

**General Terms and Conditions  
for the Rental of Hardware and Software  
("General T&Cs HW/SW Rental") status 09/2022**

**1. Scope / Customer's differing terms and conditions**

- 1.1 1.1 These General Terms and Conditions for the Rental of Hardware and Software ("**General T&Cs HW/SW Rental**") apply to SPIE Deutschland & Zentraleuropa GmbH, Balcke-Dürr-Allee 7, 40882 Ratingen, and all its affiliated companies within the meaning of Sections 15 et seq. AktG [German Stock Corporation Act] (the company respectively concluding the contract is hereinafter referred to as "**we**"/"**us/ourselves**").
- 1.2 These General T&Cs HW/SW Rental apply exclusively to companies within the meaning of Section 14 *Bürgerliches Gesetzbuch (BGB)* [German Civil Code] i.e. natural persons or legal entities which, when concluding a legal transaction, are acting in the performance of their commercial or independent professional activities. The term "**Customer**" hereinafter refers to any company that concludes a contract with us for the rental of hardware and/or software (hereinafter referred to as "**Rental Contract**") incorporating these General T&Cs HW/SW Rental.
- 1.3 Business relations with our Customers concerning the rental of hardware and software as well as related information and advice shall be governed exclusively by our General T&Cs and any individual contractual agreements made with the Customer. Differing General Terms and Conditions of the Customer, especially General Terms and Conditions of Purchase, shall only apply if and to the extent that we expressly recognise them in writing. Our silence regarding such differing General Terms and Conditions shall not be deemed to be recognition or consent, and this shall also apply to future contracts. Where our General T&Cs are implemented in business with the Customer, they shall also apply to all further business relations of the same kind between the Customer and ourselves, unless otherwise expressly agreed in writing.
- 1.4 Our General T&Cs HW/SW Rental shall apply in place of any General Terms and Conditions of the Customer, also where, according to such Terms and Conditions, acceptance of an order is deemed to be the unconditional recognition of the General Terms and Conditions or we deliver or perform after the Customer has indicated the validity of the Customer's General Terms and Conditions, unless we have expressly waived the validity of our General T&Cs HW/SW Rental in writing.
- 1.5 The documents referred to in these General T&Cs HW/SW Rental, especially the product description and/or our offer to conclude a Rental Contract, are integral parts of the Rental Contract concluded between the parties. References to documents refer to the version of the documents in force at the time, unless otherwise expressly provided.
- 1.6 *Where and insofar as we undertake to provide consultancy, training, assistance, installation, implementation, maintenance, support and/or adaptation services as well for the hardware and software to be supplied, our "General Terms and Conditions for the Performance of IT Services" ("General T&Cs IT Services") shall additionally apply.*

**2. Information, properties of the rented items, installation respectively system environment**

- 2.1 Information and explanations regarding the hardware and software provided by us on a rental basis (hereinafter also referred to collectively as "**Rented Items**") shall be provided solely on the basis of our experience to date. Values specified in this context shall be deemed average values of our Rented Items.
- 2.2 Reference to standards, similar technical regulations and technical information, descriptions and illustrations of the goods/services to be supplied in quotations and brochures and our advertising shall constitute a property of our Rented Items only when we have expressly declared the quality to be a "*property of the rented item*". These are otherwise non-binding, general specifications.
- 2.3 We shall only be deemed to have given a guarantee if we have designated a property and/or contractual performance in writing as "*guaranteed by law*".
- 2.4 The Customer is responsible for verifying whether our Rented Items are suitable for the purpose intended by the Customer. We shall provide binding advice on this only if we have agreed this in writing with the Customer, based on a separate consultancy engagement.
- 2.5 We shall retain title and copyrights to illustrations, drawings, indications of weight and dimension, performance and other property specifications, estimates of cost and other documents about our Rented Items. The Customer undertakes not to make the documents specified in the foregoing sentence accessible to third parties, unless we give our express written consent.
- 2.6 If a specific installation location has been agreed in the Rental Contract for the hardware or a system environment for the software, the Customer shall furthermore be obliged to make any change in the installation location or the system environment of the hardware or software provided only after our prior written consent. We shall refuse consent only if there is good cause that makes implementation unreasonable for us (e.g. security concerns). If the Customer changes the installation location or system environment of the Rented Items and our expense to fulfil our contractual obligations increases as a result not only insignificantly, we reserve the right to increase the remuneration to an appropriate extent, unless the Customer proves that we incur no or only insignificant additional expense in the specific case.

**3. Rights of use to software / Right of verification / Third-party software / Open source software**

- 3.1 We or our respective licensors exclusively shall be entitled to all rights to software supplied by us within the scope of the Rental Contract.
- 3.2 The Customer shall have a non-exclusive, non-transferable right, limited in time to the duration of the Rental Contract, granted by us to use the software provided in the object code to the agreed extent (e.g. in respect of the maximum number of users, processes, servers) for the Customer's own purposes. Any further exploitation or use of the software, especially for the purposes of third parties, is not permitted. If

the provision of hardware contains software necessary for its proper functioning (“Embedded Software”), the right to use such software shall be limited to use with the hardware provided, unless further use is expressly permitted in the Rental Contract and/or in any applicable licensing terms of the hardware manufacturer.

