LAWO AG General Terms of Purchase, December 2017

§ 1 Application Our Terms of Purchase (hereinafter "Terms") exclusively govern all present and future offers, supplies and services (hereinafter "Service") provided by our suppliers and service providers (hereinafter collectively "Supplier"). The Terms form an integral part of all present and future contracts or side letters that we may conclude with our Supplier. The Terms only apply to the extent that the Supplier is a contractor ["Unternehmer"] as defined in German Civil Code [BGB] § 14, a legal public entity or an investment fund constituted under public law. They apply even if not specifically referenced. The Supplier's terms and conditions do not apply, even if we do not object to them separately. They do not become part of the contract even if we accept or pay for the Service without reservation.

§ 2 Contract The Supplier must keep its offer open for four weeks. The Supplier's offer must conform to the quantity, quality and manner of implementation specified in our inquiry or request for proposals; the Supplier must expressly identify any deviation in writing. Failure to do so will cause the Supplier to forfeit its right to additional compensation.

The Supplier will confirm our purchase order in writing or perform within 10 days. We are no longer bound by our purchase order once this period expires. If the order confirmation or Service is inconsistent with the purchase order, we will only be bound if we consent to the non-conformity in writing. Acceptance or payment of the Service does not indicate consent.

Our purchase orders are exclusively placed in writing and exclusively by the purchasing department. Our employees are not authorized to consent to any terms other than these Terms on delivery notes, acknowledgments of receipt or similar documents.

Written consent is required for technical changes and the resulting impacts on prices, delivery times or other conditions.

The Supplier may not outsource all or significant parts of our order or change the production location without our prior written approval. The Supplier's liability for contract performance continues even if we give our approval.

We may rescind the contract due to urgent operational considerations for our company, e.g. as a result of force majeure, fire, flooding, in exchange for paying compensation equal to 5 % of the agreed upon price of the still-undelivered Service under the appropriate purchase order without incurring any additional costs, except where this is unduly burdensome for the Supplier.

Legally significant notices and representations that the Supplier is required to issue to us after the formation of the contract (e.g. setting a deadline, reminder, rescission) are only effective if made in written form.

§ 3 Prices/Payment The price stated on the purchase order is binding. All prices are inclusive of statutory value-added tax unless it is shown separately. Unless otherwise agreed upon in writing, all prices are free domicile, Incoterms 2010 DDP, including insurance, and include any and all costs, outlays, charges and/or conditions.

Prices are deemed to be irrevocable until the contract is performed, unless they decrease in our favor. If the Supplier's prices on its price list decrease after the order is placed but before the payment deadline, the price decrease will also apply with respect to us. The Supplier must notify us of the decrease and provide evidence of its amount in case of a dispute.

Payment is due if and only if the Supplier delivers and we receive an invoice that is compliant with the German Value Added Tax Act [USTG] and the German Value Added Tax Implementing Regulation [USIDV]. We can only process invoices if they contain the order number given in our purchase order as specified therein; the Supplier will be held responsible for all the consequences resulting from non-compliance with this obligation unless the Supplier can prove that it is not responsible for the non-compliance.

We have rights of set-off and retention to the extent allowed by law, even with respect to claims held by or against our affiliated companies. The Supplier may exercise a right of retention or set-off if and only if its claims against us are undisputed, upheld by final and absolute judgment or based on warranty claims. Claims against us may only be assigned with our prior written approval. This does not affect German Commercial Code [HGB] § 354a. We are entitled to assign rights granted hereunder to third parties.

In the event of a defective Service or the bankruptcy or imminent bankruptcy of the Supplier, we will be entitled to hold back a reasonable amount as security until the Supplier performs as contracted or the warranty period expires.

German Civil Code § 286 (3), according to which default occurs automatically 30 days after the due date and receipt of an invoice, is hereby waived. Unless otherwise agreed in writing, we will make payment within 14 days of the due date minus a 3 % prompt payment discount or within 30 days minus a 2 % prompt payment discount.

We do not owe any interest for payments made after the due date. Default interest is 6 percentage points p.a. above the base interest rate. Default is deemed to occur on fulfillment of the conditions defined by law with the possible exception that it additionally requires a written reminder from the Supplier in any case.

