

**General Terms and Conditions  
for Services (*inter alia* Consultancy etc.)  
("General T&Cs Services") status 09/2022**

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

- 1.1 These General Terms and Conditions for Services (hereinafter referred to as **General T&Cs Services**) 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 Services apply exclusively to companies within the meaning of Section 14 BGB [German Civil Code] (hereinafter referred to as "**Customer**") 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.
- 1.3 Business relations with our Customers concerning services 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 Services 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 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 Services in writing.

**2. Conclusion of the contract, object of the contract and scope of services**

- 2.1 Our quotations are subject to change and not binding, unless they were identified as binding. If the Customer places an order based on quotations subject to change, a 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, the contract shall be concluded by performance of the service. If an order confirmation is provided by us, this alone shall govern the content of the contract, in particular the scope of the services and the time of performance.
- 2.2 Object of the order is the service agreed according to paragraph 2.1 above but not, unless expressly agreed in writing or text form, a specific (economic) outcome. The services also do not include any questions of legal form or admissibility. We assume no liability for the usability of our

services for a purpose intended by the Customer other than mandatory statutory liability.

- 2.3 Reference to standards, similar technical regulations and technical, economic or other information, descriptions and illustrations of the services to be supplied in quotations and brochures and our advertising shall constitute a property of our services only when we have expressly declared the quality to be a "*property of the service*". These are otherwise non-binding, general specifications of services.
- 2.4 We shall only be deemed to have given a guarantee if we have designated a property and/or a contractual performance in writing as "*guaranteed by law*".
- 2.5 Data supplied by third parties at the request or initiative of the Customer or by the Customer are exclusively the responsibility of the Customer and without explicit order shall be checked only for plausibility and not validated by us. The conclusions and recommendations to be derived by us from the services shall be made to the best of our knowledge and according to recognised rules of science and practice.
- 2.6 Unless otherwise agreed in writing or text form, we can use specialised subcontractors at our discretion to execute the order.
- 2.7 We shall examine and take into account at our own discretion any change requests by the Customer with regard to the contractually agreed services if this is possible within the framework of capacities and scope of expenditure planning and scheduling. If such changes affect the terms and conditions of the contract, the parties shall agree an adjustment of the contract, in particular in relation to remuneration and service time/periods. If agreement is not reached about this, we shall not be obliged to provide the Customer's change request regarding the agreed services.

**3. Customer's obligations to cooperate**

- 3.1 The Customer shall specify a contact person to us as central contact partner in all project matters for the agreed service period, who can make binding decisions for the Customer during the execution of the 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.
- 3.2 The Customer undertakes to support us in our performance of the services free of charge to a reasonable and necessary extent and to create in the Customer's operating sphere all the conditions necessary for the proper execution of the order and to provide cooperation. In particular, the Customer shall provide in due time all documents and information necessary or significant for the performance of the services, especially current plans, operating data, safety information, manufacturer's information and all other documents/information required in relation to the services and notify all processes and circumstances significant for the performance of the services, even if they only become known during our work.
- 3.3 Where required, the Customer shall create the conditions in the Customer's operating sphere free of charge which are

necessary for the proper execution of the services. Such conditions include *inter alia* that the Customer

- provides the above-mentioned documents within the period stipulated;
- provides our employees at all times with access to the information and premises necessary for their work and provides them with all necessary documents in due time;
- provides any necessary work equipment upon express request by us;
- makes available, where necessary, lockable workrooms for our employees upon express request by us;
- notifies, in the case of stored program systems, user data to us with binding effect in due time prior to commencement of the service.

3.4 The cooperation to be provided by the Customer constitutes authentic obligations and not only mere incidental obligations. If and insofar as the Customer does not provide the services owed by the Customer, not in due time or not as agreed and this impacts on the performance of our services, we shall be released from the obligation to perform the services concerned. The corresponding service periods shall be postponed by an appropriate period of time. Additional expenses incurred by us as a result shall be separately remunerated based on the agreed conditions, without prejudice to further rights. Further claims shall remain unaffected by this.

#### 4. Delivery subject to own receipt of delivery / Force majeure and other obstructions

4.1 If we do not receive services from our subcontractors required to perform the service which is due from us, despite proper and sufficient covering of requirements prior to conclusion of the contract with the Customer, for reasons for which we are not responsible, or they are incorrect or not in due time 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 services 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 in particular: strikes, lockouts, war, 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.

4.2 If a service date is agreed with binding force and is exceeded due to events according to paragraph 4.1, the Customer shall only have the right, after a reasonable grace period has elapsed without effect, to terminate the contract for the part not yet fulfilled, if the Customer cannot be objectively expected to adhere further to the contract and the event according to paragraph 4.1 has already persisted for longer than 2 months. Further claims of the Customer, especially damage claims, shall be excluded in such case. The Customer shall be obliged to pay for services performed until then according to that which has been agreed in this respect.

#### 5. Service times / Default

5.1 Binding service dates and times 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 Unless otherwise agreed, we shall be obliged to perform the respectively commissioned services only during normal business hours (Mon-Fri, except on national holidays and on 24.12. and 31.12., 08:00-18:00). Services performed outside normal business hours shall be remunerated plus appropriate supplements for extra work, night work and work at weekends and on public holidays, per hour or part thereof, per employee. Appropriateness is to be assumed in particular if the corresponding supplements result from provisions of collective agreements or other applicable company regulations, which we, if recourse is made to collectively agreed or otherwise company-regulated rates, shall have to prove to the Customer in a suitable form on request.

5.3 If no specific dates are agreed for the performance of our services but a period is agreed, this shall not begin before all details about the execution of the order have been clarified and all other requirements to be fulfilled by the Customer are met, in particular agreed advance payments have been made and information required for the performance of the services has been provided etc. This shall apply to service dates. If the Customer has requested changes after placing the order, a new, reasonable service period shall begin upon our confirmation of the change.

