

General terms and conditions of EasternGraphics GmbH for supply of services: Services T&C (Updated 2010-12-15)

I. Applicability

EasternGraphics GmbH's terms and conditions concerning services ("Services T&C" or "ServT&C") are applicable to all contractual relationships with customers arising from or associated with consultancy and other services provided by EasternGraphics GmbH ("EGR") and are to be understood as an integral element of the contract insofar as nothing to the contrary has been individually agreed in writing between EGR and the customer. The ServT&C are complementary to the GT&C (general terms and conditions), which are themselves, besides the ServT&C, an integral part of any services contract.

II. EGR's services

EGR shall, on being commissioned so to do by the customer, provide the customer with various services in connection with selection, introduction, installation, use and customizing of EGR software products (EGR software). The services to be provided in the particular case by EGR shall be laid down in the price quotation, confirmation of order or service contract (as appropriate). The ServT&C shall be applicable in particular to the performance of the following services:

- establishment of the customer's precise requirements;
- planning and development of a scheme by which the EGR software can be introduced;
- project support and consultancy during the introduction of EGR software;
- piloting the use of the relevant EGR software in the customer's enterprise;
- advice on installation and during introduction of the EGR software selected by the customer;
- support of the customer while the readiness for operation of the EGR software is being achieved and optimized;
- consultancy on customization and extension of the EGR software;
- instruction and training of users and/or employees of the customer (for instance in standard training courses or workshops) on the optimal use of the EGR software;
- development and adaptation of software and data.

III. Scope and performance of services

(1) EGR shall determine the hours needed for the work and the place of work, taking account of the customer's preferences.

(2) EGR shall agree the precise aim, the scope of the task and the procedure in conjunction with the customer. This shall also apply to agents of EGR and other persons employed by EGR in the fulfilment of the contract.

(3) Insofar as EGR performs support services for the customer in the context of a project, the customer shall be under an obligation to establish at regular intervals whether the written aims of the project are being fulfilled. In this the project management and responsibility for the project shall rest exclusively with the customer. EGR and the customer shall agree unanimously not only the type and form of representation for the results and/or the documentation and reports on the project work but also the timing of such and shall thereby establish the tasks to be undertaken by EGR. In appropriate cases the scope of the contractual obligations shall be construed as those in a list of specifications drawn up by EGR in discussion with the customer.

(4) EGR shall entrust the work to qualified employees and shall continuously support and inspect their work while they are carrying out the commission. EGR shall use its own judgement to decide which employees are to be deployed or replaced.

(5) If employees of the customer are providing support during projects, the customer shall ensure that his or her employees are managed and controlled by a suitable employee of the customer. Before project support begins, the contact person on the customer's side shall be named to EGR.

(6) If EGR is supporting the customer on the customization and extension of the relevant EGR software and in accordance with the customer's specification, this support shall be incumbent on EGR but not any guarantee or maintenance of the particular version unless this has been expressly agreed and contracted.

(7) EGR shall perform its services during EGR's normal hours of business, 9am to 5pm on Monday to Thursday and from 9am to 2pm on Friday excepting German public holidays. Any service performed outside these hours shall be paid for on the basis of a separate agreement.

IV. Payment, terms of payment

(1) The services performed by EGR shall be paid for by the customer on a time basis. The rate of pay per unit of time shall be taken from the pricelist of EGR applicable at the time of confirmation of order unless otherwise agreed. The time to be paid for by the customer shall include that of the relevant activity of EGR employees, and in particular their participation in discussions, project meetings and any preparatory and supplementary work carried out elsewhere than on the customer's premises, for example at EGR's offices. Prices shall be understood to be net, with the addition of turnover tax legally applicable in the case.

(2) All incidental expenses vouched for by EGR, such as those in respect of necessary travel and overnight accommodation, shall be repaid to EGR by the customer in addition. Unless otherwise agreed, the prices shall be taken from the EGR pricelist.

(3) Any figures for time required given in the price quotation, confirmation of order or service contract (as appropriate) shall be construed as an estimate only. Calculation shall be in accordance with the actual time taken for the performance of services. EGR shall inform the customer of any potential overrun of the time originally estimated as soon as this becomes apparent to EGR. Insofar as the customer requests a binding upper time limit, this is to be laid down and agreed expressly in writing.

(4) Services being performed over several months shall be invoiced by EGR to the customer at the beginning of each month for the services performed in the preceding month. Services performed in a shorter period shall be invoiced by EGR on their conclusion.