- 3.3 The right of use is limited to use in the Federal Republic of Germany as well as to the country of destination additionally agreed between the parties, if applicable, in which the software is to be used.
- 3.4 The right of use includes the right to install and reproduce the software if the respective reproduction is necessary for use according to the contract.
- 3.5 Providing and/or making the software accessible to third parties, especially the sale, making the software temporarily or permanently available in data center operations for third parties (e.g. as software as a service), sub-licensing and re-renting are not permitted.
- 3.6 The Customer may make backup copies of the software to the necessary extent according to accepted technical rules and standards. Backup copies on removable data storage devices are to be identified as such and provided with the copyright notice of the original data storage device. The Customer may make printouts or copies of the application documentation only to the extent necessary for use according to the contract.
- 3.7 The Customer shall have no rights to modify the software and may make modifications only if this is expressly permitted by mandatory laws or contractually agreed. Please note that even minor changes can lead to significant, unforeseeable disruptions in the running of the software.
- 3.8 The Customer has the right to decompile the software only within the statutory limits and only if we have not made the necessary data and/or information available, after written request with a reasonable period of time, in order to achieve interoperability with other hardware and software. The Customer may not commission any third parties that are our competitors with decompilation measures, unless the Customer proves that the risk of disclosure of trade secrets within the meaning of Section 2 *GeschGehG* [German Trade Secrets Act] (especially of functions and design of the software) is excluded.
- 3.9 Copyright notices, serial numbers, version numbers, trademarks or other identifying features of the software may not in any case be altered or removed. The same applies to the suppression of the screen display of corresponding features. The Customer is furthermore not authorised to remove or circumvent any existing protection mechanisms of the software against unauthorised use, unless this is necessary to achieve the trouble-free use of the program.
- 3.10 The Customer may use the software only to the extent stipulated in the Rental Contract (e.g. in respect of the maximum number of users, processes, servers) and shall inform us immediately of any intended overuse or overuse that has already occurred. We shall have the right to verify whether the software is being used in compliance with the provisions of these General T&Cs HW/SW Rental and the Rental Contract. The Customer shall provide us with

information for this purpose to the requested extent, especially about the number of users and other extent of use of the software.

- 3.11 If the software contains components of open source software, for which the separate licensing terms of the respective holders of the rights apply, we shall indicate this in our quotation or display such licensing terms in the software and/or list them in the readme.txt, notices.txt or licenses.txt attached to the version. In respect of open source software, which is a component of the software, the respective licensing terms of the holders of the rights shall take precedence over these General T&Cs HW/SW Rental and the respective Rental Contract. If the respective licensing terms of an open source software require a right to modify for the Customer’s own purposes and connected therewith to reverse engineer for the purposes of troubleshooting software accessing that open source software, we herewith grant this to the Customer.
- 3.12 If the software to be supplied by us pursuant to the Rental Contract is standard software of a third party (herewith referred to as “**Third-Party Software**”), the corresponding licensing terms of the respective software manufacturer shall apply by priority to use of that Third-Party Software. The Customer undertakes to comply fully and at all times with the respective licensing terms. The licensing terms applicable to the respective Third-Party Software shall either be attached to our quotation or we shall refer in the quotation to the software manufacturer’s website, where the Customer can view and download the licensing terms. To use Third-Party Software, it may also be necessary for the Customer to declare the Customer’s consent to the validity of the licensing terms of the respective software manufacturer during the installation process. If the Customer has commissioned us to install the Third-Party Software according to separate commissioning, we shall be authorised by the Customer to make any such declaration of consent in the Customer’s name and to oblige the Customer thereby with binding effect to comply with the licensing terms vis-à-vis the software manufacturer.

#### **4. Conclusion of the contract / Scope of performance / Changes to the Rented Items**

- 4.1 Our quotations are subject to change and not binding, unless they were identified as binding. They are only requests to the Customer for purchase orders. If the Customer places an order based on quotations subject to change, a Rental Contract shall be concluded, also in day-to-day business, only by our written order confirmation (sufficient also by email or telefax), if the Customer requests such confirmation. In all other cases, a Rental Contract shall be concluded by provision of the Rented Items. If an order confirmation is provided by us, this alone shall govern the content of the contract, in particular the scope and functionality of the Rented Items provided and the delivery time.
- 4.2 In the absence of other agreement, our software shall be provided to the Customer in the version current when the Rental Contract is concluded together with the related application documentation (in principle in electronic form in the help function of the software). We shall effect provision of the software by, at our option, either (i) providing the software to the Customer on a machine-readable data storage device or (ii) making the software available for download or having it

made available (e.g. in the case of Third-Party Software by the respective software manufacturer). The source code of the software is not the object of the contract and shall not be provided to the Customer.

