

General Terms and Conditions of Purchase of BOMAG GmbH and FAYAT BOMAG GmbH & Co. Unternehmensführungs KG (as at: May 2016)

Section 1 General, scope

1.1. These General Terms and Conditions of Purchase of BOMAG GmbH and FAYAT BOMAG GmbH & Co. Unternehmensführungs KG (hereinafter referred to as "BOMAG") shall apply exclusively. BOMAG shall not recognise contradictory or divergent terms and conditions of sale or general terms and conditions of business of the supplier; such are hereby rejected. BOMAG's General Terms and Conditions of Purchase shall also apply to all future transactions, even if this is not expressly reconfirmed in each individual case. In addition to BOMAG, this contract shall apply in favour of companies affiliated with BOMAG within the meaning of Section 15 German Stock Corporation Act (Aktiengesetz, AktG).

These General Terms and Conditions of Purchase shall still apply if BOMAG accepts or pays for a delivery without reservation in knowledge of terms and conditions of the supplier that contradict or deviate from BOMAG's General Terms and Conditions of Purchase.

1.2 All agreements made between BOMAG and the supplier regarding implementation of contracts must be recorded in writing in this contract.

1.3 These General Terms and Conditions of Purchase shall exclusively apply vis-à-vis entrepreneurs within the meaning of Section 310 Para. 4 German Civil Code (Bürgerliches Gesetzbuch, BGB).

Section 2 Conclusion of contract and contract modifications

2.1. Orders placed by BOMAG – and their content and scope – shall be binding and solely authoritative for the supplier. Should the supplier fail to confirm receipt of and the content of the order to BOMAG within 5 days, in writing and without alterations, BOMAG shall be entitled to withdraw from the order. Order confirmations that deviate from orders placed by BOMAG shall, in principle, be rejected.

2.2. Orders placed by BOMAG shall only be legally effective if placed in writing in a legally valid manner by authorised employees of BOMAG's purchasing department. The same shall apply to additions, modifications and ancillary agreements.

2.3. Orders, amendments, modifications or ancillary agreements deviating from the parameters set out above shall be invalid. The same shall apply to all declarations of this nature made by BOMAG employees not from the purchasing department. Failure to comply with the formal requirements shall not be remedied by receipt of the supplier's delivery by BOMAG.

2.4. All deviations from specifications set out in requests for quotations submitted by BOMAG with regard to quantity or quality must be clearly marked as such in quotations.

2.5. Notwithstanding divergent quotations, contracts shall come into being exclusively on the basis of the orders placed by BOMAG, in conjunction with these General Terms and Conditions of Purchase.

2.6. Quotations and estimates shall be binding for at least 5 weeks from receipt by BOMAG. These shall be free of charge for BOMAG, as shall any test certificates.

2.7. BOMAG's technical specifications for orders and deliveries shall form part of the contract.

2.9 BOMAG may withdraw from an order, in whole or in part, even once it has been placed. In such an event, BOMAG shall reimburse the supplier for expenses incurred thus far as a result of the order, with BOMAG being entitled to receive any goods or production results arising from such expenses.

Section 3 Prices, terms and conditions of payment, right to offset, right of retention, payment before the end of the complaint period

3.1. The fixed price specified in BOMAG's order shall be binding. In the absence of a written agreement to the contrary, the price specified in the order shall include delivery "delivery duty paid" (DDP as per Incoterms 2010) to BOMAG or to a location specified by BOMAG and the required packaging units, such as pallets or mesh crates.

