

**General Terms and Conditions  
for the Sale of Hardware and Software  
("General T&Cs HW/SW Purchase") status  
10/2024**

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

- 1.1 These General Terms and Conditions for the Sale of Hardware/Software ("**General T&Cs HW/SW Purchase**") apply to SPIE Germany Switzerland Austria 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 Purchase 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 purchase of hardware and/or software (hereinafter referred to as "**Customer Contract**") incorporating these General T&Cs HW/SW Purchase.
- 1.3 Business relations with our Customers concerning the purchase 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 Purchase 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 Purchase in writing.
- 1.5 The documents referred to in these General T&Cs HW/SW Purchase, especially the product description and/or our offer to conclude a Customer Contract, are integral parts of the Customer 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 deliveries or services**

- 2.1 Information and explanations regarding the hardware and software supplied by us (hereinafter also referred to collectively as "**Deliveries and Services**") shall be provided solely on the basis of our experience to date. Values specified in this context shall be deemed average values of our deliveries or services.
- 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 Deliveries and Services only when we have expressly declared the quality to be a "*property of the delivery or service*". 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 deliveries or services 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 deliveries or services. The Customer undertakes not to make the documents specified in the foregoing sentence accessible to third parties, unless we give our express written consent.

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

- 3.1 We or our respective licensors exclusively shall be entitled to all rights to the software supplied by us.
- 3.2 Upon full payment of the remuneration agreed for provision of the software, the Customer shall have a non-exclusive, non-transferable right, unlimited in terms of time, 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 delivery 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 supplied, unless further use is expressly permitted in the Customer 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 Making the software available temporarily or permanently in data center operations for third parties (e.g. as software as a service), sub-licensing and rental are not permitted.
- 3.6 The Customer may make backup copies of the software to the necessary extent according to 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 provided the necessary data and/or information, 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.
- 3.10 The Customer may use the software only to the extent stipulated in the Customer 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 Purchase and the Customer 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 Purchase and the respective Customer 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 third-party software and/or open source software, we herewith grant this to the Customer.
- 3.12 If the software to be supplied by us pursuant to the Customer 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 a 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 delivery / Procurement risk**
- 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 Customer 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 Customer Contract shall be concluded by execution of the delivery/service. If an order confirmation is provided by us, this alone shall govern the content of the contract, in particular the scope of the Deliveries and Services 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 Customer 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. Unless expressly agreed in the Customer Contract, no further services shall be due from us, in particular no consultancy, training, assistance, installation, implementation, maintenance, support and/or adaptation services. Further information relating to the hardware and software, e.g. in brochures, on websites or in the context of verbal presentations, are not information about quality, unless such information is expressly stated in the product description as well.

4.4 We shall only be obliged to deliver from our own stock.

4.5 We shall assume a procurement risk only by virtue of a separate written agreement, stating “*we assume the procurement risk...*”. Assumption of a procurement risk is not established in particular solely by the fact that we are obliged to deliver an article which is defined solely by its class.

## 5. Delivery and service times / Default

5.1 Binding delivery and service dates 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 order 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 our delivery/service shall not apply in the event of default in delivery or service in the absence of other written agreement only if we fail to deliver material parts or deliver 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 the delivery/service, 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. 11.

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

6.1 If we do not receive deliveries or services from our suppliers required to provide the service which is due from us under the contract, despite proper and timely conclusion of a corresponding delivery contract with the supplier, 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 Principal in due time in writing or text form. In such case, we shall have the right to postpone the service 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 and have not assumed a performance risk. Events of force majeure are: 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.

6.2 If a delivery or service date is agreed with binding force and the agreed delivery or service date 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.

6.3 The above provision pursuant to paragraph 6.2 shall apply accordingly if a customary delivery period was exceeded for the reasons stated in paragraph 6.1, even without contractual agreement of a fixed delivery date.

## 7. Shipment / INCOTERMS / Passing of risk / Packaging in the case of delivery of hardware

7.1 Unless otherwise agreed in writing, hardware shall be shipped by us 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 the 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 invoice the costs incurred for this at 0.5% of the net price of the stored deliveries or services for each full month or part thereof but not more than 5% of the net price. The assertion of further rights shall remain unaffected. The right is reserved for the Customer to prove that no costs or substantially lower costs were incurred. Furthermore, we shall have the right, after the period expires, to dispose of the contractual deliveries or services otherwise, and to supply the Customer again 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 / Breach of duty / Warranty

### 8.1 Delivery of hardware

8.1.1 The Customer shall give us written notice of recognisable material defects immediately but at the latest 7 days after collection in the case of delivery ex works, otherwise after delivery or other provision. The Customer shall give us notice of hidden material defects immediately after their detection but at the latest within the warranty period according to paragraph 8.1.6. Material defects recognisable upon delivery must also be notified to the transport operator immediately upon delivery and the recording of the defects arranged by the transport operator. A notice of defects that fails to comply with requirements of form and/or time shall exclude any claim by the Customer for material defects. This shall not apply in the case of an intentional or a fraudulent act on our part, the assumption of a guarantee for the absence of defects by us or in the case of liability under the *Produkthaftungsgesetz* [German Product Liability Act].

