

General Terms and Conditions for the Supply of Hardware and Software Products

These terms and conditions (the “**Terms**”) govern the supply of hard- and software products by us to you. Please read these Terms carefully.

1. Definition and Interpretation

1.1. Definitions:

ETAS: means ETAS Limited (registered in England and Wales with company number 03383737) whose registered office is at c/o Robert Bosch Ltd, Broadwater Park North Orbital Road, Denham, Uxbridge UB9 5HJ, England.

Authorised Users means those employees, agents and independent contractors of the Customer (including Customer Franchisees) who are authorised by the Customer to use the Software.

Business Day: means a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Confidential Information: information in whatever form (including, without limitation, in written, oral, visual or electronic form or on any magnetic or optical disk or memory and wherever located) including, without limitation, relating to ETAS’s business, clients, customers, products, pricing, assets, affairs and finances confidential to ETAS and trade secrets including, without limitation, technical data and know-how relating to ETAS’s business or any of its suppliers, clients, customers, agents, distributors, shareholders or management, whether or not such information (if in anything other than oral form) is marked confidential.

Contract: means the contract between ETAS and the Customer for the supply of the Hard- and/or Software in accordance with these Terms.

Customer: means the person or firm who purchases the Hard- and/or Software from ETAS.

Customer Franchisees means any dealer who has contracted with the Customer to operate service and repairs under the Customer’s name or brand.

Customer Licence Server: means a server that is provided and controlled by the Customer for licence management.

Data Protection Laws: means any applicable law, statute, declaration, decree, directive, legislative enactment, order, ordinance, regulation, rule or other binding restriction (as amended, consolidated or re-enacted from time to time) which relates to the protection of individuals with regards to the processing of personal data to which a party is subject, including without limitation (i) the Data Protection Act 2018; (ii) the UK

General Data Protection Regulation as it forms part of the law in the UK by virtue of section 3 of the European Union Withdrawal Act 2018; (iii) the UK Privacy and Electronic Communications Regulations 2003; and, where relevant, (iv) the EU General Data Protection Regulation 2016.

Force Majeure Event: means any event beyond a party’s reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes, failure of energy sources or transport network, raw material shortages, acts of God, war, terrorism, civil commotion, malicious damage, breakdown of plant or machinery, fires, floods, storms, earthquakes, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

Hardware: means the hardware products (or any part of them) set out in the Order, including any tangible media on which the Software is delivered (e.g. disks or CD-ROMs).

Intellectual Property Rights: means any patents, rights to inventions, copyright and related rights, trademarks, trade names, rights to goodwill or to sue for passing off rights in designs, unfair competition rights, rights in computer software, database rights, rights in confidential information (including know-how), utility models and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Licence Model: means the licence models as described in clause 3.4.

Order: means the Customer’s order for the supply of Hard- and/or Software in whatever form.

Software: means the software products (or any part of them) set out in the Order.

Specification: means any specification for the Hard- and/or Software (as applicable) that is produced by ETAS, including any related plans and drawings.

Terms: means the terms and conditions set out in this document (as amended by ETAS and notified to the Customer from time to time).

Warranty Period: means the period of 24 months from the date of delivery, or such other period that ETAS confirms in writing.

WEEE Regulations: means The Waste Electrical and Electronic Equipment Regulations 2013 (as amended, consolidated or re-enacted from time to time).

- 1.2. In addition to the specific meanings of the words detailed above, the following rules apply to the general construction of these Terms:
 - 1.2.1. A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted; and includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
 - 1.2.2. Any phrase introduced by the Terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
 - 1.2.3. Subject to clause 20.2, a reference to writing or written includes e-mails.
 - 1.2.4. An obligation on a party not to do something includes an obligation not to allow that thing to be done.

2. The Application of these Terms

- 2.1. These Terms apply to the Contract and any quotation of ETAS to the exclusion of any other terms that the Customer seeks to impose or incorporate or which are implied by trade, custom, practice or course of dealing. These Terms shall also apply to any future deliveries to the Customer, even if not explicitly agreed.
 - 2.2. The Order constitutes an offer by the Customer to purchase the Hard- and/or Software in accordance with these Terms which ETAS may accept or reject in its absolute discretion. The Customer shall ensure that the terms of the Order are complete and accurate and that the Order incorporates the terms of the quotation given by ETAS.
 - 2.3. The Order shall be deemed to be accepted by ETAS when ETAS issues a written acceptance of the Order or supplies the Hard- and/or Software to the Customer in accordance with these Terms, whichever takes place earlier, at which point the Contract shall come into existence on these Terms.
 - 2.4. Unless explicitly agreed otherwise by the Parties, Any samples, drawings, descriptive matter or advertising issued by ETAS and any descriptions or illustrations contained in ETAS' catalogues or brochures shall not form part of the Contract.
 - 2.5. No variation or alteration to the Contract shall be effective unless it is made in writing and signed by the parties (e.g. via DocuSign).
 - 2.6. A quotation for the Hard- and/or Software given by ETAS shall not constitute an offer. Unless otherwise stated in writing or withdrawn earlier by ETAS in writing, a quotation shall only be valid for a period of 30 days from its date of issue. Cost estimates are non-binding and shall be subject to change, unless expressly agreed otherwise.
- 2.7. In case of conflict between these Terms and the provisions of any supplemental trading terms agreed between the parties, the supplemental trading terms shall prevail.

3. Software Licences

- 3.1. The Software is provided in the form of a temporary or permanent licence, as agreed in the Contract. In both cases, the Customer shall receive a simple (non-exclusive) right to use and, to the extent agreed in the Contract, to permit the Authorised Users to use the Software as described in the agreed Licence Model, provided such use is in accordance with the Contract. Unless explicitly agreed otherwise in the Contract, the use of the licence by third parties (including affiliated companies) is not permitted.
- 3.2. The Customer may not use the Software other than as specified in clause 3.1 and 3.4 without the prior written consent of ETAS, and the Customer acknowledges that additional fees may be payable on any change of use approved by ETAS. The operation of Software in a CLOUD environment or in a server infrastructure other than the Customer Licence Server requires an additional licence agreement.
- 3.3. Unless expressly agreed otherwise, temporary licences entitle the Customer to use the Software for one (1) year from delivery and terminate automatically upon expiry of this period.
- 3.4. Licence Models
 - 3.4.1. A **machine-based licence** entitles the Customer to use the Software on exactly one clearly identified local physical machine ("**Workstation**"). Each licence may only be used once at any time on the defined Workstation or on a single virtual machine on that Workstation. Unless otherwise provided for in the Software documentation or in the user manual, it is not permitted to use the Software via the Internet or network applications (e.g. Microsoft Remote Desktop or on a server).
 - 3.4.2. A **user-named licence** entitles the Customer to use the Software by one clearly identified user. Each licence may only be used once at any time on up to three individual and clearly identified Workstations or virtual machines on these Workstations, with the Software installed on the Customer Licence Server.
 - 3.4.3. A **floating licence** entitles the Customer to use the Software once at any time on a single Workstation or on a virtual machine on a single

Workstation, with the Software installed on the Customer Licence Server.