§ 4 Delivery Timely and acceptable performance is a material contractual obligation. The performance period specified in our purchase order is binding. It commences on the date on which the Supplier receives the purchase order. The Supplier is in default after the performance period expires without the need for a reminder. The Supplier must notify
A shipping notification containing the same information as the delivery note must be sent to us separately from the all cartage and forwarding insurance [RVS/SVS] as per German Forwarders’ Standard Terms and Conditions forwarder at our expense. If we agree to pay carriage, the freight forwarder must be notified that we waive any and Export transactions are subject to INCOTERMS 2010 FCA. Furthermore, the Supplier will engage the freight forwarder at our expense. If we agree to pay carriage, the freight forwarder must be notified that we waive any and all cartage and forwarding insurance [RVS/SVS] as per German Forwarders’ Standard Terms and Conditions [ADSp] § 21 and do not acknowledge any amounts charged therefor. The Supplier will inform us immediately should a delivery be subject to any export restrictions. A shipping notification containing the same information as the delivery note must be sent to us separately from the delivery note. The Supplier must indicate the contents of the shipment (item number and quantity) as well as our order identification (date and number) on all shipping documents; if the Supplier fails to do this, we will not be responsible for the resulting delays in processing and payment. We may charge processing costs related to delays caused by missing documentation or missing approvals. We reserve the right to refuse acceptance of partial or early delivery of the Service and to return the Service at the Supplier’s expense or not to make payment until the agreed upon due date. We are entitled to rescind all or part of the contract or suspend performance without any liability to the Supplier for claims if force majeure, strikes or other circumstances beyond the Supplier’s control make full or partial performance hereunder impossible within the stipulated delivery time. If delivery of a Service is delayed, we have the right to provide, or have a third party provide, the undelivered part of the Service at the Supplier’s expense if the Supplier fails to provide the Service by a reasonable additional deadline that we have granted. We reserve the right to bill the Supplier for any and all damages and costs attributable to the delayed Service (including, without limitation, production downtime suffered by us and/or by our customers, liquidated damages, etc.). This is without prejudice to any further claims. In the event of a willful or grossly negligent delay in delivery, we may demand, as compensation for the delay, a surcharge amounting to 1 % of the before-tax delivery value calculated in full weekly increments and rounded up to the next full weekly increment up to an amount of 5 %; this is without prejudice to further statutory claims. If we demand compensation in lieu of or in addition to the Service, the Supplier is entitled to prove that it is not responsible for the breach of duty or that no damages were incurred or that the actual damage was significantly lower. Making reference to German Civil Code § 254, the Supplier is notified that we may be liable for liquidated damages for default under contracts with third parties. If we incur such liquidated damages due to a circumstance attributable to the Supplier, we may pass on the liquidated damages to the Supplier. § 5 Liability for Defects The Supplier provides the Service free of defects as to title or quality, in conformity with the current state of the art in terms of design and manufacture, in conformity with the manufacturing regulations, and in constant compliance with all relevant safety and environmental regulations in force at the locations where the Supplier knows the Service will be used, and in unconditional compliance of the Service with the specimens, samples and descriptions delivered by the Supplier.
The Supplier will ensure compliance with all legally or contractually required technical data, DIN or EN standards, quality assurance requirements, specifications, certifications and quality standards, REACH requirements, government conditions and any other requirements we may stipulate. The Supplier is liable for the environmental compatibility of the Service and the packaging materials and for compliance with legal waste disposal obligations.

The same applies to import and export standards, including, without limitation, customs regulations. The Supplier will provide us with verification thereof free of charge upon request; the foregoing also applies to certificates of inspection, material safety data sheets, etc. Our prior consent is needed for any departure from these specifications and requirements that may be necessary in a particular case.

If the Supplier has any reservations regarding the requested type of design, storage or use, it must express them in writing and provide appropriate suggestions for improvements. This will not restrict the Supplier's warranty obligation.

Notwithstanding German Civil Code § 442 (1) sentence 2, we have unlimited claims for defects even if we did not learn about the defect at the time the contract was concluded as a result of gross negligence.

