

EMAG Software as a Service (SaaS) Terms and Conditions (as of August 2021)

1. Subject Matter

- 1.1. These Software as a Service (SaaS) Terms and Conditions shall apply to the online use of software applications as Software as a Service provided by EMAG GmbH & Co. KG, Austraße 24, 73084 Salach, Germany or the EMAG group company named in the Order Form ("**EMAG**") by the Customer via the Internet ("**Service**").
- 1.2. If supplementary services (e.g. consulting services, trainings) are provided in connection with the Services, these services shall be subject of separate contractual agreements. The General Terms and Conditions of Service shall apply to such services. If EMAG temporarily or permanently provides the Customer with software installed and operated locally or in the Customer's area of responsibility (On-Premise Software), such software shall be subject to the General Terms and Conditions of Licensing On-Premise Software.
- 1.3. Deviating, conflicting or supplementary general terms and conditions of the Customer shall not become part of the contract, even if EMAG is aware of them, unless their validity is expressly agreed to in writing.
- 1.4. These Software as a Service (SaaS) Terms and Conditions shall also apply to later service releases (Updates) and major releases (Upgrades) provided to the Customer, unless otherwise agreed when the respective later version or Upgrade is provided.
- 1.5. The Services of EMAG are exclusively directed at entrepreneurs within the meaning of Section 14 para. 1 German Civil Code (BGB), i.e. natural or legal persons or partnerships with legal personality, who or which when entering into a legal transaction, act in exercise of his or its trade, business or profession.

2. Provision of the Services

- 2.1. EMAG provides the Services to the Customer via the Internet for use by way of a SaaS model against payment as of the agreed for the duration specified in the order form or in the product description. For this purpose, EMAG shall enable access of the Services to the Customer and shall grant the Customer the necessary rights of use to the Services pursuant to Section 3.

- 2.2. EMAG hosts the Services directly or indirectly and shall be entitled to instruct third parties with the provision of the Services (including affiliated group companies of EMAG) as subcontractors. The Services are accessible to the Customer via the Internet, e.g. via browser or app.
- 2.3. Transition point for the contractual performance of EMAG is the router output to the Internet of the computing centers used by EMAG. The customer's connection to the Internet, maintaining the network connection as well as the procurement and provision of the necessary hardware and software on the part of the customer are not subject matter of these Software as a Service (SaaS) conditions.
- 2.4. If necessary, EMAG will provide the Customer with the necessary login data. In case a user account is required for the use of the Service, EMAG will provide the user account for the Customer after conclusion of this agreement. The contractual relationship concerning the user account and the login data is not transferable. The Customer is liable for all actions taken under his user account.
- 2.5. As of the agreed date of provision of the Services, EMAG shall provide storage capacity for the customer data transferred to the Services by the Customer for the duration of the contractual relationship, to the extent required for the agreed and intended use of the Services.
- 2.6. EMAG will provide the Services, where technically possible, in the respective version currently offered, provided that the Update of the software version – taking into account EMAG's interests – is reasonable for the Customer. EMAG will notify the Customer in due time of any changes to the Services used, provided that such changes affect the agreed upon functionality.
- 2.7. EMAG stores the customer data for the duration of the contractual relationship and backups are made on a regular basis. However, the Customer shall be solely responsible for compliance with commercial and tax obligations to preserve records of the customer data.

3. Right of Use

- 3.1. EMAG grants the Customer a non-exclusive, non-sublicensable and non-transferable right, limited to the term of the User Agreement, to use the Services for

its own business purposes within the scope of the contractually agreed functionalities in accordance with the service description. This also applies to all new versions, Updates or Upgrades of the Services provided by EMAG during the term of the agreement, if any.

- 3.2. The Customer shall be entitled to save and print the online documentation provided, while maintaining existing copyright notes, and to reproduce it in an appropriate number for the purpose of the performance the agreement.
- 3.3. The right of use pursuant to Section 3.1 apply only to the destination country agreed in the order form in which the Services are to be used. Unless expressly agreed otherwise, the right of use shall be granted exclusively for the country in which the Customer has its registered office.
- 3.4. The Customer may use the Services only for its own business purposes and for such companies that are affiliated with it within the meaning of Section 15 et seq. German Stock Corporation Act (AktG).
- 3.5. Unless expressly agreed otherwise, the granting of the right of use is subject to payment of the contractually owed and due remuneration.
- 3.6. The Customer may duplicate the Services only to the extent necessary for the authorized use of the Services. Necessary duplication includes uploading the Services into the working memory, but not the installation or storage, not even temporary, of the Services on local data carriers or on hardware used by the Customer.
- 3.7. Beyond the purposes of these Software as a Service (SaaS) Terms and Conditions, the Customer shall not be entitled to use, reproduce or download the Services or any data other than its own or to make the Services available for use free of charge or against payment to third parties or to persons outside the agreed group of users. Any modification of the Services by the Customer shall result in the loss of claims for defects pursuant to Section 8.
- 3.8. Open Source Software components contained in the Services of EMAG described in the service description or the services itself if required by the respective Open Source licensing conditions.