- 4.3 The scope of functions of our hardware and software as well as the technical conditions for use are specified in the product description for the respective hardware and software. In respect of the scope of functions of Third-Party Software, the product descriptions of the respective software manufacturer exclusively shall apply. The product description applicable to the respective Third-Party Software shall either be attached to our quotation or we shall refer in the quotation to the software manufacturer's website, where the Customer can view and download the product description. Information in the product description is not, however, to be understood as a guarantee of quality for the respective hardware and software, unless this is expressly designated as such in the product description.
- 4.4 Unless expressly agreed in the Rental Contract, the provision of patches, updates, upgrades and new releases and versions of the software shall not be due from us, except for the purpose of remedying defects and within the scope of maintaining the contractual use of the software provided. The same applies to services such as in particular consultancy, training, assistance, installation, implementation, maintenance, support and/or adaptation services.
- 4.5 The Customer must inform us in writing in due time prior to conclusion of the contract of any specific requirements of our Rented Items.
- 4.6 We shall have the right to adapt the Rented Items to current technical development or due to changes in the law, changes in judicial decisions, changes in the services of sub-contractors and third-party suppliers (e.g. software manufacturers in the case of Third-Party Software) or changes in economic circumstances and in this context to modify the technical properties and functionalities of the Rented Items. If, as a result of such adaptation, the scope of performance specified in the product description is reduced or unreasonably changed for the Customer, we shall have to notify the Customer of the adaptation at the latest six (6) weeks prior to its implementation and to provide the Customer with an accordingly adapted product description. In the event that the Customer does not accept the adapted product description, both we and the Customer shall have the right to terminate the Rental Contract as a whole, giving notice of one month to the end of the calendar month.

**5. Delivery and service times for provision of the Rented Items / Default / Establishment of operational readiness**

- 5.1 Binding delivery and service dates for provision of the Rented Items must be agreed expressly and in writing as binding. A fixed-date transaction shall only exist if we have expressly confirmed such transaction in writing or the legal requirements for a fixed-date transaction are met.
- 5.2 Delivery and/or service periods shall not begin before all details about the execution of the Rental Contract have been clarified and all other requirements to be fulfilled by the Customer are met, in particular agreed advance payments or securities have been made respectively provided in full. This shall apply to delivery and/or service dates. If the Customer

has requested changes after placing the order, a new, reasonable delivery and/or service period shall begin upon our confirmation of the change.

- 5.3 The Customer's interest in the provision of the Rented Items shall not apply in the event of default in delivery or service in the absence of other written agreement only if we do not deliver material parts/provide material parts on a rental basis or do so with delay. We shall not be in default as long as the Customer is in default in fulfilling obligations towards ourselves; this shall also include obligations under other contracts.
- 5.4 If we default in delivery or service, the Customer must first set us a reasonable grace period of at least 14 working days ("working days" are understood to mean Monday - Friday) for provision of the Rented Items, unless this is unreasonable in the individual case. If this elapses without effect, damage claims for breach of duty, for whatever reason, shall exist only as stipulated in Art. 10.
- 5.5 The Customer is in principle accountable and responsible for the installation, assembly, initial setup or establishment of operational readiness of the Rented Items. Only where corresponding services are expressly to be provided by us according to the Rental Contract, in whole or in part, shall such services be due from us. A connection to external systems / setting up of interfaces is, unless otherwise expressly stipulated, not the object of our obligation to perform. The Customer is obliged to confirm the proper handover of the Rented Item in writing. In the case of contractually agreed services for the installation, assembly, initial setup or establishment of operational readiness, the Customer shall cooperate in jointly determining the contractual condition and confirm this on the appropriate form.

**6. Delivery subject to own receipt of delivery / Force majeure**

- 6.1 If provision of the Rented Items is delayed or impossible, despite due and sufficient covering of requirements prior to conclusion of the contract with the Customer, for reasons for which we are not responsible, or events of force majeure occur, we shall notify our Customer in due time in writing or text form. In such case, we shall have the right to postpone the time or period of provision of the Rented Items for the duration of the obstruction or to rescind the contract in whole or in part for the part not yet fulfilled if we have met our foregoing duty to provide information. Events of force majeure are: strikes, war, lockouts, official intervention, epidemics and pandemics and their unforeseeable effects, energy shortages and shortages of raw materials, cyber attacks, transport bottlenecks through no fault of our own, company obstructions through no fault of our own, e.g. due to fire, water and damage to machinery, and any other obstructions which, when considered objectively, were not culpably caused by us.
- 6.2 If a date or period for provision of the Rented Items is agreed with binding force and the agreed date or period is exceeded by more than 2 months due to events according to paragraph 6.1, the Customer shall have the right, after a reasonable grace period has elapsed without effect, to rescind the contract for the part not yet fulfilled, if the Customer cannot be objectively expected to adhere further to the contract.

Further claims of the Customer, especially damage claims, shall be excluded in such case.

## 7. Shipment of hardware / Packaging

7.1 Unless otherwise agreed in writing, the physical shipment of hardware by us shall take place uninsured at the Customer's risk and expense and ex our site/works specified in the order confirmation (INCOTERM EXW 2020).

7.2 If shipment of hardware is delayed at the Customer's request or for reasons for which the Customer is responsible, notice that the hardware is ready for shipment shall be equivalent to shipment and the risk of accidental loss shall pass to the Customer (passing of risk). In such case, we shall also have the right, beginning upon expiry of the period set in the written notice of readiness for shipment, to store the hardware and to assert the storage costs incurred for this in the amount customary in the market and to be proved by us. The assertion of further rights shall remain unaffected. Furthermore, we shall have the right, after the period expires, to dispose of the hardware otherwise, and to supply the Customer again on a rental basis after a reasonable period.

7.3 The risk of accidental loss or accidental deterioration shall pass to the Customer upon the hardware to be delivered being handed over to the Customer, the forwarding agent, carrier or firms otherwise entrusted to carry out the shipment but at the latest upon leaving our works.

7.4 If the shipment is delayed because we assert our right of retention due to the Customer's default in payment in whole or in part or due to another reason, for which the Customer is responsible, the risk shall pass to the Customer at the latest as of the date of notification of readiness for shipment.

