

1. Application

1.1. All supplies and services purchased from Sprecher Automation GmbH or an affiliated company of Sprecher (Sprecher) shall exclusively be governed by this General Terms & Conditions. Any deviating conditions shall only apply in case of a written confirmation of Sprecher. Approvals to conditions of the supplier, especially as pre-condition for online transactions or terms and conditions supplied with orders etc. shall not be not-admitted respectively will be protested immediately. These General Terms & Conditions shall apply as frame conditions also for all further legal transactions with the supplier.

1.2. This General Terms & Conditions shall be amended, modified or replaced by special conditions, e.g. individual agreements, product terms, terms of third parties etc. depending on the kind of purchasing order.

1.3. In case of contradictions in the purchase order following order of precedence shall apply: (a) special agreements, if confirmed by Sprecher in writing; (b) General Terms & Conditions; (c) non-mandatory provisions of the commercial law and civil law.

1.4. Third Party shall mean any person, other than the contract partners, even if such third party is related to a partner in any way.

2. Offer, Order, Order Confirmation

2.1. Offer: All offers of the supplier shall be non-binding and free of charge and must correspond precisely to the enquiry with regard to quantity and quality.

2.2. Order: Only written orders, call-off contracts, modifications, amendments etc. issued by the purchasing department shall be valid. To be valid, agreements made orally, by phone or by email are subject to written confirmation by Sprecher's purchasing department.

2.3. Order Confirmation: Every order shall be confirmed immediately in writing (especially with indication of price and delivery time) or commented, at the latest within 7 working days after the date of order. If the supplier does not react in writing within the specified period of time, Sprecher shall be entitled to accept or withdraw the order free of charge.

2.4. Subcontracting of orders or part of it by the supplier shall require Sprecher's express previous written consent.

3. Prices

3.1. The agreed prices shall be given exclusive Austrian VAT, inclusive proper packaging, transport and insurance costs, cost-free named place of destination, DDP INCOTERMS® 2010 ICC, including any costs, e.g. transport license, customs duties, costs for return-supplies and disposal of packaging material etc., and the additional supplies or services which are usually or generally provided to perform the supplies and services, even if they are not specified separately. The supplies and services shall correspond to the state-of-the-art. The prices shall be fixed, calculated in Euro, and shall not be increased for any reason whatsoever. The supplier is obligated to grant Sprecher the essential price reductions from the procurement market, without delay.

4. Delivery time, Deadlines, Delay in Delivery

4.1. The supplies and services shall be effected fix at the dates, deadlines and in the quantities specified in the order, cost-free named place of destination within the specified or otherwise announced taking-over hours at Sprecher. Relevant for observance of the dates and deadlines is the named place of destination as given by Sprecher or the successful acceptance. In case of early delivery without coordination, Sprecher reserve the right to return respectively store the supplies and services on supplier's risk and cost. In any case, the payment period shall not commence prior to the agreed dates.

4.2. The supplier shall only be entitled to claim missing documents, which Sprecher has to provide, when he has urged remittance of the documents in writing.

4.3. Sprecher reserve the right to inspect the performance of supplies and services at any time. In case of delay or imminent delay, the supplier is obligated to inform Sprecher without delay in writing. In case of delay, Sprecher shall be entitled, irrespective of independence of negligence by the supplier and irrespective of any proof of an actual damage, to demand from the supplier payment of a penalty for delay as compensation for delay to the extent of 2% of the total order value per commenced week, however in total not more than 5% of the total order value. Sprecher shall be entitled to deduct the penalty payment without any separate agreement or arrangement from the invoice amount. Moreover, Sprecher shall be free, in any case, to rescind the order in case the supplier is in delay, without giving a period of grace. The supplier shall not be entitled to any claims whatsoever towards Sprecher on the basis of such rescission. In case Sprecher executes a replacement order, the supplier shall bear the extra costs resulting there from. Any other claims for all damages and adverse consequences exceeding the compensation for default shall remain unaffected. Acceptance of delayed supplies or services shall always be affected under reservation to claim compensation. Hindrance of delivery due to Force Majeure shall not be considered as default.

5. Documentation

5.1. The supplies and services shall include the documentation required or useful for utilization thereof, such as operating manuals, instructions, drawings, calculations, configurations etc. in German language, in sufficient number and in machine-readable form. Sprecher shall be entitled to copy or transmit the documents and, if applicable, to modify them.

