

**A.**  
**General Terms and Conditions**  
**for the Performance of IT Services**  
**(“General T&Cs IT Services”), status 10/2024**

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

- 1.1 These General Terms and Conditions for the Performance of IT Services (hereinafter referred to as “**General T&Cs IT Services**”) 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**”) and apply in particular to the consultancy, training, assistance, installation, implementation, maintenance, support and/or adaptation services for hardware and software products offered by us (hereinafter referred to as “**IT-Services**”).
- 1.2 These General T&Cs IT Services apply exclusively to companies within the meaning of Section 14 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 performance of IT Services (hereinafter referred to as “**IT Service Contract**”) incorporating these General T&Cs.
- 1.3 Business relations with our Customers concerning IT 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 IT 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 IT Services in writing.
- 1.5 The documents referred to in these General T&Cs IT Services, especially the set of specifications and/or our quotation for execution of the specific IT Services, are integral parts of the IT Service 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 In the absence of express provision in the IT Service Contract, we shall perform the IT Services for the Customer

as support service on a service contract basis within the meaning of Sections 611 et seq. BGB, without owing a specific contractual performance.

- 1.7 *Where and insofar as we have agreed a specific contractual performance in the IT Service Contract for the performance of the IT Services, e.g. for the creation of customised software and/or hardware adaptations within the scope of hardware and/or software implementation, the “**Additional Terms and Conditions for IT Services under a Contract for Work and Services**” printed under B. at the end of these General T&Cs IT Services shall additionally apply.*
- 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 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 IT Services and the delivery time.
- 2.2 Object of the IT Service Contract are the IT Services specified in the quotation or in a separate set of specifications or Service Level Agreement, not a specific (economic) outcome. We shall perform the IT Services by applying the generally accepted technical rules and standards at the time of performance and in compliance with the agreed requirements.
- 2.3 If the factual or legal situation changes after submission of the final work result, we shall not be obliged to inform the Customer about changes or resulting consequences.
- 2.4 If we have to present results in writing within the scope of performance, this written presentation alone shall be decisive. Drafts of written presentations shall not be binding. Verbal declarations and information from us shall only be binding if confirmed by us in writing. If we make declarations and provide information outside the scope of the placed order, these shall be non-binding at all times.
- 2.5 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”.
- 2.6 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 IT Services shall be made to the best of our knowledge and according to accepted technical rules and standards.
- 2.7 Unless otherwise agreed in writing or text form, we can use specialised subcontractors at our discretion to execute the order.

2.8 We shall examine and take into account at our own discretion any change requests by the Customer with regard to the contractually agreed IT 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 IT Services.

2.9 If maintenance or support for hardware and/or software is due from us within the scope of the IT Services and no differing provisions have been made in the IT Service Contract, the following shall apply:

We shall not be obliged to make an ongoing adaptation of the hardware and/or software to changing legal frameworks (i.e. mandatory laws, legal decrees, supervisory requirements) or due to changing requirements in the Customer's sphere.

Patches/updates/upgrades/releases to be made available by us within the scope of maintenance or support, if applicable, shall be provided to the Customer by us in the form of the object code at our reasonable discretion (i) as download in electronic form via the internet or (ii) on a data storage device customary in the market as soon as we or the respective manufacturer have(has) released them. The proper installation of patches/updates/upgrades/releases as specified shall be incumbent upon the Customer. The installation instructions described in the product description and/or application documentation of the manufacturer, especially the hardware and software environment, which must be available at the Customer, must be observed for the installation.

### 3. Times of performance / Service time / Default / Response and resolution times

3.1 Binding dates and times of performance 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.

3.2 Unless otherwise agreed, we shall be obliged to perform the respectively commissioned IT Services only during our service times (Mon-Thurs, 08:00-17:00, Fri 08:00-14.30, except on national holidays and on 24.12. and 31.12.) (hereinafter referred to as "**Service Time**"). IT Services performed outside the Service Time 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.

3.3 If no specific dates are agreed for the performance of our IT 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.

3.4 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. 3 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.