The statutory provisions (German Commercial Code § 377, § 381) apply to the commercial obligation to inspect and give notice of defects with the following proviso: Our obligation to inspect is limited to defects which can be identified visually, including in shipping documents, during our receiving inspection and random quality control checks (e.g. damage sustained in transit, wrong or short delivery). There is no obligation to inspect if the parties have agreed on an acceptance procedure. In all other regards, the obligation to inspect depends on the extent to which an inspection is expedient given all the circumstances of the individual case in the ordinary course of business.

This does not affect our obligation to give notice of defects discovered at a later point.

In any case, our objection (notice of defects) will be deemed to be immediate and timely if it is received by the Supplier within ten business days. Insofar as this is concerned, the Supplier waives the defense of undue delay in providing notice of defects.

The Supplier will bear the costs it incurs for inspection and defect remedy (including any removal and installation costs) even if it turns out that there was no defect. Our liability for damages in the event of an unjustified demand to remedy defects remains unaffected; however, we will only be liable in this regard if we have recognized or have grossly negligently failed to recognize that there was no defect.

Payment does not imply certification of the Service as compliant with the contract; the same applies to the acceptance or approval of documents submitted (drawing, designs, models, samples, specimens, including interim performance, etc.) and does not constitute a waiver of any warranty claims.

We can assert all statutory rights and remedies without limitation at our option if the Service is defective. Moreover, we are entitled to claims for damages or reimbursements as set out by law.

The Supplier must pay all the costs required to remedy defects, including, without limitation, transportation, labor, materials, expert opinion, removal and installation costs. We are fully and unreservedly entitled to our statutory recourse claims against the Supplier pursuant to German Civil Code §§ 478 et seq. in addition to the claims for defects. In particular, we may demand from the Supplier precisely the type of remedy (repair or replacement) that we owe our customer. Our recourse claims against the Supplier are valid even if we or one of our customers further processed the Service, e.g. by integrating it into another product, before it was sold to the consumer. Our statutory right of choice (German Civil Code § 439 (1)) is not limited hereby.

In the event that the Supplier is in default and an additionally granted reasonable period has expired without resulting in a remedy, we are entitled, but not obligated, to remedy defects ourselves at the Supplier's expense. The Supplier will be required to reimburse all the costs and expenses in this case.

Serial defects are defects that occur in materials, components, subsystems or systems with significantly greater frequency than is usually expected or specified by the Supplier. A serial defect has occurred if, among other scenarios, the number of defective materials exceeds 1% of the quantity delivered.

In this case, the Supplier must submit an action plan to remedy the defect and implement this plan at its own expense. The plan must include measures to compensate for the expected behavior of other components in this production run due to the similarity of the defects that have occurred. If a serial defect has occurred, we may demand the replacement of all the deliveries from this production run. If the Supplier's product is installed in another product, we may also recall these products from the Supplier at the Supplier's expense. The Supplier will be required to reimburse all the costs and expenses in this case.

§ 6 Liability, Insurance Coverage, Limitation Period

The Supplier is liable to us for any wrongful act or omission and any damage or loss, including that committed by its representatives and agents for whom it is vicariously liable. The Supplier's liability disclaimers and limitations are excluded. Our own in-house inspections do not relieve the Supplier of its obligation to deliver defect-free Services.

If our customers or third parties claim damages from us on any domestic or foreign legal grounds whatsoever, the Supplier will hold us harmless from and against any such claims, including the associated legal defense costs, to the extent that the Supplier has caused the damage or loss and – in cases of fault-based liability – is responsible for the
event that gave rise to the liability. The Supplier is free to prove contributory causation or contributory fault on our part. Within the scope of the Supplier's liability for damages as defined herein, the Supplier must also reimburse us for any expenses incurred for or in connection with a recall conducted by us in accordance with German Civil Code §§ 683, 670 or German Civil Code §§ 830, 840, 426. Wherever possible and reasonable, we will notify the Supplier of the scope and substance of the recalls and give the Supplier an opportunity to respond. This is without prejudice to any other statutory claims and rights of recourse.

The limitation period for the contracting parties' claims against each other expires upon fulfillment of the conditions set out by law, unless otherwise stipulated hereinafter.

