

**(Delivery Terms)**

**§ 1 Scope**

1. Any offer, delivery, service and agreements concluded by SPEECH Design Gesellschaft für elektronische Sprachverarbeitung mbH (hereafter „SPEECH“), shall exclusively be subject to the subsequent terms and conditions, even if no explicit reference to such terms and conditions is made in individual cases. Any deviating customer terms and conditions, including any purchasing terms, shall not apply even if not explicitly contradicted.
2. The present terms and conditions shall not apply to any agreements concluded with consumers (consumer agreements).

**§ 2 Offer and Conclusion of Agreement, Design Documents**

1. Any offers shall be subject to confirmation.
2. Any agreement shall be required a formal order confirmation by SPEECH. Orders shall be considered confirmed on the terms specified in the offer if delivery is made without a formal order confirmation.
3. SPEECH shall exclusively be entitled to any rights in and resulting from design and supporting documents, such as drawings, models and the tools required to execute the order. Customer shall not be entitled to delivery of any design and supporting documents or tools.
4. SPEECH shall be entitled at any time to modify the items to be delivered if such modification does negatively affect operability and SPEECH considers modification necessary for technical or model upgrade reasons.

**§ 3 Pricing and Adjustment of Prices**

1. The prices specified in the order confirmation or, absent an order confirmation, in such price list as is applicable at the time, shall apply. Unless otherwise agreed, prices shall be in euros and shall include delivery from the SPEECH warehouse net of packaging, freight, postage, insurance, customs duties such legally imposed value-added tax as may be applicable at the time of delivery.
2. In the event of any cost increases for procurement or manufacturing of the items to be delivered (increased wages, primary products or materials, raw materials, customs or other taxes, etc.) that occur between conclusion of the agreement and delivery, SPEECH shall be authorized to increase accordingly any prices agreed. If requested by the customer, we shall be required to submit proof of any cost increases. Customer shall be entitled to cancel the agreement if the price increase significantly exceeds the rise in the general cost of living between the time the order was placed and delivery was made. Customer's right to cancel shall expire if not exercised within one month after the price increase has been communicated.

**§ 4 Payment Terms, Customer's Default**

1. Payment shall be due without any deductions no later than 14 days after the invoice date. SPEECH shall be entitled to ask for advance payments.
2. Upon expiration of the payment deadline, customer shall be in default without any reminder and/or threat of refusal being required. To meet a payment deadline it shall suffice if SPEECH is in a position to dispose of the payment (e.g., payment credited to a SPEECH account, check cashed).
3. In the event that Customer is in default, interest at an annual rate of eight percentage points in excess of the base interest rate shall become payable to SPEECH, without prejudice to any additional claims.
4. In the event that customer culpably fails to meet his payment obligation or SPEECH is entitled to refuse performance according to Section 321 Paragraph 1 of the German Civil Code, any outstanding claims held by SPEECH against Customer shall become due and payable immediately, even if checks or drafts with a later due date have been accepted to meet a payment obligation.

**§ 5 Set-Off, Right to Withhold**

Customer shall only be authorized to set off claims that are legally valid, undisputed or ready for a decision. The same shall apply to assertion of any rights to withhold.

**§ 6 Delivery and Performance Periods**

1. SPEECH shall be entitled to partial delivery. Each partial delivery shall be considered independent of any other delivery, especially in the case of agreements for successive delivery.
2. SPEECH shall not be bound by any deadlines for delivery, performance or execution unless explicitly and formally agreed otherwise. Delivery deadlines shall commence once the order confirmation has been sent but no sooner than any required information, documents and parts to be provided by Customer have been received.
3. In the case of make-and-hold orders, Customer shall specify a period for delivery or performance that will allow SPEECH sufficient time and opportunity to schedule accordingly. In the event that Customer – for whatever reason – fails to properly meet his obligation to call goods or services, SPEECH shall be entitled to specify a period for performance and lot size or to cancel the agreement and ask for damages rather than performance.

