

## General Terms and Conditions for the Provision of Engineering Services, Support Services, and Software Maintenance Services

These General Terms and Conditions for the Provision of Engineering Services, Support Services, and Software Maintenance Services (hereinafter the “General Terms and Conditions”) apply to commercial relationships with entrepreneurs, public law entities and public institutions, hereinafter referred to as the “Customer”.

### 1. General Provisions

1.1 Our deliveries shall exclusively be governed by the conditions set forth hereunder. The Customer’s general terms and conditions shall not apply (even if we have not explicitly objected to their applicability), unless we have expressly agreed to their applicability.

1.2 Oral agreements given by us must be confirmed by us in writing to be valid. Changes to a contract shall also require written form. The same applies to any changes made to the requirement of written form.

1.3 If the Customer does not accept our offer within two (2) weeks of receipt thereof, we shall have the right to withdraw it.

Cost estimates are non-binding and shall be produced against payment, unless expressly agreed otherwise.

1.4 Pending the coming into force of new General Terms and Conditions for the Provision of Engineering Services, Support Services, and Software Maintenance Services, these General Terms and Conditions shall also apply to all future deliveries to the Customer.

### 2. Scope of Services, Delivery of Services

2.1 Unless expressly agreed otherwise, the description of the service shall be required to exhibit only those characteristics and service features – including technical specifications - that have contractually been specified between the parties. We reserve the right to make technical and design-specific changes to the descriptions and specifications in our brochures, catalogs and similar sales materials, and to replace products (or parts thereof) with those of technically similar or better state of the art. In this case, the Customer shall not be entitled to derive any rights to bring a claim or rights of recourse against our Company. Our descriptions, statements, and advertising messages, including those issued by the manufacturer, are not contractually binding.

2.2 We shall have the right to deploy subcontractors (affiliated enterprises as well as third parties) to

deliver the contractually agreed service. To the extent that the performance of the service requires the Customer to reveal or make accessible proprietary confidential information and documentation, the Customer agrees that these may be made available to the subcontractor for the purpose of service delivery. Prior to such conveyance of information, we shall ensure that the respective subcontractor enters into an obligation to maintain confidentiality of all information and documentation conveyed to him.

### 3. Software Maintenance

3.1 The following software maintenance services are, as a general rule, only provided for the latest program version of the software to be maintained. Support services for previous program versions are subject to a separate agreement.

3.2 Unless otherwise agreed in writing, software maintenance shall comprise the following services:

- Delivery of generally available updates and new versions which may contain code corrections, functional enhancements and/or adaptations to changed technical conditions;
- Delivery of patches and fixes to remedy and/or bypass critical errors;
- Provision of information for restrictions;
- Correction of and/or bypassing errors;
- Technical assistance for routine and straightforward issues related to installation and use

(how-to-questions) and/or defects occurred, via telephone or e-mail during ETAS normal business hours (Monday to Friday excluding bank holidays).

3.3 Software maintenance does not include support services for

- the integration of the software and any influences such integration may have on third party products;
- Design and development of applications using the software;
- Customer’s use of the software in other than the agreed/specified operating environment;
- Problems and errors caused by products for which ETAS is not responsible under this Agreement.

3.4 The acquisition of software maintenance does not result in any commitment of ETAS regarding availability and/or fail safe stability of the system.

3.5 The agreed software maintenance will only be provided in favor of the Customer. The transfer of

software maintenance to third parties, in particular to end users which are not employees of the Customer is not permitted.

3.6 Unless otherwise agreed upon, software maintenance will be provided for a period of one (1) year as of the delivery/provision of the software.

3.7 A reinstatement maintenance fee shall be due if software maintenance is resumed after (a) a license has initially been acquired without software maintenance or (b) software maintenance has previously been terminated by the Customer. The reinstatement fee shall be equal to the amount of all maintenance fees that would have accrued during the maintenance-free period.

3.8 To the extent required for the provision of the software maintenance, the Customer shall provide additional information such as program code, configuration, protocol data etc as well as necessary resources and shall enable (remote) access to its systems.

#### **4. Hardware Repair and Calibration services**

4.1 Repair services aim at the professional remediation of notified hardware defects/problems. Should we realize in the course of repair that the effort for such repair is economically not justifiable or technically not feasible, we will inform Customer thereof in writing.

