



SPEKTRA

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General Purchase Conditions (GPC)

SPEKTRA Schwingungstechnik und Akustik GmbH Dresden

Heidelberger Straße 12 | 01189 Dresden

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www.spektra-dresden.com

General Purchase Conditions

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1. General definitions of terms

In the following General Purchase Conditions, SPEKTRA Schwingungstechnik und Akustik GmbH Dresden, Heidelberger Straße 12, 01189 Dresden, is referred to as SPEKTRA. The contractual partner of SPEKTRA is the Supplier; the contractual relationship to be concluded is the Contract.

2. Scope of application

2.1 These General Purchase Conditions apply to all business relationships with Suppliers in relation to the supply of movable items ('goods' or 'products') to SPEKTRA, regardless of whether the Supplier makes the supply himself or whether he buys the items in question from upstream suppliers. The Conditions apply mutatis mutandis also to the purchase of works and services. The receipt of the goods supplied is replaced with the acceptance procedure in the case of works and the provision of the service in the case of services.

The Purchase Conditions apply only if the Supplier is a business customer.

2.2 Business customers within the meaning of these General Purchase Conditions are all economic operators (Section 14 of the Civil Code), legal entities governed by public law, and ring-fenced public funds. Economic operator is defined as any natural person or legal entity or partnership with legal capacity who or which, on conclusion of the contract, engages in a commercial or independent professional activity.

2.3 Differing, contradicting, or supplementary General Business Conditions of the Supplier form part of the Contract only if and to the extent that SPEKTRA has expressly consented to their applicability. This requirement for consent applies in every case, for example also where SPEKTRA takes receipt of the deliveries of a Supplier without reservation, in knowledge of the General Business Conditions.

2.4 Individual agreements with the Supplier made in individual cases (including riders, supplements, and amendments) always take precedence over these General Purchase Conditions. The content of such agreements is determined by a contract concluded in writing or the confirmation of SPEKTRA in writing.

2.5 The General Purchase Conditions apply in their prevailing version as a framework agreement also for future contracts with Suppliers in relation to the supply of movable items ('goods' or 'products') to SPEKTRA with the same Supplier without SPEKTRA in each instance having to refer to them once more. The prevailing version is available at:

<https://www.spektra-dresden.com/en/legal.html>

2.6 SPEKTRA retains the right to make amendments or additions to the General Purchase Conditions at any time, provided that the Supplier is not thereby disadvantaged in bad faith.



Amendments or additions to the General Purchase Conditions are notified in writing. The amendments or additions to the General Purchase Conditions are deemed to have been approved if the Supplier does not object to them in writing within two weeks from notification. If the Supplier objects to the amendment or addition, SPEKTRA may terminate the contractual relationship through ordinary termination.

3. Conclusion of the contract

3.1 An order placed by SPEKTRA is deemed binding at the earliest when placed in writing or confirmed. Supplies for which no orders are available in writing are not recognised. The silence of SPEKTRA in response to offers, requests, or other declarations by the Supplier is deemed consent only if this was expressly agreed. Obvious errors (e.g. typographical and arithmetic errors) and/or incomplete orders or missing order documents must be notified immediately by the Supplier to SPEKTRA for the purposes of correction or supplementation; otherwise, the Contract is deemed not to have been concluded.

3.2 Modified or delayed receipt is deemed to be a new offer and always requires acceptance by SPEKTRA. This applies *mutatis mutandis* to receipt subject to extensions, restrictions, or other amendments.

3.3 Offers, drafts, samples, and prototypes are provided to SPEKTRA by the Supplier free of charge. At the request of SPEKTRA, these are to be taken back by the Supplier immediately and at the latter's own cost.

3.4 The Supplier must inform SPEKTRA before the conclusion of a contract at least in writing if the product ordered, in accordance with rules prevailing in the Federal Republic of Germany, is subject to export control or other limitations on saleability ('export control'). If the Supplier breaches this notification obligation, SPEKTRA is

entitled to rescind the Contract without notice. Furthermore, the Supplier is obliged to indemnify SPEKTRA against the claims of third parties based on the product ordered being subject to an export control. SPEKTRA's own culpability must be taken into account through a reduction in the compensation payable. This does not apply where the Supplier is not responsible for the notification obligation under sentence 1. Further claims on the part of SPEKTRA are not thereby precluded.

