



# S+P LION AG General Terms and Conditions – Purchase, hereafter referred to as S+P LION

## **Article 1 Applicability**

Except to the extent otherwise expressly stipulated in writing, these S+P LION General Terms and Conditions – Purchase (herein: “Purchase Terms”) apply to all purchase orders on Contractor and purchase contracts with Contractor. They also apply in future business relationships with Contractor including where they are not expressly agreed again.

These Purchase Terms do not apply to the provision of construction works.

Nor do they apply to purchase orders or contracts for works or services. All different standard terms and conditions and other provisions tendered by Contractor are expressly rejected.

## **Article 2 Conclusion of contract**

The contract shall come into being when Contractor confirms or accepts the S+P LION purchase order in writing. If Contractor's confirmation in writing deviates from the original purchase order, Contractor shall expressly indicate this. Acceptance that deviates from the purchase order shall be construed as a new offer.

## **Article 3 Requirement of written form**

Purchase orders must be placed in writing. Parol agreements collateral to the purchase order are binding only if confirmed in writing. This also applies to subsequent amendments and additions. For the purposes of this article, communication by fax or other electronic means shall be deemed to be communication in written form.

## **Article 4 Type and quantity of and changes to contract goods**

1. The description and quantity of the contract goods shall be determined by reference to the accepted purchase order and these Purchase Terms. Except as otherwise agreed, the following shall apply in order of descending priority to purchase orders placed by S+P LION:

- The purchase order, and within the purchase order:
  - The description of the contract goods
  - General technical provisions
- These Purchase Terms

2. If documentation is required to use or operate the contract goods, it shall, except as otherwise agreed, be supplied in German or English as part of the contract goods.

3. S+P LION is entitled to require changes to the quality of the contract goods after acceptance of the purchase order.

4. If S+P LION requests a change in accordance with article 4 (3), Contractor shall give notice in writing within 10 working days of whether the change is possible or not and what impact the change would have on the purchase order with particular reference to any additional or reduced work or expenses, new prices, and changes to agreed dates. S+P LION shall give notice within 10 working days of whether the new conditions reflecting the change request are agreed or the purchase order should be performed as previously agreed.

5. During or before Contractor's assessment of the change request, S+P LION shall inform Contractor whether Contractor should proceed with or suspend delivery of contract goods under the accepted purchase order pending the final decision on the change request.

6. If it is necessary for Contractor to deviate from the purchase order, notably if technical changes are necessary, Contractor shall present to S+P LION without delay a written proposal including the detailed reasons. Deviations are permitted only where S+P LION has consented to them in writing. This also applies if the proposed deviation does not result in a change of price.

7. Place of performance is the delivery address specified by S+P

LION in the purchase order. Where the parties have not expressly agreed transportation instructions, the most advantageous transportation option for S+P LION shall be selected. Shipments shall be packed in a way that prevents damage in transit.

8. The shipping papers shall show the delivery address and the order details (purchase order number, purchase order items, purchase order date, delivery point and, where known, the first and last names of the recipient and S+P LION material number).

9. Except as otherwise agreed, goods packed on pallets shall be delivered on standard europallets of maximum height 1.20 m. Delivery vehicles shall be fully equipped to unload the goods without other assistance.

10. Contractor shall perform its duties to the highest technical standards and in compliance with the provisions of statutory and administrative law and of S+P LION's working rules and regulations. Where applicable Contractor shall maintain a quality assurance system, for example in accordance with ISO 9001-9003. S+P LION is entitled to check the system by arrangement with Contractor.

11. Product information, in particular safety data sheets, shall be provided to S+P LION in good time before the delivery of hazardous materials. The same applies to information pertaining to restrictions based on protection regulations.

12. Contractor shall bear any costs arising out of the misdirection of deliveries where such misdirection is attributable to Contractor.

13. Contractor shall make partial deliveries only where it has S+P LION's written permission to do so. For the purposes of this paragraph, communication by fax or other electronic means shall be deemed to be communication in written form.