4. Any delivery deadlines that have been agreed upon as binding and any grace period deadlines shall be considered met if the item to be delivered has been handed over by the deadline to a person designated for delivery or, at the latest, if readiness to ship has been reported in case delivery has been delayed for reasons beyond the control of SPEECH.
5. Any agreements shall be concluded subject to correct and timely delivery of SPEECH by SPEECH's suppliers. In particular, SPEECH shall be entitled to cancel any agreement for which SPEECH has concluded a congruent hedging transaction and its supplier fails to deliver. In this case, Customer shall be promptly notified that the good or service is unavailable. Any claims for damages by Customer shall be excluded.
6. Any unforeseeable events or obstacles through no fault of SPEECH's that entirely or partially delay delivery or performance, including strikes, lockouts, unforeseeable disruptions of SPEECH's or a supplier's operations, unavoidable raw material shortages, destruction by third parties or Acts of God (e.g., fire, floods, earthquakes) of goods already produced or services already rendered or obstruction due to circumstances within the control of Customer, shall entitle SPEECH, after such obstacle has been communicated to Customer, to extend any deadlines for delivery or performance by the period during which the obstruction persists. In the event that such obstruction persists for a period for more than six weeks or delivery or performance becomes impossible for one of the reasons set forth during the preceding clause 1, SPEECH shall be entitled to cancel the agreement. Customer shall be notified promptly of the obstacle impeding performance and, subject to the requirements set forth in the preceding clause 2, shall also be subject to cancel the agreement. Customer's right to cancel shall expire if not exercised within one month after Customer has been notified of such reason for cancellation. In the event of rightful cancellation, any consideration already rendered by Customer shall promptly be reimbursed. Any further claims by Customer, including any claims for damages, shall be excluded.
7. Delayed delivery shall require a prior formal written warning even if a period has been agreed for delivery or performance that can be determined or calculated from a calendar.

**§ 7 Shipment and Passing of Risk**

1. Unless otherwise agreed, shipments shall be uninsured and shall be for Customer's account.
2. Risk of accidental loss or accidental deterioration of the item to be delivered shall pass to Customer once the item to be delivered has been handed to the person in charge of transportation or has left SPEECH's warehouse for shipment. The same shall apply in the event of freight-paid delivery.
3. In the event that Customer fails to accept any delivered item offered to him that is in compliance with the terms agreed upon or that shipment or delivery is delayed at Customer's request, risk of accidental loss or accidental deterioration of the item to be delivered shall pass to Customer once readiness to ship has been reported. In such case, SPEECH, without prejudice to any further claims, shall be entitled to demand that Customer pay a storage fee in the amount of .5%, but no greater than a total of 5%, of the contractual value, beginning one month after readiness to ship has been indicated, unless Customer provides proof of lesser damage.

**§ 8 Retention of Title**

1. Until any and all receivables and claims, to which SPEECH is entitled for whatever legal reason, including any current account balance claims and claims for indemnification from liability risk assumed at Customer's request, have been paid or met, SPEECH shall be granted the following collateral, which shall be released at SPEECH's discretion upon Customer's request if their value exceeds SPEECH's claims against customer in a sustained manner by more than 20%.
2. Any items to be delivered shall remain the property of SPEECH (hereafter „Goods Subject to Retention of Title“). Any processing and alteration shall be performed for SPEECH as a manufacturer, without, however, obliging SPEECH as a result. If the Goods Subject to Retention of Title, through processing or otherwise, are inextricably mixed or combined with other movable objects that are not the property of SPEECH, SPEECH shall become a joint owner of the new object.
3. Customer shall be entitled to sell Goods Subject to Retention of Title during the ordinary course of business as long as Customer meets his payment obligations, is not in default to SPEECH and no application has been filed to commence insolvency proceedings. Customer shall not be entitled to dispose of Goods Subject to Retention of Title in any other way (use as collateral, pledging, etc.). Any claims resulting from the resale or for any other legal reason (insurance services, tort-related claims, etc.) (including any current account balance claims) shall be assigned to SPEECH for collateralization as of now (such assignment shall be pro-rata to the extent that SPEECH jointly owns such goods in the event that SPEECH is merely a joint owner of the Goods Subject to Retention of Title). SPEECH shall accept such assignment. Subject to cancellation at any time, Customer shall be entitled to collect such claims. SPEECH shall be entitled to revoke such authorization if Customer fails to meet his payment obligation. In this case, Customer shall be required to inform SPEECH about any claims that have been assigned, to provide any information required to collect such claims and to notify each debtor of the assignment.

