

## Standard Terms and Conditions

### SES-imagotag GmbH

#### Preamble

SES-imagotag GmbH, whose business address is St. Peter Gürtel 10b, A-8042 Graz, Austria, ("**SES-imagotag**") is active in the "*digital signage*" business segment, developing and selling eLabel complete systems. The present Standard Terms and Conditions serve as legal basis for the (licence) contract to be concluded between SES-imagotag and its customers.

#### Article 1 Definitions

Standard Terms & Conditions: The present Standard Terms & Conditions, as amended, are available at <https://portal.imagotag.com/>.

Intellectual property: Any and all proprietary and intellectual property rights, including copyright, trade mark and brand rights, and SES-imagotag's other know-how that is capable of being protected.

Customer/contracting partner: Any natural or legal person in a business relationship with SES-imagotag based on the present Standard Terms and Conditions.

Licence contract: The legal act between SES-imagotag and the contracting partners and exclusively based on the present Standard Terms and Conditions.

Product/product range: A product from the product range of SES-imagotag, including manufacturers' products. Product range shall include all of SES-imagotag's hardware and software products.

Software: Software from SES-imagotag's product portfolio.

Website: SES-imagotag's website, available at [www.ses-imagotag.com](http://www.ses-imagotag.com) and appertaining subdomains.

#### Article 2 Applicability

- (1) These Standard Terms and Conditions, as amended, shall govern the legal and economic framework conditions of the licence contract between SES-imagotag and the customer. Any contractual deviations from these Standard Terms and Conditions are subject to prior express written confirmation by SES-imagotag.
- (2) These Standard Terms and Conditions shall be directly binding only on SES-imagotag and the contracting partners, and unless otherwise specified, these Standard Terms and Conditions shall not result in any legal effect and any claims, etc., based on a contract in favour of third parties. Any business terms and conditions of a contracting partner shall not become automatically a subject matter of the contract and shall be applicable only if accepted in writing by SES-imagotag on a case-to-case basis.

#### Article 3 Conclusion of Contract

- (1) Contracts with SES-imagotag shall come into existence with the offer and its acceptance. When a product is ordered, this shall also be considered to imply acceptance of the services offered by SES-imagotag under the legal and economic framework conditions of the present Standard Terms and Conditions.
- (2) Offers of SES-imagotag to conclude a contract shall be without engagement in all cases. Any products and services promoted by online offers, in brochures or any other supporting documents and advertising materials do not constitute a binding offer. Any warranted properties cannot be implied unless they are expressly designated and agreed as such.
- (3) SES-imagotag shall be entitled to decline conclusion of a contract with the contracting partner or terminate the contact at any time in the event of
  - (a) founded doubts concerning the identity, legal capacity, and/or legal person of the contracting partner or the power of representation of a natural or legal person acting on its behalf;
  - (b) reasonable grounds for suspecting misuse of the products or other circumstances making the constitution or maintenance of a contractual relationship unacceptable from the point of view of SES-imagotag.

#### Article 4

##### Contract works and scope of services

- (1) The type and scope of the services of SES-imagotag shall be geared to the description of services defined between SES-imagotag and the customer. Any test data and sufficient test facilities required as the case may be shall be provided by the customer in due time and at the latter's cost.
- (2) The customer is deemed to be familiar with the essential functional and services characteristics of the product and the customer shall itself bear the risk that a certain product is not in line with its requests and/or (operational) requirements. The technical applicability and conditions of use of the products are those outlined in a functional description and/or SES-imagotag's data sheets ("**Functional description**").
- (3) Changes to the order volume and/or the description of services by the customer shall be considered as a new offer and are subject to prior approval by SES-imagotag.
- (4) If, due to an omission of the customer or an unapproved change to the services requirements, it is impossible for SES-imagotag to perform the services, the customer shall have to bear the fees and expenses payable in connection with the activity undertaken by SES-imagotag until such a change, as well as having to bear the any dismantling costs, if any.

#### Article 5

##### Services to be provided / obligations to be fulfilled by the contracting partner

- (1) The contracting partner shall be prohibited from using software, information or (technical) equipment resulting in a potential impairment of any kind whatsoever of the functionality of products.
- (2) The contracting partners must inform SES-imagotag of any changes in their company name and legal structure as well as in the address of the company immediately.
- (3) Changes of the system prerequisites under the control of a contracting partner must be notified in due time before the service performance by SES-imagotag. If necessary, the contracting partner shall also make available in due time and free of charge any supporting documents, information and equipment deriving from the contracting partner's sphere and required for service performance by SES-imagotag.
- (4) The customer shall grant SES-imagotag the right to include the customer's company name and any logo or brand of an existing company in a partner or reference list and to publish the business relationship with SES-imagotag.

