

# Specific terms and conditions for software development

ementexx GmbH

## 1. Scope of application

- 1.1 The following specific terms and conditions for software development apply in addition to the general terms and conditions of ementexx GmbH ("GTC"), and govern all contracts concluded between ementexx GmbH ("ementexx") and the customer ("customer") for creation and development of software ("software") to be used by the customer.
- 1.2 These terms and conditions shall also apply to all future transactions involving software development services provided by ementexx under the terms of the contract, even if they are not expressly agreed upon again.
- 1.3 The software to be developed can be delivered to the customer and run by the customer ("on premise"). Alternatively, the software can be provided by ementexx as a SaaS solution ("cloud"). In the latter case, the specific terms and conditions for software hosting also apply.
- 1.4 General terms and conditions of the customer that conflict or differ from these specific terms and conditions will only apply if they have been expressly agreed to in writing by ementexx. These specific terms and conditions shall apply even if ementexx provides the service to the customer while being aware of conflicting or deviating terms and conditions of the customer.

## 2. Subject matter of the contract

- 2.1 The subject matter of the contract is the software program ("software") to be developed or adapted by ementexx in cooperation with the customer based on the service specification underlying the conclusion of the contract and to be handed over to the customer for use, including user instructions (alternatively online help) and, where appropriate, supplementary documentation (hereinafter referred to collectively as the "contractual item"). Unless otherwise agreed, the operating instructions will be in the language of the user interface.
- 2.2 ementexx shall develop the software according to the principles of good professional practice.
- 2.3 Both software solutions, i.e. the on-premise version ("on-premise") and the cloud version ("cloud") to be provided by ementexx to the customer, only contain the object code. The source code of the software is not included within the scope of the contract.
- 2.4 The service specifications are based on the technical and functional software requirements communicated by the customer. The software specifications are based on the service specifications applicable at the time of the conclusion of the contract.
- 2.5 Any other specifications fall outside the scope of performance to be rendered by ementexx. In particular, the customer cannot derive such specifications from other descriptions of the software in public statements or promotional materials of ementexx, its employees or sales partners, unless ementexx has expressly confirmed the other software specifications in writing.
- 2.6 Guarantees regarding the software only exist if they have been agreed in writing and the obligations arising from such a guarantee for ementexx have been expressly specified.
- 2.7 Based on a separate agreement to be signed by the parties, ementexx will create a detailed concept in

cooperation with the customer that shall contain all the necessary information about the software, its areas of use as well as the concrete configuration. The detailed concept will then replace the service specification as the sole basis for the provision of services.

- 2.8 To be effective, any changes to the service specification or the detailed concept must be agreed in writing by the parties. Any agreed deadlines or milestones will be postponed accordingly.
- 2.9 Where necessary, ementexx shall provide the customer with a licence key for the software. This licence key is used to activate the software at launch and at regular intervals and to validate the purchased licence.
- 2.10 **ON-PREMISE ONLY:** ementexx makes the software available for download; the customer receives a message from ementexx with the download link. Alternatively, ementexx may provide a deployment tool for the software. Any telecommunication costs incurred to download the software shall be borne by the customer, even if the software is downloaded repeatedly.
- 2.11 **CLOUD ONLY:** The software is provided by ementexx on a ready-for-use basis. The customer will receive a message from ementexx with the necessary access parameters. Any telecommunication costs incurred for use shall be borne by the customer.
- 2.12 Analysis, planning, consulting and training services are not within the scope of services to be provided by ementexx under this contract unless otherwise agreed by the parties.

## 3. Cooperation and other obligations of the customer

- 3.1 The customer shall provide ementexx with a complete and detailed list of their technical and functional software requirements for the software and shall supply ementexx in a timely manner with all documents, information and data necessary to develop the software.
- 3.2 To the extent reasonable practicable, the customer shall provide ementexx with the necessary assistance and create in their sphere of control all the conditions necessary for the proper implementation of the contract, as well as provide ementexx, in particular, with sufficient workspace and working equipment upon request.
- 3.3 The customer shall ensure that expert personnel is available to assist ementexx throughout the project.
- 3.4 At the request of ementexx, the customer shall in good time supply suitable test cases and data for the quality and acceptance test in a machine-readable form.
- 3.5 The customer shall report any defects in writing in sufficient detail in an intelligible form, providing all the information needed to identify the defect. The information shall cover, in particular, any steps taken that led to the occurrence of the defect, its effects and frequency.
- 3.6 The customer shall assist ementexx in the elimination of defects to the extent reasonable and practicable. For this purpose, the customer shall provide ementexx with remote access to their systems free of charge and assist ementexx with error analysis.