- 3.4.4 In the case of a **corporate or enterprise licence**, the Software may be used by any number of the Customer's employees. Unless otherwise agreed in writing, transfer to third parties as per clause 3.12 is excluded.
- 3.4.5 In the case of a **volume licence**, the use of the Software is limited to a contractually agreed number of licence copies per product, project, or platform and/or to a certain period of time. The product, project or platform must be identified by a unique designation, the processor/compiler type used and the number of production years.
- 3.4.6 In the case of a **product and/or project and/or platform licence**, the use of the Software for a specific product, a project or a platform is granted to the Customer without any contractual restriction regarding the number of copies. The product, project or platform has to be identified by means of a unique designation, the processor/compiler type used, and, in case of a development licence, the number of years of development, and, in case of a production licence, the number of years of production.
- 3.4.7 In the case of a **customised licence**, the specific Software and its use is tailored to the needs of the Customer and described in detail in the Contract. The customised licence may include parts of any of the Licence Models as described in clauses 3.4.1 to 3.4.6. In addition to these Terms, the 'General Terms and Conditions for the Provision of Engineering Services, Support Services, and Software Maintenance' shall apply, which can be found under the link [\[T&C for ETAS UK\]](#) or are available on request.
- 3.4.8 A combination of Licence Models is possible.
- 3.5. Unless otherwise agreed in writing, the Software will be delivered in binary code.
- 3.6. Unless otherwise agreed in writing, ETAS will provide the Customer with an activation key for the activation of the Software, or provide Software access through a user authentication system. In the case of a machine-based licence (clause 3.4.1), the Customer shall provide ETAS with the anonymised unique identifier of the Workstation for licence control purposes, and in the case of the user-named licence (clause 3.4.2) with a unique identifier of the user. Furthermore, for the licences as per clauses 3.4.2 and 3.4.3, the Customer is obliged to equip the Customer Licence Server with a licence verification software provided by ETAS and to transmit the unique anonymised identifier of the Customer Licence Server to ETAS for licence control purposes.
- 3.7. Copies of the Software may only be created and installed to support authorised use (including the creation of a backup copy, which may only be used for backup purposes). The Customer shall record the number and location of all copies of the Software and take steps to prevent unauthorised copying.
- 3.8. The Customer shall not (and shall not permit any third party to) copy, reproduce, adapt, reverse engineer, decompile, disassemble, modify, edit, adapt, translate, fragment or make error corrections to the Software in whole or in part, or otherwise attempt to discover the source code of the Software except to the extent expressly permitted under applicable law or explicitly agreed in the Contract.
- 3.9. The Customer may not remove alphanumerical or other identifiers from the data carriers and shall transfer the data unchanged to the back-up copy.
- 3.10. In individual cases, Software may contain framework components from third party providers that allow communication between different processes and programming languages. The Customer may use these technologies exclusively for the development of product extensions (so-called "Add-Ons") at designated interfaces. Utilisation for other purposes is not permitted.
- 3.11. In relation to the Authorised Users, the Customer undertakes that:
 - 3.11.1. the Authorised Users comply with the provisions of these Terms;
 - 3.11.2. the maximum number of Authorised Users that it authorises to access and use the Software shall not exceed the number of Authorised Users agreed in the Contract;
 - 3.11.3. it shall maintain a written, up to date list of current Authorised Users and provide such list to ETAS within five (5) Business Days of ETAS' written request at any time;
 - 3.11.4. it shall permit ETAS or ETAS' designated auditor to audit the Customer's and each Authorised User's facilities to verify compliance with these Terms. This right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Customer's and Authorised Users' normal conduct of business;
- 3.12. Subject to clause 3.4.4, a transfer of the Software and the associated licence to third parties shall only be permitted
 - 3.12.1. in the event of a perpetual licence or upon ETAS' prior written approval; and
 - 3.12.2. only if the Customer ensures that
 - a. multiple use of the license by the third party is excluded;

- b. the new licence holder is bound in writing to comply with these Terms; the Customer shall, upon ETAS' request, provide evidence by submitting a copy of the contract with the new licence holder or parts thereof;
 - c. the Software, if purchased together with hardware, is only transferred to the new licence holder together with this identical hardware;
 - d. the Customer complies with clause 3.13; and
 - e. the Software is deleted on the Customer's own systems and the Customer confirms this to ETAS in writing; and
 - f. the Customer notifies ETAS immediately about the assignment of the Software.
- 3.13. The Customer shall not assign or otherwise transfer any software maintenance contract that the Customer has concluded with ETAS to the third party. ETAS may offer the new license holder a maintenance contract if required.
- 3.14. Unless expressly stipulated otherwise in the contract, the Customer is not permitted to make the Software or any of its functionalities available to third parties (e.g. as a service provider) via communication systems such as the Internet, e.g. as a cloud application.
- 3.15. Subject to clause 3.16, the specification of a new Customer Licence Server host ID or MAC address, e.g. when replacing a computer ("**Rehosting**"), is possible free of charge as follows:
- 3.15.1. once every six (6) months in the case of a machine-based licence;
 - 3.15.2. once every twelve (12) months in the case of a user-named licence; and
 - 3.15.3. once every six (6) months in the case of a floating licence.
- In case of Rehosting, the Customer shall delete the original licence and any copies thereof once the new licence is granted. In the event of misuse of the Rehosting frequency or continued use of the original licence, ETAS shall be entitled, without prejudice to any other rights it may have in accordance with these Terms and/or applicable law, to charge for lost licence and maintenance fees.
- 3.16. If the transfer frequency or a change of Workstation or user exceeds the limits specified in clause 3.15, or if the Customer Licence Server is changed, ETAS reserves the right to charge the Customer for the services associated with such change.
- 3.17. The purchase of a Software licence from ETAS does not include software maintenance. The Customer shall only be entitled to software maintenance services if a separate and explicit software maintenance contract is concluded with ETAS together with the licence agreement for the respective Software.
- 3.18. Unless expressly agreed otherwise in writing, updates, upgrades and other new versions of the Software are not included in the licence and may only be made available to Customers with an active software maintenance contract in place.
- 3.19. In case of licensing of simulation models, additional and/or deviating terms may apply.
- 3.20. If new versions of the Software are made available to the Customer as part of the warranty or software maintenance, these are also subject to these Terms. After installation of the new Software version, the Customer's right to use earlier Software versions shall expire.
- 3.21. Insofar as programmes or programme parts are delivered free of charge as add-ons with the Software (the "**Add-Ons**"), ETAS grants the Customer a simple (non-exclusive), non-transferable, time-limited right to use the add-ons for evaluation and test purposes. Unless expressly agreed otherwise in writing, the period of use is limited to 14 days from installation ("**Grace Period**"). The Customer is not authorised to use the Add-Ons productively and/or to transfer them to third parties (including sub-licensing). Clauses 3.6. to 3.9. shall apply accordingly.
- 3.22. In addition to these Terms, the "Additional Quotation and Sales Conditions for Products regarding Open Source Software" (the "**OSS Terms**") apply, which can be found at <https://www.etas.com/en/downloadcenter/33988.php> or are available on request. The Customer shall indemnify and hold ETAS harmless against any loss or damage which it may suffer or incur as a result of the Customer's breach of the OSS Terms howsoever arising.
- 3.23. Without prejudice to ETAS' right to terminate the Contract pursuant to clause 11, if the Customer breaches the provisions of this clause 3, ETAS may, after giving the Customer prior written notice, block the Customer's and/or any Authorised User's access to the Software if the violation can be remedied by such blocking. The block shall be lifted as soon as the reason for the block no longer exists. If the Customer continues to violate the provisions of clause 3 or does so repeatedly despite a corresponding written warning, ETAS is, without prejudice to any other right it may have, entitled to terminate the Contract without notice.
- 4. Delivery of Hard- and/or Software**
- 4.1. The Hard- and/or Software shall be delivered to the Customer as set out in the relevant Contract, which shall specify whether Software is delivered electronically, on disk or on CD-ROM, and whether the Hardware is to be delivered by ETAS to the Customer or collected by the Customer from ETAS.