4.2 As a general rule, cables are not repaired but replaced in their entirety.

4.3 Calibration for ETAS measurement products with calibration properties will be conducted in accredited calibration laboratories. Customer will receive a new test plate with a corresponding test protocol (certificate) for his product.

4.4 In the context of repair and/or maintenance it can be necessary to restore the factory settings. This can result in the deletion or modification of customer-specific data and settings. Prior to providing the hardware to ETAS, the customer shall therefore ensure the overall protection of customer-specific data and secure/back-up all settings.

4.5 As a general rule in the event of repair, the latest firmware version of the respective hardware is installed.

4.6 The warranty period for repair services is one (1) year as of delivery of the repaired product to the Customer.

4.7 ETAS reserves the right to subcontract the requested services to subcontractors and/or

calibration laboratories with the necessary qualification.

#### **5. Customer's Obligation to Cooperate**

5.1 The Customer shall provide us with all information required for the performance of our deliveries and/or services. We shall not be obligated to verify data, information or other services supplied by the Customer, with regard to completeness and correctness, unless such verification has been expressly agreed upon as a contractual duty. In the event that information or documentation supplied by the Customer proves to be faulty, incomplete, ambiguous or objectively non-executable, the Customer shall, immediately upon notification by us, effect the required corrections and/or amendments. The Customer shall remedy or cause to be remedied any faults or malfunctions of Customer-supplied components that we notify to the Customer, without delay.

5.2 To the extent that work is performed on the Customer's premises, infrastructure such as workstations, materials and work tools shall be provided to our personnel free of charge. In such cases, the Customer shall be responsible for taking all required steps to fulfill its legal duties to ensure the safety of persons and property, unless other arrangements arise from the nature of the matter or an agreement with the Customer. We shall have the right to refuse delivery and/or performance of the service if the required steps are not taken.

5.3 As far as repair, maintenance and/or calibration services are concerned, Customer shall ensure to suitably package the product. In this context, Customer shall in particular make sure that specific hardware, like for example ETAS ETK and VME cards, require antistatic packaging.

5.4 If the Customer fails to comply in whole or in part with its obligations to cooperate, collaborate or provide materials, with consequential delays and additional expenditure, we shall have the right to adjust the agreed deadlines and/or milestones and to claim damages and additional expenses resulting from such delay or non-performance.

If the Customer fails to perform its obligation to cooperate, collaborate or provide materials within a reasonable extended deadline following a further reminder, we shall, in addition, have the right to terminate the contract without notice.

## 6. Work results

6.1 When work results are supplied which have been produced in the course of a customer order (e.g., concepts, circuit diagrams, software, etc.), the Customer shall be granted – save as otherwise explicitly agreed by contract – a simple (non-exclusive), perpetual right to use the results for the purpose assumed by the respective agreement. To the extent that in an individual case products of third party vendors, in particular third-party software, are or is integrated and delivered by us, special conditions of use may apply, which appear in an annex to an offer or individual contract and become a part thereof.

6.2 Independent of the scope of rights granted to the Customer, we shall have the right in any case to use and apply the concepts and collected expertise, etc. forming the basis of the results and findings in subsequent developments and services also for other customers.

6.3 To the extent that software maintenance requires the provision of fixes, patches, updates and/or new versions of ETAS Products, the corresponding rights to use will be governed by the license model agreed for the respective program.

## 7. Deadlines

7.1 The deadlines and milestones specified for a given project shall serve the purpose of orientation in terms of the project's time schedule. Deadlines shall be binding only if they were expressly agreed as such in writing. Adherence to agreed delivery deadlines is predicated upon the fulfillment of the Customer's cooperation obligations, in particular the Customer's provision, in a timely manner, of all items, documents, permits, investigations and validations to be supplied by the Customer and the Customer's compliance with agreed payment conditions. In the event that these conditions precedent are not satisfied in a timely manner, delivery dates shall be extended appropriately.

7.2 In the event that non-compliance with delivery deadlines is caused by a force majeure event or any other event beyond our control, such as, for example, war, terrorist attacks, import or export restrictions, industrial disputes, including those affecting subcontractors, the delivery deadlines agreed upon shall be extended for a reasonable period. The Customer shall be notified immediately of the delay and/or unavailability of the service(s).