The general limitation period for defect claims is 3 years from the passage of risk, notwithstanding German Civil Code § 438 (1)(3). The limitation period begins to run upon acceptance if the contracting parties have agreed to acceptance. The three-year limitation period also applies to claims arising from defects of title without affecting the statutory limitation period for third-party in-rem claims for restitution (German Civil Code § 438 (1)(1)); furthermore, claims arising from defects of title will in no case become statute-barred as long as the third party can assert rights against us, including, without limitation, due to unexpired limitation periods.

The limitation periods set out in German Civil Code § 438, including the above extension, apply to all claims for defects under the contract to the extent contemplated by law. The regular statutory limitation period (German Civil Code §§ 195, 199) applies to our non-contractual claims for damages due to defects unless the application of the limitation periods set out in German Civil Code § 438 results in a longer limitation period in a particular case.

If the Supplier is responsible for product damage, the Supplier must hold us harmless, at first request, from and against any third-party claims for damages, including, without limitation, product liability claims, to the extent that the cause of the claim lies within the Supplier's sphere of control and organization and the Supplier itself is liable in relation to third parties. The Supplier will bear all costs incurred in connection with recalls attributable to the Supplier (including, without limitation, selection costs). The Supplier will obtain and upon request provide proof of reasonable insurance coverage for all product liability risks, including the risk of recalls, until such time as the Supplier's warranty lapses. The combined single limit must be at least € 10 million for each incident of bodily injury/property damage. The limitation period for claims accruing under this section is four years after we knew or should have known of the issue, but no more than 15 years after the complete delivery. The foregoing is without prejudice to any further claims for damages to which we may be entitled.

§ 7 Title
Title to all the Services vests in us upon payment. The Supplier guarantees that no third parties have retained title or hold any other rights which interfere with our title to the Service. The Supplier must expressly notify us if this is not the case. We will then have a right of retention.

Title to the Service must transfer to us unconditionally regardless of payment. We may on a case-by-case basis accept the Supplier's offer to transfer title to us conditionally upon payment; in this case, title passes to us from the Supplier no later than upon payment. All other forms of retention of title are excluded, including, without limitation, retention of title that are expanded ["erweiterter Eigentumsvorbehalt", i.e. title does not pass until all amounts owed by the debtor are settled], passed on ["weitergeleiteter Eigentumsvorbehalt", i.e. title does not pass until both the manufacturer and the reseller have been paid in full] or extended for manufacturing ["verlängerter Eigentumsvorbehalt", i.e. title passes to the reseller's customer and the reseller assigns the corresponding receivable to the manufacturer].

The Supplier always acts on our behalf when processing, commingling or combining (further processing) items supplied by us. The foregoing arrangement also holds true for our further processing of the delivered item with the result that we are considered the manufacturer and acquire title to the item no later than upon further processing in accordance with the law. If the items are processed or commingled in such a manner that the Supplier's item is deemed to be the main item ["Hauptsache"], the Supplier hereby agrees in advance to grant us proportionate co-ownership; the Supplier preserves the solely owned or co-owned property for us.

§ 8 Non-Disclosure/Intellectual Property Rights
The Supplier agrees to hold in strict confidence, and to use only for order fulfillment, all the contents of the contract, including, without limitation, prices, discounts, know-how and technical and commercial documents made available to the Supplier. The contents must not be shared with third parties without prior express written approval. The third parties must be notified of the ownership rights and copyrights and bound to secrecy in writing. The non-disclosure obligation will survive the termination or expiration hereof. It shall not, however, apply to contract contents which are in or enter the public domain without violating the non-disclosure obligation.

We are solely and exclusively entitled to use and/or exploit any work results prepared for us. The Supplier hereby grants us a perpetual, exclusive, irrevocable right of use and exploitation in the event that copyrights or intellectual property rights accrue to the Supplier.

The Supplier warrants that it has checked for third-party intellectual property rights in the destination countries for the Service and that no third-party intellectual property rights are being infringed upon in connection with its Service. If a third party brings claims against us in this connection, the Supplier will be required to indemnify us against these claims on first written request in Germany or abroad. The Supplier's indemnification obligation also applies if
After the order is filled or if no contract is formed, the Supplier must return all documents and copies to us and delete all stored data, unless the Supplier is required by law to retain them. In this case, the Supplier must return or delete these items after the retention period expires. The Supplier has no right of retention in this regard.

