

## GENERAL CONDITIONS OF SALE AND DELIVERY

These General Conditions of Sale and Delivery (the “**General Conditions**”) applies to all Products sold by **Q-MATIC AB**, 556212-7497, P.O. Box 198, 431 23 Mölndal, Sweden (“**Qmatic**”).

The General Conditions shall constitute an appendix to a purchase agreement, distribution agreement, order confirmation or other agreements of a similar nature, which together constitutes the Parties agreement (the “**Agreement**”).

### 1 Definitions

In these General Conditions, the following terms shall have the following meaning.

“**Buyer**” means the entity which purchases Products from Qmatic in accordance with these General Conditions.

“**End-User**” means the entity to which the Buyer sells the Products to.

“**Documentation**” means, if applicable, electronic or hard copy versions of end user manual, installation manual and technical guides delivered by Qmatic to the Buyer. The Documentation shall be in English unless explicitly stated otherwise.

“**Hardware**” means Products sold by Qmatic that are not Software Products.

“**Party**” means Qmatic or the Buyer and “**Parties**” means Qmatic and the Buyer together.

“**Products**” means any products, hardware or software products, sold by Qmatic.

“**Software**” means specifically a Product consisting of a set of machine-readable instructions (most often in the form of a computer program) that directs a computer's processor to perform specific operations, sold or licensed by Qmatic.

### 2 General

- 2.1 If the period of validity of an offer from Qmatic has not been specifically mentioned, this period is limited to ten (10) days from the date of issue.
- 2.2 Installation of the Products as well as instruction of the operating personnel shall be carried out by the Buyer. Consultation on application and usage shall be given to the best of the Buyer's knowledge and in accordance with any instructions given by Qmatic.
- 2.3 The Products delivered may be subject to change over the course of an Agreement. Changes in design and/or shape shall be deemed accepted by the Buyer, unless such changes and modifications are substantially limiting the purpose of the purchased Products.

- 2.4 The Buyer shall take responsibility for the lawful usage of the Products as stipulated in the applicable laws and regulations. The Buyer shall not be entitled to remove or change any labels or warning signs from the Products.

### **3 Delivery**

- 3.1 CIP place of destination INCOTERMS 2020 shall apply to all deliveries, unless otherwise agreed between the Parties. The place of delivery, and where the risk passes to the Buyer, shall be Durbanweg 31, 1047HD Amsterdam, the Netherlands, while the place of destination, and to which Qmatic shall contract for carriage of the Products, shall be the address agreed, from time to time, between Qmatic and the Buyer.
- 3.2 Any delivery dates communicated from Qmatic should be understood to function as target dates, unless the date has been set as a fixed delivery date in writing. The Buyer is entitled to cancel a purchase three (3) months after such a delivery date.
- 3.3 Should the Buyer suffer damages due to a delay arising from gross negligence or intent on Qmatic's part, the Buyer's claims shall be limited to zero point one (0.1) percent of the invoice value of the Product that, as a result of the delay, cannot be used, per every week the delay prevails. Claims shall never exceed an amount equal to zero point five (0.5) percent of the invoice value of the delayed Products. Claims can only be demanded provided the Buyer notifies Qmatic thereof in writing within a period not exceeding one (1) week from the actual delivery date.
- 3.4 Qmatic shall not be liable for any further claims for damages resulting from delays in delivery, including damages for indirect loss or damage (including but not limited to claims made by third party), unless the delay has been caused by Qmatic's intent or gross negligence.
- 3.5 Products already delivered are not returnable except after Qmatic's prior written acceptance. If such acceptance is given, the Buyer is obliged to pay to Qmatic compensation equal to twenty five (25) percent, of the invoice value of ordered Products as well as transportation to Qmatic's facilities. Products must be unused and not older than 30 days from delivery date to the Buyer. Products designed specifically or adapted for, or manufactured in accordance with instructions from, the Buyer are not returnable.
- 3.6 The Buyer may cancel or adjust ordered Products before delivery has taken place. If the Buyer cancels or adjust an order later than seven (7) days before delivery date, the Buyer shall pay a fixed compensation to Qmatic of five (5) percent of the invoice value of the original order but not less than 500 EURO/USD or more than 2500 EURO/USD. Order for Products designed specifically or adapted for, or manufactured in accordance with instructions from the Buyer, cannot be cancelled.
- 3.7 If delivery is delayed due to circumstances attributable to the Buyer, Qmatic shall be entitled to compensation for storage of the Products at Qmatic's storage facilities. Said compensation shall be equal to zero point five (0.5) percent of the invoice value of the Products concerned, per every week the Products remain in Qmatic's storage facilities.