8.1.2 In the case of material defects of hardware, we shall first provide a warranty by means of supplementary performance. For this purpose, we shall, at our option, provide the Customer with new hardware free from defects or otherwise remedy the defect. 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. If supplementary performance fails, the Customer shall have the right to set a reasonable grace period for remedy of the defect. In so doing, the Customer must expressly point out in writing that the Customer reserves the right to rescind the Customer Contract and/or claim damages in case of renewed failure. If remedy of the defect fails in the grace period as well, the Customer can rescind the Customer Contract or reduce the remuneration, if not only an insignificant defect exists.

8.1.3 Place of rectification is the place to which we have delivered as agreed. If the costs of supplementary performance increase due to the fact that the Customer has transferred the goods to a place other than the place of our delivery/service, the costs incurred as a result shall be borne by the Customer.

8.1.4 When processing, treating, combining or mixing with other items begins, the deliveries or services supplied shall be deemed, in the case of recognisable material defects, approved by the Customer according to the contract. This shall apply if they are shipped on from their original destination. Before any of the above activities begin, it shall be incumbent upon the Customer to clarify, through inspections that are appropriate in terms of method and scope, whether the supplied deliveries or services are suitable for the processing purposes, process purposes and other purposes intended by the Customer.

8.1.5 The Customer must give notice in writing immediately of other breach of duty, setting a reasonable period for remedy, before asserting further rights.

8.1.6 We shall provide a warranty for material defects for a period of one year, calculated from the date of the passing of risk

(see Art. 7). This shall not apply if we are culpable of fraudulent intent, intent or gross negligence and in the cases pursuant to paragraph 11.2 (a) - (f) below. The periods of limitation arising from Sections 438 (1) No 2, 445b (1) and 634a (1) No 2 *BGB* shall remain unaffected.

8.1.7 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. 11, unless these are damage claims resulting from a guarantee which is intended to cover the Customer against the risk of any defects. In this case too, however, we shall be liable only for typical and foreseeable damage.

8.1.8 If the Customer or a third party makes an incorrect rectification, unauthorised changes are made to the deliveries or services, parts are exchanged or consumables used, which do not comply with our specifications for consumables that can be used, 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.

8.1.9 Our warranty and liability arising therefrom shall likewise be excluded if defects and damages connected therewith cannot be proved to be due to defective material or defective execution or defective instructions on use. In particular, warranty and liability arising therefrom shall be excluded with respect to the consequences of incorrect use, excessive use or inappropriate storage conditions, for example the consequences of chemical, electromagnetic, mechanical or electrolytic influences that do not correspond to the envisaged, average standard influences. This shall not apply in the case of fraudulent or intentional conduct on our part or injury to life, limb or health or liability according to the *Produkthaftungsgesetz*.

8.1.10 Claims based on defects shall not exist in the case of only an insignificant deviation from the agreed or customary quality or usability.

8.1.11 Recognition of breach of duty, especially in the form of material defects, shall only be valid when given in writing.

### 8.2 Delivery of software

8.2.1 The following shall apply to the supply and provision of software in addition to the provisions under paragraph 8.1:

8.2.2 The Customer must notify us of recognisable material defects according to paragraph 8.1.1, stating information known to the Customer and relevant for recognising them. The Customer shall, to the extent reasonable, take the measures which facilitate determination of the defects and their causes. The notification must include in particular the following information:

- problems that have occurred;
- the affected 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.

In the case of the supply 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 within the scope of the further remedy of defects.

8.2.3 In the case of material defects of software, 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 software version, free from defects, 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 pursuant to the installation instructions from us or the software manufacturer, provided that the scope of functions of the software according to the contract 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.

8.2.4 If supplementary performance fails, the Customer shall have the right to set a reasonable grace period for remedy of the defect. In so doing, the Customer must expressly point out in writing that the Customer reserves the right to rescind the Customer Contract and/or claim damages in case of renewed failure. If remedy of the defect fails in the grace period as well, the Customer can rescind the Customer Contract or reduce the remuneration, if not only an insignificant defect exists. We shall pay damages or compensation for wasted expenditure due to a defect within the limits specified in Art. 11.

