

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

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 deliveries 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. The written form requirement is also deemed complied with if communications are sent by an electronic signature (e.g. DocuSign).
- 1.3 If the Customer does not accept our quotation within two (2) weeks of receipt thereof, we shall have the right to withdraw the quotation.
- 1.4 Cost estimates are non-binding and shall be subject to change, unless expressly agreed otherwise.
- 1.5 Our deliveries 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 deliveries are valid for the target market where ETAS places the ETAS product.
- 1.6 Pending the coming into force of new terms and conditions for supply, these General Terms and Conditions shall also apply to all future deliveries to the Customer.

### 2. Customer's Obligation to Cooperate

- 2.1 The Customer shall be obligated to fully inform us of any and all facts relevant to the performance of our deliveries and/or services. We shall not be obligated to verify data, information or other performances 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, 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.
- 2.2 To the extent that work is performed on the Customer's premises, infrastructure such as 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 delivery and/or performance of service if the required measures are not taken.

- 2.3 The Customer shall name a designated contact person, who shall be authorized to provide and receive information relevant for contractual performance as well as to receive software deliveries and to report complaints or deficiencies to us.
- 2.4 The Customer shall be responsible for the correct integration of our products and shall validate them prior to any productive use.
- 2.5 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).

### 3. Prices and Terms of Payment

- 3.1 Invoicing shall be based on the list prices valid at the time of delivery, plus statutory value added tax (VAT). VAT is not invoiced in cases meeting the pre-conditions for tax exemption of export deliveries, provided that suitable documentation is provided by the Customer. In the case of a tax-free intra-community delivery within the EU, the customer shall provide ETAS with the evidences required by the tax authorities, in accordance with the requirements of the national legislation of the country in which the shipment was taken over, within a period of 10 days. In the event that the evidence is not made available within the deadline, ETAS reserves the right to charge the respective national statutory value-added tax.
- 3.2 In case of digital supplied Software the licence fee does not include value added tax (VAT). Licensee is liable for VAT. Therefore invoices of Licensor must not contain VAT, but the indication: "Licensee is liable for VAT (Reverse Charge)" In case local VAT and/or other local tax are applicable in the territory of licensee, licensee must bear this tax. For recipients within EU: According to Article 44 and Article 196 VAT Directive 2006/112/EC. The valid VAT-IdNo. of the licensee must be provided before closing of contract. The VAT-IdNo. both of the licensee and of the licensor must be mentioned in the invoice.
- 3.3 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.
- 3.4 In the absence of any special agreement, prices and delivery shall be "DAP (Delivered At Place)", Incoterms® 2020, with packaging included.
- 3.5 We reserve the right to modify our prices appropriately if costs rise 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, provided 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.

- 3.6 For spare part deliveries and return shipments of defective merchandise that are not subject to warranty, we shall levy a reasonable flat rate carriage and packaging charge in addition to the remuneration for the performance rendered by ourselves.
- 3.7 Except as otherwise agreed upon in writing, invoices shall be due upon issuance of the 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.
- 3.8 We shall be entitled to make the delivery dependent upon concurrent payment (e.g. through cash on delivery or direct debit) or advance payment.
- 3.9 Moreover, we shall be entitled to offset payments against the oldest outstanding amount receivable.
- 3.10 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.
- 3.11 If, after the contract has been entered into, we become aware of circumstances may result in our claims appear to be in jeopardy due to Customer's inadequate ability to pay, we shall have the right to perform outstanding deliveries only against pre-payment or against the provision of security and, following the expiry of a deadline set to this effect, to terminate or rescind from the contract.