3.2. Supplier invoices must be presented to BOMAG in an auditable format, specifying the order number, order date, item number(s), 8-digit customs tariff number, supplier's declaration in accordance with Council Regulation (EC) No. 1207/2001, etc. BOMAG shall be entitled to reject the invoice if a component is missing. Value added tax must be listed separately on the invoice, in accordance with tax regulations. The supplier shall be liable for all consequences of failure to comply with this obligation, unless he can prove that he is not responsible for such. BOMAG shall retain payments until receipt of an invoice that complies with its requirements, as well as the corresponding delivery documents. In such an event BOMAG shall not be considered to be in default. Delivery documents shall also include all of the stipulations from the technical specifications for orders and Deliveries, such as factory test certificates. Supply of complete documentation – including spare parts documentation – shall form part of the order. Payment terms shall not commence before receipt of the appropriate delivery, including all requested documents (incl. shipping documents, delivery notes, certificates of origin, supplier's declarations, etc.), and receipt of an invoice corresponding to BOMAG's requirements.

3.3. Unless agreed otherwise in writing, BOMAG shall pay the purchase price within 14 days – counted from arrival of the delivery and receipt of the invoice – with a 3% deduction or within 30 days of arrival of the delivery and receipt of the invoice without deduction.

3.4. BOMAG shall have the statutory right to offset and right of retention.

3.5. Payments shall always be subject to the result of BOMAG's goods inspection and quantity check. Payment before the end of the inspection and complaint periods set out in Section 6 shall not signify that BOMAG has inspected the goods delivered by the supplier or checked the quantity thereof, has chosen to waive the right to lodge a complaint concerning deviations in quality or quantity, or has approved the delivery. Amounts found to be overpaid as a result of identified deviations in quality or quantity must be reimbursed by the supplier.

Section 4 Delivery, delivery period, partial call-off, adjustment of quantities for delivery

4.1 Delivery dates specified as fixed dates in the order or in a call-off shall be binding. Receipt of the goods by BOMAG or by the receiving office specified by BOMAG shall be decisive as regards compliance with delivery dates.

4.2. The supplier shall inform BOMAG immediately in writing – specifying the reason(s) and expected duration – should circumstances meaning that the agreed delivery period will not be able to be met arise or become apparent. Acceptance of the delayed delivery by BOMAG without reservation shall not release the supplier from the rights due to BOMAG on account of the delayed delivery.

4.3. BOMAG shall be entitled to the statutory claims in the event of default on delivery. In particular, BOMAG shall be entitled to demand compensation in place of performance and withdrawal directly on the agreed delivery date or after expiry of a reasonable grace period without success. Should BOMAG demand compensation, the supplier shall be entitled to prove that he is not responsible for the breach of duty.

4.4. BOMAG shall be entitled to call off partial amounts of the quantities ordered for a delivery date up to 4 weeks before said delivery date. In the event a partial call-off, BOMAG may specify a later delivery date for delivery of the remaining items not accepted by the original delivery date. Reasonable account shall be taken of the supplier's interests in the event of partial call-offs.

4.5. In the event of negative development of business as a result of unforeseeable events, known as "force majeure", BOMAG shall be entitled to adjust quantities ordered for delivery in line with its actual requirements up to 4 weeks before the delivery date. Reasonable account shall be taken of the supplier's interests in such an event. Should BOMAG make use of this right, the supplier shall have no further rights on the basis of this quantity adjustment.

4.6. In the event of excess or premature delivery, BOMAG reserves the right to refuse to accept the delivery, at the supplier's expense, or to pay the corresponding invoice on the original due date and on the basis of BOMAG's required quantities.

4.7. The weights, quantities and dimensions identified during the incoming goods inspection at BOMAG shall be decisive for BOMAG in settling the invoice.

4.8. Should BOMAG submit call-off orders with projected figures, the specified quantities shall not be binding for BOMAG and BOMAG shall have no obligation to accept. The quantities actually called off and confirmed by BOMAG may deviate from the projected quantities.

Section 5 Transfer of risk

Risk shall be transferred upon delivery to the location specified by BOMAG in the order.