3.5 Close cooperation between the Customer and ourselves is necessary for performance of the services. Both parties shall, therefore, inform themselves about all circumstances from their respective sphere, which can affect performance of the services by us. Project and success responsibility for IT projects shall remain with the Customer. Notwithstanding the foregoing, we shall, however, be responsible for performance of the IT Services due from us according to the contract.

3.6 If binding response and/or restoration times are agreed in the IT Service Contract, the provisions hereinafter set forth shall additionally apply:

Response time is the period within which execution of the IT Services begins (e.g. with the remedy of a malfunction). The period shall start upon receipt of the corresponding notification by us or occurrence of an agreed event within the Service Time and shall run exclusively during the agreed Service Time. If a notification is received or an agreed event occurs outside the agreed Service Time, the response time shall begin upon commencement of the next Service Time.

Resolution time is the period within which we endeavour to process conclusively a malfunction or other work order, when necessary also through reasonable workarounds, within the scope of our technical and operational capabilities. Resolution times shall run exclusively during the agreed Service Time. For resolution times, such times shall not be taken into account which, despite reasonable efforts by us, lead to delays in performance of the services, such as: outstanding cooperation by the Customer, delivery times of necessary spare parts (unless stock storage was expressly agreed) and if manufacturer bug fixes to hardware/software are required, the times until corresponding provision by the manufacturer. In these above-mentioned cases as well, we shall make every endeavour to identify such interim measures that keep any adverse effects for the Customer to a minimum.

### 4. Customer's obligations to cooperate

4.1 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.

- 4.2 The Customer shall ensure that all cooperation required for performance of the IT Services is provided in due time, in full and free of charge for us.
- 4.3 The Customer shall ensure that the Customer's employees, who support us in the performance of the services, are available at the agreed times. The Customer is responsible for the Customer's employees having the required knowledge, skills and experience to perform the tasks assigned to them.
- 4.4 The Customer shall be obliged to support us adequately within the scope of performance of the services and in particular to create all conditions in the Customer's operating sphere, which are necessary for the proper performance of the IT Services. Unless otherwise agreed, the Customer shall in particular
- provide all documents necessary for execution of the IT Services and further information in due time;
  - shall bring all processes and circumstances to our attention that may be significant for execution of the IT services; this shall also apply to documents, information, processes and circumstances that become known only during our activities;
  - confirm, at our request, the completeness of the submitted documents and further information and the information and declarations given in a written statement specified by us;
  - take decisions incumbent upon the Customer about the performance and content of IT Services without delay and notify us and examine proposed changes from us without delay;
  - provide information about the legal framework conditions originating from the Customer's sphere without delay as far as specific requirements of the performance of the IT Services result from this;
  - make available to us, within the scope of performance of the services and to an appropriate extent, rooms and workplaces, where necessary;
  - grant our employees remote access to the Customer's computers (during the Customer's normal office hours) for performance of the services (remote access).

Further obligations of the Customer to cooperate and to provide support are stipulated in the quotation or a separate set of specifications, where applicable.

- 4.5 As long as cooperation is not provided by the Customer according to the contract, we shall be released in this respect in whole or in part from our relevant obligation to perform to the extent that we are dependent on the respective cooperation or provision of support. We shall not be responsible for disruptions to services arising from the Customer's failure to provide cooperation according to the contract. Additional expenses incurred by us as a result of failure to provide cooperation according to the contract can be invoiced by us separately according to cost. Any further claims shall remain unaffected.
- 4.6 The cooperation to be provided by the Customer constitutes an authentic contractual obligation and not only an

incidental obligation. If the Customer does not provide the cooperation to be provided by the Customer or not according to the contract and this impacts on the IT Services to be performed by us, we shall be released from the obligation to perform the IT 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.