6. Hardware, Software

6.1. Regarding software not developed exclusively for Sprecher, the supplier shall grant Sprecher a transferable and non-exclusive right of use; in case of payment of a nonrecurring amount the right of use shall be unlimited in time. Regarding software developed individually for Sprecher, the supplier shall grant Sprecher a transferable and unlimited all-inclusive right for all types of utilization. The software source code shall be delivered in the current version.

6.2. The supplier shall install the software on the hardware. Any software developed individually for Sprecher shall be considered as accepted if the software has run without any error messages according to the specifications for the duration of the agreed test run, at least, however, for four weeks. The above-mentioned period commences with the productive utilization at Sprecher, or in case of transmittal, at Sprecher's customers.

6.3. After installation and prior to acceptance, the supplier shall submit to Sprecher a data medium with the source and/or machine-readable code and the appropriate documents, e.g. detailed written user documentation, test procedures, test programs, maintenance descriptions, etc. Within the warranty period, Sprecher shall receive all the subsequent program versions for debugging (updates) free of charge.

6.4. Any license fees shall be paid by the supplier.

7. Provision of Material, Results

7.1. All data, drawings, technical documents, materials etc. transferred by Sprecher (provisions of material) shall not be used for purposes other than the contractual ones. The supplier shall check the provisions of material immediately upon receipt regarding functionality; subsequent complaints shall be on supplier's expenses.

7.2. The provisions of material shall be identified in an appropriate manner as Sprecher's property and protected against unauthorized access or utilization and, if applicable, repaired or replaced on the account of the supplier. Subject to further rights, Sprecher can moreover demand a right of retention if the supplier infringes upon this obligation or if there are manufacturing problems. In any case, the supplier shall have no right of retention.

7.3. The results or partial results produced during execution of the order shall not be used by the supplier itself. Supplies and services and any results there from, which have been produced by the supplier for Sprecher according to its specifications, shall be transferred into the sole property and the unrestricted right of use, especially patent rights, trademark rights, utility model rights, copyrights and similar rights shall be transferred to Sprecher. The supplier shall also deliver the complete documentation of the products and - in case of research and development activities - all documents required for the preparation and processing thereof (e.g. circuit diagrams, source codes etc.). Sprecher shall be entitled to exercise all rights, especially utilization, reproduction, publication, sale, transfer to Third Parties, independently of a successful acceptance and also in case of termination notice or early termination.

7.4. Unless the provisions of material have been consumed during execution of the order or, for whatever reason, the supplies or services will not be executed, provisions of material and results or components thereof shall be returned to Sprecher in appropriately packed condition on supplier's cost and risk.

7.5. In case of a reduction in value or loss, abuse, infringement of property or improper use the supplier shall indemnify and hold harmless Sprecher.

8. Suspension, Modifications

8.1. Sprecher shall be entitled to demand at any time suspension or modification of the supplies and services. The supplier shall only be entitled to any remuneration in case of significant changes. The supplier undertakes to meet cost minimization measurements after the statement of modification. The supplier shall only be entitled to invoice supplies or services which can be proved to have been executed until the date of the modification, not, however, any loss of profit. Any advantages which can be obtained or have been obtained shall be deducted there from.

9. Selfinformation, Packing, Handling, Delivery and Delivery Note

9.1. The supplier shall be obliged to inform by self information in the offer whether and which Open Source Software its supplies and services contain. Moreover, any dangerous materials, which are included in the supplies and services, must be indicated according EAG-VO, §4 (WEEE- and RoHS-regulation) related to treatment- and recycling categorization; also on which point the dangerous material and preparation is. The offer shall contain all necessary data regarding export approval regulations, e.g. Export Control Classification Number ECCN or EAR 99; export list number according EG Dual-Use regulation respectively according the national law (AL-No, HS-Code), preference entitlement (movement certification, declaration of origin, country of origin, preference country of origin) and net value and country of origin for each position on the delivery note. The supplier shall be liable for any disadvantages which result from insufficient information.

9.2. The supplier shall be liable for correct, environmentally compatible packaging in line with the technical regulations, and for any disadvantages, especially damages, which result from improper packing. In case of delivery of dangerous materials, the legal provisions and the requirements regarding type and identification of packaging and means of transport shall be observed.

