

General Terms and Conditions of Business of SOMMER Messtechnik GmbH, A-6842 Koblach, Germany (hereinafter referred to as "SOMMER")

1. Validity of these GTC

1.1 The following General Terms and Conditions (hereinafter referred to as "GTC") shall apply to all contracts concluded by SOMMER as seller or service provider with its Customers.

1.2 By placing an order, the Customer declares that he is in agreement with these GTC. The GTC shall apply exclusively unless they are amended or supplemented by an express written individual agreement. The application of the Customer's own General Terms and Conditions shall be excluded in any case, unless SOMMER has expressly agreed to this in writing.

2. Conclusion of the Contract, Prices and Terms of Payment

2.1 All offers in sales documents of SOMMER, on the SOMMER website www.sommer.at and the like are made "without commitment" and are an invitation to the Customer to make an offer. If the Customer orders products or services, he submits a binding offer to conclude a contract with SOMMER.

2.2 The contract with SOMMER is only concluded when SOMMER accepts the Customer's offer by submitting a corresponding declaration of acceptance to the Customer or by sending the ordered product to the Customer.

2.3 All prices are subject to change without notice and do not include value added tax or shipping packaging.

2.4 Payment shall be made in the invoiced currency and free of charges and deductions.

2.5 The invoice amounts are due for payment in advance unless other payment agreements have been made.

2.6 In the event of default, the Customer undertakes to reimburse SOMMER for the reminder and collection charges incurred. In the event of default in payment, an additional 12 % default interest shall be payable.

2.7 All payments shall be made directly and exclusively to SOMMER; payments made by third parties shall not discharge the debt. vicarious agents such as subcontractors and commercial agents are not entitled to collect debts.

2.8 If the Customer's financial situation deteriorates (e.g. judicial debt collection, execution or insolvency proceedings etc. are pending) or if the agreed payment deadline is not met, SOMMER shall be entitled to demand immediate payment of all claims, to withdraw from the contract and shall furthermore be released from the duty of further deliveries and services.

2.9 The Customer may neither withhold payments nor offset counterclaims of any kind whatsoever.

3. Delivery, Transfer of Risk

3.1 Costs and risk shall be borne in accordance with the INCOTERM clause agreed in each case, as amended from time to time. If no other INCOTERM clause is agreed, goods shall be delivered ex works (EXW).

3.2 Delivery periods shall be calculated from the replacement times stated by SOMMER (sum of the standard production and standard procurement periods) and shall always refer ex works (EXW). If delivery dates are specified, delivery shall be effected by the last working day of the calendar week in which the delivery date lies.

3.4 Operational disruptions and events of force majeure such as technical disruptions, strikes, natural catastrophes or natural disasters, war, interruptions or delays in the supply of raw materials, shortages of raw materials and similar cases both at SOMMER and at suppliers of SOMMER or service providers commissioned in the transport chain shall extend the delivery times accordingly.

3.5 SOMMER shall endeavour to comply with the specified delivery dates, but does not guarantee them.

3.6 Unless otherwise agreed, delivery shall be made at the expense and risk of the Customer.

3.7 Orders are shipped and invoiced 4 weeks starting from the agreed delivery date. If the customer does not have the space to receive the goods. The order can be stored at a professional forwarder, the costs for storing the order are invoiced to the customer.

4. Retention of Title

4.1 SOMMER retains title to the delivered products until payment of all outstanding claims (including interest, expenses and costs) arising from the business relationship is made.

4.2 If the Customer is in default of payment, the Customer shall, upon Sommer's request and at Sommer's option, either return the delivered products immediately or send them to an address specified by SOMMER at the Customer's expense.

4.3 If the validity of the retention of title in the country of destination is linked to special conditions or formal requirements, the Customer is obliged to find out about these and to fulfil them.

5. Warranty and Damages

5.1 Notification of defects shall be made within 10 (ten) working days after delivery or after the defect has become apparent, otherwise the right shall be lost.