14. Partial delivery of servers and other complete systems (desktop and laptop computers, and so on) is fundamentally disallowed.

#### **Article 5 Passing of risk**

Risk shall not pass to S+P LION until the goods have been handed over to S+P LION. In all other respects, passing of risk in goods is governed by the statutory provisions, except where otherwise agreed.

#### **Article 6 Payment; Invoices**

1. All prices, except as indicated otherwise, are quoted free to place of use and include costs for transportation, insurance, installation, and instruction, subject to the applicable amount of statutory sales tax/VAT. The invoice shall indicate tax separately, taking into account the details required by the German Turnover Tax Act, section 14. Original invoices shall not be enclosed with the goods, but shall be sent to the address specified in the purchase order. Where Contractor accepts self-billing or electronic billing procedures, the provisions in this article shall apply subject as otherwise agreed in respect of self-billing or electronic billing.

2. Contractor shall submit verifiable invoices for the goods. Its invoices shall be readily understandable. In principle, one invoice shall be prepared for each purchase order. The purchase order number and purchase order items must be indicated on the invoice. Supporting documents (activity reports, service entry sheets, and so on) shall be enclosed.

3. Invoices in respect of partial deliveries shall be marked "Teilleistungsrechnung"; final invoices shall be marked "Restleistungsrechnung".

4. Except as otherwise agreed, the payment period shall commence on the later of the day after receipt of verifiable invoice (evidenced by the mailroom receipt stamp) or the due day for performance of the contract. The payment period shall be 30 calendar days. Contractor shall grant 2% cash discount in

respect of payments made within 10 days, unless otherwise agreed. For the purposes of qualification as payment within the prescribed period, payment shall be deemed made when S+P LION's bank receives the transfer order.

#### **Article 7 Times and dates for goods delivery**

1. Except as otherwise expressly agreed, dates specified in the purchase order for the delivery of goods shall apply as fixed contractual dates. Contractor undertakes to notify S+P LION in writing without delay when circumstances arise or become recognizable to Contractor that have the effect of making compliance with a contract date impossible.

2. Contractor shall give S+P LION written notification, which shall include the reason, of any foreseeable delay or impending failure to meet a contract date as soon as it becomes apparent to Contractor.

3. If circumstances outside Contractor's reasonable control jeopardize the performance of the agreement, Contractor may require a reasonable amendment of the contract dates involved, provided the circumstances fall within S+P LION's sphere of responsibility.

4. In all other respects article 13 also applies.

#### **Article 8 Subcontractors**

1. Contractor shall obtain S+P LION's prior written consent before passing contract duties on to subcontractors and self-employed persons. This also applies where the company subcontracted to supply the goods is a member of the same group of companies as Contractor or where Contractor owns capital in the subcontracted company.

With respect to the subcontracted tasks, Contractor shall impose upon its subcontractor all of Contractor's duties and enforce their performance by its subcontractor.

2. Contractor shall not hinder its subcontractors from entering into

contracts with S+P LION for other goods, works, or services.

#### **Article 9 Duty to examine and to give notice of defects**

S+P LION shall examine the goods on delivery for apparent defects only (type/identity and quantity, any transportation damage, other outwardly visible damage). In all other respects, S+P LION is released from the duties in the German Commercial Code, section 377, to examine goods and to give notification of defects. Where S+P LION is under a duty to examine goods and give notification of defects in accordance with the German Commercial Code, section 377, the time period for giving notice of defects shall be not less than 10 working days commencing on discovery of the defect.

#### **Article 10 Acceptance**

S+P LION shall inform Contractor of its acceptance of the goods if the goods concerned are complete and free of defects, if they possess the guaranteed qualities, and if the nature of the goods does not preclude acceptance. Depending on the nature of the goods, partial acceptance may be agreed. S+P LION's overall acceptance shall not however be implied from acceptance of all or any parts. Insubstantial defects shall not be grounds for withholding acceptance.

