

**Terms and Conditions of Purchase (TCP)**  
**S+P Samson GmbH**  
Effective January 2020

**Article 1 Scope**

1. These TCP shall apply exclusively and, in addition to any other contractual agreements, to all business transactions of S+P Samson GmbH, referred to as S+P in the following, and the seller, supplier, contractor or service and work provider, referred to as Supplier in the following. S+P shall not recognise any other conditions unless S+P expressly agrees to their validity in writing. These TCP shall also apply if S+P accepts the delivery or service in the knowledge that diverging conditions exist.

2. The conclusion of a contract shall not be prevented by conflicting T&C. To the extent that conflicting T&C correspond, the corresponding provisions shall apply. In addition, the provisions of these TCP are deemed to be agreed where non-colliding provisions of the Supplier's T&C exist.

On the other hand, provisions of the Supplier's T&C which do not correspond with the contractual provisions of these TCP will not become an integral part of the contract.

In all other cases, the non-mandatory provisions of the law shall apply.

3. These TCP shall also apply to all future contracts without being incorporated again. They shall apply until S+P provides new TCP.

4. These Terms & Conditions of Purchase shall only apply in respect of companies as defined by Article 14 of the German Civil Code (BGB).

5. Any subsidiary agreements and retrospective changes to the contract made by persons not authorised to represent require the written form.

**Article 2 Offers**

1. Offers and samples will be provided free of charge to S+P. Any deviations from S+P's enquiry must be clearly indicated in the offer. The Supplier shall be bound by this offer for a minimum of one month.

2. Any documentation provided by S+P must be returned immediately and at no charge to S+P when they are no longer required for the performance of the contract.

3. Orders must be accepted by the Supplier in writing, quoting the order number communicated by S+P, within 14 days from the date of order. The Supplier must confirm the order in writing. S+P shall be entitled to cancel the order until the acceptance of the order is received.

4. Confirmed prices are deemed to be fixed prices.

5. Delivery call-offs become binding unless the Supplier objects within one week following receipt.

6. Blanket orders only justify the procurement of the required amount of semi-finished goods.

7. The manufacture of parts for call-off orders is only permitted once the call-off has been received.

**Article 3 Changes**

1. S+P may request changes to the contract before fulfilling the order. The changes are to be arranged by mutual agreement. Any concerns regarding the changes requested by S+P must be communicated immediately to S+P.

2. If no agreement can be reached we shall be entitled to withdraw; in this case the Supplier will receive an appropriate reimbursement of his expenses.

3. The Supplier is not entitled to make any changes to the order without prior written confirmation by S+P.

**Article 4 Prices, Invoices, Payment**

1. The terms of delivery shall be DDP (*Delivered Duty Paid*) as per INCOTERMS 2020.

2. The price shown in the order is deemed to be the maximum price. It can be lower, but cannot be exceeded. Unilateral price increases are not permitted.

Value-added tax is to be shown separately. The cost of packaging and insurance is included in the price.

3. The Supplier shall not charge S+P any higher prices and not grant it any less favourable conditions than other, comparable customers.

4. A separate invoice must be provided in duplicate for each order immediately after delivery, with the original and copy clearly marked as such. Invoices must include the order reference, order number and article code. If known, the ordering person or department and the intended application must be indicated.

Any invoices which are not submitted in the proper manner shall only be deemed as received by S+P on the date of correction.

5. Unless otherwise agreed, S+P will make payments in Euros to the Supplier's in-country bank account.

6. Payment will be made when the invoice is due, the goods have been received in full and without any defects or when the service has been performed without any defects. If part deliveries are permitted, this shall apply accordingly.

The term for the payment begins with the day of the delivery without any defects, the performance of the service without any defects, the day of acceptance or the day on which the invoice is due, whichever comes later.

Payment is made subject to invoice verification and the proper performance of the contract.