## 8. Acceptance

8.1 Insofar as our delivery or services require the Customer's acceptance, the Customer shall accept the services upon delivery and – to the extent agreed by the parties – subsequent to successful completion of the acceptance test, with immediate effect. Minor defects or deviations from the contractually agreed performance characteristics and acceptance criteria shall not entitle the Customer to refuse acceptance. Our obligation of defect remedy shall, however, remain unaffected. The Customer shall notify us in writing of any reservations by naming specific defects and discrepancies within 30 (thirty) days of delivery. If the Customer's reservations prove to be unjustified, we shall reserve the right to invoice the Customer for the costs incurred by the process of verifying the Customer's complaint.

8.2 Acceptance shall be deemed given if the Customer refuses to issue a declaration of acceptance in violation of the foregoing Article 8.1 or if the Customer, despite a timely request, refuses to collaborate in a joint acceptance test. The same shall apply if, after a joint acceptance test has been conducted, the Customer fails to immediately declare acceptance in writing (e.g., in an acceptance protocol), unless the Customer specifies in writing within this period the defects on account of which it refuses acceptance.

8.3 We shall also have the right to ask for partial acceptance in the case of self-contained partial deliveries.

## 9. Prices and Terms of Payment

9.1 The agreed prices shall apply plus value-added tax (VAT). VAT is not invoiced in cases meeting the preconditions for tax exemption of export deliveries, provided that suitable documentary proof thereof is provided by the Customer.

9.2 We reserve the right to modify our prices appropriately if our costs rise after a contract has been entered into, in particular due to changes in wage costs under collective bargaining agreements, or to changes in the price of materials, provided an interval of more than four (4) months elapses between the date of contract signing and service provision. We shall provide proof of such changes to the Customer upon request.

9.3 Except as otherwise agreed upon in writing, payment shall be effected within 30 days of the

invoice date without deduction. In the case of late payment, we shall be entitled to charge default interest at the statutory rate plus 8% as well as the €40 statutory debt collection fee or a higher fee, where justified, notwithstanding our right to claim damages for any other loss.

We shall be entitled to make our delivery dependent upon immediate payment (e.g. through cash on delivery or direct debit) or a down payment.

9.4 Moreover, we shall also be entitled to allocate payments received from the Customer to the oldest outstanding amount receivable.

9.5 The Customer shall be entitled to hold back payments or offset with counterclaims only to the extent that its counterclaims are undisputed or recognized by final and binding judgment.

## 10. Warranties

10.1 If the service to be provided by us comprises a work performance, the limitation period for claims on account of defects shall be twelve (12) months from the date of acceptance of the work or — in the case of work unsuitable to acceptance — after delivery (passing of risk). The foregoing provisions shall not apply insofar as longer limitation periods apply under mandatory public policy provisions.

10.2 In the event that a defect arises within the limitation period, the cause of which already existed at the time of the passing of risk, we may at our discretion elect to remedy the defect either by repairing the defect or providing a new service. With software, the warranty claim shall be conditional upon the error being reproducible and the error occurring in the last revision level accepted or adopted by the Customer.

10.3 If the defect is remedied by repairing the defect, the defect shall be remedied at our discretion either at the Customer's premises or our own facilities. The Customer shall provide us with the available documentation and information that is necessary to remedy the defect.

10.4 The limitation period does not begin anew by virtue of the remedied defect.

10.5 If the defect is not remedied, the Customer may — without prejudice to the right to claim damages — terminate the contract or reduce the remuneration in accordance with statutory provisions.

10.6 Claims by the Customer on account of necessary outlays for defect remedy, in particular the costs of transportation, travel, labor and materials, shall

generally be reimbursed, against receipts. However, they shall be excluded to the extent by which such outlays are increased due to the fact that the product supplied was subsequently removed to a place other than the Customer's facilities, unless such removal is done in accordance with the designated use of the product.

10.7 The following shall not be deemed to constitute a quality defect:

- natural wear and tear;
- characteristics of the product or damage caused after the passing of risk due to improper handling, operation, storage or assembly, non-compliance with installation or handling instructions, or excessive strain or use;
- characteristics of the product or damage caused due to force majeure, special external influences which are not foreseen under the terms of the contract or which arise due to the use of the product in a manner not presupposed in the contract or not in accordance with normal use;
- non-reproducible errors in hardware or software.

