

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

For use in legal transactions with entrepreneurs, public law institutions and public law special funds hereinafter referred to as "Customer".

### **1. General Provisions**

- 1.1 Our services shall exclusively be governed by the conditions set forth hereunder. 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. "Customer" as used in these general terms and conditions shall mean the legal entity which is the contractual partner of this contract only.
- 1.2 Oral agreements made prior to or upon execution of a contract must be confirmed by us in writing to be valid. Changes to a contract shall require written form. The same applies to changes made to the requirement of written form.
- 1.3 If the Customer does not accept our quotation within two (2) weeks of receipt thereof, we shall have the right to withdraw our quotation. Cost estimates are non-binding and subject to change unless expressly agreed otherwise.
- 1.4 Our services are valid for the agreed use which is defined in the Statement of Work or in the User Manual of the products ([www.etas.com/manuals](http://www.etas.com/manuals)) or in the product description or service description and limited to business to business (B2B) transactions. Unless explicitly agreed upon in writing (e.g. Statement of Work), our services are valid for the target market where ETAS places the ETAS product.
- 1.5 Pending the coming into force of new terms and conditions for the provision of engineering and support services as well as software maintenance, these General Terms and Conditions shall also apply to all future performances to the Customer.

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

- 2.1 Unless expressly agreed otherwise, the object of 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 from the descriptions and specifications in our brochures, catalogues 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 rights to our detriment. Our descriptions, statements, and advertising messages, including those issued by the manufacturer, shall not be

construed as containing any guarantee declarations.

- 2.2 We shall have the right to deploy subcontractors (associated 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 shall agree 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 an obligation to maintain confidentiality of all information and documentation conveyed to him.

### **3. Software Maintenance**

- 3.1 Customer shall only be entitled to the software maintenance services described in this article if a software maintenance contract with ETAS for the respective license (to be entered into separately) is in place. Such software maintenance contract shall always start with the beginning of the license contract. The software maintenance services described in this Article are provided for the latest program version of licensed software only. Any support services for previous program versions shall require a separate agreement between the parties.
- 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 regarding restrictions, error correction and/or error avoidance;
  - 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 regular 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 which have not been delivered by ETAS.
- 3.4 The agreement regarding the provision of software maintenance does not result in any commitment of ETAS regarding availability and/or fail-safe stability of a system.

- 3.5 The agreed software maintenance will only be provided in favor of the Customer. Customer may not transfer software maintenance to third parties.
- 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 To the extent required for the provision of the software maintenance, the Customer shall provide additional information such as program code, configurations, protocol data etc. as well as necessary resources and shall enable (remote) access to its systems.
- 3.8 Customer's obligations to cooperate shall also apply to software maintenance services; in particular the Customer shall remain responsible for the results achieved with our software and services.
- 3.9 If and to the extent that ETAS acts as a processor in accordance with section 62 BDSG/ article 28 General Data Protection Regulation (GDPR), the agreement for data processing of software maintenance services, hardware repair, calibration services according to individual order, maintenance agreement or warranty, which is available under the Terms and Conditions (ETAS GmbH) under the following link [www.etas.com/AGB-ETASGmbH](http://www.etas.com/AGB-ETASGmbH) and which will be made available to Customer by ETAS upon Customer's request, shall apply.

#### **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 Depending on the device type, calibrations for ETAS measurement products can be performed either in our ISO or DAkkS accredited calibration laboratory. Further details on the calibration service and its scope of performance can be requested from ETAS.
- 4.4 In the context of repair, calibration 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 ETAS reserves the right to install the latest firmware version of the respective hardware in the event of repair.
- 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.

- 4.8 If and to the extent that ETAS acts as a processor in accordance with section 62 BDSG/ article 28 General Data Protection Regulation (GDPR) when providing hardware repair and calibration services, the agreement for data processing of software maintenance services, hardware repair, calibration services according to individual order, maintenance agreement or warranty, which is available under the following link [www.etas.com/AGB-ETASGmbH](http://www.etas.com/AGB-ETASGmbH) and which will be made available to Customer by ETAS upon Customer's request, shall apply.