Section 6 Investigation of defects, warranty, statute of limitations, guarantee, standards to be complied with

6.1. BOMAG shall inspect the goods delivered by the supplier exclusively in terms of transport damage to the outermost packaging and quantitative compliance with the information in the delivery documentation upon goods receipt. Should BOMAG identify obvious defects, it shall lodge a complaint within 14 working days of goods receipt; it shall lodge a complaint regarding any other, hidden defects with 14 working days of discovery. As such, the supplier waives the objection of late notification of defects. Any further obligations concerning goods receipt and notification of defects are excluded.

6.2. BOMAG shall be entitled to the full statutory claims for defects. In every case BOMAG shall be entitled to demand that the supplier remedy the defect(s) or provide a new, defect-free item, at the discretion of the former. BOMAG shall be entitled to further rights – particularly to reduction of the purchase price or withdrawal from the contract – as well as compensation upon expiry of a single grace period without supplementary performance. BOMAG expressly reserves its right to compensation, particularly to compensation in place of performance.

6.3. Except in cases of malicious intent, the limitation period shall be 36 months. It shall begin upon dispatch of the finished product in which the component supplied by the supplier has been installed to BOMAG's customer, unless a longer statutory or contractual period applies. Limitation shall be suspended during periods in which the supplier is obligated to render supplementary performance in accordance with Section 6.2. The limitation period shall begin again at the point of handover for replacement parts that the supplier provides within the scope of subsequent delivery and spare parts that the supplier provides within the scope of subsequent improvement.

6.4. Should the supplier fail to begin remedying defects immediately upon request from BOMAG, or should the initial subsequent improvement by the supplier fail, BOMAG shall, in urgent cases, be entitled to remedy the defect itself or have it remedied by a third party at the supplier's expense.

6.5. The agreed periods shall be decisive for contractual guarantee agreements.

6.6. The supplier shall provide an assurance that the goods that he supplies comply with all statutory requirements, specifications, regulations and directives, particularly those applicable within the EU. The supplier must provide BOMAG with a valid supplier's declaration in accordance with the latest version, as well as all product information relevant for (inter)national movement of goods, with the first delivery.

6.7. Should BOMAG incur follow-up costs as a result of a defective delivery – for example, work, transport, installation and removal costs, handling costs, general administrative costs – BOMAG shall be entitled to pass such costs on to the supplier.

6.8 The supplier shall maintain and meet a certified quality system in accordance with the definition of the ISO 9001 series of standards, or a system complying with an equivalent standard that has previously been approved by BOMAG and is suitable for the orders or deliveries to be implemented.

6.9 The supplier shall ensure that deliveries are made and services rendered in accordance with the order and – without limitation – in accordance with the highest and latest standards in terms of safety, technology and processing. Further, the supplier shall ensure that the goods, documents and other items delivered are of satisfactory quality, are suitable for their specific intended use, can be used without risk and comply with the latest versions of standards and codes of practice applicable to the industry in question. The materials and equipment involved in the goods delivered by the supplier must be new. In particular, the supplier shall assure BOMAG that all deliveries and services comply with all set or applicable data and prerequisites that apply or have been agreed. Further, the supplier shall provide an assurance that all deliveries and services are fully functional and that the documentation or description is complete and free of errors. In addition, the supplier shall provide an assurance that full, unimpaired ownership of the delivered goods will be transferred to BOMAG, and that other services are free of defects of title.

Section 7 Product liability, indemnification, product liability insurance

7.1. Where the supplier is responsible for a fault or product defect, he undertakes to indemnify BOMAG from claims for compensation from third parties upon first request, to the extent that the cause lies within his control, the fault can be attributed to him or he himself has unlimited liability vis-à-vis third parties.

7.2. Within the scope of supplier liability for loss events within the meaning of Para. (1), he shall also be obligated to reimburse all expenses, e.g. in accordance with Sections 693, 670 German Civil Code and in accordance with Sections 930, 940, 426 German Civil Code, arising from or in the context of a recall conducted by BOMAG. Wherever possible and reasonable, BOMAG shall inform the supplier of the content and scope of the recall measures to be implemented and give the supplier an opportunity to comment.