7. Any delays due to incorrect invoices shall not affect any agreed prompt payment discounts. If a prompt payment discount has been agreed payment will be made as agreed, no later than within 14 days less 3% discount or net within 30 days from the invoice date.

8. In the case of ordinary negligence, S+P shall not be in default. The liability of S+P to pay damages for any damage caused by default shall be limited to those resulting naturally in the ordinary course of events.

9. If advance payments have been agreed, the Supplier shall concurrently provide an open-ended performance bond issued by a German bank or insurance company for the amount of the advance payment. In the event of a default with delivery default interest at 8 percentage points above the applicable base rate in accordance with Article 247 of the German Civil Code (BGB) will be deducted from the invoice. The Supplier shall be at liberty to provide proof of a lesser damage.

This provision will not prevent S+P from asserting any claims for any other damage caused by default.

10. If the solvency of the Supplier deteriorates to an extent that endangers the performance of the contract or if the Supplier ceases his deliveries or, if insolvency proceedings are initiated against his assets, S+P shall be entitled to withdraw from the contract. The right to withdraw may also be exercised in part.

11. The Supplier shall not be entitled to assign any receivables due from S+P to third parties or to have these collected by third parties without prior approval of S+P. If an extended retention of title has been agreed, this approval is deemed to have been given. However, if the Supplier assigns receivables due from S+P to a third party without the approval of S+P, S+P may make payment to both the Supplier and the third party with discharging effect.

12. S+P shall have the right to refuse performance, the right of set-off and the right of retention to the extent permitted by law.

The Supplier shall only be entitled to the right of set-off and the right of retention insofar as the counterclaim on which the right to refuse performance, the right of set-off or the right of retention is based, is undisputed or has been established by a final decision.

**Article 5 Inspection and notification duties**

1. S+P shall examine deliveries for any obvious defects. The notification of a defect is deemed to have been made in due time if it is made within 10 working days from the discovery of the defect. The Supplier shall, in this respect,

waive the objection of a delayed notification of a defect. For transit business transactions reference is to be made to the customer's notification of a defect.

2. In the event of a justified complaint S+P reserves the right to charge the costs of the examination and notification of defects. The Supplier shall bear the cost and risk for the return of defective contractual item.

#### **Article 6 Delivery, default, liquidated damage**

1. The dates and time limits indicated in the order or call-offs are binding. S+P shall not be bound to accept the goods or services before the delivery date.

With regard to deliveries the receipt of the shipment at the agreed premises of S+P or the receiving location or point of use named by S+P shall be relevant for the adherence to dates and time limits.

Goods will be received at the receiving locations or points of use at the following times:

Monday to Friday: from 7:00 – 12:00 hours

Monday to Thursday: from 12:45 – 16:00 hours

For services the timely and full performance shall be essential.

For works the time of acceptance shall be relevant.

2. Part deliveries of goods or services are only permitted if agreed in writing by S+P.

If a part delivery has been agreed the outstanding quantity is to be stated.

3. The Supplier needs to notify S+P immediately of any problems which prevent him from delivering the specified quantity or quality and to request a decision whether the order will remain valid. He shall be liable in the event of late notification or failure to notify.

4. If the delivery is made earlier than agreed S+P reserves the right to return the goods at the Supplier's expense or to arrange interim storage at a third party at the Supplier's expense. If, in the event of an early delivery, the goods are not returned or placed into interim storage at a third party, the goods will be stored by S+P until the agreed delivery date at the Supplier's risk and expense. In the event of an early delivery, S+P reserves the right to make the payment on the agreed due date. If the goods are delivered early, the period for the prompt payment discount is calculated from the day of the agreed delivery date or the day on which the invoice is received by S+P, whichever comes last.

5. In the event of default, S+P shall be entitled to the statutory rights. The Supplier's liability cannot be excluded or limited.

