

# Terms and Conditions for Services and the Performance of Work (esp. Digitization, Seminars)

## 1. Conclusion of the Contract, Scope of Services

The precise scope of the services and work to be performed shall be specified by WSCAD electronic GmbH (hereinafter "WSCAD") in their respective offers. All offers are subject to confirmation and are non-binding. A contract enters into force only through a written confirmation by WSCAD or by the execution of an order by WSCAD. Changes in the scope of services (so-called change requests) are only possible in writing, by mutual agreement, and with an appropriate adjustment of the remuneration. In addition, the following applies to the scope of digitization services:

1.1 Digitization involves the conversion of existing plans (schematics or construction plans) on a page by page basis to a WSCAD data format or some other external format in agreement with the customer. The primary objective here is to create plans which are functional and effective with WSCAD and which can then be processed further. This may require deviations from a 1:1 representation in some cases and is not a deficiency in the processing.

1.2 Only those values, texts and information that are visibly entered in the plans are transferred. This is especially true for the automatically generated lists (e.g., material list), whose details are determined from the schematics. The conversion always occurs using the "Professional" version of WSCAD that was current at the time of placing the order or by using the current version of the target system agreed with the client.

1.3 Any functionality that extends beyond this defined scope of services (e.g., creation of terminal charts, material lists, etc.) or which involves a different output format are not included in the scope of digitization, but can be ordered separately.

1.4 The converted files are delivered in WSCAD format on CD or via e-mail or provided as a download on our server. If the supply of output lists (e.g., terminal charts, material lists) has been agreed upon, these shall be created using forms from the WSCAD standard package, unless the use of custom forms has been expressly commissioned.

1.5 The scope of the digitization expressly excludes any engineering and planning services! Within the context of digitization, the planning documents provided by the client are transferred to the target system only to the extent that they are available in the provided templates or can be read from these templates. WSCAD does not check the logical correctness of the planning documents of the client in the context of digitization. The client is solely responsible for the accuracy and completeness of the planning documents.

## 2. Cooperation Obligations of the Client and Indemnification against Third-Party Claims

2.1 The purchaser shall be obliged to fulfill all cooperation obligations required for the provision of the service. In particular, the purchaser shall provide WSCAD with free of charge access to their computer systems (including any software on it) to the extent necessary and shall designate a contact person who can quickly procure the required information and make decisions.

2.2 To the extent that the purchaser provides any material required for the provision of the contractual services, they shall guarantee to WSCAD that they are entitled to do so and that no third-party rights are infringed as a result. Should any third-party claims be nonetheless asserted, the parties shall notify each other. The purchaser undertakes to indemnify WSCAD from and against any resulting disadvantages (including any legal and court costs involved).

2.3 In addition, the following applies to the obligation to cooperate in the context of digitization:

Before any offer is created, all plans to be digitized must be provided by the client in digital form (pdf, dwg). This also includes, in particular, any custom drawing frames or forms. Only the actually supplied plans are covered by the offer. The plans are treated confidentially and, if an order is placed, archived by WSCAD until the expiry of the warranty period. After the deadline or if no order is placed, the plans will be destroyed or returned upon request.

## 3. Delivery Dates, Transfer Rights

3.1 Delivery dates and deadlines are non-binding, unless designated as such explicitly and in writing by WSCAD. Should any circumstances that could affect the processing time become known during the performance of the contract, the purchaser shall be notified without delay. Any agreed delivery date will be postponed accordingly in such cases. The same applies to delays arising from a breach of the obligation to cooperate by the purchaser. Claims for damages on exceeding the delivery period are excluded.

3.2 To the extent that the contractual services are protected by intellectual property rights, the purchaser shall be granted - unless expressly stated otherwise in the offer - only a simple, non-transferable right of use which, however, shall be subject to the condition precedent that all claims of WSCAD arising from this contractual relationship have been fully satisfied. Furthermore, all copyrights and/or rights of ownership relating to the contractual services shall remain with WSCAD, unless specified otherwise in other provisions.

