

General Service Conditions of esmo AG

A General Information, Scope of Application

- 1 Present *General Service Conditions of esmo AG* shall also apply without any future reference or agreement for any and all – including any prospective – business relations of esmo AG (hereinafter referred to as "esmo", "we" and/or "us") with our customers, if the customer is an entrepreneur (section 310, subsection 1 in conjunction with section 14 of the German Civil Code), or a legal entity under public law, or a separate estate under public law, insofar as such business transactions relate to the provision of services. These General Service Conditions shall apply even if they are not separately and expressly agreed again. Any deviating general terms and conditions of the customer shall not become subject of our business relationship with the customer despite the fact that we may not respond or render our services without any express objection. Present *General Service Conditions* shall not apply to consumers (section 13 of the German Civil Code) – they shall, furthermore, not affect the customer's claims arising from defects of the systems/plants supplied by us.
- 2 Within the scope of a service contract, we shall commit to perform an assignment/operation, not a success. We shall only render consulting or work services to the customer if we have expressly agreed this in writing within the framework of a separate contract, and in this particular case with regard to any consulting services based on sections 611 or 675 of the German Civil Code. In this case, the provisions agreed between the customer and us shall be applicable and, unless we have agreed otherwise with the customer, the provisions as set forth in section B, subsections 1 to 5 as well as section E of present General Service Conditions shall apply in addition.
- 3 The provision of installation services in connection with the sales and delivery of moveable goods shall be based on the *General Terms and Conditions of Sale and Delivery of esmo AG*. The provision of software in connection with the sale and delivery of moveable goods is governed separately by our *General Terms and Conditions for the Provision of Software*.
- 4 Any legally relevant statements and notifications to be made to us by the customer (e.g. acceptance of the contract, setting of deadlines, notification of defects, declaration of withdrawal or reduction) shall require written form in order to be effective.

B Contracts for the Provision of Services

1 Conclusion of the Contract

- 1.1 Our offers/quotations are subject to confirmation and non-binding, unless they have been expressly marked as binding or contain a particular acceptance period. The acceptance of our non-binding offer shall be effected by our written order confirmation, which determines the scope of our obligation to perform. Insofar as the customer does not accept our binding offer without any modification, a contract shall only be concluded at the time of our written acceptance. Any verbal ancillary agreements made prior to the conclusion of the contract shall become null and void upon the conclusion of the contract, unless it emerges from them that they shall continue to be binding henceforth.
- 1.2 Any information contained in the quotation and contract documents, technical documentations, brochures, catalogues, or any other descriptions of and/or documents regarding our services – also in electronic form – relating to goods are approximate unless they have expressly been marked as binding. We shall only assume guarantee if expressly specified as such by us prior to conclusion of the contract.

2 Period of Delivery, Place of Delivery, and Default in Delivery

- 2.1 Our proposed deadlines and dates for the performance of our services shall only be deemed approximate, unless a fixed deadline or date has been expressly confirmed or agreed.
- 2.2 A prerequisite for compliance with agreed and binding performance dates and deadlines shall be that the customer provides us with all required information and documents in a timely manner, fulfils any other obligations to cooperate incumbent upon her/him, and does not default on essential contractual obligations (in particular payment). In case the customer is in default of acceptance, fails to cooperate, or delays our delivery for other reasons within the customer's area of responsibility, we shall be entitled to claim compensation for the resulting damage, including additional expenses. Any other statutory claims we may have (e.g. our right to terminate the contract) shall remain unaffected thereby.
- 2.3 If prepayment before delivery or partial payment has been agreed between the customer and us, the delivery periods shall be extended accordingly pending payment of due claims by the customer. Unless a specific period for the

provision of cooperation services has been agreed, an extension of the corresponding delivery period shall commence with our request for cooperation. Irrespective of our other rights, we may demand from the customer an extension of performance periods, or a deferral of performance dates by the period within which the customer does not fulfil her/his obligations towards us. We shall not be deemed to be in default if a delayed delivery occurs outside the Federal Republic of Germany due to obstacles caused by German, U.S. American, or any other applicable national, EU, or international regulations of foreign trade law, by embargos or other sanctions, or due to any other circumstances beyond our control. We shall inform the customer immediately of the beginning and end of such circumstances.