## **4 Prices and payment**

- 4.1 The calculation of all prices for delivery of Products, services and performance agreed shall be based on the prices valid on the day of Qmatic's acceptance of an order. If, however, after an order has been accepted, changes occur to prices of raw materials or exchange rates, which affect Qmatic's cost for supplying the Product, or an increased duty, as a result of decisions taken by the authorities of any country, or new taxes, duties or insurance premiums are levied on ordered Products or their transportation, Qmatic is entitled to adjust the price of the Products accordingly. The price shall be adjusted so that Qmatic and the Buyer are equally affected by the increase in price, i.e. if the total increase in price amounts to ten (10) percent of the original price, Qmatic shall be entitled to raise the price with five (5) percent. If the price adjustment for the Buyer exceeds ten (10) percent of the originally agreed price, the Buyer shall be entitled to cancel the order in respect of Products concerned within seven (7) days after being notified of the raised price.
- 4.2 Payment is to be made by cash, by cheque or by credit transfer, within thirty (30) days upon receipt of the invoice, unless other is agreed between Qmatic and the Buyer and stated on the invoice. However, Qmatic reserves the right (even after an order has been accepted if the Buyer has defaulted on earlier payments) to request pre-payment, or appropriate guarantee arrangement (e.g. irrevocable bond or bank guarantee), if deemed necessary by Qmatic. Qmatic shall be entitled charge default interest in accordance with Swedish law for overdue payments.

## **5 Specifically regarding Software**

- 5.1 Regarding the Software, which the Buyer intends to sell to an End-User, Qmatic hereby grants the Buyer a non-exclusive, non-transferable right to license the Software to an End-User to use the Software and the Documentation solely for its own internal business purposes, and in accordance with the terms in [Appendix 1](#) (the "License").
- 5.2 The Buyer shall ensure that the End-User has received terms identical or similar to Appendix 1 and agrees to be bound by the terms and conditions provided therein.

### **5.3 Specifically regarding cancellations or downgrades of Software licenses**

- 5.3.1 A License for the Software 'Management Portal', 'Orchestra' and/or 'Solo', or any other standard software developed and delivered by Qmatic or orders for updates thereof, may be cancelled or downgraded by Qmatic, provided that it has not been activated for the End-User and Qmatic is notified by the Buyer, in writing, within fourteen (14) days after the License has been issued. Qmatic will issue a credit note (and if applicable, refund the fee) for a part of or the whole of the License fee.
- 5.3.2 Qmatic will decide on a case by case basis if a License may be downgraded or cancelled. Qmatic will typically agree to such a downgrade or cancellation if the Buyer made a mistake when placing the order or it is discovered that the End-User does not have a need for the Software or parts of the License (e.g. regarding number of users, options or modules).

- 5.3.3 For the avoidance of doubt, other types of Licenses than those referred to in section 5.3.1 cannot be cancelled or downgraded.

## **6 Maintenance and support**

- 6.1 The Buyer may purchase maintenance and support- services for the Products from Qmatic, in accordance with Qmatic’s Maintenance and Support agreement – the Qmatic Care Program. The first year of the Qmatic Care Program is mandatory when purchasing ‘Orchestra’ as from version 5 as well as management Portal.
- 6.2 The Software is granted “as is” without any support and maintenance. Qmatic may provide the Buyer with patches, updates and support for the Software in accordance with a Maintenance and Support agreement.
- 6.3 The Maintenance and Support agreements may be modified from time to time and the purchase of Maintenance and Support- services will be governed by the agreements published on the Qmatic’s web portal at the date of purchase. Existing agreements are valid “as is” until the end of the agreement period, whereas potential renewals, in time or extent, will be governed by the new agreements as they may appear at the date of purchase.

