

1. Application, Definitions

- 1.1. All service and maintenance performed by Sprecher Automation GmbH (Sprecher) shall exclusively be governed by the
- **General Terms of Delivery** issued by the Austrian Electrical and Electronics Industry Association (FEEL) – edition September 2011
 - **downloadable** under www.sprecher-automation.at
 - under prior **inclusion** of the following **deviating** and/or **supplementary conditions**

Software shall exclusively be governed by the

- **General Terms for the License Agreement for Sprecher Software** issued by Sprecher Automation GmbH
- **downloadable** under www.sprecher-automation.at
- and/or **software conditions of third parties**
- which shall be agreed separately

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

1.3. Malfunctions are faults in the function, which delimitate or eliminate operation of devices, components respectively (part of)plants compared with the functions and performances as agreed. Proposals for amended functions and operator faults and malfunctions caused by Force Majeure are not considered as malfunctions in the meaning of this terms and conditions.

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

2. Devices, Components, (part of)Plant

2.1 Pre-condition for concluding a service and maintenance agreement (hereinafter referred to as "Agreement") is, that the devices, components respectively (part of)plants (hereinafter referred to as „Products“) as covered in the agreement meet the requirements of the respective applicable specification. Sprecher will carry out an initial inspection respectively agree with the Customer the services, which are necessary to get the Products in a condition conforming with the respective applicable specification, by separate agreement. For those Products, which Sprecher has purchased from sub-contractors and delivered to the Customer, particularly products of other suppliers (for example PC's, printer etc.), Sprecher will perform service and maintenance according the maintenance instructions of these suppliers. For products not delivered by Sprecher, but included in the Agreement, the Customer shall make available all necessary maintenance instructions respectively technical documentation, otherwise Sprecher shall be released from all and any liability.

3. Scope

3.1. **Support by telephone/support by remote control** includes support for corrective maintenance by telephone and/or remote control through a service technician of Sprecher. Pre-condition for remote control is a modem or router with network access (respective configuration of the firewall) for all Products as per Agreement. With the stand-by-service-fee a telephone and/or remote support up to 30 minutes per occurrence of malfunction is included.

3.2. On request of the Customer respectively in case the telephone and/or remote support fails to aim the desired target, and after containment of the fault, an **on-site-service** by a service technician of Sprecher will be arranged. Response time agreed shall be counted from time point of not successful fulfilled remote control and shall be fulfilled with readiness of travelling ex location Sprecher (excluding travel times).

3.3. Sprecher is responsible for placing the **spare parts** at the disposal of the Customer in case a spare part stock at Sprecher is agreed. In case a spare part stock at the Customer is agreed, as per recommended spare part list, the Customer is responsible for placing the spare parts at the disposal of Sprecher.

3.4. The **preventive maintenance** of the Products (their check-up for maintenance of the proper function) comprises the maintenance as per agreed maintenance plan.

4. Time and Surcharges

4.1. For service and maintenance following times and surcharges shall apply:

Normal Work Hours: (MEZ)

Monday to Thursday: 06:45 a.m. to 03:30 p.m.

Friday:

06:45 a.m. to 12:15 p.m.

Workingdays:

are the days from Monday to Friday, excluding public holiday (excluding the time from December 24th every year until January 6th of the next year).

Surcharges:

outside the Normal Work Hours: 40 %

for night hours from 07:00 p.m. on: 80 %

for work on Sunday, public holiday: 80 %

Rest-from-Work Law:

According to the regulations of the Rest-from-Work Law, there is an obligation for a rest-from-work period during the week following the time when overtime hours are worked during the prescribed weekly weekend rest period of 36 hours (Saturday 06:45 p.m. – Monday 06:45 a.m.). This rest-from-work period shall be invoiced according to charge rates for normal working hours.