4. Fulfilment of the contract

4.1 The lead time indicated by SPEKTRA in the order is binding. The Supplier is obliged immediately to inform SPEKTRA in writing, indicating grounds and the anticipated delay, if it can be anticipated that the agreed lead times cannot be complied with. SPEKTRA can also demand amendments to the supply date for the product even after the conclusion of the Contract where this is not unreasonable for the vendor. In the event of such an amendment to the contract, the effects must be suitably taken into account by both sides, in particular in relation to increases or reductions in cost.

4.2 Before the agreed supply date, part-deliveries or deliveries and deliveries of excess or reduced quantities may be undertaken only with the prior written consent of SPEKTRA. SPEKTRA retains the right to recognise such deliveries, in exceptional circumstances, as supply in accordance with the Contract.

4.3 If the Supplier does not make his supply or does not make his supply within the agreed delivery time or he defaults, the rights of SPEKTRA – in particular to effect rescission and to claim compensation – are determined in accordance with the statutory rules. The rules set out in Paragraph 4.2 remain unaffected by this.



4.4 If the Supplier defaults, SPEKTRA may demand flat-rate reimbursement of its compensation of 0.3 % of the net price per completed working day but not totalling more than 5 % of the agreed net price of the delayed product to be supplied or delayed service to be provided. Further statutory claims on the part of SPEKTRA remain unaffected by this. SPEKTRA reserves the right to prove that a higher loss has arisen. The Supplier reserves the right to prove that no loss has arisen or only a much lower loss has arisen.

4.5 If SPEKTRA takes receipt of the delayed supply, SPEKTRA will claim the contractual penalty at the latest with the final payment. The receipt of the delayed delivery does not represent any waiver of the right to compensation or the contractual penalty.

4.6 Force majeure circumstances can discharge the Supplier of his obligation only if, immediately after he becomes aware thereof, he notifies SPEKTRA in writing and with provision of proof, indicating the precise circumstances and the anticipated duration of the breach of the deadline. Delayed deliveries or deliveries in breach of contract to the Supplier by upstream suppliers do not constitute force majeure.

5. Delivery, transfer of risk, inspection obligation

5.1 Unless otherwise agreed in an individual instance, deliveries are made free domicile to the location indicated in the order. If the delivery location is not indicated and nothing else is agreed, the delivery must take place to the business address of SPEKTRA in Germany, 01189 Dresden, Heidelberger Straße 12. The relevant delivery location is also the fulfilment location (fulfilment at the debtor's location).

5.2 The risk of accidental loss or accidental deterioration of the item is transferred to SPEKTRA on handover at the fulfilment location. In the

event of delivery with installation or assembly and in the case of other performance-related supplies to be made, this risk is transferred when SPEKTRA completes the acceptance procedure.

5.3 For the commercial obligation to inspect and notify defects, the statutory rules (Sections 377 and 381 of the Commercial Code) apply, subject to the following:

SPEKTRA's inspection obligation is limited to defects obviously identifiable on the occasion of the investigation performed by SPEKTRA on the receipt of the goods in the form of visual inspection including of the delivery documentation and on the occasion of the quality control procedures performed by SPEKTRA involving sampling (e.g. damage caused by transportation, delivery of the wrong items, and shortfalls in quantity). Where an acceptance procedure is agreed, there is no inspection obligation. Otherwise, whether or not there is such an obligation depends on the extent to which an inspection is feasible taking account of the circumstances of the individual case and in the normal course of business. The obligation to notify defects discovered later remains unaffected by this. In all cases, SPEKTRA is deemed to have notified defects immediately and in a timely manner if such a notification is received by the Supplier within 14 calendar days.

5.4 If individual sampling of a consignment of goods reveals defects, SPEKTRA, at its discretion, may demand that the Supplier identify and separate the defective goods or may bring claims for defects in respect of the entire consignment of goods. Where, due to defects in goods, an investigation extending beyond the usual scope is necessary, the Supplier will bear the costs of this investigation.