4. Customer shall store Goods Subject to Retention of Title for SPEECH free of charge. Customer shall maintain Goods Subject to Retention of Title in proper condition and insure such goods at his expense to the extent due and proper when applying commercial diligence. Customer shall promptly notify SPEECH in the event of court-imposed garnishment or any other third-party intervention, object to such intervention and point out SPEECH's joint ownership. Customer shall bear any expenses associated with preventing such intervention.
  5. In the event that Customer violates the terms of the Agreement, including default, SPEECH shall be entitled, after imposing a grace period, to cancel the Agreement and ask that the Goods Subject to Retention of Title be returned, in which case Customer shall not be entitled to withhold such goods, to enter Customer's premises, to take possession of Goods Subject to Retention of Title, and, if applicable, to require that any claims by Customer for the return of such Goods be assigned. Any additional claims, including any claims for damages, shall remain unaffected.
3. If – for whatever legal reason – liability for damages by SPEECH or, instead, a claim against SPEECH for reimbursement of useless expenses may be considered, SPEECH's liability shall include:
    - a) any damage due to harm to life, limb or health if SPEECH is accountable for such breach of duty,
    - b) any intent or gross negligence in the behavior of SPEECH's bodies or officers and any grave culpability on the part of the organization,
    - c) any violation of material contractual obligations and any grossly negligent behavior by simple auxiliary persons to the following restricted extent: Damages shall not exceed the loss incurred and profit foregone that would have been foreseeable as a potential result of violation of the agreement at the time the Agreement was concluded, taking into account those circumstances that SPEECH knew or should have known.
    - d) In cases set forth in the preceding item c), any claim for reimbursement of useless expenses shall be excluded if and to the extent such expenses do not serve operational purposes and/or in the event of expenses for additional transactions concluded by the Customer with respect to Customer's contractual relationship with SPEECH.

## § 9 Warranty

1. Items to be delivered shall be supplied in a condition customary in the trade. The condition of items to be delivered shall conclusively be determined by SPEECH's product description. The right to make technical changes to the items to be delivered, even if different from prior shipments, shall remain expressly reserved. Advertising messages and words of praise whose content is geared to serving publicity purposes shall not constitute information about the items' condition.
2. Deficient assembly instructions shall only constitute a deficiency if they prevent proper assembly of the items to be delivered.
3. To uphold his warranty rights, Customer must formally object to any faulty delivery, deviating amounts and obvious defects promptly upon delivery or, in the case of unobvious defects, promptly upon discovery.
4. Customer shall send any items delivered to which Customer has objected freight paid to a destination designated by SPEECH for verification and, if applicable, remedy of defects. In the event that Customer's objection to defects is justified, Customer shall be reimbursed any resulting transportation expenses in the amount required.
5. At its sole discretion, SPEECH shall be entitled to remedy defects of items to be delivered by remedying the defect or supplying goods devoid of defects (subsequent performance). In the event that subsequent performance fails as specified in Section 440 Clause 2 of the German Civil Code, Customer may opt either to require that compensation be lowered (abatement) or cancel the agreement. In the case of minor defects, cancellation shall be excluded.
6. Any and all warranty claims shall be subject to a statute of limitations of one year after delivery.
7. Unless otherwise expressly formally agreed, SPEECH shall not assume any procurement risk and shall not provide any guarantees for legal purposes.

