

# Terms and Conditions for Consulting and Cyber Security Services

These Terms and Conditions apply for the provision of consulting and cyber security services to customers (hereinafter "Customer") by ETAS Automotive India Private Limited registered office at B519, Post Box No. 3000, Adugod, Hosur Road, Bangalore (hereinafter: "Provider")

## 1. Subject of the contract

- 1.1. The subject of these Terms and Conditions is the provision of consulting and cyber security services (such as e.g. penetration testing, security risk analysis, security concept creation) by the Provider. The Customer and the Provider shall agree the details of the performance, e.g. objectives, subject matter, scope, content, locations, specialist and technical framework conditions and the remuneration payable for the work and/or services, in a separate document.
- 1.2. Any and all offers of the Provider are without obligation unless expressly otherwise stated in the offer.
- 1.3. Conditions deviating from these Terms and Conditions must be agreed in writing.
- 1.4. The services of the Provider are dedicated 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 or service description and limited to business to business (B2B) transactions. Unless explicitly agreed upon in writing (e.g. Statement of Work), the services of the Provider are valid for the target market where the Provider places his product.
- 1.5. Conditions of the Customer contrary to or supplementing these Terms and Conditions shall not be valid. This also applies if they are referred to in an order or in any other documents of the Customer and the Provider does not expressly object to such reference.
- 1.6. Unless the parties agree to other terms and conditions, these Terms and Conditions shall apply to the provision of all future consulting and cyber security services.

## 2. Provision of work and/or services

- 2.1. Solely the Provider has the task of organizing the provision of work and/or services and has the right to issue instructions to its employees. This also applies if the work and/or services are provided on the premises of the Customer.
- 2.2. The Provider 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, the Provider shall ensure that the respective subcontractor enters an obligation to maintain confidentiality of all information and documentation conveyed to him. The Provider shall inform the Customer in advance.
- 2.3. The Provider shall provide the work and/or services based on the acknowledged state of the art.
- 2.4. In the case of services, the Provider assumes no responsibility for achieving a particular economic success.
- 2.5. In case of a penetration test the following applies in addition: It is Customer's responsibility to determine the final scope of the test according to their requirements. The penetration test is limited in time and budget, therefore it does not reveal all weaknesses of the tested product or IT system. In addition, the security landscape is constantly changing, as new vulnerabilities and gaps can be discovered that were not yet visible at the time of the penetration test. The commissioning of a penetration test does not include the elimination of vulnerabilities in the product or IT system. At the

request of the Customer, the Provider can prepare an additional offer for the elimination of such vulnerabilities.

- 2.6. The dates of delivery and performance named by the Provider shall only be binding if these were designated as binding by the Provider in writing. Deadlines 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 dependent on 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.
- 2.7. If the consultancy results are shipped, the delivery and prices shall be "DAP (Delivered At Place)", Incoterms ® 2020. Alternatively, they shall be transmitted digitally.
- 2.8. In the event that non-compliance with delivery deadlines is resulting from force majeure and other disturbances for which the Provider 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 its suppliers and subcontractors, the delivery dates agreed upon shall be extended for the period of such hindrance. The same applies to labor disputes, which the Provider or its suppliers may be concerned with. The Customer shall be notified immediately of the delay and/or unavailability of the service(s).
- 2.9. If and to the extent that the Provider acts as a processor in accordance with section 62 BDSG/ article 28 General Data Protection Regulation (GDPR), the agreement for data processing of consulting and cyber security services according to individual order or consulting agreement, which is available under the Terms and Conditions (ETAS India) under the following link [www.etas.com/AGB-ETASGmbH](http://www.etas.com/AGB-ETASGmbH) and which will be made available to

Customer by Provider upon Customer's request, shall apply.

### **3. Changes in work and/or service(s)**

- 3.1. If the Customer suggests changes to the agreed work and/or services during the provision thereof, the Provider shall notify the Customer as rapidly as possible whether the change is possible and what effects this will have on the contract, particularly on the dates and the agreed remuneration.
- 3.2. If the change request requires a detailed examination by the Provider, the Provider shall inform the Customer of the estimated duration and expense of this detailed examination, give a provisional assessment of the prospects of realization, and outline the effects, if any, on the contract, particularly on the dates and the agreed remuneration.
- 3.3. During the current change procedure, the Provider shall continue to provide the contractual work and/or services, unless the Customer informs the Provider in writing that the work must be stopped or restricted until the decision is taken on the change to the work and/or services or until the parties reach a separate agreement on the detailed examination of the change request or on the change request itself.