6. Prices, invoicing

6.1 The price indicated in the order is binding. All prices exclude statutory turnover tax, even if this is not separately shown. This applies also to any ancillary supplies made by the Supplier.



6.2 Unless otherwise agreed in an individual instance, the price includes all supplies and ancillary supplies made by the Supplier (e.g. assembly, installation) and all ancillary costs within the meaning of Section 448 of the Civil Code (e.g. suitable packaging, customs, import duties, transportation costs including any transportation and liability insurance). The Supplier must take back packaging material at the request of SPEKTRA.

6.3 Invoices must be sent to SPEKTRA once the supply is complete, preferably in electronic form. Invoices not duly submitted are deemed received by SPEKTRA only once they have been corrected. If goods or items are despatched, the invoice must correspond in terms of content to the delivery note and the consignment note. The payment deadline for the related invoices starts with the receipt of the agreed documents. In the case of deliveries and supplies made from an EU Member State other than Germany, you must indicate your EU Turnover Tax Identification No.

7. Payment terms

7.1 The agreed price falls due for payment within 30 calendar days from completion of delivery and supply (including any agreed acceptance procedure and any agreed handover of documents by the Supplier (e.g. materials tests, test reports, quality documents)) and receipt of a duly drawn-up invoice. If we pay the invoice within 14 days, the Supplier will grant SPEKTRA a 3% discount on the net amount of the invoice. Payments are made subject to review of the invoice.

7.2 SPEKTRA owes no due date interest. Default interest is an annual five (5) percentage points above the base interest rate. The start date of SPEKTRA's default is determined in accordance with statutory rules. In any case, however, a payment reminder letter from the Supplier is required.

7.3 If SPEKTRA pays an invoice of the Supplier's without voicing objections or making a declaration concerning the payment, this may not be deemed confirmatory acknowledgement of the claim.

8. Rights of retention, offset and assignment

8.1 Rights of offset and retention and the defence of the non-fulfilled contract are available to SPEKTRA to the extent stipulated by statute. SPEKTRA is in particular entitled to withhold payment of due invoices whilst SPEKTRA continues to have outstanding claims against the Supplier arising out of incomplete or deficient supplies.

8.2 SPEKTRA may refuse to make payment if it is to be anticipated based on a circumstance arising after the conclusion of the Contract that the Supplier's supply will not be received complete and in a timely manner (e.g. due to an application for the institution of insolvency proceedings) unless the Supplier makes the supply or provides sufficient security.

8.3 Offset against the Supplier's claims which are contested, are not the subject of a declaratory judgment, and are not ready for declaratory judgment is precluded. The Supplier may refuse supply or exercise right of retention only if the Supplier's counterclaims are uncontested, the subject of declaratory judgment, or ready for declaratory judgment.

8.4 The Supplier is not entitled to assign or transfer to third parties receivables from or rights enforceable against SPEKTRA or arising out of the business relationship without the consent of SPEKTRA. The same applies to receivables from and rights enforceable against SPEKTRA arising directly out of statute.



9. Retention of title

9.1 Transfer of title takes place with handover of the goods to SPEKTRA, unconditionally and without regard to the payment of the price. However, if SPEKTRA, exceptionally, accepts an offer by the Supplier for transfer of title which is conditional on payment of the purchase price, the Supplier's retention of title lapses at the latest with payment of the purchase price for the product delivered. Any prolonged or extended retention of title of the Supplier is precluded.

9.2 The processing, mixing, or combining of materials supplied by SPEKTRA is carried out by the Supplier for SPEKTRA. There is agreement that SPEKTRA, in the ratio of the value of the materials to the value of the entire product, will become the co-owner of the products manufactured using the materials supplied, which are stored for SPEKTRA by the Supplier until the time of handover.

10. Rights in the event of defects

10.1 For the rights of SPEKTRA in the event of physical and legal defects of the product and in the event of other breaches of obligation by the Supplier, the statutory provisions apply, unless otherwise stipulated below.

10.2 If machines, devices, or systems are the subject of the delivery, these must meet the requirements of the special safety provisions for machines and systems applying at the time of the contractual fulfilment and must have a CE mark.