5.2 Place of performance for warranty claims is always the place of delivery (EXW Koblach).

5.3 The warranty period shall be 24 months from delivery by SOMMER and shall only apply to the free material replacement of the defective part; should the end customer of the Customer (consumer) assert any further claims against SOMMER in accordance with local law, the Customer shall fulfil such claims or indemnify SOMMER. This limitation shall also apply in the event of a claim for damages and in the event of recourse by the Customer. For repairs and assemblies, the period is limited to 6 months.

5.4 The liability of SOMMER, as well as that of SOMMER's suppliers, with the exception of personal injury claims within the scope of application of the Product Liability Act, shall only exist in the event of intent or gross negligence. Claims for damages shall expire within 6 (six) months after knowledge of the damage and the injuring party. Liability for slight negligence is excluded, as is compensation for consequential damage and financial loss, lost profits, loss of interest and damage from third-party claims against the Customer. SOMMER as well as SOMMER's suppliers shall not be liable for product damage resulting from product liability suffered by a business. These limitations of liability shall also apply in the event of delay or partial delay in delivery as well as for regress claims.

5.5 The Customer shall be obliged to exempt itself effectively for the benefit of SOMMER and its suppliers vis-à-vis its customers within the meaning of points 5.3 and 5.4.

5.6 All ancillary costs incurred in connection with remedying the defect (e.g. for installation and removal, transport, disposal, travel costs, helicopter flights, etc.) shall be borne by the Customer. Invoices from the Customer or third parties for repair work shall only be accepted if this work has been approved in writing by SOMMER in advance.

5.7 Warranty claims and/or claims for damages arising from the combination of SOMMER products with third-party products are expressly excluded. The Customer is obliged to inform his customers of this as well.

5.8 In the event of a warranty/guarantee, SOMMER shall, at its own discretion, remedy the defect, make a replacement delivery, reduce the price or rescind the contract. The warranty and guarantee do not include wearing and consumable parts.

5.9 Warranty and guarantee claims are excluded if the Customer himself or a third party has modified, repaired or maintained the delivered products, changed the technical specifications or carried out other interventions. The same shall apply in the event of improper handling or use of unsuitable data carriers and if the defect is not notified immediately.

5.10. SOMMER shall not be liable for indirect or consequential damages of any kind whatsoever. SOMMER shall in no case be liable for slight negligence.

5.11. For warranty work on the Customer's premises, the necessary auxiliary staff, lifting equipment, scaffolding and small materials etc. must be provided. Replaced parts become the property of SOMMER.

5.12. If a product is manufactured by SOMMER on the basis of construction data, drawings, models or other specifications of the Customer, the liability of SOMMER shall only extend to the execution in accordance with the conditions.

5.13. In all cases, the liability of SOMMER and its vicarious agents shall be limited in amount to the value of the respective individual contract.

6. Software Licenses

6.1 SOMMER grants the Customer a non-exclusive and non-transferable right of use to the software product for which the Customer acquires a license from SOMMER. If the Customer gives a device to a third party, the use of the associated software is also permitted.

6.2 The licence rights granted to the Customer by SOMMER may not be assigned, transferred, pledged, leased or passed on in any other form to third parties, transferred or shared with third parties by the Customer.

6.3 With the exception of a backup copy, any type of reproduction of the software product, documentation or parts thereof shall only be permitted with the prior written consent of SOMMER.

6.4 Without the prior written consent of SOMMER, Customer may not modify, transfer (whether electronically or otherwise), translate, disassemble, decompile or otherwise reverse engineer the Software Product or the accompanying documentation.

7. Repairs

If a device is sent to SOMMER for repair, all work will be carried out at SOMMER's facilities or certified repair centres. The Customer is obliged to ship the device properly with a repair order at his own expense. SOMMER will return the device CIP (Incoterms 2010) after the service has been completed. However, SOMMER does not assume any liability for the return costs for transport loss or transport damage.

