

## SPIE ICS GTC – Rental of Media Technology

### General Terms and Conditions for the Short-term Rental of Media Technology – B2B

Last updated: 05/2022

#### 1. Subject matter of the agreement

**1.1** The acting SPIE company (hereinafter also referred to as ‘Supplier’) provides all goods and services exclusively on the basis of these General Terms and Conditions (hereinafter also referred to as “GTC”). Any terms and conditions of the customer that conflict with or deviate from these GTC shall apply only if the Supplier has expressly agreed to their validity in writing. More specifically, the customer’s GTC shall not apply even if the Supplier has not expressly objected to them.

**1.2** These GTC shall also apply if the Supplier renders services for the customer without reservation in the knowledge of customer GTC that conflict with or deviate from its own GTC. In such cases, by accepting these services, it shall be understood that the customer hereby acknowledges the Supplier’s GTC while simultaneously renouncing its own GTC.

#### 2. Rental period

**2.1** Subject to deviating regulations, the rental period shall be calculated by the day. Any days already started count as full days. The rental period starts when the equipment arrives at the place of use and ends when the equipment arrives back with the Supplier. If the equipment arrives back with the Supplier later than the originally scheduled rental period, the rental price will be recalculated accordingly.

**2.2** If a fixed term has been agreed, the rental agreement shall end on expiry of the agreed fixed term. If a minimum term has been agreed, the rental agreement shall be extended at the end of the minimum term by the extension period stipulated in the rental agreement (for example, by the day or week). The same applies to the respective extension period. No extension applies if one of the parties terminates with 2 days’ notice, at the earliest at the end of the minimum term. If the tenant returns the rental object, the agreement shall be deemed terminated.

**2.3** Any other termination for convenience is excluded. The right of extraordinary termination for good cause remains unaffected. Any notice of termination must be given in writing.

**2.4** If the customer continues to use the rental object beyond the expiry of the rental agreement, this shall not be considered as an extension of the rental agreement. Section 545 of the German Civil Code (BGB) does not apply.

#### 3. Shipment, Risk of loss

**3.1** The rented object shall always be shipped at the expense and the risk of the customer from either the Supplier’s warehouse or the sub-supplier’s warehouse. If the shipment becomes impossible with no fault of the Supplier, the risk shall pass to the tenant with notification of the readiness for shipment. The risk for returned goods shall also be borne by the customer until they are received by the Supplier.

**3.2** The Supplier shall be liable for the selection of the carrier only in the event of gross negligence. The Supplier shall be free to choose the form of shipment mode unless the customer has provided express instructions. The Supplier may, at its own discretion, take out transport insurance at customer’s expense. An obligation to take out a transport insurance exists only in the event of written instructions from the customer.

#### 4. Equipment insurance

The tenant is obliged to take out an appropriate indemnity insurance to protect against the consequences of damage and loss and provide evidence of this upon Supplier’s request.

#### 5. Use of the rental object, Sublease, Movement

**5.1** The rented equipment is the property of the Supplier. The tenant shall handle it with care and comply with all obligations and Supplier’s instructions for use which are associated with the possession, use and maintenance of the rental object.

**5.2** Unless expressly agreed otherwise in individual cases, sublease and movement of the rental object to a place other than the agreed place of use – or, if no such place has been agreed, the place of delivery or handover – is not permitted.

#### 6. Warranty

The Supplier warrants the functional condition of the rented equipment at the time of the transfer of risk to the exclusion of further claims as follows: If, at the time of the transfer of risk, the rented equipment has a defect that nullifies its

suitability for use in accordance with the agreement or reduces it to such an extent that it is essentially nullified, the Supplier may, at its own discretion, rectify the defect, replace the defective equipment or withdraw from the agreement. For the duration of the period during which the rented equipment is unsuitable for use, the rental price shall be reduced to the corresponding extent. The tenant shall report any defects, malfunctions or damage to the rental object immediately. The limitation period for material defect claims shall be one year from the statutory commencement of the limitation period, except in cases of clause 7.2.

#### 7. Liability

**7.1** The Supplier’s liability without fault pursuant to Section 536a (1) of the German Civil Code (BGB) due to defects in the rental object which are already existing at the time the agreement is concluded, is excluded.

**7.2** The Supplier is always liable for damages to the customer

- if the Supplier, its legal representatives or vicarious agents are responsible (intent or gross negligence),
- under the German Product Liability Act, or
- for damages arising from injury to life, limb or health for which the Supplier, its legal representatives or vicarious agents are responsible.

**7.3** The Supplier shall be liable for slight negligence insofar as it, its legal representatives or vicarious agents have breached a material contractual obligation (also known as cardinal obligation), the fulfilment of which is a prerequisite for the proper performance of the agreement, the breach of which jeopardises the achievement of the purpose of the agreement, and on the observance of which (in the case of the obligation to provide fault-free performance, for example) the customer may regularly rely. Any further liability in relation to slight negligence is excluded.

Insofar as the Supplier is liable for slight negligence, the liability for damage of property and financial loss is limited to the foreseeable damage typical for the agreement. Liability for other, remote consequential damage is excluded. For a single case of damage, liability shall be limited to the value of the agreement. This does not affect the liability in accordance with Clause 7.2.

**7.4** Clause 6, last sentence, shall apply accordingly to the limitation period.

**7.5** In the event of a loss of data, the Supplier shall be liable only for the expenditure required to restore the data if the customer has properly backed up the data. Unless expressly agreed otherwise, the customer shall back up data at least daily and notably prior to any set-up and installation work by the Supplier.