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

- 5.1 The customer shall be obligated to fully inform us of any and all facts relevant to the delivery and/or performance of our services. We shall not be obligated to check or verify data, information or other services supplied to us by the Customer, with regard to completeness and correctness, unless such verification has been expressly agreed upon between the parties as being a contractual duty. In the event that information or documentation supplied by the Customer proves to be faulty, incomplete, and 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 of which he has been notified by us without delay.
- 5.2 To the extent that work is performed on the Customer's premises, the required workstations, working materials and tools shall be provided to our personnel free of charge. In such cases, the Customer shall be responsible for taking care of all legal duties to maintain safety, unless other arrangements arise from the nature of the matter or a prior arrangement with the Customer. We shall have the right to refuse our performance of service if the required measures 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 expenditures, 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.

- 5.5 The Customer shall be responsible for the correct integration of our products and shall validate them prior to any productive use.
- 5.6 Moreover, the Customer shall validate the results obtained from the use of our products and shall appropriately secure them, i.e. to validate the correct functionality (e.g. with respect to functional safety).

## 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. Periods and 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. Deadline shall be binding only if they were expressly agreed as such in writing. The commencement of and adherence to agreed delivery dates and milestones is predicated upon the fulfillment of the Customer's cooperation obligations, in particular for the supply of equipment, documents, permits, investigations, releases, and compliance with agreed payment conditions. In the event that the Customer's obligations to cooperate are not fulfilled properly or in a timely manner, delivery deadlines shall be extended appropriately.
- 7.2 In the event that non-compliance with delivery deadlines is resulting from force majeure and other disturbances for which we cannot be held liable, such as war or similar conflicts, terrorist attacks, epidemic/pandemic, import and export restrictions, including events of the

same nature that affect our suppliers and subcontractors, the delivery dates agreed upon shall be extended for the period of such hindrance. The same applies to labor disputes, which we or our suppliers may be concerned with. The Customer shall be notified immediately of the delay and/or unavailability of the service(s).

## 8. Acceptance

- 8.1 Insofar as our services require Customer's acceptance, the Customer shall accept the services upon delivery and – to the extent agreed upon – subsequent to successful completion of acceptance test, with immediate effect. Minor defects or deviations from the contractually agreed performance characteristics and acceptance criteria shall not entitle the Customer to a refuse acceptance. Our obligation of fault remedy shall, however, remain unaffected. The Customer shall notify us in writing of any reservations by naming specific defects and discrepancies within 30 days of delivery. If the Customer's reservation proves 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 does not grant or refuses to issue a declaration of acceptance in violation of the foregoing clause 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 services.

## 9. Prices and Payments

- 9.1 The prices agreed in this agreement are exclusive of indirect taxes, particularly but not limited to turnover taxes, taxes on goods and services, value added taxes, sales taxes, taxes on specific goods and services or alike and any surcharges and surtaxes thereto. Such taxes shall be borne by Customer additionally, if applicable.
- 9.2 In case the remuneration for the license / for the services is subject to a withholding tax deduction according to the local laws of the country where the Customer has its seat, Customer shall withhold such tax from the remunerations payable and remit it to the competent tax authorities. In case a reduction of or exemption from the withholding tax is possible, e.g. due to the current Double Taxation Treaty between the country where

the Customer has its seat and the country where ETAS has its seat, the parties shall see to it that the application for such reduction or exemption is processed in accordance with the established rules. Customer is obligated to present ETAS with a withholding tax certificate for the tax withheld.

- 9.3 We reserve the right to modify our prices appropriately if costs increase after a contract has been entered into, in particular due to changes in wage costs, e.g., in response to collective bargaining agreements, or to changes in the price of materials, and if an interval of more than four (4) months elapses between the date of contract signing and delivery. We shall provide proof of such changes to the Customer upon request.
- 9.4 Except as otherwise agreed in writing, invoiced amounts shall be due upon issuance of invoice. 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. Our right to claim additional damages shall remain unaffected. We shall be entitled to make the delivery dependent upon concurrent payment (e.g., through cash on delivery or direct debit) or advance payment.
- 9.5 We shall also be entitled to offset payments against the oldest outstanding amount receivable.
- 9.6 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 or becomes ready to be decided in a pending law suit.
- 9.7 If, after the contract has been entered into, we become aware of circumstances that may result in our claims appear to be in jeopardy due to the Customer's inadequate ability to pay, we shall have the right to perform outstanding services only against prepayment or against the provision of security and, following the expiry of a deadline set to this effect, to terminate the contract.