6. In the event of a withdrawal, S+P can keep part deliveries against a credit.

If the Supplier repeatedly or permanently exceeds the delivery date S+P shall be entitled to withdraw from the contract or terminate the contract without notice. If the delivery date is exceeded through no fault of the Supplier's S+P shall be entitled to withdraw from the contract if the delivery date is exceeded significantly and the delivery is needed urgently because S+P is bound by its own delivery dates.

7. If the Supplier defaults with regard to delivery he shall comply with a request from S+P for an express shipment (express freight, courier, express parcel, air freight, etc.) at his expense.

8. A reminder or setting a time limit is not required if the delivery date has been agreed as a "fixed" date or if the Supplier states that he is not able to deliver within the time limit.

9. If the Supplier defaults S+P shall be entitled, following a reminder, to claim liquidated damages at 10% of the net delivery value or the service for each full week, up to a maximum of 50% of the overall net delivery value or the value of the service and to withdraw from the contract. S+P reserves the right to claim for a higher damage. The Supplier shall be at liberty to provide proof of a lesser damage. Any liquidated damages paid will be offset with a claim for damages. The right to request the payment of

agreed liquidated damages is not forfeited by the fact that the liquidated damages were not expressly reserved when the delayed delivery was accepted, provided it is asserted before the final payment.

10. If the Supplier defaults S+P shall be entitled to purchase goods in replacement, insofar as this is pertinent under the circumstances to avert any impending consequential losses due to the default. The Supplier shall bear any additional costs incurred by S+P because of this.

11. The Supplier can only rely on the absence of required documentation which is to be supplied by S+P, if he sent a written reminder asking for the documentation and did not receive it within an appropriate time period.

12. In the event of a delay in acceptance S+P shall only be liable for claims for damages if it is our fault.

13. Each shipment is to be accompanied by a delivery note in duplicate which includes all of the markings stated in the order, including, but not limited to the name of the ordering person, order no., part no., lot no., item no.

Part deliveries and deliveries of outstanding balances are to be identified differently.

The delivery note is to be attached to the outside of the shipment, either underneath a label or under Kraft paper with a note stating "Delivery note here".

For import deliveries the shipment must be accompanied – depending on the shipping method and destination – by all the shipping documents required, including, but not limited to movement certificates, express consignment notes, transit documents, certificates of origin and invoices.

14. S+P is to be notified in advance of each delivery. The notification needs to include information about the order number, number of items, dimensions, weight, special requirements for the handling of the goods, unloading, transport and storage.

Any delays, additional costs and damage which result from the failure to comply with the shipping instructions will be the responsibility of the Supplier.

S+P reserves the right to return the packaging to the Supplier.

15. The risk shall pass only with the delivery following unloading by the Supplier or the transport company to the delivery address given by S+P or, with acceptance. This also applies if S+P personnel assist with unloading.

#### **Article 7 Force Majeure**

In cases of force majeure S+P shall be exempt from the obligation to accept the goods or works as well as from the obligation to accept the service. This also applies to other cooperations in the performance of the contract. If acceptance by S+P cannot take place on time due to force majeure and other, unforeseen obstacles which are outside of our control, the deadline for acceptance shall be extended by a reasonable period and there will be no default.

S+P shall be exempt from the obligation to accept the ordered delivery or service in full or in part, if the delivery or service is no longer usable because of the delay at S+P that was caused by force majeure – taking economic aspects into account. This applies, in particular, if our requirement is reduced by more than 30%.

#### **Article 8 Product safety**

1. The Supplier warrants that his products, services and works are free from defects.

2. The Supplier is to obtain information about the intended use of his products, services and works.

3. The Supplier shall identify the products in such a way that they are recognisable as his products.

4. The Supplier shall include test certificates and safety data sheets with his deliveries.

5. The services and works of the Supplier shall comply with accident prevention and safety at work regulations as well as the generally accepted health and safety rules and standards.

#### **Article 9. Claims for defects and compensation**

1. Complaints mean additional time and effort. For this reason S+P reserves the right to charge a damage fee of € 100 for each justified complaint.

