

GENERAL TERMS AND CONDITIONS FOR AFTER-SALES SERVICES (German Law)

EDITION 08/2015

Applicable for places of performance in Germany

1. General

- 1.1. These General Terms and Conditions constitute the basis for all service related business of SAMSON AKTIENGESELLSCHAFT (hereinafter referred to as "SAMSON") that particularly relates to repairs, alterations, maintenance, qualification, commissioning as well as after-sales services of any kind, hereinafter referred to as ("Services") and if the Customers are entrepreneurs, legal persons or special estates under public law.
- 1.2. Services for products ("Service Objects") will be performed depending on the agreed scope of services.
- 1.3. These General Terms and Conditions are also applicable to agreements for the provision of services in the course of a continuing obligation („Service Contract"). Reference is made to Clause 13 of these General Terms and Conditions of Services.
- 1.4. These General Terms and Conditions apply exclusively; General Terms and Conditions of the Customer conflicting with or deviating from these General Terms and Conditions shall be deemed as binding only to the extent as SAMSON has expressly agreed to them in writing. Acceptance of payments or other services of the Customer does not constitute any acceptance or confirmation and shall not be construed in any other regard as our approval.
- 1.5. Any reference made in these General Terms and Conditions to the INCOTERMS issued by the International Chamber of Commerce shall be deemed to refer to the edition being in force on the effective date of the contract.
- 1.6. Technical documents and marketing materials and data on weights, performance, operating costs, etc. shall not be binding unless expressly agreed in writing as a condition of the Services.
- 1.7. SAMSON shall retain ownership of, and copyright in cost estimates, drawings and other documents; drawings and documents shall not be disclosed to third parties and shall be returned immediately if so requested or if no order is placed.

2. Conclusion and Amendments to Contracts

- 2.1. Contractual agreements as well as modifications and supplements thereto must be made in writing.
- 2.2. Oral agreements of any kind – including subsequent modifications and supplements to these General Terms and Conditions – must be expressly confirmed by SAMSON in writing in order to become effective.

3. General Provisions for Services

- 3.1. Provided that the services are to be performed on a Service Objects that has not been supplied by SAMSON, the Customer, upon conclusion of the contract, shall inform SAMSON of any existing industrial property rights concerning the Service Objects; insofar SAMSON is not liable, the Customer shall indemnify SAMSON from any third-party claims concerning industrial property rights
- 3.2. Furthermore, any objects to be serviced within the scope of any services hereunder may not pose any health hazard to SAMSON (e.g. ABC contamination).
- 3.3. SAMSON shall be entitled to have third parties perform its contractual obligations hereunder.
- 3.4. Insofar as SAMSON sells spare parts or other goods and objects to the Customer that are not within the scope of the services performed hereunder, said supply shall be exclusively made according to SAMSON's General Terms and Conditions of Delivery of SAMSON.

4. Extent of Services

- 4.1. The scope and content of services not covered by a Service Contract ("Individual Orders") shall be determined according to the Individual Order and to these General Terms and Conditions. For Individual Orders the written order confirmation issued by SAMSON shall be conclusive in general for the extent of the services to be rendered.
- 4.2. In other respects the scope and the content of services shall be determined in the relevant Service Contract, the relating specification (if any) and these General Terms and Conditions each of them forming an integral part of the relevant Service Contract. SAMSON is entitled to alter the extent of the services within the boundaries of Clause 6.6 of these General Terms and Conditions of Services, in so far as it appears necessary in order to achieve the purpose of the order.
- 4.3. To the extent SAMSON provides advisory services, its advice will be to the best of its knowledge.
- 4.4. All public dues (taxes, fees, levies tariffs, etc.) payable outside the Federal Republic of Germany as a result of or in connection with the conclusion or handling of the contract are to be paid by the Customer.

