

GENERAL TERMS OF DELIVERY
ESA ELEKTRONISCHE STEUERUNGS- UND
AUTOMATISIERUNGS GES.M.B.H.
(Status 13 June 2016)

§ 1. Validity of the General Terms of Delivery

- § 1.1 The following General Terms of Delivery shall apply exclusively to the business transactions of ESA Elektronische Steuerungs- und Automatisierungs Ges.m.b.H., Steyrer Straße 6A, A-4493 Wolfen, FN 66109w (hereinafter : ESA, we or us). Our contractual partner is hereinafter referred to as "Customer" or "Contractual partner". These General Terms of Delivery are binding for the entire current and future business transactions with ESA, even if reference is not explicitly made hereto.
- § 1.2 Regulations which deviate from or supplement these General Terms of Delivery – in particular General Business or Purchasing Terms of the Contractual partner – will only become part of the contract if this was explicitly confirmed by ESA in writing.

§ 2. Offer / conclusion of contract / cost estimate

- § 2.1 Offer and conclusion of the contract
Offers of ESA are without obligation and valid for 30 days insofar as they are not explicitly described as binding. The order of the Contractual partner shall only be deemed as accepted with the ESA order confirmation or with the provision of the service through which a contract is concluded.
Possible permits, which are required for the execution of the contract and are to be granted by authorities or third parties, are to be obtained by the Customer, which has to inform ESA in this respect and, if applicable indemnify it.
- § 2.2 Cost estimate
A cost estimate will be created by ESA to the best of its specialist knowledge, it can however not assume any guarantee for the accuracy of such a cost estimate. Should cost increases arise in the extent of more than 15 % after the order has been placed, ESA will inform the Contractual partner hereof immediately. If it concerns the unavoidable exceeding of costs by less than 15 % a separate agreement is not necessary and these costs can be invoiced without further ado. Insofar as not otherwise agreed changes to the order or additional orders can be invoiced at reasonable prices. COST ESTIMATES ARE SUBJECT TO PAYMENT OF A FEE.

§ 3. Scope of the order

- § 3.1 The scope of a specific order will be agreed as per contract in an individual case.
- § 3.2 ESA is entitled to have the tasks, for which it is responsible, provided by third parties in full or in part. The third party shall be exclusively paid by ESA itself. No direct contractual relationship will be established whatsoever between the third party and the Customer.
- § 3.3 The Customer undertakes not to enter into any kind of business relationship with persons or companies, which ESA uses to fulfil its contractual obligations, during as well as until the expiry of three years after termination of this contractual relationship. The Customer shall in particular not commission these persons and companies with such or similar services, which are also offered by ESA.

§ 4. Obligation of the Customer / declaration of completeness

- § 4.1 The Customer shall ensure that the basic organisational conditions when fulfilling the order at its registered place of business will permit the work to be carried out without any disturbances as far as possible that is conducive to the fast continuation of the process.
- § 4.2 The Customer will ensure that all documents, which are necessary for the fulfilment and execution of the order, are also submitted to ESA without a special request and within the deadlines and that ESA is informed of all processes and circumstances, which are of significance for the execution of the order. This shall also apply to all documents, processes and circumstances, which only become known during our activity.
- § 4.3 The Customer shall ensure that its employees and the workers' representative body (works council) as envisaged by law and which has if applicable been set up, are informed hereof before commencement of the work of ESA already.

§ 5. Confidentiality / data protection

- § 5.1 The Customer hereby irrevocably undertakes to maintain secrecy concerning all business and trade secrets made accessible and available to it by ESA, or which have otherwise become known in connection with or owing to a business relationship or the contact to ESA and not to make these accessible to third parties in any manner whatsoever without the consent of ESA. The Customer further undertakes to only use information on a "need to know" basis and only within the scope of the concluded contract.
- § 5.2 The non-disclosure obligation shall be upheld for 3 years after the termination of the business relationship with ESA or, irrespective of a business relationship, for 3 years after the submission of the offer by ESA.
- § 5.3 ESA is released from the oath of secrecy towards possible assistants and representatives, which it uses. However, it has to assign the oath of secrecy to said persons in full.
- § 5.4 ESA is entitled to process personal data entrusted in its care within the scope of the intended purpose of the contractual relationship.

§ 6. Remuneration

- § 6.1 After completion of the agreed work ESA shall receive a remuneration according to the agreement between the contractual parties. ESA is entitled to issue interim settlements in line with the work progress and to request payment on account in line with the respective progress. The remuneration is respectively due with our invoicing.

