

1 Subject and Scope of Validity

1.1 These General Terms and Conditions of Business shall apply to all service contracts and contracts for work and labour in which a company of the SPIRIT/21 group of companies (hereinafter referred to as SPIRIT/21) is the client. Specifically, they are the basis for orders from

- SPIRIT/21 GmbH
- SPIRIT/21 IT Services & Solutions GmbH and
- SPIRIT/21 IT Services AG

1.2 For contracts for work and labour and service contracts in accordance with 1.1, these General Terms and Conditions of Business, along with the individual orders and framework agreements, shall apply. Other terms and conditions shall not become an integral part of the contract, even if SPIRIT/21 does not expressly refute them.

2 General

2.1 Contractor shall carry out all assigned tasks using qualified personnel exercising great care and in compliance with the latest state of technology. Contractor shall apply and use the methods/processes, tools and quality assurance systems coordinated with Client and/or Client's customers.

2.2 The performance requests, features and targets specified by SPIRIT/21 do not release Contractor from its responsibility to provide a technically flawless and economical solution.

2.3 If changes to the scope and/or content of the service should appear necessary or expedient when rendering the contractual service, Contractor shall notify SPIRIT/21 of this immediately and obtain a decision as to whether the contract is to be continued in modified form. Supplementary or modification services rendered without the previous consent of SPIRIT/21 shall not justify a claim for compensation. The parties shall define changes or additional services in writing.

2.4 If Contractor renders services on the end customer's premises, Contractor shall comply with the pertinent safety and accident prevention regulations of the end customer and take into account the end customer's wishes regarding conduct on the business premises.

3 Warranty / Rights of Third Parties

3.1 Contractor's warranty obligations shall be in accordance with legal regulations unless hereinafter specified otherwise.

3.2 Contractor's liability for defects shall, in particular, include fault diagnostics, troubleshooting and fault clearance. Contractor shall ensure that the defects and/or faults are cleared immediately.

3.3 Contractor shall ensure that the services, results, programs and documents are free of third-party rights and, upon first request, shall indemnify SPIRIT/21 from any and all claims of third parties filed due to defects, violations of third-party property rights or product defects due to the portion contributed by Contractor.

3.4 With regard to legal defects, a limitation period of 3 years shall apply.

3.5 Contractor warrants that it has taken out a suitable product liability insurance policy. Paragraph 1 shall not apply if the object of the order is a service.

3.6 The warranty shall begin with successful final acceptance for contracts for work and labour (when partial deliveries are agreed in advance, with the last acceptance) and shall last two years.

4 Liability

4.1 Unless otherwise agreed in this contract, the Parties shall be liable to each other in accordance with legal provisions.

4.2 If Contractor carries out work on the end customer's premises as part of this agreement upon request of SPIRIT/21, SPIRIT/21 and the end customer shall be liable for personal injury and property damage on the part of Contractor and its employees only in the event of deliberate action or gross negligence.

4.3 Insofar as any claims are filed against SPIRIT/21 or the end customer by third parties for damages caused by Contractor or Contractor's employees, Contractor shall indemnify SPIRIT/21 and/or the end customer against any and all such claims.

5 Work Results / Inventions

5.1 Contractor shall transfer, at the time of their origin, the goods and services rendered and the obtained results, including any inventions and the utilisation rights in accordance with copyright law, to SPIRIT/21 for the latter's sole utilisation and exploitation in any way desired, without limits of time or location. In particular, SPIRIT/21 shall have the right to use, edit, process, modify, reproduce and distribute the goods, services and work results in any way desired and to grant utilisation rights to third parties. Contractor shall transfer ownership to all documents, data media and codes, including the source codes, at the time of their respective origin and in their respective stage of processing to SPIRIT/21.

5.2 Depending on the status of the employees it uses for fulfilment of the contract, Contractor shall take suitable measures in accordance with the law regarding employee inventions and/or special agreements to ensure that both inventions under the terms of employment and freelance inventions are transferred to SPIRIT/21.

5.3 Contractor shall guarantee that:

5.3.1 The software, goods and/or services (hereinafter referred to as "Contractual Goods and/or Services") do not infringe on industrial property rights of third parties and no industrial property rights of third parties prohibit the utilisation of Contractual Goods and/or Services;

5.3.2 Client, Client's affiliated companies and (where applicable) customers do not need any further licenses, permissions or consent with regard to industrial property rights of third parties (including payment to licensing agencies) and

5.3.3 The holders of the industrial property rights included in the Contractual Goods and/or Services will not assert their personal intellectual property rights, par-

ticularly the right to access the workpiece and to designate the holder, insofar as is permitted under the authoritative legal provisions.

5.3.4 Contractor has all rights to the works/Contractual Goods and/or Services necessary to ensure Client is granted the rights under the terms of the contract. The rights for which Contractor has to ensure availability shall, in particular, include copyright utilisation rights and ancillary copyrights, naming rights, design patents, brand, patent, title and trademark rights, and, if necessary, utilisation rights to databases or substantial portions thereof.

