



SPEKTRA

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Terms of Use (SPEKTRA cloud services)

SPEKTRA Schwingungstechnik und Akustik GmbH Dresden

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**Terms of Use for cloud services of SPEKTRA
Schwingungstechnik und Akustik GmbH Dresden**

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0. Preamble

The parties wish to exchange data via the online platform operated by SPEKTRA ("SPEKTRA Cloud") for the purpose of their business relationship. The parties' rights and obligations in connection with the "SPEKTRA Cloud" are regulated under the following Terms of Use.

1. Scope of "SPEKTRA Cloud"

1.1 These Terms of Use apply to the "SPEKTRA Cloud" online service via which SPEKTRA provides its business partners ("users") with free access to the "SPEKTRA Cloud" service established and operated by it for the purpose of data exchange between them during the course of their business relationship. Registered business partners can access all activities (contract management, calibration certificates, software purchased, updates, etc.) via the SPEKTRA Cloud service.

1.2 The SPEKTRA Cloud service is available for use by SPEKTRA's business partners. "Business partners" for the purposes of these Terms of Use

means natural or legal persons or partnerships with legal capacity who or which act on entering into this contract in the exercise of their trade, business or profession (Section 14(1) of the German Civil Code). A consumer within the meaning of Section 13 of the German Civil Code cannot be a business partner.

2. Registration/Start of Service

2.1 Before using the "SPEKTRA Cloud", users must register and accept these Terms of Use. The following data are collected from users on registration for the purpose of supplying and providing the "SPEKTRA Cloud":

- Surname (required field)
- Forename (required field)
- For legal entities, company name
- Email address (required field)
- User name (required field)
- Password (required field)

The Terms of Use are accepted by ticking the "Terms of Use read and accepted" and the "General Privacy Notice" boxes.

2.2 Legal entities must be registered by a natural person with powers of representation, who must be named. SPEKTRA reserves the right to deny access to and use of the "SPEKTRA Cloud" to users who provide inaccurate or incomplete information. The same applies to users in breach or suspected with good cause to be in breach of these Terms of Use.

2.3 SPEKTRA will set up a user account for new registered users and will send the user an activation link. The account is activated following confirmation of the activation link sent to the user and acceptance of the Terms of Use.

2.4 Users access their account online by entering their registered user name and password. The "SPEKTRA Cloud" is accessed via:

<https://cloud.spektra-dresden.de>



3. "SPEKTRA Cloud" Licence

3.1 SPEKTRA grants users a licence to use the "SPEKTRA Cloud" online to exchange data for the purpose of conducting transactions with SPEKTRA for the term of the contract (online use). Licences are non-exclusive, limited, non-transferrable and cannot be sublicensed. Licences of broader scope are not granted.

3.2 The use of any updates or upgrades to the "SPEKTRA Cloud" is included in the scope of the aforesaid licence.

3.3 Users are not entitled to use the "SPEKTRA Cloud" for other purposes or to reproduce it or make it available for use free of charge or for a consideration to third parties outside the agreed user group and/or to make it accessible outside the agreed user group.

3.4 Users must keep the access data provided to them secret and safe from access by third parties, so as to prevent misuse by third parties. Access data are valid for 12 months (period of validity), after which business partners are automatically asked on logging into the "SPEKTRA Cloud" to change their password. The service cannot be used once the period of validity has expired unless the password is changed.

3.5 Users must ensure that contracts with third parties are performed in a way that ensures the third party cannot make unauthorised use of the "SPEKTRA Cloud".

3.6 Users are not granted any further rights to the software unless Sections 69d and 69e of the Copyright Act require more comprehensive rights to be granted.

4. Data Storage

4.1 SPEKTRA provides users with personal space on a server so that they can store data used in connection with the "SPEKTRA Cloud" and for the purposes of their business relationship with SPEKTRA in accordance with these Terms of Use.

4.2 Users can use the "SPEKTRA Cloud" to store data on the server. The data are encrypted during transmission from the user's hardware to the "SPEKTRA Cloud".

4.3 SPEKTRA only undertakes to provide the storage space; it does not act as custodian or caretaker of the data transmitted and/or processed by the user. Users alone are responsible for taking appropriate security measures within the meaning of Section 2, point 1b, of the Business Secrets Act.

4.5 SPEKTRA is required to take reasonable and appropriate precautions to prevent unauthorised access to users' data by third parties.

4.6 Rights to the data stored by a user are vested solely in the user at all times. At the end of a contract, SPEKTRA will inform the user that the contract has ended and grant the user the option of exporting their data from the "SPEKTRA Cloud" within three months (expiry date). SPEKTRA is entitled, but not obliged, to delete the content created by the user on expiry of the expiry date. The user has no claim to surrender of the created content.

