

# Sonopress

## TERMS AND CONDITIONS FOR PURCHASE ORDERS

### 1. APPLICABLE TERMS TO PURCHASE ORDER.

These terms and conditions (“**Terms and Conditions**”) shall be applicable to any purchase order and to all subsequent purchase orders received by you (“**Seller**”) from SONOPRESS GMBH, Carl-Bertelsmann-Str. 161, Gütersloh, 33332 Germany (“**Buyer**”) whether received by mail, telephone, or electronic means (each a “**Purchase Order**”), from the date hereof until such time when we agree on a revised edition of these Terms and Conditions or other notice of revocation of the same.

Additional or different terms, conditions, or instructions applicable to a particular order may be specified in the body of the Purchase Order, or in an exhibit thereto, and, in the event of a conflict, shall take precedence over these Terms and Conditions with the exception of Section 15, ELECTRONIC TRANSACTIONS, below.

Seller acknowledges that a Purchase Order is subject to the acceptance of these Terms and Conditions by the Seller. Any terms and conditions contained in any offer, quotation or invoice of Seller shall not become a part of the contract of sale only resulting from Seller’s acceptance of a Purchase Order (unless such terms and conditions are specifically incorporated or explicitly noted as applicable in the Purchase Order). For the avoidance of doubt, any purported acceptance containing additional or different terms shall be deemed to be an acceptance of these Terms and Conditions, notwithstanding such additional or different terms. Seller’s shipment of goods or commencement of services in response to a Purchase Order shall constitute acceptance on the Terms and Conditions whereas any additional or different terms contained in any acknowledgment or invoice form submitted by Seller shall not constitute any part of the contract of sale resulting from Seller’s acceptance.

2. **PRICE AND DELIVERY:** A Purchase Order shall be fulfilled at the price specified on such order, or at any lower price agreed between the parties. Such price shall be the final price include any and all royalties, license fees or other similar fees or charges unless mutually agreed otherwise. Seller shall box, crate, or package as necessary for shipment without charge unless otherwise specified on the Purchase Buyer’s order.

Unless otherwise stated on the face of the Purchase Order, the product shall be delivered Incoterms DDP (Ship to address specified in the Purchase Order) Incoterms® 2020.

3. **PAYMENT TERMS:** Payment terms are net 90 days from date of invoice if not agreed differently in the Purchase Order.
4. **MODIFICATION:** Modification, rescission, or amendment of Purchase Order or the contract of sale resulting from its acceptance shall be ineffective unless approved in writing by an authorized representative of Buyer.
5. **INSPECTION:** All goods furnished pursuant to Purchase Order shall be subject to Buyer’s inspection and acceptance, notwithstanding prior receipt and payment, and, if unsatisfactory, may be returned, transportation both ways, unpacking, examining, and repacking at Seller’s expense. Nothing contained herein shall relieve in any way Seller from its own obligation of testing, inspection and quality control.
6. **DELIVERY, CANCELLATION:** Time is of the essence with respect to all aspects of a Purchase Order. In addition to its other rights and remedies, Buyer shall have the right to cancel all or any portion of its order without liability if delivery is not made within the time stated in the Purchase Order.
7. **GENERAL REPRESENTATIONS AND WARRANTIES:** Seller represents and warrants:
- A. That Seller in the performance of this Purchase Order and any software, products or services provided under this Purchase Order will comply with all state, local, national, and international laws, regulations, rules or orders (collectively, the “**Laws**”), including but not limited to applicable Laws regarding the manufacturing, packaging, labeling, notification, instruction, warning, certification, testing handling, sale, use, storage, processing, transportation, treatment and/or disposal of material or other items which are, or contain, hazardous or toxic wastes, substances or materials (collectively called “**Hazardous Substances**”) such as but not limited to heavy metals. Seller warrants that all products and components provided to Sonopress shall fully and in all respects conform to the specifications specified

# Sonopress

Under UFPI0001 [Restricted Substances Specification.pdf](#)

