

General terms and conditions of

ementexx GmbH

1. Scope of application

1.1 The following general terms and conditions ("GTC") form an integral part of contracts concluded between ementexx GmbH ("ementexx") and the customer ("customer") for

- services provided by ementexx
- the purchase of licences for standard software (Software licensing)
- the development of individual software and custom product upgrades (Software development)
- Software maintenance services (software maintenance)
- Software hosting services (Software hosting)

These GTC also apply to all future transactions arising from the ongoing business relationship with the customer.

1.2 The specific terms and conditions for software licensing, software development, software maintenance and software hosting, as amended from time to time, apply to the contractually agreed services in a supplementary manner. In case of any contradictions, the specific terms and conditions shall take precedence over the provisions listed in these GTC.

1.3 The rights and obligations of the parties, and in particular, the scope of services, are mainly based on the specific contractual provisions. Unless otherwise provided herein, the following provisions will apply.

1.4 Terms and conditions of the customer that conflict or differ from these GTC will only apply if they have been expressly agreed to in writing by ementexx. These GTC shall apply even if ementexx provides the service or delivers the goods to the customer while being aware of conflicting or deviating terms and conditions of the customer.

1.5 The business hours of ementexx are Monday to Friday from 8:00 to 17:00 with the exception of national holidays and holidays of the federal state of Hessen.

2. Quotes and contract conclusion

2.1 Any quotes from ementexx are subject to change and non-binding and can be withdrawn at any time until accepted in writing by the customer, except where the quote has been expressly designated by ementexx as binding.

2.2 Unless designated as binding, ementexx is entitled to deviate from the documents included in the contract, such as illustrations, drawings, measurements and weights to comply with the latest technology standards or for production-related reasons, provided this is reasonable for the customer. Furthermore, ementexx reserves the right to make technical changes as well as changes in shape, colour, material and/or weight to comply with the latest technology standards to the extent this is reasonable for the customer. Specifications of the goods are only considered to be guaranteed if this has been expressly agreed between the parties.

2.3 By placing an order, the customer makes a binding offer to purchase the service or the ordered goods

("contractual item"). ementexx is entitled to accept the offer underlying the order within two weeks of receipt. The offer is accepted by written confirmation of the order.

2.4 If the customer places the order by electronic means, ementexx will confirm the receipt of the order. The confirmation of receipt does not constitute a binding acceptance. The confirmation of receipt can be combined with the confirmation of acceptance.

2.5 The conclusion of the contract for the delivery of the goods is subject to ementexx receiving correct and timely deliveries from its suppliers. This applies only if the failure to deliver is not due to a fault on the part of ementexx, in particular, if ementexx concluded a congruent hedging transaction with its supplier. ementexx shall notify the customer promptly if performance is unavailable and refund any payments already received without delay.

2.6 If ementexx has reasonable concerns about the financial standing of the customer at the time or after the conclusion of the contract, in particular, if the customer is subject to attachment or other enforcement or insolvency proceedings or if such proceedings are rejected for lack of assets, ementexx will be entitled to request an advance payment or security from the customer or withdraw from the contract. The rest of the contract will remain binding on the customer even if individual items become invalid.

2.7 Brochures, advertising materials, etc. published by ementexx or the manufacturer of the ordered goods, as well as the information contained therein, will only become subject of the contracts concluded between the parties if they have been expressly included in the contract or recognised as binding in writing.

3. The customer's obligation to cooperate

3.1 The customer shall provide ementexx free of charge with all the assistance necessary to fulfil its obligations under the contract. This includes employees, workspace, hardware and software, data and telecommunication facilities.

3.2 Any additional obligations of the customer to provide services and assistance under the specific terms and conditions of contract shall apply in a supplementary manner.

3.3 If the customer fails to provide the necessary services and assistance, ementexx will not be responsible for any resulting limitation of the contractual services. In this case, ementexx will make all reasonable efforts to meet its contractual obligations despite the customer's failure to provide the necessary services and assistance. The customer shall reimburse ementexx for any additional costs incurred as a result.

3.4 If the customer breaches their duty of acceptance or fails to provide assistance, ementexx will be entitled to demand compensation for any damage or loss suffered as a result, including any additional expenses. In this case, the risk of accidental loss or deterioration of the contractual items shall pass to the customer upon the breach of contractual obligations.

4. Terms of delivery

- 4.1 All deliveries are made ex works (EXW, Incoterms 2000).
- 4.2 The expected delivery dates provided by ementexx are based on estimates and are always non-binding, unless otherwise expressly agreed in writing.
- 4.3 The customer is not entitled to withhold acceptance of the contractual item due to minor defects that do not considerably affect its use.