Other statutory claims that BOMAG is entitled to shall not be affected.

7.3. The supplier undertakes to maintain product liability insurance with a lump sum insured of EUR 10 mil. per personal injury/case of damage to property; should BOMAG be entitled to further claims for compensation, these shall not be affected.

Section 8 Execution of works

8.1. Persons deployed on BOMAG's factory grounds to fulfil a contract must strictly observe the notice for external firms and transport companies at www.BOMAG.com, "Use of external firms". The supplier undertakes to inform his commissioned carriers thereof. Liability for accidents suffered by such persons on BOMAG's factory grounds is excluded, unless BOMAG has committed a grossly negligent or deliberate breach of duty or mandatory statutory liability applies, e.g. on the basis of product liability or due to injury to life or limb.

8.2. If ladders or scaffolding are used in the works to be executed, only BOMAG products may be used.

Section 9 Items furnished by BOMAG

Materials, parts, containers and special packaging provided by BOMAG shall remain under the ownership of BOMAG. Such components may only be used for parts and orders pertaining to BOMAG. Materials shall be processed and parts shall be assembled expressly for BOMAG. BOMAG shall hold co-ownership of the items stored by the supplier and made from materials and parts supplied by BOMAG, with its proportion corresponding to the value of the materials and parts that it supplies.

Section 10 Tools

10.1. Tools paid for by BOMAG shall remain under the sole ownership of BOMAG; the supplier may only use such for orders and parts pertaining to BOMAG. Tools paid for by BOMAG shall be available to BOMAG in perfect condition at all times. The supplier shall clearly label BOMAG's property as such and store it separately.

10.2. The supplier undertakes to insure tools owned by BOMAG and stored by the supplier against property damage at his own expense. The supplier hereby cedes all claims for compensation under this insurance to BOMAG.

10.3. Parts manufactured using tools owned by BOMAG must not be offered or supplied to third parties, and the applicable expertise must not be passed on.

10.4. The supplier shall be exclusively responsible for maintenance and servicing of the tools at his expense. The supplier shall be solely responsible for the costs of subsequent tools. As such, output is unlimited. Should BOMAG's tools be damaged by the supplier, they must be properly repaired at the supplier's expense.

10.5. All modifications to tools must be approved by BOMAG in writing. Prototypes must be provided for inspection and approval following each modification.

10.6. BOMAG shall only pay tool costs following the inspection and approval of an initial prototype.

10.7. Following payment of tool costs, the tools shall be considered provided on loan by BOMAG. BOMAG shall have sole ownership of the tools.

Section 11 Dangerous goods

The supplier shall be solely responsible for compliance with and application of any applicable provisions regarding dangerous goods, particularly but not exclusively the German Law on Carriage of Dangerous Goods (Gesetz über die Beförderung gefährlicher Güter, GGBefG), the German Dangerous Goods Act concerning Road, Rail and Inland Shipping (Verordnung über die innerstaatliche und grenzüberschreitende Beförderung gefährlicher Güter auf der Straße, mit Eisenbahnen und auf Binnengewässern, GGVSEB), the European Agreement concerning the International Carriage of Dangerous Goods by Road (ADR) and IATA's air freight regulations. The supplier shall inform BOMAG of any hazards in writing in good time.

Section 12 Force majeure

Force majeure, disruptions outside of the company's control, strikes, official measures and other unavoidable events shall release BOMAG from fulfilment of contractual obligations for the duration of the issue and its effects.

Section 13 Proprietary rights

13.1. The supplier shall be responsible for his deliveries and services not leading to BOMAG violating any rights of third parties.

13.2. Should a claim be asserted against BOMAG by a third party in this context, the supplier undertakes to fully indemnify BOMAG upon first written request.

13.3. The supplier's obligation to indemnify shall concern all necessary expenses that BOMAG incurs from or in conjunction with the claim.