## 10. Quality Defects

- 10.1 If the service to be provided by us comprises a work performance, the limitation period for claims on account of quality defects shall be twelve (12) months from the date of acceptance of the work or — in the case of a work unsuitable to acceptance or not being subject to acceptance — after delivery (passing of risk). The foregoing provisions shall not apply insofar as longer limitation periods may be prescribed by statute pursuant to Art. 438 (1) No. 2 (Construction Work and Objects for Construction Work), Section 479 (1) (Right of Recourse) and Section 634a (Construction Defects), German Civil Code (BGB).
- 10.2 In the event that a quality 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 render subsequent performance either by repairing the defect or delivering a new work. With software, the precondition for a compensation claim is that the error must be reproducible and that it occurs in the last revision level accepted or adopted by the Customer.

- 10.3 In the case of subsequent performance 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 documentation and information in its possession that is necessary to remedy the defect.
- 10.4 The limitation period does not begin anew by virtue of subsequent performance.
- 10.5 If subsequent performance fails, the Customer may — without prejudice to possible claims for damages — rescind from the contract or reduce the remuneration in accordance with statutory provisions.
- 10.6 Claims by the Customer on account of necessary outlays for the purpose of subsequent performance, in particular the costs of transportation, travel, labor and materials, shall be governed by statutory provisions. 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 branch operation, unless such removal is done in accordance with the designated use of the product.
- 10.7 Claims for subsequent performance shall be excluded in case of a minor deviation from the quality agreed upon or in case of a minor impairment in usability. Further rights and claims shall remain unaffected.
- 10.8 The following shall not be deemed to constitute quality defects:
- natural wear and tear;
  - characteristics of the product or damages caused after the passing of risk due to improper handling, operation, storage or assembly, non-compliance with installation or handling instructions, and 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 software products.
- 10.9 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 not be liable for the compatibility of the software provided with Customer's data processing environment utilized by the Customer, in

particular with the software and hardware products implemented by the Customer.

- 10.10 The Customer shall undertake all actions that are necessary and that 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 are made of all programs and data.
- 10.11 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.
- 10.12 Customer's right of recourse shall exist only to the extent that the claims are not based on any agreement with its own customer exceeding statutory claims in respect of defects, e.g. ex gratia or goodwill regulations.
- 10.13 Claims on account of defects as to quality including claims asserting the Customer's right of recourse shall be excluded insofar as the Customer has failed to have the defect remedied by our repair department.
- 10.14 In all other respects, our obligation to compensate for damages and to compensate for futile expenditures as contemplated by Art. 284 BGB (German Civil Code) on account of quality defects shall be governed by the terms of Article 12. Claims made by the Customer concerning quality defects other than those covered by this Article 10 and Article 12 and its Subsections shall be excluded.
- 10.15 This Article 10 shall also apply with respect to defects as to title other than those resulting from third party industrial property rights (see Article 11). In the event that a work contains or incorporates standard products from third parties, our obligation to remedy defects shall in the first instance be limited to an assignment of 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 rescind the contract.

## 11. Copyright and Related Protective Rights

- 11.1 We shall not be liable for claims arising from an infringement of industrial property rights or copyright of third parties (hereinafter referred to as Protective Rights) if the Protective Rights are or were owned by the Customer or by an enterprise in which the Customer holds, directly or indirectly, a majority of the shares or voting rights.
- 11.2 We shall not be liable for claims arising from an infringement of Protective Rights unless at least one Protective Right from the protective rights family has been published either by the European Patent Office (EPO) or in one of the following countries: Federal Republic of Germany, France, Great Britain, Austria, or United States.
- 11.3 The Customer shall notify us immediately of (alleged) infringements of Protective Rights

and of risks of infringement in this respect which become known and, at our request—to the extent possible—allow us to conduct the litigation (including non-judicial proceedings).

