

Terms and conditions (T&Cs) for Spiess-Urania Chemicals GmbH when commissioning work and services

As at: April 1st 2017

Object and scope

- 1.1 These Terms and Conditions apply to all contracts for work and services where Spiess-Urania Chemicals GmbH (hereinafter SPU) appears as the principal.
- 1.2 These T&Cs, as well as individual commissions, apply exclusively to contracts for work and services in the sense of 1.1. Other terms and conditions do not form part of the contract, even if SPU does not object expressly to them.

2 General

- 2.1 The contractor shall have all tasks assigned to it performed by qualified staff with the greatest of care and in consideration of the latest techniques. It shall apply or, as may apply, use the methods/processes, tools and quality assurance systems agreed with SPU.
- 2.2 The performance requests, features and objectives required by SPU do not release the contractor from its responsibility for a technically perfect and economic solution.
- 2.3 Where, when performing the contract changes to the content and scope are still required or appropriate, the contractor shall inform SPU of them without delay and obtain the decision as to whether the order is to be continued in an amended form. Supplementary or amended performance without the prior consent of SPU does not justify any claim to payment. SPU is entitled to demand amendments or supplementary performance in writing. Where and insofar feasible, these will be performed in accordance with the contractual provisions.
- 2.4 Where the contractor performs work at the facilities or, as may apply, offices of SPU, it shall comply with the relevant SPU health & safety requirements and bear in mind wishes regarding conduct at the facilities.

3 Warranty / Third-party rights

- 3.1 The contractor's duty to provide a warranty is in line with statutory provisions unless otherwise set out below.
- 3.2 The contractor's liability for defects covers in particular fault diagnosis and troubleshooting. The contractor shall ensure rectification of the faults without delay.
- 3.3 The contractor guarantees that the performance, results, programmes and documents are free from third-party rights, and on first request holds SPU harmless from all third-party claims due to defects, breaches of third-party protective rights, or damaged property in its delivery that arise due to its share in the cause.
- 3.4 A 3-year limitation period applies with regard to legal defects.
- 3.5 The contractor shall ensure that appropriate product liability insurance is in place.
- 3.6 With contracts for work, the warranty commences on successful definitive acceptance, and with agreed partial performance on final acceptance, and lasts for two years.

4 Liability

- 4.1 Unless otherwise set out in this contract, the Parties have mutual liability in accordance with statutory provisions.
- 4.2 Where third parties assert claims against SPU for damages caused by the contractor or its employees, the contractor shall hold SPU or, as may apply, the end customer harmless from these claims.

5 Delayed performance

- 5.1 Where the contractor falls behind with performance, liquidated damages of a cash amount of 0.2 % of the payment owed for the delayed performance is to be paid for each day of delay. The duty to pay is limited to 50 days of delay. The cash amount may be claimed up to the final payment. Where the contractor only falls behind with partial performance, the consequences of the delay only apply to the missing parts of performance if the principal is able to make use of the performance already provided. Where SPU is unable to make use of the performance, SPU shall notify the contractor of the reasons in writing without delay. The consequences of delay for performance already provided commence at the earliest on receipt of the message by the contractor, and in this case, use by SPU is excluded and the contractor is entitled to demand return of the corresponding performance for the duration of the delay.

- 5.2 Where SPU has purchased systems, equipment (hardware) or programmes from third parties in connection with a contract for work, and these are identified by the Contractor as required for correct performance of the contract by the Contractor at the end customer, and due to a delay the principal is unable to use these, or only able to do so to a limited extent, SPU is entitled to claim liquidated damages for the duration of the restricted use in this respect and along with the claim under paragraph 1. The amount of liquidated damages for each day of restricted use caused by delay is 0.1 % of the price or, as may apply, payments incurred for purchasing the system components in question. The duty to pay is limited to 50 days of delay. The cash amount may be claimed up to the final payment.
- 5.3 Regardless of, and along with, the assertion of liquidated damages in accordance with Clauses 5.1 and 5.2, SPU is entitled to set a grace period in the event of late performance by the contractor. No grace period is required if the contractor refuses supplementary performance, or if subsequent performance fails or is unacceptable to SPU. Where the contractor allows an appropriately set deadline to lapse without success, SPU is entitled to withdraw from the respective individual contract. Where SPU has already accepted partial performance, SPU may restrict withdrawal to the parts of performance still outstanding. If SPU's interest in overall performance ceases or is more than insignificantly diminished by the delay, SPU is entitled to withdraw from the individual contract. In the event of withdrawal, SPU shall opt to return or destroy performance by the contractor and, where applicable, in-house copies. SPU shall inform the contractor of destruction without delay after withdrawal.
- 5.4 SPU's right in the event of Clauses 5.1 to 5.3 to evidence higher losses actually incurred by SPU and to assert them against the contractor remains just as unaffected as evidence by the contractor that a loss or reduction in value has not happened at all, or is substantially lower than the liquidated damages. Further or other rights of SPU remain unaffected.