### **4. Work results**

- 4.1. Work results are all the works individually created by the Provider for the Customer, e.g. documents, project sketches, presentations and the related draft versions. The Customer receives a non-exclusive right of use without any time restriction to copyrightable work results upon full payment of the agreed remuneration. The Customer is entitled to reproduce and edit work results, convert them into other display formats and change, continue and supplement them in any other manner. This is without prejudice to the mandatory rights to which the Customer is entitled under § 69e of the German Copyright Act (Urhebergesetz).
- 4.2. Insofar as in individual cases products of third parties, in particular software of third parties, are integrated and supplied by Provider, special terms

of use may apply in this respect, which shall become part of this contract as an annex to the offer/individual contract.

- 4.3. Unless otherwise agreed, the Customer is not entitled to grant sublicenses without the prior written approval of the Provider.
- 4.4. If the work results are software, the scope of delivery shall contain a copy of the software in object code.
- 4.5. Irrespective of the type of rights granted, the Provider is entitled to
  - a) create comparable work results with the same functionalities and
  - b) continue use of the know-how obtained upon the provision of the work and/or service without restriction (the secrecy obligations under section 10 remain unaffected).
- 4.6. If work results contain open source software components, the Provider will inform the Customer accordingly and it shall be provided with a corresponding list of the open source software components and the applicable open source software license terms. The Customer has the right to use the open source software components to the extent described in Section 4.1 . Any use in excess of this (e.g. transfer of the open source software components to third parties) is permissible if the Customer accepts the open source software license terms and thereby acquires further rights directly from the respective licensor of the open source software components. In this case, the use of the open source software components is governed solely by the respective open source software license terms.
- 4.7. If the open source software license terms of the open source software components contained in the work results include the obligation to provide the source code the Provider will make the source code available on an appropriate medium and within an adequate timeframe for use and transfer according to the open source software license terms upon Customer 's request.

## **5. Remuneration, due date**

- 5.1. The agreed remuneration is 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.

Tax invoices will be raised in compliance with the applicable indirect tax laws (GST) and customer agrees to provide the details including correct GSTIN for raising invoices. Customer agrees to pay the tax amount along with transaction value within the stipulated time. Any disputes as regards to non-matching of ITC will be resolved amicably after mutual discussion.

If payment of remuneration to provider is subject to withholding tax (WHT), the customer agrees to comply with the relevant rules and regulations under the Income Tax Act and provide the WHT certificates to provider within the prescribed timelines. The customer agrees to reimburse the provider any loss of tax credit, including interest and penalty, arising from any deficiency by the customer on WHT compliances prescribed under the law.

- 5.2. Provider reserves the right to modify their 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. Provider shall provide proof of such changes to the Customer upon request.
- 5.3. If remuneration was agreed based on the time worked, the Provider shall present a list of the hours or days worked to the Customer each month for the preceding month and shall bill these. If a fixed-price remuneration is agreed, the remuneration is due and payable based on a separately agreed payment schedule. Where such

a payment schedule was not agreed, down payments at an equal amount are due after a) commencement of contract, b) first partial delivery, c) making available for acceptance, and d) acceptance.

- 5.4. Travel required to provide the work and/or services of the Provider is not included in the remuneration agreed for the work and/or service and will be agreed on an individual basis.
- 5.5. All invoices of the Provider shall be paid cashless and without any deduction, except to the extent WHT, if any, into a bank account stated by the Provider no later than 30 days after receipt and due date. The date on which the invoice amount is credited to the Provider is relevant for determining compliance with the time allowed for payment.
- 5.6. In the case of late payment, Provider shall be entitled to charge default interest at the statutory rate. Provider's right to claim additional damages shall remain unaffected. Provider shall be entitled to make the delivery dependent upon concurrent payment (e.g., through cash on delivery or direct debit) or advance payment.
- 5.7. Provider shall also be entitled to offset payments against the oldest outstanding amount receivable.
- 5.8. 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 lawsuit.
- 5.9. If, after the contract has been entered into, Provider becomes aware of circumstances that may result in their claims appearing to be in jeopardy due to the Customer's inadequate ability to pay, Provider shall have the right to perform 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.

## **6. Customer's duties to cooperate and provide information**

- 6.1. The Customer bears the risk that work and/or services comply with its requests and requirements

where these were not expressly made a part of the contract. In case of doubt, the Customer must obtain advice from the Provider or from third-party experts prior to conclusion of contract.

