

General Terms and Conditions of EasternGraphics GmbH for Supply of Services "Services GTC" (Status 2023-01-01)

I. Scope of Application

1) The General Terms and Conditions of EasternGraphics GmbH, Albert-Einstein-Straße 1, 98693 Ilmenau, Germany ("EGR") for supply of services shall apply to all contractual relationships with customers in connection with the provision of services and shall be deemed to be an integral part of the contract unless otherwise agreed in writing in an individual agreement between EGR and the customer.
(2) The Services GTC shall be supplemented by the General GTS of EGR, which shall be deemed to form part of the contract in addition to the Services GTC.

II. Services

EGR shall; on the basis of a separate order from the customer, provide services in connection with software and services which the customer receives or has received from EGR. The services to be provided by EGR in individual cases shall be regulated in a separate contract, in a quotation on which this contract is based or in an order confirmation.

III Scope and provision of the services

(1) The content, scope, duration and location of the services to be provided are specified in the contractual documents referred to in clause II, sentence 2. Insofar as the scope and duration have not been agreed, this information shall be deemed to be estimates only. The actual scope and duration shall be determined by the task to be performed. If no place of performance has been agreed, the place of performance shall be EGR's registered office.
(2) Insofar as EGR provides support services for the customer within the framework of projects, the customer shall be obliged to check regularly whether the project objectives laid down in each case are being met. Project management and responsibility shall lie exclusively with the customer unless otherwise agreed in an individual contract. EGR and the customer shall mutually agree on the nature and presentation of the results or the documentation and recording of the project work and on the time allowed, specifying which tasks EGR shall assume in this regard.
(3) EGR shall employ qualified staff in the performance of the work and shall supervise and control them. EGR shall decide at its own discretion which employees shall be deployed or replaced.
(4) Insofar as the customer's employees provide support within the framework of projects, this shall be done free of charge for EGR and on the customer's responsibility and at the customer's risk. The customer shall ensure that its employees are under the disciplinary control of a suitable employee. The customer's contact person in each case shall be named to EGR in writing before the project support begins.
(5) If EGR supports the customer in making adaptations and extensions to the software programs on the customer's behalf and in accordance with the customer's specifications, EGR shall owe the activity but not the success and not the version maintenance for this.

IV. Remuneration, invoicing

(1) Remuneration shall be as stated in the contract documents referred to in clause II, sentence 2. In the absence of any other agreement, remuneration shall be based on time spent, which shall be charged to the customer in accordance with the EGR price list for services valid at the time the service is provided. Billing shall be on an hourly basis. The time to be paid for by the customer shall include not only the work of EGR staff but also their participation in meetings, project meetings and any preparatory and finishing work carried out by staff and time spent travelling between EGR's place of business and the customer. All prices shall be net without deductions plus the statutory value added tax applicable at the time.
(2) In addition, the customer shall reimburse EGR for any costs incurred in the performance of the service (e.g. travel expenses). The prices for these shall be as set out in the contract documents referred to in clause II, sentence 2, or - unless otherwise agreed - in the EGR price list for services.
(3) Insofar as a time expenditure is stated in the quotation or the order confirmation, this is merely an estimate. Overruns or underruns may occur during the performance of the service. In that case EGR shall notify the customer that the time originally estimated has been exceeded. If the customer wishes a binding upper limit to the time required, this must be expressly agreed in writing.
(4) EGR reserves the right to invoice the customer for services worth more than EUR 10,000.00 per month. Services of a lesser value or one-off services shall be invoiced by EGR in each case after they have been provided.
(5) If agreed services are not provided or not provided in full for reasons beyond EGR's control, the customer shall pay EGR for them less any expenses saved.

V. Liability for consultancy and other services

(1) EGR shall not be liable for the suitability of consultancy services for any purpose pursued thereby.

(2) If EGR provides purely activity-related services without any specific success, EGR shall be liable solely for the performance of the agreed services in accordance with the contract.