5. Request for Service

5.1. Requests for service can be placed at the service department of Sprecher during the agreed times. The Customer shall inform Sprecher about any malfunctions, otherwise the liability from Sprecher shall be excluded. In case the malfunction occurred because of interacting with different devices, components respectively (part of)plant, which are not within the scope of this Agreement, Sprecher will, on request of the Customer, participate in the search of the cause of malfunction. As long as Sprecher is contractually obliged for service and maintenance, the Customer shall not carry out any services by third parties. The date of preventive maintenance will be agreed amicably with the Customer. The request for service will be confirmed in writing only if desired by the Customer.

6. Execution of Service and Participation of the Customer

6.1. **Sprecher** will start with service or maintenance as soon as possible, but at the latest during the agreed response- and assignment time. Sprecher warrants diligent fulfilment of the services through qualified personnel. The manner how the service and maintenance work is carried out shall be defined by Sprecher, taking the commercial interest of the Customer into account. On request of the Customer Sprecher will proceed with their services beyond the agreed times. The execution of services beyond the agreed times in the course of a servicing assignment shall not create a precedent to be applied to other servicing assignments. Estimates about the duration of the repair given by Sprecher shall not be binding.

6.2. **The Customer** shall grant Sprecher the necessary access to the premises, an unhindered performance of the services and adequate power and water supply as well as the necessary access to the data network, free of charge, for the duration of the performance of the services. If required, the storage media (version of software and programming devices) shall be made available for Sprecher. The Customer shall be responsible to secure the existing data stock sufficiently. The Customer shall make available all necessary information and documentation, updating of documentation is not included in this Agreement. Sprecher observes the internal regulations of the Customer as demonstrably informed by the Customer to Sprecher. The Customer shall place at the disposal of Sprecher authorised and experienced service personnel, which is familiar with the functions of the devices, components respectively (part of)plant, for smoothly performance of the services, free of charge.

Before starting the preventive maintenance the Customer shall take care that the Products are in use without any functional malfunctions. Existing respectively already known malfunctions are not covered in the preventive maintenance.

6.3. Defect Products shall be sent from the Customer to Sprecher respectively will be taken along by Sprecher at their service or maintenance on site. After repair the Customer will get his original Product or an equivalent Product. The Product returned to the Customer shall become the property of the Customer, while the Product remaining at Sprecher shall become property of Sprecher. Products can be taken from the spare part stock of the Customer, if available, until final repair or replacement. In case the Customer does not have a spare part stock, the Customer will get a Product from Sprecher, as available respectively within the agreed times, until final repair or replacement. In such case Sprecher reserves the right to invoice a handling fee of 15% of the Product value per week.

6.4. After completion of service- or maintenance Sprecher will issue a time and material sheet (report), showing date, times, kind of malfunction and action taken etc., which will be signed by both Partners. This shall not apply for telephone respectively remote service and repairs.

7. Modification in Scope of Supply and Services

7.1. Requested respectively necessary adaptations (extent, deadlines or other issues) shall be subject to modification to be agreed before date of commencement of service. Changes in the place of performance respectively changes made on software or on software parameters on devices, components respectively (part of)plants must be disclosed to Sprecher immediately in writing. Sprecher shall not be responsible for any liability in case of changes not made by Sprecher.

8. Prices and Terms of Payment

8.1. Die The stand-by-service-fee, the maintenance fee respectively the charges rates including surcharges (Prices) are valid in Euro, excluding VAT. Sprecher reserves the right to change prices and/or these General Terms and Conditions at any time without any advance notice. In any case, the Prices are subject to adjustment by 100% based on the collective arrangement of tariff wages (minimum salary) published by the Austrian electronic industry, occupation group G/basic level, as per their adaptations in May every year.

8.2. With payment of the stand-by-service-fee respectively the maintenance fee the provision of personnel of Sprecher is included, as per availability at Sprecher. Assignments for service and maintenance work are not compensated with the stand-by-service-fee or maintenance fee, they will be invoiced as agreed, according actual expenditure of time as per actual charge rates taking the mentioned surcharges into account. Travel time respectively preparation time for travelling shall be invoiced as per normal working hour rates. The daily allowance is included in the charge rates. Costs for travelling and accommodation (ticket, train, taxi, hotel etc.), costs for transport or any other costs shall be invoiced according actual expenses. Spare parts respectively any Products required shall be invoiced according actual price lists from Sprecher.