- 6.2. The Customer must support the work and/or services of the Provider with reasonable collaborative action. The Customer shall be obligated to fully inform the Provider about any and all facts relevant to the delivery and/or performance of the services. Provider shall not be obligated to check or verify data, information or other services supplied to Provider 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 Provider, 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 Provider without delay. In particular, Customer shall provide the information and data required for these to the Provider free of charge and – insofar as necessary to perform the services - give employees of the Provider access to its business premises to the extent necessary during business hours. If necessary for the performance of the services, the Customer shall provide work materials, such as workstations, computers, telephones, internet connection and printers, to a reasonable extent if the work and/or services are provided on the business premises of the Customer.

- 6.3. The setting up of a sufficiently dimensioned hardware and software environment for software is the sole responsibility of the Customer. The Customer shall test the work results thoroughly before use to ensure they are free from defects and if applicable, that they can be used in the existing hardware and software configuration.

- 6.4. The Customer shall grant the Provider access to the work and/or services for trouble-shooting and rectification purposes either directly and/or by remote access at the option of the Provider.
- 6.5. The Customer shall take reasonable precautions in the event that software fails to work properly as a whole or in part (e.g. by daily data back-ups, fault diagnosis, regular checks of the data processing results). To the extent that the Customer does not expressly refer to this in advance, the Provider may assume that all data of the Customer with which it might come into contact have been secured (e.g. by back-up).
- 6.6. Markings on the work results, particularly copyright notices, trademarks, series numbers and similar, may not be removed, changed or obliterated.
- 6.7. In the course of a penetration test, the Provider may gain access to confidential data of the Customer and third parties. The Customer therefore undertakes to obtain all necessary confirmations from such third parties in advance of the penetration test and to submit them at the request of the Provider. The Customer grants the Provider his express consent for the measures required in the course of the penetration test. This includes in particular the access of the Provider to data, if necessary by overcoming possible access restrictions to the systems specified by the Customer and/or from a non-public transmission of data and/or from the electromagnetic radiation of a data processing system (§§202a ff StGB).
- 6.8. If the Provider is prevented from the provision of work and/or services by the lack of the fulfilment of the contract by the Customer, namely the lack of the provision of the Customers above-mentioned duties to cooperate and provide information, the Provider is not responsible for any resulting performance deficiencies (including any service credits). 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, the Provider 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. The extension depends on the length of the delay of the non-contractual cooperation and other resulting temporal effects (eg. taking account of a necessary start-up time).

- 6.9. The Customer shall reimburse to the Provider any expenses that the Provider incurs based on the Customer's non-compliance or delayed compliance with its duties under this section 6, unless this is beyond the Customer's control. In addition, the legal remedies and claims to which the Provider is legally entitled remains unaffected.

## **7. Warranty**

- 7.1. The provider performs the services in a professional manner. If the provider performs the work poorly, this may result in a non-fulfilment of the contractual obligation to perform if the extent of the poor performance is corresponding, so that the remuneration is not due as a consequence. In addition, culpable defective performance may, under certain circumstances, trigger an obligation to pay damages to the Customer.
- 7.2. In the event that, in the opinion of the Provider or a third party, the work results violate the rights of third parties, the Provider is entitled, taking due account of the interests of the Customer, to replace or modify the work results while retaining the agreed functionalities in order to remedy the alleged or presumed infringement of rights.

## **8. Liability**

- 8.1. In accordance with the provisions of law, the Provider shall be liable for damages in the following cases: damage to persons; damage governed by the German Product Liability Act (Produkthaftungsgesetz); damage caused by fraudulent behavior or with intent on the part of the Provider and damage caused by gross negligence on the part of the Provider's legal representatives or executive staff.
- 8.2. Without prejudice to the liability defined in section 8.1., the Provider's liability for damages shall be limited to the level of damage foreseeable in

contracts of this kind in the case of damage resulting from an ordinarily negligent breach of fundamental contractual obligations as well as in the case of damage caused due to gross negligence by the Provider's ordinary vicarious agents. Fundamental obligations refer to obligations whose fulfillment is integral to the proper performance of the agreement and on the observance of which the Customer is entitled to depend. Except where there are explicit provisions to the contrary in these Terms and Conditions, the Provider shall bear no liability beyond that defined above.