6 Work results / Inventions

- 6.1 As it occurs, the contractor shall assign performance and the results obtained, including any inventions and the rights of use in accordance with copyright law to SPU for any exclusive use and exploitation unrestricted by time. In particular, SPU is entitled to any application, editing, amendment, reproduction and distribution of the performance and results, and to grant rights of use to third parties. The contractor shall assign ownership to all documents, data carriers and codes, including the source codes created during performance when they arise in their respective state of editing to SPU.
- 6.2 Depending on the status of the employees used by it for performance, the contractor shall ensure by means of suitable measures in accordance with the law regarding employee inventions and/or particular agreements, that both job-related and free inventions are assigned without delay to SPU.

7 Issuing documents

Data carriers, CDs, documents and drawings, printed material and other business papers owned by the end customer that come into the contractor's possession, as well as documents created as part of an assignment are to be returned by no later than after performance or, as may apply, on acceptance of performance. The contractor is nevertheless entitled to retain an archive or, as may apply, security copy on written confirmation by SPU. Nevertheless, this copy will only be used exclusively for the purposes of warranty or, as may apply, maintenance or preservation of evidence. Those responsible shall ensure that these cannot be accessed by third parties.

8 Handover and instruction with software developments

Programs developed are to be handed over ready for operation on the agreed data carriers and with the required documentation. The contractor shall instruct the relevant SPU employees in the program's use and systems.

9 Confidentiality /Non-disclosure

- 9.1 The contractor shall not disclose any business or operational secrets of SPU or its clients. In particular, customer details and addresses are to be treated as confidential. This duty of confidentiality shall also continue to apply after termination of the contractual relationship.
- 9.2 Without the prior consent of SPU, the contractor is not entitled to copy, amend, reproduce or disclose to third parties any SPU or client data that it has access to. Where the contractor is granted access to networks and data processing systems, these may only be used for the purpose of performance. On completion of the commissioned activity, the contractor is obliged to completely return to SPU or destroy all data and documents.
- 9.3 All information disclosed to the contractor when performing the work shall also be treated as confidential. It undertakes not to use or disclose to third parties any information, data or knowledge of business transactions resulting from its activity.
- 9.4 Disclosure of performance or parts thereof requires the prior written consent of SPU.
- 9.5 The contractor undertakes to point out the obligations set out in Clauses 9.1 to 9.4 to its employees and ensure that they are also complied with. The employees used by the contractor shall be bound in accordance with data protection law to safeguard data secrecy before first commencing activity.

9.6 On request, the contractor shall provide SPU with evidence of the organisational and technical measures implemented by it for protecting personal data.

10 Contractor staff

10.1 The contractor's employees do not enter into any employment relationship with SPU, even when deployed at SPU's premises.

10.2 The contractor's employees are subject exclusively to its professional and disciplinary right to instruct.

11 Severability clause

A provision of these T&Cs being or becoming invalid does not effect the validity of the remaining provisions of this contract. On the contrary, the provision in question shall be replaced by one coming as close as possible to the commercial substance of the original one.

9 Place of performance/Governing law/Jurisdiction

Hamburg is the place of performance. The law of the Federal Republic of Germany to the exclusion of provisions regarding the conflict of laws and the United Nations Convention on Contracts for the International Sale of Goods applies exclusively. Jurisdiction lies with the courts of Hamburg, and SPU may also opt for that covering the contractor's registered office.