4. Availability

- 4.1. The services are available 24 hours a day, seven days a week ("Operating Hours"). The average availability during the Operating Hours shall be 95% on an annual average. During other times ("Maintenance Times"), the Services may nevertheless be available, possibly with interruptions and restrictions. However, there is no entitlement to use during Maintenance Times.
- 4.2. If the Services are not available in case of planned maintenance, EMAG will inform the Customer in due time in text form (Section 126b BGB).

5. Data Storage

- 5.1. The storage of data of the Customer is a prerequisite for the use of the Services. The Customer hereby grants to EMAG the perpetual, non-exclusive right unrestricted as to place and content, to such data (including the right to modify and reproduce them), to
 - (i) enable EMAG to provide the Services,
 - (ii) analyze and improve the services provided; and
 - (iii) to develop further services.
- 5.2. In the event that personal data are processed, the provisions of Section 14 shall apply additionally.

6. Customer's Obligations

- 6.1. The contractual use of the Services provided by EMAG depends on the hardware and software used by the Customer, including workplace computers, routers, data communication equipment, etc., meeting the minimum technical requirements for the use of the currently offered version of the Services and on the authorized users being familiar with the operation of the Services.
- 6.2. The customer shall establish, at its own cost, a data connection via the internet between the workstations to be used and the data transition point defined by EMAG. EMAG is entitled to redefine the data transition point at any time if necessary for the unobstructed use of the services by the Customer. In such case, the Customer shall establish a connection to the newly defined transition point.

EMAG assumes no responsibility for any malfunction in the transmission of or access to data outside of EMAG's control (e.g. due to malfunctions of the Internet or DNS servers attributable to the provider of storage capacity, the internet provider, the network provider, etc.).

- 6.3. The Customer shall carefully test the Services for absence of defects and for usability in the existing hardware and software configuration before using them. This shall also apply to Services received under warranty.
- 6.4. The Customer is obliged to keep the login data provided by EMAG confidential from unauthorized third parties and to keep it secure from access by unauthorized third parties, thus making it impossible for third parties to abuse data in order to gain access. All passwords must be changed by the Customer immediately into individual passwords. EMAG is not responsible for the consequences of misuse of user passwords.
- 6.5. As soon as the Customer has any indication that a third party may have gained unauthorized access to, or may have misused the user and access rights, the Customer is obliged to inform EMAG thereof immediately via e-mail (service.global@EMAG.com).
- 6.6. Insofar as EMAG agrees with the Customer on further performance obligations beyond the provision of the Services, the Customer shall cooperate in this to the necessary extent free of charge, e.g. by providing employees, work rooms, hardware and software, data and telecommunication facilities.
- 6.7. The Customer must not use improperly or allow any improper use of the Services; in particular, the Customer must not transmit any illegal content. The Customer shall refrain from any attempt, including through unauthorized third parties, of unauthorized retrieval of information or data or from interfering with programs run by EMAG or from intruding into data networks of EMAG without authorization. The Customer bears disadvantages and additional costs resulting from a violation of these duties to cooperate.
- 6.8. When using the Services as well as the contractual services, the Customer shall observe applicable law, in particular all applicable laws and regulations. The Customer is in particular prohibited from uploading data or content that infringes legal provisions, third-party property rights or copyrights, or other third-party rights

- 6.9. EMAG is entitled to block the use of the Services and the storage space if there is reasonable suspicion that the stored Customer data is illegal and/or infringes the rights of third parties. A reasonable suspicion for an illegality and/or a violation of rights exists in particular if courts, authorities and/or other third parties inform EMAG thereof. EMAG will notify the Customer about the block and the reason for it. The block is to be lifted as soon as the suspicion of an infringement is refuted.
- 6.10. Notwithstanding EMAG's obligation to back up data pursuant to Section 2.7 the Customer shall save the data and content transferred to SICK on a regular basis and according to the risk involved and create its own back-ups in order to ensure their recovery in the event of data and information loss. The Customer shall in particular use any options provided by EMAG to save its data in its own sphere of responsibility. The Customer shall scan the data and information for viruses prior to upload and use state-of-the art antivirus programs.