5. Dates, Periods

- 5.1. Information regarding periods/times of performance apply only after complete clarification of the order and not upon submission of documents, approvals and releases to be provided by the Customer and not prior to receipt of an agreed down payment.
- 5.2. Customer's requests as to periods/times of performance shall require written confirmation by SAMSON.
- 5.3. The Customer may request to agree to a binding deadline for performance of the Service(s) hereunder only if the scope of work and/or Services is exactly defined.
- 5.4. A binding deadline for performance of Services hereunder shall be considered met, if
 - 5.4.1. upon expiration thereof the particular object of service is ready to be taken over by the Customer, in case of a contractually agreed trial operation accepted by the Customer; or
 - 5.4.2. the Services have been completed; or
 - 5.4.3. the objective desired in relation to the Services n has been achieved.
- 5.5. If additional or extended orders are placed or if Services are required, the agreed deadline for performing the originally ordered Services hereunder shall be extended accordingly.
- 5.6. If any Services to be performed hereunder are delayed in the context of events relating to industrial disputes, in particular strikes and lockouts, or occurrence of circumstances for which SAMSON is not liable, the deadline for performing the Services shall be reasonably extended, insofar as such obstacles are proven to exert significant influence on performance of any Services hereunder; this shall also apply if such circumstances occur after SAMSON has already defaulted on said performance.
- 5.7. The rendering of the Services is conditioned upon timely and proper performance of all duties owed by the Customer. The right of objection to non-performance of contract shall be reserved.
- 5.8. In the event of default of acceptance or any other culpable infringement of the duties to cooperate by the Customer, SAMSON is entitled to reimbursement of any consequential damage including any additional expenses.
- 5.9. If the Clauses 5.7 and 5.8 of these General Terms and Conditions do not apply and the Customer suffers any



- verifiable damage as a result of the delay caused by SAMSON, the Customer shall be entitled to demand liquidated damages. The same shall amount to 0.5% per each full week of the delay, but shall not exceed an aggregate maximum of 5% of the net price of the Services of the particular part on which SAMSON is to perform the Services and which cannot be timely used as a result of said delay.
- 5.10. If the Customer is entitled to the maximum liquidated damages as defined in Clause 5.9 of these General Terms and Conditions and if it has granted SAMSON a reasonable period of extension in writing and SAMSON doesn't culpably meet the deadline the Customer shall be entitled within the scope of the legal provisions to withdraw from the contract. Further claims on account of a delay in performance shall be governed exclusively as defined in Clause 17 of these General Term and Conditions of Services.
- 5.11. In case the service remuneration has not been fully paid by the Customer, the liquidated damages shall be offset against the final payment to SAMSON.
- 5.12. The Customer shall forfeit its right to liquidated damages or any other indemnification for the delay, if it has not reserved its right upon completion of the Services.
- 5.13. If the Services are delayed due to reasons beyond the control of SAMSON, the resulting additional costs shall be borne by the Customer.
- 6. Prices, Cost Estimates**
- 6.1. The Services performed by the personnel shall be invoiced according to working time, travel time, idle time and any preparatory time plus travel expenses, accommodation costs etc. The corresponding remuneration shall be calculated pursuant to the document issued by SAMSON under the name "After-sales Service Rates" as applicable from time to time on the date of the order confirmation or the execution date of the Service Contract.
- 6.2. Parts and Materials used for performing the Services and any special services rendered are subject to additional invoicing.
- 6.3. Value-added tax, if applicable, shall be additionally charged to the Customer in the respective statutory amount.
- 6.4. For all services performed outside SAMSON's premises the following applies:
Labour time of SAMSON service personnel shall begin upon entering the Customer's premises. The Customer shall bear any expenses for idle time for which SAMSON or their service personnel is not responsible, which maybe invoiced separately to the Customer.
- 6.5. As far as appropriate, the Customer shall be informed upon conclusion of the contract about the price expected for the particular Services to be performed hereunder; otherwise the Customer may set price limits.
- 6.6. If Services cannot be performed under the afore remuneration conditions in individual cases or if SAMSON considers that it is necessary to perform additional work while rendering the Services, SAMSON shall obtain the prior consent of the Customer, if the price will be exceeded by more than 15%.
- 6.7. If a lump-sum price for the services is agreed upon by written agreement, such lump-sum price is not any longer binding if the Customer affects rendering of the Services, particularly if it does not fulfil its obligations under Clause 11 of these General Terms and Conditions of Services, or if, without any fault on the parties, seriously complicating circumstances arise.
- 6.8. If the Customer wishes to have a cost estimate with binding prices prior to the performance of the Services, the Customer shall expressly request said cost estimate. Such a cost estimate shall only be binding if it is given in writing, unless otherwise agreed. The services rendered in order to submit the cost estimate shall not be invoiced to the

Customer, provided that said services can be used to perform the Services hereunder.