- 4.2. Where ETAS is delivering Hardware to the Customer:
 - 4.2.1. ETAS shall deliver the Hardware to the location set out in the Order or such other location as the parties may agree (the "**Delivery Location**") at any time after ETAS notifies the Customer that the Hardware is ready;
 - 4.2.2. delivery of the Hardware shall be completed on arrival of the Hardware at the Delivery Location; and
 - 4.2.3. if the Customer fails to take delivery of the Hardware at the Delivery Location, then, unless the parties agree otherwise, the Customer will be required to collect the Hardware on the terms set out in clause 4.3 below.
- 4.3. Where the Customer is collecting the Hardware:
 - 4.3.1. the Customer shall collect the Hardware from ETAS' premises, or such other location as may be advised by ETAS prior to delivery (the "**Collection Location**") within three (3) Business Days of ETAS notifying the Customer that the Hardware is ready; or
 - 4.3.2. delivery of the Hardware shall be completed on completion of loading of the Hardware at the Collection Location or, when the Hardware is made available for collection by the Customer from the Collection Location, as applicable.
- 4.4. Any dates quoted for delivery of Hard- and/or Software are approximate only, and the time of delivery is not of the essence.
- 4.5. If ETAS fails to deliver the Hard- and/or Software, its liability shall be limited to replacing the Hard- and/or Software within a reasonable time or issuing a credit note at the pro-rata price against the invoice for the Hard- and/or Software (as applicable).
- 4.6. ETAS shall be liable for any damage to or loss of all or part of the Hardware in transit (where the Hardware is carried by ETAS' own transport or by a carrier on ETAS' behalf), provided that the Customer notifies ETAS within ten (10) Business Days of delivery and the Hardware has been handled in accordance with ETAS' stipulations. Any remedy under this clause shall be limited, at ETAS' option, to the replacement or repair of any Hardware proven to ETAS' satisfaction to have been damaged in transit. ETAS shall be entitled to claim compensation from the Customer for any expenses ETAS incurs, in the event of unjustified claims.
- 4.7. ETAS shall have no liability for any delay or failure to deliver the Hard- and/or Software to the extent caused by a Force Majeure Event or the Customer's failure to provide ETAS with adequate delivery instructions or any other instructions relevant to the supply of the Hard- and/or Software.
- 4.8. If the Customer fails to take delivery of the Hard- and/or Software, then:
 - 4.8.1. delivery shall be deemed to have been completed at 9.00 am on the third Business Day following the day on which ETAS attempted delivery under clause 4.2 or 4.3, as applicable;
 - 4.8.2. ETAS shall store any Hardware until delivery takes place, and charge the Customer for all related costs and expenses (including insurance); and
 - 4.8.3. ETAS shall be entitled to demand from the Customer the payment of liquidated damages in the amount of 0.5% of the total price of the Hard- and/or Software for each month or part thereof, up to a maximum of 5% of the total price of the Hard- and/or Software. This clause 4.8.3. is without prejudice to ETAS' right to claim general damages arising from the Customer's failure to take delivery or to comply with other obligations to cooperate. The parties confirm that these liquidated damages are reasonable and proportionate to protect ETAS' legitimate interest in the Customer's timely acceptance of delivery.
- 4.9. If, 15 Business Days after ETAS notified the Customer that the Hard- and/or Software were ready for delivery, the Customer has not taken delivery of them, ETAS may resell or otherwise dispose of part or all of the Hard- and/or Software and, after deducting all costs and expenses, account to the Customer for any excess over the price already paid or charge the Customer any shortfall between the Contract price and such costs and expenses.
- 4.10. The Customer shall not be entitled to reject the Hardware if ETAS delivers up to and including 5% more or less than the quantity of Hardware ordered, but a pro rata adjustment shall be made to the Order invoice on receipt of notice from the Customer within 14 days of delivery that the wrong quantity of Hardware was delivered.
- 4.11. ETAS may deliver the Hard- and/or Software by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel the Contract or any other instalment.
- 4.12. ETAS reserves the right to substitute or otherwise modify the Hard- and/or Software in any manner provided the substitute or otherwise modified Hard- and/or Software function in substantially the same way.
- 4.13. The Customer agrees to comply fully, at its own expense, with all applicable import and export laws, restrictions, national security controls and regulations of the United Kingdom and any other applicable local law or regulation. Unless agreed otherwise, the Customer

shall be solely responsible for obtaining any and all necessary import or export licences or permits necessary for the delivery to the Customer, and the Customer shall be responsible for any and all customs duties, clearance charges, taxes, brokers' fees and other amounts payable in connection with the importation, exportation and/or delivery of the Hard- and/or Software.

5. Warranty

5.1. ETAS warrants that on delivery, and, where specified in the Order, during the Warranty Period, the Hard- and/or Software shall:

- 5.1.1. conform in all material respects with any applicable Specification;
- 5.1.2. be free from material defects in material and workmanship; and
- 5.1.3. be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).

