

# **1. General Terms and Conditions of ESAC Engineering & Aerospace UG (haftungsbeschränkt) (ESAC)**

## **1.1 Scope of application**

1.1.1 All services shall be provided exclusively on the basis of these GTC.

1.1.2 Any terms and conditions deviating from them, including general terms and conditions of the contractual partner, shall not be valid.

1.1.3 Deviations or supplements as well as additional agreements made by telephone, verbally or in any other manner shall only become effective upon written confirmation by ESAC.

1.1.4 By accepting the offer, the Principal (Customer) acknowledges the following GTC of ESAC as binding for itself.

## **1.2 Offer**

1.2.1 For each service provided by ESAC, the Customer shall receive a written offer containing a description of services.

1.2.2 The prepared offers are non-binding.

1.2.3 The Customer shall accept the offer by notifying ESAC of its binding contractual intention by written order in accordance with the offer or by returning the legally binding signed offer to ESAC as work order.

1.2.4 The contract shall only be concluded upon ESAC's confirmation of the offer signed by the Customer in a legally binding manner

## **1.3 Withdrawal from the contract by the Customer**

1.3.1 The customer shall have the right to withdraw from the contract in its entirety by written declaration. Notwithstanding that, the following paragraphs shall apply.

1.3.2 If the Client has lost interest in the service due to a postponement or local change on the part of ESAC, the withdrawal is free of charge. In this case, order fees already paid shall be offset against work performed and refunded if due.

1.3.3 If the Client withdraws from the contract between 14 and 7 days before the start of the order, 80% of the order fees specified in the offer shall be paid. If the cancellation is made within 6 days before the start of the order, 100% of the order fees shall be paid.

1.3.4 Decisive for cancellation fees to be paid is the receipt of the written withdrawal from the contract by ESAC.

## **1.4 Cancellation of the contract by ESAC**

1.4.1 ESAC reserves the right to cancel the contract in case of insufficient information on the part of the Principal.

1.4.2 Furthermore, ESAC reserves the right to cancel the order in case of force majeure (esp. illness, accident, refusal of transport, epidemics, etc.) or other circumstances for which ESAC is not responsible.

1.4.3 The customer will be notified as soon as possible in such cases. Order fees already paid will be offset against the service already provided and any overpayment will be refunded in full. Further claims are excluded.

## **1.5 Order-related services**

### **1.5.1 Duties of ESAC**

1.5.1.1 The Order-Related Services shall include the performance of the Order, the provision of necessary documents as well as the necessary use of the premises and technical facilities of ESAC and/or the Principal in case the place of accomplishment is at customer sites.

1.5.1.2 At the request of the Principal, ESAC shall assist in booking necessary travel. In this connection, the booking shall be made in the name and for the account of the Customer.

### **1.5.2 Duties of the Customer**

1.5.2.1 All travel expenses, insurance costs, board and lodging costs shall be borne by and the responsibility of the Principal.

1.5.2.2 Trips of up to 3 hours total duration shall be booked in economy class or rail 2 class. Rental cars shall be booked as middle class.

1.5.2.3 Trips of more than 3 hours total duration are booked in Business Class or Rail 1 Class. Rental cars are booked as middle class.

## **1.6 Execution of the order**

### 1.6.1 Duties of the ESAC

1.6.1.1 Unless otherwise agreed, consulting shall be performed in accordance with ESAC's implementation standards.

1.6.1.2 ESAC shall determine the own personnel to be used.

### 1.6.2 Obligations of the Customer

1.6.2.1 The Customer shall bear the organizational responsibility for the provision of adequate working premises.

## **1.7 Prices, payment terms and deadlines**

1.7.1 The invoice amount shall be based on the services specified in the service description of the offer and the associated current prices.

1.7.2 The currently valid value added tax in Germany shall be charged for services rendered.

1.7.3 Invoicing shall take place after the contractually agreed provision of services. The invoice amount shall be due immediately without deduction upon receipt of the invoice and shall be transferred to ESAC's bank account stated in the invoice. Payment shall be made at the risk and expense of the Customer.