#### **Article 11 Defects as to quality; Defects in title**

1. Contractor warrants that the goods have the expressly agreed qualities, or, where no qualities have been agreed, that the goods are suitable for the use set out in the contract or otherwise for ordinary use, and that they have qualities that are ordinary for goods of this type and that the ordering party can expect from goods of this type, and that no third-party rights are infringed by any grant to S+P LION of any right or authorization pursuant to article 17.

2. S+P LION is entitled to the benefit of the statutory warranties in full measure. Except where the law provides for a longer period, statutory warranties are barred not later than 12 months after



handover or acceptance of the goods. The warranty period shall be extended by the time during which the goods cannot be used for their intended purpose due to the defect.

3. If the goods are redelivered, remedied in whole or in part, or replaced, the warranty period recommences for the redelivered, replaced or wholly or partly remedied goods.

#### **Article 12 Liability**

Contractor's liability shall be governed by the statutory provisions. In particular Contractor shall indemnify S+P LION and hold S+P LION harmless in respect of all claims brought against S+P LION by third parties in connection with contract goods, or omissions or defects therein, and in respect of associated costs and expenditure. S+P LION shall notify Contractor in good time of any such claim brought by a third party and shall not make any payment or admit any liability without consulting Contractor.

#### **Article 13 Default**

If Contractor is in default of performance and S+P LION shows with reasonable clarity that S+P LION has as a result suffered loss, S+P LION can without prejudice to its rights in law demand liquidated damages of 5% of the net value of the purchase order. Contractor retains the right to show that the loss did not actually occur or is significantly less than this amount.

#### **Article 14 Insurances**

1. Contractor shall take out suitable insurance with adequate cover of not less than €1.5 million per event during the entire period of the contractual relationship. Contractor shall show S+P LION evidence of such insurance on S+P LION's demand. Cover may be maintained for smaller sums only with S+P LION's agreement from case to case.

2. Contractor shall also insure all shipments (arising, for example, out of purchase contracts, contracts for works, maintenance contracts, specially produced goods) consigned direct to S+P LION. All premiums for such

insurances and the cost of other self-insurances shall be borne by Contractor.

#### **Article 15 Data protection**

1. Contractor consents to the storage and modification of its personal data by S+P LION and to S+P LION's forwarding of such data to S+P LION group companies, to the extent necessary for the performance and administration of the purchase order. S+P LION shall observe the German Federal Data Protection Act and any other applicable statutory data protection provisions.

2. Contractor shall also observe the provisions of the law of data protection and other applicable protection regulations. Where Contractor processes data related to individuals, it acts in the name of and on behalf of S+P LION within the meaning of the German Data Protection Act, section 11, and shall adhere to the data protection provisions that apply in that respect. Contractor shall obtain from its employees a written data protection declaration pursuant to the German Federal Data Protection Act, section 5, sentence 2, and show S+P LION on demand that it has done so.

#### **Article 16 Nonassignability**

Except where the German Commercial Code, section 354a, applies, Contractor's assignment of rights and duties is excluded; exceptions to this provision shall be effective only with S+P LION's written consent.

#### **Article 17 Intellectual property**

1. The performance of the purchase order shall be Contractor's own responsibility. Contractor guarantees that the delivery and use of the goods and/or works produced shall not infringe any patent or other intellectual property right of third parties.

2. Contractor shall notify S+P LION in writing without delay if the S+P LION requirements in the description or associated drawings of the goods, or in the technical specifications or other documents

describing the goods could lead to the infringement of industrial or intellectual property rights and shall otherwise indemnify S+P LION and hold S+P LION harmless in respect of all claims brought against S+P LION by third parties in connection with the infringement of such rights.

3. S+P LION shall be exclusively entitled to property in all designs, patterns, models, literary, scientific, and artistic works, and inventions made available to Contractor by S+P LION or by a third party under S+P LION's instructions for the production of the goods or made or created by Contractor for or in performance of the purchase order.