VI. Acceptance and liability for defects in the case of success-related services

(1) If EGR's performance corresponds to that agreed (possibly in the specifications) and if it is a success-related performance, the following provisions [clause VI. (2) to (11)] shall apply in addition:
(2) The customer shall inspect EGR's services without delay after EGR has notified customer that they are complete (notification of completion) and shall declare acceptance to EGR in writing without delay, but no later than ten days after notification of completion (acceptance period). If the customer does not declare acceptance to EGR within the aforementioned acceptance period without indicating any defects actually present, EGR's services notified as completed shall be deemed to have been accepted on expiry of the acceptance period. Acceptance may not be refused on account of minor defects. The foregoing shall apply equally to partial services which are usable.
(3) Acceptance shall be deemed to have taken place if the customer uses the services for ten days without notifying EGR of any defects actually present. Functional testing within the acceptance period shall not be regarded as use in this sense.
(4) The customer shall be obliged to notify EGR in writing without delay of any defects that occur, stating how the defect manifests itself and which effects it has and under what circumstances it occurs. Claims for defects shall exist only if the defect reported is reproducible or can be shown by machine-generated output.
(5) EGR shall remedy the defect properly notified by the customer by way of subsequent performance, i.e. by repair or subsequent delivery. The right to choose in what way a defect shall be remedied shall lie with EGR. EGR's right to refuse subsequent performance under the statutory conditions shall remain unaffected. Insofar as this is reasonable for the customer, EGR shall be entitled, in order to remedy the defect, to provide the customer with a new version of the service (e.g. "update", "release/patch") which no longer contains the defect complained of or which remedies it, or to develop an alternative solution.
(6) If subsequent performance has failed within a reasonable period, the customer shall set EGR in writing a further reasonable period (second period of grace) for subsequent performance, provided that the setting of the period is reasonable for the customer and provided that EGR does not finally refuse subsequent performance. If these conditions are met, the customer shall be entitled, after the second period of grace has expired unsuccessfully, to withdraw from the contract under the statutory conditions or to reduce the agreed remuneration and, if EGR is at fault, to claim damages in lieu of performance or compensation for wasted expenditure. After the unsuccessful expiry of the period of grace, the customer shall declare within a reasonable time whether it will continue to demand subsequent performance or whether it will assert his above rights. A right of withdrawal does not exist in the case of a minor defect. On declaration of withdrawal or reduction, the customer's right to supply of a defect-free service shall lapse.
(7) EGR shall not be liable for defects based on incomplete or incorrect information supplied by the customer.
(8) EGR shall not be liable for defects which have occurred after a change in the conditions of use and/or operation, after installation and/or operating errors, after interventions in the service or software, such as alterations, adaptations, connection with other programs and/or after use contrary to the terms of the contract, unless the customer proves that the defects were already present at the time of notification of completion or handing over of the service and have no causal connection with the above events.
(9) EGR shall not be liable for the correctness of the customer's or third party's data on the software and any defects that may result from it.
(10) If it transpires that a defect reported by the customer does not actually exist or is not due to EGR's services, the customer shall pay EGR for the work involved in analyzing and otherwise dealing with it in accordance with EGR's price list for services in force at the time the defect was reported.
(11) In the event of justified withdrawal, EGR shall be entitled to demand reasonable compensation for the use made by the customer of the service or software in the past up to the point of withdrawal. This compensation for use shall be calculated on the basis of a four-year total period of use of the service or software, with an appropriate deduction for the defect which led to the withdrawal.
(12) The customer's claims for defects shall lapse within a period of one year of the transfer of risk.

VII. Customer's duty of cooperation

(1) The customer shall provide EGR free of charge with all the cooperation required on its part for the provision of the service and which is otherwise customary.

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(2) The customer shall make suitable rooms available for employees and third parties commissioned by EGR to provide services, in which documents, work equipment and data carriers can be stored, protected from access by unauthorized persons, if services are to be provided outside EGR's place of business.

(3) The customer shall provide EGR's employees with access at all times and free of charge to the information necessary for their work and shall supply them with all the necessary information in good time.

(3) The customer shall support EGR comprehensively and free of charge, e.g. by creating the operational conditions for the performance of the service, in particular by making available work rooms, data and telecommunications facilities when the service is being performed at the customer's premises and by cooperating in specifications and tests. The customer shall grant EGR or its employees and third parties commissioned to perform the service access to the hardware and software and shall enable access to the software by means of remote data transmission.

(4) Insofar as EGR installs software at the customer's premises for test purposes as part of its consultancy services, it shall be the customer's responsibility to provide a suitable system environment in good time. The customer shall be required to test all the functions of these software programs under the customer's system environment before commissioning. EGR shall not be liable for the loss of data if the damage would not have occurred if data had been properly backed up in the customer's area of responsibility. Data shall be deemed to have been properly backed up if the customer demonstrably backs up its data stocks daily and on a daily basis in machine-readable form and thus guarantees that this data can be restored with reasonable effort.

(5) The aforementioned duties to cooperate are essential contractual obligations. If the customer breaches its duties to cooperate, EGR shall not be obliged to provide the service for the duration of the breach of duty plus a reasonable restart period. In the event of repeated or serious breach of duty, EGR shall be entitled to terminate the contractual relationship without notice.

VIII. Rights of Use (License)

(1) The customer shall be granted a simple, non-exclusive, non-transferable and non-sublicensable right to use EGR's services for the contractually agreed purpose; if a term has been agreed, this right shall be limited to that term, otherwise it shall be unlimited in time. EGR shall be the author and free in all respects to use these services in any way it chooses.

(2) EGR shall not be obliged to hand over the source code and development documentation.

(3) Insofar as EGR uses or adapts standard software, the rights of use in respect of this shall be determined in accordance with pCon software license conditions, unless and insofar as otherwise agreed in writing.

IX. Training

(1) EGR may provide training services at the customer's place of business or at a place specified by the customer. In this case the customer shall ensure at its own expense that suitable premises and a sufficient number of computers per participant are available for the training dates. This also includes that the training software is installed on the computers and ready for operation.

(2) The customer shall bear the costs of travel, meals and overnight accommodation for the EGR employee(s) and the customer's participants. Partial participation shall not entitle the customer to a reduction in the training fee.

X. Changes to and cancellation of training courses, miscellaneous provisions

(1) EGR reserves the right to deploy a substitute trainer at the training courses, to make minor changes to the content of the training and, if necessary, to change the date and venue and to cancel a training. In the latter case, training fees already paid shall be refunded in full.

(2) The customer shall inform EGR immediately if agreed training dates cannot be kept. The customer shall pay EGR a handling fee of 25% of the remuneration if the customer cancels a training date up to two weeks before the start of the training, 50% of the remuneration if the customer cancels a training date up to one week before the start of the training and 75% of the remuneration thereafter. The above flat rates shall not apply only if the customer proves that no loss or a lesser loss has been incurred or that the training course has been cancelled by EGR in accordance with (1).

(3) Cancellations must be received by EGR in writing.

(4) Training documents shall be protected by copyright. Any form of reproduction of training documents - including extracts - shall require the express written consent of EGR.

XI. Application of the General GTC

The General GTC of EGR shall supplement these Services GTC and shall apply subordinately thereto.