



English Translation Version of 21st September 2016
(translation from German original version without limit or warranty)

ESCAB Hotel-Gastronomie Software & Consulting e.U.
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Firmenbuch: FN 454370 t

1. General terms and conditions/scope

- 1.1 These general terms and conditions of business are valid exclusively for all transactions between a purchaser and the company ESCAB Hotel-Gastronomie Software & Consulting e.U. (ESCAB). Each time the version, which is valid at the time of completion of contract, is relevant.
- 1.2 These general terms and conditions of business are also valid for all future contract relations in the future, even, if there are not any other hints for additional contracts.
- 1.3 Other general terms and conditions of business are only valid, if ESCAB has explicitly accepted these.
- 1.4 If there are individual provisions which are/become ineffective, the effectiveness of all other provisions and of the contracts which have been ratified on this base are not touched. The ineffective provision is to replace by an effective provision, which comes closest to the sense and economic purpose of the ineffective provision.
- 1.5 Quotations are principally subject to alteration.
- 1.6 All orders and contracts are only legally binding if they are corporately signed in written form by ESCAB. They are only binding in the scope which is described in the confirmation of order.

2. Scope of service and examination

- 2.1 ESCAB is entitled to engage third parties for the partial or complete realization of the tasks which are ESCAB's responsibility. The payment of the third parties has to be carried out exclusively by ESCAB. The creation of any contractual relationship between these parties and the purchaser is excluded.
- 2.2 The purchaser signs up for not having any business relations, until and three years after the termination of the contractual relationship, with persons or companies, that have been involved by ESCAB for the realization of the contract. The purchaser will especially not hire those persons and companies for such or comparable services and products which are also offered by ESCAB.
- 2.3 The realization of the contractual services of ESCAB, takes place, wherever it is chosen by ESCAB, or in ESCAB's office during the normal business hours of ESCAB, if it is not settled differently. If the service provision of ESCAB occurs exceptionally and on demand by the purchaser out of these normal business hours, ESCAB is allowed to charge for the additional costs.
- 2.4 The scope of a contract must be agreed on contractually in each case.
- 2.5 The elaboration of individual organization concepts and the preparation of software installation occur in type and scope according to the binding information, documents and auxiliaries, which are completely provided by the purchaser. These also include practical data, which have to be provided punctually and at his own costs by the purchaser. In case of data dispatch the purchaser will take the risk.
- 2.6 ESCAB signs up for fulfilling the contractual services according to the contractually settled scope of services. The individual services described as follows are only valid for software contracts and have to be agreed on individually.
 - Information service: The purchaser will be informed about new programme versions, available updates, program developments etc.
 - Hotline service: During the given hotline hours of ESCAB, ESCAB will be available for the purchaser for consultations as to possibly appearing problems connected with the use of the contractual software product. In case of repeated use of the hotline for very similar problems, ESCAB has the right to make further advisory support as covered by this agreement dependent on additional buyer training outside the scope of this contract and at the purchaser's expense. The enforcement of the Hotline service by the purchaser is excluded at any rate if ESCAB cannot be reached for any possible reason.
 - Update service: At a date terminated by ESCAB, ESCAB will make available the program updates to the purchaser and will take over the installation of the data. These updates comprise corrections of mistakes, and of possible program problems that do not occur either during the test run or during use within the warranty period, enhancement of the scope of performance, changes in the software programs as a consequence of legal changes. Legal changes that result in new program logic, that is, changes in existing functions that lead to new programs and program modules, as well as possibly necessary additions to the hardware, are not included in the performance obligations covered by this contract. These programs will be offered separately to the purchaser along with the required data carriers and documentation. Software products, which are offered by ESCAB on the market, after the completion of contract, are not included either.
- 2.7 ESCAB Software-Licenses are only valid for one company location, if not settled differently. If the purchaser is using the software for company locations with not contractual settled address, ESCAB is entitled to charge the drawn software service as additional license retrospectively and with currently usual conditions.

3. Services not covered by this contract

- 3.1 Cost of travel, accommodation and travel time, which arise for ESCAB in carrying out the contractually agreed upon services, are not covered, if not explicitly agreed in this contract differently.
- 3.2 In case of unauthorized use of services, ESCAB may invoice the purchaser for accrued costs at the respective valid rates.
- 3.3 Services that result from changes in the operating system or in hardware and/or from changes in mutually dependent software programs and interfaces are not covered by this contract.
- 3.4 Individual program customizations or new programming are not covered.
- 3.5 Program changes due to changes in statutory requirements are, if they require a change in program logic not covered.
- 3.6 A fully accessible embodiment for the purpose of the federal law about the equality of humans with handicaps (Bundes-Behindertengleichstellungsgesetz – BGStG) can be requested separately.
- 3.7 Losses or damages that result either directly or indirectly from actions or omissions on the part of the purchaser or user in operating the system are not covered.
- 3.8 Data conversions, data recovery and interface adjustments are not covered.