7.5 If there is a statutory obligation to take back transport packaging and the Customer requests us to take back transport packaging, the Customer undertakes to have return deliveries processed free domicile or order the return delivery.

## 8. Notice of defects / Warranty

8.1 For the term of the Rental Contract, we shall maintain the Rented Items in a condition suitable for the contractual use and perform the maintenance and repair work required for this. The corresponding measures shall be carried out at regular maintenance intervals and where defects, malfunctions or damage occur. The obligation to maintain the contractual use does not include the adaptation of the Rented Items to changed operating conditions and technical and functional developments such as changes in the IT environment, especially change in the hardware or operating system, adaptation to the range of functions of competing products or establishment of compatibility with new data formats.

8.2 If the Rented Item is software, we shall fulfil our obligation to maintain the contractual use primarily by providing available patches, updates, upgrades and new releases and versions of the software. In the case of Third-Party Software, the new software version shall be provided, where applicable, directly by the respective software manufacturer. Any further services (e.g. service/support hotline, ongoing remedy of malfunctions

outside the warranty) shall be performed by us only if this has been expressly stipulated in the Rental Contract.

8.3 The Customer must notify us of defects, malfunctions or damage of the Rented Items immediately, stating information known to the Customer and relevant for recognising them. The notification must include in particular the following information:

- problems that have occurred;
- the affected function or, in the case of software, the program functionality;
- the number of affected users, a screenshot of the problem if visible via the user interface and a defect description;
- description of the system and hardware environment as well as any simultaneously used Third-Party Software.

The Customer must take measures to the extent reasonable that facilitate identification of the defects and their causes. In the case of provision of Third-Party Software, we can require the Customer to forward the foregoing notification directly to the respective software manufacturer and to cooperate directly with the software manufacturer in the context of the further remedy of defects respectively malfunctions.

8.4 The notice of defects according to paragraph 8.3 must be given in writing or text form.

8.5 The provisions of Art. 12 shall furthermore apply to defects of title of the Rented Items.

8.6 In the case of material defects, we shall first provide a warranty by means of supplementary performance. For this purpose, we shall, at our option, provide the Customer with a new Rented Item free from defects or, in the case of software, a new software version, especially patches, bug fixes or new versions of the software or otherwise remedy the defect. In the case of material defects of Third-Party Software, the new software version shall, where appropriate, be provided directly by the respective software manufacturer. The Customer must accept the new software version provided and install it on the Customer's hardware and software environment according to the installation instructions from us or the software manufacturer, provided that the contractual scope of functions of the software is maintained. In addition, a defect can also be remedied in the form of instructions (workaround) to the Customer. The Customer must follow such instructions. If we perform services in detecting or remedying defects, without being obliged to do so, we can require a remuneration according to cost, if the Customer has failed to recognise at least through gross negligence that a defect did not exist.

8.7 Termination by the Customer pursuant to Section 543 (2) No 1 *BGB* for failure to provide the contractual use shall be admissible only when we have been given sufficient opportunity to remedy defects and this has failed. Failure of remedy of defects is to be assumed only when this is impossible, when it is refused or unreasonably delayed by us, where there are justified doubts as to the prospects of success or it is unreasonable for the Customer for other reasons. If the Rented Item is software, the Customer shall have no right of self-remedy according to Section 536a (2) *BGB*.

- 8.8 An immediate reduction in the recurring rental fee shall only be admissible if the claim for reduction is undisputed or has been recognised by declaratory judgment. The right is reserved for the Customer to claim back any overpaid amounts according to the principles of unjust enrichment (Sections 812 et seq. *BGB*).
- 8.9 Further claims by the Customer for or in connection with defects or consequential damage caused by a defect, for whatever reason, shall exist only subject to the provisions of Art. 10.
- 8.10 If the Customer or a third party makes an incorrect rectification, unauthorised changes or changes not agreed with us and expressly released are made to the Rented Items, parts are exchanged or consumables used, which do not comply with the specifications or our operating or maintenance instructions are not complied with, we shall not be liable for the resulting consequences. This shall not apply, however, if the warranty claim cannot be proved to be due to one of the above-mentioned reasons for exclusion.
- 8.11 Claims based on defects shall not exist in the case of only an insignificant deviation from the agreed or customary quality or usability.
- 8.12 Recognition of breach of duty, especially in the form of material defects, shall only be valid when given in writing.

## 9. Remuneration / Payment terms / Adjustment of rental fee

- 9.1 All our prices are in principle quoted in EUROS and exclude packaging, freight and value added tax which shall be borne by the Customer at the respective legally valid rate.
- 9.2 Remuneration for provision of the Rented Items shall be invoiced by us according to the intervals stipulated in the Rental Contract (e.g. monthly, quarterly, annually) on an ongoing basis respectively at the beginning of each interval. If there is no corresponding provision for invoicing made in the Rental Contract, the remuneration shall be due and invoiced monthly in advance respectively on the 1st of each month.
- 9.3 Our invoices are payable within 10 days of provision of the Rented Item and receipt of the invoice without any deduction (e.g. cash discount), unless otherwise agreed in writing. The date payment is received by us or credited to our account shall be deemed the payment date.
- 9.4 The Customer shall have a right of retention or right of set-off only with respect to those counterclaims that are not disputed or have been recognised by declaratory judgment. The Customer can exercise a right of retention only if the Customer's counterclaim is based on the same contractual relationship.
- 9.5 The Customer shall have the right to the use of software that exceeds the rights of use granted in the Rental Contract only after our prior written consent. In the case of overuse without consent (especially in the case of simultaneous usage of a larger number of users than agreed), we shall have the right to require an appropriate remuneration for the further use, which shall be calculated as a rule according to the price list valid at that time, unless the Customer proves substantially lower damage by us. Further claims by us and, where Third-

Party Software is supplied, by the software manufacturer as well shall remain unaffected.