The Supplier reserves the right to provide proof of lower expenses and S+P reserves the right to proof higher expenses.

2. S+P is, at its discretion, entitled to request supplementary performance from the Supplier, withdraw from the contract or to reduce the purchase price and to claim compensation for losses suffered or wasted expenditure in accordance with applicable law.

Within the scope of the supplementary performance S+P is entitled to request, at its discretion, to either have the defect remedied or to receive a delivery of items that are free from defects.

The Supplier shall bear all the expenses required to remedy the defect, to deliver a replacement or to rectify the damage, including, but not limited to transport, infrastructure, labour and material costs.

3. If the Supplier does not remedy the defect or provide a replacement delivery within an appropriate time limit set by S+P, or if it is impossible to remedy the defect or if it fails, S+P shall be entitled to withdraw from the contract and to request compensation instead of performance.

If it is not possible to inform the Supplier about the defect and the impending damage and to set him an albeit short time period to remedy the defect, due to a particular urgency, S+P shall be entitled to remedy the defect itself or have it remedied by third parties, at the Supplier's expense.

4. If the same goods are delivered with defects repeatedly, S+P shall also be entitled to withdraw from the scope of delivery which has not been fulfilled if the delivered goods were defective again.

5. With a purchase contract, claims for replacement or damages expire when 36 months have elapsed since the delivery of the S+P products manufactured using the delivered products, however, no later than 60 months after they were delivered to S+P and, in case of services and works, no later than 60 months have elapsed after the acceptance of the service or works.

This shall only apply if there is no statutory limitation period which is longer or starts later.

If there is a delay in acceptance which is not the fault of the Supplier the warranty period shall be a maximum of 60 months after the contractual item has been made available for acceptance.

For delivered parts which cannot remain in operation or cannot be otherwise used in accordance with their intended use during the supplementary performance or the rectification of the defect, the ongoing warranty period shall be extended by the period for which their operation or use is disrupted.

The above mentioned limitation periods shall also apply if the Supplier has provided a warranty for his products, works or services.

6. The limitation period for any claims against the Supplier due to defects in title of the products, services or works shall expire 5 years after delivery to S+P or acceptance by S+P.

This shall only apply if there is no statutory limitation period which is longer or starts later.

7. If the Supplier is clearly not only acting out of good will or to settle a dispute amicably, but also in the awareness that he is bound to remedy the defect, where, in particular, the extent, duration and the cost of remedying the defect are to be considered, the limitation periods for any parts which are replaced during the limitation periods, will start again on the day on which the Supplier has provided the products or services for supplementary performance or on the day of acceptance.

8. The Supplier shall indemnify S+P against any claims of third parties which are due to material defects of the

delivered item or the service or works provided, provided the damage is his responsibility.

If any claims are asserted against S+P on grounds of no-fault liability in respect of third parties pursuant to laws which are not subject to the disposition of the contracting parties, the Supplier shall only assume liability towards S+P to the extent that it is directly liable. For any compensation settlements between S+P and the Supplier the principles of Article 254 of the German Civil Code (BGB) shall apply accordingly.

9. The Supplier shall indemnify S+P against any claims of third parties due to defects in title insofar as he is responsible for the defect.

10. The Supplier shall reimburse any expenses for and any damages due to a product recall or product return activities to prevent personal injury or damage to property caused by a defect of the delivered items or the services or works provided.

#### **Article 10 Insurance cover**

1. The Supplier shall take out and maintain public and product liability insurance with an insured sum of a minimum of 2.5 million Euros each for personal injury and damage to property and product-related damage as well as a general recall cost insurance with an insured sum of 1 million Euros minimum.