## § 10 Breaches of Duty Beyond the Scope of Warranties

1. Cancellation of the Agreement by Customer on account of non-performance or performance in violation of the Agreement shall be excluded if the breach of duty is insignificant and/or beyond SPEECH's control.
2. Cancellation of the Agreement on account of violation of an ancillary obligation as defined by Section 241 Paragraph 2 of the German Civil Code shall only be permissible if SPEECH can be charged with intent or gross negligence and Customer cannot be reasonably expected to uphold the Agreement and accept performance by SPEECH.
3. Unless the statutory statute of limitations imposes shorter timeframes, Customer claims on account of breaches of duty beyond the scope of warranties shall be subject to a statute of limitations of one year after the Customer has learned the facts giving rise to the claim and the identity of debtor or should have learned such information in the absence of gross negligence, and, regardless of whether Customer has learned such information, shall be subject to a statute of limitations of five years after the breach of duty has been committed.

## § 11 General Restrictions of Liability

1. Claims for indemnification rather than performance may only be asserted if Customer has previously granted SPEECH a formal grace period for subsequent performance, associated with a threat to require indemnification rather than performance upon expiration of the grace period and/or to cancel the Agreement if such grace period expires without effect. Customer's claims for performance shall expire upon expiration of the grace period set but no later than at the time Customer demands indemnification rather than performance.
2. Claims for indemnification rather than performance on account of breach of an ancillary obligation as defined by Section 241 Paragraph 2 of the German Civil Code may only be asserted subject to the above right to cancel as specified in the preceding Section 10 Item 2.

4. Personal liability by any SPEECH bodies and officers acting in the capacity of auxiliary persons shall be excluded.
5. Any additional claims against SPEECH shall be excluded.
6. The above restricted liability shall also apply if and to the extent SPEECH has assumed any procurement risk.

## § 12 Form Requirements

To comply with the requirements for formal notices as specified in the present General Terms and Conditions, transmission of the notice in question in writing, by fax or electronically shall be required and sufficient.

## § 13 Software and Licenses

1. Unless otherwise formally agreed, any software made available shall be machine-readable.
2. Use of such software shall be subject to the licensing terms of the respective software manufacturer / licensor. Software and documentation shall only be intended for end-user's internal use along with the products supplied by SPEECH. Isolated use of software shall not be permitted.
3. In the event that Customer is a reseller, Customer shall not obtain any right to use software on his own. Customer shall point out that the respective software manufacturer's / licensor's licensing terms apply. Customer shall be required to accept returns of unused delivered items in return for reimbursement of the purchase price paid by his customer if end user refuses to accept the respective software manufacturer's licensing terms. SPEECH shall reimburse Customer any purchase price paid in return for a freight-paid return of the unused delivered item.
3. The following shall apply unless the respective software manufacturer's / licensor's licensing terms contain provisions to the contrary: End user may only make copies for backup or archiving or troubleshooting purposes while including the original copy's trademark symbol. End user shall ensure that software, documentation or copies are not made available to any third parties without the consent of the respective software manufacturer / licensor. Retranslating any software made available into source code, including retranslation using debugging software, shall not be permitted.

## § 14 Final Provisions

1. This Agreement shall be governed by the laws of Germany. Application of the United Nations Convention on Contracts for the International Sale of Goods (UN Purchase Law) shall be excluded.
2. Munich shall be the place of performance.
3. The courts of Munich shall have jurisdiction for any disputes – including draft and check litigation – that involve business persons, legal entities under public law and public-law special assets. However, SPEECH shall also be entitled to bring action against Customer in Customer's jurisdiction.
4. Invalidity of individual provisions shall not affect the validity of any other provisions. Invalid provisions shall be replaced by provisions that best approximate the Parties' intent.

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