



## **General Terms and Conditions for Consulting Services**

Last changed February 1, 2021

### **1. General Provisions**

- 1.1. Contracting Parties  
The Contracting Parties are Event Safety Consult GmbH & Co KG (hereinafter referred to as "ESC") and the Client, who is not a consumer in the sense of § 13 BGB (German Civil Code).
- 1.2. General terms and conditions of the Client shall not become part of the contract, even if these are attached to requests for quotations, orders, declarations of acceptance, etc., and even if they are not objected to.
- 1.3. Conclusion of an Agreement  
Unless otherwise agreed, an Agreement shall only be concluded upon confirmation by ESC.
- 1.4. All offers of ESC are subject to confirmation, unless expressly stated otherwise in the quotation documents.

### **2. Subject Matter of the Agreement, Services of ESC**

- 2.1. ESC provides consulting and support services for the Client in the field of event safety (including planning and implementation). Details of the services provided by ESC can be found in the offer documents.
- 2.2. The services are based on the commonly recognized state of the art. The services of ESC are provided exclusively to support the Client in their project. ESC assumes no responsibility for any particular outcome.
- 2.3. The delivery and performance dates stated in the offer documents are non-binding unless they have been expressly agreed in writing as binding. Dates agreed as binding shall become non-binding as a result of the Client requesting changes, unless these dates have been confirmed or adjusted in writing within the scope of the changes.
- 2.4. ESC is entitled to provide services by subcontracting to third parties.
- 2.5. Unless otherwise agreed, ESC shall provide the services on its own business premises.
- 2.6. Employees of ESC or subcontractors to ESC are generally not authorized to represent ESC or to make binding statements, in particular of a commercial or legal nature.

### **3. Client Participation Services**

The Client undertakes to provide all services that are necessary for the proper provision of services by ESC, in particular the following, free of charge for ESC, in a timely manner and to the extent necessary:

- 3.1. The Client shall appoint a qualified contact person with decision-making authority and ensure that he or she shall have a representative.
- 3.2. The Client is responsible for obtaining any necessary permits.
- 3.3. The Client agrees to enter into unencrypted correspondence by e-mail and will always provide an up-to-date e-mail address. The Client is aware that information essential for the provision of services, such as access data, information on changes to services and legal conditions, as well as invoices are sent by mail.
- 3.4. ESC shall provide the Client with information essential for the performance of the service on the ESC Owncloud project server. The Client shall check it regularly for updated content.
- 3.5. The Client agrees to keep passwords and access data secret, not to pass them on to unauthorized third Parties, to prevent access by third parties and to change the access data if necessary. The Client will inform ESC immediately if there are indications that unauthorized third parties may have gained knowledge.
- 3.6. The Client shall check on its own responsibility whether the data it transmits to ESC constitutes personal data and whether the processing of such personal data is permissible. If the Client wishes to have personal data processed, he will conclude an agreement on the processing of personal data with ESC.
- 3.7. The Client shall provide copyrighted or otherwise protected content to the extent necessary for the execution of the agreement.
- 3.8. The Client shall independently check all relevant and applicable legal regulations, laws, ordinances and industry-specific or regional and internal company regulations and ensure compliance with them. Insofar as regulations applicable to the customer must be observed by ESC, the Client shall inform ESC thereof.
- 3.9. The Client shall ensure that the services are not misused.
- 3.10. The Client shall provide the necessary operating and work equipment (in particular: workstations and premises), insofar as the work is to be performed on the Client's premises.



- 3.11. The Client shall always provide ESC with all necessary information and shall ensure that its information is correct and up-to-date in terms of content.
- 3.12. The Client shall ensure the provision of necessary participation services by its contractual partners or other third parties acting on behalf of the customer.
- 3.13. The Client shall inform ESC immediately in writing if it cannot provide a participation service or cannot provide it as agreed, or if circumstances arise that make it difficult or impossible for ESC to render the services.
- 3.14. If the Client does not provide its participation services, does not provide them properly or does not provide them in a timely manner, ESC shall be released from the obligation to provide the services concerned, in particular from deadlines and milestones agreed as binding. ESC shall nevertheless endeavor to provide the relevant services in accordance with the agreement. Agreed deadlines, dates and milestones shall be suspended and extended or postponed by a reasonable period of time if the obligation to participate is fulfilled subsequently. The Client shall pay to ESC all costs, damages and additional expenses arising from the non-fulfillment, improper fulfillment or untimely fulfillment of participation services.