(5) If services fail to be performed or to be completed for reasons attributable to the customer, EGR shall be permitted to invoice for these notwithstanding, but with a deduction for any time and effort saved.

V. Liability for consultancy and other services

(1) If it is incumbent on EGR to provide consultations per se and if it is the customer's sole responsibility to put into practice the knowledge or results gained from the consultations or introduce this into a system, EGR shall bear no liability for the correctness or suitability of the advice given, in particular no liability in respect of whether the purpose pursued with the aid of the consultations requested can be fulfilled.

(2) If EGR provides or if it is incumbent on EGR to provide consultancy or other services solely in association with an activity for which success is indefinite, EGR shall be liable only for the provision of the agreed services in accordance with the contract.

VI. Liability for defects and acceptance of services dependent on success

(1) If the consultancy and other services performed by EGR are those which have been agreed (if appropriate, in the specifications) and if the service is dependent on its success in use, the following terms and conditions [(2) to (12)] shall apply in addition to those above:

(2) The customer shall immediately on conclusion of the service dependent on success in use make a written declaration of acceptance of completion of service to EGR. The customer shall carry out proper tests of functioning of practical relevance to establish whether the service fulfils the agreed specifications. No refusal or partial refusal of acceptance by the customer shall ensue on insignificant defects.

(3) EGR shall support the customer in the carrying out of the tests, insofar as this is necessary and agreed. The testing phase shall last 4 weeks at most. When the tests of functioning have successfully concluded and at the latest within 7 days of commissioning the service shall be construed as having been accepted.

(4) If deviations which fall short of the specifications for the service are found during the tests of functioning, they shall be recorded as defects in the declaration of acceptance. Deviations which are qualitatively or quantitatively better than the specifications shall not be construed as defects.

(5) The customer shall have a duty immediately to inform EGR in writing of any defects arising and to state and describe how the defect manifests itself, what its effects are and under what circumstances it appears. There shall be a right to claim in respect of the defect only if the defect notified is reproducible or can be demonstrated in machine-generated output.

(6) EGR shall remedy a defect properly notified by the customer by way of supplementary performance, i.e. by repair or replacement. The right of choice of the means of the supplementary performance for the remedy of a defect shall lie in the first instance with EGR. The right of EGR under the applicable law to refuse the chosen type of supplementary performance shall remain unaffected. Insofar as such is reasonable for the customer, EGR shall have the right to provide the customer with a new version of the software by way of remedy of defect (for instance an update or patch), which either no longer contains the defect complained or will remove it; or to provide an alternative solution.

(7) If the supplementary work has failed to provide a remedy within a reasonable period, the customer shall set a reasonable extension for EGR in writing as long as to set such an extension is reasonable for the customer and as long as EGR has not made a final refusal of supplementary work. If both of these conditions are fulfilled, the customer shall be permitted to withdraw from the contract at the end of the extended period if it has brought no success, or to reduce the agreed payment and if appropriate because EGR is at fault to demand compensation in lieu of performance or recompense for time and effort applied in vain. When the last extension has brought no success, the customer shall declare within a reasonable period whether he or she is continuing to demand supplementary performance or is claiming the rights named above. There shall be no right of withdrawal in the case of insignificant defects. All claims by the customer to supply of defect-free software shall lapse on declaration by the customer of withdrawal or of reduction. The customer shall have no right to remedy the defect him or herself at the cost of EGR.

(8) EGR shall have no liability in respect of defects in the service which are caused by statements in the specifications which are incomplete or wrong.

(9) EGR shall have no liability in respect of a defect if a defect has arisen after alterations to the conditions of use or operation, after alteration of the system environment, after faults in installation or operation (as long as these faults are not caused by defects in the user handbook), after manipulation of the service or software such as modification, adaptation, connection to other programs and/or after use in breach of contract: unless the customer proves that the defects were already present on transfer of the software and/or the performance dependent on success or have in no way been caused by the events listed.

(10) Should it transpire that a defect notified by the customer does not in fact exist or is not caused by the software, the customer shall pay EGR for the effort involved in analysis and other work in accordance with calculations based on the current price list of EGR for the tasks in question.

