

# SPIRIT/21

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### Terms and Conditions (T&C)

for IT Services and Contract Work

#### 1. Scope

**1.1** These General Terms and Conditions (“GTC”) of the SPIRIT/21 Group form the basis for the provision of specified works and services by each company within the Group. Specifically, they govern the contractual relationships between SPIRIT/21 GmbH and SPIRIT/21 IT Services & Solutions GmbH (hereinafter collectively referred to as “SPIRIT/21”) and their business customers.

**1.2** These Terms and Conditions apply unless otherwise expressly agreed in writing in the contract. In the event of any conflict between an individual contract and these Terms and Conditions, the relevant provision of the individual contract shall prevail.

**1.3** The customer’s general terms and conditions or terms of purchase shall not apply. This applies even if the customer refers to them in their order and SPIRIT/21 does not object.

#### 2. Types of Contracts / Quotation Preparation

**2.1** Services provided by SPIRIT/21 are agreed upon in the offer as work within the meaning of § 631 of the German Civil Code (BGB), or services within the meaning of § 611 of the BGB,.

**2.2** In the case of work within the meaning of § 631 of the German Civil Code (BGB), SPIRIT/21 is responsible for supervising, managing, and monitoring the provision of services as well as the services rendered. The customer is solely responsible for integrating SPIRIT/21’s services into its own operational processes.

**2.3** Services are provided to advise and assist the customer. SPIRIT/21 provides these services under its own responsibility.

**2.4** The customer is solely responsible for the purposes for which they use the work or services provided by SPIRIT/21.

**2.5** A contract is formed when the parties sign the offer. The date on which the contract is formed is the day on which SPIRIT/21 receives the offer signed by the customer. The customer may place subsequent orders for services up to an amount of €50,000 informally, in writing, or verbally. In such cases, a contract is concluded upon receipt of the order confirmation.

#### 3. Scope of Deliverables

**3.1** The scope of deliverables is set forth in the individual quote, project contract, or performance description.

**3.2** Any changes to the scope of deliverables must be agreed upon in writing.

**3.3** The contractual scope of deliverables is exhaustive. SPIRIT/21 is obligated to provide only the deliverables specified in the contract.

#### 4. The Customer’s Obligations to Cooperate and Provide Materials

**4.1** SPIRIT/21 relies on the Customer’s cooperation to ensure the proper performance of the contractual services owed by SPIRIT/21. The acts of cooperation specified in more detail herein and in the individual contract thus constitute performance obligations of the customer, which must be fulfilled in full and on time. To the extent that the customer’s acts of cooperation are necessary to enable the contractor to perform its deliverables, these acts of cooperation also constitute independent contractual obligations.

**4.2** The customer shall designate at least one contact person for SPIRIT/21 who will be available to SPIRIT/21 employees during the agreed service period and who is authorized to make decisions necessary for the continuation of the service.

**4.3** The customer shall provide all necessary information, access, and resources in a timely manner and for as long as they are required for the provision of services.

**4.4** If services are provided on the customer’s premises, the customer must inform SPIRIT/21 of any potential occupational safety risks. If such risks exist, the customer is responsible for implementing appropriate safety measures.

**4.5** Delays caused by a lack of cooperation shall release SPIRIT/21 from its obligation to perform to the extent applicable. In the event of incorrect, untimely, or incomplete cooperation, SPIRIT/21 shall notify the customer of the breach of duty and, in such a case, shall be entitled to bill the customer for any additional costs incurred as a result of the breach.

**4.6** The customer is responsible for backing up their data, unless otherwise agreed.

**4.7** If, during the provision of services, the need arises for further cooperation on the part of the Customer that is not specified either here or in the individual contract, the Customer is obligated to provide such cooperation, provided that:

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**4.7.1** the specific need for cooperation could not have been identified by SPIRIT/21 at the time the contract was concluded, and

**4.7.2** both contracting parties would have agreed to such an obligation of cooperation on the part of the customer had they been aware of it in a timely manner.

**4.8** The customer's participation is provided free of charge.

### 5. Service Provision

**5.1** The provider shall perform the services in accordance with generally accepted technical standards.

**5.2** Dates are binding only if they have been expressly agreed upon as binding.

**5.3** SPIRIT/21 is entitled to engage third parties to perform the services.

### 6. Payment

**6.1** Payment is made either on a time-and-materials basis or as a fixed fee. If billed on a time-and-materials basis, SPIRIT/21 will provide the corresponding time sheets along with the invoice.

**6.2** Unless otherwise agreed, invoices are issued monthly at the end of each calendar month.

**6.3** All prices are subject to applicable sales tax.

**6.4** Invoices are payable within 14 days without deduction.

### 7. Acceptance (within the meaning of § 640 of the German Civil Code (BGB))

**7.1** The customer shall conduct the acceptance testing immediately upon delivery of the work results. The acceptance specifications are set forth in the contract. The customer is responsible for providing the necessary test data and for conducting the acceptance testing. An acceptance report shall be prepared for the acceptance, which must be signed by both parties. This report may include a description of which minor defects are to be corrected and which major defects require a repeat acceptance.