#### **4. Rights of Use**

To the extent necessary for the performance of the Agreement, the Client shall receive a simple, non-exclusive right of use to the work results. ESC reserves the final granting of the rights of use until full payment of the remuneration owed. Until then, the granting of rights is provisional and can be revoked at any time. Any use beyond the immediate purpose of the Agreement, in particular any transfer to third parties, reproduction or publication of the work results is only permitted with the prior written consent of ESC.

#### **5. Term of the Agreement, Termination of Framework Agreements**

Unless a different term of the Agreement has been agreed, the minimum term is 12 months. The Agreement can be terminated subsequently by either party with a notice period of 3 months to the end of the month. Notice of termination must be given in text form. The right to terminate for cause remains unaffected.

#### **6. Terms of Payment, Remuneration**

- 6.1. Remuneration and ancillary costs are net prices plus taxes and duties applicable at the time of delivery and performance.  
The claim to remuneration for services already rendered by ESC exists independently of the implementation of the respective event by the Client.
- 6.2. Services rendered on a time/hour basis will be invoiced based on the schedules provided by ESC.
- 6.3. Maturity  
The invoice amount is to be paid to the account specified in the invoice. It is due for payment immediately and without deduction.
- 6.4. Offsetting, right of retention  
Offsetting is only permitted with legally established or undisputed claims. The Client shall only be entitled to a right of retention due to counterclaims arising from the same contractual relationship.
- 6.5. Default  
If the customer is in default of payment, ESC may terminate the contractual relationship without notice. The assertion of further claims remains unaffected by this.

#### **7. Liability**

- 7.1. In case of intent or gross negligence ESC shall be liable without limitation.
- 7.2. In case of slight negligence, ESC shall be liable without limitation for injury to life, body or health. Apart from this, ESC is liable in cases of slight negligence only in case of violation of a cardinal obligation. The liability of ESC for material damage and financial losses resulting therefrom shall be limited to the foreseeable damage typical for the Agreement. Cardinal obligations are obligations the fulfillment of which makes the proper execution of the Agreement possible in the first place, and on whose fulfillment the Contracting Party may regularly rely and trust in.
- 7.3. Liability for all other damages is excluded. Liability according to the ProdHaftG (German Act on Liability for Defective Products - Product Liability Act) or other mandatory legal provisions remains unaffected.



## 8. Force Majeure

- 8.1. ESC is not liable for events of Force Majeure, which make the contractual performance significantly more difficult, temporarily hinder the proper execution of the Agreement or make it impossible. Force Majeure shall mean all circumstances independent of the will and influence of the Contracting Parties, such as, in particular, natural disasters, governmental measures, decisions by authorities, military conflicts, riots, terrorist attacks, strikes, epidemics, pandemics or other circumstances that are unforeseeable, serious and beyond the control of the Contracting Parties and occur after the conclusion of this Agreement.
- 8.2. Insofar as one of the Contracting Parties is prevented from fulfilling its contractual obligations due to Force Majeure, this shall not be considered a breach of contract, and the deadlines stipulated in the Agreement or on the basis of the Agreement shall be reasonably extended in accordance with the duration of the impediment. The same shall apply if any advance performance of third parties is delayed due to force majeure.
- 8.3. Each Party shall do all that is necessary and reasonable to mitigate the consequences of the Force Majeure. The Party affected by the Force Majeure shall immediately notify the other Party of the beginning and end of the impediment.
- 8.4. If a Force Majeure event continues for more than 30 days, either Party may terminate the agreement affected thereby without any liability or cost. However, costs already incurred or services already rendered shall be paid by the Client.