7. Terms of Payment

- 7.1. SAMSON shall be entitled to request a reasonable down-payment.
- 7.2. Payment shall be due immediately without any deduction upon completion of the Services and receipt of the invoice..
- 7.3. Any complaint regarding the invoice shall be made by the Customer in writing no later than four weeks upon receipt of said invoice.
- 7.4. The Customer shall not be entitled to net any counter-receivables against SAMSON unless such counter-receivables are undisputed or have been finally awarded by a court decision. The Customer may only exercise a right of retention if such right is due to claims under the same contract.
- 7.5. SAMSON reserves the right to set off all amounts owed to SAMSON by the Customer against payments owed by SAMSON or any other SAMSON Group Company to the Customer (whether due or not) on whatsoever reasons.
- 7.6. If SAMSON has not received by the relevant due date the payment(s), SAMSON - without prejudice to its other rights and remedies, regardless whether provided by contract or at law - shall be entitled to charge the Customer interest at a an annual rate of 10 (ten) percentage points above the prevailing Base Interest Rate of the European Central Bank without any reminder being required.
- 7.7. In case of late payment SAMSON - without prejudice to its rights and remedies under contract or at law - and without being required to send a reminder -, may suspend its performance of the Contract until it receives payment in full.
- 7.8. If the Customer should default on its payment obligations, if there is a substantial deterioration in its financial situation or if he ceases to make payment, then the entire balance shall become due immediately, including bills of exchange with a later date of maturity.

8. Non-performable Services

- For Non-performable Services the following shall apply:
- 8.1. The services performed to submit a cost estimate and further labour and expenses that are to be substantiated (troubleshooting equals labour time) shall be invoiced to the Customer if the Services cannot be performed by SAMSON for reasons for which they are not responsible, particularly because
- 8.1.1. the defect complained did not occur during inspection; or
- 8.1.2. third-party spare parts cannot be procured timely;
- 8.1.3. the Customer has failed to meet the agreed deadline by culpable breach; or
- 8.1.4. contract was terminated prior to the completion of the Services for reasons not within SAMSON's control.
- 8.2. In case that Services were to be provided for a Service Object and alterations to the Service Object were made by SAMSON personnel, said Service Object shall only be restored to its original condition at Customer's express request and only against reimbursement of costs, unless the work performed was not necessary.
- 8.3. SAMSON shall not be liable for damages to the Service Objects.
- 8.4. Neither shall SAMSON be liable for breach of collateral duties hereof or for damages not sustained by the Object itself, irrespective of the legal grounds the Customer invokes. SAMSON shall be liable for wilful intent, gross negligence on the part of their legal representatives or executive-level employees and for culpable breach of material contractual duties. In the event of culpable breach of material contractual duties, SAMSON shall be liable – except in the cases of wilful intent and gross negligence on the part of the owner or executive-level employees – only for damage that is typically associated with this Contract and reasonably foreseeable.