5.4 If we default in performance, 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 performance, 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 this Art. 5 and Art. 8. 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.

#### 6. Conclusion and completion of the services

6.1 Unless otherwise agreed, we shall notify the Customer of the completion of the services. Such notification also lies in the transmission of any agreed result of the services, report, statement etc. The services shall be deemed thereby performed and executed.

6.2 Remuneration shall become due (see specifically Art. 7), unless otherwise agreed, at the latest upon completion according to paragraph 6.1 of these General T&Cs Services.

#### 7. Remuneration and payment terms

7.1 If no agreement was reached on a remuneration, we shall be entitled to the remuneration customary in the industry for the services performed, unless certain services were expressly agreed as free of charge.

7.2 All our prices are in principle quoted in EUROS and exclude value added tax which shall be borne by the Customer at

the respective legally valid rate. Value added tax shall be shown separately on the invoice. Prices and price supplements shall be determined according to our price list generally valid at the time of conclusion of the contract, unless otherwise agreed.

7.3 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 prices for our services unilaterally where production costs, material costs and/or 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, changes in customs duties 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% and if more than 2 months elapse between conclusion of the contract and delivery/service. 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 delivery/service (cost balancing). If above-mentioned cost factors are reduced, without the reduction in costs being set off by the increase of other of the cost factors mentioned above, the reduction in costs shall be passed on to the Customer through a price reduction. 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 rescind contracts not yet executed in full with respect to the part of the contract not yet fulfilled. The Customer can, however, assert this right only immediately after notification of the increased remuneration.

7.4 Unless otherwise agreed, we shall have the right, in the case of an expected execution period of more than 90 days, to require an advance payment of 1/3 of the agreed total net remuneration upon conclusion of the contract plus value added tax.

7.5 Our invoices are payable within 10 days of performance of the services and receipt of the invoice without any deduction, unless otherwise agreed in writing. The date payment is received by us or credited to our account shall be deemed the payment date.

7.6 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.

## 8. Liability / Exclusion and limitation of liability

8.1 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.

8.2 The above exclusion of liability pursuant to paragraph 8.1 shall not apply

- a) 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;
- b) 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;
- c) in the event of injury to life, limb and health, also caused by legal representatives or vicarious agents;
- d) in the case of default if a fixed-date service was agreed;
- e) where we have assumed a guarantee for the existence of a contractual performance;
- f) in the case of liability under the *Produkthaftungsgesetz* [German Product Liability Act] or other mandatory statutory liability.

8.3 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 8.2 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.

8.4 Exclusion respectively limitation of liability pursuant to paragraphs 8.1 to 8.3 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 subcontractors.

8.5 Claims of the Customer according to the foregoing paragraphs shall become statute-barred within one year. Commencement of the limitation period shall be determined according to Section 199 (1) *BGB*. Paragraph 8.2 of these General T&Cs Services shall apply accordingly.

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

## 9. Third-party property rights

9.1 We shall only be obliged to perform the services free from third-party rights or claims which are based on industrial property rights or other intellectual property and 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 foreign state, if the Customer has its registered office or branch there; or

c) according to the law of a third country only if we have expressly agreed in writing the use of our services in that third country with the Customer.

9.2 If a third party makes justified claims against our Customers in respect of our services pursuant to paragraph 9.1 above, we shall be liable to the Customer within the period determined in paragraph 8.5 as follows:

a) We shall at our option first try at our expense either to obtain a right of use for the relevant services or modify the services in such a way that the property right is not

infringed. If we cannot do so on reasonable conditions, the Customer shall be entitled to the Customer's statutory rights which shall, however, be governed by these General T&Cs Services.

- 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 services 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 services performed by us, the Customer undertakes to notify us of this immediately and to give us the opportunity to participate in any legal action. The Customer shall support us in every respect in conducting such legal action. The Customer shall not take any action which could impair our legal position.

9.3 Our obligation according to paragraphs 9.1 and 9.2 shall not cover cases where

- a) the infringement of property rights results from the fact that, in performing the services, 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 services were modified by the Customer or mixed or used together with services not performed by us.

9.4 Our liability according to Art. 8 shall remain unaffected.

## 10. Confidentiality / Data protection

10.1 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.

10.2 Disclosure of Confidential Information to third parties by the Customer shall require our express and prior written consent.

10.3 There shall be no obligation to maintain confidentiality pursuant to paragraph 10.1 above 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.

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

10.5 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 service 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.

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

10.7 If, in fulfilling the service 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 Services.

## 11. Property rights, rights of use, ownership and retention of title

11.1 Unless otherwise agreed, property rights and copyrights to illustrations, drawings, performance and other descriptions of properties, cost estimates and other documents concerning our services of a physical and non-physical nature - also in electronic form - shall exist and remain with us; they may not be made accessible to third parties.

11.2 If, according to that which has been contractually agreed, ownership of work results and/or other products/services created by us is to pass to the Customer, such passing of ownership shall take place only upon full payment of all our claims arising from the business relationship with the Customer, including claims arising in the future from



contracts concluded at a later date. This shall also apply to any balance in our favour when any or all claims are incorporated by us in an open (current) account and the balance has been established.

11.3 Paragraph 11.2 shall apply accordingly to rights of use, insofar as the granting of such is the object of what has been contractually agreed.

11.4 A direct or indirect use of the services and work results provided by us by third parties shall be permitted only with our express written consent. "Third parties" within the meaning of this provision are also group companies of the Customer as defined by Sections 15 et seq. *AktG*.

## **12. Written form / Place of performance / Place of jurisdiction / Applicable law**

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

12.2 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*.

12.3 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 Services 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.

12.4 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.

12.5 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**