## 9. Confidentiality

- 9.1. The documents and knowledge handed over to the other Contracting Party may only be used for the purposes of the respective Agreement. Furthermore, the Contracting Parties agree to maintain confidentiality about the content of the Agreement and about the knowledge gained during its execution.
- 9.2. The Contracting Parties undertake not to disclose information to be kept secret to third parties. Subcontractors and Contracting Parties of ESC or the Client shall not be regarded as third parties, if their knowledge is required and if they have been appropriately obligated to maintain confidentiality.
- 9.3. The obligation to maintain confidentiality of the mutually disclosed information does not apply,
  - a) insofar as this information was demonstrably known to the informed Contracting Party prior to the notification, or if it was known or generally accessible to the public prior to the notification,
  - b) or if the information would become known or generally available to the public after notification without the participation or fault of the informed Party,
  - c) or if the information generally corresponds to information disclosed or made available to the informed Party at any time by an authorized third party,
  - d) or if disclosure of the information has been ordered by law or by decision of a court or administrative authority or if the information serves to enforce legal claims. As soon as there are indications that judicial or administrative proceedings may be initiated which could lead to the disclosure of confidential information, the Party involved in the proceedings shall inform the other Party thereof without undue delay and shall not disclose the confidential information without such prior notification.
  - e) or if 2 (two) years have elapsed since the termination of this Agreement.

## 10. Data Protection

- 10.1. The Contracting Parties shall observe compliance with the statutory provisions on data protection.
- 10.2. In the case of processing of personal data on behalf of the Client, ESC shall collect, process, use or access personal data exclusively within the scope of the agreement reached and in accordance with the instructions of the Client.

## 11. Modifications

- 11.1. ESC is entitled to modify the General Terms and Conditions and the remuneration with a reasonable notice period of at least six weeks before the modification takes effect, provided that the modification is reasonable for the Client when considering the interests of ESC. Modifications will be communicated to the Client by e-mail.
- 11.2. In the event of modifications to the disadvantage of the Client, the Client shall have a special right of termination at the time the modification takes effect. ESC shall inform the Client in the notice of modification both of this special right of termination and that the modification will become effective if the Client does not exercise the special right of termination within a period of 6 weeks.
- 11.3. Any modifications or amendments must be made in text form. This also applies to any modification of this formal requirement itself.



## 12. Other Provisions

- 12.1. The place of jurisdiction for all disputes arising from or in connection with this Agreement is Heidelberg. Any exclusive place of jurisdiction shall remain unaffected. The relationship between ESC and the Client shall be governed exclusively by German law to the exclusion of the UN Convention on Contracts for the International Sale of Goods.
- 12.2. Any transfer of rights and obligations is only permitted with the prior written consent of the other Party. Consent shall not be unreasonably withheld. The assignment of monetary claims requires neither notification nor consent.
- 12.3. Should any provision of these General Terms and Conditions or of the offer be or become invalid, the validity of the remaining provisions shall remain unaffected thereby. The contracting parties shall immediately replace the invalid provision with a valid provision that comes as close as possible to the economic purpose of the invalid provision. The same applies in the event of an omission.

## 13. Supplementary Conditions for the Provision of Safety Technology

The following provisions apply in addition to the above provisions for the rental, installation and maintenance of safety technology components (hereinafter referred to as "Rental Items"). Insofar as these include deviating provisions, the following provisions shall take precedence.

- 13.1. Services of ESC
  - a) Renting  
ESC shall hand over the Rental Items to the Client and shall maintain them for the duration of the rental relationship.
  - b) Delivery and installation  
ESC shall deliver and assemble the Rental Items to the Client and shall perform configuration services if agreed.
  - c) Maintenance  
ESC shall maintain the Rental Items for the duration of the contract, insofar as the malfunctions have arisen in the course of proper use.
  - d) Maintenance includes fault identification and replacement of components that have become unusable. The replacement of operating materials (e.g. batteries) is not owed. During the necessary work, ESC is authorized to put the components out of operation.
  - e) Disassembly and return transport  
Dismantling and return transport of the Rental Items after the end of the Agreement shall be carried out by ESC at the Client's expense.