- 11.4 For a product that infringes a Protective 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 Protective Right, or to replace it by an equivalent substitute product which no longer infringes the Protective Right. If this is not possible subject to reasonable conditions or within a reasonable period of time, the Customer—insofar as it has facilitated the execution of a modification by us—shall be entitled to the statutory rights of termination. Subject to the aforementioned preconditions we too shall have a right of termination. The provision set forth in Article 13 shall apply accordingly. We reserve the right to carry out the action at our disposal under the terms of Sentence 1 of this Article 11.4, even if the infringement of the Protective Rights has not yet been recognized by final and valid judgment or acknowledged by us.
- 11.5 Claims by the Customer shall be excluded insofar as the Customer is responsible for the infringement of the Protective Right or if the Customer fails to support us to a reasonable extent in the defence against claims by third parties.
- 11.6 Claims by the Customer shall also be excluded if the products are or were manufactured in accordance with the specifications or instructions of the Customer or if the (alleged) infringement of the Protective 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 In all other respects, our obligation to pay damages in case of infringements of Protective Rights shall be governed by Article 12.
- 11.8 Article 10.1 apply mutatis mutandis to the limitation period for claims based on infringements of Protective Rights.
- 11.9 Consequential claims and claims other than those made by the Customer on account of an infringement of third party Protective Rights governed by this Article 11 and Article 12 shall be excluded.
- 11.10 Product may comprise components implementing Standards (e.g. mobile service standards, WLAN standards), integrated electronics and/or related software, supplied or provided by sub-suppliers, which may make use of third party intellectual property rights. Unless otherwise agreed, licenses to use such third party intellectual property rights for the Product, and corresponding indemnifications for claims against Customer based on such third party intellectual property rights, are not part of ETAS's deliverables. Customer may be required to obtain licenses from the owners of these third party intellectual property rights directly. "Standards" shall mean technical

specifications or functions (i) adopted by a standards organization (inter alia ETSI or IEEE), (ii) defined by research institutes, industrial companies or other market participants to ensure technical conformity or compatibility, or (iii) established by common practice in a particular technical field.

11.11 In the event of alleged infringements of third party intellectual property rights by Customer's use of components implementing Standards, integrated electronics and/or related software, contained in the Product, ETAS shall reasonably provide Customer with relevant information on request against such allegations. This includes the provision of any documents which ETAS controls and is entitled to provide to Customer.

## 12. Compensation for Damages, Product Liability

12.1 We shall be liable for damages and compensation of futile expenditures as defined in Section 284 BGB (hereinafter referred to as Compensation) on account of a breach of contractual or non-contractual obligations only in case of

- deliberate acts or gross negligence
- fatal or physical injury or damage to health
- the assumption of a quality or service life guarantee
- breach of material contractual duties
- compulsory liability pursuant to the German Product Liability Act
- or any other compulsory liability.

12.2 The Compensation payable in case of a breach of material contractual duties is, 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 assumption of a quality guarantee.

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 operation by qualified professional personnel.** We shall not assume liability for damages caused by improper operation 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 electronic 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 liability for effects to or impairment of our services and products with regard to performance, usability and safety ensuing from the use of the Customer's own software, model or hardware 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 or damage to data and programs at the Customer, our liability shall not include any expenditures resulting from their recovery. The Customer shall therefore be obligated to affect data backups on a regular basis.

12.7 The foregoing provisions shall not be construed as reversal of evidence.

12.8 Insofar as liability on our part is excluded or limited, such exclusion or limitation shall apply for the benefit of our employees, representatives or vicarious agents as well.

## 13. Withdrawal/Termination

13.1 In case the customer does not comply with its contractual duties, e.g. in case of default of payment, after expiration of a reasonable grace period we shall be entitled to withdraw from or terminate the contract. Any other right given by contract or law shall remain unaffected.

13.2 We shall be entitled to withdraw from or terminate the contract immediately (without any grace period), if the Customer suspends payment, or insolvency or similar proceedings for the purpose of debt relief have been filed.

13.3 Without providing a grace period, we shall be entitled to withdraw from or terminate the contract, if

- an impairment of the Customer's financial situation occurs or is threatening to occur and if as a result thereof Customer's ability to fulfill its payment obligations toward us be at risk, or
- the Customer should become insolvent.

