

These general terms of use for SaaS-products (Software as a Service) ("**General Terms of Use**") exclusively apply to the Customer's use of the Software provided by BOMAG. Conflicting general terms and conditions of the Customer are rejected by BOMAG and do not apply. The contract for the use of the software on the basis of these General Terms of Use ("**Agreement**") is concluded by BOMAG sending a written order confirmation to the Customer following an order placed by the Customer ("**Order Confirmation**"). The specific content of the Agreement is determined by the conditions contained in the Order Confirmation, which may also deviate from individual provisions of these General Terms of Use, e.g. regarding the term of the Agreement, notice periods, usage fees, number of users or machines, tonnages, etc. Conditions deviating from these General Terms of Use shall only apply if they are expressly stated in the Order Confirmation.

## 1. Software And Apps

- a. BOMAG provides the Customer with the software as a web application for use as "Software as a Service" ("**Software**"). In addition, suitable apps for mobile devices ("**Apps**") are available for some web applications. At the commencement of the contract, BOMAG grants the Customer non-exclusive rights of use to the Software in accordance with Section 6 ("**Licence**").
- b. The Licence is valid for the agreed period ("**Licence Period**"), which may be automatically renewed in accordance with the provisions set out in the Order Confirmation, unless one of the parties terminates the Agreement in due time in accordance with Section 10.
- c. BOMAG provides the Customer with storage space on Servers in the EU or within the European Economic Area. The Customer may upload and store the data collected with the Software or Apps ("**Application Data**") to the extent of the Licence.
- d. BOMAG enables the Customer to download the Apps to any number of its mobile devices. For this purpose, BOMAG makes the Apps available for download on suitable digital platforms. The installation and setup of the Apps is the responsibility of the Customer. BOMAG makes new versions of the app available to the Customer via the aforementioned platforms. The upload of the application data collected by the Apps, their storage in accordance with b) and use at the same time is only possible to the extent agreed in each case (e.g. number of simultaneous users or machines used).
- e. BOMAG conducts automated reviews of reported errors in the Software and installed Apps that occur during customer use. These reports are forwarded to the App manufacturer or software service provider for analysis. The aim is to use this data to avoid future errors and to create an updated App/Software that will be made available to the Customer in accordance with section 1 a) or d).
- f. These services may be provided by third-party service providers or companies affiliated with BOMAG ("**Service Providers**").

## 2. Licence Adjustments

- a. The Licence entitles the Customer to use the Software and Apps within certain limits agreed between the parties. Depending on the Software, these limits may be a certain number of users or machines or similar.
- b. If the Customer wishes to extend the agreed scope of the Licence, for example by increasing the number of machines or users, this is possible at any time for an increase in the licence fee in accordance with the applicable price list. When the licence extension is activated, the previous Licence Period ends, and a new Licence Period begins according to the period agreed between the parties. The pro-rata licence fee already paid by the Customer for the remaining period of the previous Licence Period will be credited to the Customer. The licence

fee for the new Licence Period, adjusted in accordance with the licence extension, is due for payment in advance after the corresponding invoice has been issued.

- c. Any reduction in the scope of the Licence requested by the Customer will take effect at the beginning of the next Licence Period. There will be no retroactive reduction of the licence fee for the current Licence Period.

### 3. Licence fee

- a. For the provision of the agreed services, the Customer pays the licence fee for each Licence Period specified in the Order Confirmation and, if applicable, an agreed one-time set-up fee.
- b. Unless otherwise agreed, the licence fee must be paid in advance for each Licence Period. BOMAG will provide the Customer with corresponding invoices for the licence fee, the set-up fee and, if applicable, any other services.
- c. Invoices are payable within two weeks without deduction, unless otherwise agreed.
- d. BOMAG is entitled to adjust the licence fee at the beginning of each new Licence Period. BOMAG will inform the Customer of this in text form at least three months before the start of the new Licence Period. The Customer has the right to terminate the contractual relationship based on to the price adjustment within a period of two months after receipt of the announcement, effective at the end of the current Licence Period.
- e. The licence fee is due plus VAT in the applicable statutory amount.
- f. BOMAG is entitled to temporarily deny the Customer access to the Software if the Customer is materially in default of its payment obligations. BOMAG will announce the temporary blocking in advance in text form and will carry out the blocking no earlier than 1 week after the notification has been sent.