4. Purchaser's obligation to provide information/declaration of completeness

- 4.1 The purchaser shall ensure that during the performance of the contract assignment, organizational conditions in the purchaser's place of business allow the contract process to proceed in a timely and undisturbed manner.
- 4.2 The purchaser shall inform ESCAB in case of a consulting contract in detail about previously conducted and/or currently active consulting projects, including those in other areas of competency.
- 4.3 The purchaser shall, in a timely manner and without special request on the part of ESCAB, provide ESCAB with all documents necessary to fulfil and perform the contract assignment and shall inform ESCAB of all activities and conditions pertinent to the performance of the contract assignment. This includes all documents, activities and conditions that become known or available during the performance of the contract assignment.
- 4.4 The purchaser shall ensure in case of a consulting contract that all employees as well as any employee representation (works council) provided by law, if established, are informed of ESCAB's contractual activities prior to the commencement of the assignment.

5. Prices, taxes and charges

- 5.1 All prices are in Euro and do not include sales tax. They are valid only for the present order. The quoted prices are ex business domicile or branch office of ESCAB. The costs of program carriers as well as any contract fees will be billed separately.
- 5.2 All services, which are not fixed in price in the order, will be charged with the valid rate at the day of assignment. Deviations, which are not caused by ESCAB, from the expenditure of time, which is the basis for the contractual price, will be charged by the hour.
- 5.3 If labor and material costs, or other costs and charges, increase after the conclusion of the contract, ESCAB has the right to increase accordingly the agreed flatrate amounts and to charge the purchaser of the higher rate from the beginning of the month following the cost increase. This increase is deemed to be accepted by the purchaser a priori, if they do not exceed 10% per annum.

- 5.4 All fees and taxes (especially sales tax) are calculated in accordance with the laws in effect at the time. Should the tax authorities subsequently impose additional taxes or levies, these will be paid by the purchaser.

6. Delivery schedules

- 6.1 ESCAB will endeavor to provide answers to purchaser inquiries within a reasonable period of time during the usual business hours of ESCAB.
- 6.2 The purchaser does not have the right to withdraw from the contract nor is he entitled to damages in case a prospective delivery date is not adhered to.
- 6.3 Delays of supplies or cost increases, which are caused by unright, incomplete or belatedly changed data and information and/or provided documents, are not under the responsibility of ESCAB and cannot result in the delay on the part ESCAB. Additional costs then arising are to be borne by the purchaser.
- 6.4 Partial and advance deliveries are permissible.

7. Payment

- 7.1 The invoices submitted by ESCAB, inclusive of sales tax, are payable at the latest 14 days from receipt of the invoice without any deductions and free of charges. For partial invoices, the terms of payment for the entire order follow analogously.
- 7.2 Where orders encompass a number of units, ESCAB is entitled to submit an invoice after the delivery of each unit of service.
- 7.3 Payment on the agreed-upon dates is an essential condition for delivery and for fulfillment of the contract by ESCAB. Failure on the part of the purchaser to comply with the agreed payment schedule entitles ESCAB to discontinue current work and to withdraw from the contract. All costs connected therewith as well as loss of profit are to be borne by the purchaser. In case of delayed payment interest on payment in arrears will be charged at customary bank rates. In case two consecutive installments are not paid on time, ESCAB has the right to enforce non-compliance and to call accepted drafts.
- 7.4 The purchaser is not entitled to withhold payment because of incomplete total delivery, guarantee or warranty claims, or complaints.
- 7.5 ESCAB is entitled to transmit invoices electronically. The purchaser agrees explicitly to accept invoices transmitted electronically by ESCAB.

8. Maintenance of independence and loyalty

- 8.1 The contracting parties are committed to mutual loyalty.
- 8.2 The contracting parties are obligated to take all necessary measures to ensure that the independence of all people working for ESCAB and/or of any third parties employed by ESCAB is not jeopardized.
- 8.3 The contracting parties will not hire away staff or employ, including by way of third parties, staff of the other party to the contract who have worked on the realization of the projects, during the duration of the contract or for 12 months after the end of the contract. A party to the contract in violation of this clause is obliged to pay lump-sum damages in the amount of one annual salary of the employee.