(11) EGR shall be entitled in the case of justified withdrawal on the part of the customer to demand reasonable compensation for the extent to which the customer has benefitted by using the software up to the dissolution of the contract. This compensation for benefit from use shall be calculated on the basis of a total period

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of four years of use of the software, with a reasonable deduction for the impairment of the software due to the defect which caused the withdrawal.

(12) Any claims by the customer in respect of defects shall lapse unless made within a year of transfer of risk.

VII. Customer's duty of cooperation

(1) The customer shall, if necessary, make available to the EGR employees working on his or her premises suitable rooms in which it is also possible to store documents, equipment and storage media.

(2) Where required, the customer shall make available to EGR without charge all necessary equipment and enough of it, shall without charge grant EGR's employees access at all times to the information which is essential to their activity and shall provide them with all necessary information in due time.

(3) The customer shall support EGR fully and without charge, for instance by creating the operational preconditions for the performance of the services. In particular, the customer shall make available employees, work space, hardware and software, data and telecommunication equipment and shall cooperate on matters of specification and testing. The customer shall ensure that EGR and/or its employees have access to the system environment and shall make it possible to access the software by remote data transfer, insofar as there are no weighty reasons against this.

(4) Insofar as EGR installs software for purposes of testing while providing the customer with consultancy, it shall be the duty of the customer to ensure a suitable system environment is available in due time. (2) The customer shall be under an obligation to test all functions of this software under the customer's system environment conditions before commissioning the software. EGR shall not be liable for loss of data if the harm would not have arisen if data in the customer's sphere of responsibility had been duly backed up. Data shall be construed as duly backed up if the customer can prove that he or she stores it daily in a machine-readable form and ensures thereby that the data can be retrieved with reasonable effort.

(5) The duty of cooperation described above shall constitute a substantial contractual obligation. If the customer is in breach of his or her duty of cooperation, EGR shall be under no obligation to provide its services. EGR shall have the right to terminate the software rental contract at the end of a month with two weeks' notice if the customer is in repeated or serious breach of obligation.

VIII. Rights of use

(1) The customer shall have the right to make use of the services performed by EGR for the contractually prescribed purposes. EGR shall be entitled to benefit from and to use the copyright-protectable results of the joint work for purposes of maintenance, guaranteeing and further development of the program.

This shall apply in particular also to all documents and other materials created by EGR while performing the services for the customer.

(2) EGR shall be under no obligation to transfer the relevant source code and development documentation over and above the transfer of the services including any user documentation.

(3) Insofar as EGR makes use of or adapts standard software the rights of use of such shall be determined in accordance with Clauses IV. and V. of EGR's general terms and conditions concerning software transfer (SoftT&C) and/or in accordance with the rights of use established in the relevant contract.

IX. Training at the customer's site, standard training courses

(1) EGR shall be permitted to provide training at the customer's registered office or a place named by the customer. The customer shall in this case ensure at his or her own cost that suitable rooms and an adequate number of computers per participant are available on the training dates agreed. The software on which the training is to take place shall have been installed onto these computers.

(2) The price of training shall include the necessary training documents. Any travelling, catering and accommodation costs shall be borne by the participants and/or by the customer. Participation for less than the full time shall not justify reduction of the payment agreed for the training.

X. Changes to and cancellation of training courses, et cetera

(1) EGR shall reserve the right to deploy a substitute trainer for training events such as training at the customer's premises and standard courses, to make minor alterations to the content of the training, to alter the time or venue for the training and, where necessary for good reason, to cancel training events. Should this last case apply, any training charges already paid shall be fully reimbursed.

(2) The customer shall inform EGR immediately if it is impossible to keep to agreed training dates. The customer shall be obliged to pay 25 % of the agreed sum to EGR in case of cancellation of a training date up to two weeks beforehand. Should a training date be cancelled up to a week before commencement, 50 % of the payment shall be due, and thereafter 75 %. These lump sums due in respect of cancellation shall only not apply if the customer proves that no harm or only very slight harm has ensued.

(3) For the deadlines to be met, the date of cancellation shall be the date of receipt by EGR in the post, by fax or by email.

(4) Any reproduction in whatever form of the training documents (or extracts of them) transferred to the customer in print or as electronic data shall require the prior written approval of EGR.

XI. Applicability of the GT&C

The terms of the GT&C relating to such matters as conclusion of contract, supply, payment and means of payment, reservation of ownership and rights, liability, limitation, place for hearings, etc. shall likewise be applied in an appropriate manner to contractual performance of the supply of consultancy and other services.