## 4. Acceptance of Services, Prices and Payment for Services and the Performance of Work, Set-off

4.1 For work performed, the purchaser shall be obliged to formally accept the completed work. The work shall be deemed accepted if the purchaser does not complain in writing that the work is deficient or represents a breach of contract within 14 days after the delivery. The remedy may be denied as long as the purchaser has not fulfilled their payment obligations for the non-deficient part of the performance.

4.2 The agreed price for the performance of work shall be due upon expiration of the aforementioned acceptance period as a net amount, including the statutory value-added tax, and without any deductions. Invoices for services shall be due within 14 days after the invoice as a net amount, including the statutory value-added tax, and without any deductions.

4.3 Unless stipulated otherwise in the purchase offer, all services are billed on a time basis. The daily rate includes 8 hours of service. Any time beyond this period is charged on an hourly basis at 1/8-th of the daily rate. In so far as a contingent of service days (service package) has been agreed in advance, it shall be initially billed on a time basis, and shall be charged in full no later than 90 days after the agreement of the service package - unless stipulated otherwise in the offer. The open quota from the contingent can then be claimed in accordance with these terms and conditions. Travel expenses (e.g., transportation fares and accommodation costs, catering costs and other allowances) are charged at actual cost, and travel times are calculated at 1/2 the hourly rate. The prices for services are determined by the currently valid price list of WSCAD.

4.4 The performance of work is charged on a time and materials basis, unless stipulated otherwise in the offer. The foregoing paragraph shall apply mutatis mutandis. The prices for work performed are determined by the currently valid price list of WSCAD.

4.5 If an estimate of the charges for the performance of work or services is included in an offer, the estimate shall always be deemed non-binding.

## **5. WSCAD Warranty for Work Performed, Liability of WSCAD for Work and Services, Statute of Limitations for Claims of the Purchaser**

5.1 WSCAD provides no warranties for services. For work performed, WSCAD provides a warranty period 12 months after acceptance. Defects and/or deficiencies must be reported and documented by the client in writing. WSCAD will rectify these defects and/or deficiencies in the context of a cure within a reasonable time period. Should even a second attempt at a cure fail, the client shall be entitled to reduce the price of the service or withdraw from the contract. As a prerequisite, the defect involved must be a serious defect. Claims for damages are excluded, however, unless a defect has been fraudulently concealed or a warranty has not been complied with. If it turns out that WSCAD has provided services for troubleshooting/repairs without being obligated to do this (for example, because the client cannot prove the defect or attribute it to WSCAD), the purchaser shall reimburse WSCAD for the expenses incurred at the currently valid rates for services or the performance of work.

5.2 For damages resulting from injury to life, limb or health, WSCAD shall be liable according to the statutory provisions. For other damages, WSCAD shall only be liable (subject to the next sentence) for intent and gross negligence. For other damages resulting from the breach of any crucial obligation whose fulfillment is essential to the proper performance of the contract, and on whose compliance the purchaser may regularly rely on, WSCAD shall also be liable for simple negligence, but this liability shall be limited to the foreseeable damages at the time of the infringement. The above provisions also apply to breaches of duty by vicarious agents of WSCAD. Liability under the Product Liability Act and liability for damages resulting from the breach of warranties remain unaffected by the foregoing provisions.

5.3 The purchaser is obliged to use the provided updates, patches and/or service packs for the software and to back up their data before installing the software and periodically thereafter, especially before making any changes to the hardware or software environment. Insofar as the purchaser is guilty of contributory negligence through the breach of contractual or legal obligations or through any changes to the software and/or the subject of the contract or the improper handling or incorrect operation of the software and/or subject of the contract by the purchaser or a third party, WSCAD shall not be deemed liable. WSCAD assumes no responsibility for the selection, installation and use, as well as the intended results of the software and/or the subject of the contract.

5.4 Furthermore, the following applies to digitization:

The client is personally responsible for the acceptance of the planning documents digitized by WSCAD. The planning, design or conversion of a plant based on digitization created by WSCAD is explicitly prohibited until the client has formally checked the digitization for errors and completed the approval and acceptance process.