10.8 With respect to software products that the Customer or a third party has extended via a designated interface, we shall only be liable for quality defects up to the interface. We shall in no way be liable for compatibility or interoperability of the software with the Customer's data processing environment, in particular with the software and hardware products implemented by the Customer.

10.9 The Customer shall undertake all action which is necessary and may be reasonably expected to prevent or limit the consequences of damage resulting from quality defects in the software; in particular, the Customer shall ensure that backups of all programs and data shall be conducted on a reasonable and regular basis.

10.10 We shall not be liable for the quality of the work based on the design or choice of material, insofar as the design or the material has been stipulated by the Customer.

10.11 The Customer's right of recourse for indemnity shall exist only to the extent that the Customer's claims are not based on an agreement with its own customer exceeding our own obligations.

10.12 All claims on account of defects including all claims asserting the Customer's right of recourse for indemnity shall be excluded insofar as the Customer has failed to have the defect remedied by our repair department.

10.13 Articles 10.3, 10.8, and 10.9 shall not apply in the event that it is proven that our product was sold by the Customer or by a customer of our Customer to a consumer without any processing or installation into another product.

10.14 For any claims that do not arise from a violation of the property rights of third parties (see Article 11), the provisions of Article 12 shall apply.

10.15 In the event that work contains or incorporates standard third-party products supplied by us, our obligation to remedy defects shall in the first instance be limited to transferring the warranty claims to the third-party manufacturer. If the third-party manufacturer fails to repair the defect, the Customer – as stipulated in the foregoing provisions – shall be entitled to demand a reduction of the purchase price or to terminate the contract.

## 11. Intellectual property rights

11.1 We shall not be liable for claims arising from an infringement of an intellectual property right if the intellectual property right is or was owned by the Customer or by an enterprise in which the Customer holds, directly or indirectly, a majority of the share capital or voting rights.

11.2 We shall not be liable for claims arising from an infringement of intellectual property rights unless at least one intellectual property right from the family of the relevant intellectual property rights has been published either by the European Patent Office (EPO) or in one of the following countries: Germany, France, Great Britain, Austria, or United States.

11.3 The Customer shall notify our Company immediately of any (alleged) infringements of an intellectual property right of which it becomes aware and of any risks of such an infringement and, at our request – to the extent possible – allow us to conduct the litigation (including non-judicial proceedings).

11.4 For any product that infringes a third-party intellectual property right, we shall be entitled, at our discretion, to obtain a right of use or modify the product so that it no longer infringes the intellectual property right, or to replace it by an equivalent product which no longer infringes said right. If this is not possible subject to reasonable conditions or within a reasonable period of time, the Customer shall be entitled to exercise the statutory rights of termination provided that the Customer allowed us to make changes.

11.5 Claims by the Customer shall be excluded insofar as the Customer is responsible for the infringement of the intellectual property right or if the Customer fails to support us to a reasonable extent in the defense against claims by any third parties.

11.6 Claims by the Customer shall also be excluded if the products were manufactured in accordance with the specifications or instructions of the Customer or if the (alleged) infringement of the intellectual property right arises from use of our product in conjunction with another product not originating with us, or if the products are used in a manner that we were unable to foresee.

11.7 The provisions of Article 12 provide a strict framework for our obligation to pay damages in case of an infringement of an intellectual property right.

11.8 Claims made by the Customer on the basis of an infringement of a third-party intellectual property right shall be excluded other than those permitted under this Article.

## 12. Compensation for Damage/Product Liability

12.1 Pursuant to the legislation in force, we shall only be liable to pay damages for any non-performance or late performance of the obligations set out in these Terms and Conditions if they cause the Customer to sustain a loss as an immediate and direct consequence of the non-performance or late performance of our contractual obligations.

12.2 The Compensation payable in case of a breach of contractual obligations shall be, however, limited to the foreseeable damage typical of the type of contract, except in cases of deliberate acts or gross negligence or in the event of liability due to fatal or physical injury or damage to health or due to the implementation of a warranty covering defects.