8. Secrecy

The Customer as well as SOMMER shall treat all information which they mutually receive in connection with their business relationship and its processing confidentially and shall not make it accessible to third parties. However, SOMMER is entitled to use customer data for marketing purposes, e.g. references.

9. Intellectual Property Rights

SOMMER is entitled to the intellectual property rights to all devices, programs and services as well as all copyrights, patents, trademarks and proprietary rights associated therewith and shall remain with SOMMER undivided.

10. Technical Installation and Commissioning

The work for assembly and commissioning as well as the training of the operating personnel for the operation of the plant and/or evaluation of the measurement data on PC are invoiced according to the actual expenditure at the stated travel costs and hourly rates. The daily rate for on-site technical support for installation, set-up, commissioning and calibration can be found in the quotation. The costs include daily allowance, board and lodging if necessary. Travel expenses will be invoiced separately. The Customer must request the service technician at least three weeks before.

11. Not included in the Scope of Delivery

In order to avoid misunderstandings, it is stated that the following items are not included in the scope of delivery, unless expressly stated in the offer:

1. making the foundations, fixtures and mountings or assembly devices for the products
2. installation, setup and calibration of the sensors
3. legal clarifications (e.g. permits, operating licences)
4. earthworks or landscaping measures
5. power supply including earthing and fuse protection
6. transport or removal of sensors, systems, tools etc. from and to the measuring point
7. transport of the service technician and his tools and materials required for installation and commissioning from and to the construction site

12. Framework Conditions for Flat-rate Commissioning

The following requirements must be met by the Customer for a flat-rate commissioning:

1. the commissioning work can be carried out without interruption.
2. all legal clarification and approval procedures for the installation of the measuring station(s) have been concluded with final effect.
3. the consent of all property owners has been obtained.
4. any agreed provision and assembly of constructions for the recording of sensors according to SOMMER's specifications have been completed.
5. carrying out all earthmoving and planting work.
6. if any, provision of power supplies with appropriate fuses for the supply of the measuring and acquisition stations.
7. installation of the required measuring signal and supply cables from the measuring point to the acquisition station.
8. assembly support during the assembly of the measuring station.
9. transport of all equipment and assembly personnel to and from the assembly site (e.g. at mountain stations).
10. outward and return transport as well as free access to the measuring stations for service purposes according to appointment coordination

13. Final Provisions

13.1 Regarding all disputes arising from the contracts, offers and deliveries and services or relating to their violation, dissolution or invalidity both SOMMER and the Customer shall first seek an out-of-court solution, e.g. through mediation. If no agreement is reached within four weeks, these disputes shall, at the discretion of SOMMER, be finally settled either by the competent court in A-6800 Feldkirch or by an arbitral tribunal in accordance with the Rules of Arbitration and Conciliation of the International Arbitral Tribunal of the Austrian Federal Economic Chamber in Vienna (Vienna Rules) by one or more arbitrators appointed in accordance with these rules. The place of arbitration is Feldkirch. The language of arbitration is German. The 4-week period begins with the receipt of a written request from a contracting partner to resolve a dispute.

13.2 Austrian law shall apply to the exclusion of national and supranational reference legal provisions (IPRG and ROME I-Regulation) and the United Nations Convention on Contracts for the International Sale of Goods (CISG).

13.3 Place of performance for delivery and payment for both parties is exclusively Koblach, unless another place of performance is specified in the individual order.

13.4 Amendments and supplements to these GTC and all contracts concluded on the basis thereof may only be made in writing. This shall also apply to the agreement to depart from the requirement of written form.

13.5 Should one or more provisions of these GTC be invalid in whole or in part or lose their validity at a later date, the validity of the remaining provisions of these GTC shall not be affected thereby. The contracting parties shall replace the legally ineffective or unenforceable provision with an effective and enforceable provision that comes as close as possible to the content and purpose of the legally ineffective or unenforceable provision.