intentional and grossly negligent breaches of duty, as well as those of its legal representatives and other vicarious agents in accordance with the statutory regulations.

5.2

Furthermore, the seller shall only be liable for slight negligence if an obligation is violated, compliance with which is of particular importance for achieving the purpose of the contract (cardinal obligation) and in this case only for foreseeable damage, the occurrence of which must typically be expected.

5.3

The liability according to clause 5.2 is also limited to three times the total remuneration owed under this contract. Withdrawal shall be excluded in the event of a breach of duty for which we are not responsible.

5.4

symmedia is liable for the loss of data and/or programs only to the extent of the expenses incurred if the customer performs regular and application-adequate data backups and thus ensures that lost data can be restored with reasonable effort.

6 SET-OFF, RIGHTS OF RETENTION, RESERVATION OF TITLE

6.1

The customer shall only have the right of set-off insofar as its counterclaims have been legally established or are undisputed. The assertion of rights of retention from claims other than those based on this contract is excluded.

6.2

Until full payment of the agreed purchase price, ownership of all delivered items, including the associated software and documentation, shall remain with the supplier.

6.3

Purchase price changes are not possible without express agreement to the contrary. Taxes, customs duties, and other public charges are not included. Value added tax shall be added to the agreed prices.

7 FINAL PROVISIONS

7.1

All amendments and supplements to the contract must be made in writing. Deviations in the customer's terms and conditions of purchase shall only apply if symmedia expressly agrees to these deviations in writing.

7.2

Applicable to the contractual relationship are the provisions of this contract and supplementary the law of the Federal Republic of Germany. The place of performance and jurisdiction for all disputes arising from this contract is the registered office of symmedia, provided that the customer is a merchant or a legal entity under public law.