8.2.5 Furthermore, the provisions in Art. 13 shall apply to defects of title of software.

## 9. Prices / Payment terms

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 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 Deliveries and 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 Deliveries and 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 in cost factors other than those 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.

9.3 Our invoices are payable within 10 days of provision of the deliveries or services 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 Customer 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 customary in the industry for the further use, unless the Customer proves substantially lower damage to us. Further claims by us and, where Third-Party Software is supplied, by the software manufacturer as well shall remain unaffected.

## 10. Retention of title

10.1 We retain title to all goods delivered by us (hereinafter referred to as a whole as "Goods Subject to Retention of Title") until all our claims under the business relationship with the Customer, including claims arising in the future from contracts concluded at a later date, are paid. 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.

10.2 The Customer must insure Goods Subject to Retention of Title adequately, in particular against fire and theft. Claims against the insurance arising from a case of damage relating to Goods Subject to Retention of Title are already herewith assigned to us in the value of the Goods Subject to Retention of Title.

10.3 The Customer is authorised to resell the deliveries or services supplied in the normal course of business. The Customer is not permitted to make other disposals, especially pledging or granting of equitable lien. If Goods Subject to Retention of Title are not paid for immediately by third-party purchasers when resold, the Customer shall be obliged to resell under retention of title only. Authorisation to resell Goods Subject to Retention of Title shall cease to apply at once if the Customer suspends its payment or defaults in payment to us.

10.4 The Customer herewith already assigns to us all claims including securities and ancillary rights that accrue to the Customer against the final customer or third parties from or in connection with the resale of Goods Subject to Retention

of Title, also within the scope of current account relationships. The Customer may not reach an agreement with its customers that excludes or impairs our rights in any way or nullifies the assignment of the claim in advance. If Goods Subject to Retention of Title are sold with other items, the claim against the third-party customer amounting to the delivery price agreed between ourselves and the Customer shall be deemed assigned, unless the amounts applicable to the individual goods can be determined from the invoice.

10.5 The Customer shall remain entitled to collect the claim assigned to us until revoked by us, revocation being admissible at any time. At our request, the Customer shall be obliged to give us the information and documents in full required to collect assigned claims and, unless we do so ourselves, notify its customers immediately of the assignment to us.

10.6 The Customer must notify us immediately if the Customer has already assigned claims to third parties arising from the resale of deliveries or services supplied or to be supplied by us, especially due to real or unreal factoring, or made other agreements which can impair our current or future security interests pursuant to this Art. 10. In the case of unreal factoring, we shall have the right to rescind the contract and require the surrender of deliveries or services already supplied. This shall also apply to real factoring if, according to the contract with the factor, the Customer cannot freely dispose of the purchase price of the claim.

10.7 In the event of conduct by the Customer in breach of the contract through the Customer's fault, especially in the case of default in payment, we shall have the right, without previously having to rescind the contract, to take back all Goods Subject to Retention of Title. The Customer shall be obliged in such case to surrender the goods at once. We may at any time during normal business hours enter the Customer's business premises to determine the stock of the goods delivered by us. The Customer must notify us immediately in writing of any third-party attachment of Goods Subject to Retention of Title or claim assigned to us.

10.8 If the value of the securities existing for us according to the foregoing provisions exceeds the secured claims as a whole by more than 10%, we shall be obliged, at the Customer's request, to release securities at our option.

10.9 Treatment and processing of Goods Subject to Retention of Title shall be carried out for us as manufacturer within the meaning of Section 950 *BGB* but without obligation on our part. If Goods Subject to Retention of Title are processed or combined inseparably with other items that do not belong to us, we shall acquire co-ownership of the new item in the ratio of the invoice value for our goods to the invoice values for the other processed or combined items. If our goods are combined with other movable items into a uniform item that is deemed the principal item, the Customer shall herewith already assign co-ownership thereof to us in the same ratio. The Customer shall maintain ownership or co-ownership free of charge on our behalf. Rights of co-ownership accordingly arising shall be deemed Goods Subject to Retention of Title. At our request, the Customer shall be obliged at any time to provide us with the information required to pursue our ownership or co-ownership rights.

## 11. Liability / Exclusion and limitation of liability

11.1 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.

11.2 The above exclusion of liability pursuant to paragraph 11.1 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 delivery and/or fixed-date service was agreed;
- e) 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*;
- f) in the case of liability under the *Produkthaftungsgesetz* or other mandatory statutory liability.