## **7 Complaints concerning defects**

- 7.1 Regarding Hardware, the following shall apply. Any complaints concerning defects in quality and performance, or the delivery of the correct number and types of the Products, which can be determined by reasonable efforts, shall be notified to Qmatic in writing promptly after discovery and not later than within fourteen (14) days after delivery. Hidden defects shall be notified to Qmatic in writing promptly after discovery and not later than within fourteen (14) days after the Buyer have discovered, or should have discovered, the defect. Should the Buyer fail in the performance of his obligations pursuant to this clause, the Buyer has forfeited any claims caused by the defect.
- 7.2 Regarding Software, the following shall apply. Any complaints concerning defects in quality and performance, i.e. other than complaints regarding the delivery of the correct number and types of Products, shall be notified to Qmatic in writing promptly after discovery and not later than within fourteen (14) days after the Buyer have discovered, or should have discovered, the defect. Such complaints, however, shall be made at the latest within one year after delivery. Should the Buyer fail in the performance of his obligations pursuant to this clause, the Buyer has forfeited any claims caused by the defect.

## **8 Warranty and liability**

- 8.1 During a period of twenty four (24) months from delivery of the Hardware, Qmatic warrants that any defects in the Hardware shall at Qmatic’s own choice either be repaired and/or replaced. In case of repair, the Buyer shall carry accrued costs for transportation of the defect Hardware or part of the defect Hardware to Qmatic’s premises. Qmatic will carry any costs, excluding customs, taxes or other country specific fees, for transportation of the repaired or replaced Hardware to the Buyer’s premises.

- 8.2 The Buyer is, however, not entitled to claims based on warranty;
- (a) if the deficiency has been caused by improper usage of the Hardware, faulty installation, usage of unsuitable accessories, e.g. spare parts, consumables etc. not approved by Qmatic, or improper operation;
  - (b) if the Hardware concerned has not been maintained or serviced in accordance with recommendations given and this has caused the deficiency;
  - (c) if the deficiency has been caused by improper modification of the Hardware (including but not limited to any Software bundled with the Hardware);
  - (d) if the damage has been caused by circumstances beyond Qmatic's control;
  - (e) if the deficiency results from normal wear and tear, especially as far as working parts and consumables are concerned; and/or
  - (f) if the damage has been caused during delivery.
- 8.3 Above and beyond the above, the Buyer shall not be entitled to claim any damages against Qmatic for defects, including indirect damages (including but not limited to claims made by a third party), e.g. loss of data or missed profit. This shall not apply if the damage has been caused by Qmatic's intent or gross negligence.
- 8.4 Regarding Software, see Appendix 1.

## **9 Force majeure**

- 9.1 Circumstances that may be designated as force majeure shall be considered as grounds for relief from an order, provided that the circumstance at hand could not have been foreseen when the order was made and that it impedes the performance of a Party according to the order and fulfilment of the performance in question therefore would be unreasonably onerous. Amongst others, the following circumstances shall be considered to constitute force majeure: industrial dispute (strike) and any other serious circumstance beyond the control of the Parties, such as technical fault in the manufacturing of Products, fire, war, mobilisation or military call up of comparable scope, requisition, seizure, currency restrictions, insurrection and civil commotion, shortage of transport, general shortage of materials, restrictions in the use of power and defects or delays in deliveries by sub-contractors caused by any such circumstance as referred to in this clause.
- 9.2 The Party wishing to claim relief under this clause shall notify the other Party in writing without delay on the intervention and on the cessation of such circumstance. If grounds for relief prevent the Buyer from fulfilling his obligations, the Buyer shall compensate Qmatic for reasonable expenses incurred in securing and protecting the Product.
- 9.3 Notwithstanding any other provision of these General Conditions, either Party shall be entitled to terminate an order by written notice to the other Party, if performance of the order is delayed more than five (5) months by reason of any grounds for relief as

described above and the notification reaches the other Party before the cessation of the circumstance constituting force majeure.