- 9. Right of Termination by SAMSON**
In addition to the statutory rights of termination of the contract SAMSON has the right to terminate the contract with immediate effect if:
- 9.1. there is or threatens to be a fundamental deterioration of the financial circumstances of the Customer and as a result of this claims of SAMSON are put at risk; or
- 9.2. preliminary insolvency proceedings regarding the Customer's assets are opened or insolvency proceedings are opened; or
- 9.3. the Customer ceases to make payments.
- 10. Retention of Title, Extended Lien**
- 10.1. SAMSON shall retain title to all accessories, spare parts and exchange parts or subassemblies used until all payments due from the particular service contract have been received.
- 10.2. On account of the claim of SAMSON to payment arising from the particular service contract, SAMSON shall be entitled to a lien on the Service Objects which came into the possession of SAMSON as a result of the service contract. This lien may be also be enforced on the grounds of accounts receivable for work performed earlier, spare part deliveries and other Services insofar as they are in connection with the Object hereunder. For any other claims arising from this business relation, this lien shall apply only to the extent that said claims are undisputed or res judicata.
- 11. Duty to Cooperate, Technical Support by the Customer for Services Performed Outside the Premises of SAMSON**
- 11.1. The Customer, at its own expense, shall support service personnel in performing the Services hereunder
- 11.2. The Customer shall take the required special measures to protect people and objects on the site where the Services is to be performed.
- 11.3. It shall also inform the service personnel of SAMSON of any special safety rules and regulations, provided that these are important for said service personnel. He shall inform SAMSON of any violation of the latter's service personnel against said safety rules and regulations. In the event of serious violations, the Customer may deny the service personnel whose conduct violates said rules and regulations access to the service site.
- 11.4. The Customer shall be required to provide assistance in particular to the following:
- 11.4.1. provide the necessary auxiliary staff in the number and for the time required to perform the Services hereunder; said auxiliary staff shall follow instructions and orders issued by the service personnel. SAMSON shall not assume any liability for said auxiliary staff. If auxiliary staff cause a defect or damage on account of instructions or orders issued by service personnel, the provisions of Clauses 17 and 18 of these General Terms and Conditions shall apply accordingly;
- 11.4.2. perform all construction, foundation and all scaffolding work, including procurement of the building materials required therefor;
- 11.4.3. provide the required devices and heavy machinery and/or tools as well as the required materials and items (e. g. transport devices, lifting equipment, compressors, scaffolding, supporting frames, lubricants);
- 11.4.4. provide heating, lighting, utilities, water, including the required connections and outlets.
- 11.4.5. provide the necessary dry and lockable rooms for storing the service personnel's tools.
- 11.4.6. protect the site at which the Services are to be performed and the materials located there from damaging effects of any type; clean the site at which the Services are to be performed.
- 11.4.7. clean the site at which the services are to be performed.
- 11.4.8. provide the service personnel with suitable, secure lounge and work areas (with heating, lighting, wash facilities, sanitary facilities) and first aid;
- 11.4.9. provide materials and take all action that is necessary to perform the Services.
- 11.5. The Customer's technical and cooperative support shall ensure that the Services can be started immediately upon arrival of the service personnel and that the Services can be performed without delay all the way to acceptance on the part of the Customer.
- 11.6. Insofar as special diagrams or instruction manuals are required for the Service Object, SAMSON shall provide these in due time to the Customer.
- 11.7. Pertaining to commissioning works the Customer shall - besides providing assistance set forth hereinabove - ensure the complete electrical and mechanical installation of the Service Object prior to commissioning as a prerequisite to commence the Services, unless such installation has been assigned to SAMSON.
- 11.8. If the Customer fails to fulfil its obligations hereunder, SAMSON shall be entitled, after having set a deadline to cure said breach, but shall not be obligated to, have the Customer's obligatory support and action performed on the Customer's site and at the Customer's expense. As for the remaining provisions, legal rights and claims of SAMSON shall remain unaffected thereby.
- 12. Additional Provisions for Services to be performed at SAMSON Plants**
- 12.1. Unless otherwise agreed in writing, transportation of the Service Objects including any packaging and loading shall be performed at the Customer's request and expense. Apart from that the Service Objects shall be shipped to SAMSON DDP INCOTERMS by the Customer at its own expense and after completion of the Services at the SAMSON plant they shall either be collected by the Customer or shipped at its expense (EXW INCOTERMS),
- 12.2. During the time that Services are performed at SAMSON plants, no insurance protection is provided.
- 12.3. The Customer shall bear exclusively all risks of accidental loss or accidental deterioration.
- 12.4. If the Customer delays retrieval and acceptance of the Object following completion of Service, SAMSON may decide at their discretion to store the object of Service at another place. Costs and risk of storage shall be borne by the Customer.
- 13. Additional Provisions for Continuing Services (Service Contracts)**
- 13.1. Any Service Contract shall become effective upon signing by both contract parties and shall be deemed concluded for the term indicated in such Service Contract. Either contract party shall be entitled to terminate a Service Contract to the end of a contract year by giving six-months' notice, however not with effect prior to the end of the first year of contract.
- 13.2. Under Service Contracts SAMSON shall be entitled to modify the Service Remuneration in its own discretion by giving the Customer a one-month's written notice in advance. If the Customer does not agree to the modified Service Remuneration, it shall be entitled to terminate the Service Contract with 4 (four) weeks' notice period with effect to the date of effectiveness of the modified Service Remuneration.
- 13.3. Any Service Remuneration as a result of Service Contracts shall be invoiced as agreed for the period of one contract year or parts thereof, i.e. monthly, quarterly or half-yearly, at the beginning of the applicable settlement period.
- 13.4. Either contract party shall be entitled to terminate the Service Contract without notice for good cause. Such good cause on the part of either contract party shall include, in particular, any violation by the other contract party of a material duty under the Service Contract, which is not remedied within fifteen (15) calendar days upon receipt of a written notification of such violation.



