

Our performance of services (*Dienstleistungen*) and work (*Werkleistungen*) such as, for example, testing, engineering and development services (hereinafter "**performance**") in relation to any company, commercial entity, legal person of public law as well as in relation to any special funds under public law (hereinafter collectively called the "**Customer**") shall be provided solely on the basis of the following conditions.

I. Contract Formation / Text Form

1. The contract as well as any amendments, supplementary agreements or other agreements shall become effective only after being confirmed by us.
2. The contract as well as any amendments, supplementary agreements or declarations as to its termination and any other declarations or notifications must be in text form unless otherwise agreed in these conditions.
3. Upon the receipt of our confirmation and/or acceptance of the performance ordered the Customer shall be deemed to have accepted our General Terms and Conditions for the Provision of Services and Work. We shall not be subject to any conflicting general terms and conditions of the Customer. Any such terms and conditions are hereby expressly rejected. Such terms shall not become part of the contract by way of the acceptance of an order or by way of any other circumstances implying acceptance. The scope of performance to be provided shall be determined exclusively by our written order confirmation as well as any written attachments thereto.

II. Prices

1. If remuneration is agreed as a fixed price, we shall have a right to a reasonable advance payment for any completed self-contained parts of the performance as well as upon completion of any project phase (e.g. commencement of the contract, the initial part performance, upon making available for acceptance, acceptance procedures). Insofar as nothing is agreed to the contrary, invoicing shall be on the basis of time and materials in accordance with our respective applicable hourly rates and material charges. Travel time shall be invoiced as work time. Provided that nothing is agreed to the contrary, travel expenses as well as per diem expenses shall be invoiced according to the commutation allowances set down under tax law. Any costs of accommodation shall be invoiced on the basis of a separate agreement.
2. In the event of any value added tax being due, such shall be detailed expressly in the invoice at the applicable rate at the time of performance.

III. Performance and Performance Times

1. Performance shall be provided in terms of our existing technical and operational capabilities.
2. Unless a specific result is agreed separately in a particular case, our performance shall in principle be deemed to be a provision of services. Unless expressly agreed otherwise, we shall not accept any responsibility for the achieving of particular results or for a specific type of success in relation to the provision of any performance. We are entitled to arrange for performance by way of subcontract (subcontractors, suppliers). The parties are free to agree otherwise in a separate contractual agreement.
3. Any deadline for the completion of performance shall only be binding if such a binding nature is expressly agreed in writing. In any case deadlines shall be subject to mutual clarification of all matters related to the performance of an order as well as a requirement of prompt cooperation as well as technical support on the part of the Customer.
4. In the event of any unforeseen or unavoidable events in the provision of the performance as well as in the event of any hindrances, such as force majeure, labour disputes or any other disruptions in our own operations or in the operations of our suppliers as well as in case of any delayed delivery or delayed performance by our subcontractors, we are entitled to extend any performance deadline by a period corresponding with such hindrance. The Customer shall be notified as soon as possible as to the commencement and end of such circumstances.

5. The Customer is entitled to claim compensation for delay insofar as we are in default and damage has resulted to the Customer from such delay. The compensation shall be 0.5 % of the value of the respective part of the complete delivery for each full week of delay but totalling no more than 5 % of the value of the respective part of the complete delivery which as a result of delay could not be used in time or in accordance with the contract. Any further claims related to default delay shall be determined exclusively in accordance with IX. The Customer may rescind (*Rücktritt*) from the contract in accordance with the provisions of law only if such delay in performance is our responsibility.
6. Compliance with any deadlines for our performance are subject to all documents to be supplied by the Customer being received in good time, the due provision of cooperation required, as well as compliance with the agreed payment conditions and other obligations. If such prerequisites are not satisfied in good time, performance deadlines shall be extended accordingly to a reasonable extent.
7. Any rights resulting from delayed performance may be exercised by the Customer only after the Customer has issued a notification of delay with a reasonable deadline for compliance and such deadline has expired.
8. Any part performance shall be permitted to a reasonable extent and may be invoiced as such. We are entitled to prepare any part performance for acceptance. Such shall include self-contained phases of the performance of the contract as well as any self-contained parts capable of functioning.

IV. Industrial Property Rights, Knowhow, Rights of Use

1. Insofar as the Customer has ordered any development performance (services or work) and paid for such in full, we shall grant the Customer an unlimited, simple, i.e. non-exclusive, non-transferable, non-sublicensable right of use to the results obtained in terms of the specific development contract (such as, for example, concepts, construction drawings, software) regardless of whether such are protected, are capable of being protected or are not capable of being protected ("Foreground").
2. We shall grant the Customer a simple, i.e. non-exclusive, non-transferable, non-sublicensable right of use to any existing rights or knowhow which we have developed before or beyond the scope of the respective development contract ("Background") insofar as such is absolutely necessary for the use of the results in accordance with section 1 above.
3. Notwithstanding the above, the Customer acknowledges and accepts our title to our knowhow as well as our industrial property rights. Unless otherwise agreed to the contrary, we reserve our property rights and intellectual property rights to any depictions, drawings, calculations and other documentation. Such shall not be made accessible to any third parties; this shall apply in particular to any confidential documentation.