- B. That Seller shall comply with all Buyer's policies, procedures, and programs as provided to Seller by Buyer from time to time, including, without limitation, Buyer's policies, procedures, and programs related to quality, labor, security, health and safety, environmental, discrimination, ethics, etc.; in particular, Seller will comply the Bertelsmann Supplier Code of Conduct which can be found here: [code-of-conduct-en.pdf](#)
- C. That all articles, software, services, or product supplied under a Purchase Order: (i) are new; (ii) are free from defects in design, reliability, conformity, manufacture, material, and workmanship, including latent defects; (iii) shall conform to the applicable specifications, documentation and other requirements (including without limitation information on functional performance, operation, material content, size, appearance, response times, etc.); (iv) shall conform to Buyer's quality program requirements as provided to Seller; (v) shall fully perform, operate and function as set forth in the specifications, documentation, requirements and terms and conditions in this Purchase Order or otherwise agreed to by the parties in writing; (vi) are of merchantable quality and suitable for their intended purpose; (vii) are free and clear from all claims, security interests, encumbrances and liens;
- D. Without limiting Seller's liability to Buyer or third parties hereunder, Seller agrees to maintain, at its own expense, all necessary insurance for Buyer of at least the following kinds and limits, with insurance companies licensed or permitted to do business in the jurisdiction(s) where the work, products or services will be provided and rated at a minimum of "A-" VIII by AM Best (or similarly recognized rating agency in the country where the coverage was obtained). For the avoidance of doubt, Seller's insurance shall be primary insurance, without a right of contribution from any and all insurance maintained by or otherwise afforded to Buyer, but only to the extent of liabilities falling within Seller's liability obligations pursuant to the terms of the Agreement.
- (1) Workers' Compensation (or similarly required government scheme) – in accordance with statutory requirements for all locations where work, products or services are to be provided.
  - (2) Commercial General Liability – with a limit of not less than € 5,000,000 (or USD equivalent) per occurrence against bodily injury or property damage, €2,000,000 for products and completed operations, and € 5,000,000 (or USD equivalent) in the aggregate. For any work performed in the United States or Canada, policy shall include Buyer as additional insured, waive subrogation in favor of Buyer, and provide that Seller's insurance is primary and any other insurance carried by Buyer shall be noncontributory.
  - (3) Professional Liability (Errors & Omissions) – if Buyer will be providing "professional services" under this Agreement, Seller will maintain Professional Liability Insurance with a limit of not less than € 1,000,000 (or USD equivalent) per claim and in the aggregate and covering claims arising out of or related to acts, errors or omissions in connection with work or services provided by Seller. The policy shall have a retroactive date on or before the Purchase Order date or the date of Seller's first professional service, whichever is earlier. Seller shall maintain such coverage for one (1) year following final delivery of work or services;
- E. As updated from time to time, Seller shall provide Buyer with material safety data sheets and any other information and documentation reasonably necessary to enable Buyer to comply with its policies and procedures and with applicable Laws, or to verify compliance with this section, including but not limited to a certification of compliance, and testing data from an accredited third party testing facility. Seller shall further warrant and certify that the foregoing information, documentation and certification are true and correct. Seller warrants and certifies that products supplied to Buyer do not contain and are not manufactured with any ozone depleting substances, as those terms are defined by applicable Laws. Seller further acknowledges that the products purchased under this Purchase Order may be used in a manner that will subject it to a classification as a children's product or similar classification under applicable Laws, including but not limited to the federal Consumer Product Safety Improvement Act, and warrants and certifies that Seller's product complies and conforms with all applicable Laws and requirements applicable to such classification.
8. **INDEMNIFICATION:** Seller agrees to defend, indemnify, and hold harmless Buyer against all direct and indirect liabilities, causes of action, lawsuits, fines, penalties, claims, demands, costs, expenses (including reasonable attorney fees), damages and judgments that may be made by anyone, including without limitation, Buyer and its affiliates, occasioned by or resulting from: (i) any infringement claim related to any trademark, copyright, patent, or other proprietary right of a third party; (ii) any product, software or services purchased under a Purchase Order; (iii) any defective products or materials provided by Seller,

