

## TERMS OF USE HOMAG UPDATE AGENT

### INTRODUCTORY REMARK

- (A) The Customer is entitled, in accordance with a separate agreement concluded between him and HOMAG, to receive updates for software components from HOMAG that he uses on HOMAG machines ("Update Agreement").
- (B) To simplify the update process, HOMAG offers its customers the HOMAG Update Agent. The HOMAG Update Agent is a software for distributing HOMAG-specific software and configuration data for the machines and systems produced by HOMAG, which HOMAG provides to the user free of charge in order to download and then install software updates for HOMAG machines. The HOMAG Update Agent can also be used to distribute HOMAG software that is used on work preparation systems (AV systems).

### 1. GENERAL

- 1.1 These terms of use apply in all cases in which we, HOMAG Group AG, Homagstrasse 3-5, 72296 Schopfloch, Germany, make the HOMAG Update Agent available to the customer for use. General terms and conditions or other conditions of the customer do not apply.
- 1.2 These terms of use apply exclusively to the purchase and use of the HOMAG Update Agent by the customer. The rights and obligations of the customer with regard to the updates themselves are determined in accordance with the update agreement and are not the subject of these terms of use.
- 1.3 The prerequisite for using the HOMAG Update Agent is the customer's authorization to receive updates from HOMAG under an existing update agreement.
- 1.4 The customer hereby expressly agrees that updates for its HOMAG machines will be made available electronically using the Homag Update Agent. HOMAG provides the customer with the HOMAG Update Agent free of charge for this purpose.
- 1.5 To use the HOMAG Update Agent and to authorize the customer, the customer will receive an authorization email from HOMAG, via which the HOMAG Update Agent can be downloaded.
- 1.6 The customer will receive an access code with the authorization email, which the customer can use to download the relevant update using the HOMAG Update Agent and then install it on the customer's HOMAG machines together with HOMAG service staff.

## **2. USAGE RIGHTS**

- 2.1 All rights, in particular trademarks, patents, copyrights, database rights and other intellectual property rights as well as trade secrets and know-how ("IP Rights") to the HOMAG Update Agent, including the underlying architectures and applications, the documentation and all works derived therefrom, are owned exclusively by HOMAG or its licensors.
- 2.2 HOMAG grants the customer a non-exclusive, non-sublicensable, non-transferable right to use the HOMAG Update Agent expressly for the purpose of providing updates for HOMAG machines by HOMAG.
- 2.3 For programs from third-party manufacturers, the license conditions of these manufacturers apply. If a software component is subject to an open-source license, the respective open-source license conditions apply with priority. HOMAG will make the conditions of the third-party manufacturers and the relevant open-source license conditions available to the customer upon request.
- 2.4 The Customer is not authorized to: (a) grant third parties (except Authorized Users) access to the HOMAG Update Agent or otherwise permit third parties (except Authorized Users) to use the HOMAG Update Agent, (b) copy, modify, decompile or reverse engineer the HOMAG Update Agent or otherwise attempt to discover software code or underlying technical information unless permitted to do so under mandatory law, (c) use the HOMAG Update Agent in violation of applicable law, this Agreement or the Documentation; or (d) use the HOMAG Update Agent to gain unauthorized access to a service, device, data, account or network of HOMAG or a third party, or (e) use the HOMAG Update Agent in a manner that violates the rights of HOMAG or third parties.

## **3. CUSTOMER OBLIGATIONS**

- 3.1 The customer is obliged to prevent any unauthorized use of the HOMAG Update Agent. The customer must in particular ensure that the access code sent with the authorization email is only used by authorized employees, is otherwise treated as strictly confidential and third parties are not permitted to use the access code.
- 3.2 The customer is obliged to treat all data downloaded with the HOMAG Update Agent as confidential and not to pass it on to third parties, either in whole or in part.
- 3.3 The customer will immediately inform HOMAG of any unauthorized use or security breaches relating to the HOMAG Update Agent or other problems that may affect the use of the HOMAG Update Agent and the HOMAG machines.

- 3.4 The customer ensures that the HOMAG Update Agent is installed and operated properly and in accordance with the documentation.
- 3.5 The customer shall ensure a technical system environment sufficient for the proper operation of the HOMAG Update Agent, which at least meets the minimum requirements contained in the documentation.
- 3.6 The customer must maintain an adequate internet connection. In particular, the internet connection must allow unhindered access to port 443 via HTTPS
- 3.7 If a customer does not fulfill the required customer obligations or does not do so on time, HOMAG is released from the obligation to provide services under these terms of use until the required customer obligations have been fully fulfilled in accordance with the contract, insofar as HOMAG is dependent on the corresponding customer obligations to provide the service. In this case, HOMAG is not responsible for any resulting disruptions in performance. Section 254 of the German Civil Code remains unaffected.
- 3.8 The customer must ensure adequate security of the internet connection and adequate IT security protection in line with the current state of the art for both the internet connection and the network environment of the system on which the HOMAG Update Agent is used.
- 3.9 The execution of the HOMAG Update Agent is carried out independently and under the customer's own responsibility.