4.7 Users grant SPEKTRA, in its capacity as service provider, a free, simple, non-exclusive right with no limitation in space, but limited in time to the term of the business relationship, to reproduce the data stored or to be stored in the "SPEKTRA Cloud", provided that is necessary for the provision of the service. SPEKTRA is also entitled to keep the data in a backup centre. If SPEKTRA employs third parties in connection with the service, it is entitled to transfer the aforesaid rights to those third parties.



5. Data Exchange

5.1 Users grant SPEKTRA permanent access to the data stored by them in the "SPEKTRA Cloud" for the purpose of intended order-related data exchanges.

5.2 In return, SPEKTRA grants users permanent access to the data which it stores in the "SPEKTRA Cloud" for users to use and view, and provides them with the access data needed for that purpose.

6. Availability/Impaired Service

6.1 SPEKTRA endeavours to ensure that the "SPEKTRA Cloud" is available without interruption. However, temporary interruptions and/or impaired service and data losses may occur in the event of a technical disruption (e.g. power outage, hardware or software malfunction, technical problems in data lines) or as a result of measures to identify and rectify malfunctions. The same applies to adjustments, changes, add-ons and maintenance work.

6.2 Users of free SPEKTRA services have no claim to uninterrupted use.

7. User's obligations

7.1 Users are required to refrain from any action that might impair the seamless operation of the "SPEKTRA Cloud" and/or overload SPEKTRA's IT systems.

7.2 Only data which is relevant to the business relationship may be stored. Users must apply a policy of data avoidance and data economy. That means minimising data use and ensuring that any data used are required for the business relationship.

7.3 Users also must not use the storage space provided to store content, the supply, publication and use of which infringes applicable laws,

third-party rights, official orders or youth protection policies.

7.4 Users are required in particular to refrain from:

- Uploading, disseminating, offering and advertising pornographic content, services and/or products, or content, services and/or products which infringe youth protection policies, equal treatment, privacy and other laws and/or which may lead to criminal prosecution.
- Using content which offends, defames or disparages other users or third parties.
- Using, supplying and disseminating content, services and/or products protected by law or third-party rights (e.g. copyright) without being expressly authorised to do so.

7.5 Irrespective of whether or not the law is breached, users must refrain when uploading their own content to the "SPEKTRA Cloud" from:

- Spreading viruses, trojans and other malware.
- Disseminating and/or communicating indecent, sexually explicit, obscene or defamatory content or content capable of inciting or supporting racism, fanaticism, hatred, physical and/or psychological violence or other unlawful or immoral acts.

7.6 If it learns, irrespective of how, that users' uploads or the uploaded content itself breach the terms of Section 7 of these Terms of Use or has good cause to suspect that such a breach will occur, SPEKTRA is entitled to block uploading of content and to block and delete content already uploaded without prior notice. Users are advised if their content is blocked or deleted.



8. Liability for defects/Liability

8.1 Unless these Terms of Use and the provisions below stipulate otherwise, SPEKTRA only bears statutory liability in the event of infringement of contractual and non-contractual obligations.

8.2 SPEKTRA can only be held liable for damages, regardless of the legal grounds, in the event of wilful or grossly negligent conduct. In the event of simple negligence, SPEKTRA can only be held liable for:

- Harm caused by injury to life, limb or health.
- Harm caused by breach of a material contractual obligation (an obligation which must be fulfilled before the contract can be duly performed and which the counterparty regularly expects and may expect to be fulfilled), in which case, however, our liability is limited to reparation of typical foreseeable harm and, in the event of financial losses, to the net remuneration agreed.

8.3 Any claim for damages shall be reduced by the user's contributory negligence.

8.4 The liability limitations set out in paragraph 8.2 shall not apply if SPEKTRA fraudulently concealed a defect or warranted product properties. The same applies to users' claims under the Product Liability Act.

8.5 Liability for damages over and above that provided for in paragraphs 8.1 to 8.4 is excluded, irrespective of the legal basis of the claim brought. This applies in particular to claims for damages on the grounds of fault during execution of a contract, on the grounds of some other breach of duty or on the grounds of claims in tort to damages under Section 823 of the Civil Code.

8.6 Where liability for damages on the part of SPEKTRA is excluded, the same applies to the personal liability for damages of its staff, representatives and agents.