#### 4. Software Licenses

- 4.1 The allocation of software may be effected by means of a license for a limited or an unlimited time period. In both cases the Customer shall be granted a simple (non-exclusive) right to use the software in accordance with the license model stipulated in the contract. The usage by third parties (including affiliates) requires a separate agreement. Unless otherwise expressly agreed upon, a temporary license shall authorize the Customer to use the software for one (1) year after receipt of the same, and then terminate automatically. The use of software in a CLOUD environment or in another server infrastructure than the license server mentioned below requires the conclusion of a separate agreement.
- 4.2 Licensing models
  - (1) A **workstation license** (MACHINE-BASED LICENSE) authorizes the Customer to use the software on exactly one uniquely identified local physical machine ("workstation"). Each license may only be used once at any point in time on the defined workstation or on one virtual machine on that workstation. Unless otherwise determined in the product documentation or User Manuals, the use of the software through internet or network applications (e.g. Microsoft Remote Desktop or on a server) is not permitted.

- (2) A **centrally administered, personal single user license** (USER-NAMED LICENSE) authorizes the Customer to use the software by one uniquely identified user. Each license may be used once at any point in time on up to three workstations or virtual machines on these workstations, which obtain the license from a server for license management, allocated/controlled by the Customer ("License server").
  - (3) A **concurrent license** (FLOATING LICENSE) authorizes the Customer to use the software once at any point in time on a workstation or in a virtual machine on a workstation, which obtain the license from a license server allocated/controlled by the Customer.
  - (4) In the case of a **corporate license**, the software may be used simultaneously by any desirable number of the Customer's employees. This license model, however, does not allow the transfer to or use of the software (e.g. by means of sublicensing) by third parties.
  - (5) In the case of a **volume license**, the use of software is limited to a contractually agreed amount of reproductions per product, project or platform and/or within a specific period. The product, the project or the platform will need to be identified by means of an unambiguous designation, the processor/compiler-type used and the production years.
  - (6) In the case of a **product and/or project and/or platform licenses** the use of software is granted for a specific product, project or platform at the Customer without a contractually agreed limitation of the amount of reproductions. The product, the project or the platform will need to be identified by means of an unambiguous designation, the processor/compiler-type used, as well as in case of a development license the development years and in case of a production license the production years.
  - (7) A combination of license models is possible.
- 4.3 Unless otherwise agreed upon in writing, software will be delivered in binary code.
  - 4.4 In conjunction with the license models described in Article 4.2, subs. (1) – (3), the Customer shall activate the software by means of a license key obtained from ETAS. For the purpose of license control in the cases described in Article 4.2 subs. (1), the Customer shall additionally transmit us a unique anonymized identification of the workstation. In case of centrally administered, personal user license described in Article 4.2, subs. (2) the customer shall pass a unique identifier of the user to us. In the cases described in subs. (2) and (3), the Customer shall be obligated to equip a license server with an ETAS-supplied license checking software. In case of a license server the Customer shall transmit us a unique anonymized identification of the license server.
  - 4.5 Copies of the software may be created and installed exclusively for the purpose of authorized use (this includes the creation of a backup copy which may be used only for backup purposes).
  - 4.6 Except with the applicability of section 69e of the German Copyright Act (UrhG), the Customer shall not be entitled to modify, copy/reproduce, reverse engineer, translate or fragment parts of the software provided by us.