#### Article 6

##### Acceptance and trouble-shooting

- (1) The customer shall accept SES-imagotag's contractual services at the terms and conditions set forth in the description of services. The functionalities and properties of the products (hardware and software) are those listed in the functional description according to Article 3 (4). The customer shall be deemed to be acquainted with the scope of the services by the mere fact of ordering products (see also Article 4).
- (2) Upon delivery, the customer shall subject the products to a thorough functional test. Any defects, bugs or other application errors of the product becoming apparent during the functional tests of the product in question shall be notified to SES-imagotag within a reasonable deadline, however, not later than 5 (*five*) workdays after delivery. Hidden defects of the product must be notified within 3 (*three*) days from detectability of the defect. Notice of defect must first be given electronically by e-mail to [office.at@SES-imagotag.com](mailto:office.at@SES-imagotag.com) and subsequently by letter sent to SES-imagotag's business address, stating precisely (i) the type of error, (ii) the application during which an error occurred and (iii) any measures taken to remove the defect.

- (3) In the event of a notice of defect, (i) a responsible contact of the customer shall be named and (ii) a detailed description of the occurrence of the defect must be prepared. After removal of the defect, the product is again subject to acceptance by the customer.
- (4) If the customer fails to accept any contractual services in due time without any legal cause or if a defect in the performance of the services is attributable to the customer, the latter shall indemnify SES-imagotag for any damages resulting therefrom.

## **Article 7 Copyright and use**

- (1) When licencing the software/software applications, the customer is granted a non-exclusive, non-transferable right of use of the software/software applications, which right shall be limited materially and temporally by the validity of the relevant contractual relationship.
- (2) Any copyright relating to the software and/or the application in question as well as the services under the contract (programs, documentations, etc.) shall be the unlimited property of SES-imagotag and, as the case may be, its licensors (manufacturers) and shall remain so after conclusion of a contract. At the time of their creation, any specifications, further developments and adaptations of the software (software applications) or programs based thereon shall become the intellectual property of SES-imagotag and/or its licensors (manufacturers). This includes all rights that may result from copyright or other provisions covering intangible goods rights all over the world.
- (3) In the course of using the software under the contract, customer shall not be entitled to edit, change or otherwise model the software, to pass it on to third parties, to connect it to other programs or to retranslate (decompile) it to a different display format. Likewise, the customer shall not remove, obviate or change any copying or protective mechanisms, program elements serving for digital rights management (DRM), security codes or characteristics serving to designate the software (notes of ownership, brands, copyright information).
- (4) The customer shall not be entitled to use the software applications and/or (overall) software purchased for any purposes other than those stipulated in the contract or to permit use of the software / software applications by third parties (in the meaning of Article 228 para 3 of the Austrian Commercial Code) outside the customer's operations or to surrender them to such third parties either temporarily or permanently.
- (5) The customer shall hold harmless and indemnify SES-imagotag for any non-compliance with the subject conditions of use, especially for any interference with the copyright or intellectual property rights of SES-imagotag or third parties, and in all such cases, full satisfaction shall be given.

## **Article 8 Prices, delivery, payment terms**

- (1) SES-imagotag shall provide the services described in Article 4 (2) including the delivery of products and the granting of licence rights in the software (software applications) or provision of hardware components from its range of products against payment of a consideration by the customer. The product-specific prices and licence fees can be inferred from the Website as well as specific product catalogues. SES-imagotag's pricing is based on the billing costs customary in the trade. The payment terms will be announced separately.
- (2) Delivery:
  - Any delivery deadlines stated shall not be binding unless having been given as binding expressly and in writing.
  - The risk of damage to or loss of the goods shall be transferred to the customer when the goods are handed over to the transport person.
  - Partial supplies or supply in instalments shall be acceptable unless otherwise agreed, with the present Terms and Conditions being applicable to each partial supply.
  - Ownership of the goods supplied shall be transferred to the customer as and when payment for the goods, including any interest due or other claims, has been effected in full.