10.3 Under the statutory provisions, the Supplier is especially liable for the product having the agreed characteristics on the transfer of risk to SPEKTRA. An agreement concerning such characteristics is deemed at any rate to be those product descriptions which – in particular through designation or reference in SPEKTRA's order – are the subject of the relevant contract or were

included in the Contract in the same way as these purchase conditions. In this context, it is irrelevant whether the product description originates with SPEKTRA or the Supplier.

10.4 In deviation from Section 442 Paragraph 1 line 2 of the Civil Code, SPEKTRA may make claims in respect of defects in an unlimited way even where the defect remains unknown on conclusion of the Contract due to gross negligence.

10.5 SPEKTRA's receipt of the product and its processing of, payment for, and further ordering of a product not yet recognised as defective and not yet notified as such does not represent approval of the delivery or waiver of the right to make claims in respect of defects.

10.6 The costs incurred by the Supplier for testing and rectification (including any extraction and installation costs) are borne by the Supplier even if it proves that there was actually no defect. SPEKTRA's liability to pay compensation remains unaffected in the event of an unjustified demand for the rectification of defects; in this context, however, SPEKTRA is liable only if SPEKTRA knew or grossly negligently failed to realise that there was no defect.

10.7 SPEKTRA may demand rectification through repair, replacement supply, or remanufacture in accordance with the statutory provisions, at its discretion. The Supplier must compensate SPEKTRA for losses arising and for the total costs and expenses of the rectification, the costs of locating defects, retrofitting costs, extraction and installation costs, and transportation, labour, and materials costs. If rectification does not take place within a reasonable deadline or fails or if setting the deadline was redundant, SPEKTRA may rescind the Contract or reduce the purchase price and, in accordance with the statutory provisions, demand compensation or the reimbursement of costs incurred in vain.

The Supplier bears the costs and the risk of returning defective items delivered. If SPEKTRA



may make guarantee claims extending in scope beyond the statutory rights it enjoys in the case of defects, these remain unaffected by this.

10.8 If the Supplier does not fulfil his rectification obligation within the suitable deadline set by SPEKTRA, without the right to refuse rectification, SPEKTRA is furthermore entitled itself to take the required measures at the cost and risk of the Supplier or to have a third party take such measures. If, due to particular urgency (e.g. the avoidance of production downtime) and/or due to other losses that are expected to be disproportionately high in relation to the guarantee obligation, it is no longer possible to inform the supplier of the defect and the anticipated loss and to set him a deadline for rectification – even a short one – SPEKTRA may take this measure immediately and without prior agreement with the Supplier.

of the same defect or the consequences of defective repair and where the Supplier is not acting in discharge of his (supposed) rectification obligation but purely out of goodwill or for similar reasons, for instance when the defect is only slight and can be rectified without particular expense being incurred.

11.4 The limitation periods referred to in the UN Convention on Contracts for the International Sale of Goods including anticipated extension apply – to the statutory extent – to all contractual claims of SPEKTRA in respect of defects. Where SPEKTRA may also make extracontractual compensation claims in respect of a defect, this is subject to standard statutory limitation (Sections 195 and 199 of the Civil Code), unless application of the UN Convention limitation periods would result in a longer limitation period in the individual case in question.

11. Limitation

11.1 Unless otherwise stipulated in the following provisions of this point, claims are time-barred in accordance with the statutory rules.

11.2 In deviation from Section 438 Paragraph 1 No. 3 of the Civil Code, the general limitation period for claims in respect of defects is 3 years from the transfer of risk. The 3-year limitation period applies mutatis mutandis also to claims arising out of legal defects, although the statutory limitation period for third party claims for surrender in respect of rights in rem (Section 438 Paragraph 1 No. 1 of the Civil Code) remains unaffected by this; claims arising out of legal defects furthermore are not time-barred in any instance provided that the third party may still exercise the right – in particular in the absence of limitation – against SPEKTRA.

11.3 In the event of repair or replacement supply, the limitation period restarts each time. In the event of repair, however, this applies only in respect

12. Liability

12.1 Unless otherwise stipulated by these General Purchase Conditions, including the following provisions, SPEKTRA is liable in the event of a breach of contractual and extracontractual obligations in accordance with the relevant statutory rules.