### 4. Provision of Software and storage space

- a. From the agreed point in time, BOMAG will make the Software available for use on a central data processing system or several data processing systems ("**Servers**") in accordance with the following regulations.
- b. The software and storage space are available to the Customer at least 99% of the time, 365 days a year, unless urgent maintenance work is required.
- c. BOMAG provides the Customer with a master access to the Software, which the Customer can use to set up the users of the Software, their permissions (roles) and passwords. On request, BOMAG or a BOMAG service provider will provide support services for setting up the Software and Apps for a separate fee.
- d. BOMAG will provide the necessary amount of storage space on the Servers from the agreed point in time.
- e. BOMAG backs up the web application and the Application Data stored on the provided storage space on a regular basis, at least every calendar day. However, the Customer is solely responsible for compliance with statutory retention periods.
- f. The handover point for the Software and S is the entry point of the BOMAG service provider's data centre into the internet.
- g. The use of the Software and the Apps requires compliance with certain system requirements on the part of the Customer, which result from the respective product descriptions of the Software and Apps. The Customer is responsible for the quality of the necessary hardware, software and other services on the part of the Customer as well as for the internet and telecommunications connection between the Customer and BOMAG up to the handover point.

- h. The Customer is not entitled to its own copy of the Software and the Software will not be provided on a permanent basis, neither as object code nor as source code.

## 5. Support, Modifications, Other Services

- a. In addition to the support provided by BOMAG dealers, BOMAG provides the Customer with software support via e-mail, electronic ticket systems or hotlines, depending on the product. The support services are provided during normal business hours.
- b. BOMAG shall make released versions of the Software available to the Customer in accordance with Section 1. In addition, BOMAG makes new versions of the Apps available for download in accordance with Section 1 and informs the Customer of the available new versions by means of an electronic message. The installation of the new versions of the Apps is the responsibility of the Customer. Upon request, BOMAG or its service provider will support the Customer in this regard after concluding a separate agreement in return for payment of a separate fee. These services are primarily provided via teleservice. The foregoing shall apply to new versions that are made available to the Customer for the elimination of defects or malfunctions.
- c. If, with the provision of a new or modified version of the Software, an essential functionality is omitted or significantly changed and the Customer is prevented in its use of the Software to such an extent that the further use of the software objectively is no longer of interest to the Customer, the Customer may terminate the contractual relationship within a period of one month after becoming aware of the change. If the Customer does not make use of its right of termination within the specified period, the change shall be deemed to have been approved by the Customer.

## 6. Rights of use

- a. The Customer shall be granted a non-exclusive, non-sublicensable and non-transferable right to use the Software for the duration of the Agreement in accordance with the terms and conditions set forth below.
- b. The Customer may only use the Software for its own business activities or within the framework of joint ventures for the work of a consortium on common construction sites during the duration of these activities and may grant the other consortium member(s) access to the Software to the licenced extent. By means of the downloaded Apps, the data collected can be stored on the storage space in order to document and control the joint consortium projects, in each case exclusively within the framework of the other contractual conditions, such as the agreed machines that are active at the same time or the number of users. In addition, the Customer may grant access to the Software to clients of the work carried out by the Customer exclusively for control and documentation purposes, insofar as he is contractually obliged to do so vis-à-vis its clients. In all other respects, the Customer may not allow third parties to use the Software or make it available to third parties. The Customer shall take the necessary precautions to prevent the use of the Software by unauthorized persons, see also Section 7.
- c. The Customer shall ensure that the Software is not used for purposes that are unlawful or contrary to official regulations or requirements, or that any unlawful data, in particular Application data, is created and/or stored on the Servers.
- d. If the Customer culpably and materially violates a provision of paragraphs a) – c) BOMAG may, in order to avoid further violations, temporarily block the Customer's access to the Software or the application data after prior notification to the Customer. This does not affect BOMAG's right to terminate the Agreement without notice.

- e. For each case in which the Customer culpably enables the use of the Software by unauthorized persons, the Customer shall be liable to pay an appropriate contractual penalty to be determined at the reasonable discretion of BOMAG, but at least in the amount of € 5,000. BOMAG reserves the right to claim damages; in this case, any paid contractual penalty will be deducted from the claim for damages.