- 13.5. Good causes for SAMSON to terminate a Service Contract shall include, without limitation,
- 13.5.1. payment in arrears of more than thirty (30) calendar days if such due payment has not been made within fifteen (15) calendar days upon receipt of a written reminder; or
- 13.5.2. additional service expenses are incurred, in particular with regard to time or materials, caused by:
- a) the use of Equipment by not instructed persons; or
 - b) violation of the Customer of its duties as provided under Clause 11 of these General Terms and Conditions of Services; or
 - c) the use of not compatible or not approved components or their connection to the equipment; or a relocation of the equipment without the prior consent of SAMSON.
- 13.6. Any termination to become effective shall be made in writing.
- 14. Acceptance**
- 14.1. In the event that performed Services do not proof to be in accordance with the contract at the acceptance, SAMSON is obligated to eliminate the defect as defined by Clause 15. hereof, provided that this is possible for the particular Services to be performed. This shall not apply if the defect is minor when assessed in the interest of the Customer or is based on a circumstance for which the Customer is responsible. If there is a minor defect, the Customer may not refuse acceptance.
- 14.2. If acceptance is delayed through no fault of SAMSON, acceptance shall be deemed as having taken place two (2) weeks after notification of the Customer of completion of the Services performed hereunder.
- 14.3. Upon acceptance, SAMSON shall no longer be liable for discernible defects, insofar as the Customer does not reserve the right to enforce a claim for a certain defect.
- 15. Material Defects**
- 15.1. All defects must be reported to SAMSON in writing immediately, however no later than within one week of being discovered
- 15.2. If SAMSON owes the Customer specific work as agreed in a contract for work and services and thus work and services legislation is applicable, warranty for defects applies under following provisions:
- 15.2.1. In the event of deficient Services performed hereunder, SAMSON shall first be entitled, and obligated to perform, rectification.
- 15.2.2. If rectification ultimately fails to eliminate the deficient Service, the Customer may elect to withdraw from the contract, reduce payment for the Services or request damages according to the legal provisions. The Customer's claims to reimbursement of expenses shall be excluded.
- 15.2.3. All Customer warranty claims based on a defect in quality or material or in title shall be subject to a limitation period of twelve (12) months as of acceptance of the work performed hereunder unless otherwise stipulated in Clause 18 of these General Terms and Conditions for Services.
- 15.3. Otherwise Clause 17 of these General Terms and Conditions shall apply.
- 15.4. If the Services are subject to Sections 611 et.seq. of the German Civil Code the following shall apply:
In the event of deficient Services performed hereunder, SAMSON shall first be entitled, and obligated to perform, rectification. If said rectification fails to eliminate the deficiency, the Customer shall be entitled to receive damages within the scope of Clauses 17 and 18 of these General Terms and Conditions of Services.
- 15.5. The warranty shall exclude damage incurred as a consequence of natural wear and tear, inadequate maintenance – provided that this was not performed by SAMSON – failure to follow equipment operating instructions, excessive or unsuitable use and improper construction and/or assembly work performed by third parties and any other external effects and causes over which SAMSON has no control or for which SAMSON is not responsible.
- 15.6. This warranty shall expire if the Customer or a third party conducts any work to the Services without obtaining the prior written consent to do so from SAMSON.
- 15.7. SAMSON shall be entitled to scrap the parts which have been replaced unless the Customer expressly asks the parts to be returned when placing its order. Transportation costs shall be borne by the Customer.
- 16. Defects in Title**
- 16.1. If the Services results in an infringement of intellectual property rights or copyright, SAMSON will at its own expense arrange for the Customer to have continued use or modify the supplied goods to such an extent that satisfies the Customer and so that the infringement of rights no longer exists.
- 16.2. Should this not be possible either on commercially reasonable terms or within a reasonable time, then the Customer is entitled to withdraw from the contract. Under these conditions SAMSON is also entitled to withdraw from the contract.
- 16.3. In addition SAMSON will indemnify the Customer with regard to claims of the relevant owner of the intellectual property rights which are undisputed or awarded by a court of law.
- 16.4. Save for Clause 17 of these General Terms and Conditions the preceding stipulations shall be deemed conclusive in the event of infringement of intellectual property or copyright. Claims may only be brought if the Customer immediately notifies SAMSON of claims made against him of alleged infringements of intellectual property rights or copyright, the Customer supports SAMSON in its defence against such claims to a reasonable extent and permits SAMSON to make any modifications in accordance with Clause 16.1 of these General Terms and Conditions of Service, SAMSON reserves to itself all defensive measures including out of court settlement, and the legal defect is not the result of an instruction by the Customer and the legal infringement was not caused by any unauthorised change to the supplied goods by the Customer or by virtue of use by the Customer which is not in accordance with the contract.
- 16.5. All warranty claims of the Customer due to legal defects shall become statute-barred after 12 months after acceptance of service, unless otherwise stipulated in Clause 18 of these General Terms and Conditions
- 16.6. Clause 17 of these of these General Terms and Conditions applies accordingly in all other respects.
- 17. Liability of SAMSON**
- 17.1. Liability of SAMSON for Services that cannot be performed is subject to Clauses 8.2 - 8.4 of these General Terms and Conditions of Services.
- 17.2. If parts of the Service Object are damaged through the culpable fault of SAMSON, SAMSON may elect to repair said damage at its own expense or to deliver new replacements. The obligation by SAMSON to replace said damaged parts shall be limited to the price at which the particular Services were agreed. As for the remaining provisions, Clause 17.3 of these General Terms and Conditions shall apply accordingly.
- 17.3. In the event of damage that is not sustained by the Service Object itself, SAMSON shall be liable, irrespective of the legal reason, only
- 17.3.1. in the event of wilful intent;
 - 17.3.2. in the event of gross negligence on the part of the legal representative | entities, directors or executive-level employees;
 - 17.3.3. in the event of culpable physical injury death and hazards to life and health; or