## **10 Miscellaneous**

- 10.1 The Buyer is not entitled to make any pledges whatsoever on behalf of Qmatic in respect of the performances and properties of the Products. No such pledge will bind Qmatic and the Buyer is obliged to hold Qmatic harmless in the event Qmatic, for any reason, suffers damages as a result of breach of this section.
- 10.2 Qmatic shall be entitled to use the Buyer as reference for current and potential customers, in Qmatic's marketing materials.
- 10.3 In no event shall any delay, failure or omission of a Party in enforcing, exercising or pursuing any right, claim or remedy under this Agreement be deemed as a waiver thereof, unless such right, claim or remedy has been expressly waived in writing.
- 10.4 If any provision of this Agreement or the application of it shall be declared or deemed void, invalid or unenforceable in whole or in part for any reason, the remaining provisions of this Agreement shall continue in full force and effect. The Parties shall seek to amend such void, invalid or unenforceable provisions and thereby this Agreement in order to give effect to, so far as is possible, the spirit of this Agreement and to achieve the purposes intended by the Parties.
- 10.5 This Agreement shall be binding upon and inure to the benefit of the successors of the Parties. Qmatic may, without prior consent, assign its rights under this Agreement to a legal entity directly or indirectly controlling, controlled by or under common control with Qmatic.
- 10.6 Qmatic shall be entitled to make all relevant inquiries, inspections and investigations in order to establish if the Buyer fulfils the obligations set out in the Agreement.

## **11 Applicable law and dispute resolution**

- 11.1 These General Conditions of Sale shall be interpreted and construed in accordance with the laws of Sweden. The United Nations Convention on Contracts for the International Sale of Goods shall not apply.
- 11.2 Any dispute in connection with these General Conditions shall be finally settled by arbitration, in accordance with the Rules of the Arbitration Institute of the Stockholm Chamber of Commerce (the SCC Institute).
- 11.3 The place of arbitration shall be Gothenburg, Sweden. The language to be used in the arbitral proceedings shall be English.
- 11.4 Notwithstanding the above, any dispute regarding payment for Products delivered – regardless any counterclaims made by the Buyer – shall, at Qmatic's choice, be settled by the courts of Sweden or such court of law or equal authority determined by Qmatic.
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## Appendix 1

### Software Terms and Conditions

#### 1 License grant

- 1.1 The Buyer shall provide access to the Software and the Documentation only to its authorised employees, to its independent contractors and to End-Users. The Buyer shall take all reasonable steps to protect the Software and the Documentation from unauthorised access, copying or use.
- 1.2 The Buyer acquires no ownership of any kind in the Software or the Documentation or any copies thereof. For all intents and purposes, Qmatic has and shall retain, all title, exclusive ownership rights and all intellectual property rights and other rights and interests in the Software and the Documentation, in the content thereof, and in any and all copies, modifications, alterations and enhancements to the Software and the Documentation, including any derivative works resulting therefrom.
- 1.3 Except as expressly permitted by mandatory applicable law and this Agreement, the Buyer agrees not to copy, duplicate, decompile, reverse engineer, disassemble, or otherwise discover, or to sublicense the Software or the Documentation, in whole or in part to a third party without the prior written approval of Qmatic.
- 1.4 The Buyer may make back-up copies of the Software in machine executable code form, only to be used in the event that the copy of the Software received from Qmatic fails to function, is lost, damaged or destroyed. There may be no more copies than are necessary to form part of a reasonable back-up plan for the Buyer. Back-up copies of the Software may be kept by the Buyer in a bank deposit or such other secure place as is normally used by the Buyer for storage of its computer program back-ups. Each back-up copy shall display the same program name, serial number (if applicable), version number, copyright and trademark notices as the original licensed copy provided by Qmatic and the Distributor.

