1. Scope

(1) The buyer (hereinafter referred to as the “Client”) within the meaning of these Terms and Conditions of Purchase (hereinafter “TCP”) is the company named in the letterhead of the negotiation minutes or in the purchase order of SpiraTec AG or any company affiliated with it in accordance with section 15 of the German Stock Corporation Act (AktG).

(2) These TCP apply to all business relationships between the Client and its business partners and suppliers (hereinafter referred to as the “Contractor”). They apply in particular to contracts for the sale and/or delivery of movable goods (“Goods”), regardless of whether the Contractor manufactures the Goods itself or purchases them from its own suppliers (sections 433, 650 BGB). Unless otherwise agreed, these TCP in the version valid at the time of the Client’s order or the version last communicated to the Contractor in text form shall also apply as a framework agreement for similar future contracts without the Client having to refer to them again in each individual case.

(3) These TCP apply exclusively. Deviating, conflicting, or supplementary general terms and conditions of the Contractor shall only become part of the contract if and to the extent that the Client has expressly agreed to their validity in writing. This requirement of consent shall apply in all cases, in particular if the Client accepts the Contractor's deliveries without reservation in full knowledge of the Contractor's general terms and conditions.

(4) Individual agreements made with the Contractor in specific cases (including collateral agreements, addenda, and amendments) shall take precedence over these TCP. Subject to proof to the contrary, a written contract or written confirmation by the Client shall be decisive for the content of such agreements.

(5) These TCP shall only apply if the Contractor is an entrepreneur (section 14 BGB), a legal entity under public law, or a special fund under public law.

(6) References to the applicability of statutory provisions are for clarification purposes only. Even without such clarification, the statutory provisions shall apply unless they are directly amended or expressly excluded in these TCP.

2. Prices

The agreed prices are fixed prices. Unless otherwise agreed in individual cases, they include all services and ancillary services of the Contractor (e.g., assembly, installation) as well as all ancillary costs (in particular offer processing costs, duties, customs, packaging, transport, and unloading costs, as well as insurance) up to the Client's place of receipt (delivery address). The prices are exclusive of statutory value added tax.

3. Termination

The Client may terminate the contract in whole or in part at any time prior to delivery of the purchased item by giving written notice or notice in text form. In this case, the Contractor shall not be entitled to the agreed purchase price, but only to reimbursement of the services and expenses demonstrably incurred by him that cannot be used elsewhere, plus a reasonable, demonstrable share of the profit. The Contractor must allow for any expenses saved and other earning opportunities.

4. Delivery time

(1) The agreed delivery dates are binding. The timely performance of the service shall be determined by the handover of the purchased item at the agreed place of performance. The Contractor shall only be entitled to make early delivery with the written consent of the Client. The Contractor shall notify the Client immediately in writing of any delays in delivery, stating the expected delivery date. The Client's statutory rights in the event of delay shall remain unaffected.
(2) The Contractor shall bear the procurement risk for its services, unless otherwise agreed in individual cases.
(3) The statutory provisions shall apply to the occurrence of default of acceptance on the part of the Client. However, the Contractor must expressly offer its services to the Client even if a specific or determinable calendar time has been agreed for an action or cooperation on the part of the Client (e.g., provision of material). If the Client is in default of acceptance, the Contractor may demand compensation for its additional expenses in accordance with the statutory provisions (§304 BGB). If the contract concerns an irreplaceable item to be manufactured by the Contractor (custom-made product), the Contractor shall only be entitled to further rights if the Client has undertaken to cooperate and is responsible for the failure to cooperate.
(4) If the Contractor defaults on the fulfillment of its obligation, a contractual penalty of 0.2% of the net contract price, but not exceeding 5% of the net contract price, shall be forfeited at the end of each working day of the default, which shall be offset against any damages. The Client reserves the right to prove that higher damages have been incurred. The Contractor reserves the right to prove that no damages or only significantly lower damages have been incurred. The Client's further statutory rights due to default remain unaffected.
(5) In particular, after the fruitless expiry of a reasonable grace period set by the Client, the Client shall be entitled to procure the outstanding delivery elsewhere at market conditions (cover purchase) and to demand reimbursement of the additional costs incurred from the Contractor.