# Sonopress

including without limitation the use or disposal of Hazardous Substances; (iv) Seller's failure to perform its obligations or breach of any of the representations or warranties; (v) injury or death of any person(s) or damage to any property attributable to the product, software, any component or misconduct, negligent acts or negligent omissions of Seller, its subcontractors, and their officers, agents or employees; or (vi) product recalls or epidemic failures. If the product, software or services becomes the subject of a preliminary or final order or judgment against Buyer's use due to a claim of infringement, Seller shall, at its expense, either: (i) procure the right for Buyer to continue using such product, software, or services; or (ii) replace or modify the same so as to become non-infringing, while remaining compatible, functionally equivalent and in conformity with the specifications at no cost to Buyer, including without limitation, any cost associated with Buyer's manufacture, sale or certification of Buyer's Product. Seller must inform the Buyer promptly in writing after becoming aware of any action or threatened action which may invoke this Indemnification section. Such a notification from Seller must include a re-affirmation of its duties to Buyer under this section. Any response from Seller that does not clearly state Seller's agreement to indemnify, defend and hold Buyer harmless shall be deemed a non-responsive for purposes of this section. In the event Seller fails to respond to Buyer's notification under this section in writing within ten (10) days from receiving said notice from Buyer, Buyer shall have the right to defend or settle the matter on Seller's behalf. Such defense or settlement by Buyer as a result of the aforementioned non-response from Seller shall not diminish nor relieve Seller of its obligations in under this section.

9. **CONFIDENTIALITY:** Seller shall preserve as confidential all, and shall not disclose any, proprietary or confidential information of Buyer (including information of a third party which Buyer is under an obligation to maintain in confidence) to which Seller may have access as a result of a Purchase Order, the contract of sale resulting from its acceptance or the presence of Seller's employees at any Buyer site. This confidentiality obligation shall apply to all such proprietary or confidential information of Buyer whether in its original form or a derivative form, including work product resulting from Seller's performance of a Purchase Order. Seller shall not take photographs of any portion of any work performed pursuant to a Purchase Order or duplicate any drawings or specifications without the prior approval of Buyer. Nothing herein shall prevent the communication to others of any proprietary or confidential information which Seller can show was known to Seller or its representatives prior to its receipt from Buyer hereunder, was lawfully obtained by Seller or its representatives other than by disclosure from Buyer, or became public knowledge through no fault of Seller.
10. **PUBLICITY:** Seller shall not refer to the existence of a Purchase Order in any press release, advertising or materials distributed to prospective or existing customers or any other public disclosure, except as required by law. If required by law, the Seller shall provide copies of the disclosure for the prior review and comment by the Buyer, which shall have a minimum of five (5) business days to review the materials. The logo of SONOPRESS GmbH may not be used under any circumstance. Except to the extent provided in this Section, Seller shall not disclose any information concerning a Purchase Order or the contract of sale resulting from its acceptance, including its existence, without the prior written consent of Buyer.
11. **ASSIGNMENT:** Seller shall not in any manner delegate its duty of performance or assign its rights or obligations under a Purchase Order or the contract of sale resulting from its acceptance to a third party without Buyer's prior written consent. Any attempted assignment in violation of the preceding sentence shall be of no force or effect.
12. **PARTIAL INVALIDITY.** Should any provision of this Agreement be held to be void, invalid or inoperative, the remaining provisions of this Agreement shall not be affected and shall continue in effect and the invalid provision shall be deemed modified to the least degree necessary to remedy such invalidity.
13. **LEGAL EXPENSES.** The prevailing party in any legal action or proceeding brought by one party against the other and arising out of a Purchase Order shall be entitled, in addition to any other rights and remedies it may have, to reimbursement for its expenses, including court costs and reasonable attorneys' fees.
14. **ELECTRONIC TRANSACTIONS.**

If Seller and Buyer have mutually agreed to the use of an Electronic Data Interchange ("EDI") system (such as the Sonopress SAP system) to facilitate purchase and sale transactions, Seller agrees:

- (i) That it shall not contest (a) any contract of sale resulting from an EDI transaction under the provisions of any law relating to whether agreements must be in writing or signed by the party to be bound thereby; or (b) the admissibility of copies of EDI records under the business

# Sonopress

records exception to the hearsay rule, the best evidence rule or any other similar rule, on the basis that such records were not originated or maintained in documentary form;

- (ii) That it shall use proper security procedures to protect its EDI records from improper access; and;
- (iii) That the records maintained by Buyer regarding EDI purchase orders issued by Buyer shall be controlling.

**15. GOVERNING LAW:** These Terms and Conditions as well as a Purchase Order hereunder and all matters arising out of or relating to this Purchase Order shall be governed by and construed in accordance with the Laws of the Federal Republic of Germany. Venue shall be the Landgericht Bielefeld.