5.5 Contingents from service packages shall become statute-barred within one year from the date of the agreement of the service package. Any other claims of the purchaser resulting from these Terms and Conditions shall become statute-barred within one year after the provision of the service or acceptance of the work.

## **6. Special Conditions for Standard Training Services of WSCAD (Seminars)**

6.1 The fees for a seminar shall be charged to the purchaser about 4 weeks prior to the start of the seminar and shall be due, including the statutory value added tax (MwSt), within 14 days after receipt of the invoice. The seminar fees must be paid before the start of the seminar; otherwise, WSCAD reserves the right to prohibit the participation of the customer in the seminar. Lunch (Mon-Fri), refreshments and seminar handouts are included in the seminar fees.

6.2 Schedule changes, changes in registrations and cancellations must be communicated to WSCAD by the purchaser in writing or via an email to [gbs@wscad.com](mailto:gbs@wscad.com).

6.3 Schedule changes notified up to 14 days before the start of the seminar shall be implemented free of charge. For schedule changes notified at a later date, a processing fee of €100.00 net shall be due and shall be charged to the purchaser by WSCAD in addition to the seminar fees.

6.4 A change in registration, i.e., replacing a registered participant by another person, is free of charge.

6.5 In the case of a cancellation of the seminar by the purchaser – except in the case of termination pursuant to §626 of the German Civil Code (BGB) – the seminar fees shall be calculated as follows:

- For cancellations up to 14 days prior to the seminar date: 15% of the seminar price
- For cancellations up to 7 days prior to the seminar date: 20% of the seminar price
- For cancellations up to 1 day prior to the seminar date: 30% of the seminar price
- For cancellations on the starting date of the seminar or failure to attend (no-show): 100% of the seminar price

6.6 Should the seminar event be canceled by WSCAD for a compelling reason (e.g., illness of faculty staff, insufficient number of participants, force majeure), this shall be deemed a notice of termination pursuant to §626 Section 2 of the German Civil Code (BGB). In case of such cancellation, the purchaser shall have no claims on the implementation of the seminar date. WSCAD shall, however, refund the already paid participation fees to the purchaser.

6.7 For damage caused as a result of cancellation by WSCAD (e.g., travel and accommodation costs or loss of work), WSCAD shall be liable only pursuant to the above Section 5.2.

6.8 The seminar documents provided by WSCAD are copyright protected and may not be reproduced, copied or distributed without written consent.

## **7. Vicarious Agents of WSCAD**

WSCAD shall be entitled to perform any owed work or services through subcontractors or other vicarious agents.

## **8. Set-off / Assignment by the Purchaser**

8.1 The purchaser shall be entitled to set-off of debts only with undisputed or legally established counterclaims.

8.2 Without the express permission of WSCAD, the purchaser is not entitled to assign or transfer any rights and obligations under this contract.

## **9. Validity of these Terms and Conditions**

In addition, our Terms and Conditions for Software Delivery and Maintenance apply. The present terms and conditions shall take precedence over the general terms and conditions for software delivery and maintenance within the context of the provision of services and work. Other conditions of the purchaser shall apply, even if not explicitly objected to, only insofar as they conform to these terms and conditions. Collateral agreements are only effective if they are confirmed in writing.

## 10. Final Provisions

10.1 The invalidity or ineffectiveness of individual provisions of these Terms and Conditions shall not affect the validity of any of the remaining provisions. In such cases, both parties shall strive to replace the invalid provision by some other valid provision that most closely reflects the original economic and legal intent of the replaced provision.

10.2 Insofar as these terms and conditions do not include any provisions to the contrary, the general legal provisions of the substantive law of the Federal Republic of Germany to the exclusion of the CISG (United Nations Convention on Contracts for International Sale of Goods) shall apply.

10.3 The place of fulfillment is Bergkirchen. The place of jurisdiction for any disputes arising from or in connection with these Terms and Conditions shall be Munich if the client is a merchant or has no general jurisdiction in the territory of the Federal Republic of Germany or is a legal person under public law. WSCAD reserves the right to institute legal proceedings through courts in any other prescribed place of jurisdiction.

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