



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

## Article 1 Applicability

These S+P LION AG General Terms and Conditions – Purchase of Works and Services (hereinafter: “Purchase Terms”) apply to all goods, works, and services of Contractor provided as part of consulting and development projects for S+P LION software systems, in particular for S+P LION's customers, except as exclusively specified otherwise in writing. They also apply for future business relationships with Contractor including relationships for which they are not expressly agreed. However these Purchase Terms only apply to Contractor if Contractor is a body corporate or special fund under public law.

Contrary terms and conditions and other contrary provisions tendered by Contractor are expressly rejected. Except as otherwise agreed, the following apply in this sequence to S+P LION purchase orders:

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

## Article 2 Conclusion of contract

The contract comes into being when Contractor confirms or accepts the S+P LION purchase order in writing. A purchase order accepted in writing is an order. If Contractor's confirmation in writing deviates from the original purchase order, Contractor must expressly indicate this. An acceptance that deviates from the purchase order will be construed as a new offer.

## Article 3 Requirement of written form

1. Purchase orders and orders are valid only if made in writing. Parol collateral agreements 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 will be deemed to be communication in written form.

2. S+P LION may make records of any discussions detailing or amending contractual provisions. Such a record is deemed to have been agreed if S+P LION submits it to Contractor and Contractor does not submit a contrary view in writing within one week.

## Article 4 General principles

1. The details of a particular order, such as the task to be carried out, the term, and the remuneration must be agreed in that order.

2. Contractor must adhere to S+P LION's specification in respect of each duty to be performed. All goods, works, and services must be provided with due care and in accordance with the most advanced technological practice. Contractor must perform its duties to the highest technical standards possible at that time and in compliance with the provisions of statutory and administrative law and of S+P LION's working rules and regulations. Where applicable, Contractor must 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.

3. In dealings with its own customers and prospects, Contractor must have proper regard to S+P LION's high quality and reputation. Contractor must comply with S+P LION's stated requirements in that respect.

4. During the term of the project, Contractor must not make any offer to S+P LION's customer in respect of consulting services in the field addressed by the project. Contractor's breach entitles S+P LION to a contractual penalty of five percent of the order value. This is without prejudice to other rights, in particular claims for damages.

5. S+P LION will designate for Contractor a contact person who will provide required information and make required decisions or ensure that they are made without delay. Contractor undertakes to involve the S+P LION contact person wherever necessary for the proper performance of the order.

6. Contractor must designate a person to be contact person who has the authority and experience to make required decisions or ensure that they are made without delay.

7. S+P LION is entitled to require that Contractor replace any employee or subcontractor who or that is unsuitable or does not work to the required standard. S+P LION is also entitled to require that Contractor replace an employee or subcontractor at the request of S+P LION's customer. Contractor must bear the costs that arise from replacing the employee or subcontractor, in particular but not limited to start-up and training costs.

8. Contractor must protect S+P LION's intellectual property in its software and Contractor must ensure as far as possible that third parties (in particular its customers) observe S+P LION's intellectual property and Contractor must notify S+P LION of possible infringements without delay in writing.

9. Contractor must obtain S+P LION's written consent before deploying any subcontractor, whether a company or a self-employed person. This also applies where the subcontractor is a member of the same group of companies as Contractor or where Contractor has a proprietary interest in the subcontractor. Contractor must impose upon its subcontractor all of Contractor's duties relating to the subcontracted tasks and enforce their observance by the subcontractor. Contractor must not hinder its subcontractors' entering into contracts with S+P LION for other goods, works, or services.

10. Except as otherwise agreed in writing, Contractor is not entitled to submit partial goods, works, or services.

11. Risk will not pass to S+P LION until the goods, works, or services have been handed over to S+P LION. In all other respects, passing of risk for goods, works, and services is governed by the statutory provisions, except where otherwise agreed.

## Article 5 Time and date

1. Except as otherwise expressly agreed, dates specified in an order for the delivery of goods or the provision of



works or services apply as fixed contractual dates.