7. Remuneration, Terms of Payment

- 7.1. The remuneration shall be according to the prices agreed in the order form. Unless otherwise agreed, the remuneration shall be an annual service fee.
- 7.2. The service fee is subject to the applicable statutory sales tax.
- 7.3. The remuneration is due and payable within 14 days after receipt of the invoice.
- 7.4. EMAG reserves all rights to the Services until receipt of all payments due under this agreement.
- 7.5. Offsetting by the Customer with counterclaims is not permitted unless the counterclaim is undisputed or has been legally established.

8. Claims for Defects

- 8.1. The customer shall inform EMAG of defects in the contractual performance in text form (Section 126 BGB) without undue delay and state in a reproducible manner how and when the error or defect occurs. The customer shall actively support EMAG in the remedy of defects by providing suitable documentation (hardcopy, etc.) and any other documents, data, etc. necessary for the analysis and remedy of defects by EMAG. If during the inspection of a complaint the defect turns out

not to have occurred within EMAG's area of responsibility, EMAG may charge the customer for the inspection at the respective applicable prices. This does not apply if the Customer, exercising due care, could not have determined that the malfunction did not occur in EMAG's area of responsibility

- 8.2. EMAG shall rectify or re-perform duly notified defects in the services to be rendered within a reasonable period of time at its discretion. When using third party software which EMAG has licensed for use by the Customer, the liability for defects shall consist in the procurement and installation of generally available upgrades, updates or service packs.
- 8.3. EMAG shall, at its sole discretion, rectify or re-perform duly notified defects in the performance within reasonable time. With regard to third-party software licensed by EMAG for use by the Customer, the liability for defects is limited to the procurement and installation of generally available Upgrades, Updates or service packs.
- 8.4. If, due to reasons attributable to EMAG, supplementary performance fails within a reasonable grace period notified by the Customer, the Customer may reduce the agreed remuneration on a pro rata basis for the time in which the Services have not been available to the Customer to the agreed extent. The right to reduce the remuneration is limited in amount to the monthly remuneration due for the defective part of the performance. The Customer's right of reduction shall be excluded unless the right of reduction is undisputed or has been legally established.
- 8.5. Any claims for damages due to defective performance shall be governed by Section 9 of these Software as a Service (SaaS) Terms and Conditions.
- 8.6. The Customer's right to terminate the contract for failure to provide the services pursuant to Section 543 para 2 Sentence 1 No. 1 German Civil Code (BGB) shall be excluded unless the contractual use is deemed to have failed. The contractual use shall be deemed to have failed at the earliest after the second unsuccessful remedy of defects attempt.
- 8.7. Warranty claims shall become statute-barred within one year. The limitation period for all warranty claims begins with the transfer of the Services to the Customer.

8.8. The strict liability due to initial defects according to § 536a para. 1 BGB is excluded.

9. Liability

9.1. In all cases of contractual and non-contractual liability, EMAG shall be liable only in accordance with the following provisions:

- (i) in the event of intent in the full amount,
- (ii) likewise in the event of gross negligence as well as for losses from the lack of a quality for which EMAG has given a written guarantee;
- (iii) in other cases: only for the breach of a material contractual obligation if the purpose of the agreement is jeopardized, but always limited to the amount of the foreseeable damage. The Customer and EMAG agree that the contract-typical foreseeable damage from breaches of obligations under this agreement shall not exceed the value of the remuneration paid under this agreement. This shall also apply in the event of negligent breaches of obligations by EMAG's legal representatives, executive employees or simple vicarious agents.

9.2. The limitations of liability pursuant to Section 9.1 not apply in the case of liability for personal injury and liability under the German Product Liability Act (ProdHG).

9.3. EMAG is free to raise the objection of contributory negligence.

9.4. Apart from that, any liability for damages on the part of EMAG, irrespective of the legal basis, is excluded. The above limitations of liability also apply to claims for reimbursement of expenses.

9.5. Section 8.6 sentence 1 shall apply mutatis mutandis to the limitation period, with the proviso that the statutory limitation period shall apply to claims under Section 9.1 **Fehler! Verweisquelle konnte nicht gefunden werden.** and Section 9.1. The limitation period pursuant to sentence 1 shall commence at the point in time specified in Section 199 para 1 of the German Civil Code (BGB). It shall commence at the latest upon expiry of the maximum periods specified in Section 199 para 3 and para 4 of the German Civil Code (BGB).