The Hard- and/or Software shall only be used for the agreed purpose as defined in the Specification or in the user manual (www.etas.com/manuals), and only in the target market in which ETAS sells the Hard- and/or Software. For the avoidance of doubt, ETAS specifically excludes any implied or express warranty, representation or condition of the Hard- and/or Software's fitness for a particular purpose.

5.2. Subject to clauses 5.3 and 5.5, if:

- 5.2.1. the Customer gives notice in writing (in such manner as ETAS instructs) to ETAS during the Warranty Period that some or all of the Hard- and/or Software do not comply with the warranty set out in clause 5.1; and
- 5.2.2. ETAS is given a reasonable opportunity of examining such Hard- and/or Software; and
- 5.2.3. the Customer (if asked to do so by ETAS) returns such Hard- and/or Software (in such manner as ETAS instructs) to ETAS' place of business at the Customer's cost,

ETAS shall, at its option, repair or replace the defective Hard- and/or Software, or refund the price of the defective Hard- and/or Software in full or in part, and, in any event ETAS' liability shall not exceed the amount paid by the Customer for the Hard- and/or Software (as applicable).

5.3. Repairs are, at ETAS' discretion, carried out at the Customer's or at ETAS's premises. To the extent necessary, the Customer shall provide the documents and information necessary for the repair. In case of a replacement, ETAS is entitled to deliver a new revision level or a new version of the Hard- and/or Software.

5.4. As part of the repair, a reset to factory settings may be required. This may result in the deletion or modification of Customer-specific data and instrument settings. Therefore, the Customer must ensure a comprehensive backup of Customer-specific data and save or record the settings made by it before handing over any Hardware or providing access to Software to ETAS.

5.5. ETAS shall not be liable for the Hard- and/or Software's failure to comply with the warranty set out in clause 5.1 if:

- 5.5.1. the Customer or any other party makes any further use of such Hard- and/or Software after giving notice in accordance with clause 5.2, or
- 5.5.2. the defect is based on the design or the choice of material if the Customer has specified the design or the material; or
- 5.5.3. the defect arises because the Customer or any other party failed to follow ETAS' oral or written instructions as to the storage, use and maintenance of the Hard- and/or Software or (if there are none) good trade practice; or
- 5.5.4. the Customer or any other party alters or repairs such Hard- and/or Software without the written consent of ETAS; or
- 5.5.5. the defect arises as a result of fair wear and tear, wilful damage, negligence, force majeure or abnormal storage or working conditions or is an error that ETAS is unable to reproduce having carried out further tests.
- 5.5.6. the defect results from the use of the Customer's own software, model or hardware components or access to the Hard- and/or Software via interfaces.

5.6. If the Software contains standard products of third-party manufacturers and the defect is based on these, ETAS may, at its discretion, remedy the defect by assigning the warranty claims against the third-party manufacturer to the Customer.

5.7. If the Customer or a third party has extended the Software via an interface provided by ETAS for this purpose, ETAS is only liable, subject to clauses 5.2 and 5.5, for defects that occur up to the interface. ETAS is not liable for a lack of interoperability of the Software with the data processing environment used by the Customer, in particular with the software and hardware products used by the Customer.

5.8. If, having carried out the necessary examinations and tests under this clause 5, ETAS believes (in its reasonable opinion) that the Hard- and/or Software do comply with the warranty set out in clause 5.1, the Customer shall reimburse ETAS for any reasonable

costs that have been incurred in transporting, examining and testing the relevant Hard- and/or Software.

- 5.9. Except as set out in these Terms, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 5.10. These Terms shall apply to any repaired or replacement Hard- and/or Software supplied by ETAS; save that any such repaired or replacement Hard- and/or Software shall only be warranted for the residual unexpired Warranty Period, if any.

6. Title and Risk

- 6.1. The risk in the Hardware shall pass to the Customer on completion of delivery or deemed delivery (in accordance with clause 4.8.1).
- 6.2. Title to the Hardware shall not pass to the Customer until ETAS has received payment in full (in cash or cleared funds) for:
 - 6.2.1. the Hard- and Software (if any); and
 - 6.2.2. any other goods or services that ETAS has supplied to the Customer in respect of which payment has become due; and
 - 6.2.3. all other sums however arising which are or which become due to ETAS from the Customer on any account.
- 6.3. Until title to the Hardware has passed to the Customer, the Customer shall:
 - 6.3.1. hold the Hardware (if any) on a fiduciary basis as ETAS' bailee;
 - 6.3.2. not assign, underlet, pledge, mortgage, charge, encumber or part with possession of the Hardware or any interest in the Hard- and Software nor create or allow to be created over the Hardware any lien;
 - 6.3.3. store the Hardware separately from all other goods held by the Customer so that they remain readily identifiable as ETAS' property;
 - 6.3.4. not remove, deface or obscure any identifying mark or packaging on or relating to the Hardware;
 - 6.3.5. maintain the Hardware in satisfactory condition and keep it insured against all risks for its full price from the date of delivery;
 - 6.3.6. notify ETAS immediately if the Customer becomes subject to any of the events listed in clause 10.2;

6.3.7. give ETAS such information relating to the Hard- and Software as ETAS may require from time to time; and

6.3.8. grant ETAS, its agents and employees an irrevocable licence at any reasonable time without the need of consent of any third party to enter upon any premises of the Customer for the purposes of removing the Hardware, only using such force as may be necessary to this end.

6.4. Notwithstanding clauses 6.2 and 6.3, the Customer may use or resell the Hardware in the ordinary course of its business on an arms' length basis.

6.5. If, before title to the Hardware passes to the Customer, the Customer becomes subject to any of the events listed in clause 10.2, or ETAS reasonably believes that any such event is about to happen and notifies the Customer accordingly then:

6.5.1. the Customer's right and that of any third party acting for and on behalf of the Customer to sell the Hardware as set out in clause 6.4 shall cease; and

6.5.2. provided that the Hardware has not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy ETAS may have, ETAS may at any time require the Customer to deliver up the Hardware or enter any premises of the Customer or of any third party where the Hardware is stored in order to recover it.

6.6. ETAS shall be entitled to recover payment for the Hardware notwithstanding that title to the Hardware has not passed to the Customer.