**7.2** Defects that do not significantly impair the use of the agreed-upon project services do not preclude acceptance. However, the customer may make acceptance contingent upon rectification within the warranty period. If SPIRIT/21 fails to remedy the defects in question despite two reasonable grace periods having been granted, the customer is entitled to deduct a reasonable reduction from the remuneration or to exercise statutory warranty rights.

**7.3** If the customer fails to accept the work within a reasonable period set by SPIRIT/21, the

work results shall be deemed accepted. The same applies if the customer puts the work results into productive use, in whole or in part, without first having carried out the relevant acceptance. Minor defects do not entitle the customer to refuse acceptance.

### 8. Legal defects

**8.1** SPIRIT/21 warrants that the transfer of agreed-upon rights of use to the customer does not infringe upon the rights of any third parties.

**8.2** If any third party asserts intellectual property rights against the Customer in connection with such a transfer, the Customer is obligated to notify SPIRIT/21 immediately in writing.

**8.3** SPIRIT/21 is entitled to defend the customer against claims by third parties. The customer shall assist SPIRIT/21 to a reasonable extent and shall refrain from any actions that could hinder the defense (e.g., admission of liability). SPIRIT/21 shall indemnify the customer against the disadvantages and risks of the dispute. SPIRIT/21 shall retain the right described herein even after the expiration of the statute of limitations for liability for defects.

**8.4** In the event of subsequent performance, SPIRIT/21 shall, at its discretion, carry this out by means of

**8.4.1** replacing the deliverables with an appropriate equivalent substitute,

**8.4.2** modifying the deliverables, or

**8.4.3** settling the third party's intellectual property claims.

**8.5** SPIRIT/21 shall indemnify the customer against any actual damages resulting from SPIRIT/21's infringement of third-party intellectual property rights.

**8.6** The statute of limitations for claims arising from defects in title is twelve (12) months and begins upon acceptance of the work.

### 9. Material defects in contracts for work and services (§ 631 of the German Civil Code (BGB))

**9.1** SPIRIT/21 warrants that the work complies with the terms of the contract.

**9.2** The customer shall immediately report any identified defects in writing. The report must include all information necessary for SPIRIT/21 to conduct its own investigation of the reported defect.

**9.3** SPIRIT/21 shall, at its discretion, remedy confirmed defects within a reasonable period of time either by correcting the defect or by producing a new work. If the attempt to remedy the defect ultimately fails despite at least two attempts per reported defect, the client may assert the legal

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rights to which it is entitled. The condition for the reservation of two attempts at rectification is that this waiting period is not unreasonable for the customer.

**9.4** If SPIRIT/21 has failed to perform a due service in accordance with the contract and attempts to remedy the defect are unsuccessful, the client may not rescind the contract or claim damages in lieu of the entire service or reimbursement of futile expenses if the defect falls into the “minor” or “moderate” defect category. However, in this case, the client may demand a reasonable reduction in the agreed remuneration for the work; insignificant defects, however, shall not be taken into account and do not entitle the client to a reduction.

**9.5** Claims for defects are also excluded if the customer has interfered with the work results, in particular by modifying them. This does not apply if the customer can prove that the interference in question did not cause the defect.

**9.6** SPIRIT/21 may charge the customer for services related to the investigation or resolution of reported malfunctions based on the standard rate, provided that the reported malfunction does not constitute a defect and the customer could have identified this through a diligent review. If SPIRIT/21 determines that the reported malfunction is not a defect, it shall immediately notify the client and shall only proceed with further action after receiving an order to resolve the malfunction.

**9.7** The statute of limitations for claims arising from material defects is twelve (12) months and begins upon acceptance of the work.

## 10. Liability

**10.1** SPIRIT/21 shall be liable without limitation, within the scope of statutory provisions, for the following damages in the following cases:

- Damages resulting from a breach of duty caused by willful misconduct or gross negligence
- Damages resulting from injury to life, limb, or health, to the extent caused by negligent or intentional acts;
- Damages resulting from a breach of warranty;
- Damages resulting from the absence of a warranted characteristic;
- Damages resulting from other acts for which unlimited liability is mandatory under law.

**10.2** Furthermore, unless otherwise provided in Section 10.1, SPIRIT/21 shall be liable for ordinary negligence as follows:

- In the event of a breach of material contractual obligations, liability for such breach is limited to foreseeable damages typical for

this type of contract. Contractual obligations are considered material if their fulfillment is essential for the proper performance of the contract and the customer may reasonably rely on their fulfillment.