10. Confidentiality and Data Protection

- 10.1. The contracting parties are obligated to treat all Business Secrets within the meaning of Section 2 No. 1 of the German Act on the Protection of Business Secrets (GeschGehG) of the respective other party, of which they become aware in the course of the execution of the contract, as strictly confidential and to use them only for the contractually agreed purposes. Both contracting parties shall be obliged to contractually bind their employees involved in the projects as well as third parties, if any, to confidentiality accordingly. Upon request, these non-disclosure agreements shall be presented to the other party. The contracting parties shall take appropriate confidentiality measures to keep the Business Secrets of the other party confidential.
- 10.2. If information is requested from a public institution which affects Business Secrets of the other party, this party must be informed immediately and, if possible, before the information is released to the public institution.
- 10.3. The rights and obligations in Section 10.1 and Section 10.2 shall not be affected by the termination of the agreement. Both contracting parties shall be obliged to return or destroy confidential information of the other party upon its request upon termination of the agreement.
- 10.4. The foregoing obligations shall not apply to Business Secrets which (i) were already known or generally accessible to the other party at the time of its communication by the other party; (ii) became known after the day of receipt without a fault of the other party; (iii) became known after the day of receipt from a third party in a manner which is not unlawful and without restriction as to secrecy or exploitation; (iv) has been independently developed by a party without use of the other party's Business Secrets; (v) is required to be disclosed by law, governmental order or court order, provided that the disclosing party promptly notifies the other party and assists the other party in defending such order; or (vi) is permitted to be used or disclosed by the other party pursuant to the extent of mandatory legal provisions or the provisions of this agreement.
- 10.5. The parties shall observe the applicable provisions of data protection law in each case and shall oblige their employees involved in the contractual relationship and its performance to maintain confidentiality, unless they are already under a general equivalent obligation.

- 10.6. In the event that the Customer collects, processes or uses personal data, the Customer warrants processing of data in accordance with the applicable provisions, in particular the provisions of data protection law, and shall indemnify EMAG against claims by third parties in the event of any infringement.
- 10.7. If access by EMAG to personal data of the Customer cannot be excluded, the Customer shall conclude an agreement with EMAG in accordance with the requirements of Art. 28 EU Data Protection Regulation (DSGVO) and inform EMAG of this requirement in writing.

11. Force Majeure

If EMAG's failure to meet deadlines is due to force majeure or other malfunctions for which EMAG is not responsible, e.g. significant health hazards (e.g. pandemics and epidemics, radioactive radiation), war, terrorist attacks, riots, similar current threat situations, industrial disputes, also with regard to EMAG's subcontractors, or due to regulatory actions, such as import and export restrictions, or due to business disruptions, the time limits for the provision of the services shall be extended for EMAG for the duration of the hindrance or EMAG shall be optionally entitled to withdraw or partially withdraw from the agreement.

12. Export Compliance

- 12.1. EMAG's obligation to fulfill its obligations under this agreement is subject to the proviso that such fulfillment is not prevented by any obstacles arising from national or international regulations of customs and foreign trade law as well as any embargoes and/or other sanctions.
- 12.2. Customer agrees to comply fully with all applicable national and international export and re-export control regulations. In particular, but without limiting the foregoing, the Customer shall ensure that the Software and derivatives thereof are not (i) downloaded, exported, re-exported or directly or indirectly transferred in violation of any applicable economic sanction or export regulation, or (ii) used for any purpose prohibited by export regulations, or (iii) delivered to any person or entity that would not otherwise be permitted to acquire, license or use the Software.

- 12.3. EMAG reserves the right to perform the necessary export law audits. Upon request, the Customer shall immediately provide EMAG with the information necessary to fulfill its legal obligations. The Customer shall indemnify EMAG and hold EMAG harmless with respect to all claims, proceedings, actions, penalties, losses, costs and damages due to or in connection with non-compliance with export control law obligations. The Customer undertakes to compensate EMAG for all damages and expenses incurred in this connection.
- 12.4. These provisions of Section 12 shall survive any termination of these Software as a Service (SaaS) Terms for any reason.