7. Customer's Obligations

7.1. The Customer shall:

7.1.1. ensure that the terms of the Order are complete and accurate;

7.1.2. provide ETAS, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by ETAS to deliver the Hard- and/or Software and/or services, including the free provision of infrastructure such as the necessary workstations, work materials and tools; the Customer shall at all times remain responsible for compliance with all legal obligations to maintain safety;

7.1.3. provide ETAS with such information and materials as ETAS may reasonably require to deliver the Hard- and/or Software and provide any services, including, if necessary, programme

codes, configurations, log data and the like, and ensure that such information is accurate and complete;

7.1.4. prepare the Customer's premises for the supply of the Hard- and/or Software and enable (remote) access to the system where required;

7.1.5. notify ETAS as soon as it becomes aware of any unauthorised use of the Software by any person;

7.1.6. in the case of services to be provided at other premises than the Customer's, ensure that the Hardware is properly packaged for shipment, including, where necessary (e.g. ETAS ETK and VME cards), antistatic packaging;

7.1.7. keep and maintain all materials, equipment, documents and other property of ETAS ("**ETAS Materials**") at the Customer's premises in safe custody at its own risk, maintain ETAS Materials in good condition until returned to ETAS, and not dispose of or use ETAS Materials other than in accordance with ETAS' written instructions or authorisation;

7.1.8. appoint a permanent contact person who is authorised to provide and receive information relevant to the execution of the contract, to receive Software deliveries and to enter complaints and notices of defects; and

7.1.9. provide any other cooperation or assistance reasonably required by ETAS.

7.2. The Customer is responsible for the correct integration of the Hard- and/or Software into an existing system or a third-party system and must check its suitability prior to operational use.

7.3. The Customer must validate the work results generated with the Hard- and/or Software and verify them in a suitable manner, i.e. validate the correct functionality (e.g. with regard to functional safety).

8. Inspection Rights

8.1. The Customer shall permit ETAS to inspect and have access to any premises (and to the computer equipment located there) at or on which the Software is being kept or used, and have access to any records kept in connection with this licence, for the purposes of ensuring that the Customer is complying with the terms of the licence, provided that ETAS provides reasonable advance notice to the Customer of such inspections, which shall take place at reasonable times. ETAS shall also be entitled to have the inspections carried out by affiliated companies and independent auditors, provided that they are bound to secrecy by a written confidentiality agreement.

8.2. The Customer shall prepare and retain written records, system outputs and other system data and provide ETAS, its affiliated companies and auditors with verifiable evidence of the installation and use of the Software in compliance with the contractual terms. If the inspection reveals irregularities or indications that the Customer is not complying with these Terms and its obligations, ETAS shall notify the Customer immediately and be entitled

8.2.1. to request additional payment in the event the licence was used in excess of these Terms; and

8.2.2. terminate the Contract in accordance with clause 11.

9. Prices and Payment Terms

9.1. The price of the Hard- and/or Software shall be the price as set out by ETAS. Unless otherwise stated by ETAS in writing, the price of the Hardware is inclusive of the costs and charges of standard packaging and in-scope agreed transport ("DAP (Delivered At Place)", Incoterms ©2020). The cost of non-standard packaging and out-of-scope transport of the Hardware, if required, shall be paid by the Customer when it pays for the Hard- and Software.

9.2. ETAS may, by giving 30 days' prior written notice to the Customer (or immediately on written notice in circumstances beyond ETAS' control) at any time before delivery, increase the price of the Hard- and/or Software. Circumstances beyond ETAS' control that may necessitate an increase in the price of the Hard- and/or Software on immediate written notice may include unforeseen increases in ETAS' external production and supply costs, which may include, but are not limited to, the costs of warehousing, transportation, utilities and energy supply, raw materials, components and foreign currency exchange; payment of applicable taxes, customs and duties; and the cost of complying with changes in applicable laws.

9.3. The price of the Hard- and/or Software is exclusive of amounts in respect of value added tax (VAT) or any other relevant taxes. The Customer shall, on receipt of a valid VAT invoice from ETAS, pay to ETAS such additional amounts in respect of VAT as are chargeable on the supply of the Hard- and/or Software.

9.4. In respect of Hard- and/or Software, ETAS shall invoice the Customer for the Hard- and/or Software on or at any time after delivery.

9.5. For deliveries of spare parts and returns of defective Hardware that are not subject to warranty, ETAS shall charge an appropriate flat-rate freight and packaging fee in addition to the remuneration for the service provided.

9.6. The Customer shall pay each invoice in pound sterling (unless another denomination is agreed in writing) in full

- and cleared funds within 30 days of the date of the invoice.
- 9.7. Notwithstanding the above, ETAS reserves the right to require payment for the Hard- and Software to be made on or, in advance of delivery and/ or completion, as applicable.
- 9.8. Payment shall be made to the bank account nominated in writing by ETAS. Time of the Customer's payment is of the essence.
- 9.9. Without prejudice to any other rights or remedies it may have, if the Customer fails to make any payment due to ETAS under the Contract by the due date for payment, then ETAS may:
- 9.9.1. suspend future delivery of the Hard- and/or Software and/or services under the Contract and under any other contract for the supply of goods and/or services from ETAS to the Customer; and
- 9.9.2. after giving the Customer prior written notice, block the Customer's and/or any Authorised User's access to the Software. The block shall be lifted as soon as the full payment (including interest in accordance with clause 9.9.3 has been made; and
- 9.9.3. charge the Customer interest on the overdue amount at the rate of 5% per annum above Barclays Bank's base lending rate from time to time. Such interest shall accrue on a daily basis from the due date for payment until the date of actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount; and
- 9.9.4. require all unpaid invoices to become immediately due for payment.
- 9.10. Without prejudice to any other rights or remedies it may have, in the event ETAS makes available credit facilities to the Customer and the credit limit is reached, ETAS may suspend future delivery of the Hard- and/or Software and/or services under the Contract and under any other contract for the supply of goods and/or services from ETAS to the Customer unless and until the Customer satisfies all or part of the credit as ETAS may demand, at its absolute discretion.
- 9.11. The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against ETAS in order to justify withholding payment of any such amount in whole or in part. ETAS may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by ETAS to the Customer.
- 9.12. If the Contract is terminated for any reason, the Customer shall immediately pay any outstanding unpaid invoices and interest due to ETAS. If ETAS agrees that the Customer can amend or cancel an Order, the Customer's liability to ETAS shall be limited to payment of all costs reasonably incurred by ETAS in fulfilling the Order up until the date of deemed receipt of the amendment or cancellation; except where the amendment or cancellation results from ETAS' failure to comply with its obligations under this Contract.
- 10. Customer's Insolvency or Incapacity**
- 10.1. If the Customer becomes subject to any of the events listed in clause 10.2, or ETAS reasonably believes that the Customer is about to become subject to any of them and notifies the Customer accordingly, then, without limiting any other right or remedy available to ETAS, ETAS may cancel or suspend all further deliveries under the Contract or under any other contract between the Customer and ETAS without incurring any liability to the Customer, and all outstanding sums in respect of Hard- and/or Software supplied to the Customer shall become immediately due.
- 10.2. For the purposes of clause 10.1, the relevant events are:
- 10.2.1. the Customer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply; or
- 10.2.2. the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer; or
- 10.2.3. (being an individual) the Customer is the subject of a bankruptcy petition or order; or
- 10.2.4. a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days; or
- 10.2.5. (being a company) an application is made to court, or an order is made, for the appointment of

an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer; or (being a company) a floating charge holder over the assets of the Customer has become entitled to appoint or has appointed an administrative receiver; or

- 10.2.6. a person becomes entitled to appoint a receiver over the assets of the Customer or a receiver is appointed over the assets of the Customer; or
- 10.2.7. the other party applies to court for, or obtains a moratorium under Part A1 of the Insolvency Act 1986; or
- 10.2.8. any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 10.2.1 to clause 10.2.7 (inclusive); or
- 10.2.9. the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business; or
- 10.2.10. (being an individual) the Customer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation; or
- 10.2.11. the Customer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this agreement is in jeopardy.