- 8.3. Contributory negligence on the part of the Customer must be taken into account.
- 8.4. The above limitations on liability apply also to the personal liability of the Provider's employees, representatives, and/or organs. The provisions set out above apply also to the liability of the Provider with respect to compensation for wasted expenditure and indemnity obligations.
- 8.5. The Customer indemnifies the Provider against all claims of third parties against the Provider in the context of the provision of a Penetration Test. This applies in particular to claims of third parties from the violation of intellectual property rights, copyrights and/or personal rights as well as for costs and expenses caused by the defense of such claims or the defense against allegations based on penal and/or administrative laws.
- 8.6. Penetration tests can lead to damage or destruction of the tested product or the IT system (e.g. data loss, system failure, operational disruptions, destruction of products). For this reason, penetration tests on running IT systems will only be carried out with the express order of the Customer. The Provider shall not be liable for the destruction of products, the failure of a product or of IT systems or the loss of data. The Customer shall indemnify the Provider against all claims of third parties as well as costs and expenses for the defense against such claims.

## 9. List of References

Unless expressly agreed otherwise, the Provider is entitled to include the Customer's name and its company logo in its list of references and to present this list to third parties and to publish the list for advertising purposes. The Customer may object to such use at any time with effect for the future. However, the Provider is not obliged to recall or change advertising already published at the time when the Customer objected to such use.

## 10. Confidentiality

- 10.1. Each party undertakes to treat information and other materials of the other party as confidential, particularly information on operational processes, business relations, and know-how (hereinafter: "Confidential Information") and not to make them accessible to third parties. Third parties in this sense do not include affiliated companies as defined by section 15 of the German Stock Corporation Act (Aktiengesetz) and subcontractors of the Provider that are obliged to maintain secrecy accordingly. In order to protect the Confidential Information, the parties must apply the same degree of care (but not less than a reasonable extent) as they would to protect their own Confidential Information of similar importance.
- 10.2. The obligation to maintain secrecy according to section 10.1 does not apply to confidential information a) that the receiving party already legitimately possessed before disclosure by the disclosing party; b) that became or becomes public knowledge without any breach of duty; c) that the receiving party legitimately received from third parties without any secrecy obligations; d) that is disclosed by the disclosing party to third parties without any secrecy obligations; e) that is developed by the receiving party independently from the Confidential Information; f) that must be disclosed by law; or g) that may be disclosed after obtaining the prior written approval from the disclosing party.
- 10.3. Insofar as the Provider provides consulting services, the right of both parties and the companies associated with them within the meaning of Section 15 of the German Stock

Corporation Act (AktG) to make use of any new knowledge gained by either party within the framework of and on the occasion of the consulting assignment, in particular knowledge about the procedures, procedures and settings in the business processes of the other party ("Results") shall have priority over any confidentiality obligations and transfers/grants of rights and their limitations that may exist. Within this framework and only for this purpose, the parties grant each other access to existing know-how, provided that existing know-how is indispensable for the exploitation of the Results by the parties.

## **11. Termination**

- 11.1. As far as no fixed duration is agreed, the contract may be terminated by either party with a notice period of three months to the end of a calendar quarter. The right of termination according to § 627 of the German Civil Code (Bürgerliches Gesetzbuch; hereinafter: "BGB") is excluded.
- 11.2. If the Customer breaches the contract, especially in case of delayed payment, the Provider is entitled, notwithstanding any other contractual or statutory rights, to terminate the contract after a reasonable period of grace without any notice.
- 11.3. The termination has to be in writing/e-mail.

## **12. Export control and Customs**

- 12.1. 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.
- 12.2. 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.

- 12.3. 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 12.1. or delay in performance according to clause 12.2.
- 12.4. Upon Provider`s 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. The Provider may, in his sole discretion, refuse to perform his obligations under this contract or terminate the contract, if the Customer does not provide the Provider with such information or documents within a reasonable time period.
- 12.5. 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. The Provider is entitled to refuse to perform his obligations under this contract and to terminate the contract for cause, if the Customer breaches this obligation.
- 12.6. To the extent permitted by applicable law, the Provider 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 12.1., 12.2., 12.4. and 12.5.
- 12.7.1. For delivery of goods across customs borders to the Provider, the Customer is obliged to provide the Provider 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 the Provider, 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.

12.7.2. 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).

### **13. General provisions**

13.1. To the extent permissible by law, the exclusive place of jurisdiction shall be at Bangalore, India, however the Provider may sue the Customer at his place or at the place of provision of the services

13.2. The present Terms and Conditions and all agreements in this connection between the Provider and the Customer are governed by the law of India. The applicability of the UN Sales Convention is expressly excluded.

13.3. Should a provision be or become invalid, this shall not affect the validity of the remaining provisions. In this case the invalid provision shall be replaced by an admissible agreement that most closely approximates the commercial aim of the original, invalid provision.

ETAS Automotive India Private Limited