## **5. Conclusion and completion of the IT Services, disruptions to services**

- 5.1 Unless otherwise agreed, we shall notify the Customer of the completion of the IT Services. Such notification also lies in the transmission of any agreed performance result, report, statement, messages via a ticket system etc. The IT Services shall be deemed thereby performed and executed.
- 5.2 The Customer must inform us immediately in writing or text form if the Customer recognises that a service has not been performed by us according to the contract. In so doing, the Customer must specify the performance of services not according to the contract in as much detail as possible.
- 5.3 If we are responsible for the performance of the services not according to the contract and the Customer has met the Customer's duty to provide information pursuant to paragraph 5.2, we shall first have the right and be obliged to perform the relevant service according to the contract, without additional costs for the Customer, within a reasonable period, provided that it is possible to make good the service and this does not entail disproportionate costs for us.
- 5.4 If it is not possible to make good the performance of services that are not according to the contract or this is refused by us due to disproportionate costs or does not succeed in significant parts for reasons for which we are responsible, also within a reasonable grace period set by the Customer, the Customer shall have the right to terminate the IT Service Contract without notice for good cause. In such case, we shall be entitled to remuneration for IT Services performed until termination enters into force. Entitlement to remuneration shall not apply, however, to such IT Services that are of no interest to the Customer due to the termination. The Customer must produce detailed evidence in writing within two (2) weeks of receipt of the notice of termination, stating to which IT Services this applies.
- 5.5 Further claims due to qualitative disruptions to services shall be excluded. This exclusion shall not apply in the case of intent or gross negligence on our part as well as in the case of injury to life, limb or health.
- 5.6 Claims due to disruptions to services shall become statute-barred after one year as of commencement of the statutory period of limitation. The foregoing period of limitation shall not apply to disruptions to services due to intent or gross negligence on our part as well as in the case of injury to life, limb or health. In such cases, the statutory period of limitation shall apply.

- 5.7 If we perform IT Services in the determination or remedy of disruptions to services notified/alleged, without being obliged to do so, we shall have the right to require an appropriate remuneration according to cost from the Customer if the Customer has failed to recognise at least through gross negligence that the disruption to services did not exist.
- 5.8 If the disruption to services is an infringement of third-party property rights, Art. 9 shall apply.
- 5.9 Recognition of breach of duty shall only be valid when given in writing.

## 6. Remuneration / Payment terms

- 6.1 Remuneration for the IT Services performed follows from the IT Service Contract. Unless otherwise provided therein, the Customer shall owe a remuneration according to cost in the form of *per diem* rates pursuant to our price list generally valid at the time of conclusion of the contract. In the case of expense reimbursement, we shall have the right to require payment for this after performance of the services, also in the case of partial services, at least on a monthly basis retrospectively and to invoice this. If no agreement was reached on a remuneration, we shall be entitled to the remuneration customary in the industry for the IT Services performed, unless certain IT Services were expressly agreed as free of charge.
- 6.2 If a remuneration according to cost has been agreed and nothing to the contrary is stipulated in the IT Service Contract, the following shall also apply:
- Travel expenses, cost of materials, out-of-pocket expenses and/or incidental expenses are not included in the *per diem* rates and shall be additionally invoiced. Waiting times of our employees, for which the Customer is responsible, shall be remunerated like working hours. We must, however, take into account what we have saved by not performing our IT Services or have acquired by other use of our IT Services or foregone acquiring by acting in bad faith.
  - *Per diem* rates cover a working time of eight (8) hours and invoicing is on a half-hourly basis. An amount of work in excess of this per day shall be invoiced on a *pro rata* basis. For work at weekends and on public holidays and, for the performance of services outside the Service Time, reasonable supplements for extra work, night work and work at weekends and on public holidays, per half hour or part thereof, per employee, shall be additionally remunerated. 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. Arrival and departure times of our employees at the Customer's place of business as well as IT Services, which we perform at other locations at the Customer's request, shall be charged by us for the travel time of the respective employees at the agreed *per diem* rate.
  - If we submit expense/time sheets to the Customer, the Customer shall check them immediately and sign them off

as an indication of agreement at the latest within fourteen (14) calendar days of receipt and thereby release them. If the Customer does not agree with the submitted expense/time sheets, the Customer shall state any concerns about the expense/time sheets in detail in writing within that period. The parties shall then immediately try to establish clarification. If the Customer does not communicate any concerns about the expense/time sheets within the above-mentioned period, they shall be deemed approved if and to the extent to which we have referred to the assumption of approval in the expense/time sheets.