- 2.4 In case we are unable to comply with our contractual obligations or are unable to comply with them in due time, as a result of force majeure occurring after conclusion of the contract (e.g. direct or indirect consequences of fire, natural disasters, acts, restrictions, or omissions attributable to domestic or foreign government authorities, strikes, industrial disputes, general material shortages on the market, unrest, transport delays), or any other events occurring after conclusion of the contract beyond our control – without any fault on our part – the performance periods shall be extended accordingly. The foregoing shall also apply if such circumstances affect our sub-suppliers, and also if such circumstances occur during an already existing delay on our part. If the customer cannot reasonably be expected to accept the delivery or service as a result of the delay, she/he shall be entitled to withdraw from the contract with us by immediate notification, which shall require text form to become effective. Insofar as such events render performance significantly more difficult or impossible for us, and the impediment is not only of a temporary nature, we shall be entitled to withdraw from the contract.
- 2.5 The prerequisites for default in performance shall be governed by applicable statutory provisions, whereby in any event, however, a reminder issued by the customer has to precede. Insofar as the performance dates or periods are extended in accordance with subsection 2.3 herein, or insofar as we are exempt from performance pursuant to section 326 of the German Civil Code, any claims for damages on the part of the customer shall be excluded. Our right to claim damages for non-performance by the customer or any further claims shall remain unaffected thereby.
- 2.6 The customer's rights, as set forth in section 4 of present General Service Conditions, as well as our statutory rights shall remain unaffected, particularly in cases where the obligation to perform is excluded (e.g. due to impossibility, or unreasonableness of performance, or subsequent performance).
- 2.7 In the event that we are in default of performance, the customer shall be entitled to grant us a reasonable grace period to effect performance. Such period shall be deemed unreasonable unless it amounts to at least two (2) weeks. If this period expires to no avail, the customer shall be entitled to withdraw from the contract. If we have already rendered partial performances, the customer shall not be entitled to withdraw from the entire contract unless the customer has no reasonable interest in the partial performance already provided.
- 2.8 Unless otherwise agreed, our remote maintenance services shall be performed at our headquarters in Rosenheim, Germany, or alternatively, at the location agreed with the customer.

3 Prices, Terms of Payment

- 3.1 We shall render our services on the basis of our price list valid at the time of contract conclusion. The prices quoted are net prices, and thus do not include the legally applicable value-added tax. Payments shall be made free payment office in Rosenheim, Germany.
- 3.2 In the event that any cost component changes within the total costs (e.g. personnel costs or third-party-related material costs), we shall be entitled to adjust the price proportionately, and in proportion to the respective cost component upon expiration of four (4) months as of the date of contract conclusion. The same shall apply in the event that an individual contract is based on our price list, and performance is rendered later than four (4) months subsequent to the date of contract conclusion. The new price shall apply effective the date of receipt of the written notification regarding the price adjustment.
- 3.3 Any monetary claims shall be due upon invoicing, and payable within thirty (30) days of receipt of invoice.
- 3.4 Upon expiration of the payment deadline the customer shall be deemed to be in default. During default, our monetary claim shall be subject to default interest at the applicable statutory default interest rate. We shall reserve the right to assert further claims for loss caused by default.
- 3.5 The customer shall only be entitled to set-off insofar as her/his counterclaim has been legally established or acknowledged by us. Counterclaims shall only be admissible if they pertain to the same contractual relationship.

- 3.6 If, upon conclusion of the contract, it becomes evident that our payment claim is at risk owing to the customer's inability to pay, we shall be legally entitled – pursuant to applicable statutory provisions – to refuse performance and, after having set a deadline, if required – to withdraw from the contract (section 321 of the German Civil Code). Any statutory provisions on the dispensability of setting deadlines shall remain unaffected thereby.
- 3.7 Without our prior written consent, the customer shall not be entitled to assign her/his claims against us, or have them collected by third parties – section 354 a) of the German Commercial Code shall remain unaffected thereby.
- 3.8 If the customer is obligated to make payment to us from several debt relationships, and if a payment made by her/him is not sufficient for the repayment of all payment obligations, we shall be entitled to first set off against her/his older debts. The customer shall be informed of the type of settlement made. If the customer has to pay interest and costs in addition to the principal claim, we shall be entitled to first set off against the costs, then against the interest, and finally against the principal claim any payment not sufficient to settle the entire debt.
- 3.9 Any claims of the customer for damages or reimbursement of futile expenses shall exclusively be governed by section 4 herein.