5. Remuneration / terms of payment

- 5.1 All invoices are payable in full within 14 days of the invoice date. At the end of this period, the customer will be in default of payment without the need for a separate reminder.
- 5.2 Invoices will only be sent electronically by email.
- 5.3 All prices are quoted exclusive of VAT at the rate applicable at the time of performance.
- 5.4 Where the remuneration payable under the terms of contract is based on the actual costs incurred, the hourly rates, travel expenses and incidental expenses shall be based on the rates applicable at ementexx, unless agreed otherwise by the parties.
- 5.5 Payments shall be made by bank transfer to ementexx. The parties can also agree to SEPA direct debit payments. ementexx is under no obligation to accept payments by cheque or bill of exchange. In any event, cheques or bills of exchange will only be accepted subject to clearance and does not lead to deferment of payment. Any costs associated with the collection of cheques or bills of exchange shall be borne by the customer.
- 5.6 In the event of default, ementexx will be entitled to charge the customer late-payment interest. at 8% p.a. above the base rate of the European Central Bank.
- 5.7 If the customer falls into arrears with payment or if the financial situation or creditworthiness of the customer has deteriorated considerably over time, ementexx will be entitled to suspend performance until payment has been received in full.

6. Material defects

- 6.1 Where ementexx provides work and services based on a purchase agreement, nature of the goods or services or under specific contractual provisions, ementexx shall be liable, in the absence of any overriding mandatory provisions, for material defects solely in accordance with the provisions set out in this Section.
- 6.2 The customer shall check the goods and services and, in particular, software thoroughly to establish whether the goods and services are free from defects and can be used in the existing hardware and software configuration. The customer shall notify ementexx promptly in writing of any obvious defects identified during the inspection; the customer shall notify ementexx of any other defects promptly upon discovery and include a detailed description of the defect and information about the date and time of discovery. If the customer fails to comply with their notification obligations in a proper and timely manner, the performance will be deemed to have been accepted by the customer in accordance with Article 377 of the German Commercial Code (HGB).

- 6.3 In the case of material defects, ementexx will be entitled to remedy the defect first by providing supplementary performance. This means that ementexx is entitled, at its option, to either provide the customer with a new, defect-free software version or to eliminate the defect; possible remedies include reasonable workarounds offered by ementexx to mitigate the effects of defects.
- 6.4 ementexx is entitled to make the supplementary performance dependent on the customer having paid at least a reasonable portion of the remuneration.
- 6.5 Following two failed attempts at supplementary performance, the customer will be entitled to set a reasonable grace period to remedy the defect. In this case, the customer is required to state clearly in writing that they reserve the right to withdraw from the contract and/or claim damages.
- 6.6 If ementexx fails to remedy the defect within the grace period, the customer will be entitled to withdraw from the contract or to reduce the remuneration. This does not apply if the defect is minor.
- 6.7 ementexx is only liable for the specifications of the contractual item that have been agreed in writing. ementexx does not assume any procurement risk or guarantees, unless specifically agreed otherwise by the parties in writing. Manufacturer guarantees remain unaffected thereby.
- 6.8 ementexx shall pay damages or reimburse the customer for the costs incurred due to a defect within the limits set out in Section 8.
- 6.9 If ementexx provides troubleshooting and debugging services without being obliged to do so under the terms of the contract, it will be entitled to charge a fee based on its standard rates. This is especially valid if a defect is not verifiable or cannot be attributed to ementexx.

7. Defects of title

- 7.1 ementexx shall ensure that the customer's use of the contractual item does not infringe any third-party rights.
- 7.2 In the case of defects of title, ementexx will be entitled to remedy the defect first by providing supplementary performance. This means that ementexx shall grant the customer, at its option, either a legally compliant option to use the delivered contractual items or exchanged or modified contractual items of equivalent value.
- 7.3 If third parties raise claims that prevent the customer from exercising the rights of use granted under the terms of the contract, the customer shall notify ementexx in writing and provide all the necessary details. Furthermore, the customer hereby authorises ementexx to represent the customer alone to settle any disputes with the third party in or out of court.
- 7.4 ementexx shall assume the costs of defence against such third-party claims and indemnify the customer against any costs or losses associated with defence against these claims, provided they are not based on actions of the customer that are contrary to their obligations under the contract.
- 7.5 ementexx shall pay damages or reimburse the customer for the costs incurred due to a defect within the limits set out in Section 8.

8. Liability

8.1 In the absence of any overriding mandatory provisions, ementexx shall pay damages in cases of contractual and non-contractual liability solely in accordance with the following provisions:

- ementexx is fully liable for any damage caused intentionally;
- The liability of ementexx for damage caused by gross negligence is limited to foreseeable damage caused by the breach of the obligation;
- in all other cases, ementexx is only liable for breaches of material contractual obligations, which can jeopardise the proper performance of the contract; the liability is always limited to the amount foreseeable damage. While liability is limited to EUR 10,000 per claim, the total liability is limited to EUR 50,000 under these GTC.
- In addition, ementexx is liable, to the extent it is insured against the loss/damage incurred, under the terms of the insurance cover and subject to the condition precedent of premium payment.

