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Somic GmbH & Co. KG's Terms and Conditions of Delivery

I. General Terms and Conditions

1. The company Somic GmbH & Co. KG (hereinafter referred to as Somic) and the Customer shall agree that only the following terms and conditions shall apply for the delivery and installation of packaging machines as well as of peripheral devices and other services in this connection (hereinafter referred to as delivery item).
2. The Customer's purchase and other terms of business shall only apply if they are in agreement with the following terms and conditions. Differing or supplemental terms and conditions of the Customer shall also not become terms of this agreement if, with knowledge of these terms and conditions, Somic provides the agreed services without reservations.
3. These terms and conditions shall apply with regard to entrepreneurs as defined by Section 14 of the German Civil Code [BGB], corporate bodies under public law or separate assets under public law as defined by Section 310, Para. 1 of the German Civil Code.
4. Fundamental contractual obligations shall be obligations that protect the Customer's fundamental contractual legal positions, that are owed to said Customer pursuant to the content and purpose of the agreement; furthermore, fundamental contractual obligations shall be those, the very fulfilment of which is deemed to be necessary for due and proper execution of the agreement and the compliance of which the Customer ordinarily relied on or may rely on.
5. Non-fundamental contractual obligations shall be all obligations that do not serve to protect the Customer's fundamental contractual legal obligations, and/or that do not serve the purpose of making the due and proper execution of the agreement possible in the first place, and the compliance of which the Customer does not ordinarily rely on or may not rely on.

II. Delivery

1. Delivery terms and dates shall only be deemed binding if Somic has explicitly confirmed this in writing.
2. The delivery term shall be deemed complied with if, by the time it expires, the object of agreement has left Somic's site or if the Customer has been notified of the readiness for dispatch.
3. In the event of labour disputes or unforeseeable obstacles that are beyond Somic's control, the delivery term shall be appropriately extended. This shall also apply if the obstacles already occurred during a pre-existing delay.
4. In any case, the prerequisite for compliance with the delivery date shall be the fulfilment of the Customer's obligations (to co-operate) as specified in the agreement, in particular, the timely provision of required samples with sufficient number of pieces thereof. Should the aforementioned obligations be violated, the delivery terms shall be accordingly extended.
5. Should Somic default and, in turn, this result in damage to the Customer, said Customer shall be entitled to demand a fixed compensation rate for delay. Said compensation shall be 0.5 % for each full week of delay, and in total not more than a maximum of 5 % of the value of the delivery item or the part of the overall delivery that, as a result of the delay, cannot be used on time or used as per the agreement. Further claims resulting from the delivery delay shall solely be determined according to Item IX of these terms and conditions.

III. Payment / Prices

1. Unless otherwise agreed, the prices shall be ex works.
2. Unless otherwise agreed, 60 % of the purchase price shall be due within 10 calendar days after the date of order confirmation. A further 30 % shall be due 14 days after factory approval (FAT) and the remaining 10 % shall be due 14 days after the machines have been accepted at the intended installation place (SAT).
3. Should the according payments not be effected on time, the Customer shall default without an additional warning being required.
4. The prices shall be net prices plus the respectively applicable value-added tax.
5. Changes in price shall be permissible if more than four months lie between the conclusion of agreement and the agreed delivery date. Should the costs of labour and materials or the market-standard cost prices increase after this and up until the completion of the delivery item, Somic shall be entitled to reasonably increase the price according to the increase in costs.

IV. Offsetting / Rights of Retention and Rights to Refuse Performance

1. The Customer may only offset with counter-claims resulting from liability for defects within the framework of the agreement that are undisputed or disputed, but legally determined or - in the event of a legal dispute - disputed but on which a decision is soon to be made.
2. The assertion of retention rights or the right to object the unfulfilled agreement due to counter-claims of the Customer, shall only be possible if, in the event of dispute by Somic, the counter-claim due to which the retention right is asserted or due to which the objection is raised, is legally determined or in the event of a legal dispute is ready for a decision to be made. With undisputed counter-claims by Somic, the assertion of retention rights and/or the objection due to non-performance of the agreement, shall be possible at any time.

V. Reservation of Title

1. Somic shall reserve the title to the delivery item until all payments have been received - also, if applicable, for additionally owed ancillary services - from the delivery agreement.
2. Somic shall be entitled to insure the delivery item against theft, breakage, water or other damages, at the expense of the Customer, provided that the Customer has not taken out such an insurance and can provide evidence of this.

