



General Terms and Conditions of SOMMER GmbH, A-6842 Koblach (called hereafter "SOMMER")

1. Validity of these terms and conditions of business

All deliveries and services are carried out exclusively on the basis of the following terms and conditions of business. Conflicting terms and conditions will not be accepted by us, even if these terms and conditions are not expressly contradicted.

2. Prices and terms of payment

2.1. All prices are non-binding. All prices shall be net prices ex works or ex SOMMER's warehouse in Koblach (Incoterms 2010), and are based on the calculation basis on the date of concluding the contract (e. g. raw material prices, exchange rates, personnel costs, energy and transport costs, etc.) and are exclusive of VAT and transport packaging. Should any charges, taxes or other levies be incurred in connection with the delivery, these shall be borne by the customer.

2.2. Payment must be made in the invoiced currency, free of charges and without deductions.

2.3 The invoiced amounts fall due for payment in advanced, unless otherwise agreed. When a payment period is agreed, the due date is calculated from the date of the invoice.

2.4. If the due date is exceeded, without prejudice to other statutory rights, interest on arrears shall be charged at the statutory rate. The buyer undertakes to refund all costs incurred in the course of any legal steps taken, such as, for example, reminders and collection costs, court and lawyers' costs, insofar as these are proportionate to the claim pursued.

2.5. All payments must be made directly and exclusively to SOMMER; payments by third parties shall have no debt-discharging effect. Agents and commercial agents are not entitled to collect payments.

2.6. If the buyer's assets situation deteriorates (for example, court proceedings, executions or insolvency proceedings, etc.) or if the agreed payment deadline is not met, SOMMER shall be entitled to immediately demand payment of all claims and to withdraw from the purchase contract; SOMMER shall, moreover, be released from making further deliveries. The buyer shall not retain any payments or offset them against counterclaims of any kind whatsoever.

3. Delivery, Transfer of risk

3.1. Costs and risks of the buyer shall be governed by the agreed INCOTERM clause in the current version. If no other INCOTERM clause is agreed, deliveries of goods shall be ex works (EXW).

3.2. Upon delivery pursuant to clause 3.1, the delivery shall be considered as accepted and the risk shall pass to the buyer.

3.3. Delivery periods are calculated from the replacement times specified by SOMMER (the total of the regular production and regular purchasing times) but is always the ex works (EXW). When indicating delivery dates, delivery shall be made up to the last working day of the calendar week in which the delivery date falls.

3.4. Operational interruptions and events of force majeure, e. g. technical faults, strikes, natural disasters or weather events, war, interruptions or delays in the supply of raw materials, lack of raw materials and similar cases at SOMMER as well as at suppliers of SOMMER or the service providers commissioned in the transport chain shall release SOMMER from its delivery obligations.

3.5. SOMMER shall use its best efforts to comply with but does not warrant any delivery dates. Delivery shall be made at the expense and risk of the customer.

4. Reservation of title

4.1. SOMMER reserves title to all delivered goods until payment in full of all outstanding claims arising from the business relationship (including interest, expenses and costs).

4.2. If the buyer sells the goods delivered by SOMMER - even after further processing - before payment in full to SOMMER, the buyer shall assign his purchase price claims against his customers from his deliveries to SOMMER. The buyer undertakes to carry out all the public actions required for the effectiveness of the transfer of claims (e. g., assignment note on the invoice or note in its books, etc.). Furthermore, the buyer also undertakes to oblige its customer also to sell the goods with extended reservation of title and against advance assignment of its purchase price claim.

4.3. In the case of processing or mixing of the goods delivered by SOMMER with other goods, SOMMER's title shall not be lost thereby. SOMMER shall acquire co-ownership in the proportion of the product used to the selling price of the goods. Title to the processed goods shall only be transferred to the buyer when the latter has paid the purchase price in full.

4.4. Payments as well as assignments in advance are always made on account of performance. The approval of resale or further processing as well as the collection of the receivables do not constitute a waiver of the assignment in advance to third parties or a waiver of the reservation of title and the expectant right to the title.

4.5. In the case of payment arrears or insolvency of the buyer's customer, the buyer undertakes to take back the reserved goods or to demand the assignment of the surrender claims of these customers against third parties.

4.6. In the case of the cessation of payment or insolvency on the part of the buyer, or an already effected attachment, its right to resale or further processing of the goods delivered by SOMMER shall expire, along with its right to the collection of outstanding amounts.



4.7. In so far as the validity of the reservation of title in the country of destination is subject to special conditions or formal requirements, the buyer is obliged to ascertain and fulfil these requirements.