8.2 The limitations of liability under Section 8 of these GTC do not apply to liability for personal injury or liability under the Product Liability Act.

8.3 The limitation period for warranty claims is one year and starts to run upon delivery of the contractual items or the provision of services; the same period applies to other claims of whatever type against ementexx, unless ementexx has acted with intent or gross negligence, or has fraudulently concealed the defect. Furthermore, the statutory limitation periods apply in the case of personal injury or defects of title within the meaning of Article 438 (1) No 1a of the German Civil Code (BGB) and guarantees (444 BGB) as well as claims under the Product Liability Act.

8.4 In cases of force majeure (unforeseen circumstances or occurrences beyond the control of ementexx, which could not have been avoided by exercising due care of a prudent businessman, e.g. industrial action affecting ementexx or its suppliers, war, fire, transport disruption, shortage of raw materials, official actions, natural disasters, incorrect or delayed delivery by suppliers despite concluding a congruent hedging transaction or lockouts) ementexx will be entitled to suspend its delivery and/or performance obligations for the duration of the disruption plus a reasonable lead time and to the extent of the effect thereof. This also applies if ementexx is already in default of delivery. ementexx shall notify the customer promptly of the occurrence of a force majeure event and the expected duration of the disruption. Notwithstanding this, ementexx will be entitled to withdraw from the contract in whole or in part with respect to the unfulfilled part, if it cannot be reasonably expected to continue the contractual relationship having given due consideration to the duration of the force majeure event and the interests of the customer.

8.5 If the disruption lasts longer than three months, the customer will be entitled to withdraw from the agreement with respect to the unfulfilled part of the agreement after setting a reasonable grace period.

9. Set-offs, right of retention, assignment

9.1 The customer is only entitled to set off or withhold payments in the case of undisputed or legally established claims. The customer is also not entitled to

withhold payment if their counterclaims are not based on these GTC.

9.2 The customer may not assign or transfer the rights and obligations arising from these GTC in whole or in part without prior written consent of ementexx. ementexx is permitted to assign or transfer its rights and obligations arising from these GTC to affiliated companies within the meaning of Article 15 et seq. of the German Stock Corporation Act (AktG).

10. Data processing for internal purposes

10.1 The customer hereby consents to ementexx processing and using contact information to implement the contract between the customer and ementexx (hereinafter referred to in this section as the "intended purpose").

10.2 Contact information means business-related contact information, which is made available to ementexx by the customer; this includes names, job titles, business addresses, telephone numbers and email addresses of employees and contractual partners of the customer.

10.3 The customer furthermore consents to ementexx accessing, processing and using this contact information for the intended purpose. In this context, ementexx will process and use all contact information for the intended purpose in accordance with the applicable laws and regulations governing data protection and electronic communication.

10.4 Where required under laws and regulations governing data protection and electronic communications, the customer will be expected to obtain the prior consent of the contact persons and inform them accordingly. In this way, the customer ensures that ementexx can process and use the contact information for the intended purpose and communicate with the contact persons, e.g. by email.

11. Data processing on behalf of third parties (on behalf of the customer)

11.1 If ementexx processes data on behalf of the customer and comes into contact with personal data of the customer during the provision of the agreed services, the parties will be required to conclude a separate agreement. By virtue of the will of the parties, this agreement shall contain the written data processing contract required under Article 28 of the General Data Protection Regulation (GDPR), which will set out the rights and obligations of the parties related to data processing.

12. Final provisions

- 12.1 The place of performance is the registered office of ementexx.
- 12.2 The sole place of jurisdiction for any disputes arising from and relating to these GTC is Frankfurt am Main, Germany.
- 12.3 Before referring the matter to ordinary courts, the parties shall follow the dispute resolution procedure in accordance with the conciliation rules of the German Association of Law and Informatics (Deutsche Gesellschaft für Recht und Informatik e.V. / DGRI). If the dispute is not settled within a period of 45 days from the date of submitting the conciliation application or within a period modified by the parties in writing in accordance with the conciliation rules of the DGRI, the parties shall have no further obligations under this paragraph and will be entitled to bring the dispute before a court of law.
- 12.4 All legal transactions arising from or relating to these GTC are governed and shall be construed solely in accordance with the laws of the Federal Republic of Germany to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG) and the conflict of law rules under private international law.
- 12.5 To be effective, any changes or additions to these GTC must be made in writing. This also applies to the waiver of these GTC or the waiver of the written form requirement. There are no oral side agreements.
- 12.6 If any provision of these terms and conditions is or becomes invalid, unenforceable or if there is an omission, the validity and enforceability of the remaining provisions of this agreement will not be affected or impaired thereby. The parties undertake to replace the invalid, unenforceable provision or rectify the omission with an effective and enforceable provision, which the parties would have agreed upon had they been aware of the invalidity, unenforceability or omission.