4. Supplier assigns to S+P LION all intellectual and industrial property rights and title in and to all works and inventions created in performance of or under this contract at the time they come into being. Supplier undertakes to give all notices and sign all documents necessary or appropriate to give effect to and register such assignment in S+P LION's favor where S+P LION is so entitled.

5. Where such assignment is not possible, Supplier grants to S+P LION full exclusive assignable perpetual worldwide rights to use and exploit such works and inventions. This includes without limitation comprehensive assignable perpetual exclusive worldwide right to use and exploit any work to which rights of authorship and copyright attach. It also includes without limitation the right to copy, change, process, translate, and market, whether by way of leasing, renting, or otherwise, any such work or invention and to grant such rights to others.

6. Agreed assignments and grants take effect immediately when the work or invention is made. S+P LION now accepts such assignment of title to or, as the case may be, grant of rights in the work or invention.

7. Supplier expressly waives the right to be identified as the author of the works.

8. Supplier must ensure that its contracts with its employees and/or subcontractors contain intellectual



property provisions that have the effect that Supplier's assignments, grants, and waivers herein do not conflict with the intellectual and commercial property rights of its employees and are not prevented or encumbered by these rights of its employees. Supplier must at S+P LION's request show to S+P LION that such contracts have been concluded with all employees and subcontractors assigned to the project.

9. Only S+P LION is entitled to apply for patents and other protection in respect of works created and inventions made under this contract. S+P LION may pay compensation to Supplier's employees and subcontractors for work toward making inventions or creating works that become the subject of an application for patent or other protection.

10. Immediately on completion of contract work or provision of contract service or, as the case may be, when the contract ends, Supplier must make available to S+P LION all material and transient information recorded on electronic or other media that is needed for full enjoyment of S+P LION's rights in 4. above.

11. Supplier guarantees that no contract good, work, or service or its use infringes the right of authorship, copyright, patent, or other intellectual or industrial property right of any other.

12. Supplier will at its own expense defend against all third-party claims brought against S+P LION and S+P LION's customers arising out of intellectual and industrial property right infringements including without limitation copyright, authorship, and patent infringements. Supplier must indemnify S+P LION and S+P LION's customers and hold S+P LION and S+P LION's customers harmless in respect of all damages and judgments arising out of such infringement as well as in respect of other related expenditure.

13. Supplier must notify S+P LION in writing without delay if the S+P LION requirements in the description or associated drawings of the works and services, or in the technical specifications or other

documents describing the Services could lead to the infringement of any third-party intellectual or industrial property right and must otherwise indemnify S+P LION and hold S+P LION harmless in respect of all claims brought against S+P LION by third parties in connection with the infringement of such rights. The parties also undertake each to the other to inform one another immediately of all claims by third parties in respect of infringements of intellectual and industrial property and other rights arising out of the use of works created under this contract.

14. In addition to defending against claims against S+P LION, Supplier undertakes to provide replacement or changed works that do not infringe the intellectual or industrial property rights of any other including without limitation any right of authorship or copyright, or to acquire for S+P LION the right to continue to use the works in the form in which they gave rise to the third-party claim.

15. The foregoing provisions are without prejudice to S+P LION's other rights in contract or law with respect to infringements of third-party intellectual and industrial property rights.

#### **Article 18 Weights and quantities**

In the event of weight deviation the weight recorded by S+P LION for its receiving report shall apply unless Contractor shows that the weight that it has determined was correctly determined in accordance with a generally accepted method. This also applies analogously to quantities.

#### **Article 19 Confidentiality**

1. Each party undertakes forever to treat as confidential the provisions of the contract and all information of the other party acquired in connection with the contract that the other party has marked as confidential or that should be considered confidential under the circumstances.

2. Contractor also undertakes to prevent unauthorized third-party access to the subject matter of the contract using no less care than it

applies in respect of its own comparable things.

3. S+P LION may demand at any time that Contractor surrender without delay documents that were created or received for the purposes of the purchase order. Contractor is not entitled to retain documents.