- 17.3.4. in the event of Defects that SAMSON has fraudulently concealed or the absence of which SAMSON has guaranteed;
- 17.3.5. to the extent that liability is prescribed by the Product Liability Law for personal injury resulting from, or property damage to, privately used objects.
- 17.3.6. In the event of culpable breach of material contractual duties, SAMSON shall also be liable in the event of gross negligence by its non-executive employees and in the event of slight negligence, where the latter case shall be limited to losses that are typically associated with this type of contract and that are reasonably foreseeable.
- 17.4. Any further claims shall be excluded.

18. Limitation of Claims

All Customer's claims, irrespective of their legal basis, shall be subject to a limitation period of twelve (12) months. For claims for damages as defined by Clause 17.2 of these General Terms and Conditions of Services, the statutory limitation periods shall apply. If SAMSON performs Services on a building or structure and causes it to become defective as a result, the statutory limitation periods shall likewise apply.

19. Damages to Objects of SAMSON

If the devices, equipment or tools provided by SAMSON are damaged or lost through no fault of SAMSON during Services performed outside the SAMSON plant at the site at which the Services(s) is (are) to be performed, the Customer shall be obligated to pay compensation to SAMSON for said damage incurred. Damage that can be attributed to normal wear and tear shall not be considered.

20. Miscellaneous

- 20.1. The place of performance is the place where the Services are to be rendered.
- 20.2. The Customer shall not assign its contractual rights to a third party without the prior express and written consent of SAMSON.
- 20.3. If one of the provisions of these General Terms and Conditions or further agreements should be or become ineffective, this shall not affect the validity of the General Terms and Conditions in other respects. The contract parties are obliged to agree upon a provision to replace the ineffective provision that approximates as closely as possible the economic intent of the ineffective provision.
- 20.4. The contractual relationships shall be governed exclusively by German law excluding the conflict of law provisions and the UN Convention on Contracts for the International Sale of Goods (CISG).
- 20.5. The venue for all legal disputes arising either directly or indirectly out of contractual relationships based on these General Terms and Conditions of Service, subject to the following regulations, shall be Frankfurt am Main, Germany. Moreover SAMSON at its discretion shall have the right to take legal action against the Customer at a court with jurisdiction over the registered office or branch office of the Customer or at the court with jurisdiction over the place of performance.