V. Risk and Acceptance

1. In case any force majeure event causes substantial difficulties in the performance of the contract or temporarily prevents or renders impossible the due performance of the contract we shall not be liable. Force majeure shall mean all events not foreseen by us or the Customer which are beyond our influence and occur after the formation of the contract including, but not limited to, natural catastrophes, blockades, war and other military conflicts, mobilisation, strikes and lockouts.

Insofar as we are prevented from providing the contractual performance by reasons of force majeure, such shall not be deemed to be a breach of contract and any contractual deadlines shall be extended accordingly for a reasonable period. The same shall apply insofar as any performance by a third party is delayed in relation to us due to a force majeure event.

2. In cases where our performance is subject to acceptance procedures, the Customer shall accept any performance of a work or part performance of a work without undue delay and declare such acceptance or part acceptance insofar as there are no defects which substantially detract from suitability or functioning.

3. If, within a period of ten (10) calendar days after making available for acceptance or part acceptance, no notices of substantial defects are given or if the Customer uses the delivered performance of a work or the part performance, acceptance (part acceptance) shall be deemed to have taken place.

VI. Payment

1. Payment shall be made without any deductions to one of our bank accounts within 30 days of receipt of invoice. An invoice shall be deemed to have been received within 3 days after dispatch unless the Customer is able to prove otherwise.
2. The Customer shall be deemed to be in default in relation to any payment as soon as the Customer is in delay in relation to any payment date unless payment has been delayed as a result of circumstances for which the Customer is not responsible.
3. The Customer shall not be entitled to exercise any right of set-off or retention in relation to any counter-claim except unless such a claim has been confirmed by way of a final binding court judgment or unless such a claim is undisputed.

VII. Cooperation by Customer

1. The Customer shall cooperate at its expense our employees in the provision of the contract performance as is necessary.
2. Insofar as any performance is to be provided at the premises of the Customer, the Customer shall undertake all special measures necessary for the protection of personnel and property at the place of the provision of services and the performance of a work. If necessary, the Customer shall provide special protective clothing at no charge. Furthermore, the Customer shall instruct our personnel as to any applicable special safety regulations insofar as such are of significance for our personnel and for the performance of the contract. In the event of any breach of such regulations by our personnel the Customer shall notify us without undue delay. If any performance is not possible because of non-compliance with safety regulations and a resulting threat to the safety of personnel, either appropriate counter-measures are to be undertaken or the respective performance shall be suspended until such time as an appropriate level of safety can be ensured. In the event that the Customer is responsible for ensuring the required safety at the place of work, such suspension shall result in an extension of any affected deadlines.
3. Insofar as any performance is to be provided in a foreign country and our personnel require visas or other permits to visit and/or work in the country, the Customer shall cooperate with us at no expense to us as far as necessary in applying for, or extending or modifying such permits or visas as required for the contractual performance.
4. We reserve the right to claim reasonable compensation in terms of § 642 Civil Code (*BGB*) resulting from any failure of the Customer to cooperate. Any additional rights shall not be affected thereby.
5. Unless otherwise agreed to the contrary, the Customer shall cooperate with us at its own expense in providing technical support to the necessary extent. The Customer shall be liable for the correctness of any information, documentation etc. supplied to us, and also in terms of any third party rights related thereto.

VIII. Warranty for Performance of a Work

1. Unless otherwise agreed below and insofar as our performance is the performance of a work in relation to any defects or defects of title, the provisions of law shall apply:
 - If the performance of a work is defective we may initially determine whether to provide subsequent performance (*Nacherfüllung*) by way of correction of the defect (rectification (*Nachbesserung*)) or we may provide the performance of a work once again (reperformance (*Neuerbringung*)). Depending on the individual case, we are entitled to at least two (2) attempts at rectification.

- In the carrying out of any performance of a work we shall strive to avoid infringing any third party rights in relation to patents or other industrial property rights or knowhow (collectively called "industrial property rights"). We shall acquaint ourselves as to industrial property rights of third parties to the extent customary in our industries. Both parties undertake to inform the other party without undue delay concerning any conflicting third party industrial property rights as soon as they become aware of such and the parties shall jointly agree on how to proceed in such cases. Our liability in relation to any infringement of third party industrial property rights shall be limited to those industrial property rights of which we are aware or of which we are not aware due to a failure to examine the situation concerning industrial property rights to the customary extent undertaken in the industry. In the event that any third party makes a justified claim based on an infringement of an industrial property right in relation to our performance of a work, subsequent performance on our part shall be at our choice by way of the establishing of an equivalent alternative solution ("work around") or by the acquisition of a licence for the respective matter or the reconfiguration of the performance with an equivalent work around. We shall not be liable for (i) any combining of the performance of work with other services or products as well as any infringement of property rights which would not have occurred without such a combining; (ii) changes or modifications to our performance of a work by the Customer or any third party; (iii) direction of the Customer or the services or performance of any third party and (iv) infringement of industrial property rights which result from any unforeseeable use or operation of our performance of a work.
- 2. In the event that any claim for rectification of a defect by the Customer proves to be unjustified, we are entitled to claim reimbursement from the Customer for any resulting costs.
- 3. In the event of any subsequent performance proving to be unsuccessful the Customer shall be entitled in relation to the rectification of any defect at its own choice to either rescind from the contract or to reduce the agreed remuneration. Any right to compensation for damage in lieu of performance shall not be affected hereby.