1.7.4 In the event of default, ESAC reserves the right to charge default interest in the amount of 8% above the current prime rate pursuant to §247 BGB (German Civil Code)

1.7.5 The Principal shall be in default if it fails to make payment without undue delay in response to a reminder issued by ESAC after the due date of the purchase price. Irrespective thereof, the Customer shall be in default if it fails to make payment by a date specified in the invoice. The right to assert further claims for damages is expressly reserved.

#### 1.7.6 Machine hour rates

ESAC will invoice machine hours for its power tools and power equipment at the following rates\*.

1.7.6.1 Tools, incl. special tools with electric motor up to 230V supply voltage:

EUR 10.00 per operating hour

1.7.6.2 Tools, incl. special tools with electric motor over 230V supply voltage and power tools with combustion engines up to 3.5kw engine power:

EUR 15.00 per operating hour

1.7.6.3 Power tools with combustion engines over 3.5kw engine power:

According to expenditure

#### 1.7.7 Provision fees workshop trailer / mobile workshop

Unless otherwise agreed, the following conditions apply, delivery and collection will be charged individually according to actual expenditure.

Workshop trailer (graduated prices):

per day	EUR 75,00
per week	EUR 340,00
per month	EUR 1.150,00
more than one month	by arrangement

\*The machine hourly rates were determined by a rough machine hourly rate calculation

### 1.7.8 Handling Charge

For the processing of order-related additional services such as, but not limited to, the procurement of materials and/or services, ESAC shall raise a Handling Charge of 9.00% on the individual invoice amount.

## 1.8 Data protection

1.8.1 ESAC reserves the right to process and store data and information received in connection with all business-significant transactions of which it will become aware in the course of order processing within the meaning of the German Data Protection Regulation (DSGVO).

1.8.2 ESAC undertakes to treat such data and information as strictly confidential. Personal or company-related data will only be disclosed to third parties with the express consent of the Client or on the basis of legal requirements.

## 1.9 Copyrights and rights of use

1.9.1 ESAC is the owner of all rights to documents prepared by ESAC as well as required software.

1.9.2 Any use outside of the order, in particular the reproduction and/or duplication of documents and software prepared by ESAC - even in part - in any form (photocopy, using electronic systems or by means of other processes) shall be prohibited.

1.9.3 The transfer of documents or software prepared by ESAC to third parties for the purpose of reproduction and/or duplication without the prior written consent of ESAC is prohibited.

1.9.4 Copyright notices, trademarks or brand names may not be removed.

1.9.5 Audio or video recording is only permitted with the written consent of ESAC.

1.9.6 In all other respects, the statutory provisions, in particular copyright and criminal law, shall apply.

## **1.10 Liability**

1.10.1 ESAC will be liable towards Customer for damage to or loss of property and for the injury to or death of any person caused by wilful misconduct of its directors, officers, employees, agents or Subcontractors in connection with or as a result of the Services rendered under this Agreement. Customer will be liable towards ESAC for damage to or loss of property and for the injury to or death of any person caused by the negligence or wilful misconduct of its directors, officers, employees, agents or Subcontractors in connection with or as a result of the Services rendered under this GTC.

1.10.2 Any liability beyond the foregoing shall be excluded to the extent legally possible.

1.10.3 ESAC will indemnify and hold harmless Customer, its directors, officers, employees, agents and Subcontractors from and against all claims of third parties related to damage, loss, injury or death caused by the wilful misconduct of ESAC, its directors, officers, employees, agents or Subcontractors.

1.10.4 Customer will indemnify and hold harmless ESAC, its directors, officers, employees, agents and Subcontractors from and against all claims of third parties related to damages, loss, injury or death unless such damage, loss, injury or death is caused by the wilful misconduct of ESAC, its directors, officers, employees, agents or Subcontractors.

1.10.5 The Principal shall be liable for damage and loss of property caused by him and/or his employees.

1.10.6 The Customer shall indemnify ESAC against any obligation to pay damages to a third party appearing in connection with this agreement. This shall not apply to intent and gross negligence on the part of ESAC.