9. Reporting/obligation to report

- 9.1 ESCAB is obligated to report to the purchaser on the progress of services performed by persons working for ESCAB and/or any third parties employed by ESCAB.
- 9.2 ESCAB delivers the final report in a timely manner, i.e. depending on the type of assignment, two or four weeks after completion of the assignment.
- 9.3 ESCAB is not bound by directives while performing the agreed service and is free to act at ESCAB's discretion and under ESCAB's own responsibility. ESCAB is not required to work in a particular place or to keep particular working hours.

10. Copyright and use

- 10.1 ESCAB or its licensors are entitled to all copyrights on the agreed services (programs, offers, documentations, calculations, drafts, data media etc.). For software contracts it is additionally valid, that the purchaser obtains only the right to use the software after payment of the agreed remuneration strictly for his own purposes, only with the hardware as specified in the contract, and, in accordance with the number of licenses acquired, simultaneously at different workplaces and at different company locations. By this contract the buyer acquires merely the authorization to use the works, as long as it is agreed in the contract. Further distribution of the product by the purchaser is not permitted, as fixed by copyright law.
- 10.2 The purchaser does not by virtue of participating in the production of the works acquire any rights beyond its use as set forth in this contract.
- 10.3 Any infringement against this clause will result in the right for ESCAB of an immediate finalization of the contractual relation and of enforcement of other legal claims, especially for injunction and/or damages in which case ESCAB is entitled to full satisfaction.
- 10.4 The purchaser is permitted to make copies for archival and data backup purposes only on condition that the works does not contain an express prohibition on the part of the licensor or a third party and that all notices of copyright and ownership are transferred unchanged into these copies.
- 10.5 Should the disclosure of the interface be necessary to produce the interoperability of the software covered by this contract, ESCAB is to request this of the purchaser with remuneration of costs. If ESCAB does not comply with this stipulation and decompilation follows in accordance with copyright law, the result are to be used exclusively for the production of interoperability. Misuse will result in claims for damages.

11. Duration of contract

- 11.1 The duration of contract depends on the definition in contract.
- 11.2 Consulting contracts terminate in principle with the completion of the project. Apart from this, the contract may be terminated for good cause by either party at any time without notice. Reasons for premature termination include the following,
- one party breaches major provisions of the contract
 - one party is in delay with the payments after the beginning of insolvency proceedings
 - legitimate concerns exist regarding one party's credit standing, even though insolvency proceedings have not been opened, the party fails to make an advance payment or to furnish suitable security at ESCAB's request or ESCAB did not know about the other party's bad financial situation when the contract was concluded.
- 11.3 A period of notice of 3 months is valid for all contracts of software use, which have been agreed upon a limited period. If this period of notice is not kept, the contract of use will be prolonged automatically for another year.
- 11.4 If individual programs or services are cancelled from ESCAB's portfolio or software maintenance, the purchaser is not entitled for any replacement. In this case the contractual relationship can be terminated prematurely with a period of notice of 3 months. On this condition the aliquote part of the contractual amount will be offset against and in case of a credit balance for the purchaser the amount will be transferred to a bank account which has to be announced by the purchaser.
- 11.5 Cancellations by the purchaser are only possible if they are accepted by ESCAB in written form. If ESCAB agrees with the cancellation, ESCAB is entitled to charge not only the completed services and resulted costs, but also a cancellation charge of 30% about the amount of the whole project, which is not settled yet.
- 11.6 A right of withdrawal is excluded.

12. Warranty, maintenance, alterations, defective performance

- 12.1 ESCAB guarantees that all services and performances which are described in the contract, with including the necessary documentation will be fulfilled.