2. Contractor must give S+P LION written notification, which must include the reason, of any foreseeable delay or impending failure to perform a duty by an agreed date as soon as it becomes apparent to Contractor.

3. If circumstances outside Contractor's reasonable control jeopardize completion of contract goods, works, and services, Contractor may require a reasonable amendment of the affected dates provided the said circumstances fall within S+P LION's sphere of influence.

4. In all other respects article 16 applies.

#### **Article 6 Change request procedure**

1. S+P LION is entitled to require changes to the agreed goods, works, or services.

2. If S+P LION requests a change, Contractor must give notice in writing within ten working days of whether the change is possible or not and what impact the change would have on the order with particular reference to any additional or reduced work or expenses, new prices, and changes to agreed dates.

Thereupon S+P LION must give notice within ten working days of whether the new conditions reflecting the change request are agreed or whether the order should be performed as previously agreed.

3. During or before Contractor's assessment of the change request, S+P LION must inform Contractor whether work under the existing order should continue or be suspended pending the final decision on the change request.

4. If it is necessary for Contractor to deviate from the goods, works, or services set forth in the order, notably if technical changes are necessary, Contractor must 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.

#### **Article 7 Remuneration; Presentation of invoice; Due date for payment**

1. Unless indicated otherwise all prices include transportation, insurance, installation, and instruction and are

subject to the applicable amount of statutory sales tax/VAT. The invoice must show tax separately and show the details required by the German Turnover Tax Act, section 14. Original invoices must be sent to the invoice address in (3).

2. Except where a fixed price has been agreed, all goods, works, and services must be billed on a resource-related basis. Contractor must submit verifiable invoices for the works and services and the invoices must be readily understandable. In particular, for each calendar week, Contractor must without delay provide to S+P LION a written activity report showing details of the person, time worked, location of work, and activities. Invoices must be submitted after works and services have been evidenced pursuant to article 13. If requested by S+P LION, Contractor must submit a fixed-price quotation.

3. Each invoice must relate to only one order. It must be sent – separately for each purchase order – to the invoice address indicated in the purchase order after the goods have been delivered or the works and services have been performed.

Purchase order numbers and purchase order items must be indicated; invoice documents (activity reports, records of expenses, receipts, and so on) must be enclosed.

4. Invoices in respect of partial deliveries of goods or partial provision of works or services must be marked "Teilleistungsrechnung"; final invoices must be marked "Restleistungsrechnung".

5. Except as otherwise agreed, the payment period commences on the later of the day after receipt of verifiable invoice in accordance with (3) (evidenced by the mailroom receipt stamp) or the day on which the contract goods, works, and services are received from Contractor at the appointed place. The payment period is 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 is deemed made when S+P LION's bank receives the transfer order.

6. Contractor must observe S+P LION's special provisions governing activity reports and invoices, in particular with regard to their format.

#### **Article 8 Expenses**

1. Expenses will be reimbursed only to the extent they are reasonable and

have been agreed as necessary for the immediate purposes of the activity.

2. Contractor undertakes to use employees from its nearest office to the site.

If the site is at the same place as one of the usual offices of Contractor's employees, no expenses will be reimbursed.

#### **Article 9 No managerial authority**

1. Contractor must plan its work in consultation with S+P LION. Contractor must complete the work assigned to it independently. S+P LION is not authorized to issue managerial instructions to Contractor but is entitled to issue technical and organizational specifications to the extent necessary to ensure the usability of Contractor's goods, works, and services.

2. Contractor has sole managerial authority over its employees when they are providing goods, works, or services at S+P LION's office. Contractor's employees are not included in S+P LION's business operations.

#### **Article 10 Intellectual property**

1. Contractor 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. Contractor 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.

2. Where such assignment is not possible, Contractor 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.

3. 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.



4. Contractor expressly waives the right to be identified as the author of the works.

5. Contractor must ensure that its contracts with its employees and/or subcontractors contain intellectual property provisions that have the effect that Contractor'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. Contractor 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.