5. Warranty and damages

5.1. Complaints must be notified within 10 working days after delivery or after discovery of the defect, or such claims shall otherwise lapse.

5.2. Sommer warrants the GOODS and SERVICES to be free from defects in material and workmanship at the time and place of delivery.

5.3. The warranty period is 12 months from delivery by SOMMER and comprises only the free material replacement of the defective part. If the customer of the buyer (consumer) makes additional claims against SOMMER in accordance with local law, the buyer shall fulfil these claims and shall indemnify SOMMER. This shall also apply in the event of a claim for damages and in the event of recourse by the buyer. For repairs and hardware modules the period is limited to 6 months.

5.4. SOMMER, together with its suppliers, shall only be liable in the event of intention or gross negligence, with the exception of personal injuries pursuant to the Product Liability Act. Claims for damages shall become statute barred within 6 (six) months from knowledge of the damage and the party causing the damage. Liability for minor negligence is excluded, as well as compensation for consequential damage and damage to property, loss of profits, loss of interest and damages from claims of third parties against the buyer. SOMMER together with its suppliers shall not be liable for material damage resulting from product liability incurred by a company. These limitations of liability shall also apply in the event of delay or partial delay in delivery as well as for recourse.

5.5. The buyer must exclude its liability to its customers under clauses 5.3 and 5.4 for the benefit of SOMMER and SOMMER's suppliers.

5.6. A warranty claim and / or claim for damages from the combination of SOMMER products with third party products is expressly excluded. The buyer must inform its customers thereof. Any rectifications or rights of buyer (whether under this contract, at law or otherwise) other than those specified herein shall be excluded. In particular, but without limitation, Sommer shall in no event be liable for any consequential loss by buyer including but not limited to loss of profit, loss of goodwill, loss of use of the goods, loss of time, for any kind of inconvenience or any other consequential or incidental damages. In no event shall Sommer be liable to the buyer for any misuse, abuse or any other improper use of the GOODS (including any parts thereof) or for any modification of the GOODS (including any parts thereof) that has not received Sommer's explicit prior written approval. The buyer shall defend, fully indemnify and hold Sommer, its affiliates, distributors or agents, and its and their respective officers, directors and employees, harmless from any and all damage, costs (including attorney's fees) and liabilities that they may incur as a result of or in relation to such misuse, abuse or any other improper use of the GOODS (including any parts thereof) or such non-authorized modification of the GOODS (including any parts thereof).

5.7. SOMMER shall in the event of warranty/guarantee, at its own discretion, effect a reparation or replacement of the product, a price reduction or dissolve the contract. Warranty and guarantee shall not include any parts subject to wear or expendable items.

5.8. Any claims for warranty or guarantee shall be excluded if the customer himself or a third party modified, repaired or maintained the products delivered or modified the technical specifications thereof or otherwise intervened. The same shall apply to improper handling or if unsuitable data media is being used or if notice of the defect is not given immediately.

5.9. SOMMER shall not be liable for any kind of indirect damage or consequential damage. In no event shall SOMMER be liable for any damage caused by slight negligence.

5.10. Any supporting staff, lifting devices, scaffolding and incidentals required for performing warranty work on the buyer's premises shall be provided. Replaced parts shall pass into the seller's ownership.

5.11. The warranty claim is contingent upon the prerequisite that the buyer has reported any defects that have occurred in writing in due time and that the seller receives this report. The buyer shall provide evidence that the defect exists within an appropriate period of time, in particular by providing to the seller the documents and/or data available on the buyer's premises. In the event of a defect subject to the warranty obligation under item 7.1, the seller shall, at its discretion, rectify the defective good or the defective part at the place of performance or arrange for it to be sent to its own place for rectification, or reduce the price accordingly.

5.12. If goods are manufactured by the seller based on design descriptions, drawings, models or other specifications provided by the buyer, the seller's liability shall only extend to execution as agreed.

6. Software Licenses

6.1. SOMMER shall grant to the customer a non-exclusive and non-transferable right to use any software product for which the customer acquires a license from SOMMER. If the customer leaves a device to a third party, use of the corresponding software is allowed.

6.2. The customer shall not assign, transfer, pledge or lease any licensing right granted to the customer by SOMMER or otherwise pass it on, leave it to a third party or share it with them.

6.3. With the exception of a backup copy, any duplication of the software product, the documentation or any part thereof shall require the prior written consent of SOMMER.

6.4. The customer may not modify, transmit (neither electronically nor by any other means), translate, disassemble, decompile or otherwise modify the software product by reverse engineering unless SOMMER has given its prior written consent.