9.3. The supplier shall deliver any warning signs, storage and/or operating instructions together with the delivery without being requested to do so. These instructions shall be affixed on the delivery, as far as possible and reasonable. The supplier shall be liable for any damage resulting from lack of knowledge of these instructions.

9.4. Deliveries to customers shall be effected, if applicable, in neutral packing and with neutral shipping documents on behalf of Sprecher. Sprecher shall receive a copy of the shipping documents.

9.5. On the date of shipment, the shipping advice with order number and item numbers shall be sent to Sprecher. Sprecher reserve the right to treat deliveries, without appropriate shipping

advice, as not executed, and to store them at supplier's risk and costs. The supplier shall strictly adhere to any specifications issued by Sprecher regarding packaging and the mode of shipment.

9.6. All deliveries shall be accompanied by a delivery note, two-fold and separated according order- and item number.

10. Export Regulations

10.1. The supplier shall determine, at notification of destination, whether the supplies or services are subject to export requirements in accordance with EU regulations, EAR Regulations (Export Administration Regulations) or ITAR Regulations (International Traffic in Arms Regulation). If the supplier does not expressly point out such, it is deemed to be confirmed by the supplier that no export requirements whatsoever need to be observed.

11. Acceptance

11.1. The supplies and/or services shall be accepted as soon as they are in conformity with the order and free of defects, on receipt at the destination specified by Sprecher, and with issuance of confirmation of receipt. The risk shall pass to Sprecher at the time of acceptance. Any reservations of ownership of the supplier, no matter of which type, shall not be applicable.

11.2. Sprecher reserves the right of retention, in case the supplies and/or services or part of them are not in conformity with the specifications of Sprecher or with customary conditions during random approval.

12. Invoicing, Payment

12.1. Invoices shall comply with the legal provisions, especially the Value-Added Tax Act and any separately agreed stipulation. They shall not be accompanied with the deliveries. Invoices shall in any case contain the order number, the order date and the order item number to allow easy comparison with the order. If the inclusion of the invoice with the delivery is specified by law (e.g. customs clearance), the supplier shall not derive any rights whatsoever from such inclusion. Invoices regarding services shall be accompanied by work and time records confirmed by Sprecher. The supplier shall be liable for any extra or consequential costs due to incorrect or incomplete invoicing. Sprecher reserve the right to return invoices which do not comply, in such case invoices shall be considered as not to be issued.

12.2. The payment period shall commence at the earliest on the date on which the supplies and/or services have been accepted and the correctly issued invoice has been received. The payment does not imply an acknowledgement of the correctness of the supplies and/or service or a waiver of any claims whatsoever. The supplier shall not assign any claims against Sprecher to Third Parties, to pledge them or to make them the object of legal transactions. The supplier shall not be entitled to set off claims.

12.3. Sprecher shall be entitled to retain payment completely or partially in case of performance other than contractually agreed respectively until correct elimination of any obvious defects.

12.4. Unless agreed to the contrary, payment shall be effected at the choice of Sprecher within 30 days less 3% discount or 90 days net. The payment shall not release the supplier from warranty and guarantee obligations; it shall not affect any subsequent notifications of defects. Down payments shall retain constant in value on an aliquot basis referred to the total order value. Sprecher reserves the right to effect payment by bill of exchange. The payment shall be effected on time if the payment is dispatched within the payment period, or if an appropriate instruction has been issued to the credit institute performing the money transfer.

13. Guarantee, Warranty, Liability

13.1. The supplier undertakes for itself and his sub contractors and sub suppliers, a full and genuine 24 months guarantee for the supplies and services, to be in conformity with an order respectively delivery-scheduled execution, full, free from defects – especially for the usual and guaranteed attributes, mentioned in public statements,

in accordance with samples or specimens and for the compliance with all the appropriate legal and regulatory provisions of the supplies and/or services valid at the destination and for the sales markets disclosed by Sprecher.

13.2. The supplier notices that Sprecher shall not be obligated to verify the items delivered and to notify the supplier of defects after delivery, because of the genuine guarantee mentioned above. The guarantee period shall commence at the date of acceptance of the supplies and/or service by Sprecher.