Contractor shall furthermore ensure that, insofar as Contractor itself is not the author/copyright holder, the authors/copyright holders of the works delivered by Contractor receive appropriate compensation for the services they have rendered and pay the proper fees to the natural and/or legal persons entitled to the claims.

5.4 Contractor undertakes to indemnify Client (hereinafter referred to including their legal representatives, employees and/or other representatives) without limitation as to any and all legal actions, accounts receivable, costs, charges, losses, claims for compensation for damages and other claims and expenses that are based on an actual or alleged infringement of industrial property rights of third parties by the Contractual Goods and/or Services. Parties agree that such an actual or alleged infringement is also present in the event of:

5.4.1 Any indirect infringement of rights or in which one of the Parties is complicit

5.4.2 Any actual or alleged infringement in complicity.

5.5 Contractor's liability in accordance with this § 5 shall be excluded insofar as the infringement is the direct result of:

5.5.1 A detailed design specification of Client,

5.5.2 A modification of the Contractual Goods and/or Services by Client without the consent of Contractor

5.5.3 Any combination of the Contractual Goods and/or Services with other software, goods and/or services not defined in the specification and/or not foreseeable for Contractor taking into account the intended use of the goods.

5.6 Each party must notify the other party immediately about any claims that have been filed or are imminent with regard to the infringement of third-party property rights and/or notify the other Party immediately if it becomes aware of infringements or alleged infringements of third-party property rights in conjunction with the Contractual Goods and/or Services. In this case, the Parties shall reach an agreement with regard to the defence in a joint defence agreement that contains Client's right to access all confidential procedure information in accordance with any court-issued protective order and all other information associated with asserting the claim. Client undertakes to do the following: (a) notify Contractor in writing immediately of any legal complaints or claims; (b) defer to Contractor's decision as to whether to defend against any complaint or claims, where Client shall be entitled to participate in the defence at Contractor's expense; and (c) furnish Client with all information, supporting actions and powers of attorney available and reasonably necessary to defend against any such complaint or claim.

5.7 If the use of the Contractual Goods and/or

Services or any portion thereof is prohibited by court order and if Contractor has good reason to believe that litigation related to infringement of third-party industrial property rights is imminent or a corresponding complaint has already been submitted, Contractor shall be entitled – in addition to Contractor's obligations arising from this § 5 – to do either of the following at its option and at its own expense:

5.7.1 Modify or replace the Contractual Goods and/or Services or portions thereof in such a way as to prevent the infringement or alleged infringement or third-party property rights; however, this must be done in a way that ensures that the modification or replacement conforms in all respects to the specifications and other contractual requirements with regard to the software or

5.7.2 Obtain for Client the right to continued use of the Contractual Goods and/or Services in accordance with the contract.

If the claim of the third party is based on the infringement of an (allegedly) standard-essential patent and the third party asserts a cease-and-desist claim against Client, Contractor shall be obligated to take all appropriate measures (including asserting non-infringement, patent exhaustion or any claim of nullity) to defend Client from the third-party claim. "Standard-essential patents" are those patents necessary to create, utilise or market the Contractual Goods and/or Services in conformity with the formal technical standards of the standardisation organisations recognized internationally by experts (such as GSMA, ETSI, DIN etc.). If these measures are unsuccessful, Contractor undertakes to procure all licences necessary to defend against such a claim. Contractor shall, in particular, undertake to (i) submit to the third party binding, unconditional and appropriate offers that can be used in legal proceedings or (ii) assert claims for granting a licence to the third party. If Client is not able, before the time of the last verbal negotiation before a court, to obtain all necessary licences for the standard-essential patents that are the subject of the dispute, Client shall be entitled to, at Contractor's expense, procure these licenses directly from the third party under fair, reasonable and non-discriminatory conditions ("FRAND"). In this case, Contractor undertakes to reimburse Client for the compensation paid for these rights; Client shall – insofar as not prohibited by non-disclosure agreements – keep Contractor informed about the license terms and conditions.

Parties also agree that this § 5.7 shall also be applicable in the event of restraining orders or seizures at borders of third parties.

5.8 If Contractor does not cease and desist the infringement of third-party rights in accordance with alternatives listed above under § 5.7.1 or 5.7.2 or by obtaining all necessary licenses for standard-essential patents in accordance with the aforementioned conditions within a suitable period defined by Client, Client shall be entitled to, at its discretion, withdraw from the respective purchase order and demand compensation for damages.

5.9 Contractor hereby undertakes with respect to Client, irrevocably and without additional compensation, not to assert any rights from its patents – neither in accordance with the law nor due to fairness – with regard to such software, goods and/or services that correspond to the Contractual Goods and/or Services or are comparable to same.

This provision contains a representation of Contractor not to file a complaint in the event of infringement, but shall not be construed as a waiver of rights.

5.10 This provision shall apply for the Parties and for each Client and their successors, authorized agents, estate executors, administrators and legal representatives.