The Supplier must keep its contract with us strictly confidential. The Supplier may not refer to its business relationship with us, including, without limitation, for advertising purposes, without prior written approval.

If the Supplier culpably violates these obligations, it must pay us liquidated damages of at least 10 % of the agreed-upon price but no more than the amount that the Supplier received from other sources as a consequence of the violation if this amount exceeds the minimum amount. We will set the amount of the liquidated damages at our reasonable discretion on a case-by-case basis; this does not exclude our right to claim damages. We reserve the right to claim greater damages and assert other rights and remedies, including, without limitation, the right to injunctive relief.

The Supplier consents to the processing of its data as needed for business purposes. The foregoing is deemed to be due notice ["Benachrichtigung"] within the meaning of German Federal Data Protection Act [BDSG] § 33 (1).

§ 9 Title, Copyrights, Spare Parts

We reserve title and/or copyrights in and to any technical and commercial documents provided or ordered by us, including, without limitation, design plans, data sheets, calculations, instructions, sketches, samples, dummies and software custom-made to our specifications (including the source code). They must be used solely for contract performance and returned to us once performance under the contract is complete. They must not be shared with third parties without our prior written approval. They must not be commercially exploited for the benefit of third parties.

The Supplier warrants that it will supply spare parts for at least eight years after the last delivery has been made and that, for composite deliveries ["zusammengesetzte Lieferungen"], it will fill orders for spare parts after the same period of time. The Supplier's obligation to keep spare parts expires at the end of that period and upon receipt of our written consent. Consent may only be refused for good cause.

§ 10 Final Provisions

These provisions also apply to the Supplier's associate companies ["verbundene Unternehmen"] within the meaning of German Companies Act [AktG] § 15. The Supplier must bind the Supplier's associate companies to observe these provisions.

Amendments and modifications hereto that are not based on an individual agreement must be made in written form (including fax). This also applies to a waiver of the written form requirement. If any provisions of these Terms are or become invalid, the validity of the remaining provisions will be unaffected thereby.

Unless otherwise indicated by the purchase order, the place of our registered office is the place of performance, even for our payments, irrespective of the agreed upon INCOTERMS.

German law applies unless national law inevitably conflicts with it. The German wording of these Terms of Purchase shall control in the event of disputes.

The place of our registered office is the sole and exclusive place of jurisdiction for all disputes arising under the contract if the Supplier is a merchant ["Kaufmann"] within the meaning of the German Commercial Code or a legal entity constituted under public law. We are, however, entitled to file suit against the Supplier at the court that has jurisdiction over the place of the Supplier's registered office.

If the Supplier has its registered office outside Germany, CISG ("UN Convention on Contracts for the International Sale of Goods") will apply with the following special provisions: Any contract modifications or terminations must be made in written form, including any agreements concerning a waiver of the written form requirement. In the event of a culpable breach of contract, the Supplier will also be liable for any damage that was unforeseeable at the time the contract was concluded. In the event that non-contractual goods are delivered, we may demand a replacement delivery from the Supplier if the non-conformity constitutes a material breach of contract. A breach of contract is considered material if, for example, the goods are only manufactured or sold by the Supplier or if we cannot reasonably be expected to acquire the goods from a third party for any other reason. In the event that non-contractual goods are delivered, we may cancel the contract if the non-conformity constitutes a material breach of contract. A breach of contract is considered material if, for example, the damage is difficult or impossible to estimate, non-material damage has occurred, a claim for damages is excluded under Article 79 V of the UN Convention on Contracts for the International Sale of Goods, if trust in the Supplier's reliability has been permanently impaired for long-term obligations or if the non-conformity of the goods is so extensive that the goods can no longer be sold in the ordinary course of business. Requirements for and effects of the retention of title are subject to the law at the respective storage location of the item wherever the choice of German law is inadmissible or ineffective.
All cross-border legal disputes arising out of or in connection with the contract will be settled by arbitration in accordance with the Swiss Rules of International Arbitration of the Swiss Chambers of Commerce. The Arbitration Court consists of one arbitrator if the amount in dispute is up to EUR 100,000.00 and of three arbitrators if the amount is greater. The place of arbitration is Zurich, Switzerland.

We also have the option to seek redress before the competent national court.