7. Repair



7.1. If a device is being sent to SOMMER for repair, all work must be performed in the plants or certified repair centers of SOMMER. The customer shall be obliged to duly dispatch the device at his own expense together with a repair order. Upon completion of the service, SOMMER shall send back the device CIP (Incoterms 2010). SOMMER shall take over transportation costs, but shall not assume any liability for any loss of or damage to goods in transit.

8. Copyrights

8.1. The intellectual property rights in all devices, programs and services, and in all related copyrights, patent rights, trademark rights or proprietary rights shall be due to SOMMER and shall remain in its exclusive ownership.

9. Confidentiality

9.1. The customer and SOMMER shall treat all information received from the respective other party in connection with their business relationship and its transaction confidential and shall not disclose such information to any third party. However, SOMMER is entitled to use customer's data for any marketing purposes, e.g. reference.

10. Technical Assistance for Start-up and Commissioning

If assistance is required, supervisory services for installation, start-up, commissioning and final adjustments can be provided at a daily rate of EUR 1200.- per man-day. The costs for daily allowances, meals and accommodation are included. Travelling expenses will be charged at documented costs. The purchaser shall request Sommer's service engineers' assistance giving at least three (3) weeks prior written notice.

11. Not included in scope of supply

For the avoidance of doubt Sommer's scope of supply does not include being without limitation:

- 11.1. Foundation, substructure or any mountings required for the installation of the sensor unless stated in above quotation.
- 11.2. Installation, adjustment and final calibration of GOODS, unless stated in above quotation.
- 11.3. All clarification and approval procedures for installation of the measuring station(s)
- 11.4. Earthworks or landscaping work
- 11.5. Were applicable, provide the requisite power supply units with relevant fusing to supply the measuring and data collection stations
- 11.6. Transportation of all equipment to and from the place of installation
- 11.7. Transportation of assembly personnel and all assembly tools to and from the place of installation

12. Force Majeure

Neither party shall be responsible or liable to the other for any delay in performance, nor shall any sum or sums (except for payments accrued due) be or become payable by either party to the other, to the extent caused by Force Majeure during the continued existence of any such Force Majeure which shall be defined hereunder as including but not limited to fire, floods, explosion, earthquake, acts of war, insurrection or riots, epidemics, acts of God, national strikes, boycotts, vandalism or sabotage, acts of any government official or agency, civil or military, unlawful acts of third parties or any other cause which is beyond the control of the party claiming Force Majeure provided that lack of funds shall not be considered to be Force Majeure. The party affected by any of the occurrences referred to above shall give notice in writing to the other party within three (3) days after the commencement of the occurrence.

13. Final provisions

- 13.1. All legal transactions concluded with SOMMER are governed by Austrian law, excluding the provisions of international private law and excluding UN purchase law.
- 13.2. The place of performance for delivery and payment is exclusively Koblach for both parties, unless a different place of performance is specified in an individual order.
- 13.3. No supplementary agreements have been made.
- 13.4. In order to avoid misunderstandings, any changes of and amendments to agreements must be made in writing in order to be effective. This shall also apply to any agreed waiver of the written form requirement.
- 13.5. In relation to all disputes arising from this contract, the jurisdiction of the local competent court at SOMMER's principal place of business is agreed, and SOMMER shall be free to bring any legal dispute before any other legally competent court, including the court at the buyer's principal place of business.
- 13.6. Both, SOMMER and the customer shall take all efforts to settle all disputes arising from the agreements, offers and deliveries or referring to the breach, annulment or invalidity thereof out of court, e.g. by mediation. Should the parties fail to reach an agreement within a period of four weeks, any such dispute shall, at SOMMER's option, be finally settled by the competent court in 6800 Feldkirch or by an arbitral tribunal pursuant to the arbitration and conciliation rules of the international arbitral tribunal of the Austrian Chamber of Commerce in Vienna (Vienna Rules) by one or several arbitrators appointed in accordance with such rules. The place of arbitration shall be Feldkirch. The language of the arbitration proceedings shall be English or German. The arbitral tribunal shall apply the law as specified in section 13.1. The four-weeks period shall commence upon receipt of a contracting party's written request to settle a dispute.
- 13.7. Should a provision of these terms and conditions of business be or become invalid or unenforceable as a whole or in part, this shall not affect the legal validity of any of the other provisions. The contracting parties shall replace the legally ineffective or unenforceable provision



13.8. In case of contradictions between the English and the German version of the General Sales Conditions or any other document of legal relevance, the German version shall prevail.