5.11 Individually agreed restrictions on liability shall not apply to this § 5.

6 Document publication

Diskettes, CDs, documents and recordings, printed works and other business papers that are the property of the end customer and come into possession of Contractor during contract fulfilment, as well as documents created as part of an assignment, must be returned after the service has been rendered or acceptance of the task at the latest. Nevertheless, Contractor shall be entitled to keep an archive or backup copy upon written confirmation from Client. Contractor shall only use this copy for warranty or maintenance purposes, or to preserve evidence. The responsible person shall ensure that this copy is not accessible to unauthorised persons.

7 Transfer of and briefing on software developments

Developed programs must be transferred to the stipulated data carriers with required documentation in a ready-to-use state. Contractor shall brief the responsible end customer employees on how to use the programs and their systems.

8 Non-disclosure / Confidentiality

8.1 Contractor shall maintain confidentiality of all business secrets of Client or its customers that it knows or is made aware of. Customer data and addresses in particular must be handled with strict confidentiality. This obligation shall continue to apply even after termination of the contractual relationship.

8.2 Contractor shall not be authorised to copy, reproduce or pass on the data of Client or its customers that it can access without prior consent from SPIRIT/21. If Client or its customers grant Contractor access to networks and data processing systems, this access may only be used for purposes of service fulfilment. Upon conclusion of the assigned task, Contractor must return all data and documents in their entirety to Client or destroy them.

8.3 In addition, all information gained by Contractor during task fulfilment shall be handled with strict confidentiality. Contractor shall ensure that no information, data or knowledge from business affairs during its tasks are/is used when working with third parties or passed on to these parties.

8.4 Publications on services rendered or portions thereof require prior written consent from SPIRIT/21.

8.5 Contractor shall undertake to refer its employees to the obligations outlined in Paragraph 8.1 to 8.4 and to ensure that these obligations are also fulfilled. An obligation required in accordance with data protection rights that employees of Contractor keep

data confidential must be carried out prior to initial acceptance of the task.

8.6 On request, Contractor shall provide SPIRIT/21 with verification of the organisational and technical actions taken to protect personal data.

9 Employees of Contractor

9.1 Employees of Contractor shall not enter into an employment relationship with Client, not even for tasks completed on premises of Client or the end customer.

9.2 Employees of Contractor shall only be subject to Customer's supervisory authority over work and discipline.

10 Defaulting on tasks

10.1 If Contractor defaults on tasks, Contractor must pay a lump sum equal to 0.2% of the owed compensation. This shall be considered compensation for damages for the defaulted service for each day of default. The payment obligation is limited to 50 days of default. This amount can be claimed until the final payment is received. If Contractor only defaults on parts of the service, the ramifications of default shall only apply to parts of the service not yet performed, assuming Client can utilise the services already rendered. If SPIRIT/21 cannot utilise the rendered services, SPIRIT/21 shall notify Contractor of the rationale for this decision immediately in writing. The ramifications of default for rendered services shall take effect on the day Contract receives a default notification (at the earliest); in such cases, utilisation by Client is not possible and Contractor shall be entitled to request a return of the associated service parts for the duration of the default.

10.2 If Client procured systems, devices (hardware) or programmes from third parties as part of this work contract that the Contractor clearly requires to properly complete the obligations in the contract for the end customer, and if Client cannot utilise this or only utilise it to a limited extent due to a default, Client has a claim to a lump sum of compensation for damages in accordance with and in addition to Paragraph 1 for the duration of time that utilisation is impeded. For each day utilisation is impeded due to a default, the lump sum of compensation for damages shall be 0.1% of the prices or compensation applied for acquisition of the system components. The payment obligation is limited to 50 days of default. This amount can be claimed until the final payment is received.

10.3 Irrespective of and in addition to enforcement of a claim to a lump sum of compensation for damages in accordance with Paragraph 10.1 and 10.2, SPIRIT/21 shall be entitled to set a suitable extension period with Contractor if services are not rendered within the original specified period. An extension period need not be set if Contractor refuses a rectification, if rectification fails or if SPIRIT/21 deems the rectification to be unreasonable. If Contractor lets a reasonable, defined extension period elapse, Client shall be entitled to withdraw from the respective individual contract. If Client has already

accepted partial performance, Client can restrict contract withdrawal to those services not performed. If Client's interest in the entire service no longer applies or is greatly reduced due to default, Client shall be entitled to

withdraw from the entire individual contract. In case of a withdrawal, Client must return or destroy the deliverables received from Contractor and, where applicable, any duplicates created; Client must inform Contractor of destruction of these materials right after the withdrawal is finalised.

10.4 In cases related to Paragraphs 10.1 to 10.3, Client's right to document higher damages that are incurred and to request compensation from Contractor for such damages shall remain unaffected, as is the Contractor's right to assert that damages or a loss of value did not occur or is that the amount is much lower than that of the fixed rates. Additional rights or other rights of Client shall remain unaffected.

11 Severability Clause

If a provision in these General Terms and Conditions of Business is or becomes invalid or unenforceable, this shall not alter the validity of the remaining provisions in this contract. Instead, the affected provision needs to be replaced by a regulation that most closely approximates the financial content of the original provision.