- 9.6 We shall have the right at our reasonably exercised discretion (Section 315 *BGB*, subject to judicial review according to Section 315 (3) *BGB*) to increase the rental prices unilaterally where procurement costs, wage and ancillary wage costs, social security contributions as well as energy costs and costs due to legal requirements, environmental charges, currency regulations and/or other public charges increase if these have a direct or indirect impact on the costs of our contractually agreed services and increase by more than 5%. An increase as mentioned above shall be excluded if the increase in costs for individual or all of the above-mentioned factors is set off by a reduction in costs for other of the above-mentioned factors with respect to the overall cost burden for the services (cost balancing). If above-mentioned cost factors are reduced, without the reduction in costs being set off by the increase in cost factors other than those mentioned above, the reduction in costs shall be passed on to the Customer through a price reduction. We shall notify the Customer in writing of the change at the latest six (6) weeks before it enters into force. If the new price based on our right to adjust prices as stated above is 25% or higher than the original price, the Customer shall have the right to terminate the Rental Contract.

## 10. Liability / Exclusion and limitation of liability

- 10.1 Subject to the exceptions specified below, we shall not be liable in the case of breach of duty arising from the contractual obligation, in particular not for claims by the Customer for damages or reimbursement of expenses, for whatever legal reason.
- 10.2 The above exclusion of liability pursuant to paragraph 10.1 shall not apply
- in the case of own intentional or grossly negligent breach of duty and intentional or grossly negligent breach of duty by legal representatives or vicarious agents;
  - in the case of violation of material contractual obligations; "material contractual obligations" are obligations, the fulfilment of which defines the contract, and on which the Customer may rely;
  - in the event of injury to life, limb and health, also caused by legal representatives or vicarious agents;
  - in the case of default if a fixed-date delivery and/or fixed-date service was agreed;
  - where we have assumed a guarantee for the quality of our goods or the existence of a contractual performance or a procurement risk within the meaning of Section 276 *BGB*;
  - in the case of liability under the *Produkthaftungsgesetz* [German Product Liability Act] or other mandatory statutory liability.
- 10.3 If we or our vicarious agents are responsible only for slight negligence and none of the cases specified in c), e) and f) of paragraph 10.2 above exist, we shall be liable, in the case of violation of material contractual obligations as well, only for damage typical for the contract and for foreseeable damage.
- 10.4 In the case of loss or destruction of data, we shall be liable only if we have caused the loss or destruction with intent, through gross negligence or due to a violation of a material

contractual obligation. Liability of ourselves for the simple negligent violation of a material contractual obligation shall be limited in the foregoing case in amount to the damage which would also have been incurred in the event of proper data backup by the Customer.

10.5 No-fault liability of ourselves according to Section 536a (1), 1<sup>st</sup> Alternative *BGB*, for defects of the Rented Items, which were already present at the time of conclusion of the contract, is excluded.

10.6 Exclusion respectively limitation of liability pursuant to paragraphs 10.1 to 10.5 above shall apply to the same extent for the benefit of our bodies, our executive and non-executive employees and other vicarious agents as well as our sub-contractors.

10.7 There is no connection between the reversal of the burden of proof and the foregoing provisions.

## 11. Export control / Intra-Community trade in goods

11.1 In the absence of other written agreement, our Rented Items are intended at all times to remain and for use in the country of destination agreed with the Customer. We are not obliged to provide the Customer with appendices or documents relating to:

- non-preferential origin of goods (e.g. certificate of origin)
- preferential origin of goods, especially proof of preferential treatment status and (long-term) supplier's declarations
- customs tariff number
- German AL [export list] number
- Export Control Classification Number pursuant to Annex I and IV of Council Regulation (EC) 428/2009
- Export Control Classification Number pursuant to the U.S. Commerce Control List

If we provide the Customer with related information in an individual case, this shall be without liability as to the accuracy of the information. The Customer shall not as a result acquire any right to receive such information from us for future business transactions.

11.2 The export of certain goods may be subject to authorisation e.g. because of their nature or intended purpose or final destination. This shall apply in particular to so-called dual-use goods. The Customer shall be obliged to comply strictly with the relevant export regulations and embargos for these goods (Rented Items, products, software, technology), especially of the European Union (EU), Germany respectively other EU Member States and, if applicable, the USA.

11.3 The Customer shall in particular check and ensure that

- a) the Rented Items provided are not intended for use in armaments, nuclear facilities or weapon technology;
- b) no companies and persons specified on the US Denied Persons List (DPL) are supplied with original US goods, US software and US technology;
- c) no companies and persons specified on the US Warning List, US Entity List or US Specially Designated Nationals List are supplied with original US products without relevant authorisation;
- d) no companies and persons are supplied who are

specified on the List of Specially Designated Terrorists, Foreign Terrorist Organisations, Specially Designated Global Terrorists or the EU Terrorist List;

- e) the early-warning indications of the competent German or national authorities of the respective country of origin of provision of the Rented Items are complied with.