2. The scope of the product liability insurance shall extend to the types of cover of the so-called extended product liability insurance which includes insurance for personal injury and damage to property caused by the delivered products not having the agreed properties according to no. 4.1 ProdHV (model terms and conditions of the German Insurance Association GDV – earliest version August 2008), combining, mixing and processing of the delivered products according to no. 4.2 ProdHV, further treatment and processing according to no. 4.3 ProdHV, cost of disassembly and installation according to no. 4.4 ProdHV, scrap productions by machines according to no. 4.5 ProdHV, and an inspection and sorting costs clause according to no. 4.6 ProdHV.

3. The cover must also extend to any damage caused abroad.

4. The Supplier shall submit the provisions for the modification of the inspections and notification duties according to Article 5 of these TCP and for the extension of the statutory period of limitation according to Article 9 number 5 of these TCP as well as the provision for indemnification according to Article 9 numbers 8 and 9 of these TCP to his public liability insurance company for co-insurance within the scope of his public and product liability insurance and to confirm that there are no modifications with a negative effect on coverage.

5. The Supplier agrees the co-insurance of the recall costs according to Article 9 number 10 of these TCP in addition to this public and product liability insurance.

6. The Supplier shall provide S+P with the confirmation of the insurance company for the above mentioned extent of cover (*Certificate of Insurance*) no later than with the first delivery or provision of service.

#### **Article 11 Confidentiality**

1. The contractual partners shall treat all aspects of the business relationship as confidential. In particular, they shall treat as trade secrets any commercial and technical details which are not apparent and which become known to them in the course of the business relationship. Excluded from the duty to keep confidential are any information or aspects of the business relationship which were already in the public domain at the time of disclosure as well as any information or aspects of the business relationship which are proven to be already known to the Supplier before the information was disclosed by S+P.

2. S+P retains title and copyright for all of the images, drawings, calculations, samples, functional models, designs / proofs, technical drawings and information,

sample prints and any other materials. Any materials communicated to S+P, in particular, in writing or by email must only be made available to those persons who process the order placed by S+P. The Supplier shall ensure that his employees will also maintain the justified confidentiality interests of S+P.

3. The Supplier shall still be bound by the confidentiality obligations after the end of the business relationship.

Any items provided by S+P are to be returned to S+P after the order has been rejected or processed.

4. The reproduction of any items, documents and other information provided to the Supplier is only permitted within the scope of the operational requirements and copyright provisions.

5. All the information relating to the business relationship with S+P is not intended for any third parties.

The disclosure of the order placed by S+P to any third parties, even in part, is only permitted with prior written agreement of S+P; the Supplier shall ensure that these third parties will be bound to maintain confidentiality by concluding a similar agreement.

6. The Supplier is only permitted to use his business relationship with S+P for advertising purposes following prior written agreement.

7. The Supplier shall not, directly or indirectly, conduct business transactions with customers of S+P which correspond with the ordered items.

#### **Article 12 Passing on and transferring orders to third parties**

1. The transfer of orders to any third parties without the agreement of S+P is not permitted. It shall entitle S+P to withdraw from the contract and to assert a claim for damages.

2. Products which correspond with the order placed by S+P and which are not of a general specification, but are intended for a specific application must not be delivered to any third parties.

#### **Article 13 Manufacturing equipment, retention of title**

1. Any manufacturing equipment which is provided by S+P, planned or paid for by S+P such as drawings, models, stencils, films, designs / proofs, tools and print substrates remain or become the property of S+P.

They must not be used for any deliveries to third parties, must not be reproduced, sold, assigned as security, pledged or transferred in any other way. This also applies to the delivered products that were manufactured with this manufacturing equipment.

The Supplier shall use the manufacturing equipment for the manufacturing of the contractual products ordered by S+P only.

2. If any objects owned by S+P are seized by third parties, the Supplier shall inform S+P immediately about this in writing. The Supplier shall advise the enforcement body of the ownership of the items when these are seized.

3. The Supplier shall insure any items which are owned by S+P at his expense for the replacement value with all-risk, extended coverage.