4 Liability

- 4.1 Our liability, unless otherwise provided by law, shall be limited to our coverage under our business liability insurance with the exception of damage –
 - resulting from injury to life, body, or health, attributable to an intentional or negligent breach of duty, or any other intentional or grossly negligent conduct on our part or on the part of any of our legal representatives or vicarious agents;
 - arising from the absence or loss/expiration of a guarantee granted by us;
 - resulting from intentional or grossly negligent breach of duty or otherwise on intentional or grossly negligent conduct on our part or on the part of any of our legal representatives or vicarious agents;
 - based on the fact that we fraudulently concealed a defect.
- 4.2 Unless otherwise agreed in subsection 4.1 herein, we shall be liable – limited to compensation for foreseeable loss/damage typical for this type of contract – for such loss/damage resulting from a simple or slightly negligent breach of essential duties/obligations (cardinal duties) on our part or on the part of any of our legal representatives or vicarious agents. Cardinal duties are defined as obligations, the fulfilment of which is essential for the proper performance of the contract, and on the observance of which the customer may rely.
- 4.3 Unless otherwise agreed in subsections 4.1 and 4.2 herein, our liability shall be excluded for any cases of slight negligence.
- 4.4 The objection of contributory negligence (as set forth in section 254 of the German Civil Code) shall remain unaffected thereby.
- 4.5 The provisions of present section 4 shall also apply mutatis mutandis for the benefit of any of our executive bodies, legal representatives, employees, and other vicarious agents, irrespective of whether contractual or statutory claims are concerned, and mutatis mutandis for any liability regarding the reimbursement of futile expenses as well.
- 4.6 The customer may only withdraw from or terminate the contract due to a breach of duty, not consisting of a defect, to the extent that we are responsible for this particular breach of duty.
- 4.7 Any damage claims shall be exclusively governed by statutory limitation periods.

5 Ownership and Industrial Property Rights to Documents

- 5.1 We shall reserve any and all property rights, copyrights as well as industrial property rights to any documents such as catalogues, technical documentation (e.g. drawings, plans, calculations, cost estimates, references to DIN standards), or any other product descriptions made available to the customer, irrespective of whether such documents have been transmitted in writing or verbally, and irrespective of whether they have been transmitted electronically or physically. Our *General Terms and Conditions for the Provision of Software* shall apply to any provision/transfer of software.
- 5.2 Only with our express written consent may the documents referred to in present subsection 5.1 be reproduced/copied or made accessible to third parties, or in the event of the transfer of software, as set forth in and pursuant to our *General Terms and Conditions for the Provision of Software*. The customer may only use the

documents for the contractually agreed purpose, and shall return them to us upon request, including any copies thereof, unless negotiations entail the conclusion of a contract, or if they are no longer required by the customer in her/his regular course of business.

C Maintenance Services

1 Scope of Application

The following regulations shall supplement the provisions as set forth in sections A and B of present General Service Conditions.

2 Remuneration

Unless otherwise agreed with the customer in a separate contract, any maintenance services shall be remunerated on the basis of working time and material expenditure. We calculate the prices/charges for working and travel time, valid on the day of the service performance, including – if required – surcharges for any work performances under adverse/aggravating circumstances as well as for planning and supervising. Any ancillary expenses, in particular for overnight accommodation and travel of our personnel, shall be borne by the customer.

3 Involvement of Subcontractors

We shall be entitled to perform the maintenance services with our own personnel or have them performed by a subcontractor commissioned by us. The selection of the subcontractor shall be at our sole discretion, and does not affect our obligations towards the customer.

4 Customer's Obligation to Cooperate

4.1 The customer shall at her/his own expense –

- designate a qualified staff member, prior to the commencement of the installation work who shall be available as a point of contact for the entire duration of the work performance,
- and, furthermore, take all measures required for the protection of persons and property at the installation site, in particular, instruct our personnel on any applicable safety regulations, insofar as these will be relevant for the protection of our personnel or property. This shall also apply to any operating instructions and warning notices for third-party devices which are either part of our installation services or may be affected by the setup/installation operations.

4.2 Technical Support/Assistance of the Customer

4.2.1 The customer shall commit to provide technical support/assistance at her/his own expense, in particular, in order to –

- (a) provide any appropriate auxiliary personnel in the number and for the time required to conduct the respective work performance – we shall not assume any liability for auxiliary personnel though;
- (b) undertake all earthwork, building, bedding, and scaffolding work required, including the procurement and provision of all necessary building materials;
- (c) provide all necessary equipment and heavy tools (e.g. lifting devices, compressors, etc.) as well as all supplies, materials, and appliances required (e.g. construction wood, wedges, supports, dowels, cement, plaster, sealant, etc.);
- (d) provide heating, lighting, operating power, water, including all required connections;
- (e) provide adequate, dry, and lockable rooms for the storage of our personnel's tools and equipment as well as to allocate parking spaces on the premises, located as closely as possible to the installation object;
- (f) transport the parts/components to be installed on site, to protect the installation site and all materials against any harmful effect and influences as well as to clean the working area;
- (g) provide adequate, theft-proof common/break rooms and offices/work rooms (with heating, lighting, washing, and sanitary facilities) as well as first aid precautions/material for our personnel;
- (h) provide all materials and to perform all measures/operations required for the adjustment of the object to be installed, and in order to perform subsequent, contractually scheduled testing – this comprises

appropriate communication facilities and an internet access in the immediate vicinity of the installation object.