8.7 The above liability rules do not change the burden of proof to the user's detriment.

8.8 Users undertake to report any harm within the meaning of the above liability rules in writing to SPEKTRA without delay, so that SPEKTRA is made aware promptly and can, where appropriate, take action with the user to mitigate the harm.

9. Indemnification Claims

If an action is brought on the grounds of presumed or actual breach of the law and/or breach of third-party rights as a result of action taken by the user in connection with use of the "SPEKTRA Cloud", the user shall indemnify SPEKTRA and its staff or agents against all resultant third-party claims.

Users further undertake to reimburse all costs incurred by SPEKTRA as a result of actions brought by third parties, including the costs of reasonable legal defence.

10. Data Protection

10.1 Users hereby consent to storage of the personal data input by them on registration. This also applies to storage of IP addresses transmitted every time the portal is used.

10.2 SPEKTRA needs to collect, process and use personal data to enable use of the "SPEKTRA Cloud". SPEKTRA guarantees that all stored data are handled with care and are processed solely within the framework of the user's consent under privacy laws. SPEKTRA will only use personal data outside that framework where permitted to do so by law or with the user's prior consent.

10.3 SPEKTRA's Data Privacy Notice (DPN) also applies. See:

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



11. Confidentiality

11.1 The parties undertake to keep all the partner's confidential processes (including business and trade secrets) of which they obtain knowledge during the preparation, performance and fulfilment of the user contract in the strictest confidence and not to disclose or otherwise use and/or exploit them. This applies to all unauthorised third parties, including unauthorised staff, unless the disclosure of information is necessary to ensure reciprocal obligations are duly fulfilled.

11.2 The parties shall only grant staff and contractors access to the data stored in the "SPEKTRA Cloud" to the extent needed in order to discharge contractual duties and achieve contractual objectives.

11.3 The parties further undertake to agree a rule identical in content to paragraph 11.1 with all staff and contractors used by them in connection with the preparation, performance and fulfilment of this contract.

12. Change Disclaimer

12.1 SPEKTRA is entitled to change the "SPEKTRA Cloud" service provided, to restrict or suspend services or to introduce new services at any time. Any such measures shall take due account of users' legitimate interests. However, users have no right to demand that particular services or part-services be retained.

12.2 SPEKTRA reserves the right to amend or supplement the Terms of Use of the "SPEKTRA Cloud" at any time, including during the term of the user contract. SPEKTRA shall give users timely notice of any such amendments or addenda.

12.3 SPEKTRA is entitled to upgrade the "SPEKTRA Cloud" to the state of the art and to adapt the legal requirements at any time.

12.4 SPEKTRA is entitled to terminate its cloud service subject to three months' notice. If the cloud service is terminated, SPEKTRA will delete the data stored by or provided by users on expiry of the expiry date referred to in paragraph 4.6.

12.5 This is without prejudice to the right of SPEKTRA and of the user to cancel the contract with immediate effect with good cause.

13. Term of Contract/Cancellation

13.1 The contract is of unlimited term and may be cancelled by either side at any time subject to 14 days' notice.

13.2 This is without prejudice to the parties' right to give extraordinary notice cancelling the contract with good cause.

13.3 SPEKTRA shall have good cause to cancel the contract if the user consistently fails to fulfil its obligations under Section 7 of these Terms of Use.

13.4 If the user contract is cancelled, SPEKTRA shall delete the data stored or provided by the user on expiry of the expiry date referred to in paragraph 4.6.

14. Final Terms

14.1 German law applies. The UN Convention on Contracts for the International Sale of Goods does not apply.

14.2 No side agreements exist to these Terms of Use. Amendments and addenda to these Terms of Use must be set out in writing. This formal requirement can only be waived by written agreement.

14.3 The place of performance and the place of jurisdiction for all disputes between the parties



further to the Terms of Use is Dresden, provided the user is an entrepreneur, a public-law legal entity or a public-law special fund or has no general place of jurisdiction in the Federal Republic of Germany or moves their place of jurisdiction abroad. If the requirements for a choice of forum in accordance with Section 38 of the Code of Civil Procedure are fulfilled, the place of jurisdiction for all claims brought by the parties under these Terms of Use shall be the place of SPEKTRA's registered office. However, SPEKTRA is also entitled to sue users in the court in whose district they are registered.

14.4 If individual provisions in these Terms of Use are or become legally ineffective in full or in part, that shall be without prejudice to the remaining provisions. The parties hereby agree that, in such an eventuality, the invalid provision shall be replaced by a legally effective provision that best emulates the economic purpose of the invalid provision. The same shall apply to any omissions in the terms.

The current version of these Terms of Use is available at:

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

Dresden, April 2020