- 4.7 The Customer may not remove alphanumerical or other identification from the data media and shall transfer the data onto the back-up copy without modification.
- 4.8 Unless explicitly agreed upon in writing, the Customer shall not have the right to adapt the software.
- 4.9 ETAS software may contain framework components of third party vendors, which allow communication between different processes and programming languages. The Customer may use such technologies only for the purpose of developing product extensions (so-called "Add-Ons") on interfaces designed for such purpose.
- 4.10 The licensing models described in Article 4.2 of this Agreement permit, in principle, the transfer of the software and the associated perpetual license to third parties as long as the Customer informs us of such transaction without delay.
- 4.11 The Customer shall ensure that the transfer of the license to a third party does not allow for any kind of multiple use, and shall be responsible for the deletion of the software from any system remaining in its possession, such deletion to be confirmed by Customer vis-à-vis ETAS in writing. The Customer must reach a written agreement with the third party in which the said party accepts the provisions of these General Terms and Conditions for the Delivery of Hardware and Software Products. The Customer shall present a copy of the relevant parts of the agreement upon request. Insofar as the software is covered by a software maintenance contract, the same shall remain with the Customer and shall not be transferable. Upon request, we will offer a software maintenance contract to the assignee.
- 4.12 Unless otherwise explicitly provided for in the contract, the Customer is not allowed to make our software or any of its functionalities available to third parties (e.g., as service provider) through communication systems like the internet, e.g., as cloud application.
- 4.13 If the Customer has acquired the software together with a piece of equipment, the Customer may only transfer the software together with the same piece of equipment for use by a third party.
- 4.14 The specification of a new License server Host ID or MAC address for a license e.g. in the event of a replacement of a computer ("Rehost") is possible in the event of MACHINE-BASED-LICENSE once in 6 months, in the event of a USER-NAMED-LICENSE once in 12 months and in the event of a FLOATING-LICENSE once in 6 months. The customer shall delete the old license and any copies thereof once he received the new license. Such deletion shall be confirmed in writing by Customer vis-à-vis ETAS upon request by ETAS. This requires the deletion of the existing license. In case of misuse of the rehost frequency or the continued use of the initial license, we reserve the right to charge the Customer for resulting damages, e.g. lost license and maintenance fees. In case of transfer or a change of workstation or License server we reserve the right to charge the Customer for the services associated with such change.
- 4.15 Unless expressly agreed otherwise, updates and upgrades of software shall not be considered part of the software delivery. We reserve the right to make the availability of updates, upgrades, and new releases conditional upon the existence of a valid service contract.
- 4.16 In case of licensing of simulation models additional and/or deviating terms may apply.
- 4.17 If within the scope of warranty and/or software maintenance services a new software version is provided to the Customer, such version shall be subject to the above mentioned license conditions. Upon installation of such new version Customer's rights to use previous versions shall cease.
- 4.18 In case that other programs or program parts are provided to the Customer as Add-Ons with the licensed software, ETAS hereby grants the Customer a non-exclusive, non transferable, timely limited right to use such Add-Ons for testing and evaluation purposes. Unless expressly agreed otherwise in writing, the right to use such Add-Ons shall be limited to a period of 14 days from the date of installation („Grace Mode“). The Customer shall not be entitled to use the Add-Ons for series development/production and/or provide them to third parties (including sub-licensing). Articles 4.4 – 4.7 shall apply respectively.
- 4.19 In addition to these Terms and Conditions, the "Additional Quotation and Sales Conditions for Products regarding Open Source Software" of ETAS shall apply which are available under the following link [www.etas.com/AGB-ETASGmbH](http://www.etas.com/AGB-ETASGmbH) or will be provided upon request.
- 5. Software Maintenance**
- 5.1 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.
- 5.2 Unless otherwise agreed upon in writing software maintenance shall comprise the following services:
- delivery of generally available program updates, new program versions, which may include defect corrections, functional enhancements and/or adaptations to technical frameworks;
  - 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 or straightforward issues related to installation and use ("how-to" questions) and/or defects via telephone or e-mail during ETAS' regular business hours (Monday to Friday, except public holidays).
- 5.3 Software maintenance does not include support for
- the integration of the software and any influences such integration may have on third party products,
  - the 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.
- 5.4 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.
- 5.5 The agreed software maintenance services will only be provided in favor of the Customer. Customer may not transfer software maintenance to third parties.
- 5.6 Unless otherwise agreed upon, software maintenance will be provided for a period of one (1) year as of the delivery/provision of the software.
- 5.7 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.
- 5.8 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.
- 5.9 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 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.
- 6. Compliance Verification**
- 6.1 We shall have the right to verify the contractually authorized use of the software by the Customer, and thus Customer's adherence to the agreed licensing conditions, at all sites and for all environments in which an installation is made and/or used by the Customer. We shall have the right to delegate such verification to associated companies and/or independent auditors, provided that they have been bound to observe confidentiality on the basis of a written confidentiality agreement.
- 6.2 The Customer undertakes to create, retain, and make available to us or our auditors records, system outputs and other system data sufficient to provide auditable proof for a contractually agreed installation and utilization of the supplied software. In the event that the verification identifies discrepancies and/or indications that the Customer is failing to adhere to his obligations, we will inform the Customer thereof without delay.
- 7. Delivery, Delivery Deadlines, Delay**
- 7.1 The commencement of and adherence to agreed delivery dates 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.
- 7.3 Claims made by the Customer for compensation due to delayed delivery shall be governed by Article 11.
- 7.4 In the event that the Customer causes shipment or delivery to be delayed (default of acceptance) or if the Customer does not comply with its obligations to cooperate culpably, we shall be entitled to claim any loss or damage resulting thereof. Without proof of any actually accrued loss or damage, we shall be entitled to claim a lump sum fee for additional expenditures in the amount 0.5 % of the price of the products or services concerned for each inchoate month, but not exceeding the aggregate amount of 5 % of the price for the products or services concerned. The parties shall, however, have the right to provide evidence for higher or lower loss or damages. Partial shipments and corresponding invoices shall be permitted, unless these should be unreasonable for the customer.
- 8. Complaints and Notices of Defect**
- 8.1 The Customer shall serve written notice of recognizable quality defects immediately, however no later than 15 days after receipt of the products. Adhesive box labels, content labels and any tally sheets or control slips enclosed with the consignment shall be submitted with the notice. As regards other complaints of quality defects, the Customer shall provide similar notification immediately upon their discovery. The material date shall be the date on which we receive the notice of defect.
- 8.2 If a complaint is unjustified, we shall have the right to demand compensation for incurred expenses from the Customer.
- 8.3 Claims for quality defects shall be excluded if the notice of defect is not received by us within the time period stipulated above.
- 8.4 Claims for transport damages shall be made within the applicable legal and contractual limitations.
- 8.5 The Customer shall not have the right to refuse acceptance of deliveries due to minor defects.
- 9. Quality Defects**
- 9.1 The limitation period for claims on account of quality defects shall be 24 months after delivery of the products (passing of risk). The foregoing provisions shall not apply insofar as longer limitation periods are prescribed by statute pursuant to section 438 para. 1 No. 2 (Construction Work and Objects for Construction Work), section 479 para. 1 (Right of Recourse) and section 634a (Construction Defects) of the German Civil Code (BGB).
- 9.2 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 defect-free product. With software, the warranty claim shall be conditional upon the error being reproducible and that it occurs in the last revision level accepted or adopted by the Customer.