The details and scope of the services result from the respective offers made by ESC.
- 13.2. Client participation services  
The Client undertakes to provide all services that are necessary for the proper provision of services by ESC, in particular the following, free of charge for ESC, in a timely manner and to the extent necessary:
  - a) Provision of electrical power, surge protection, and the required equipotential bonding including earthing.
  - b) Granting access to premises and buildings.
  - c) Copyright notices, serial numbers and other identifying features may not be removed or altered under any circumstances.
  - d) All installation and repair work on the Rental Items may only be carried out by ESC or by specialist personnel authorized by ESC, unless it is in default.
  - e) The Rental Items are to be treated with care; in particular, the manufacturer's instructions must be observed. The customer is obligated to protect the Rental Items from damage or loss (in particular the effects of weather and theft) and to take appropriate measures against this. The Client will insure the Rental Items.
  - f) ESC is entitled to demand a deposit of up to 100% of the agreed rent before handing over the Rental Items. The deposit shall not bear interest. ESC is not required to invest the deposit separately from its assets.
  - g) If there is a threat of damage to the components provided or if such damage has occurred, ESC must be notified immediately.
  - h) In case of loss or damage of the Rental Items, ESC is entitled to claim compensation in the amount of 100% of the agreed rent of the damaged or lost Rental Item. The compensation shall be set higher or lower if ESC proves a higher damage or if the Client proves that no damage or a lower damage has occurred. ESC reserves the right to claim further damages.
  - i) The Rental Items may be set up at a location other than the agreed location only with the consent of ESC. ESC may make its consent conditional upon the provision of security.
  - j) All applicable import and export regulations are to be observed by the Client on its own responsibility. In the case of cross-border delivery or performance, the Client shall bear any customs duties, fees and other charges incurred. The Client shall handle legal or official procedures in connection with cross-border deliveries or services on its own responsibility.
  - k) The Client is obligated to inspect the installation site prior to execution of the Agreement and to ensure the suitability of the installation site for materials to be set up or erected by ESC.
  - l) Upon handover of the Rental Items, the customer must inspect them for completeness and damage. Complaints must be reported immediately after the inspection. Later complaints will not be accepted.



m) At the end of the rental period, the customer shall return the Rental Items in proper and cleaned condition, or allow ESC to disassemble and return them.

13.3. Transfer to third parties

The Client is not permitted to transfer or subrent the Rental Items to third parties without prior permission from ESC. In case of refusal of this permission, the Client has no right to terminate the contract.

13.4. Warranty

If the Rental Items are defective in a way that not only insignificantly impairs their contractual use, the Client may demand that the defects be remedied without prejudice to its statutory claims, provided that the Client has fulfilled its obligation to notify ESC. ESC is free to supply a replacement component instead of rectifying a defect.

The strict liability of ESC for damages (in accordance with § 536a of the German Civil Code, BGB) for defects existing at the time of conclusion of the Agreement is excluded. The Client shall be entitled to warranty rights for one year from the handover of the respective item. Claims based on refused subsequent performance can be asserted within the shortened period for material defect claims.

13.5. Early termination of the Agreement

If ESC terminates the Agreement for an important reason for which the Client is responsible, the Client is obliged to pay ESC a lump-sum compensation due in one sum amounting to 50% of the remuneration still to be paid until the expiry of the agreed term of the Agreement. The amount of damages shall be set higher if ESC proves higher damages. It shall be set at a lower amount or shall not apply if the Client proves that less damage or no damage at all has occurred.

Important reasons shall include, in particular, the unauthorized transfer of the components to third parties, the opening of insolvency proceedings against the Client's assets or the rejection of such proceedings for lack of assets, or a significant or sustained breach by the Client of the obligations incumbent upon it.

13.6. Termination of the rental contract

Upon termination of the rental contract, the renter is obliged to hand over the Rental Items. If the renter does not hand over the Rental Items after termination of the rental contract, or if ESC is prevented from dismantling and returning the Rental Items, ESC may continue to charge the agreed rent until handover/dismantling of the Rental Items. Further claims remain unaffected by this.

## 14. Special Conditions for Translation Services

The following provisions apply in addition to the above provisions. Insofar as these include deviating provisions, the following provisions shall take precedence.

14.1. ESC's service includes the translation of the text to be provided by the Client into the agreed target language. ESC reserves the right to correct obvious errors and to add comments to help understand the translation in the target text. ESC will notify the Client of any corrections.

14.2. The terminology or translation memory database or comparable working aids that may be created by ESC are not part of the service.

14.3. Translations are carried out according to the generally accepted rules. Technical terms shall be translated using their conventional meaning.  
If ESC is to consider a specific terminology or form, the necessary information, instructions, graphics, tables and the required vocabulary, terminology or a specific purpose must be provided in advance.

14.4. After receiving the translation, the Client will check it for any errors. Translation errors must be communicated by the Client immediately in text form. If the Client uses the translation result within the scope of his activities or does not claim any errors within 14 days, the service shall be deemed to have been provided in accordance with the Agreement.

14.5. Within the scope of the contractually agreed purpose, the Client is entitled to edit, modify and disclose translation results to third parties.