

General Terms & Conditions of Sale and Services rendered by SOMAG AG Jena

§ 1 Scope

- 1.1 The General Terms and Conditions (further on referred to as „T&C“) govern the entire legal relationship between SOMAG AG Jena (further on referred to as „SOMAG“) and its customers exclusively.
- 1.2 The conclusion of the contract, the content of such contract and the performance under the contract are exclusively governed - in the following order – by SOMAG’s Order Confirmation or, in absence of such Order Confirmation, by SOMAG’s Quotation, by the T&C and by SOMAG’s product/service specification. SOMAG objects any General Terms and Conditions of purchase orders of customers which are contradictory or diverging from the T&C; unless SOMAG’s Order Confirmation or Quotation confirm the diverging or contradicting terms in writing, by Telefax or Email (further on referred to as “Contractual Form”). The term Contractual Form does not imply the necessity of a mutual agreement for the document requiring Contractual Form. The customer finally accepts the T&C upon receipt of the delivered products or services. Where the law does not respect this inclusion of T&C, the customer accepts by receipt of the products the mandatory clauses covering warranty, limitation of liability, period of limitation, jurisdiction and arbitration and place of delivery of the T&C.
- 1.3 All declarations of will which are deemed to have legal effect to the contract must observe the Contractual Form. The Conclusion of contract, amendments or changes of contractual rights or obligations in oral or by conduct are excluded.
- 1.4 The T&C apply to consecutive business transactions in the future between SOMAG and the customer without the necessity of repeated reference to the application of T&C and without the further necessity to submit the T&C to the customer.

§ 2 Conclusion and Content of Contract Treatment of and Rights on Documents and Information

- 2.1 SOMAG’s Quotations are not legally binding offers unless explicitly marked as “binding” or in similar manner in Contractual Form. SOMAG’s quotations are issued under application of the T&C. Customer’s orders are subject to the T&C.
- 2.2 The Contract is – in absence of a binding SOMAG Quotation - generally concluded upon the receipt of SOMAG’s Order Confirmation as response to customers order. The Order Confirmation must be provided in Contractual Form to have legal effect.
- 2.3 Technical details provided by SOMAG before or after conclusion of contract are understood as approximate information unless strict adherence upon the details was agreed mutually in Contractual Form. Deviations under trade customs are also admissible.
- 2.4 Orders for engineering or design services have to provide a functional specifications document which clearly particularizes customer’s requirements. The specification sheet needs the consent of SOMAG in Contractual Form. In the case that customer has not provided a specification sheet, SOMAG’s Quotation, Order Confirmation and final formation of contract are subject to SOMAG’s technical knowledge at the time of issue of the documents. Additional expenses or costs resulting from modifications of requirements by the customer during execution of the contract are to be paid by the customer additionally.
- 2.5 SOMAG retains title, property, copyright and ownership of any proprietary or confidential information, images, drawings, presentations, maps, data, illustrations, calculations, technical or commercial specifications and other related information provided to the customer irrespectively whether provided in writing, orally or any other form. The stipulations of a separate Non-Disclosure Agreement signed by both parties prevail.
- 2.6 Documents and information mentioned in point 2.5 must not be presented to any third party by the customer unless SOMAG has explicitly consented in Contractual Form.
- 2.7 Any information as defined in point 2.5 is to be returned to SOMAG on request immediately, or, where electronically submitted, deleted by the potential customer on request immediately, if the contract is not concluded according to SOMAG’s Quotation or Order Confirmation. Upon SOMAG’s request, the potential customer must provide a written solemn confirmation of the return/deletion and the completeness thereof. The potential customer is not entitled to retention of such return/deletion of information for the reason of own alleged claims/rights against SOMAG.