5. Delivery, shipping, packaging, transfer of risk

(1) The Contractor shall notify the Client of the dispatch of the purchased item as early as possible, at the latest upon dispatch, by e-mail. The dispatch note, other shipping documents, and delivery notes must contain the delivery date, the Client's ordering department, the receiving department, the project name, number, and date of the order.
(2) The Contractor shall carry out an appropriate quality control of the purchased item and provide the Client with suitable evidence of this at the latest upon handover. The Client is entitled to monitor the quality control carried out by the Contractor after giving prior notice.
(3) The Contractor shall pack the purchased item appropriately for transport to the place of receipt and take back the packaging material used at its own expense. The costs for this shall be covered by the contract prices. The Contractor shall ensure that the purchased item, if it is subject to special public transport or storage conditions in the country of origin, transit, and destination known to the Contractor, is labeled and transported in accordance with regulations and shall issue the necessary declarations for this purpose. If delivery is made to a construction site, the Contractor shall collect the packaging material within a reasonable period specified by the Client. The expenses for this shall be covered by the contract prices.
(4) Partial, multiple, reduced, and advance deliveries require the prior consent of the Client in writing or text form. Without prior agreement, there is no obligation to accept delivery. Any necessary returns shall be at the expense of the Contractor.
(5) Unless otherwise agreed in writing, the named place of receipt (hereinafter also referred to as the "destination") shall be the place of performance.
(6) All deliveries require confirmation of receipt by an employee of the Client authorized to issue such confirmation. Confirmation of receipt does not constitute acceptance of the contractual quality and completeness of the purchased item.
(7) In the case of deliveries to third countries (imports), the shipping documents must indicate whether the goods are customs-cleared or uncleared.

(8) In the case of goods that have not been cleared through customs, the Contractor must submit the following customs clearance documents to the Client: shipping documents (e.g., T1), freight documents, customs or commercial invoice, proof of preference such as Form A, EUR.1, A.TR., certificate of origin, and, if necessary, other documents required for customs clearance. The Contractor shall also ensure that the information for the customs pre-notification procedure is complete, correct, and available in good time to the authority responsible for submitting the pre-notification so that no delivery delays can arise.

(9) For goods that have been cleared through customs, the proof of customs clearance (e.g., ATC number, tax assessment number) must be noted in the freight documents.

(10) The Contractor is obliged to inform the Client in detail and in writing of any approval requirements for (re-)exports in accordance with the respective national export and customs regulations as well as the export and customs regulations of the country of origin of the goods and services if it is aware that these will be (re-)exported.

(11) The Contractor shall package, label, and ship hazardous products in accordance with the relevant national and international regulations. The Contractor shall fulfill all obligations incumbent on suppliers (within the meaning of Article 3 No. 32 of EC Regulation 1907/2006/EC (hereinafter "REACH Regulation")) in accordance with the REACH Regulation with regard to the delivery of the goods. In particular, the Contractor shall provide the Client with a safety data sheet in accordance with Article 31 REACH Regulation in the language of the recipient country in all cases prescribed in Article 31 (1) to (3) REACH Regulation.

(12) Until the goods arrive at their destination in accordance with the contract and the documents required for customs clearance and documentation have been received, the Contractor shall bear the risk of accidental loss and accidental deterioration of the goods. If delivery with installation/service has been agreed, the transfer of risk shall take place after proper execution of the installation/service and handover.

(13) If acceptance is required by law or contractually agreed, the transfer of risk shall take place upon acceptance by the Client. If formal acceptance has been agreed, the transfer of risk shall not take place until the Client has confirmed successful acceptance in the acceptance report. Payment of invoice amounts does not replace formal acceptance.

(14) In the case of deliveries of machines or systems, the Contractor shall, at the request of the Client, take over the installation and commissioning. If the necessary equipment is provided by the Contractor, the costs incurred shall be stated and invoiced separately; otherwise, they shall be deemed to be included in the offer. If additional development work is required for the Contractor to execute the order, the Client shall only bear the corresponding costs after prior written agreement.

(15) If the Contractor provides processing, measuring, and testing equipment as well as gauges, the tooling costs incurred for this shall be specified separately in the offer and invoiced separately; otherwise, they shall be deemed to be included in the offer. Only calibrated measuring and testing equipment and gauges may be used.

6. Origin of goods

(1) The Contractor shall indicate the non-preferential origin of the goods (country of origin) in commercial documents and shall provide a certificate of origin for the goods at the request of the Client.

(2) The goods must meet the conditions of origin of the bilateral or multilateral preferential agreements or the unilateral conditions of origin of the Generalized System of Preferences (GSP) for beneficiary countries, provided that the deliveries are made within the framework of these goods movements.

7. Rights in case of defects

(1) Unless otherwise specified below, the statutory provisions shall apply to the rights of the Client in the event of material defects and defects of title in the purchased item (including incorrect and short delivery as well as improper assembly, defective assembly, operating or operating instructions) and in the event of other breaches of duty by the Contractor.