8.3. The stand-by-service-fee respectively the maintenance fee shall be invoiced quarterly in advance, the assignment shall be invoiced after their completion. Discounts granted on the charges rates, if any, shall not apply for services not included in the Agreement respectively shall not apply for any modifications of the Agreement.

8.4. Payments shall be made within 30 days from date of invoice, net, without any deductions. Setoff of claims against claims of Sprecher shall not be permissible. The Customer shall have no right of retention. Sprecher reserves the right, to assign rights to third parties. In case of delay in payment, Sprecher shall be entitled to invoice interest for delay of 14% p.a. and put on hold all further service obligations respectively outstanding services

8.5. All Products delivered from Sprecher shall be the sole property of Sprecher until complete fulfilment of all obligations.

9. Deadlines

9.1. The partners are in default with deadlines, agreed in the contract as penalty dates, in case of non-compliance, in all other cases after reminder and granting an adequate extension of time. The liability for occasions where liquidated damages are agreed is restricted to the agreed amount. The maximum sum is restricted to 25% of one annual stand-by-service-fee or maintenance fee of the respective Agreement, excluding VAT and such payment shall be in full satisfaction of Customer respective claims and Customer's sole and exclusive remedy.

10. Duration of the Contract

10.1. The contract shall enter into force upon signing by duly authorised representatives of the Partners. The Agreement shall be renewed automatically, unless terminated by either Partner subject to a notice period of three months before the expiration of the Agreement by means of registered mail. The termination can also be subject to particular parts of the Agreement. In case devices, components respectively (part of)plants are shut down before expiration of the Agreement, the Customer shall be entitled to prematurely terminate the Agreement.

10.2. Each Partner shall be entitled to immediately terminate the Agreement for important reason. Such important reason shall be, for example, adherence to a violation of a substantial provision of this Agreement in spite of notice and reminder, violation of the secrecy obligation, if insolvency proceedings are opened over the assets of one Partner or a petition for opening of such proceedings is dismissed for lack of assets to cover the costs or if a material change in the shareholder structure of the other Partner occurs. In case of termination all services and supplies already fulfilled shall be invoiced and payable immediately.

11. Liability, Insurance, Force Majeure

11.1. Outside the scope of the Product Liability Act, Sprecher shall be liable if the damage in question is proved to be due to intentional acts or acts of gross negligence, within the limits of statutory provisions, whereas the liability in case of gross negligence shall be limited to the year net value of the service stand-by fee or the maintenance fee. Sprecher shall not be liable for damages due to acts of ordinary negligence nor for consequential damages or damages for pure economic loss, indirect damages, loss of production, financing costs, costs for replacement energy, loss of energy, data or information, loss of profits, loss of savings or interest, or damage resulting from Third Party claims against the Customer.

11.2. Sprecher shall not assume any liability for dysfunctions at the Customer not caused by Sprecher, although they are in timely closeness to installation or usage of the performance of service and maintenance. Sprecher shall not assume any liability for interference or failures on the computer system of the Customer, for loss of data due to technical malfunction, interrupted data communication or other interferences or failures, which can arise during service and maintenance.

11.3. In case of a special risk of any damage at the Customer, which cannot be identified from Sprecher, the Customer shall inform Sprecher and shall keep itself an appropriate insurance coverage.

12. Secrecy

12.1. The Customer undertakes to use all data, drawings, technical specifications, materials provided and documentations of any kind, which he receives in connection with the contract 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 Customer shall impose the above obligation on their

staff and auxiliary persons accordingly. The secrecy obligation shall continue after termination of the contract.

12.2. The Customer 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.

13. Other Provisions

13.1. 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.

13.2. 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.

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

14. Applicable Law, Jurisdiction

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

14.2. All legal transactions, especially contracts 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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