The Customer undertakes to forward to us immediately upon request but at the latest within 10 days the corresponding original end-use certificates in the form specified by the *Bundesamt für Wirtschaft und Ausfuhrkontrolle* [German Federal Office for Economic Affairs and Export Control].

11.4 Our Rented Items may be accessed and used only if they comply with the above checks and assurances; otherwise we are not obliged to perform.

11.5 The Customer undertakes to indemnify us against all damages incurred by us arising from culpable violation of the foregoing obligations pursuant to paragraphs 11.1 to 11.4. The extent of the damages to be compensated also includes reimbursement of all necessary and reasonable expenses that we incur or have incurred, especially the costs and expenses of any legal defence as well as any official administrative fines or fines.

11.6 In the case of a culpable violation of the foregoing obligations pursuant to paragraphs 11.1 to 11.4 by the Customer, we shall have the right to terminate the Rental Contract without notice for good cause.

11.7 The Customer confirms the correctness of the Customer's VAT identification number, which the Customer shall give us, without being requested to do so, immediately after the contract is concluded. The Customer undertakes to notify us and the domestic tax authority competent for the Customer immediately of any change of the Customer's name, address, company name and VAT identification number. If the provision of Rented Items is treated as subject to taxation due to errors in specifying the name, company name, address or VAT identification number, the Customer shall reimburse the tax to be paid by us as a result.

11.8 In the case of double taxation - purchase tax in the customer country, VAT in Germany - the Customer shall pay the overpaid VAT, i.e. the VAT not owed due to the purchase tax liability, to us, waiving the defence of disenrichment.

## 12. Third-party property rights

12.1 We shall only be obliged to provide the Rented Items free from third-party rights or claims which (i) obstruct, restrict or exclude the contractual use of the Rented Items, (ii) which are based on industrial property rights or other intellectual property and (iii) which we were aware of when the contract was concluded or were not aware of due to gross negligence, provided that the right or claim is based on industrial property rights or other intellectual property

- a) according to the law of the Federal Republic of Germany, if our Customer has its registered office or branch there; or
- b) according to the law of a third country only if we have expressly agreed in writing the use or provision of our Rented Items in that third country (country of destination) with the Customer.

12.2 If a third party makes justified claims against our Customers in respect of our Rented Items pursuant to paragraph 12.1 above, we shall be liable to the Customer as follows:

- a) We shall at our option first try at our expense either to obtain a right of use for the relevant Rented Items or modify the Rented Items in such a way that the property right is not infringed or exchange them. If we cannot do so on reasonable conditions, the Customer shall be entitled to its statutory rights which shall, however, be governed by these General T&Cs HW/SW Rental.
- b) The Customer shall be obliged to notify us immediately in writing of claims asserted by third parties, not to admit any infringement and to reserve all defensive measures and settlement negotiations for us. If the Customer ceases using the Rented Items for reasons of mitigation or other good cause, the Customer shall be obliged to advise the third party that cessation of use is not deemed to be an acknowledgement of an infringement of property rights. If an action for infringement of property rights is brought against the Customer by third parties resulting from the use of Rented Items supplied by us, the Customer undertakes to notify us of this immediately and to give us and, where applicable, our affected third-party supplier (e.g. software manufacturer, from whom we have purchased the third-party software) the opportunity to participate in any legal action. The Customer shall support us and, where applicable, our third-party supplier in every respect in conducting such legal action. The Customer shall not take any action which could impair our legal position or that of the third-party supplier.

12.3 Our obligation according to paragraphs 12.1 and 12.2 shall not cover cases where

- a) the infringement of property rights results from the fact that, in producing the Rented Items, we acted on information or other data that were provided or specified to us by the Customer; or
- b) the infringement of property rights is due to an application of the Customer which we could not foresee or is caused by the fact that the Rented Items were modified by the Customer or mixed or used together with items not supplied by us; or
- c) the infringement of property rights is caused by use of the Rented Items in a field of application and use that has not been agreed.

12.4 Our liability according to Art. 10 shall remain unaffected.

### 13. Customer's obligations to cooperate and other obligations

13.1 The Customer shall specify a contact person to us, who can make binding decisions for the Customer during the execution of the Rental Contract and shall be available to exchange necessary information. Necessary decisions of the Customer are to be brought about by the contact partner without delay and documented by the parties jointly in writing, if possible immediately thereafter.

13.2 The Customer shall support us, if necessary, in providing the Rented Items, in particular shall create all conditions in the Customer's operating sphere which are necessary for the proper execution of the contract and shall help to ensure that

we can begin to provide the Rented Items on time in each case and perform without obstruction and interruption. The Customer shall furthermore inform us immediately in writing of changes in the field of application and of malfunctions resulting from the Customer's area of responsibility (e.g. of the network operator, access provider) and their expected duration.

13.3 In particular, the Customer shall make available to us, if required for provision of the Rented Items, free of charge and in due time: unrestricted access to the place of provision of the Rented Items, provide the current plans, operating data, safety instructions, functioning transmission and communication equipment as well as other necessary information and documents relating to the Rented Items; auxiliary equipment not provided by us and necessary for provision of the Rented Items; electricity, water, sanitary facilities, parking facilities; authorisations and other permits required for provision and not expressly due from us. In the case of stored program systems, the Customer shall be obliged in particular to notify user data with binding effect in due time prior to provision of the Rented Items. If provision of the Rented Items is also rendered at the Customer's premises, the Customer shall provide us with suitable workplaces and, after consultation, work equipment for use in execution of the contract. In particular, the Customer shall permit our employees and authorised representatives free access to the Rented Items during normal business hours for servicing and repair work. In so doing, the Customer's legitimate security interests are to be safeguarded.