13.3. Within the frame of the guarantee, Sprecher shall be entitled, at its choice, to either demand from the supplier at supplier's cost and risk elimination of defects by correction (repair, restitution of missing items) and/or replacement at short notice, respectively to demand a reduction in prices or to return the supplies and/or services to the supplier on supplier's costs and to declare annulment or to eliminate defects or to perform services which have not been provided or only with defects or to have them eliminated or provided by Third Parties at the cost and risk of the supplier. Replacement deliveries shall be effected on a freight paid basis.

13.4. If a defect on one item occurs more often, the supplier shall repair or replace at its costs the entire delivery charge and refund Sprecher the extra costs, which Sprecher can prove to be incurred.

13.5. The genuine guarantee mentioned above shall remain any other claims from Sprecher unaffected, especially such resulting from legal warranty, liability and rescission of the order. The warranty period shall be three years. In case of repair, the warranty and guarantee period for the repaired or replaced part commences anew. At the same time, the warranty of the entire delivery charge is extended by the period for which utilization of the latter due to the defect and elimination thereof was not possible.

13.6. To the extent that Sprecher is entitled to claim compensation for damages, this claim shall also cover compensation of loss of profit and compensation of all damages which Sprecher have to compensate its customers.

13.7. The supplier shall verifiably point out to Sprecher all risks which may be reasonably expected to occur during usage of the delivery. In case of warranty claims, the supplier shall have the burden of prove during the entire warranty period, that the defect did not exist at time point of acceptance.

13.8. In case of particular urgency, e.g. supplier's tardiness in the elimination of defects, Sprecher reserves the right, after granting a grace period and notwithstanding the rights of Sprecher out of supplier's warranty and guarantee liability, to cover its demand from another source at the supplier's costs, or to repair or to have repaired faulty supplies and/or services at supplier's expenses. The expenses for such remedial action shall also be compensated in full even if these expenses are higher than the costs in case the supplier had made the repair by itself.

14. Product Liability

14.1. In case the delivery turns out to be deficient after acceptance according the Product Liability Act (PHG) and/or it turns out that characteristics of the delivery are no longer according the state-of-the-art and science, the supplier undertakes to abandon such delivery and to refund the price in total.

14.2. In case Sprecher receives a claim on deliveries based on PHG, the supplier undertakes to release immediately, at supplier's cost, any required evidence, especially quality and inspection records, certificates etc. In such case, the supplier undertakes additionally and independent of negligence, to compensate the entire damage or disadvantage as well as any legal fees to be incurred by Sprecher due to Sprecher's liability. The supplier undertakes to take out an appropriate insurance policy according PHG, whereas Sprecher reserves the right to demand proof about it.

15. Support, Spare Parts

15.1. In case of any deficiencies the supplier shall submit immediately a suggestion for correction of the error. The supplier

undertakes to ensure traceability of its deliveries over a period of at least 10 years after acceptance, to permit localization of faulty parts.

15.2. The supplier guarantees an ability to deliver technically equivalent spare parts for a period of 15 years after the end of the warranty period, or to support in sourcing of equivalent spare parts. The supplier undertakes to inform Sprecher at least 12 months prior to changes/discontinuation of its supplies and services.

16. Termination, Rescission, Force Majeure

16.1. Sprecher shall be entitled to completely or partially terminate the order at any time. The supplier shall be entitled to receive the remuneration for all supplies and services performed, delivered and accepted until the date of termination and in accordance with the order. Further claims shall be excluded. In case of termination, the supplier shall deliver to Sprecher the complete results and documentations executed.

16.2. Sprecher shall be entitled to rescind from the contract immediately in case of an important reason. Such important reason will be for example infringement on essential contractual stipulations, delay, bankruptcy, institution of insolvency proceedings or dismissal of a petition to institute insolvency procedures due to lack of cost-covering assets. The supplier shall not be entitled to any claims whatsoever towards Sprecher which might be asserted on the basis of such rescission. Sprecher shall be entitled to demand from the supplier compensation of any costs incurred by Sprecher for such rescission.

16.3. Any unforeseen circumstance and any case of Force Majeure which interfere, delay or eliminate on time production, delivery or acceptance, such as regulatory measures, war, strike, lock-out, riot, business disruptions, transportation disruptions, lack of raw materials or the delayed allocation thereof, other elementary events, etc., entitle Sprecher without the necessity of granting a grace period, to rescind from the order completely or partially, to reduce the agreed delivery volume unilaterally, or to request the delivery or performance of an issued order etc. at a subsequent date excluding any claims of compensation whatsoever resulting there from for the supplier.