#### 2 Infringement of intellectual property rights

- 2.1 Qmatic shall defend and hold harmless the Buyer against any claims that the Buyer's use of the Software infringes any patents or copyright, provided that Qmatic is given prompt written notice of such claim and is given information, reasonable assistance and sole control of the defence or settlement of such claim. The Buyer may not settle or compromise such claim, action or allegation, except with prior written consent of Qmatic.
- 2.2 If the Software becomes or in Qmatic's opinion is likely to become the subject of a proceeding or claim of intellectual property rights infringement, Qmatic shall, at its option and expense: (i) obtain the right for the Buyer to continue using the Software in accordance with this Agreement (ii) replace or modify the Software so that it becomes non-infringing; or (iii) if Qmatic cannot reasonably obtain the remedies in (i) or (ii), terminate the License for the infringing Software, at which time the Buyer shall immediately return the infringing Software and/or Documentation to Qmatic and this Agreement shall terminate. The Buyer's sole remedy in respect thereof shall be Qmatic's obligation to refund the Buyer for the price of the Software.
- 2.3 Qmatic shall have no liability to defend the Buyer in accordance with Section 2.1 and 2.3 above to the extent the alleged infringement is based on: (i) use of Software in combination with third party products; (ii) alterations or modifications of the Software;

(iii) use of the Software other than in accordance with the Documentation and the terms of this Agreement; or (iv) use of a prior version of the Software and the infringement claim could have been avoided by use of a current version.

- 2.4 The Buyer shall defend and hold harmless Qmatic from any loss, liability, cost or expense (including reasonable legal fees) related to any action brought against Qmatic, whether civil, criminal or administrative, arising from the Buyer's failure to use the Software in compliance with the terms of this Agreement.

### **3 No Warranties**

- 3.1 The License is granted "as is" without any warranty.
- 3.2 Qmatic shall have no responsibility for errors or other problems with the Software caused by or derived from (i) alterations or modifications of the Software; (ii) third party software or hardware; or (iii) a combination of the Software with any program, equipment or device not supplied or approved by Qmatic.
- 3.3 Qmatic does not warrant that the Software will meet Buyers's or End-User's requirements or that the operation of the Software will be uninterrupted and error free. The Buyer is solely responsible for the selection of the Software to achieve its intended results and for the results actually obtained. Qmatic disclaims all other warranties, express or implied, including but not limited to warranties of merchantability and fitness for a particular purpose. Qmatic shall have no liability or responsibility whatsoever with respect to third party software or hardware. Qmatic makes no warranty as to the adequacy or capacity of any hardware or third party software to gain some or all of the performance objectives of the Licensee.

### **4 Limitation of liability**

Qmatic shall have no liability, except to the extent that such limitation is held to be legally invalid, to the Buyer regarding Software, from any cause, including breach of contract, warranty or negligence. Qmatic's liability related Software shall in no event exceed the price paid for the Software and Qmatic shall in no event be liable to the the Buyer for any indirect, incidental, special or consequential damage, including but not limited to loss of data, loss of business opportunity or loss of profit arising out of or in connection with the use of the Software, even if Qmatic has been advised of the possibility of such damages.

### **5 Termination of the License**

- 5.1 In the event of a failure by either Party to comply with any material obligation under this Agreement, including but not limited to payment for the Licenses, and such non-compliance remains uncured for more than thirty (30) days after receipt of written notice thereof, the non-defaulting Party may, in addition to any other rights available to it, terminate this Agreement and the License granted hereunder immediately upon written notice to the defaulting Party.
- 5.2 Qmatic may terminate the License immediately upon written notice to the Buyer, if the Buyer becomes insolvent, makes a general assignment for the benefit of creditors, files a voluntary petition of bankruptcy, suffers or permits the appointment of a receiver for its business or assets, or becomes subject to any proceedings under any bankruptcy or insolvency law, whether domestic or foreign, or has wound up or liquidated, voluntarily



or otherwise. In the event that any of the above events occurs, the Buyer shall immediately notify Qmatic of its occurrence.

- 5.3 Upon termination of this Agreement for whatever reason, the Buyer shall immediately discontinue all use, destroy and delete all copies of the Software and the Documentation or any part thereof in its possession in any form. Upon Qmatic's request, the Buyer shall verify in writing that the above actions have been carried out.

## **6 Confidentiality**

The Buyer is aware of and acknowledges that the Software contains proprietary and confidential information, including the ideas, methods of operation, processes, know-how, sub-systems and modules included in the Software, the graphical user interfaces for the Software and the look and feel of the Software, all of which embody valuable trade secrets of Qmatic or third party related thereto. Such proprietary and confidential information shall be held and maintained by the Buyer in confidence for the exclusive benefit of Qmatic.