(2) The Contractor warrants that the purchased item has the contractually agreed quality, is suitable for the use specified in the contract, and complies with the state of the art and all relevant private and public law standards. The Contractor further warrants that its contractual performance does not infringe any third-party rights, in particular any property rights, copyrights, or patent rights.

The limitation period for claims for defects shall be at least 36 months from the transfer of risk, to the extent permitted by law; otherwise, the statutory limitation periods shall apply. If the Client has agreed to longer or more extensive limitation periods with its Clients and the defect is attributable to a delivery or service provided by the Contractor, these extended limitation periods shall also apply to the relationship between the Client and the Contractor.

(3) The statutory provisions (§§377, 381 HGB) apply to the commercial obligation to inspect and give notice of defects, with the following proviso: The Client's obligation to inspect is limited to defects that are apparent during its incoming goods inspection upon external examination, including the delivery documents (e.g., transport damage, incorrect or short delivery), or that are recognizable during its quality control in random sampling. If acceptance has been agreed, there is no obligation to inspect. Otherwise, it depends on the extent to which an inspection is feasible in the ordinary course of business, taking into account the circumstances of the individual case. The obligation to give notice of defects discovered later remains unaffected. Notwithstanding the Client's obligation to inspect, its complaint (notification of defects) shall in any case be deemed to have been made immediately and in good time if it is sent within five working days of discovery of the defect or, in the case of obvious defects, within five working days of delivery.

(4) In addition to the expenses specified in §439 (2) and (3) BGB, the Contractor is obliged to compensate for damage to other items resulting from the removal and installation of the defective purchased item and indemnifies the Client against claims by third parties in this respect.

(5) The place of performance for subsequent performance is the place where the purchased item is located in accordance with its intended purpose. If the purchased item is installed by third parties, subsequent performance shall be carried out in consultation with them and in accordance with their interests.

(6) Subsequent performance also includes the removal of the defective purchased item and its reinstallation, provided that the purchased item has been installed in or attached to another item in accordance with its nature and intended use; the Client's statutory claim for reimbursement of corresponding expenses remains unaffected. The Contractor shall bear the expenses necessary for the purpose of inspection and subsequent performance even if it turns out that there was in fact no defect. In the event of an unjustified request for the removal of defects, the Client shall only be liable if it recognized or, through gross negligence, failed to recognize that there was no defect.

(7) Notwithstanding the statutory rights and the provisions on liability in these GTC (in particular "Liability, Product Liability, Insurance"), the following shall apply: If the Contractor fails to fulfill its obligation to remedy the defect – at the Client's discretion, either by remedying the defect (repair) or by delivering a defect-free item (replacement delivery) – within a reasonable period set by the Client, the Client may remedy the defect itself and demand reimbursement from the Contractor for the necessary expenses or a corresponding advance payment. If the subsequent performance by the Contractor has failed or is unreasonable for the Client (e.g. due to particular urgency, endangerment of operational safety or the threat of disproportionate damage), no deadline need be set; the Client shall inform the Contractor of such circumstances without delay.

(8) In all other respects, the Client shall be entitled to reduce the purchase price or withdraw from the contract in accordance with the statutory provisions in the event of a material defect or defect of title. In addition, the Client shall be entitled to compensation for damages and reimbursement of expenses in accordance with the statutory provisions.

(9) If the Client receives claims from its customers or third parties due to a defect or breach of duty attributable to a delivery or service provided by the Contractor, the Contractor shall indemnify the Client upon first request against all resulting claims and reimburse the Client for all damages, costs, and expenses incurred in connection therewith (including reasonable legal costs), insofar as the Contractor is responsible for the cause.

8. Liability, product liability, insurance

(1) The Contractor shall be liable without limitation in accordance with the statutory provisions for all damages arising from the performance of the contractual service by him or his vicarious agents.

(2) If the Contractor is responsible for product damage, it shall indemnify the Client against third-party claims to the extent that the cause lies within its sphere of control and organization and it is itself liable in relation to third parties. Within the scope of its indemnification obligation, the Contractor shall reimburse expenses pursuant to Sections 683, 670 of the German Civil Code (BGB) arising from or in connection with claims by third parties, including recall campaigns carried out by the Client. The Client shall inform the Contractor of the content and scope of recall measures – as far as possible and reasonable – and give him the opportunity to comment. Further legal claims remain unaffected.