11.3 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 11.2 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.

11.4 Exclusion respectively limitation of liability pursuant to paragraph 11.1 to 11.3 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 sub-contractors.

11.5 Claims of the Customer according to the foregoing paragraphs shall become statute-barred within one year of the passing of risk (see Art. 7). Paragraph 11.2 of these General T&Cs HW/SW Purchase shall apply accordingly. The period of limitation arising from Sections 438 (1) No 2, 445b (1) and 634a (1) No 2 *BGB* shall remain unaffected.

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

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

12.1 In the absence of other written agreement, our Deliveries and Services are intended at all times to remain and for use and sale in the first country of delivery 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.

12.2 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 (deliveries or services, products, software, technology), especially of the European Union (EU), Germany respectively other EU Member States and, if applicable, the USA.

12.3 The Customer shall in particular check and ensure that

- the deliveries or services provided are not intended for use in armaments, nuclear facilities or weapon technology;
- no companies and persons specified on the US Denied Persons List (DPL) are supplied with original US goods, US software and US technology;
- 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;
- 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;
- the early-warning indications of the competent German or national authorities of the respective country of origin of the delivery 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].

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

12.5 Where Deliveries and Services are passed on, the Customer undertakes to oblige other recipients in the same way and to notify them of the need to comply with such legal provisions.

12.6 The Customer undertakes to indemnify us against all damages incurred by us arising from culpable violation of the foregoing obligations pursuant to paragraphs 12.1 to 12.5. 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.

12.7 In the case of a culpable violation of the foregoing obligations pursuant to paragraphs 12.1 to 12.5 by the Customer, we shall have the right to rescind the contract with the Customer.

12.8 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 a delivery 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.

12.9 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.

### 13. Third-party property rights

13.1 We shall only be obliged to supply the deliveries or services free from third-party rights or claims which (i) obstruct, restrict or exclude use of the deliveries or services according to the contract, (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

- according to the law of the Federal Republic of Germany, if our Customer has its registered office or branch there; or
- according to the law of a third country only if we have expressly agreed in writing the use or supply of our deliveries or services in that third country with the Customer.

13.2 If a third party makes justified claims against our Customers in respect of our deliveries or services pursuant to paragraph 13.1 above, we shall take the following measures to remedy the situation within the period determined in paragraph 8.1.6:

- We shall at our option first try at our expense either to obtain a right of use for the relevant deliveries or modify the deliveries or services 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 Purchase.
- 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 deliveries or 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 deliveries or services 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 our third-party suppliers.

13.3 Our obligation according to paragraphs 13.1 and 13.2 shall not cover cases where

- a) the infringement of property rights results from the fact that, in producing the deliveries or 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 deliveries or services were modified by the Customer or mixed or used together with deliveries or services not supplied by us; or
- c) the infringement of property rights is caused by use of the deliveries or services in a field of application and use that has not been agreed.

13.4 Our liability according to Art. 11 shall remain unaffected.

#### **14. Customer's obligations to cooperate**

14.1 The Customer shall specify a contact person to us, who can make binding decisions, also in relation to any installation and assembly services, 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.

14.2 The Customer shall support us, if necessary, in providing our deliveries/services, 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 the deliveries/services on time in each case and perform them without obstruction and interruption.

14.3 In particular, the Customer shall make available to us, if required for the delivery or provision of the service, free of charge and in due time: unrestricted access to the place of delivery/provision of the service, provide the current plans, operating data, safety instructions, functioning transmission and communication equipment as well as other necessary information and documents relating to performance; auxiliary equipment not provided by us and necessary for the delivery/provision of the service; electricity, water, sanitary facilities, parking facilities; authorisations and other permits required for performance 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 delivery/commencement of the service. If the deliveries/services are also provided 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.

14.4 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 our delivery/service, we shall be released from the obligation to provide the delivery/service concerned. The corresponding delivery periods shall be postponed by an appropriate period of time. Additional expenses incurred by us as a result shall be borne by the Customer, without prejudice to further rights.

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

14.6 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 Third-Party 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. If the use of Third-Party Software is necessary to use the software, this shall not be a delivery item of the Customer Contract but must be purchased separately by the Customer.

14.7 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.

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

14.9 The Customer shall be obliged to perform proper data backups on a regular basis. The Customer is 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.

#### **15. Confidentiality / Data protection**

15.1 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.

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

15.3 There shall be no obligation to maintain confidentiality pursuant to paragraph 15.1 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.

15.4 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).

15.5 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 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.

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

## **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 Purchase 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 Germany Switzerland Austria GmbH**