§ 3**Price/Price Adjustment/Terms of Payment**

- 3.1 The prices are in EURO net and ex works (EXW Incoterms) Jena/Germany. Costs of package, insurance, transport, value added tax or other taxes applicable by law, customs, and any other related charges may be invoiced by SOMAG additionally.
- 3.2 SOMAG is entitled to invoice the customer because of price increases caused by SOMAG's suppliers.
- 3.3 The manufacture of products specifically tailored for the demands of the customer, the manufacture of specimen/prototypes/samples, and the execution of engineering or design services may imply additional costs diverging to those initially calculated by SOMAG if the technological aim to be achieved requires further and additional efforts by SOMAG like additional work, expenses for materials etc. SOMAG will notify the customer of such extra costs, and SOMAG is entitled to invoice such additional costs separately after notice.
- 3.4 SOMAG's invoices and any other claims are due 10 days upon receipt of the invoice.
- 3.5 Unless otherwise agreed, SOMAG may demand the payment of instalments of the total contract price as follows: (i) 40 % at the time of conclusion of contract, (ii) 45 % after notification of readiness for shipment or, where applicable, after achievement of milestones for services, and (iii) 15 % after delivery or completion of services.
- 3.6 The customer is not entitled to any deductions, the retention of payment for own claims or the set off against SOMAG's invoices.
- 3.7 The delay of payment of more than 30 calendar days after expiration of payment period of 10 days entitle SOMAG to postpone the fulfilment of further obligations or performances until all due payments are settled by the customer, including costs and interests of 10 % above the basic interest rate announced by the European Central Bank at the time.
- 3.8 Customer's bankruptcy, a winding up order of customers entity, the appointment of a receiver or administrator or any other circumstances which indicate a diminishment of customers creditworthiness or which threat to jeopardize the settlement of our accounts – not cured within two weeks after acknowledgement of SOMAG – entitle SOMAG to resign from the obligations not yet fulfilled by SOMAG or, where the complete contract is without interests and worth to SOMAG, the resignation form the entire contract.
- 3.9 Payments are to be made by bank transfer to the accounts of SOMAG in Germany at customer's costs.

§ 4**Time of Delivery, Delay, Export / Import**

- 4.1 Information about time of delivery or performance of services refers to SOMAG's internal planning and such information is not binding, unless otherwise explicitly agreed in Contractual Form.
- 4.2 Legally binding agreements of time of delivery or performance of services do not constitute a fix term business but are solely relevant for the consequences of delay under point 4.5).
- 4.3 Binding periods of time depend on the completeness of fulfilment of customer's obligations.
- 4.4 Binding periods of delivery are compiled at the latest with disposal of the goods to the carrier.
- 4.5 Non-compliance with binding times of delivery/services entitle the customer – to the extent as provided within the T&C – to claim damages caused directly by the delay, but not to claim any further damages or to claim termination of contract.
- 4.6 SOMAG's compliance with binding period of time agreements depends on the timely and accurate delivery of goods to SOMAG by its own suppliers. Otherwise, SOMAG's own obligation to delivery timely is suspended reasonably.
- 4.7 Cases of major force like strikes, natural occurrences and any other unforeseeable incidents beyond SOMAG's reasonable control (breakdown of machinery despite proper maintenance, unexpected transport hindrance, shortage of energy, sickness of key personnel) including acts of the legislative or authorities prolong binding periods or delivery and, if the extension is unreasonable long, entitle both parties to rescind from the contract excluding any claims for any damages.
- 4.8 SOMAG determines the manner and way of transport unless otherwise agreed in Contractual Form.
- 4.9 It is the customer's sole responsibility to conform to any legal requirement regarding the export of products delivered by SOMAG in the event that the customer exports such product into a third territory different from the initial territory of delivery. The same applies vice versa in cases where the necessity arises to reimport the products into Germany for maintenance purposes or warranty purposes. The customer has to clarify all customs issues on its own costs and responsibility.
- 4.10 SOMAG insures the products against loss or damage only on request of the customer at its expense and according to its specifications.

§ 5**Passing of the Risk**

SOMAG delivers EXW according to INCOTERMS 2010. The risk passes at leaving the works of SOMAG or, where applicable, with the notification of readiness to deliver. This also applies to partial deliveries or where SOMAG bears the cost of transportation.

§ 6**Limited Warranty, Limited Liability, Period of Limitation**

SOMAG grants a limited warranty under observance of the following stipulations:

- 6.1 The customer is solely responsible for the fulfilment of its obligations to collaborate and deliver technical input and documentation. SOMAG has no obligation to investigate if the ordered products or services are suitable for the specific purpose pursued by the customer unless such obligation was explicitly mentioned in SOMAG's Order Confirmation in Contractual Form. Furthermore, the customer is solely responsible that third party's intellectual or proprietary rights do not conflict with the application of the products or services delivered or rendered by SOMAG through the customer in the territory intended to be used by the customer. Therewith, SOMAG is not liable for any violation of third party's intellectual or proprietary rights in these territories.
- 6.2 The customer must check the received products immediately in case any damages happened during the delivery by the transporter. This includes the check of the transport sensors fixed at the products which may give information about improper treatment of the products by the carrier. The customer must notify the carrier immediately about the discovered damage, default or other circumstances under precise description in the freight documentation papers in order to preserve all potential rights SOMAG may have against the carrier.
- 6.3 Furthermore, any product must be inspected immediately upon receipt in order to detect potential obvious malfunctions by the customer. Detected or easily detectable defects are to be reported to SOMAG in Contractual Form within 5 calendar days after the day of receipt. Any notification after expiration of the 5-calendar-days-period excludes any warranty claim and any other claim in relation or connection with such defects or malfunctions of the products.