12.2 SPEKTRA is liable for compensation – regardless of the legal basis – in the event of intent and gross negligence. In the case of simple negligence, SPEKTRA is liable only:

- a) For losses arising out of loss of life, injury, or damage to health,
- b) For losses arising out of a breach of a material contractual obligation (an obligation whose fulfilment is required for the due performance of the Contract and whose discharge the contractual partner regularly relies on and may rely on); in this instance, SPEKTRA's liability, however, is limited to compensation for foreseeable, typically occurring losses and, in the case of pecuniary losses, is limited in terms of amount to the agreed net remuneration.



12.3 Shared culpability on the part of the Supplier is offset up to the limit of any compensation claim.

12.4 The limitations of liability arising out of Paragraph 2 do not apply where SPEKTRA remains deceitfully silent concerning a defect or has assumed a guarantee for the characteristics of the product. The same applies to claims of the Supplier in accordance with the Product Liability Act.

12.5 Further liability for compensation beyond what is provided for in Paragraphs 1-4 is precluded, regardless of the legal nature of the claim made. This applies in particular to claims for compensation arising out of culpability when the Contract is concluded, due to other breaches of obligation, or due to tort claims for compensation of property losses in accordance with Section 823 of the Civil Code.

12.6 Where SPEKTRA's liability for compensation is precluded, this applies also in relation to the personal liability for compensation on the part of its employees, representatives, and vicarious agents.

12.7 The above liability rules do not entail an alteration to the burden of proof to the detriment of the Supplier.

13. Supplier recourse

13.1 The statutory recourse claims of SPEKTRA within a supply chain (supplier recourse in accordance with Sections 478 and 479 of the Civil Code) are available to SPEKTRA in an unlimited fashion in addition to the claims in respect of defects. In particular, SPEKTRA is entitled to demand the precise nature of rectification from the Supplier (repair or replacement supply) that SPEKTRA is due its own customer in the case in question. SPEKTRA's statutory right of choice (Section 439 Paragraph 1 of the Civil Code) is not limited by this.

13.2 Before SPEKTRA recognises or fulfils a claim in respect of a defect made by its customer (including for cost reimbursement in accordance with Sections 478 Paragraph 3 and 439 Paragraph 2 of the Civil Code), SPEKTRA will inform the Supplier and ask for a written opinion, having briefly presented the facts. If an opinion is not forthcoming within a suitable deadline and if no agreed solution is arrived at, the defect-related claim actually honoured by SPEKTRA is deemed to have been due to its customer; in this instance, the Supplier has the burden of supplying counterevidence.

13.3 SPEKTRA's claims in accordance with Paragraph 13.1 apply also if the product, prior to its sale to a customer, was further refined or processed by SPEKTRA or by a customer, e.g. through installation.

14. Product liability and insurance obligation

14.1 If SPEKTRA is sued due to product liability, the Supplier must indemnify SPEKTRA against such claims where the loss was caused by a defect in the product supplied by the Supplier. In cases of liability dependent on culpability, however, this applies only where the Supplier is culpable. If the cause of the loss lies within the Supplier's domain of responsibility, he must prove he is not culpable.

14.2 As part of his indemnification obligation, the Supplier assumes all costs and expenses arising out of or in connection with third-party claims including recalls by SPEKTRA.

SPEKTRA will inform the supplier of a recall action, collaborate with him sufficiently, and communicate with him concerning efficient implementation; this is not required where notification or participation of the Supplier is not possible due to particular urgency.



14.3 The Supplier is furthermore liable also for losses suffered by SPEKTRA due to reasonable precautions against being sued on the basis of extracontractual liability where such losses are substantially attributable to the Supplier (e.g. public advertising campaigns).

14.4 Further statutory claims remain unaffected by this.

14.5 During the contractual relationship with SPEKTRA, the Supplier must always maintain sufficient product liability insurance, at his own cost. The Supplier must prove to SPEKTRA, on request, the conclusion and maintenance of the product liability insurance.