13.4 The Customer must treat the Rented Items with care and protect them from damage. The Customer shall follow our instructions for maintenance, care and use, especially the information contained in the application documentation provided and the product description to the extent reasonable for the Customer. The Customer further undertakes to insure the Rented Items adequately against damage, destruction and theft and to provide proof of the conclusion or existence of electronics insurance upon request.

13.5 Modifications and attachments by the Customer to the hardware provided shall require our prior written consent. This shall apply in particular to attachments or installations and connection of the hardware to other equipment, EDP systems or networks.

13.6 The cooperation to be provided by the Customer constitutes real obligations and not only mere incidental obligations. If and insofar as the Customer does not provide the services owed by the Customer, does not do so in due time or not as agreed and this impacts on the provision of the Rented Items, we shall be released from the obligation to provide the Rented Items. The corresponding delivery/service periods shall be postponed by an appropriate period of time. Additional expenses incurred by us due to failure to perform the obligations to cooperate according to the contract or by violations of other obligations incumbent upon the Customer can be invoiced by us separately according to cost. Any further claims shall remain unaffected.

13.7 In addition to the foregoing provisions, the following shall apply to the provision of software:

13.8 The Customer has informed itself about the essential functional features of the software and bears the sole risk that

these correspond to the Customer's expectations and needs. In case of doubt, the Customer has sought advice from us or from expert third parties prior to conclusion of the contract. The installation instructions described in the product description and/or application documentation, especially the hardware and software environment, as well as any other conditions for use (e.g. necessary additional software), which must be available at the Customer, must be observed for the installation and operation and use of the software. The setup of a properly functioning hardware and software environment for use of the software is the sole responsibility of the Customer. Where the use of additional software is necessary to use the software, this is not a delivery item of the Rental Contract but is to be purchased separately by the Customer. Finally, the Customer shall be obliged to keep the software in each case up to date according to the current program versions made available by us or, in the case of Third-Party Software, by the software manufacturer.

13.9 The Customer shall thoroughly test before use that the software is free from defects and can be used in the existing hardware and software configuration. This shall also apply to any patches, updates, upgrades and new releases and versions of the software provided to the Customer, especially in the context of rectification, after conclusion of the contract.

13.10 The Customer shall grant us, at our option, either remote access to the software by means of remote data transmission and/or the possibility of accessing this on site at the Customer for the purposes of troubleshooting and remedy of malfunctions during the Customer's normal office hours.

13.11 The Customer shall be obliged to perform proper data backups on a regular basis. The Customer shall be obliged in particular to perform a data backup immediately before installation of the software and any patches, updates, upgrades and new releases and versions provided by us and, during operation of the software, to keep all data used or obtained in connection with the software available in machine-readable form as backup copy, which enables the reconstruction of lost data with reasonable effort.

13.12 The condition for maintenance of the possibility of use of the Rented Items, due from us according to the contract, in particular for the performance of maintenance and repair work as well as remedy and handling of defects, is furthermore that the Customer uses the latest version level of the software provided by us. The latest version level of the software is when all patches, updates, upgrades and new releases and versions of the software provided by us under the Rental Contract or, in the case of Third-Party Software, by the respective software manufacturer have been installed.

#### 14. Confidentiality / Data protection

14.1 The Customer undertakes to keep confidential such facts, documents and knowledge, which the Customer becomes aware of in the course of performing the business relations with ourselves and which contain technical, financial, business or market-related information about our company, if we have designated the respective information as subject to confidentiality or we have an obvious interest in its confidentiality (hereinafter collectively referred to as confidential information). The Customer shall use the confidential information solely for the purpose of implementing and performing the contractual relationship

with ourselves according to the contract and the individual contracts based thereon.

14.2 Disclosure of confidential information to third parties by the Customer shall require our express and prior written consent.

14.3 There shall be no obligation to maintain confidentiality pursuant to paragraph 14.1 if it is proved that the respective confidential information:

- a) is or becomes generally known without any action on the part of the Customer; or
- b) was already known to the Customer or is disclosed by a third party authorised to do so; or
- c) is developed by the Customer without any action on our part and without exploitation of other information or knowledge acquired through the contractual contact; or
- d) must be disclosed due to mandatory statutory provisions or orders by a court or official authority.

14.4 The parties process personal data in compliance with the respectively applicable provisions on data protection, especially Regulation (EU) 2016/679 (General Data Protection Regulation).

14.5 In respect of the Customer's personal data, we shall observe the relevant statutory data protection regulations. Personal data of the Customer shall be collected, stored, processed and used by us if, when and as long as this is necessary to establish, perform or terminate the Rental Contract with the Customer. Further collection, storage, processing and use of the Customer's personal data shall only take place if legislation requires or permits this or the Customer has consented to this. The Customer is aware that the collection, processing and use of the contact data of the Customer's contact partners (name, e-mail addresses etc.) based on Art. 6 (1) b) GDPR is necessary to implement measures prior to entering into a contract and to fulfil the contract with the Customer. We have the right in particular to transfer the data to third parties if and when this is necessary to take measures prior to entering into a contract and to fulfil the contract (e.g. for delivery, invoicing or customer service) pursuant to Art. 6 (1) b) GDPR or to fulfil a legal obligation within the meaning of Art. 6 (1) c) GDPR. Furthermore, we shall also forward such data to third parties (e.g. debt collection agencies), if necessary, for the purpose of enforcing claims according to Art. 6 (1) b) and/or f) GDPR.