## **Article 9 Warranty**

- (1) SES-imagotag's services will be performed along generally applicable industrial standards and practices. SES-imagotag shall warrant that at the time of performing the services, the products are in a state ready for operation and conforming to the usually postulated characteristics and the state of the art current at the time in question. The customer is aware that due to bugs it is impossible according to the state of the art to render completely flawless computer services.
- (2) In addition, SES-imagotag warrants and represents, within the scope of legal provisions, that the licence rights granted to the customer according to Article 7 (1) enable use of the products/software under the contract. If third parties assert claims or protective rights against the customer, the latter shall notify SES-imagotag immediately. Customer must not itself recognise the claims asserted by third parties. SES-imagotag will either defend or satisfy the claims at its discretion or replace the services concerned by equivalent services conforming to the purchase order, if the customer finds this acceptable.
- (3) SES-imagotag shall not provide any warranty for defects or other failures
  - (a) which are due to defects of the hardware, the operating system or the software of other manufacturers outside the sphere of SES-imagotag;
  - (b) which were caused by application errors of any kind whatsoever or improper handling on the part of the customer and which could have been avoided by proper and careful use;
  - (c) resulting from (i) a change of an operating system component, interfaces and parameters, (ii) use of unsuitable organisational means and data carriers, as far as these have been stipulated, (iii) atypical operating conditions (especially deviations from the installation and storing conditions) and (iv) transport damage;
  - (d) caused by viruses or other exposure such as to fire, accidents, power failures, etc. which are due to external reasons not under the control of SES-imagotag;
  - (e) due to transmission errors to data carriers or in the internet.
- (4) No warranty that the product is fit for a certain purpose intended by the customer shall be given.
- (5) SES-imagotag may (i) either repair a defect of which the customer has given proper notice and which is justified or (ii) replace the defective product at its own discretion. The warranty period for the products is 6 (six) months.

## **Article 10 Software support and maintenance**

The software support provided by SES-imagotag for the customer and the performance of maintenance work are subject to separate agreements.

## **Article 11 Liability and indemnification**

- (1) SES-imagotag shall be liable under the valid legal provisions for damage caused to the customer by its directors, employees, agents and other persons commissioned to perform services for the customer under an agreement only to the extent that such damage is proved to have been caused by deliberate acts or gross negligence. Liability for slight negligence shall be excluded, except where it leads to a damage to life and limb.
- (2) SES-imagotag can be held liable for destruction of any data or software only to the extent that the customer has complied with its obligation to use the software properly under the contract.
- (3) Any recourse claims directed against SES-imagotag either by the customer itself or by third parties under product liability in the meaning of the Austrian Product Liability Act shall be excluded except if the recourse claimant proves that the defect originated in the sphere of SES-imagotag or was at least caused by gross negligence.
- (4) Events of Force Majeure rendering the performance of services under the contract impossible or seriously hampering performance shall entitle SES-imagotag to postpone performance of its obligations for the duration of this impediment plus a reasonable ramp-up time.



- (5) In the event of business-to-business transactions, any claim for damages exerted by the customer against SES-imagotag shall lapse within six months after knowledge has been obtained of the damage and its author.

**Article 12**  
**Data protection and secrecy**

- (1) The customer shall be solely responsible for any personal (user) data and information (whether sensitive data in the meaning of the Data Protection Act 2000, Article 4, or non-sensitive data) transferred, used or processed by SES-imagotag in the course of the performance of the services. Prior to editing or processing such (personal) data, the customer shall be obliged to obtain the consent of the persons concerned and, in the event of contravention, to hold harmless and indemnify SES-imagotag in relation to any claims brought by third parties.
- (2) SES-imagotag and the customer shall treat all business and operational secrets of the other party of which they become aware in the course of the business relationship as strictly confidential.

SES-imagotag wishes to point out that the confidentiality of any unencrypted data, information, etc. transmitted via the internet cannot be warranted.

- (3) At the termination of the business relationship, the customer shall be obliged to return all documents received in the course of the performance of the contract to SES-imagotag or to destroy these documents.
- (4) These secrecy obligations shall survive termination of the business relationship by five years.
- (5) The obligations in the present Article 12 shall equally apply to any agents and employees of SES-imagotag and the customer.

**Article 13**  
**Final Clauses**

These Standard Terms and Conditions shall be subject to Austrian law. The application of the United Nations Sales Convention shall be excluded. Any disputes arising from or in connection with the Standard Terms and Conditions shall be settled by the court having material competence for the seat of SES-imagotag.