## 7. Duties and Obligations of the Customer

The Customer will fulfil all duties and obligations that are necessary or customary for the execution of the Agreement. In particular, it will:

- keep the usage and access authorisations assigned to it or the authorised users as well as any identification and authentication safeguards secret, protect them from access by third parties and do not pass them on to unauthorised users. The Customer shall inform BOMAG immediately if there is a suspicion that the access data and/or passwords may have become known to unauthorized persons;
- create the agreed conditions for access;
- comply with the restrictions/obligations with regard to the rights of use in accordance with Section 6, in particular
  - not retrieve or cause to be retrieved any information or data without authorisation, or to interfere or allow to be interfered with, programmes operated by BOMAG or to penetrate BOMAG's data networks without authorisation, or to promote such intrusion;
  - not misuse the exchange of electronic messages possible within the framework of the contractual relationship and/or with the use of the Software for the unsolicited sending of messages and information to third parties, e.g. for advertising purposes;
  - oblige authorised users to comply with the obligations contained in this Section 7;
- indemnify BOMAG against claims by third parties based on the use of the services by the Customer in violation of the law or the contract or resulting from data protection or copyright violations or from any other legal disputes caused by the Customer that are connected with the subject matter of the Agreement;
- obtain any necessary consent from the respective data subjects – also for the benefit of BOMAG and its Service Providers – insofar as the Customer collects, processes or uses personal data when using the services and no statutory permission applies;
- check data and information for viruses before sending them to BOMAG and use state-of-the-art virus protection software;
- To the extent provided for by the respective Software, regularly back up the application data stored on the Servers by means of data export, as well as the data created on the mobile devices on a regular basis.

## 8. Disruptions, Claims for Defects, Liability

- a. If malfunctions occur during the use of the Software, the Customer shall notify BOMAG immediately and give it the opportunity to check and rectify such malfunctions.
- b. Malfunctions shall be reported primarily by e-mail to the current service address (currently: [smartservice@bomag.com](mailto:smartservice@bomag.com)) stating the Customer number and/or by telephone (currently: + 49 6742 100-900).
- c. The Customer shall:
  - document the malfunctions of the Software and other services in as much detail as possible and submit this documentation to BOMAG for review,

- supplement/update the documentation of the malfunction in the event of new developments/findings,
  - answer BOMAG's queries about a malfunction report in a timely manner, to carry out tests at the request of BOMAG in order to isolate or determine the cause of the malfunction and to document the measures and make them accessible to BOMAG,
  - exclude other possible causes of the malfunction, e.g. installed third-party updates, changes in configuration, interface changes, network changes, changes in the system environment,
  - use sufficiently competent employees for documentation and testing of a malfunction and communication with BOMAG in this regard, and
  - set up and maintain a working remote data transmission facility in accordance with BOMAG's technical specifications and to grant BOMAG access to the system on request.
- d.** If malfunctions occur due to changed conditions on the part of the Customer (e.g. changed hardware or software environment), BOMAG is not obliged to rectify such malfunctions. Any measures taken by BOMAG in these cases to remedy the malfunctions shall be appropriately remunerated, except as otherwise agreed by the parties.
- e.** Insofar as BOMAG is obliged to remedy a malfunction, it reserves the right to choose the method of rectification and will endeavour to remedy the malfunction that has occurred within a reasonable period of time. The impact of the disruption and the urgency indicated by the affected Customer will be taken into account. If the malfunction cannot be remedied with reasonable effort, a workaround solution will be examined and, if necessary, implemented in so far as this is possible with reasonable effort and is reasonably acceptable to the Customer.
- f.** With regard to the provision of the storage space on the Servers, BOMAG excludes any strict liability for initial defects of the Servers. The same applies to initial shortcomings of the Software and Apps.
- g.** Liability for interruption, disruption or other events causing damage that are based on cloud services provided by BOMAG's Service Providers that are not in accordance with the Agreement is limited to the amount of recourse that BOMAG may have against such Service Providers. BOMAG is not liable for the functionality of the internet connections of the Servers, in the event of power failures and server failures or errors in data transmission that are beyond its control. The above limitations and exclusions do not apply to damages resulting from gross negligence or intent on the part of BOMAG or if BOMAG has assumed a warranty covering the breach of duty.
- h.** There will be no reduction of the agreed remuneration attributable to the use of the Software in the event of an initial or subsequent defect in the Software.
- i.** Claims for damages by the Customer due to a defect in the Software are excluded. Furthermore, claims of the Customer for the elimination of malfunctions/defects, subsequent performance, reimbursement of futile expenses and damages due to a malfunction shall expire within 12 months of the Customer becoming aware of them. BOMAG's limitations of liability referred to in this Section 8 i) shall not apply,
- for any culpable injury to life, limb or health,
  - in the event of intent or gross negligence on the part of BOMAG,
  - if BOMAG has fraudulently concealed the defect / malfunction,
  - in the event of a culpable breach of BOMAG's essential contractual obligations, which are essential for the proper execution of the Agreement and on the fulfilment of which the Customer may rely; in this case, however, BOMAG's liability is limited to the foreseeable damages typical of the Agreement,
  - if BOMAG has provided a guarantee for a service.