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3.
The Customer may neither sell, pledge nor assign the delivery item as security. The Customer shall immediately inform Somic of pledges and confiscation or other orders through third parties.

4.
In the event of resale of the delivery item, the Customer shall already now assign to Somic, by way of security, all arising claims from the resale of the reserved goods, as a security, in the amount invoiced by Somic, including value-added tax, plus an extra security charge of 10 %. Somic shall accept the assignment.

5.
After assignment, the Customer shall be authorised to collect the receivable claim.

6.
In the event the Customer's conduct breaches the agreement, especially regarding late payment, Somic shall be entitled to take back the delivery item after issuing a reminder and the Customer shall be obligated to release the item.

7.
The application for opening insolvency proceedings shall entitle Somic to withdraw from the agreement and to demand immediate return of the delivery item.

VI. Transfer of Risk and Acceptance of the Machine

1.
The risk shall be transferred to the Customer when the delivery item is handed over to the forwarding agent, freight carrier or collecting customer or with transportation through Somic, and at the latest when leaving Somic's factory/distribution warehouse.

2.
Should the dispatch be delayed due to circumstances for which Somic is not responsible, the risk shall be passed to the Customer on the day the item is ready for dispatch. At the Customer's request, Somic shall be obligated to insure the delivery item for damages. The cost of this shall be borne by the Customer.

VII. Rights for Defects

1.
Should the delivery item have a defect, Somic shall - at its own discretion and expense - either repair or redeliver said item. The Customer shall not be entitled to claim for a specific type of supplementary performance.

2.
Somic shall be immediately notified in writing should any defect on the delivery item be determined. Replaced parts shall become Somic's property.

3.
Claims for defects shall lapse in 12 months.

The statutory warranty period shall apply for claims

- according to the Product Liability Act
- for defects in a construction or items that were used according to the intended purpose for a construction and that caused its defectiveness,
- for intentionally, grossly negligent or fraudulent behaviour with regard to the defect
- for ordinary negligent breach of fundamental contractual obligations
- for culpable injury to life, personal injury or damage to health, or
- for injury to third parties covered by the agreement and
- for a guarantee promise issued by Somic.

VIII. Software Use

1.
With regard to the software comprised in the scope of delivery, the Customer shall be granted a non-exclusive right to use the provided software including its documentation. The software shall be given to the Customer to use on the delivery item intended for this. It shall be forbidden to use the software on more than one system.

2.
The Customer may only duplicate, process, translate or convert the software from the object code into the source code within the legally permissible scope (Sections 69a ff. of the Germany Copyright Act).

3.
All other rights to the software and the documentation, including the copies, shall remain Somic's. Awarding sub-licenses shall be excluded.

IX. Liability Limitations / Exclusion of Liability

1.
No liability shall be assumed for damages resulting from normal wear and tear.

2.
Furthermore, no liability shall be assumed for damages resulting from the following causes:

- inappropriate or incorrect use,
- incorrect handling/operation by the Customer or third party,
- in the event of incorrect or negligent handling of the machine, especially with regard to provided operating instructions,
- through excessive operation and wear,
- by using unsuitable equipment and substitute material.

3.
Somic shall only be liable for damages to the Customer that are based on injury to life, personal injury or damage to health, as well as for the Customer's claims in accordance with the Product Liability Act as well as for other financial losses of the Customer that are based on intentional or grossly negligent violation of obligation of Somic, in the event of violation of fundamental contractual obligations also for ordinary negligence of Somic or its auxiliary agents. Should, according to the preceding sentence 1, Somic be liable for a slightly negligent violation of obligation of fundamental contractual obligations through auxiliary agents or an auxiliary person, the liability shall be limited to the foreseeable damage that is typical for the agreement.

4.
Somic shall not be liable for the Customer's financial losses if these are not based on the Customer's injury to life, personal injury or damage to health, provided these financial losses are based on the violation of non-fundamental contractual obligations through an auxiliary person/ auxiliary agents of Somic and provided the violation of obligation is deemed ordinary negligent.

5.
If Somic's liability is excluded or limited, this shall also apply for direct claims towards employees, wage earners, representatives and auxiliary agents of Somic.

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X. Place of Jurisdiction / Place of Fulfilment / Severability Clause

1.

The Law of the Federal Republic of Germany shall apply.

2.

The place of jurisdiction shall be the court responsible at the registered seat of Somic. However, Somic shall also be entitled to file suit and bring action at the location of the machine.