IX. Liability

1. Unless otherwise agreed, our liability, regardless of the legal basis therefor and notwithstanding any statutory requirements for a claim, shall be subject to the following limitations and exclusions and such shall also apply to our personnel, agents and contractors and other third parties with which we work in relation to the contract performance.
2. The Customer shall not be entitled to rescind or terminate in relation to any breach of an obligation which does not constitute a defect unless such breach of an obligation is the result of wilful conduct on our part. Any other rights to terminate on the part of the Customer are hereby excluded.
3. We shall be liable to pay compensation insofar as we have acted wilfully or in a grossly negligent manner. In relation to simple negligence we shall be liable to pay compensation only in cases of injury to life, body or health or damage due to the breach of a material term (duties in relation to which correct performance is necessary for the contract as a whole to be performed and upon compliance with which the contract parties regularly rely and are entitled to rely); in the latter case our liability shall be limited, however, to compensation for foreseeable, typical damage occurring.
4. We assume that foreseeable, typical damage in case of a negligent breach of a material term will not exceed the price of the respective individual order. The Customer shall inform us expressly in each case if this assumption is not correct. Our liability arising from damage of any material term in case of simple negligence is therefore limited to the amount of the price of the respective order.
5. The above limitations of liability shall not apply insofar as we have fraudulently concealed any defect, in the event that a guarantee has been provided in relation to the quality of the goods, in relation to any claims by the Customer under the German Product Liability Act or if any personal injury or damage to health is caused.

X. Guarantee and Impossibility

1. The details contained in our catalogues, printed materials, type lists, data sheets and other advertising materials or in specifications, specification sheet or other technical delivery conditions, in certificates (e.g. certificate of compliance) or other forms or documentation shall not constitute in any event a guarantee beyond the normal scope of a warranty. Any statements concerning reliability (life period, long-time stability etc.) are statistically-calculated medium values. These are calculated to the best of our knowledge and subject to deviations in individual cases.
2. Performance shall be provided in terms of our existing technical and operational capabilities.

XI. Limitation Period

The general limitation period for any and all claims of the Customer shall be, particularly in relation to claims arising from defects or defects of title in relation to the performance of a work, 24 months from the time of the provision of performance. Insofar as any acceptance procedures are agreed, the limitation period shall begin to run from the time of acceptance.

XII. Use of Software

Insofar as performance includes the provision of software, the Customer shall be granted a non-exclusive, non-licensable right to use the software including any documentation exclusively in connection with the acquired performance. Insofar as the performance consists of the production of software, the Customer shall be granted a non-exclusive, non-licensable right in relation to using the software for the agreed purpose. Any granting of a sublicense is not permissible. The Customer is entitled to use the software only to the extent permitted by law (§ 69a et seq. Copyright Act (*UrhG*)). The Customer undertakes not to remove or change without our prior written express approval any details of the producer – in particular any copyright notices. All other rights in relation to the software and documentation including any copies thereof shall remain with us.

XIII. Confidentiality

1. Both parties undertake to keep confidential all information received from the other party. This shall apply also after the ending of the contract. This obligation shall not apply to information already known to the receiving party by legitimate means at the time of receipt without any duty of confidentiality, or to any information which the receiving party later becomes aware of by legitimate means without any duty of confidentiality or, to any information which – without a breach of contract by any of the parties – is or becomes generally known.
2. Each party shall retain its title of ownership and any rights to documentation and data carriers made available by that party. Any copying or passing on of such documentation or data carriers is permitted only with the approval of the party providing such.

XIV. Miscellaneous

1. The place of performance in relation to all matter shall be the place at which the performance is being delivered.
2. The place of jurisdiction shall be Nuremberg. Notwithstanding the above, we reserve the right to commence legal proceedings at the seat of business of the Customer.
3. The contractual relationship shall be subject to the law of the Federal Republic of Germany excluding the rules of the conflict of laws.
4. Any omission or part omission or failure to claim any right arising under this contract in good time shall not constitute a waiver of such right or any other right.
5. If a specific provision of these terms and conditions is or becomes ineffective, the remaining terms and conditions shall not be affected thereby. In such case the parties shall replace any ineffective provision with a provision which most closely reflects the commercial purpose of the original ineffective provision. The same shall apply accordingly in case of any omission.

**General Terms and Conditions
for the Provision of Services and Work
of Schaeffler Engineering GmbH**

SCHAEFFLER



6. Please note that we store and process personal data in according with the requirements of law in the course of commercial transactions.