#### **4. WARRANTY**

- 4.1 HOMAG provides the HOMAG Update Agent free of charge to facilitate the update process for the customer.
- 4.2 The use of the HOMAG Update Agent is at the customer's own risk. A warranty for the HOMAG Update Agent is excluded.
- 4.3 HOMAG points out that the regular updates of the HOMAG Update Agent may also have an impact on functionalities in other applications and the customer's system environment.

#### **5. LIABILITY**

HOMAG's liability in all cases of contractual and non-contractual liability for damages or reimbursement of expenses is limited as follows:

- 5.1 HOMAG shall be liable in the event of intent, fraudulent concealment of a defect, culpable personal injury and in the event of liability under the Product Liability Act in accordance with the statutory provisions.
- 5.2 In all other respects, HOMAG's liability is excluded.
- 5.3 To the extent that the liability of HOMAG is excluded or limited according to the above provisions, this also applies to the personal liability of the bodies, legal representatives, employees, staff and vicarious agents of HOMAG.

## **6. DATA**

- 6.1 The data provided by HOMAG via the HOMAG Update Agent can be downloaded using the HOMAG Update Agent. During the process, HOMAG collects not only the IP address and the customer's name, but also information on the current status of the download progress. This progress information includes the start/end time of the overall download or the download of individual packages. In addition, an error message is reported back to HOMAG if an error occurs.
- 6.2 HOMAG uses the progress information to improve the HOMAG Update Agent and the update process as well as to track and prevent unauthorized distribution of the access code.

## **7. 9. CONFIDENTIALITY**

- 7.1 With regard to confidential information exchanged in the context of the use of the HOMAG Update Agent, HOMAG and the customer undertake to keep this confidential information secret and not to exploit/have exploited within their own company, including all affiliated companies, subsidiaries, branches, consultants, employees and all similar persons, companies or other natural or legal persons, or to use/have used in any other way themselves or by third parties.
- 7.2 Confidential information is only made available internally to those employees who need it to fulfil their obligations and who are themselves obliged to maintain confidentiality. Within the scope of these terms of use, confidential information includes, by way of example but not exclusively, any software including the source code, any trade secret, any information and all data or other non-public or confidential information relating to products, processes, know-how, design, formulas, algorithms, drafts, developments, research, computer programs or parts of computer programs (including the source code), interfaces, databases and other copyrighted works or any other information relating to the business activities of HOMAG or the customer, which is disclosed in the context of the use of the HOMAG Update Agent or is

otherwise marked as confidential and communicated in written, electronic, physical or oral form.

- 7.3 The above confidentiality obligation does not apply if and to the extent that the information in question was demonstrably already public at the time of its transmission, i.e. published or generally accessible, or becomes public after its transmission through no fault of the recipient, or was made known by a third party after its transmission to the recipient in a legal manner and without restriction with regard to confidentiality or use. It also does not apply with regard to the contractual use of the progress information within the HOMAG Group.

## **8. EXPORT CONTROL REGULATIONS**

- 8.1 The customer is obliged to observe the relevant national and international legal provisions regarding the control of the (re-)export of the deliveries and services regulated in this contract. In particular, the customer will not export or re-export the HOMAG Update Agent or parts thereof - if entitled to do so under this contract - nor pass it on or transfer it without complying with the applicable legal provisions.
- 8.2 If this is necessary to comply with export control regulations, the customer will, at HOMAG's request, immediately provide all information about the recipient, whereabouts and intended use of the licensed object or its individual components.

## **9. FINAL PROVISIONS**

- 9.1 If the customer is based within the Federal Republic of Germany, the place of jurisdiction is our company headquarters. We reserve the right to file suit at the customer's legal place of jurisdiction.
- 9.2 If the customer is based outside the Federal Republic of Germany, arbitration proceedings will take place at the International Chamber of Commerce in Paris in accordance with the ICC Arbitration Rules. The decision is final. It must be made and justified by three judges. Our insurer may participate in the case in accordance with the possibilities for participation in the ordinary legal process. We reserve the right to file a lawsuit at a legal place of jurisdiction.
- 9.3 The law of the Federal Republic of Germany applies, excluding all conflict of law rules and the United Nations Convention on Contracts for the International Sale of Goods (CISG).
- 9.4 Should individual provisions of these Terms of Use be or become invalid in whole or in part, the remaining provisions shall remain unaffected.

If you do not agree to the terms of use, please contact your contact at HOMAG. They will inform you about alternative delivery options.

I have read and accept the terms of use.