- 9.3 In 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 available to him that is necessary to remedy the defect. In case of defect remedying through delivery of a defect-free product, we shall be entitled to deliver a new revision level or version of the software.
- 9.4 The limitation period does not begin anew by virtue of subsequent performance.
- 9.5 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.
- 9.6 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 in accordance with the designated use of the product.
- 9.7 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.
- 9.8 The following shall not be deemed to constitute a defect as to quality:
- 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 hardware or software products.
- 9.9 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 in no way be liable for compatibility or interoperability of the software with Customer's data processing environment, in particular with the software and hardware products implemented by the Customer.
- 9.10 The Customer shall undertake all action which is necessary and 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 of all programs and data shall be conducted on a reasonable and regular basis.

- 9.11 We shall not be liable for the quality of the product based on the design or choice of material, insofar as the design or the material has been stipulated by the Customer.
- 9.12 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.
- 9.13 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.
- 9.14 In all other respects, our obligation to compensate for damages and/or for futile expenditures as contemplated by section 284 of the German Civil Code (BGB) on account of quality defects shall be governed by the terms of Article 11. Claims made by the Customer concerning quality defects other than those covered by this Article and Article 11 shall be excluded.
- 9.15 For any defects of title that do not arise from a violation of the property rights of third parties, the provisions of this Article 9 shall apply mutatis mutandis.

#### **10. Copyright and Related Protective Rights**

- 10.1 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.
- 10.2 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.
- 10.3 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).
- 10.4 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 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 the first sentence of this Article, even if the infringement of the Protective Rights has not yet been recognized by final and valid judgment or acknowledged by us.
- 10.5 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 defense against claims by third parties.