- 12.2 ESCAB is entitled and obligated, regardless of fault, to correct any errors and/or inaccuracies in the contractual works, which have become known subsequently, in a reasonable period. ESCAB shall immediately inform the purchaser thereof. This right of the purchaser expires six months after completion of the respective service.
- 12.3 Improvement always has priority over price reduction or conversion, in case of warranty. In case of a justified notice of defects, the defects have to be rectified in a reasonable period. Notices of defects have to be announced in written form. For a detailed enquiry of possibly appearing defects, the purchaser is obliged to provide free of charge the used computer system (for systems in online-connection with other computers also the relevant connection), software programs, protocols, documentation of diagnosis and data to ESCAB in a reasonable period for test purposes during the normal business hours and to support ESCAB. Recognized defects, which are under ESCAB's responsibility, have to be cleared up in a reasonable period. If there are defects on the side of the purchaser which obstruct ESCAB, and the purchaser does not clear up these defects, ESCAB is relieved from this obligation. A solution of the mistake can be realized with a software update or an adequate substitute solution, depending on the kind of mistake. The assumption of deficiency is excluded according § 924 AGB.
- 12.4 The period of warranty is about six months. Notices of defects are only valid as to reproducible defects and if they are done in written form within four weeks after the service provision.
- 12.5 Every warranty by ESCAB lapses for services, which are changed afterwards by the purchaser or by the purchaser's third parties.
- 12.6 As far as the object of the order is the revision or supplementation of existing services and works, the warranty covers the revision or supplementation. The warranty for the original program does not thereby come into effect again.

13. Liability/Damages

- 13.1 ESCAB is liable to the purchaser for damages – with the exception of personal injury – only to the extent that these are the result of serious fault (intention or gross negligence). Correspondingly, this also applies to damages resulting from third parties employed by ESCAB.
- 13.2 Liability for indirect damages – for example lost profits, costs, which are connected to a business interruption, loss of data or demands of third parties – is explicitly excluded.
- 13.3 Any claim for damages on the part of the purchaser may only be enforced by law within six months after those entitled to assert a claim have gained knowledge of the damage and the liable party, but not later than three years after the incident upon which the claim is based.
- 13.4 The purchaser shall furnish evidence of ESCAB's fault.
- 13.5 If ESCAB performs the required services with the help of third parties, any warranty claims and claims of damages which arise against the third party shall be passed on to the purchaser. In this case, the purchaser primarily refers to the third party.
- 13.6 It is not a violation of the contract, if obligations are not fulfilled in time or properly, as a consequence of force majeure, as e.g. war, terrorism, natural catastrophe, fire, strike, lock-out, embargo, official encroachment, blackout, failure of transportation, failure of the telecommunication network or of data lines, legal changes after the contract formation, which are affecting the service, or other unavailability of products.

14. Confidentiality/data protection

- 14.1 ESCAB is obligated to maintain complete confidentiality concerning all business matters made known to ESCAB in the course of services performed, especially trade and company secrets and any other information concerning type and/or scope of business and/or practical activities of the purchaser.
- 14.2 Furthermore, ESCAB is obligated to maintain complete confidentiality towards third parties concerning the content of the work completed, as well as any information and conditions that contributed to the completion of the work, particularly concerning data on the purchaser's clients.
- 14.3 ESCAB is not obligated to maintain confidentiality towards any person working for ESCAB or representatives of ESCAB. ESCAB is required to obligate such persons to maintain complete confidentiality and is liable for any violation of confidentiality on their part in the same way as if ESCAB had breached confidentiality.
- 14.4 The obligation to maintain confidentiality persists indefinitely even after termination of this contract – with the exception of any duty to give evidence.
- 14.5 ESCAB is entitled to use any personal data entrusted to ESCAB for purposes of the services performed. The purchaser guarantees ESCAB that all necessary measures will be taken, especially those regarding data protection laws, e.g. that declarations of consent are obtained from the persons involved.

15. Final provisions

- 15.1 The contractual parties declare that all information contained herein is accurate and made in good conscience. They shall be mutually obligated to immediately inform the other party of any changes.
- 15.2 Modifications of and amendments to this contract or these general terms and conditions shall be made in written form. This shall also apply to a waiver of this requirement in written form. Subsidiary oral agreements do not exist.
- 15.3 This contract is governed by the substantive law of the Republic of Austria excluding the conflict-of-law rules of international private law, even if the place of fulfilment of the order is in other countries. Jurisdiction in all disputes is the court in the place where ESCAB's registered business establishment is based.
- 15.4 In case of controversies out of this contract, which can not be regulated mutually, the contractual parties agree mutually to bring in a registered mediator (ZivMediatG) with focus on economic mediation from the list of the Ministry of Justice. If there is no agreement upon the choice of the economic mediator, or upon the contents, the earliest moment for legal steps is settled as one month after the failure of the negotiations.
- 15.5 In case that a mediation is broken off or is not achieved, only Austrian law is valid for the possibly initiated trial. All costs, which have come up for a prior mediation, especially those for an introduced lawyer, can be pleaded according to the agreement as pretrial cost during the arbitration or trial.