14.6 Our privacy policy is available at: <https://spie.de/footer-dt/datenschutzhinweise-fuer-kunden-geschaefspartner-und-interessenten>.

14.7 If, in fulfilling the Rental Contract, we process personal data on behalf of the Customer, we shall process the personal data only within the scope of the performance of services due under the contract or the Customer's other written instructions and pursuant to data protection regulations. Details of the commissioned processing shall be determined by the parties in a separate "Contract on Commissioned Data Processing". This shall take precedence in its scope of application over the provisions of these General T&Cs HW/SW Rental.

## 15. Contract term / Termination / Suspension of services / Return

15.1 The term of the Rental Contract is stipulated in the respective Rental Contract and is always understood as minimum term. Unless otherwise agreed in the Rental Contract, the Rental Contract shall have a minimum term to the end of the full calendar year following conclusion of the contract. The Rental Contract shall be extended thereafter respectively by one (1) further calendar year, unless terminated by notice of three (3) months to the end of the minimum term or the respective year of extension. Ordinary termination is excluded before expiry of the minimum term.

15.2 Either party shall have the right to terminate the Rental Contract for good cause at any time according to Section 314 *BGB*. Good cause exists if facts are given, based on which the terminating party can no longer be expected, taking all circumstances of the individual case into account and considering the interests of the other party, to continue the Rental Contract ("good cause"). If good cause exists in the violation of a contractual obligation, termination shall be admissible only after expiry of a time limit set for remedy without effect or a notice has remained without effect, unless the setting of a time limit is unnecessary pursuant to Section 323 (2) *BGB*. Good cause, entitling us to termination, exists in particular if the Customer is in default in payment of the rental fee and despite reminder notice makes no payment or violates material obligations of the Rental Contract or these General T&Cs HW/SW Rental.

15.3 We shall have the right to suspend our contractual services temporarily (including the deactivation of possibilities of use of the Rented Items) if there are specific indications that the Customer is violating or has violated these General T&Cs HW/SW Rental, the Rental Contract, licensing terms or other terms agreed in the Rental Contract of our third-party suppliers (e.g. software manufacturers of Third-Party Software) and/or applicable law or if we have another legitimate interest in suspension (e.g. default in payment by the Customer, violation of licensing terms). When deciding on suspension, we shall adequately consider the Customer's legitimate interests and give written warning of suspension in advance with reasonable notice. In individual cases, a suspension can be carried out by us without prior warning as well in order to safeguard the legitimate interests pursued by us with blocking, unless a prior warning is required by law or for other legal reasons. Suspension shall not be deemed at the same time to be termination of the Rental Contract. We can maintain suspension without termination only for a reasonable period, at most three (3) months. Our right to payment of the remuneration shall remain unaffected during suspension. The Customer shall be entitled to the resumption of the services after the Customer has proved that it has ceased use in breach of the contract and has prevented any future use in breach of the contract.

15.4 Any use of the Rented Items, including any copies of software, shall not be admissible after termination of the Rental Contract. The Customer shall return the Rented Items to us in a proper condition. If the Customer has changed the Rented Items, the Customer shall be obliged when returning them to restore the original condition at the Customer's expense. When the Rented Items are returned, a protocol shall be drawn up, specifying any existing changes, damage and defects of the Rented Items. The Customer shall

reimburse the costs for restoration in the case of damage or defects for which the Customer is responsible. Unless otherwise agreed in the Rental Contract, the Customer shall bear the costs for disassembly, deinstallation, packaging and return transport of the Rented Items. Alternatively, we can require for software that the Customer deinstalls the software and deletes or destroys any data storage devices provided to the Customer and all copies of the software made, except for archive copies, and makes a declaration at our request concerning the deletion/destruction.

15.5 If the Customer continues using the software after expiry of the Rental Contract, the Rental Contract shall not be deemed extended. Section 545 *BGB* shall not apply.

## 16. Place of performance / Place of jurisdiction / Applicable law

16.1 Place of performance for all contractual obligations is our company's registered office except where an obligation to be performed at the Customer's place of business is assumed.

16.2 We have the right at any time to transfer the rights and obligations hereunder in part or in their entirety to affiliated companies within the meaning of Sections 15 et seq. *AktG*.

16.3 All agreements, collateral agreements, assurances and contract amendments shall only be valid when given in writing. This shall also apply to waiver of the written form requirement. If these General T&Cs HW/SW Rental require the written form, this shall also be maintained by transmissions using telefax or email, digital/electronic signatures and signatures (e.g. DocuSign). The precedence of an individual agreement (Section 305b *BGB*) shall remain unaffected.

16.4 Any disputes shall be settled exclusively before a competent court of law at the location of our registered office. We shall also have the right, however, to bring an action against the Customer at the Customer's place of general jurisdiction.

16.5 The law of the Federal Republic of Germany shall apply exclusively to all legal relations between the Customer and ourselves, to the exclusion of the UN Sales Convention (CISG).

**SPIE Deutschland & Zentraleuropa GmbH**