- Liability for indirect or consequential damages is excluded. Such damages include lost profits or the downtime of production facilities.
- In the event of data loss, SPIRIT/21 shall be liable only to the extent that the damage would have occurred even if the customer had performed proper, regular data backups appropriate to the importance of the data. This shall not apply if SPIRIT/21 is responsible for the fact that data backup was impossible or impeded.
- Liability is excluded in the event of a breach of non-essential contractual obligations.

**10.3** SPIRIT/21 shall not be liable in cases of force majeure. Force majeure is an external, unforeseeable, and unavoidable event that cannot be prevented even with the exercise of due care. This includes (by way of example, not limited to) events such as natural disasters, attacks on IT infrastructure or the power supply, wars, or pandemics.

## 11. Confidentiality

**11.1** The parties shall treat each other’s material and non-public information with the care customary in business dealings. Any additional protection of particularly confidential information and the associated establishment of conditions require the conclusion of a separate written agreement (confidentiality agreement) in each case. Ideas, concepts, know-how, and techniques relating to information processing may be freely used by the contracting parties, provided that no intellectual property rights preclude such use.

**11.2** SPIRIT/21 may disclose the essential content of a customer inquiry to subcontractors in the event that they are engaged. Otherwise, such inquiries are subject to confidentiality.

**11.3** The confidentiality obligation remains in effect even after the contract has ended.

## 12. Rights of Use

**12.1** SPIRIT/21 grants the customer a non-exclusive, perpetual right to use the deliverables to be produced under this contract solely for the customer’s business operations. Any further rights of use may only be granted by express written agreement. In the case of joint creation, the rights of use belong jointly to both parties in such a way that each party is entitled to exercise its rights independently of the other party.

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**12.2** All rights to the hardware or software provided by SPIRIT/21 to the customer as part of its services, including program descriptions, documentation, and source code, remain the property of SPIRIT/21 or the third party.

**12.3** In the case of reseller services, SPIRIT/21 will provide the customer with the third party's terms of use. The customer accepts the third party's additional terms and conditions and agrees to comply with them. The third party's additional terms and conditions shall take precedence over any conflicting provisions in these Terms and Conditions.

**12.4** To the extent that the Customer provides SPIRIT/21 with software products for the purpose of rendering services, the Customer is responsible for ensuring that such software is properly licensed and that any transfer restrictions pertaining to the software are complied with. In the event of alleged or proven violations of such license terms, the customer shall indemnify SPIRIT/21 against any resulting claims. This shall not apply to the extent that SPIRIT/21 is at least predominantly at fault for the violations.

### 13. Term of the Agreement and Termination

**13.1** The term is specified in the respective contract.

**13.2** Service contracts may be terminated with four weeks' notice effective at the end of the calendar month, unless otherwise agreed.

**13.3** The right to terminate the contract for cause remains unaffected. In particular, SPIRIT/21 may terminate a contract without notice, notwithstanding any further statutory right of termination, if

**13.3.1** the customer is in default on two payments due at the same time and fails to pay after the expiration of a reasonable grace period, or

**13.3.2** the customer's financial circumstances deteriorate significantly after the conclusion of the contract, unless an application for the opening of insolvency proceedings has already been filed. Irrespective of this, SPIRIT/21 may terminate this contract without notice if the customer defaults on payment after filing for insolvency proceedings or if the customer violates other provisions of the contract despite a written warning from SPIRIT/21.

### 14. Force majeure

To the extent that services are affected by events of force majeure, SPIRIT/21 shall not be in default. Agreed dates and deadlines shall be extended accordingly.

### 15. Privacy Policy

**15.1** The provider processes personal data in compliance with applicable data protection laws.

**15.2** If necessary, the parties shall enter into a separate data processing agreement.

### 16. General Information

**16.1** The assignment of rights under a contract, with the exception of SPIRIT/21's claims for payment, requires the prior written consent of the other party. Consent may be withheld only for good cause.

**16.2** Before the customer or SPIRIT/21 takes legal action for breach of a contractual term, the party in question must be given a reasonable opportunity to remedy the breach.

**16.3** The customer may set off a claim only if the counterclaim is undisputed or has been established by a final and binding judgment.

**16.4** Any amendments or additions to a contract must be made in writing. This also applies to the requirement for the written form.

**16.5** The law of the Federal Republic of Germany shall apply to contracts entered into by SPIRIT/21 GmbH, and the law of the Republic of Austria shall apply to contracts entered into by SPIRIT/21 IT Services & Solutions GmbH, in each case to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods.

**16.6** The place of jurisdiction is the registered office of the respective SPIRIT/21 company that entered into the contract. For SPIRIT/21 GmbH, this is Böblingen; for SPIRIT/21 IT Services & Solutions GmbH, it is Vienna.

**16.7** If any provision or part of this agreement is invalid, the remaining provisions and parts of this agreement shall remain in full force and effect.

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