(3) The Contractor undertakes to take out sufficient business, product, and environmental liability insurance with adequate coverage for personal injury, property damage, and financial loss, and to maintain this insurance throughout the term of the contract and for a reasonable period thereafter. Upon request, the Contractor shall provide the Client with evidence of the existing insurance coverage by submitting appropriate documentation (e.g., insurance confirmation).

(4) The Contractor shall take out transport insurance if it bears the risk for transport or if it is required to take out transport insurance due to the delivery conditions. The liability amount must correspond to at least 110% of the commercial value of the goods transported.

9. Retention of title, goods provided

(1) Ownership of the purchased item shall pass to the Client upon delivery to the Client or to a third party designated by the Client, unless the parties agree on another form of transfer of ownership. Any retention of title by the Contractor, in whatever form, is excluded.

(2) If goods provided by the Client are inseparably processed with other items not belonging to the Client, the Client shall acquire ownership of the new item; if sole ownership is not legally possible, the Client shall receive a co-ownership share in proportion to the value of the goods provided to the other processed materials. The Client shall be informed immediately of any change in the legal and/or actual circumstances.

10. Payments

(1) Payments shall be made by bank transfer either
– within 30 days of delivery or partial delivery and receipt of the corresponding (partial) invoice by the Client with a 3% discount or
without deduction within 60 days.

(2) Payments shall be made exclusively by bank transfer to a bank account held in the name of the Contractor in the country in which the contractually agreed service is to be provided or in which the Contractor has its principal place of business.

(3) The invoice must show the order number, project number, cost center, the service performed, and the recipient of the service, and must be sent to the billing address specified by the Client. A signed delivery note or proof of service must be enclosed. Incomplete information or invoices that cannot be verified for other reasons will be returned unprocessed at the Contractor's expense. The rejection of invoices suspends payment deadlines, which only begin to run again when the invoice in question is resubmitted. The date on which the transfer order is issued to the bank is decisive for the timeliness of the payment.

11. Assignment/offset/right of retention

(1) The Contractor may only assign its claims arising from the contractual relationship to third parties with the prior consent of the Client. Section 354a of the German Commercial Code (HGB) remains unaffected.

(2) The Contractor shall only be entitled to offset and exercise rights of retention if its counterclaims are undisputed or have been legally established. Rights of retention may only be exercised in the contractual relationship in which the Client's claim is based.

12. Declarations of the parties

(1) All declarations by the Contractor in connection with the purchase contract shall be addressed to the Client's ordering department named in the order.

(2) All documents sent by the Contractor to the Client must contain the order number, the recipient, the project name, and the number and date of the order letter.

(3) Legally relevant declarations and notifications by the Contractor in relation to the contract (e.g., setting deadlines, reminders, withdrawal) must be made in writing or in text form. Legal formal requirements and further evidence, in particular in cases of doubt regarding the legitimacy of the declarant, remain unaffected.

13. Confidentiality/data protection

(1) The contracting parties are obliged to treat all confidential information obtained within the framework of the contractual relationship, in particular business and trade secrets of the other party, as confidential, not to disclose it to third parties without authorization, and not to use it for purposes other than those agreed in the contract. The Contractor shall take appropriate technical and organizational measures to ensure the confidentiality of the information provided by the Client and shall demonstrably oblige its employees and third parties employed by it to maintain confidentiality.

(2) The contracting parties undertake to observe the applicable statutory data protection provisions when handling personal data.

14. Drawings, models, documents

The Contractor may use drawings, models, specifications, and other documents received from the Client exclusively for the purpose of initiating and executing the contract and may only make them available to third parties with the prior consent of the Client. At the request of the Client, but no later than upon termination of the contract, the Contractor shall return these documents in full and/or destroy them in a verifiable manner, unless there are legal retention obligations to the contrary. They remain the property of the Client; all other rights (in particular copyrights) are also exclusively reserved to the Client.

15. Applicable law/place of jurisdiction

(1) In addition to these TCP, the law of the Federal Republic of Germany applicable to the legal relationships of domestic contracting parties shall apply exclusively, excluding the referral provisions of international private law and the UN Convention on Contracts for the International Sale of Goods (CISG).

If the Contractor is a merchant within the meaning of the German Commercial Code (HGB), a legal entity under public law, a special fund under public law, or an entrepreneur within the meaning of § 14 BGB, the exclusive place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be the registered office of the Client. However, the Client shall also be entitled in all cases to bring an action at the Contractor's general place of jurisdiction. Overriding statutory provisions, in particular those relating to exclusive places of jurisdiction, shall remain unaffected.