1.10.7 The liability shall be limited to EUR 1,000

1.10.8 The Parties agree that the liability and indemnification set forth in this article 1.10 is exclusive and that each Party explicitly waives any other rights to claim damages or indemnification it may have at law or otherwise.

## **1.11 Termination of the Agreement**

1.11.1 If ESAC or Customer materially violate these General Terms and Conditions or any provision under any other agreement, the respective party should be granted a reasonable period of time to remedy the defect upon receipt of the written request to do so.

1.11.2 If the error has not been remedied at all or not to the satisfaction of the complaining party within the granted period of time, the complaining party shall be entitled to terminate the contract without notice.

## **1.12 Mediation of services**

1.12.1 If ESAC mediates services of third parties to the Principal within the scope of its contractual obligation, ESAC shall not assume any liability for the correctness of the services rendered between third parties and the Principal. In this case, the GTC of the third party contracting party or any other applicable law shall apply.

The same shall apply in the event of any delay in the above-mentioned agency relationship, provided that the delay was caused by a third party.

## **1.13 Provision of data and documents**

1.13.1 ESAC may provide the Customer with project-related technical data and documents via an FTP server. This facilitates in particular the transfer of high data volumes and shall relieve e-mail inboxes. The CL agrees to this procedure and the terms of use of the service provider selected by ESAC (Nextcloud) and undertakes to use the server provided exclusively for project-related purposes agreed with ESAC.

1.13.2 In the event that the Customer has used the provided server for purposes other than intended, ESAC reserves the right to charge damages for possible failures and other circumstances delaying the regular work process or damaging the reputation of ESAC. The same shall also apply in the event that the Customer has demonstrably negligently or willfully loaded malware, viruses or other files with damaging intent onto the server.

## **1.14 Additional Work and Travel**

1.14.1 All services not covered by fixed-price service packages are intended to be charged on a time & material basis and as agreed between Customer and ESAC by means of a side-letter agreement

Such services may include but are not limited to the:

- Creation of required but unavailable programs, listings, extensive mail traffic etc.
- Restoration of documentation in unusable / unknown / bad condition / incomplete / not in electronically format
- Search for / determination of dirty finger prints
- On-site waiting time not caused by ESAC
- Additional efforts caused by prohibitions to use modern IT equipment, such as but not limited to smartphones, tablets, cameras, etc.

1.14.2 Travel expenses, such as but not limited to travel time, accommodation, mobile communication and daily rates for ESAC personnel or any personnel arranged by ESAC are charged additionally, unless a flat-rate solution has been offered.

## **1.15 Force Majeure**

1.15.1 The following shall apply

ESAC shall bear no responsibility with regards to incomplete accomplishment or termination of agreed services induced by direct result of Force Majeure. ESAC reserves the right to pause or cancel the order or bill Customer for any additional effort directly linked to the accomplishment of services as a result of Force Majeure.

1.15.2 Following Circumstances are considered being Force Majeure:

- Abnormal environmental conditions such as natural disasters or any other unforeseeable environmental impact that affects ESAC Operation on Customer order



- War and/or Civil Rebellions/Riots (regardless of in country of principal place of business or in country directly affected by execution of order)
- Sudden Legal Changes (regardless of in country of principal place of business or in country directly affected by execution of order)
- Acts of Crime (regardless of in country of principal place of business or in country directly affected by execution of order)
- Power Interruptions greater one working day (8hrs) (regardless of in country of principal place of business or in country directly affected by execution of order)
- Any impacts due to the Corona (SARS-CoV2 COVID-19) pandemic and/or any other epidemic or pandemic

## **1.16 Severability clause**

1.16.1 Should any provision in these GTC or any provision within the scope of other agreements be invalid, this shall not affect the validity of the other provisions or agreements.

## **1.17 Place of jurisdiction**

1.17.1 The exclusive place of jurisdiction for all disputes arising from the business relationship shall be Bad Segeberg / Schleswig-Holstein.

1.17.2 The law of the Federal Republic of Germany shall apply.