**12.3 Our services or products may on occasion facilitate the exertion of influence or control on an electronic system. Such actions may lead to injury to life or limb or to property damage. Our services and products are therefore exclusively intended for use by qualified professional personnel. We shall not assume any liability for damage caused by improper use or by use in a manner other than that intended.**

12.4 When using our services and products for safety-relevant intervention in vehicle behavior (as with the stimulation of the vehicle's bus systems, e.g., CAN, or with bypasses intervening in the vehicle's control equipment, e.g., in the control units onboard the vehicle governing powertrain, chassis or body

systems), and when our services and products are deployed in conjunction with electronic control units presenting a danger to life and limb in the event of any malfunction, the user shall be obligated to ensure the installation of devices that provide a secure transition of the system to a safe condition in the event of a hazard (e.g. Emergency-Off mode or Limp-home operation).

12.5 We shall not assume any liability for the effects or impairment of our services and products or their performance, usability or safety ensuing from the use of the Customer's own software or model segments or from access to our products via interfaces released by us.

12.6. In the event that a defect or fault in our product causes a loss of or damage to the Customer's data or programs, our liability shall not include any expenditure for their recovery. The Customer shall therefore be obligated to effect data backups on a regular basis.

12.7 The foregoing provisions shall not be construed as a reversal of the burden of proof.

### **13. Export Control**

13.1 Deliveries and services (contractual performance) shall be subject to the provision that there are no obstacles to performance due to national or international export control regulations, in particular embargos or other sanctions. The Customer undertakes to provide all information and documentation which is required for delivery purposes for the export or shipment of the software to be delivered under the contract and which fall within the Customer's ambit. Delays due to export inspections or authorization procedures shall be deemed to extend the delivery deadline accordingly, unless the licensor is responsible for these delays. If necessary authorizations are not granted or if the delivery and service are not capable of being approved, the contract shall be treated as never having been entered into by the parties.

13.2 We reserve the right to terminate the contract without notice if such termination is necessary for us in order to comply with national or international legal provisions.

13.3 In the event of termination pursuant to Article 13.2, the Customer is excluded from raising a claim for any compensation or any other rights on account of the termination.

13.4 When passing on the products delivered by us (hardware and/or software and/or technology and the respective documents, irrespective of the manner in which they are made available) and work and services performed by us (including technical support of all kinds) to third parties in France or abroad, the Customer must comply with the provisions of national and international (re-) export control law.

### **14. Confidentiality**

14.1 All of our business and technical information (including the purchase price of our products, characteristics which can be derived from any items or software which may be delivered, and other knowledge or experiences) shall be kept secret with regard to third parties as long and insofar as it is not provably public knowledge; in the Customer's own operation, such information may only be made available to those persons in the Customer's own enterprise who must necessarily be involved for its deployment and who are also subject to a confidentiality obligation; the business and technical information shall remain our exclusive property. Without our prior written consent, such information may not be duplicated or used commercially. At our request, all of the information originating with us (including any copies and recordings made, if any) and property on loan must be returned to us immediately and completely, or destroyed.

14.2 We shall retain all rights to the information indicated in Article 14.1 (including copyright and the right to apply for industrial property rights such as patents, utility models, semiconductor protection etc.).

### **15. Miscellaneous Provisions**

15.1 If any one of the provisions of these General Terms and Conditions or of any contracts entered into on the basis of these General Terms and Conditions should be or become invalid, null and void, non-binding or unenforceable, this shall not render the other provisions invalid, null and void, non-binding or unenforceable and they will remain in full force and effect. The parties are obliged to replace the invalid, null and void, non-binding or unenforceable provision with a valid provision most closely approximating the economic objective pursued by the original provision.

Moreover, if a party fails to act on or delays acting on a breach by the other party of any one of its obligations, this may not be construed as a waiver of the relevant obligation or as an amendment to these General Terms and Conditions, and may not prevent the non-defaulting party from acting on it in the future.

15.2 The parties shall endeavor to settle out of court any dispute or claim relating to these General Terms and Conditions or any contracts entered into on the basis of these General Terms and Conditions. If the parties fail to reach a settlement within a reasonable time, any dispute relating to the interpretation, performance or termination of these General Terms and Conditions or any contracts entered into on the basis of these General Terms and Conditions will be referred to Bobigny Commercial Court (*Tribunal de Commerce*) which will have exclusive jurisdiction for such disputes, regardless, in particular, of the place of delivery or the method of payment agreed by the parties elsewhere and even in the event of third party claims for indemnity, multiple defendants or interlocutory applications.

15.3 French substantive law shall apply between the parties, to the exclusion of the Vienna Convention on the International Sale of Goods dated 11 April 1980.

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