13.4. The limitation period for such shall be ten years, counting from conclusion of contract.

13.5. Expertise that the supplier becomes aware of on the basis of the collaboration must not be made available to third parties without express written consent from BOMAG, and must not be used by the supplier or by any third party without BOMAG's agreement. BOMAG's expertise shall be used exclusively for manufacture based on the order and must be kept secret; Section 14 shall also apply.

Section 14 Secrecy

14.1. Without exception, the supplier undertakes to maintain strict secrecy regarding all business and technical data, documents, prototypes, models, other documents and all information ("Confidential Information") that he receives, and only make such available to persons within his company that must be consulted for the purposes of delivery to BOMAG and that have also undertaken to maintain secrecy. Confidential Information may only be disclosed to third parties with express written consent from BOMAG. All information, documents (including copies) and prototypes provided by BOMAG must be returned to BOMAG in full upon request.

14.2. The obligation to maintain secrecy shall continue to apply after implementation of this contract; it shall only expire if and insofar as the production, product, system or manufacturing knowledge contained in the Confidential Information provided has become publicly known without this obligation to maintain secrecy having been violated.

14.3. Disclosure of Confidential Information and provision of documents, prototypes or models shall not give rise to any rights to industrial property rights, expertise or copyright for the supplier, and shall not represent prior publication or a right of prior use within the meaning of the German Patent Act (Patentgesetz, PatG) and German Law on Utility Models (Gebrauchsmustergesetz, GebrMG). The supplier must only use Confidential Information for the purpose approved by BOMAG and within the scope of the agreed collaboration. The supplier shall never have his own rights thereto. Should third parties come into contact with BOMAG's Confidential Information through the supplier, the supplier must conclude a comparable written non-disclosure agreement with such parties in advance and provide BOMAG with evidence thereof upon request.

Section 15 Data protection, security

15.1. BOMAG shall record personal information about the supplier exclusively for the contractual or commercial purpose for which the supplier provides his information. Personal data shall only be used within the BOMAG group.

15.2. The supplier agrees to such and authorises BOMAG to process, save and evaluate information obtained in conjunction with the business relationship in accordance with the applicable data privacy regulations.

15.3. The data privacy statement and further information on data protection can be found on BOMAG's website at <http://www.BOMAG.com/de/html/datenschutz.htm>.

Section 16 Place of fulfilment

Unless stated otherwise in the order, BOMAG's place of business in Boppard, Germany shall be the place of fulfilment.

Section 17 Advertising

The supplier is forbidden to use requests, orders or correspondence of any kind from BOMAG for his advertising purposes. Advertising using the business relationship with BOMAG shall only be permitted with prior, express consent from the same.

Section 18 Final provisions

18.1. The exclusive place of jurisdiction, including for proceedings concerning bills of exchange, cheques and certificates, shall – regardless of the value in dispute – be courts of Koblenz, Germany that have factual and geographical responsibility for BOMAG's place of business in the first instance in the event that the parties are registered traders, legal entities under public law or special funds under public law; however, BOMAG shall alternatively be entitled to file a suit against the supplier at the court at the supplier's domicile or place of business. The same shall apply if the supplier does not have a general place of jurisdiction in Germany, if he changes his domicile or place of business or normal residence away from Germany after conclusion of contract, or if his domicile or place of business or normal residence is unknown at the time of filing the suit.

18.2. The contractual relationship and these General Terms and Conditions of Purchase shall be exclusively subject to the laws of the Federal Republic of Germany, to the exclusion of the UN Convention on Contracts for the International Sale of Goods.

18.3. Should individual provisions of this contract be invalid or unenforceable or become invalid or unenforceable following conclusion of contract, this shall not affect the validity of the remainder of the contract. The invalid or unenforceable provision shall be replaced by a valid and enforceable provision whose effect comes as close as possible to the economic aim pursued by the Parties with the invalid or unenforceable provision. The above provisions shall also apply accordingly in the event that there are loopholes in the contract.