**7.6** Clauses 7.1–7.5 shall apply accordingly to claims for the reimbursement of expenses and other liability claims of the customer against the Supplier.

#### 8. Liability of the tenant

The tenant shall be responsible to the Supplier for all damages resulting from improper use of the rental object. The tenant shall be liable for any damage caused by accidental loss or accidental damage. In the event that the rental object is totally written off, the tenant shall be obliged to provide compensation at the current market value. The tenant shall be liable for all damages, regardless of whether or not the tenant is responsible for the damage.

#### 9. Prices, Payments

**9.1** The list prices of the Supplier on the day of delivery or service shall always apply unless otherwise agreed. The applicable statutory value added tax is charged additionally.

**9.2** The prices shall apply ex warehouse. Expenses for freight, packaging, insurance, etc., as well as any installation work, shall be charged additionally. If carriage-paid deliveries are agreed, carriage and delivery charges from the customer’s place of receipt shall be borne by the customer.

**9.3** Invoice amounts for rentals are payable in advance for the respective selected rental interval (such as daily/weekly), in the case of an agreed fixed or minimum term for the entire fixed or minimum term on a strictly net basis. Any services also commissioned on the basis of flat-rate remuneration shall also be due in advance once the order has been made.

**9.4** The Supplier is entitled to make the handover of the rental object dependent on the advance payment of the agreed rent for the fixed or minimum term along with any agreed service charges.

#### 10. Cancellation (“Stornierung”)

If the tenant withdraws from the agreement for reasons for which the Supplier is not responsible, the tenant shall be charged 30% of the rental and service fee (net) for the agreed fixed or minimum rental period as a cancellation fee, subject to any deviating provisions at the time of commissioning. This charge will increase to 50% of the agreed rental or service charge if the cancellation takes place less than six weeks before the agreed start of the rental period, 75% if less than three

weeks before, and 90% if less than one week before. Provision of proof for higher or lower costs shall remain permissible for tenant as well as Supplier.

#### **11. Security**

The Supplier has the right to demand advance rental payments, security deposits or the provision of a bank guarantee up to the value of the rental object. The tenant is obliged to preserve the Supplier's ownership rights to the rental object. This shall also apply in particular in the event of sublease to third parties, which is permitted on a case-by-case basis.

#### **12. Delivery**

The agreement of a date for rental is subject to punctual availability for delivery. If it becomes impossible to deliver on the rental date due to circumstances for which the Supplier is responsible, and if a postponement of the start of the rental period is demonstrably not of interest to the tenant, the tenant may withdraw from the agreement. Compensation claims are excluded. Unforeseen events for which the Supplier is not responsible, regardless of whether they affect the Supplier or one of its suppliers, such as strikes, lockouts, accidental damage or operational disruptions, shall entitle the Supplier – to the exclusion of compensation claims by the tenant – to withdraw from the rental agreement or to postpone the start of the rental period by the duration of the hindrance.

#### **13. Surrender and Return of the rental object**

The tenant is solely responsible for assembly and dismantling, set-up, instruction and connection to third-party systems, unless otherwise agreed. The tenant is obliged to confirm the proper handover of the rental object in writing. The tenant shall return the rented equipment to the Supplier immediately, at its own expense, and at its own risk at the end of the rental period. Upon return of the rented equipment, a joint return report will be prepared upon request.

#### **14. Late return**

In the event of late return of the rental object, the tenant shall compensate the Supplier for use in accordance with the agreed rent and for any further damages. If the rental object is not returned in proper condition, the tenant shall pay the full rental price for the time required for the repair without prejudice to further claims for damages.

#### **15. Confidentiality, Data protection, Reference**

**15.1** The Supplier and the tenant are obliged to maintain confidentiality about business and trade secrets as well as other information designated as confidential which becomes known in connection with their agreement or resulting contractual relationship. The disclosure of such information to persons who are not involved in the conclusion, implementation or processing of the contractual relationship may only take place with the express written consent of the contractual partner unless a legal obligation exists. Unless otherwise agreed, this obligation shall end after the expiry of five years from the date on which the respective information became known, but not before the end of the contractual relationship existing between the Supplier and the tenant. The contractual partners shall also impose these obligations on their employees and any third parties engaged.

**15.2** The parties shall process the personal data entrusted to them in the context of the cooperation in compliance with the applicable data protection provisions. The parties undertake to provide proof of compliance with these provisions in the required form to the other party's data protection officer at the latter's request. The parties shall conclude agreements necessary under data protection law for the handling of personal data insofar as they are in a commissioned processing relationship pursuant to Art. 28 GDPR or in joint responsibility pursuant to Art. 26 GDPR. With regard to the information obligations pursuant to Art. 13 GDPR and for further information on the handling of personal data of the renter, the Supplier refers to its data protection declaration (<https://www.spie.de/spie-ics/datenschutz-und-rechtliche-hinweise>).

**15.3** The Supplier is entitled to name the customer as a reference customer in relation to third parties, also with use of the company logo there. The customer may revoke his consent in writing to the provider at any time with effect for the future.

#### **16. Final provisions**

**16.1** The place of performance for all obligations arising from the contractual relationships of the parties is the registered office of the Supplier.

**16.2** All contractual relationships between the parties shall be governed exclusively by the laws of the Federal Republic of Germany. The application of the Vienna UN Convention on Contracts for the International Sale of Goods (CISG) is excluded.

**16.3** The exclusive place of jurisdiction for all disputes arising from the contractual relationship is the registered office of the Supplier; however, the Supplier is also entitled to file a suit against the tenant at its general place of jurisdiction.