- 6.3 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.
- 6.4 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 IT 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 IT 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.
- 6.5 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.
- 6.6 Our invoices are payable within 10 days of 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.
- 6.7 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.

## 7. Rights of use / Disclosure of work results

7.1 All contractually agreed IT Services and work results from us are intended exclusively for the Customer and for use for the purposes stipulated in the IT Service Contract.

7.2 We shall remain the owner of all work results that are protected or can be protected by industrial property rights or legal positions similar to property rights of whatever kind (e.g. patent rights, trade mark rights, utility model and design rights, copyrights) and whether registered or not and to which we are entitled at the time of conclusion of the IT Service Contract or created by us (or by third parties on our behalf) after conclusion of the IT Service Contract (hereinafter referred to as "Work Results"). The same shall apply to adaptations, modifications and further developments of the Work Results.

7.3 Upon payment of the agreed remuneration in full, we shall grant the Customer a non-exclusive, permanent, non-transferable right to the Work Results, created specifically for the Customer under the IT Service Contract and identified as such in the quotation or in a separate set of specifications, to use such Work Results if this follows from the purpose of the IT Service Contract. The right of use is limited to use in the Federal Republic of Germany as well as to any country of destination additionally agreed between the parties, in which the Work Results are to be used.

7.4 The disclosure of Work Results (or extracts of Work Results - whether in draft or final version) or the information about our activities for the Customer to a third party shall require our written consent, unless (i) consent to the disclosure or provision of information already follows from the purpose of the IT Service Contract or (ii) the Customer is obliged to disclose or provide information under a law or an official order.

7.5 If the Work Results contain standard software of a third party (hereinafter referred to as "**Third-Party Software**"), the corresponding licensing terms of the respective software manufacturer shall take precedence for the use of such 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 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.

## 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 or a procurement risk within the meaning of Section 276 BGB;
- 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 period of limitation shall be determined according to Section 199 (1) BGB. Paragraph 8.2 of these General T&Cs IT 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 ensure that no third-party rights exist which obstruct, restrict or exclude the contractual use of the Work Results created by us under the IT Service Contract by the Customer. Should third parties nevertheless assert justified claims for infringement of their rights and the Customer is prohibited by declaratory judgment from using the Work Results in whole or in part, we shall be liable to the Customer as follows, if and to the extent that we are to be blamed for any fault in this respect:

9.2 We shall only be obliged to supply the IT Services and the Work Results achieved free from third-party rights or claims which (i) obstruct, restrict or exclude the use of the IT Services or Work Results 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

- 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 of our IT Services and Work Results in that third country with the Customer.

9.3 If a third party makes justified claims against our Customers in respect of contractual Work Results 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 Work Results or modify the Work Results 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 IT 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 IT Services or Work Results 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 the IT Services or Work Results, the Customer undertakes to notify us of this immediately and to give us and, where applicable, our third-party supplier concerned (e.g. software manufacturer, from whom we have purchased 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.

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

- a) the infringement of property rights results from the fact that we have aligned the Work Results according to 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 Work Results were modified by the Customer or mixed or used together with products not supplied or IT Services not performed by us; or
- c) the infringement of property rights is caused by use of the deliveries or IT Services in a field of application and use that has not been agreed.

9.5 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 Customer is responsible for compliance with all relevant statutory data protection provisions, in particular for the legality of the data transfer and data processing of personal data of the Customer's employees and other data subjects in connection with performance of the services by us. We shall process the Customer's personal data only with the scope of the performance due under the contract and pursuant to data protection regulations.

10.5 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).

10.6 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 IT 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.

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

10.8 If, in fulfilling the IT 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 IT Services.

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

11.1 If we do not receive IT services from our subcontractors required to provide the service which is due from us under the contract, despite proper and timely conclusion of a corresponding contract with the subcontractor, 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.