4. Confidential information shall be kept secret by the parties forever and shall be used, copied, or made available to authorized third parties only for the purposes of bringing about or performing the purchase order.

#### **Article 20 Recovery or disposal of waste**

Except as otherwise agreed in writing, where Contractor's deliveries give rise to waste materials, Contractor shall recover or dispose of the waste materials at its own expense as provided by the applicable law. Ownership, risk, and responsibility under the law of waste material pass to Contractor at the time when the waste material arises.

#### **Article 21 Publicity; Advertising**

Contractor's use or announcement of its business relationship with S+P LION, in particular for publicity or advertising purposes, is permitted only with S+P LION's express prior written consent.

#### **Article 22 Termination; Rescission**

1. If an accepted order is terminated or rescinded before completion, Contractor shall receive the agreed remuneration only for those individual goods that Contractor has supplied and S+P LION has accepted before communication of the termination or rescission notice. Where S+P LION terminates for just cause for reasons for which Contractor is answerable, Contractor will be paid only for those individual goods that have been supplied before communication of the termination notice and that S+P LION uses. All other claims of Contractor are excluded. This shall be without prejudice to any rights arising out of or in connection with S+P LION's termination or rescission of the order before completion for reasons for which Contractor is





answerable, notably rights to compensation for loss or for additional work or expense. All title to and rights in partial deliveries for which remuneration is paid shall vest in S+P LION in accordance with article 17.

2. S+P LION is entitled to rescind or terminate the contract with immediate effect, if

- Contractor breaches its duties in **articles 4, 15, 17, or 19** in these Purchasing Terms, or

- Insolvency proceedings are brought in respect of Contractor's assets or if such proceedings are rejected because the assets are insufficient to cover their cost or Contractor ceases making payments or performing contracts and such ceasing is not temporary S+P LION shall be entitled to rescind or terminate the contract as soon as an application to commence insolvency or composition proceedings is filed in court.

3. S+P LION shall be entitled in accordance with the German Civil Code, section 649 to terminate an accepted order for works in the meaning of the German Civil Code, section 631 or an accepted order for work and materials to which the German Civil Code, section 651 applies, at any time before work is completed. The parties agree the provisions in the preceding paragraphs concerning the consequences of termination as exceptions to statutory provisions.

4. S+P LION shall be entitled to rescind a purchase order for the supply of goods for just cause at any time until the goods are handed over. In such cases the foregoing paragraphs also apply as appropriate.

#### **Article 23**

##### **Site access**

The instructions of S+P LION's specialist staff must be followed. Notice must be given in good time for access, including without limitation vehicular access, to the site. The German Road Traffic Regulations apply. If goods are delivered on site, the appropriate site rules apply. S+P LION and its employees shall be liable in tort and otherwise in respect only of intentional and grossly negligent acts and omissions.

#### **Article 24**

##### **Miscellaneous provisions**

1. The contract language is German. German law applies. Commercial terms shall be construed in accordance with the Incoterms current from time to time.

2. If Contractor is a businessperson in the meaning of the German Commercial Code, section 1 or a body corporate or special fund under public law, the sole place of jurisdiction for all disputes arising out of or in connection with the contractual relationship shall be Mannheim, Germany. S+P LION shall also be entitled to bring actions at the competent court for the place where Contractor is registered.

3. If Contractor is registered outside Germany, German law applies subject to the exclusion of conflict of laws provisions and subject to the exclusion of UN sales laws.

4. Except where the German Commercial Code, section 354a, applies, Contractor's assignment of rights and duties is excluded; exceptions to this provision shall be effective only with S+P LION's written consent. S+P LION shall be entitled to assign to affiliated companies within the meaning of the German Stock Corporation Act, section 15, all rights and duties arising out of contractual relations with Contractor.

5. Amendments to contractual agreements must be made in writing. There are no parol collateral agreements.

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Courtesy translation only. The German original is the authoritative text.