6. 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 Contractor's employees and subcontractors for work toward making inventions or creating works that become the subject of an application for patent or other protection.

7. Immediately on completion of contract work or provision of contract service or, as the case may be, when the contract ends, Contractor 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 (1) herein.

8. a) Contractor 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.

b) Contractor 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. Contractor 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.

c) Contractor 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 goods, works, and 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.

d) In addition to defending against claims against S+P LION, Contractor 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.

e) 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 11 Confidentiality; Data protection**

1. Each party undertakes forever to treat as confidential the provisions agreed between the parties and all information of the other party acquired in connection with the contract that the other party has marked as confidential or that is considered confidential under the circumstances and to use, copy, or make those provisions and that information available to authorized persons only as required to negotiate or perform the order.

2. Contractor also undertakes to prevent unauthorized third-party access to the contract objects using no less care than it applies in respect of its own comparable objects. Contractor must inform its employees and others who have access to the contract objects for the purposes of their work of S+P LION's rights of authorship and copyright and of their confidentiality duties.

3. Contractor must observe the provisions of the law of data protection and other relevant protection regulations and any relevant agreements between S+P LION and S+P LION's customer about which S+P LION informs Contractor to the necessary extent. 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 must adhere to the data protection provisions that apply in that respect. Contractor must obtain from its

employees a written data protection declaration pursuant to the German Data Protection Act, section 5, sentence 2, and show S+P LION on demand that it has done so.

4. S+P LION may demand at any time that Contractor surrender without delay documents, programs, and so on that were created and received for the purposes of the order. Contractor is not entitled to retain documents.

5. 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 order. S+P LION must observe the German Data Protection Act and the relevant statutory data protection provisions.

#### **Article 12 Duty to examine and to give notice of defects**

S+P LION must examine the goods, works, and services for apparent defects only (type/identity and quantity, any transportation damage, other outwardly visible damage). Otherwise S+P LION is released from the duties of examination and defect notification in the German Commercial Code, section 377. Where S+P LION is under a duty of examination and defect notification pursuant to the German Commercial Code, section 377, the maximum time period for giving notice of defects must not be less than ten working days commencing on discovery of the defect.

#### **Article 13 Evidence of performance; Acceptance**

1. S+P LION will inform Contractor in writing if the goods, works, and services concerned are complete and free of defects and exhibit the guaranteed qualities.

2. S+P LION must inform Contractor of its acceptance of works if the works concerned are complete and free of defects and if the nature of the works does not preclude acceptance. Depending on the nature of the works and services, partial acceptance may be possible. S+P LION's overall acceptance must not, however, be implied from acceptance of all or any parts. Insubstantial defects will not be grounds for withholding acceptance.

3. Performance of services must be evidenced by appropriate activity reports submitted by Contractor and countersigned by S+P LION; S+P LION must countersign them if the services have been performed in accordance



with the contract and must not unreasonably refuse to sign or delay signing them.

#### **Article 14 Defects as to quality; Defects in title**

1. Contractor warrants that the goods, works, and services have the expressly agreed qualities, or, where no qualities have been agreed, that the goods, works, and services 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, works, or services of their type and that the ordering party can expect from goods, works, and services of their type, and that no third-party rights are infringed by any grant to S+P LION of any right or authorization pursuant to article 10.

2. S+P LION is entitled to the benefit of the full statutory warranties. The qualities in the description of the goods, works, and services are guaranteed. Except where the law provides for a longer period, statutory warranties are barred not later than 12 months after handover or acceptance. The warranty period will be extended by the amount of time for which the defective goods, works, or services cannot be used for their intended purpose for reasons ascribable to Contractor. Contractor is willing in individual cases to accept a longer warranty period if desired by S+P LION's customer.

3. If the goods, works, or services are redelivered, provided again, remedied in whole or in part, or replaced, the warranty period starts from the beginning for the redelivered, newly provided, replaced, or wholly or partly remedied goods, works, or services.