11. Termination

- 11.1. Without prejudice to any other rights or remedies it may have, ETAS may immediately terminate the Contract if:
 - 11.1.1. the Customer commits a serious breach of the Contract and, in the case of a breach which is capable of remedy, fails to remedy the breach within ten (10) Business Days of receiving notice from ETAS giving details of the breach and requiring it to be remedied; or
 - 11.1.2. the Customer fails to pay any amount due under the Contract on the due date and remains in default for not less than 5 Business Days after being notified to make such payment; or
 - 11.1.3. there is a change of control of the Customer (within the meaning of section 1124 of the Corporation Tax Act 2010); or
 - 11.1.4. ETAS becomes aware or is of the reasonable opinion that the Customer is in breach of the Bribery Act 2010; or

11.1.5. the Customer commits any act or omission that in the sole opinion of ETAS adversely affects ETAS' goodwill, damages the reputation of ETAS or otherwise brings ETAS into disrepute; or

11.1.6. if ETAS reasonably believes that the performance of the Contract is legally, technically or economically not or no longer feasible.

11.2. Termination of Contract shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination.

11.3. On termination of the Contract for any reason:

11.3.1. the Software licence(s) and all rights granted to the Customer in accordance with the Contract shall cease;

11.3.2. the Customer shall immediately pay to ETAS all outstanding unpaid invoices and interest, and in respect of Hard- and/or Software supplied but for which no invoice has been submitted, ETAS shall submit an invoice, which shall be payable by the Customer immediately on receipt; and

11.3.3. the Customer shall promptly:

- (a) stop using the Software and stop permitting Authorised Users using the Software;
- (b) destroy or return to ETAS (at ETAS' option) all copies of the Software then in its possession, custody or control;
- (c) return to ETAS all equipment, materials and property belonging to ETAS that the Customer has in its custody;
- (d) return to ETAS all documents and materials (and any copies) containing ETAS' Confidential Information;
- (e) erase all of ETAS' Confidential Information from its computer systems (to the extent possible); and
- (f) on request, certify in writing to ETAS that it has complied with the requirements of this clause.

11.4. On termination of the Contract, clauses which expressly or by implication have effect after termination shall continue in full force and effect.

12. Liability

12.1. Nothing in these Terms shall limit or exclude ETAS' liability under the Contract for:

- 12.1.1. death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable); or
 - 12.1.2. fraud or fraudulent misrepresentation; or
 - 12.1.3. breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); or
 - 12.1.4. breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
 - 12.1.5. any matter in respect of which it would be unlawful for ETAS to exclude or restrict liability.
- 12.2. Subject to clause 12.1, ETAS shall not be liable to the Customer for any:
- 12.2.1. loss of profit (whether direct or indirect) whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract; or
 - 12.2.2. indirect or consequential loss whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract; or
 - 12.2.3. ex gratia or other compensatory payments made to a third party by the Customer or on the Customer's behalf, arising under or in connection with the Contract.
- 12.3. In the event of loss of or damage to data and/or programmes, ETAS shall not be liable for the cost of restoring them. The Customer is responsible for regular data and programme backups.
- 12.4. Subject to clauses 12.1 to 12.3, ETAS' total liability to the Customer in respect of all other losses (including indemnified losses) arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall not exceed the price paid for the Hard- and Software under the Contract in the twelve (12) months prior to the event giving rise to the liability.
- 12.5. The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 13. Intellectual Property Rights**
- 13.1. All Intellectual Property Rights in the Hard- and Software remain with ETAS and no Intellectual Property Rights of either party are transferred or licensed as a result of the Contract except as stated in these Terms. The Customer shall not use or exploit ETAS' Intellectual Property Rights in any manner that is competitive with ETAS and other than as expressly set out in these Terms.
- 13.2. The Customer shall not remove, obscure, change, supplement or otherwise tamper with any proprietary rights notices, markings or legends provided by ETAS under the Contract.
- 13.3. If any third party makes a claim, or notifies an intention to make a claim, against the Customer resulting from (alleged) infringements of Intellectual Property Rights (a "Claim"), the Customer shall
- 13.3.1. as soon as reasonably practicable, give written notice of the Claim to ETAS, specifying the nature of the Claim in reasonable detail;
 - 13.3.2. not make any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of ETAS;
 - 13.3.3. give ETAS and its professional advisers access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the Customer, so as to enable ETAS and its professional advisers to examine them and to take copies (at ETAS' expense) for the purpose of assessing the Claim; and
 - 13.3.4. be deemed to have given to ETAS sole authority to avoid, dispute, compromise or defend the Claim.
- 13.4. ETAS shall not be liable to the Customer
- 13.4.1. in relation to claims for infringement of third party registered Intellectual Property Rights unless at least one Intellectual Property Right from the property right family of the same or narrower scope of the third-party Intellectual Property Right in question has been granted by the United Kingdom Intellectual Property Office or the European Patent Office designating at least one of the following countries: the United Kingdom, the Federal Republic of Germany, France, Austria or the USA;
 - 13.4.2. for claims arising from the infringement of Intellectual Property Rights of third parties (hereinafter: property rights) if the Intellectual Property Right is or was owned by the Customer or by a company in which the Customer directly or indirectly holds a majority of the capital or voting rights;
 - 13.4.3. if the Customer is responsible for the infringement of Intellectual Property Rights;
 - 13.4.4. if the Hard- and/or Software were manufactured or provided in accordance with the Customer's

specifications or instructions or if the (alleged) infringement of the Intellectual Property Right results from use in conjunction with another item not originating from ETAS or if the Hard- and/or Software is used in a manner which ETAS could not foresee;

13.4.5. if the Customer does not support ETAS to a reasonable extent in the defence against claims of third parties.

13.5. In the case of clauses 13.4.2 to 13.4.4., the Customer shall indemnify ETAS and keep ETAS indemnified from and against all claims, damage, losses, costs (including all reasonable legal costs), expenses, demands or liabilities arising out of or in connection with any Claim.

