

## General Terms and Conditions of the Eastern Switzerland University of Applied Sciences

### 1. Scope of validity

1.1. These General Terms and Conditions (hereinafter referred to as "GTC") apply to all contracts concluded by the Eastern Switzerland University of Applied Sciences, St. Gallen (hereinafter referred to as "the Eastern University"), or one of its departments with reference to these GTC. By concluding a contract, the contractual partner of the Eastern University (hereinafter referred to as "the customer") acknowledges these GTCs as a binding part of the contract.

1.2. The contractual relationship between the Eastern University and the customer is based on descending hierarchical order on (1) the individually agreed contract between the customer and the Eastern University, (2) the GTC and (3) the Swiss Code of Obligations. Agreements to the contrary shall only be binding for the Eastern University if they are expressly provided for in the individually agreed contract.

### 2. Conclusion of a contract and modifications

2.1. The conclusion of a contract between the customer and the Eastern University shall be in writing, the term "in-writing" similarly includes consent made by e-mail. In general, the basis for the conclusion of the contract is an offer which the Eastern University submits to the customer for review. The contract shall be concluded by a legally valid signature of the offer, or another contractual document, by the parties. If the contract sum is less than CHF 10'000, the contract may be concluded by e-mail without the exchange of a signed offer, or contract document. Up until the time when a contract is signed, the parties involved can withdraw from the contract negotiations at any time, without any financial obligations.

2.2. Documents (e.g. data, brochures, drawings) provided by the Eastern University as part of contractual negotiations shall be non-binding. All rights thereto shall remain with the Eastern University and they may only be made accessible to third parties with its permission. If the contract negotiations end without conclusion of contract, the customer shall be obliged to return all documents prepared by the Eastern University regarding contract negotiations, without being requested to do so, without retaining a copy, and to not use them again.

2.3. Any modifications and/or amendments to this GTC shall only be legally binding when in writing.

### 3. Financial regulations

3.1. The customer is obliged to pay the consensually agreed amount of the payment for the services performed by the Eastern University. All costs apply as of the location of the relevant department, subsidiary of the location of the registered office, exclusive of VAT, are generally set out in CHF and are payable net, within 30 days of the date of the invoice, by transfer to a bank account designated by the Eastern University. The contract may include a payment schedule. The payment is due in accordance with the payment schedule. This will be based on the progress made, on the work and the costs incurred. Once the payment term has expired, the customer will be in arrears. If the invoice is still not paid within an additional 30 days of the due date, the customer is obliged to pay interest on the outstanding amount from the due date, at a rate of 5% per annum. Offsetting against counterclaims of the customer is only permitted with the consent of the Eastern University.

3.2. If remuneration was agreed upon at hourly or daily rates, the customer shall pay for the services actually rendered. If a fixed price has been agreed and if the performance of the contractual services is substantially more time-consuming for Eastern University than assumed at the time of conclusion of the contract due to instructions by the customer or due to unforeseen circumstances, the parties shall agree on a reasonable increase in the

remuneration. If the parties cannot agree, Eastern University shall be entitled either to perform the contract at the agreed price or to terminate the contract with immediate effect by written notice.

3.3. The costs of supplies and services which Eastern University purchases from third parties with a view to fulfilling the contractually agreed services shall be charged to the customer adding VAT.

3.4. The shipment of work products shall be at the expense and risk of the customer. Packaging, transport, insurance, import, export and disposal costs shall be borne by the customer. Unless otherwise agreed, test items shall be disposed of by Eastern University at the customer's expense after testing.

### 4. Deadlines

4.1. Eastern University undertakes every effort to abide to the agreed deadlines of the contract. Unless explicitly agreed otherwise, these dates shall not be binding and shall be considered as being indicative, whereby delays shall not entitle the customer to withdraw from the contract or to claim damages, or other claims. Eastern University will keep the customer regularly informed of the progress and will notify them promptly of any circumstances that threaten or impair fulfillment in accordance with the contract.

4.2. If deadlines cannot be met on account of the occurrence of unforeseen events (natural disaster, pandemic, strikes, etc.) despite reasonable care, the deadlines shall be postponed as far as the event requires and the customer is not entitled to claim damages, or make other claims.

### 5. Right of Examination and duties of cooperation

5.1. The customer shall have the right to inspect the documents and data of the Eastern University concerning the project, which are available at the Eastern University for the duration of the contract. After termination of the contract, Eastern University shall not be obliged to retain such documents and data. However, the customer may inspect documents and data still available for three years after termination of the contract upon request to Eastern University.

5.2. The customer shall be obliged to cooperate in the implementation of the project in the required manner. In particular, the customer must designate a responsible project manager as contact person for the Eastern University and provide the necessary information, data, materials, test specimens, etc. in due time.

5.3. The customer undertakes to provide Eastern University's employees with the necessary protective equipment for field and workshop work and to inform them about applicable accident prevention and safety regulations, as well as company regulations. If this is not the case, Eastern University employees shall not be allowed to start work.

### 6. Confidentiality

6.1. Any information, materials, data and documents declared as confidential (hereinafter referred to as "information" in Clause 6), that is disclosed to the parties in connection with the contract, shall be treated by each party as confidential information. Such information shall be disclosed to third parties exclusively for the purpose of fulfilling the contract and shall be used only for the purposes provided for in the contract. If confidential information is communicated orally, it must be declared as confidential in writing to the other party within 10 days. This does not apply to information that are proven to be already known to the receiving party, that is generally known or accessible, or to disclosures that are required by law, or by official or court order. This duty

of secrecy starts with the initial contact for a potential new project and lasts for a further three years once the contract has ended.