- § 6.2 Incurred cash expenses, expenses, travelling costs, etc. are to be additionally reimbursed by the Customer against the invoices issued by ESA.
- § 6.3 If the agreed work is not carried out for reasons on the part of the Customer, or owing to a justified premature termination of the contractual relationship by ESA we reserve the right to claim for payment of the total agreed remuneration minus saved expenses. In the event of the agreement of an hourly fee the remuneration is to be paid for the number of hours, which would have been expected for the entire agreed work, minus the saved expenses. The saved expenses are agreed as a flat rate with 30 per cent of the remuneration for those services, which the Contractor has not yet provided by the day upon which the contractual relationship is terminated.
- § 6.4 If the Customer is in default with an agreed payment or other service then ESA can either insist on fulfilment of the contract irrespective of its other rights and deem the full still outstanding purchase price due from this and other business transactions and settle interest on default for these amounts from the respective due date in the amount of 9,2% p.a. above the respective base lending rate of the Austrian National Bank or also cancel the contract without setting a final deadline.
- § 6.5 In the event of the non-payment of interim settlements ESA is released from its obligation to provide further services. The assertion of further claims resulting from the non-payment is however not affected hereby.
- § 7. Place of performance / assumption of risk**
- § 7.1 The place of performance for all services of the Contractual partners is the registered head office of ESA.
- § 7.2 Subject to a deviating written agreement the time at which the risk is passed, both in the cross-border as well as accordingly in the non-cross-border transactions, shall be stipulated in line with the respective applicable Incoterms. If no agreement was reached in this respect then the clause "EXW" "ex works of ESA in A-4493 Wolf fern" of the respective applicable Incoterms shall apply.
- § 7.3 With regard to data, the risk of deterioration or a change to the data during downloading and with the despatch via Internet shall pass to the Contractual partner by passing of the ESA network interface.
- § 8. Reservation of title**
- Delivered goods shall remain our property until the full payment (together with interest and secondary charges). In case of the processing, connection or mixing of our goods with other materials ESA shall acquire co-ownership to the products produced hereby according to the value added shares. The customer must comply with the form provisions, required at its site, to ensure the reservation of title.
- § 9. Acceptance / partial delivery**
- § 9.1 The Contractual partner is obliged to accept the deliveries and services made available by ESA. Insofar as no independent acceptance is carried out all services shall be deemed as accepted 14 days after provision or delivery. If installation or commissioning services are agreed, those services shall be deemed as accepted from the earliest of the following dates:
- if acceptance is confirmed by the Contractual partner or its end customer
 - if the installed delivery or service has been put in operation at Customers or its end users site,
 - or at least 14 days after installation or commissioning.
- Service and cost-plus services shall be deemed as accepted with the actual provision.
- § 9.2 Insofar as ESA deliveries and services can be divided, partial deliveries and partial acceptances are permitted.
- §10. Protection of intellectual property**
- § 10.1 The copyrights to the works created by ESA, its employees and commissioned third parties (in particular offers, reports, analyses, expert's opinions, organisation plans, programs, service specifications, drafts, calculations, drawings, data carriers, etc.) shall remain with us. They may exclusively be used by the Customer during and after termination of the contractual relationship for purposes covered by the contract. The Customer is insofar not entitled to sell, reproduce and/or distribute the work (the works) without our explicit consent. In no way will a liability of ESA be established by an unauthorized reproduction/distribution of the work – in particular for example for the accuracy of the work – towards third parties.
- § 10.2 A breach of these provisions by the Customer shall entitle ESA to immediately terminate the contractual relationship prematurely and to assert a separate remuneration as well as to other statutory claims, in particular for cease and desist and/or damages.
- § 11 Delay in delivery / cancellation**
- § 11.1 The delivery deadlines and dates shall be adhered to by ESA as far as possible. They are, if they have not been explicitly agreed as binding, non-binding and always understood as the expected time of the provision and hand-over of the service to the Contractual partner.
- § 11.2 A cancellation of the contract by the Customer owing to delay in delivery is only possible by setting a reasonable – at least 3-week –final deadline. The cancellation is to be asserted by means of registered letter. The right of cancellation shall only refer to the delivery or service part, with regard to which there is a delay.
- § 11.3 Irrespective of its other rights ESA is entitled to cancel the contract if
- a) there are concerns with regard to the solvency of the Customer and it neither makes an advance payment, nor provides suitable security before the delivery at the request of ESA or
 - b) insolvency proceedings are opened over the Customer's assets or an application for opening of such proceedings is rejected in the absence of assets to cover the costs or the pre-requisites exist for the opening of such proceedings or the rejection of such an application or the Customer has suspended its payments.
- The cancellation can also be declared with regard to a still outstanding part of the delivery or service for the above reasons. Irrespective of the claims for damages of ESA deliveries or partial deliveries already provided in the event

of the cancellation are to be settled and paid as per contract. This shall also apply insofar as the delivery was not yet taken over by the Customer and to preparatory acts provided by ESA.