13.6. If ETAS or a third party alleges or suspects that the Hard- and/or Software infringe a third party right, ETAS shall be entitled, at its own discretion and taking the interests of the Customer into account, to replace or modify the Hard- and/or Software while retaining the agreed functionalities in order to remedy the alleged or suspected infringement. If this is not possible for ETAS under reasonable conditions or within a reasonable period of time, either party shall be entitled to terminate the Contract with immediate effect. The rights of ETAS under this clause 13.6 apply regardless of whether the infringement of Intellectual Property Rights has already been legally determined by a court or acknowledged by ETAS.

13.7. The Hard- and/or Software may make use of integrated electronics and/ or software components implementing Standards, and/ or may comprise or make use of related software, supplied or provided by sub-suppliers. These integrated electronics, software components and/ or related software may make use of third-party Intellectual Property Rights. Unless otherwise agreed, licences for the use of these third-party Intellectual Property Rights and corresponding indemnifications from third party claims against the Customer on the basis of infringement of these third party Intellectual Property Rights are not part of ETAS' contractual obligations. The Customer must obtain licences for the use of these third party Intellectual Property Rights directly from their owners.

"Standards" means a technical specification or function that (i) has been adopted by a standardisation body (e.g. ETSI or IEEE), (ii) has been defined by a research institution, industrial companies or other market participants in order to ensure technical conformity or compatibility, or (iii) has been established by common practice in a specific technical field.

In the event of alleged infringements of third party Intellectual Property rights by Customer's use of the Hard- and/or Software, ETAS shall on request provide Customer with relevant information against such allegations to reasonable degree. This includes the provision of any documents, which ETAS controls and is entitled to provide to Customer.

14. Force Majeure

14.1. Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event (save for the Customer's obligation to pay for the Hard- and/or Software).

14.2. In the event a Force Majeure Event takes place, the time for performance of any obligations impacted by the Force Majeure Event shall be extended accordingly.

14.3. If the Force Majeure Event prevails for a continuous period of more than 28 days, ETAS may terminate the Contract by giving 20 Business Days' written notice to the Customer. On the expiry of this notice period, the Contract will terminate. Such termination shall be without prejudice to the rights of the parties in respect of any breach occurring prior to such termination.

15. Confidentiality

15.1. The Customer shall not at any time use, duplicate, commercially exploit or disclose to any person any Confidential Information, except as permitted by clause 15.2.

15.2. The Customer may disclose ETAS' Confidential Information:

15.2.1. to those of its employees who need the Confidential Information in order to make use of the Hard- and/or Software in the ordinary course of the Customer's business; or

15.2.2. if the Customer has obtained prior written consent from ETAS; or

15.2.3. as may be required by law, court order, governmental or regulatory authority.

15.3. The Customer shall ensure that its employees whom it discloses ETAS' Confidential Information comply with this clause 15.

15.4. At ETAS' reasonable request, the Customer shall immediately return, destroy or erase all Confidential Information (including any copies) it holds about ETAS.

15.5. Without prejudice to any other rights or remedies that ETAS may have, the Customer acknowledges and agrees that damages alone would not be an adequate remedy for any breach of this clause 15 by the Customer. Accordingly, ETAS shall be entitled, without proof of special damages, to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of this clause 15.

16. Data Protection

- 16.1. In this clause 16, the terms "**Controller**", "**Data Subject**", "**Personal Data**", "**Personal Data Breach**", "**Processing**" and "**Processor**" shall have the meanings given to them in the Data Protection Laws, and "**Process**" and "**Processed**" shall be construed accordingly.
- 16.2. The Customer and ETAS shall each Process Personal Data in order to perform their respective obligations under the Contract. This Personal Data shall include the names, job titles and contact details of relevant personnel of the Customer and ETAS (the "**Common Data**").
- 16.3. The Customer and ETAS acknowledge that the factual arrangement between them dictates the role of each party in respect of the Data Protection Laws. Notwithstanding the foregoing, both parties anticipate that, for the purposes of the Contract, in most instances, the Customer and ETAS shall each be a Controller of the Common Data in common with the other.
- 16.4. In respect of the Common Data, the Customer and ETAS shall each:
- 16.4.1. comply with their respective obligations under the Data Protection Laws;
 - 16.4.2. use all reasonable efforts to assist the other to comply with such obligations as are respectively imposed on them by the Data Protection Laws; and
 - 16.4.3. ensure that all fair processing notices have been given (and / or, as applicable, consents obtained) and are sufficient in scope to enable the other party to Process the Common Data as required in order to obtain the benefit of its rights, and to fulfil its obligations, under the Contract in accordance with the Data Protection Laws.
- 16.5. ETAS may monitor and record information relating to the Customer's business and trade performance. ETAS may make such information available to credit referencing agencies who may share that information with other businesses in assessing applications for credit and fraud prevention. To the extent such information contains Personal Data, the Customer acknowledges and agrees that ETAS will Process its data for these purposes.
- 16.6. The Customer acknowledges and agrees that ETAS may approach any referees nominated by the Customer.
- 16.7. So far as permitted by law, the Customer shall reply to ETAS in relation to any credit enquiries regarding its trade or business.

17. Health and Safety

- 17.1. Where necessary, ETAS will provide the Customer with information and/or written conditions for the safe and proper use of the Hard- and/or Software.
- 17.2. The Customer shall:
- 17.2.1. ensure that any information and/or written conditions provided by ETAS are communicated to users of the Hard- and/or Software (or products in which the Hard- and/or Software is a component);
 - 17.2.2. provide all assistance required by ETAS with any recall or service action in relation to the Hard- and/or Software; and that, as far as is practicable, the Hard- and/or Software can be properly used safely and without risk to health.
- 17.3. **It may be possible to influence or control an electronic system with the Hard- and/or Software. These actions can lead to damage to body and life or property. The Hard- and/or Software must therefore be exclusively operated by specialised personnel.**
- 17.4. When using the Hard- and/or Software for safety-relevant interventions in the vehicle behaviour (such as by stimulating the bus systems of the vehicle, e.g. CAN, or by bypass interventions in control units of the vehicle, e.g. control units of the drive train, the chassis or the body) and when using the Hard- and/or Software together with control units that pose a risk to life and body due to malfunctions, the Customer must ensure that devices are installed that allow the system to be switched to a safe state in the event of danger (e.g. to emergency stop or emergency running mode).
- 17.5. The Customer must take all necessary and reasonable measures to prevent or limit the consequences of damage caused by defects in Hard- and/or Software, including, but not limited to regular data and programme backups.