17. Intellectual Property Rights

17.1. The supplier guarantees that, with payment of the agreed prices, acquisition of all rights of use and legal industrial property rights has been remunerated so that supplies and services can be used freely without infringing on any industrial property rights of Third Parties (patent rights, trademark rights, utility model rights, copyrights, territory protection and similar rights, even if granting thereof has been filed for and is pending). The supplier shall indemnify Sprecher completely and hold Sprecher harmless against any claims from Third Parties. Notwithstanding any further rights, the supplier shall procure the right for Sprecher, in case of utilization, to use the supplies or the services freely or to replace it by another one which complies with the requirements of the order.

18. Quality Assurance

18.1. To ensure the highest quality, the supplier shall be required to plan, determine, perform and monitor systematically quality measures, and to oblige its sub contractors and sub suppliers accordingly. The supplier shall grant Sprecher and their representatives on request and to the extent required, the right of inspection, or shall deliver records to them.

18.2. As far as not agreed otherwise in writing, supplies and services shall be performed according the relevant quality norms valid in its recent edition. Especially the applicable national, international and technical norms and environmental -, security - and quality norms (all in their recent edition) shall be observed and be approved on request, like e.g. ÖVE, VDE, Ö-norms, DIN, EN, UL and similar regulations, as well as MTBF-data, as well as statutory (e.g. electronic law "Elektrotechnikgesetz") and regulatory rules valid on the place of performance as given by Sprecher.

18.3. Supplies and services within the European Union shall be confirmed with CE-labelling („Konformitätserklärung“) in accordance

with EU-regulations and the Austrian regulations by the manufacturer or the company putting supplies and services on the market, in writing. On request of Sprecher the supplier shall provide free of charge conformity declarations and inspection reports issued by an accredited agency. The supplier shall inform about any changes in material, manufacturing mode, parts as well as in conformity declaration on time.

19. Secrecy

19.1. The supplier undertakes to use all data, drawings, technical specifications, materials provided and documentations of any kind, which he receives in connection with the order with Sprecher or which he receives or become aware in the course of the contractual co-operation, confidential, not to copy them and not to disclose the same to Third Parties or make them available elsewhere, unless they are generally known or otherwise lawfully known. The supplier shall impose the above obligation on their staff and auxiliary persons accordingly. The secrecy obligation shall continue after termination of the order.

19.2. The supplier is permitted to refer to the contractual co-operation in marketing material and publication, irrespectively of the kind, only after he has got the expressly written confirmation from Sprecher

20. Other Provisions

20.1. If individual provisions are or become ineffective or unenforceable, totally or partly, they shall be deemed to be replaced by a provision which comes as close as possible to the economic purpose intended and the effectiveness and enforceability of the remaining provisions shall not be affected thereby. The same shall apply to gaps

20.2. In order to be effective any and all modifications and amendments including this Clause shall be made in writing and signed by authorized representatives of both partners.

20.3. A transfer of rights and obligations to Third Parties shall require the prior express written consent of Sprecher.

21. Place of Fulfilment, Applicable Law, Place of Jurisdiction

21.1. Place of fulfilment of all duties out of the contractual obligations for both partners shall be the delivery address given in the order respectively the place of installation or utilization, otherwise Sprecher's head office in 4020 Linz/Austria, Franckstraße 51. This shall be applicable for the supplier especially for deliveries and payments, irrespectively of the individual agreement regarding place of delivery- and/or payment and/or taking over of any transport costs by Sprecher.

21.2. Place of jurisdiction for the supplier, for all disputes, arising out of or in connection with the order shall be settled exclusively by the court in charge in Linz/Austria. Sprecher shall be entitled, on its own choice, to sue the supplier at any other court, which can be applicable according national or international law.

21.3. All legal transactions, especially orders concluded under this General Terms and Conditions, shall exclusively be subject to Austrian Law, the conflict of laws rules shall be expressly excluded, especially the rules of private international law, as far as they refer to the application of foreign law. If the Austrian Law provides, in case of foreign contact, the application of special international rules, applicable also in Austria – e.g. the UN Sales Law (CISG) – they shall be expressly excluded.

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