#### **Article 15 Liability; Insurance**

1. Contractor's liability is governed by the statutory provisions. In particular Contractor will 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, works, or services or omissions or defects therein, and in respect of associated costs and expenditure. S+P LION must notify Contractor in good time of any such claim brought by a third party and must not make any payment or admit any liability without consulting Contractor.

2. Contractor must take out insurance with adequate cover especially for damage to S+P LION's property. It must show S+P LION evidence of such insurance on demand. Except as otherwise agreed, cover must be not less than €1.5 million per event.

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#### **Article 16 Default on the part of Contractor**

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

#### **Article 17 Publicity; Advertising**

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

#### **Article 18 Termination; Rescission**

1. If an order is terminated or rescinded before completion, Contractor is entitled to receive the agreed remuneration only for those individual goods, works, and services that Contractor has supplied and provided 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, works, and services that have been supplied and provided before communication of the termination notice and that S+P LION uses. All other claims of Contractor are excluded. This is without prejudice to any rights arising out of or in connection with S+P LION's termination or rescission of the order 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 parts of the works and services and partial deliveries of goods for which remuneration is paid vest in S+P LION.

2. Upon termination or rescission of the order, Contractor must without delay, without being asked, and in all cases within ten days after the end of the contract return to S+P LION at Contractor's expense and risk all of the documents, discs, and any other information that S+P LION has provided to Contractor in any form whatsoever, or, if S+P LION so agrees, must destroy in an appropriate manner all such documents, discs, and other information and provide evidence of such destruction to S+P LION on demand.

3. This is without prejudice to the parties' right to terminate for just cause. Termination notice must be in written form.

4. S+P LION is entitled immediately to terminate for just cause or to rescind, as appropriate, in any of the following cases (among others), namely:

- Contractor breaches its duties under these Purchase Terms, **articles 4, 10, and 11**
- Despite written warning notice, Contractor's goods, works, and services fail to exhibit the required quality
- During the term of the contract, Contractor works for a competitor of S+P LION or a competitor of S+P LION assumes a controlling interest in Contractor and in consequence thereof a risk of unauthorized disclosure of S+P LION expertise arises
- Insolvency proceedings are brought in respect of Contractor's assets or such proceedings are rejected because the assets are insufficient to cover their cost
- Contractor ceases making payments or providing goods, works, and services and such ceasing is not temporary.

S+P LION is entitled to rescind or terminate the contract as soon as an application to commence insolvency or composition proceedings is filed in court.

5. S+P LION is 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.

6. S+P LION is entitled to rescind an order for just cause at any time until the goods, works, and services are handed over or complete. In this case the paragraphs above also apply.

#### **Article 19 Assignment of rights and duties; succession**

1. Except where the German Commercial Code, section 354a, applies, Contractor's assignment of rights and duties is excluded; exceptions to this provision are



effective only with S+P LION's written consent.

2. S+P LION is 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.

**Article 20**  
**Environmental protection;**  
**Recovery or disposal of waste**

Except as otherwise agreed in writing, where Contractor's supply of goods or provision of works or services gives rise to waste materials, Contractor must recover or dispose of the waste materials 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**  
**S+P LION site access**

The instructions of specialist staff must be followed. Notice must be given in good time of vehicular and other site access requirements. The German Road Traffic Regulations apply. If works and services are provided on site, the appropriate site rules apply. S+P LION and its employees are liable, whether in tort and otherwise, in respect only of intentional and grossly negligent acts and omissions.

**Article 22**  
**Miscellaneous provisions**

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

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 is Mannheim, Germany. S+P LION is also entitled to bring actions at the competent court for the place where Contractor is registered.

3. The language of the contract is German. German law applies. If Contractor is not registered in Germany, German law applies subject to the exclusion of its conflict of laws provisions and subject to the exclusion of UN sales laws. Commercial terms must be construed in accordance with the Incoterms current from time to time.

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