18. Foreign Trade

- 18.1. Each Party is entitled to refuse to perform its obligations under the Contract insofar as the foreign trade law, including, without limitation, national and international (re-)export control and customs regulations, including embargos and other sanctions, which is applicable to the Contract and/or the performance of the Contract (hereinafter "Foreign Trade Law") render impossible or prohibit the fulfilment of obligations under the Contract. In such cases, either Party is entitled to terminate the Contract in whole or in part to the extent that the Foreign Trade Law makes it impossible or prohibits the proper fulfilment of obligations under the Contract. If, in the event of partial termination, a partial performance is excluded for technical or legal reasons or if one party

has no interest in a partial performance, the termination will end the Contract in its entirety.

- 18.2. In case of delay in the performance of obligations under the Contract caused by licensing, authorisation or similar requirements under Foreign Trade Law (hereinafter "Authorisation"), the agreed deadlines and dates shall be extended/postponed by the period between the conclusion of the Contract and the granting of the Authorisation. In the event an Authorisation be denied or not granted within 12 months after filing the application, either Party is entitled to terminate or rescind from the Contract in whole or in part insofar as the performance of the obligation requires this Authorisation. If a partial performance is excluded for technical or legal reasons or if one Party has no interest in a partial performance, the termination will end the Contract in its entirety.
- 18.3. Each Party shall notify the other Party within a reasonable time period upon becoming aware of a Foreign Trade Law, which may prohibit or render impossible performance according to clause 18.1, or delay performance according to clause 18.2.
- 18.4. Upon request, the Customer shall provide any information and documents that ETAS requires to comply with Foreign Trade Law or that authorities request from ETAS. This includes information and documentation including, without limitation, on the end user, the destination and the intended (end-)use of the deliveries, services and/or technologies. ETAS may, in its sole discretion, refuse to perform its obligations under the Contract or terminate the Contract, if the Customer does not provide ETAS with such information or documents within a reasonable time period set by ETAS.
- 18.5. In the event that the Customer provides to any third party (specifically including any affiliate of the Customer) any deliveries, services and/or technologies, the Customer shall comply with applicable Foreign Trade Law, insofar as Customer's non-compliance could lead to a violation of ETAS' obligations to act or to refrain under Foreign Trade Law.
- 18.6. ETAS is entitled to refuse to perform its obligations under the Contract to the extent that Customer's breach of duty could lead to a breach of ETAS' obligation to act or refrain under Foreign Trade Law, or to terminate the Contract for cause, if the Customer breaches this obligation.
- 18.7. Insofar as the Customer purchases products or technologies from ETAS that fall under the scope of Article 12g of Regulation (EU) No. 833/2014 or Article 8g of Regulation (EC) No. 765/2006 as amended, the following shall apply:
- 18.7.1. The Customer shall not sell, export or re-export, directly or indirectly, to the Russian Federation or Belarus or for use in the Russian Federation or Belarus any goods or technology supplied under or in connection with the Contract that fall under

the scope of Article 12g of Council Regulation (EU) No 833/2014 or Article 8g of Regulation (EC) No. 765/2006, as amended from time to time.

- 18.7.2. The Customer shall undertake its best efforts to ensure that the purpose of clause 18.7.1. is not contravened by any third parties further down the commercial chain, including by possible resellers.
- 18.7.3. The Customer shall set up and maintain an adequate monitoring mechanism to detect conduct by any third parties further down the commercial chain, including by possible resellers, that would frustrate the purpose of clause 18.7.1.
- 18.7.4. If the Customer breaches clause 18.7.1, 18.7.2 or 18.7.3., this shall entitle ETAS to immediately cease further deliveries or services to the Customer and to terminate the Contract and any contracts concluded under the Contract or these Terms at any time, insofar as these have not yet been fully performed. In this case, a previous warning letter to be issued before the termination notice shall not be required. This shall not affect other termination rights or remedies available to the parties whether under the Contract, these Terms or otherwise.
- 18.7.5. The Customer shall immediately inform ETAS about any problems in applying clauses 18.7.1., 18.7.2. or 18.7.3., including any relevant activities by third parties that may contravene the purpose of clause 18.7.1. The Customer shall make available to ETAS information concerning compliance with the obligations under clauses 18.7.1., 23.7.2 and 18.7.3. within two weeks of the simple request of such information.
- 18.8. For delivery of goods across customs borders to ETAS, the Customer is obliged to provide ETAS with all required documents and information such as commercial invoice and delivery note, for a complete and correct import customs declaration to the shipment. In the case of free of charge deliveries to ETAS, the Customer is obliged to declare a value, which reflects a fair market price as well as the note "For Customs Purpose Only" in the pro forma invoice. The value has to contain all components of the good such as hardware and respectively software.
- 18.9. Unless explicitly agreed otherwise in written form in the delivery or quotation documents, the customs-cross-border supply or provision of software, technology or other data (e.g. map data) shall be performed exclusively by electronic means (e.g. e-mail or download). This clause does not cover the supply of embedded software (software which is flashed on hardware).

19. WEEE Regulations

- 19.1. The Customer acknowledges that, pursuant to the WEEE Regulations, ETAS may be required to finance the costs of collection, treatment, recovery and disposal of certain Hardware supplied to the Customer.
- 19.2. The Customer shall be liable for and shall indemnify ETAS against any and all claims, actions, liabilities, losses, damages, costs and expenses (including reasonable legal expenses) incurred by ETAS in complying with the WEEE Regulations in respect of the Hardware supplied in accordance with these Terms.

20. Other Important Information

20.1. Assignment

- 20.1.1. ETAS may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 20.1.2. Unless explicitly stipulated otherwise in these Terms, the Customer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of ETAS.

20.2. Notices

- 20.2.1. Any notice or other communication given to a party under or in connection with the Contract shall be in writing. Termination notices and notifications of a breach shall be delivered personally, sent by pre-paid first-class post, or recorded delivery addressed to:

For ETAS Limited: c/o Robert Bosch UK Holdings Limited, C/LSR-GB, PO Box 1092, Uxbridge, UB8 9UX; and

For the Customer: at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as the Customer has specified to ETAS in writing in accordance with this clause.

- 20.2.2. A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 20.2.1; or if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting.

- 20.2.3. The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

20.3. Severance

- 20.3.1. If any court or competent authority finds that any provision of these Terms and/or the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

- 20.3.2. If any invalid, unenforceable or illegal provision of these Terms and/or the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

- 20.4. Except as expressly provided in these Terms, the rights and remedies provided under these Terms are in addition to, and not exclusive of, any rights or remedies provided by law.

- 20.5. A waiver of any right or remedy under these Terms and/or the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under these Terms and/or the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

- 20.6. A person who is not a party to the Contract shall not have any rights under or in connection with it.

- 20.7. Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, nor authorise any party to make or enter into any commitments for or on behalf of any other party.

- 20.8. The Contract, these Terms and any dispute or claim arising out of or in connection with them or their subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.