## 9. Customer Reference

BOMAG is entitled to name the Customer as a current or former Customer of the services covered by the Agreement (e.g. in the event of inquiries from third parties, on its homepage, in other advertising materials, in social media portals) and to use the Customer's name and its company logo for this purpose.

The right to use the name of the Customer and its logos expires after 3 years after the termination of the contractual relationship with regard to the services in connection with the Software.

## 10. Term of Agreement, Rights of Termination

- a. The Agreement commences on the start date specified in the Order Confirmation and runs for an indefinite period of time, but at least for the duration of the first Licence Period. The Agreement may be terminated by either party by giving notice at least 1 month before the end of the current Licence Period, unless otherwise expressly agreed. The right to a termination for cause remains unaffected. Notice of termination must be given in writing.
- b. In addition, BOMAG may terminate the Agreement for cause if the Customer defaults on the payment of a significant part of the annual licence fee and does not settle the outstanding claim within a further grace period of at least 2 weeks set by BOMAG. The right to temporary blocking in accordance with Section 3 f) remains unaffected by this.
- c. The Software will be deactivated upon termination of the Agreement. Likewise, the storage space provided is no longer accessible to the Customer upon termination of the Agreement. The data stored by the Customer during the term of the Agreement will be deleted two months after the end of the Agreement.
- d. During the term of the Agreement and for a further period of two months after termination of the Agreement, it is possible for the Customer to download the data and documentation created via the Software and the Apps used, which are stored on the Customer's storage space made available by BOMAG, in a standard data format.

## 11. Data protection

- a. The Customer will not use the location data collected with the Software and the Apps for the purpose of secretly monitoring the work performance of its employees.
- b. In order to compile anonymous statistics (e.g. on the frequency of use of certain functionalities), BOMAG may collect and evaluate data on the use of the Software and the Apps. This serves to optimise ongoing services (provision of storage space, creation of new programme versions in accordance with section 1) as well as other offers and services of BOMAG, such as the planning of new / improved products.
- c. With regard to the processing of personal data in connection with the performance of the Agreement, the contracting parties hereby agree on a separate order processing agreement (to be found at: <https://www.bomag.com/ww-en/legal/saas-privacy-and-general-terms/>).

## 12. Withholding tax

- a. All payments that the Customer owes to BOMAG under this Agreement shall be clear of tax deductions, unless a tax deduction is required by law (withholding tax).
- b. To the extent that a tax deduction is required by law, the amount of the payment owed by the Customer shall be increased to an amount which, after the mandatory tax deduction has been made, will result in an amount equal to the amount that would have been payable without the tax deduction.

- c. If the Customer is obliged to make a tax deduction, the Customer shall make such tax deduction and all payments required in connection with such tax deduction within the prescribed period and in the minimum amount required by law. The Customer shall provide BOMAG with a tax certificate stating the amount of the tax deduction within one month of the Customer's payment of the tax.
- d. In the event that a tax deduction made and paid by the Customer can be refunded in whole or in part under the applicable tax laws, double taxation treaties or other laws or regulations ("Refund"), BOMAG will provide the Customer with reasonable assistance in recovering such refund from the competent tax authorities, provided that the Purchaser provides BOMAG with all information and documents, including the necessary tax certificate and cooperates with BOMAG in any way necessary for this purpose. Any refund should preferably be paid directly to the Customer by the tax authorities, if possible. Otherwise, BOMAG will pay the refund to the Customer if and to the extent that the refund has been received by BOMAG.
- e. In the event that tax exemption certificates can be obtained that make the procedures described above unnecessary, the Customer and BOMAG will make reasonable efforts to obtain such exemption certificates.

### **13. Applicable Law, Place of Jurisdiction, Miscellaneous**

- a. These General Terms of Use and the Agreement are subject to the laws of the Federal Republic of Germany. The applicability of the UN Convention on Contracts for the International Sale of Goods is excluded.
- b. Exclusive legal venue for disputes arising out of or in connection with these General Terms of Use or this Agreement is Boppard, Germany. BOMAG may also file a lawsuit at the Customer's place of business.
- c. In case individual provisions of these General Terms of Use or the Agreement are held to be invalid or unenforceable, the validity of the remaining provisions shall not be affected. There are no ancillary provisions outside of these General Terms of Use and the Agreement. Amendments or additions to the Agreement must be made in text form in order to be effective. This also applies to the waiver of this textual form requirement.
- d. If gaps become apparent in the practical implementation of the Agreement that the contracting parties have not foreseen, or in the event of an invalidity or unenforceability of a provision within the meaning of clause c), the parties shall fill this gap or replace such ineffective or unenforceable provision in an objective and appropriate manner in alignment with the economic purpose of the Agreement.