#### 4. Rights of use

- 4.1 ementexx shall grant the customer a non-exclusive, non-transferable time-limited or time-unlimited right to use the software for the contractually stipulated purpose and within the contractually agreed scope in their company ("right of use").
- 4.2 **CLOUD ONLY:** The right of use is limited in duration to the term of the hosting contract.
- 4.3 **ON-PREMISE ONLY:** The right to use the software is limited to the territory of the European Union.
- 4.4 All other rights are reserved to ementexx.
- 4.5 If the agreed usage factor is exceeded, ementexx will be entitled to charge the customer for the amount incurred for the continued use in accordance with ementexx's price list applicable at the time.
- 4.6 ementexx is entitled to check whether the contractual item is used in accordance with the provisions of this contract. To this end, ementexx can request information from the customer, in particular, about the period and scope of use of the contractual item. In addition, ementexx is entitled to take appropriate technical measures to protect against any non-contractual use.
- 4.7 **ON-PREMISE ONLY:** To check whether the contractual item is used in conformity with the contract, ementexx is entitled to access the books as well as the hard- and software of the customer taking the measures described above. To facilitate this, the customer shall give ementexx access to their business premises during normal business hours.
- 4.8 If the review provided for under Sections 4.6 and 4.7 shows that the customer is in breach of this agreement, the customer shall promptly pay the licence fees for any unauthorised uses in accordance with ementexx's applicable price list. If an inspection reveals a deviation of more than 15%, the customer shall also bear the costs of the inspection.
- 4.9 **ON-PREMISE ONLY:** When making hardware changes, the customer shall delete the software from the previously used data carriers and other hardware.
- 4.10 **ON-PREMISE ONLY:** If the use of the software on the new/upgraded hardware involves a higher fee, the customer shall pay ementexx the corresponding amount. If another technical version of the software is required for this purpose, ementexx shall develop or deliver this, if feasible, at an additional charge.
- 4.11 **ON-PREMISE ONLY:** In case of additional use without consent (especially in case of simultaneous installation on several systems), ementexx will be entitled to charge the customer for the amount incurred for the continued use in accordance with ementexx's price list applicable at the time. This is without prejudice to the right to assert further non-contractual claims for damages.
- 4.12 The customer will only be entitled to use the software in a manner that falls outside the rights of use granted in this contract with the prior written consent of ementexx.
- 4.13 The source code of the software is not included within the scope of the contract.

#### 5. Reproduction rights and multiple uses

- 5.1 **ON-PREMISE ONLY:** The customer is entitled to use the URL provided by ementexx to download the software and save it in a suitable form.
- 5.2 **ON-PREMISE ONLY:** The customer may only copy or reproduce the software if this is necessary for the intended use of the software. This is the case, in particular, when making copies to install the software, loading it into memory and making a backup.

#### 6. Acceptance

- 6.1 The customer shall check without delay - as a general rule, within 14 calendar days - whether the contractual item, especially software or executable parts of the software agreed upon as partial delivery/provision, is free from defects and has all the specifications agreed under the terms of the contract - using suitable and practical test cases to be coordinated with ementexx ("specifications check").
- 6.2 ementexx is entitled, but not obliged, to accompany the specifications check on site.
- 6.3 The customer shall accept the performance if the check based on the agreed test criteria does not reveal any material defects. Material defects are errors that fall into classes 1 and 2 as defined in Section 6.6; defects that fall into classes 3 and 4 do not prevent the customer from accepting the performance. ementexx remains obligated to perform subsequent performance as part of its guarantee obligations.
- 6.4 The customer shall prepare a written acceptance report and provide it to ementexx without undue delay; if the customer fails to comply with this obligation in a proper and timely manner, the performance will be deemed to have been accepted by the customer.
- 6.5 After acceptance, ementexx shall start to eliminate the defects detected during acceptance free of charge at its own expense. The defects shall be eliminated within a reasonable period of time based on the respective error classes.
- 6.6 Error classes within the meaning of the above provisions are as follows:
- Class 1 error: The software cannot be used at all or only to a very limited extent or essential agreed service specifications are unavailable.
  - Class 2 error: While the core functionality is provided, a sub-module is reporting one or several significant errors that prevent or significantly restrict work with this module.
  - Class 3 error: While the core and main functionality is provided, there are errors or missing agreed specifications in sub-functions or sub-modules that do not fall into error class 2.
  - Class 4 error: Errors or unavailability of agreed service specifications which only marginally affect the functionality of the software (e.g. spelling errors on the screen or in printouts).
- 6.7 The parties intend to assign defects to error classes by mutual agreement. In the event of any disagreement as to whether there is an acceptance obligation and/or

whether there are defects within the meaning of the error classes defined above, the parties shall endeavour to reach an agreement at the management level.

- 6.8 Any - even partial - active use of the software by the customer shall be treated as acceptance. If a deadline for acceptance set by ementexx expires without yielding any results, the customer will be deemed to have accepted the performance.
- 6.9 The customer is also subject to the inspection and reporting obligations under Article 377 of the German Commercial Code (HGB).
- 6.10 If the customer identifies defects that entitle the customer to refuse acceptance, ementexx undertakes to eliminate the defects within a reasonable period of time. The acceptance shall be repeated within one week after receiving notification that the defects have been eliminated.