Hidden defects or malfunctions are to be notified to SOMAG within 5 calendar days after detection, otherwise any warranty claim or any other claim in relation or connection with such defects is excluded.

The obligation to check and notify faulty products also applies to partial deliveries and deliveries or services as procedures to fulfil warranty claims.

Delayed notification after expiration of the time limits set above result in the waiver of any warranty claim and the waiver of any related claim based on the faulty product.

A reply from SOMAG to the notification of faulty products referring to the allegation of fault or arguing alike does not mean a waiver of the objection of late notification unless SOMAG acknowledged explicitly the timeliness of notification in Contractual Form.

- 6.4 No warranty is given for faults resulting from inappropriate or improper use of the products or from improper storage.
- 6.5 SOMAG warrants solely the accordance of the products and services to the functionalities described in the product/service specification provided by SOMAG under the limitations contained in the T&C. The product specifications and manuals do not contain any kind of guarantee, warranted characteristics except explicitly agreed in Contractual Form. The specifications and manuals do not imply any warranty or condition.

The warranty also covers improper workmanship and defects in material to the extent that: (i) such defects constitute a discrepancy to the product specification, and (ii) such defects affect the functionality of the product essentially. Any other warranties are explicitly excluded to the extent permitted by the applicable law as provided for in clause 10.1.

SOMAG's sole warranty is to repair the product or, at SOMAG's choice, to replace the product. If the problem is not solved after reasonable efforts by SOMAG, then the customer may dilute the price for the defective or faulty product under consideration of the impact of the default in relation to the total price of a faultless product.

Any further warranty and the compensation of damages based on faulty products are excluded as far as permitted under the applicable law of clause 10.1.

In the case of legal invalidity of this exclusion, SOMAG is only obliged to compensate direct damages if the damages were caused by SOMAG's management, assistants or agents in the form of intentional or gross negligent action. Any liability for indirect or consequential damages is excluded.

- 6.6 To the extent that SOMAG's deliveries are comprised of SOMAG's products and additional items or products manufactured by third parties, the limited warranty as described above only applies to the part of products manufactured by SOMAG itself. The customer must seek compensation in respect of defective or faulty products of such third parties with the third party directly at first instance. SOMAG will assign potential own claims against the third party to the customer to enable the customer to proceed seeking compensation.
- 6.7 Research and Development Services are executed by SOMAG under reasonable efforts based on the Know How present at SOMAG at the time of performance. A usable result or success are not owed by SOMAG except fixed upon in Contractual Form.
- 6.8 The customer must not fix a fault or defect at a product on its own before SOMAG had sufficient opportunities to repair or replace the faulty product or the parts thereof. Any violation of this stipulation results in a waiver of all warranty claims the customer may have, included, but not limited to, the waiver of all related claims based on the faulty product. The same applies to unauthorized launch of operation or maintenance without SOMAG's approval, or in contradiction to SOMAG's manuals.
- 6.9 SOMAG may perform its warranty at SOMAG's discretion at its office in Germany (Jena) or at the place of first destination of delivery. The return of any product to SOMAG requires in any case the previous consent of SOMAG in Contractual Form. Approved return of products to SOMAG for warranty purposes are to be sent free of charge to SOMAG.
- 6.10 The warranty for software is understood under the assumption that software never runs completely error-free according to the state-of-the-art. Under this consideration, SOMAG warrants software only if the malfunction: (i) is reproducible to enable SOMAG to warrant software, (ii) is not caused by malfunctions or failures of interaction between the hardware environment provided by the customer, and/or the system software used by the customer and the software provided by SOMAG, (iii) is not caused by any system parts provided by third parties other than SOMAG or the customer. SOMAG may warrant malfunctions of software either by: (i) the delivery of up-dates or up-grades which fix the problem, (ii) identify and illustrate ways to circumvent the problem provided that the essential functionality is not affected, or (iii) by dilution of the part of contract price which is allotted to the software component. In any case, the customer grants SOMAG sufficient time to investigate the cause of the software's malfunction and assists and supports SOMAG properly with the detection and salvation of the problem. Any further liability, especially the compensation of damages resulting of the malfunction of software, is excluded.
- 6.11 Any claims based on defective products or malfunctions of the products, equipment and software, and any other in relation to such reclamations are subject to a period of 12 months. The period commences with the receipt of the products by the customer or, where the products are no longer receivable, with the passing of the risk. After the expiration of the period of limitation, any of such claims are excluded.
- 6.12 SOMAG does not warrant that delivered software interacts properly with any third party software used by the customer unless it has been agreed upon in Contractual Form.