§ 12 Warranty

- § 12.1 The warranty period is 12 months from acceptance according to § 9 of these Terms of Delivery. Should the Customer begin to use the service before hand-over or take-over of the provided service already then the warranty period shall begin to apply from this time already.
- § 12.2 The existence of defects is to be proven by the Contractual partner. Section 924 ABGB [Austrian Civil Code] shall not apply. Defects which occur are to be reported by the Contractual partner immediately in writing and specified. In the event of warranty ESA is entitled to determine the type of the warranty (improvement, exchange, price reduction or redhibition) itself.
- § 12.3 The warranty shall lapse immediately if, without our written consent, the Customer makes changes to the objects of delivery itself or a third party makes changes which has not been authorized by us.
- § 12.4 Work and deliveries subject to warranty shall not extend the warranty period. The right of recourse of Section 933b ABGB will not apply.
- § 12.5 Insofar as ESA remedies defects outside of the warranty and/or provides service or cost-plus services, these will be settled according to required work.

§ 13. Liability / damages

- § 13.1 With the exception of physical injuries, the liability of ESA for all claims, arising for no matter what legal grounds, is limited to wilful and grossly negligent actions.
Accordingly the compensation for indirect damages as well as consequential damages (in particular consequential damages owing to a defect) – such as e.g. missed profit, interruptions to operation, loss of data and information, costs from production losses, non-achieved savings, losses of interest and of damages from claims of third parties against the Customer – is also excluded for us.
- § 13.2 The liability of ESA is limited by the order value for each conceivable case of liability under the exclusion of claims beyond this, no matter for what legal grounds.
- § 13.3 Claims for damages can only be asserted within six months from having knowledge of damages and the damaging party.
- § 13.4 If contractual penalties have been agreed then claims beyond this, no matter for what legal grounds, are excluded.
- § 13.5 ESA is released from a possible warning obligation according to Section 1168a ABGB and the reversal of proof according to Section 1298 ABGB is excluded.

§ 14. Place of jurisdiction / choice of law / mediation

- § 14.1 Place of jurisdiction
The exclusive jurisdiction of the courts, which can be taken into consideration factually and locally, at the registered seat of ESA, shall be agreed for a decision regarding all disputes arising from a contract – including such concerning its existence or non-existence.
- § 14.2 Choice of law
The validity of Austrian law under the exclusion of the UN Convention on Contracts for the International Sale of Goods and the provisions of the Austrian IPRG as well as other standards regarding the conflict-of-law is agreed for this contractual relationship.
- § 14.3. Mediation
For the event of disputes from this contract, which cannot be regulated by mutual agreement, the contractual parties shall mutually agree upon using the services of registered mediators for the out-of-court settlement of the conflict (ZivMediatG) with the focus on business mediation from the list of the Ministry of Justice. If it is not possible to reach a mutual agreement on the selection of the business mediators or contents, legal steps will be initiated by no earlier than one month from the failure of the negotiations.

§ 15. Electronic invoicing

ESA is also entitled to send invoices to the Contractual partner in an electronic form. The Contractual partner declares that it explicitly agrees with the sending of invoices in an electronic form by us.

§ 16. Further provisions

- § 16.1 Severability clause
Should one provision of these Terms of Delivery be or become legally invalid or non-enforceable in full or in part, this shall have no effect on the legal validity of all other business provisions. The contractual parties will replace the legally invalid or non-enforceable provision by a valid and enforceable provision, which shall as far as possible correspond with the contents and purpose of the legally invalid and non-enforceable provision.
- § 16.2 Form requirement
Amendments or addendums to a contract or these Terms of Delivery require a written form. This shall also apply to the change to the written form requirement. There are no oral collateral agreements.
- § 16.3 Offsetting
An offsetting against our claims with counter-claims, no matter of what kind, is excluded.
- § 16.4 Subcontractors
The use of subcontractors is permitted at all times.