## 7. Claims for defects (guarantee)

- 7.1 The customer shall only have claims for defects if they can be reproduced or otherwise demonstrated.
- 7.2 Where ementexx takes action based on an error report, but the error fails to materialise, ementexx will be entitled to demand reimbursement of any incurred expenses; this does not apply if the customer could not have reasonably been aware that this was not a defect, the error is not reproducible or otherwise demonstrable as a defect.

## 8. Intellectual property rights of third parties

- 8.1 Where the use of the software developed by ementexx infringes third-party intellectual property rights, ementexx will, at its discretion and at its expense, either acquire the necessary usage rights on behalf of the customer or modify the contractual item to a degree that it will no longer infringe any third-party rights while continuing to comply with the agreed specifications.

## 9. Installation, instruction, training and maintenance

- 9.1 **ON-PREMISE ONLY:** For the installation of the software by the customer, ementexx refers to the installation instructions, in particular, with respect to the required hardware and software environment.
- 9.2 Where ementexx provides optional installation, setup, instruction and training services, these shall be governed by the GTC of ementexx and the respective specific terms and conditions.

## 10. Software protection

- 10.1 Unless the customer is expressly granted rights under this contract, all rights to the software and the accompanying documentation (including all copies made by the customer) - in particular, copyright and technical property rights - are exclusively held by ementexx. This does not affect the customer's ownership of the respective data carriers.
- 10.2 The customer is not permitted to change or remove copyright notices, marks and/or control numbers or marks of ementexx. If the customer changes or processes the contractual item, these notices and logos must be included in the amended version of the contractual item.

10.3 **ON-PREMISE ONLY:** The customer shall handle the supplied software with due care and diligence to prevent any misuse. The customer will only make the contractual item (irrespective of whether it is unchanged or reworked) accessible to third parties with the prior written consent of ementexx. The customer's employees or other persons designated by the customer to use the contractual item in conformity with the contract are not classified as third parties.

10.4 **ON-PREMISE ONLY:** The customer shall keep a record of the copies of the contractual item made in conformity with the contract and their location and shall give ementexx access to the relevant information upon request.

10.5 **ON-PREMISE ONLY:** The customer may only make the software available to third parties with the written consent of ementexx after they have completely and definitively stopped using the software. The customer is also not permitted to make the software available to third parties on a temporary basis or partially in return for payment, irrespective of whether this is done in a physical or digital form. This applies mutatis mutandis to the gratuitous loan for use.

10.6 **ON-PREMISE ONLY:** If the customer hands over data carriers, storage or other hardware on which the software is stored (whether in whole or in part, unchanged or modified) (i) to third parties without it constituting disclosure in accordance with Section 6.5 or (ii) the customer gives up direct possession thereof, they shall ensure that the software is completely erased beforehand.

10.7 ementexx may revoke the customer's usage rights if the customer breaches the usage limitations or the provisions to protect against unauthorised use in a material way. ementexx shall first give the customer a grace period to remedy the situation. In the case of a repeated breach or in special circumstances that justify the immediate revocation without setting a grace period, ementexx will be entitled to revoke the customer's usage rights with immediate effect. The customer will be required to confirm to ementexx in writing that they have ceased using the software after their rights were revoked.

10.8 Commercial subleasing of the software is prohibited.

## 11. Retention of title

11.1 **ON-PREMISE ONLY:** ementexx will retain title to the software ("reserved goods") until all claims against the customer arising from the business relationship have been settled in full. The recovery of reserved goods will only constitute withdrawal from the contract if ementexx has expressly declared this in writing.

11.2 **ON-PREMISE ONLY:** The customer hereby assigns all claims arising from the sale of reserved goods, including bills of exchange and cheques, to ementexx to secure any delivery-related payment claims. ementexx hereby accepts the assignment. Where ementexx only holds a share in the sold items, the assignment will be restricted to the part of the claim that is equal to ementexx's share.

11.3 **ON-PREMISE ONLY:** As long as the customer is willing and in the position to meet their obligations to ementexx in accordance with the terms of the contract, they will be entitled to dispose of the reserved goods in the ordinary course of business and collect the claims assigned to them. The customer is not permitted to assign the reserved goods as collateral, attach or transfer the goods, including through

the sale of claims, without the prior written consent of ementexx.

- 11.4 **ON-PREMISE ONLY:** If the customer is based in a country where the retention of title is not permissible or only permissible to a limited extent under the applicable laws and regulations, the rights of ementexx will be limited to the extent permitted by law.
- 11.5 **ON-PREMISE ONLY:** If the value of the reserved goods exceeds the claim to be secured by more than 20%, ementexx will release any excess collateral at the customer's request.