4.2.2 The customer's technical assistance shall ensure that all maintenance work may commence immediately upon arrival of our personnel, and be carried out without any delay.

4.2.3 In the event the customer does not comply with her/his obligations, we shall be entitled, yet not obligated, to perform the actions incumbent on the customer in her/his place and at her/his expense after specifying a deadline.

D Remote Maintenance Services

1 Contractual Relationship, Subject Matter of the Contract

1.1 Our use of the term "remote maintenance" defines the technical operations analysis of the customer's system/plant, the provision of assistance and support in handling and remedying errors and failures as well as the documentation of all technical processes. Depending on the agreement concluded with the customer, remote maintenance services may be provided via voice-based remote communication and/or online connection to the customer's system/plant.

1.2 We offer various models/options of remote maintenance services. The customer may have opted to conclude a contract with us on the long-term provision of remote maintenance services, or to place individual remote maintenance service orders on demand, either verbally or in writing.

2 Remuneration

Remuneration shall be based on the contract with the customer, governing the permanent provision of remote maintenance services. If, however, no such contract has been established with the customer, remuneration shall be based on our price list for the provision of remote maintenance services, valid on the day of the service performance – our most current price list shall be available upon request at any time.

3 Technical Requirements

The customer shall commit to make available and maintain at her/his site any technical conditions required for the provision of remote maintenance service (in particular, an internet connection granting us access to the respective system/plant) at her/his own expense.

The customer shall furthermore be responsible to ensure that the software installed on the system/plant is both suitable for/compatible with the remote maintenance services contracted with us and state-of-the-art.

4 Customer's Obligation to Cooperate

Upon consideration of the nature of remote maintenance services, the cooperation of the customer is an indispensable prerequisite in order to achieve successful performance results. The customer's obligation to cooperate shall necessitate and comprise as follows –

- the provision of trained staff;
- compliance with any and all instructions and directives given by us;
- the provision and, if required, the transmission of any information on the condition of the system/plant, on any maintenance measures taken, on the occurrence of failures/malfunctions/breakdowns, on any error messages received as well as on any modifications of/changes to the system/plant, made without our knowledge and cooperation;
- the protection of persons and property at the location of the system/plant in order to ensure that any remote maintenance measures may be performed properly and safely;
- the preparation of backup copies of all data required for system/plant operations, prior to any remote maintenance service performance;
- the availability of all documentation (operating instructions, user manuals, check lists etc.) required for system/plant operations, previously provided by us.

5 Availability of Services

The availability of remote maintenance services shall be subject to the contract concluded with the customer.

6 Confidentiality and Data Security

- 6.1 The customer shall ensure that any user identifications and passwords assigned to her/him will only and exclusively be disclosed to authorized persons.
- 6.2 We shall commit to use any customer data (e.g. production secrets, product-relevant data etc.), communicated and/or disclosed to us, exclusively for the purpose of providing and conducting our contracted remote maintenance services, to treat such data confidentially, and not to pass them on to third parties. We shall be entitled, however, to use all insights gained in the course of the provision of such remote maintenance services in order to improve our own products and services.
- 6.3 The customer shall be obligated to conduct data backups at regular intervals.
- 6.4 Both contracting parties hereto shall take adequate and appropriate precautions in accordance with current state-of-the-art technologies against the penetration of malware (malicious software e.g. viruses, worms, Trojans) in the software they use. In the event of malware occurrence at one of the contracting parties hereto, which might impair the remote maintenance service performance or be transferred to systems of the other contracting party, this respective contracting party shall be informed at once and without any undue delay.

E General and Final Provisions

- 1 Present General Terms and Conditions as well as any and all legal relations between us and the customer shall be governed exclusively by the laws of the Federal Republic of Germany to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods.
- 2 If we provide present General Terms and Conditions to our customers in German and/or English, the German language version shall be deemed authoritative in the event of any deviations/discrepancies.
- 3 Unless otherwise stated in our order confirmation, the place of performance for service performance and payment shall be Rosenheim, Germany.
- 4 The exclusive – as well as international – place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship with merchants, legal entities under public law, special funds under public law and/or customers, who do not hold a general place of jurisdiction in the Federal Republic of Germany, shall be Traunstein, Germany. We shall, however, also be entitled to take legal action at the customer's general place of jurisdiction.