- 10.6 Claims by the Customer shall also be excluded if the products 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.
- 10.7 In all other respects, our obligation to pay damages in case of infringements of Protective Rights shall be governed by Article 11.
- 10.8 Article 9.1 applies mutatis mutandis to the limitation period for claims based on infringements of Protective Rights.
- 10.9 Claims other than those made by the Customer on account of an infringement of third party Protective Rights governed by this Article 10 and Article 11 shall be excluded.
- 10.10 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.
- 10.11 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.
- 11. Compensation for Damages, Product Liability**
- 11.1 We shall be liable for damages and compensation of futile expenditures as defined in section 284 of the German Civil Code (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 guarantee with respect to quality or durability,
  - breach of material contractual duties,
  - compulsory liability pursuant to the German Product Liability Act or
  - any other compulsory liability.
- 11.2 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.
- 11.3 Our 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 products are therefore exclusively intended for operation by qualified specialist personnel. We shall not assume liability for damages caused by improper operation or by use in a manner other than that intended.**
- 11.4 When using our 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 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).
- 11.5 We shall not assume liability for effects to or impairment of our 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.
- 11.6 In the event that a defect or fault in the licensed software 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.
- 11.7 The foregoing provisions shall not be construed as reversal of evidence.
- 11.8 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.
- 12. Retention of Title**
- 12.1 We shall retain title to the goods delivered, pending full performance of all claims to which we are entitled on the basis of the business relationship now and in future.
- 12.2 Should the products in which retained title require maintenance, such maintenance shall be carried out at Customer's expense.
- 12.3 The Customer shall have the right to process or connect our products within the normal course of its business. We shall acquire joint ownership in the products created by such processing or connection as security for our claims set forth in Article 12.1; the Customer transfers this joint ownership to us already at this point. As a subsidiary contractual duty, the Customer shall keep in safe custody, free of charge, the items in which we hold joint ownership. The proportion of our joint ownership share shall be determined by the relationship between the value of our product and the value of the item (invoiced amount incl. VAT) created through the processing or connection at the time of such processing or connection.

- 12.4 The Customer shall have the right to resell the products within the normal course of business against pre-payment or subject to the retention of title. Already at this point, the Customer shall assign to us in full all of the claims to which it is entitled from such sale of our product together with all ancillary rights, irrespective of whether our product has been further processed or not. The assigned claims shall serve as security for our claims pursuant to Article 12.1. The Customer shall have the right to collect the assigned claims. We may revoke the Customer's rights set forth in this Article 12.4 if the Customer fails to duly perform its payment duties to us, in particular if the Customer is in default of payment, suspends payment, or if insolvency or similar proceedings for the purpose of debt relief have been filed. In addition we shall be entitled to revoke Customer's rights set forth in this Article 12.4, if an impairment of the Customer's financial situation occurs or is threatening to occur or if the Customer should become insolvent.
- 12.5 Upon request, the Customer shall notify us immediately in writing as to whom the Customer has sold the products in which we hold title or joint title, and of the claims to which the Customer is entitled from such sale; the Customer shall also be obligated to issue to us at its expense publicly certified deeds relating to the assignment of the claims.
- 12.6 The Customer shall not be entitled to effect any other disposals of the products to which we have retained title or joint title or of the claims assigned to us. The Customer shall be obligated to notify us immediately of any seizures of or other impairments to the rights of products or claims belonging to us either in whole or in part. The Customer shall bear all the costs which must be incurred to cancel the access of third parties to our property with reserved title or serving as security and to recover the property items, insofar as it is not possible to collect these from third parties.
- 12.7 If the value of the security existing for us exceeds the amount of our total claims by over 10 %, we shall release security to this extent at our discretion at the Customer's request.

### 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. 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 14.1 (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 one of the provisions of these General Terms and Conditions or 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 are 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 (for proceedings at the court of first instance, the district court in 70190 Stuttgart), Germany 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 bound 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