11.2 If a service date is agreed with binding force and is exceeded due to events according to paragraph 11.1, 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 11.1 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 remunerate IT Services performed until then according to that which has been agreed in this respect.

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

12.1 If the duration of the IT Service Contract is neither agreed nor to be inferred from the nature or purpose of the IT Services, this can be terminated in whole or in part by either party giving notice of three months to the end of a calendar month but at the earliest to the end of a minimum contract

term agreed in the IT Service Contract. A different notice period can be agreed in the IT Service Contract. The IT Service Contract can also be terminated in whole or in part by either party where good cause exists, without complying with a notice period, within a reasonable time as of knowledge of the grounds for termination. Good cause exists if facts exist, 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 contract partners, to continue the contract. 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 314 in conjunction with Section 323 (2) *BGB*. In the event of termination for good cause, we shall be entitled to remuneration for the IT Services performed on the basis of the IT Service Contract until termination enters into force. Remuneration shall not, however, apply to such IT Services, for which the Customer demonstrates that they are of no interest to the Customer due to the termination.

12.2 Place of performance for all contractual obligations is the registered office of our respective location/affiliated company pursuant to the order confirmation.

12.3 We have the right at any time to transfer the rights and obligations hereunder to affiliated companies within the meaning of Sections 15 et seq. *AktG*.

12.4 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 IT 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.

12.5 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.

12.6 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**

## B. Additional Terms and Conditions for IT Services under a Contract for Work and Services

### 1. Scope

These Additional Terms and Conditions for IT Services under a Contract for Work and Services (hereinafter referred to as “**Additional Terms and Conditions**”) apply in addition to the foregoing General T&Cs IT Services if a specific contractual performance is due from us according to the IT Service Contract within the scope of performing the IT Services and German law on contracts for work and services applies in this respect, e.g. in the case of customised hardware and/or software adaptations in the context of hardware and/or software implementation. In the event of inconsistencies between the General T&Cs IT Services and these Additional Terms and Conditions, the Additional Terms and Conditions shall take precedence.

### 2. Scope of services

- 2.1 The IT Services to be performed by us and the Work Results to be achieved are stipulated in the IT Service Contract.
- 2.2 If IT Services are performed on site at the Customer’s premises, the Customer shall not be authorised to issue instructions to the consultants used by us. The consultants shall not be integrated into the Customer’s organisation. The Customer may give instructions only to the contact partner designated by us in the IT Service Contract for project coordination by us, not directly to the individual consultants.
- 2.3 The Customer shall bear the risk that the IT Services agreed in the IT Service Contract and the Work Results to be achieved by consultants meet the Customer’s requirements. In case of doubt, the Customer must seek advice from us or from expert third parties in due time.
- 2.4 If we perform IT Services beyond the scope of the IT Service Contract by agreement (text form is sufficient) with the Customer, the provisions and terms and conditions of the IT Service Contract shall apply accordingly to the IT Services performed in this respect.
- 2.5 Unless otherwise explicitly agreed in the IT Service Contract, the project language shall be German. Project documentation can be in German and/or English. If the creation or adaptation of software is due within the scope of the service, any documentation of the code owed can also be made inline i.e. comments in the code directly.

### 3. Customer’s obligations to cooperate

In addition to Art. 4 of the General T&Cs IT Services, the following additional obligations to cooperate apply to the Customer:

- 3.1 If this is necessary within the scope of performing the services, the Customer shall grant the consultants used by us direct or indirect access to software and IT systems as well as a non-exclusive right of use, limited in time to the term of the IT Service Contract, for use of the Customer’s

systems and applications according to the contract and intended use. It is the responsibility of the Customer to ensure the proper operation of the necessary software and IT systems. If the Customer provides us with content, materials, data and information for performance of the services, the Customer shall ensure that these are free from third-party rights, which could conflict with performance of the services by us.