13. Price Adjustment and Reservation of Right to change the Services and SaaS Terms

- 13.1. EMAG is entitled to adjust the annual license fee with a notice period of three months at the beginning of a contractual year, for the first time at the end of the 12-month minimum contract term, in order to compensate cost increases (in particular personnel, material, energy costs or paid advance services), or within the scope of the general increase of service prices for the Software. If the increase is more than 3% compared to the last paid annual license fee, the Customer is entitled to terminate the license at the beginning of the new contract year with a notice period of one month in writing. If the Customer does not terminate the contract, the price adjustment will become effective at the beginning of the new contract year. EMAG will point out this consequence to the Customer when announcing the adjustment.
- 13.2. EMAG reserves the right to adapt these Software as a Service (SaaS) Terms and Conditions as well as the Services at any time with effect also within the existing contractual relationships to future changes of legal or technical conditions, API compatibilities or with regard to further developments of the Services or technical progress, provided that the essential functionalities of the Services are maintained.
- 13.3. The Customer shall be notified of such changes by e-mail at least 30 calendar days before the changes come into force if the changes cause any restriction of the usability of already generated data or other not merely insignificant disadvantages (e.g. adjustment effort). If the Customer does not object within 30 days

of receipt of the change notice and continues to use the Services even after the expiry of the objection period, the changes shall be deemed to have been agreed with effect from the deadline. In the event of an objection, the contractual relationship shall be continued under the previous conditions. In case of an objection, EMAG shall be entitled to terminate the contractual relationship subject to a notice period of one month. In the change notice the Customer shall be informed about his right of objection and the consequences.

14. Term, Termination

- 14.1. The right of use is granted for the minimum term specified in the order form. Unless otherwise specified in the order form, the minimum term shall be twelve (12) months. The term shall be automatically extended by a further twelve (12) months unless it is terminated by one of the parties with three months' notice at the end of the respective term. The right of each party to extraordinary termination for good cause shall remain unaffected. Termination must be given in writing in order to be effective.
- 14.2. If the Customer has not paid the fee for the use of the Services use in the form of the annual fee for the following year by the agreed due date, the right of use shall expire and EMAG shall be entitled to prevent the use of the services. Provided that the due fee for the use of the Services (including any default interest and reminder fees) is paid in full after the reminder, the Services can be reactivated by EMAG upon Customer's request.
- 14.3. In the event of a culpable violation of the provisions of these Software as a Service (SaaS) Terms and Conditions by the Customer, EMAG is entitled to terminate the contract without notice, unless the violation and its consequences are only immaterial. In this case, the Customer shall not be entitled to a refund of the remuneration paid for the Services. EMAG reserves the right to assert claims for damages.
- 14.4. In the event of a withdrawal or termination by EMAG pursuant to Section 14.3 Customer's right to use the Services shall expire.

15. Obligations upon and after Termination of the Contract

- 15.1. EMAG shall delete the Customer data from all EMAG systems one month after termination of the contract, provided there is no legal obligation to preserve records.
- 15.2. The Customer is obliged to export and save the customer data on its own responsibility in due time before termination of the contract or the expiry of the aforementioned obligation. Upon the Customer's request, EMAG shall support the Customer in this respect against reasonable remuneration.

16. Final provisions

- 16.1. Should one or more provisions of these Software as a Service (SaaS) Terms and Conditions be or become invalid or should these Software as a Service (SaaS) Terms and Conditions contain omissions, the validity of the remaining provisions shall remain unaffected. In this case, the contracting parties undertake to work towards a valid agreement that comes as close as possible in economic terms to the invalid or missing provision, if had the contracting parties known of its invalidity or absence.
- 16.2. There are no ancillary agreements to these Software as a Service (SaaS) Terms and Conditions. Amendments and supplements to these Software as a Service (SaaS) Terms and Conditions must be made in writing. This formal requirement may only be waived by written agreement.
- 16.3. These Software as a Service (SaaS) Terms and Conditions and all obligations arising hereunder shall be governed by and construed in accordance with the laws of the Federal Republic of Germany, excluding its conflict of laws principles and the UN Convention on Contracts for the International Sale of Goods (CISG).
- 16.4. The exclusive place of jurisdiction for all legal disputes arising from or in connection with these Software as a Service (SaaS) Terms and Conditions shall be the registered office of EMAG GmbH & Co. KG, Austraße 24, 73084 Salach, Germany, or the registered office of the EMAG Group company named in the order form. However, EMAG shall also be entitled to sue at the Customer's general place of jurisdiction.

16.5. These Software as a Service (SaaS) Terms and Conditions are executed in the German and English languages. In the event of any inconsistencies, the German version shall prevail.