15. Force majeure

15.1 Where SPEKTRA is hindered by a force majeure from fulfilling its contractual obligations, in particular in relation to goods acceptance procedures, SPEKTRA is relieved of its payment obligation for the duration of the hindrance and for a sufficient lead time thereafter, without being obliged to pay compensation to the Supplier. The same applies where SPEKTRA's fulfilment of its obligations is unreasonably hindered or temporarily obstructed by circumstances that are unforeseeable and not attributable to SPEKTRA, in particular by industrial dispute, public measures, power outages, or major disruptions to operations.

15.2 SPEKTRA is entitled to rescind the Contract in full or in part if such a hindrance persists for more than four months and loses interest in the fulfilment of the Contract due to the hindrance. At the request of the Supplier, SPEKTRA will explain once this period has elapsed whether it will exercise its right to rescind or will accept the goods within a suitable deadline.

16. Confidentiality

16.1 If there is a separate secrecy or confidentiality agreement, this is an integral part of the Contract in place between the Supplier and SPEKTRA. If there is no such agreement, the following applies: All materials, products, and/or software made available by SPEKTRA and the information contained therein designated as confidential (except for information expressly intended for public dissemination or subject to mandatory disclosure on the basis of a judicial or other public order) constitute commercial secrets within the meaning of the Commercial Secret Act, are passed on to the Supplier confidentially, and must be stored by him with due commercial care, in particular involving protection using suitable measures to maintain secrecy. The Supplier may pass such information on to such employees or representatives who are obliged on the basis of their contractual obligations towards SPEKTRA to store confidential information. The Supplier will keep secret all confidential information indefinitely.

16.2 In respect of documents and resources, made available to the Supplier for the fulfilment of an order placed by SPEKTRA, in particular drawings, diagrams, designs, calculations, descriptions, plans, models, prototypes, technical specifications, data carriers, other written documents, tools, parts, and materials, SPEKTRA retains ownership rights and copyright. Such documents and resources may be used only for contractual performance and must be returned on completion of the Contract to SPEKTRA in full (cf. including copies or recordings made). Products made by SPEKTRA in accordance with documents and resources may not be used by the Supplier himself or offered or supplied to third parties.

16.3 Technical documentation, documents, drawings, diagrams, plans, graphics, photographs, layout templates, and other documentation produced by the Supplier as part of the fulfilment of the contract – whether on data carriers, in printed



form, or as material for printing preparation or the printing process – and all prototypes, tools, materials, and other assets become SPEKTRA's property on provision. Furthermore, SPEKTRA receives all ownership, use, and licensing rights to all these copyrightable works, where permitted by statute. For the transfer of the above rights, no special remuneration is due from SPEKTRA; it is contained fully in the prices indicated in the orders.

16.4 Without prior, express, written consent, the Supplier is prohibited from citing SPEKTRA or the business relationship between the Supplier and SPEKTRA as a reference.

17. Breach of intellectual property rights

The Supplier assumes responsibility for ensuring that no intellectual property rights of third parties are breached in connection with his delivery and the contractual use of the goods by SPEKTRA. If SPEKTRA, due to the delivery and contractual use of the goods, is sued by a third party due to a breach of such rights attributable to the Supplier, the vendor is obliged to indemnify SPEKTRA against these claims and to reimburse SPEKTRA for all necessary costs in connection with this litigation, in addition to acquiring the required licences from the holder of the intellectual property rights or taking back the goods supplied, at the discretion of SPEKTRA.

18. Venue, applicable law

18.1 The fulfilment location and venue for all disputes arising between the parties out of the contractual relationship (including those arising out of bills of exchange and cheques) is Dresden, where the Supplier is a merchant, a legal entity governed by public law, or a ring-fenced public fund or the Supplier has no general venue in the Federal Republic of Germany or has moved his venue abroad.

18.2 SPEKTRA is also entitled to sue at the court competent in respect of the Supplier's registered office.

18.3 All contractual and other legal relations between the parties are subject exclusively to German law, precluding application of the UN Convention on Contracts for the International Sale of Goods (CISG).

19. Severability clause

If a provision of these General Purchase Conditions or a provision of other agreements is or becomes ineffective, this will not affect the efficacy of all other provisions or agreements.

Dresden, April 2020