- 3.2 The Customer shall take appropriate measures in the event that IT Services and/or Work Results are affected by malfunctions (e.g. by data backup, malfunction diagnosis, regular checks). If no explicit written indication is provided by the Customer in the individual case, the consultants used by us can assume at all times that any data, with which they come into contact, are backed up.

### 4. Acceptance

- 4.1 Acceptance shall take place after examination of the Work Results to be created within the scope of the IT Services. For this purpose, we can require a written declaration of acceptance and/or acceptance protocol signed by the Customer.
- 4.2 If (partial) Work Results are defined in an IT Service Contract, we can provide each (partial) Work Result for acceptance.
- 4.3 The Customer must examine (partial) Work Results provided for acceptance immediately after notification of completion but within ten (10) working days at most (hereinafter referred to as “**Acceptance Period**”) and in writing either declare acceptance and/or notify any defects with an exact description. If the Customer makes no declaration within the Acceptance Period or uses the Work Results without complaint, the (partial) Work Result shall be deemed accepted. Insignificant defects shall not entitle the refusal of acceptance. The productive use, putting into operation or use of (partial) Work Results by the Customer shall be deemed in any case acceptance of the respective (partial) Work Results.
- 4.4 If the Customer gives notification of identified defects within the Acceptance Period, we shall assign them to one of the following defect classes:

**Defect Class 1:** The (partial) Work Result is affected by a defect which makes usability impossible or unreasonably impairs usability.

**Defect Class 2:** The (partial) Work Result is affected by a defect which more than insignificantly restricts usability, although a Defect Class 1 defect does not exist.

**Defect Class 3:** The (partial) Work Result is affected by a defect which restricts usability only insignificantly.

- 4.5 The Customer can refuse acceptance if Defect Class 1 defects exist or if several Defect Class 2 defects together lead to Defect Class 1 effects.
- 4.6 We shall remedy notified defects pursuant to paragraph 4.3 of these Additional Terms and Conditions within a period appropriate to the category of the defect and shall, in the case of refused acceptance, provide the Work Result to the



Customer again for acceptance. Paragraphs 4.3 to 4.5 of these Additional Terms and Conditions shall apply accordingly to such acceptance inspections and any further acceptance inspections.

## **5. Warranty for work**

- 5.1 We warrant that the Work Results created within the scope of the IT Services have the expressly agreed quality features and that the granting of the rights of use agreed in paragraph 7.3 of the General T&Cs IT Services to the Customer does not conflict with any third-party rights. If no express quality has been agreed, the warranty refers to the fact that the Work Results are suitable for the otherwise usual use presupposed under the contract and have a quality which is customary for Work Results of this kind and which the Customer may expect of Work Results of this kind.
- 5.2 The Customer shall notify us of any defects arising immediately with an exact description of the problem and information useful for remedying the defects. In the case of proven material defects, we shall provide warranty by supplementary performance to the extent that we shall, at our option, provide the Customer with a new version of the Work Results free from defects or remedy the defect. In the case of proven defects of title, we shall provide warranty by supplementary performance, by providing the Customer with a legally unobjectionable possibility of using the Work Results or, at our option, exchanged or modified equivalent Work Results. The Customer must accept a new version of the Work Results (e.g. update of software) if the range of functions is maintained according to the contract and acceptance is not unreasonable. The urgency of troubleshooting shall be determined by the degree of operational obstruction.
- 5.3 If supplementary performance finally fails after expiry of two reasonable grace periods to be set by the Customer without effect, the Customer can terminate the IT Service Contract, declare rescission or reduce the remuneration. Where defects or deviations are insignificant, rescission of the IT Service Contract shall, however, be excluded. We shall pay damages or compensation for wasted expenditure due to a defect within the limits specified in Art. 8 of the General T&Cs IT Services.
- 5.4 The warranty period for work is one year from acceptance. This shall not apply to damage claims arising from a guarantee, the assumption of a procurement risk, due to injury to life, limb or health, intentional, grossly negligent or fraudulent act.

**SPIE Germany Switzerland Austria GmbH**