§ 7

Retention of Title, Securities, Insurance

- 7.1 SOMAG reserves title and property on any product, equipment, software and other items delivered to the customer until all outstanding payments are settled by the customer.
- 7.2 Any resale, forfeiting, bailment, pledge, chattel mortgage or other security on the items delivered to the customer under retention of title is not permitted unless explicitly consent by SOMAG in Contractual Form. This provision does not apply to the resale of products which are initially intended for resale (e.g. delivery to a wholesaler, OEM-products). The customer assigns its claims against its customer out of the resale to SOMAG as a security instead of the retention of title. The customer remains entitled to debt the claim against its customer as long as SOMAG's customer settles all outstanding payments in time to SOMAG.

§ 8

Implementation, Launch of Operation

SOMAG has no obligation to the implementation and launch of operation at customer's premises unless explicitly agreed in Contractual Form.

§ 9

Software License, Copyright

- 9.1 SOMAG retains title, property and copyright of any software product including, but not limited to, software regulating or controlling the products.

- 9.2 SOMAG grants a non-exclusive and not transferable license to use the software and related documentation to run the delivered products and equipment. The license commences with the payment of all outstanding debts regarding the software and the associated product the software is deemed to run.
- 9.3 The use of the software is restricted to the hardware tool the software was purchased for and, where relevant, the use is limited to the number of users as indicated in SOMAG's Order Confirmation in Contractual Form. If the number is not specified, the number of user is restricted to one.
- 9.4 The source code is not owed to be delivered by SOMAG unless otherwise agreed in Contractual Form. The customer must not redevelop, reassemble, copy or use the software.

§ 10

Applicable Law, Panel of Arbitration, Court of Jurisdiction in minor cases/ Place of Execution

- 10.1 The Contract including the T&C as part hereof and the complete relationship with the customer shall be governed and construed by the Laws of Switzerland under exclusion of the United Nations Convention on International Sales of Goods.
- 10.2 Disputes out of or in relation to the contract – irrespectively what cause of action based on, including issues of validity of the contract, its formation, conclusion, cancellation - shall be submitted to arbitration from an amount in dispute of upwards 150.000 EUR or the equivalent of value if the issue in dispute is not directly monetary. The arbitral award shall be final under exclusion of any state court intervention or remedy before a state court. The rules of the Chamber of Commerce Zurich, Switzerland, shall apply to arbitration. The release of the rules at the time of initiation of the arbitration shall apply. Arbitration shall take place in Zurich, Switzerland, and the spoken and written language shall be English. The arbitration panel shall be composed of three arbitrators, where the president of the panel must not be citizen of one of the parties' countries. The arbitral award has to be issued in written form and must present reasons which refer to the law, not solely to reasonableness. The costs of arbitration including reasonable costs of Attorneys are to be covered by the party that does not prevail.
The validity of this Arbitration Clause shall also be governed by the Laws of Switzerland.
- 10.3 In cases where the amount or value in dispute does not reach the mark of clause 10.2 (below 150.000 EUR), the exclusive jurisdiction of the Courts of Germany and the exclusive place of jurisdiction in Erfurt/Germany applies. An increase of the amount or value in dispute over the proceedings does not affect this jurisdiction clause, the arbitration clause in point 10.2 will not become applicable in such a case.
- 10.4 The parties agree the enforceability of the arbitration award and, where applicable, the final judgement, irrespectively of any international unified laws in any country where the respective party has a seat, branch or any other financial interests.
- 10.5 The place of execution of all obligations to pay under the contract shall be Jena/Germany. The place of execution of the obligation to deliver the products is Jena/Germany unless otherwise agreed in Contractual Form.

§ 11

Severability Clause, Miscellaneous, General Limitation of Liability

- 11.1 If one or more of the Contract clauses including this T&C are for any reason held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect the validity of the contract as a whole. The contract including the T&C shall be read and construed by the arbitrators or the court of jurisdiction as if the parties had implemented a valid provision which, to the extent possible, meets the economical intention the parties had when they implemented the invalid or unenforceable provision.
- 11.2 The assignment of rights or duties out of the Contract requires the consent of SOMAG in Contractual Form.
- 11.3 Die Software darf ausschließlich in der Steuerung, für die sie erworben wurde, und nur auf der Anzahl der Arbeitsplätze, für die eine Lizenz besteht, verwendet werden. Die Vervielfältigung, Rückübersetzung in den Quellcode (Dekompilierung) und Erweiterung sowie sonstige Eingriffe sind nur unter den Voraussetzungen der § 69 d) und 69 e) UrhG gestattet.
- 11.4 To the extent that the liability for damages is not validly excluded by any of the foregoing clauses of these T&C, SOMAG's liability for damages is limited to a maximum of 200.000 EUR per occurrence causing the damage.