The Supplier shall assign the rights to claim compensation from this insurance to S+P. S+P herewith accepts the assignment.

4. The Supplier shall carry out any required services and inspections as well as any required maintenance and repairs on the items provided to S+P in a timely manner and at his expense.

5. S+P retains the title to any items it provides. The contracted processing or alteration by the Supplier shall be done for S+P. If the reserved goods are processed, combined or mixed with other items which are not the property of S+P, S+P shall acquire joint ownership of the new object, based on the ratio of the value of the reserved goods and the other items at the time of processing, combining or mixing. If the processing, combining or mixing is done in such a way that the Supplier's object is to be

regarded as the main object, it shall be deemed as agreed that the S+P transfers ownership to the Supplier on a pro-rata basis.

This provision shall also apply if S+P refuses acceptance due to a late or defective delivery or if S+P can refrain from placing further orders.

In these cases the items provided are to be made available to S+P free of charge. A set-off shall be excluded.

6. Additional expenses due to material defects and dimensional variations of the raw materials provided can only be charged to S+P following the prior written agreement of these additional expenses.

7. The Supplier shall inspect the items provided for any obvious defects such as identity, quantity and transport damage on arrival and notify S+P immediately of any defects. S+P must notify any defects of the items provided discovered during processing immediately after the discovery of the defect.

8. To the extent that the security interests to which S+P is entitled do not exceed the purchase price of all of the reserved goods which have not been paid for yet by more than 15%, S+P will release a corresponding portion of the security interests, if requested by the Supplier.

9. S+P shall not recognise any extension, in scope or in time, of the retention of title which goes beyond the simple retention of title for the unprocessed product of the Supplier which is stored at S+P, including, but not limited to processing, combining or mixing with other goods and selling the Supplier's product.

10. Any items provided to the Supplier by S+P remain the property of S+P and must not be used for any other purposes or made available to any third parties.

11. Any items which are manufactured by order of S+P become the property of S+P. These items must only be supplied to third parties with the express prior written agreement of S+P.

#### **Article 14 Industrial property rights**

1. The Supplier shall ensure that all deliveries and products or services are free from the industrial property rights of third parties and, in particular, that no patents, licenses and any other industrial property rights of third parties are violated by the delivery and use of the delivered items.

2. The Supplier shall indemnify S+P and its customers against any claims of third parties arising from any violations of industrial property rights, to the extent that these are his responsibility.

3. S+P shall be entitled to obtain the approval for the use of the delivered items and products or services from the beneficiary, at the Supplier's expense.

#### **Article 15 EU Regulation REACH**

The Supplier shall ensure that all of the substances used which are subject to the EU regulation regarding chemicals – REACH – are registered and/or approved in accordance with this regulation and taking into account the use of the substances which are the subject of this agreement by S+P. This also applies to suppliers from outside of the EU. At our request, the Supplier shall provide proof that this obligation is met.

#### **Article 16 Provision of data**

The Supplier warrants that he has complied with the obligations of the GDPR and other data protection regulations when storing or processing personal data or contacting addressees for advertising purposes.

#### **Article 17 Place of jurisdiction, place of performance, applicable law**

1. The place of jurisdiction shall, at the discretion of S+P, be the court having jurisdiction at the registered office of S+P or the Supplier's place of jurisdiction.

2. Place of performance is the location to which the goods are to be delivered according to the order. Place of performance for payments is the registered office of S+P in Kissing.

3. The law of the Federal Republic of Germany shall apply exclusively to the contractual relationships with S+P and the customers of S+P.

4. Should one or several of these TCP found to be invalid, this shall not affect the validity of the other provisions. The contractual partners shall endeavour to replace the ineffective clause with a clause which comes as close as possible to the commercial purpose and legal sense of the original wording and which is in accordance with the applicable statutory provisions in this respect.

5. The contract language is German.

#### **Article 18 Contact information**

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