13.4 We shall be entitled to withdraw from or terminate the contract if the fulfillment of the contract was no longer permissible due to legal and/or regulatory changes after the signature of the contract.

13.5 Immediately after Customer's receipt of our declaration to withdraw from or terminate the contract, the Customer shall be obliged to provide us with access to the products to which we have reserved title and shall render them to us or any designated representative. Upon advance notice we shall be entitled to take possession of the products to which we retained title for purposes of recovery of our due claims.

13.6 The rights mentioned in this Article 13 shall be in addition to any statutory right, which shall not be affected thereof.

#### **14. Export Control and Customs**

- 14.1. Each party is entitled to refuse to perform its obligations under this contract insofar as the performance is prohibited or impaired by foreign trade law (including, without limitation, national and international (re-)export control and customs regulations, including embargos and other sanctions) which is – in accordance with this law – applicable to this contract (hereinafter “Foreign Trade Law”). In such cases, either party is entitled to terminate this contract to the extent necessary. 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.
- 14.2. In case of delay in the performance of obligations under this contract caused by licensing, authorization or similar requirements under Foreign Trade Law (hereinafter “Authorization”), the time of performance for such obligations is extended/moved accordingly and neither party shall have any liability for non-compliance related to such delay. Should an Authorization be denied or not granted within 12 months after filing the application, either party is entitled to terminate or rescind from the contract to the extent the performance of the obligation requires this Authorization. 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.
- 14.3. Each party shall notify the other party within a reasonable time period upon becoming aware of a Foreign Trade Law, which may prohibit or impair performance to clause 14.1. or delay in performance according to clause 14.2.
- 14.4. Upon our request, the customer shall provide any information and documents necessary to comply with Foreign Trade Law or requested by authorities in relation to Foreign Trade Law. Such information and documents including, without limitation, information on the end customer/user, the destination and the intended end-use of the Deliveries and Services. We may, in our sole discretion, refuse to perform our obligations under this contract or terminate the contract, if the customer does not provide us with such information or documents within a reasonable time period.
- 14.5. In the event that the customer provides to any third party (specifically including any affiliate of the customer) any Deliveries and Services the customer shall comply with applicable Foreign Trade Law. We are entitled to refuse to perform our obligations under this contract and to terminate the contract for cause, if the customer breaches this obligation.
- 14.6. To the extent permitted by applicable law, we shall have no liability for any claims of the customer for damages related to or arising from our refusal to perform obligations under

this contract or termination of the contract in accordance with clauses 14.1., 14.2., 14.4. and 14.5.

- 14.7.1 For delivery of goods across customs borders to us, the customer is obliged to provide us 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 us, 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.
- 14.7.2 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 paragraph does not cover the supply of embedded software (software which is flashed on hardware).

#### **15. Secrecy, Confidentiality**

- 15.1 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 subject 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.
- 15.2 We shall retain all rights to the information indicated in Article 15.1 (including copyright and the right to apply for industrial property rights such as patents, utility models, semiconductor protection etc.).

#### **16. Miscellaneous Provisions**

- 16.1 If any of the provisions of these Terms and Conditions of any contracts entered into based on these General Terms and Conditions should be or become invalid, this shall not affect the validity of the remaining provisions. The contracting parties shall be obliged to replace the invalid provision by an effective regulation most closely approximating the

economic success pursued by the ineffective provision.

16.2 The courts of Stuttgart, Germany (for proceedings at the court of first instance, the district court in 70190 Stuttgart) shall have jurisdiction and venue or, at our discretion, the court at the registered office of the business facility executing the order, if the Customer is

- a merchant or
- does not have a general place of jurisdiction in Germany or
- if the Customer moves his place of domicile or normal place of residence abroad after execution of the contract or if his place of domicile or normal place of residence is not known at the time a suit is filed.

We shall also have the right to start legal action at a court with jurisdiction at the place of the Customer's registered office or a branch operation.

16.3 All legal relationships between us and the Customer shall be exclusively governed by the laws of the Federal Republic of Germany, to the exclusion of the provisions of the conflict of laws and the Convention on the International Sale of Goods (CISG) of the United Nations.

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**ETAS GmbH**