6.2. In the event of product tests and test setups, etc. that are located indoors or outdoors on the Eastern University premises, it may be possible for test specimens to be visible and to be accessible to a limited extent in some cases. If special non-disclosure-measures are to be taken for test specimens, this must be agreed upon in the contract. Any additional costs incurred in this way will be invoiced.

6.3. The Eastern University is entitled to name the customer as a reference unless this right has been withdrawn or restricted by a written agreement between the parties.

## **7. Intellectual Property**

7.1. All intellectual property rights to the work products created under the contract (e.g. documents, reports, drawings, calculations, etc.) belong exclusively to Eastern University. The customer is granted the right to use the work products for the contractually intended purpose.

7.2. Without the written consent of Eastern University, the customer shall not be entitled to claim its own intellectual property rights concerning the work product (e.g. by means of patent applications). Inventors provided by the Eastern University must be named in any case and Eastern University shall remain entitled to further use and develop of the work product for teaching and research.

7.3. Manufacturing drawings and plans, etc. may only be used for the contractual purpose intended in the individual case. Repeated use shall only be permitted with written consent given by the Eastern University and against compensation of additional remuneration to be agreed on.

## **8. Publication**

8.1. Eastern University shall be entitled to publish project results, paying due consideration to Articles 6 and 8.

8.2. Prior to publication of customer-specific project results, Eastern University will send a draft to the customer for them to examine. Within a period of one month of receipt of the draft, the customer can:

(i) file an objection with Eastern University if the customer claims legitimate confidentiality interests. The parties then shall immediately endeavor to find mutually acceptable modifications that adequately address the customer's confidentiality interests and still allows for meaningful publication by Eastern University within a maximum of three months; and/or

(ii) request a time extension of no more than three months, if with Eastern University's consent, intellectual property rights relating to the Project Results are to be registered prior to publication.

In the absence of a timely counter report of the customer, the customer consent to publication shall be deemed to have been given.

8.3. If a publication is planned for an event in accordance with Clause 8.2, Eastern University shall send the Customer a summary of the planned publication and Clause 8.2 shall apply, with the period in Clause 8.2 (i) being reduced to one month.

8.4. The customer is only entitled to publish project results after prior agreement with the Eastern University. This agreement should make allowance for the fact that semester, Bachelor's, or Master's theses, publications, and/or the potential protection of intellectual property are not to be impaired.

## **9. Software as a product**

9.1. If the customer is provided with software of a third party as part of the work results, which is licensed to Eastern University by a third party (including open source software), the customer shall be obliged to comply with the applicable license provisions of the third party. Any findings, software and procedures developed in the context of the contract may be further used and developed for teaching and research purposes without restriction,

unless the contract provides for another written agreement with corresponding compensation.

## **10. Duration and Termination**

10.1. The contract shall commence upon its creation in accordance with Clause 2.1. It shall last until completion of the project, or until the agreed date. If the contract is concluded for an indefinite period and the rights of termination are not otherwise regulated in the contract, each party shall be entitled to terminate the contract by giving three months' written notice to the other party at the end of each month.

10.2. Each party shall be entitled to terminate the contract with good cause and with immediate effect by written notice to the other party. Good cause shall, in particular, include (i) a material breach of contract by the other party which is not remedied within thirty days despite a written request to do so, as well as (ii) liquidation, bankruptcy, debtor's deferral, or similar proceedings concerning the other party.

10.3. The work and the services supplied up to the point when the contract is terminated must be paid for in full. Payments for wages and salaries that continue to accrue for a limited period of time due to the research collaboration and the obligations entered into as a result shall also be settled.

## **11. Warranty, liability and limitation of liability**

11.1. The Eastern University warrants that services will be rendered with due care and that the employees of Eastern University deployed on the project have the required qualifications. Eastern University also warrants that work products comply with the agreed specifications upon delivery and are free from material defects and deficiencies. All other warranties not listed in this Clause 11.1 are excluded. Warranty claims shall be asserted in writing within fourteen days of knowledge thereof and shall become statute-barred upon expiry of one year from delivery or performance of the service.

11.2. In the event of a breach of the warranty pursuant to Clause 11.1, the customer shall initially only be entitled to reworking by Eastern University within a reasonable period of time. If Eastern University does not succeed in remedying the breach of warranty despite two written requests by the customer, the customer shall be entitled to demand a reasonable reduction of the agreed remuneration instead of remedying the breach. All other rights are waived.

11.3. Eastern University's liability, arising from or in connection with the contract for slight negligence as well as for damage not caused to the work products themselves, for indirect damage, consequential damage, loss of profit and turnover, as well as for punitive damages etc. is excluded. Eastern University shall not be liable for damage caused by changes made by the customer or a third party to a work product or a service provided. Otherwise, Eastern University's liability for all claims arising from or in connection with the contract shall be limited to the sum of the remuneration paid by the customer, subject to mandatory statutory provisions.

11.4. The customer shall indemnify Eastern University and its employees against all claims asserted by third parties against Eastern University or its employees in connection with the performance of the contract, or the use by the customer or a third party of the service provided by Eastern University.

## **12. Place of Execution and Jurisdiction**

12.1. The place of execution shall be the registered office of the Eastern University in the city of St.Gallen, Switzerland. The contract shall be in accordance with Swiss law, excluding the rules of private international law and the Vienna Sales Convention. The exclusive place of jurisdiction for all legal disputes arising from and in connection with the contract shall be the city of St. Gallen, Switzerland.

Rapperswil, 4<sup>th</sup> January 2021