

General Terms and Conditions of emz – environmental technologies GmbH (Version 2020)

1. General Provisions

1.1 These General Terms and Conditions apply exclusively to all commercial transactions with emz e.t. GmbH. emz e.t. is bound by conflicting or supplementary General Terms and Conditions of the customer only insofar as these conditions correspond with the following provisions or if emz e.t. has expressly agreed to them in writing.

2. Orders / Delivery

2.1 The customer's order and the order confirmation by emz e.t. must be made in writing.

2.3 Deliveries shall be made, unless otherwise agreed in writing, ex emz e.t., Nabburg.

3. Software

3.1 emz e.t. shall, at its discretion, either install software products on internal hardware storage or provide them on emz e.t. servers for hosting projects.

3.2 The software documentation will be provided to the customer either in printed form or in the same form as the software itself, at the discretion of emz e.t.

3.3 The customer is granted a non-exclusive right to use the software in unmodified form on the hardware specified in the contractual documents. Furthermore, the software may only be used for the purpose specified in the software documentation. For software of third-party manufacturers, the respective special license terms apply additionally.

3.4 The user must immediately create a backup copy of each software (excluding embedded software, firmware, etc.). Alphanumeric identifiers, trademarks, and copyright notices must be reproduced unchanged. Records of the copies' whereabouts must be kept and may be inspected by emz e.t. upon request. Any further copying of the software and/or documentation is not permitted.

3.5 The customer is not entitled to modify, translate, or otherwise edit the software. This applies accordingly to documentation not provided in printed form. Reverse engineering, disassembly, and decompilation of the software are prohibited.

3.6 The customer shall impose corresponding obligations on its buyers regarding the software and shall not grant rights exceeding the scope of use granted to the customer.

3.7 All industrial property rights and copyrights remain reserved by the respective owner. Mandatory statutory rights of the customer and its buyers to the software remain unaffected.

3.8 The foregoing conditions apply accordingly to the use of corrections/modifications and updates.

4. Retention of Title

4.1 Delivered goods (retained goods) remain the property of emz e.t. until all claims arising from the business relationship with the customer, including all balance claims from current accounts (current account reservation), have been fully satisfied. The provisions on retention of title apply accordingly—where appropriate—to the right to transfer software.

4.2 If retained goods are combined or mixed with goods not owned by emz e.t., emz e.t. acquires co-ownership of the new item proportionate to the value of the retained goods relative to the other goods.

4.3 During the retention of title period, resale is permitted only to resellers in the ordinary course of business and only under the condition that the reseller receives payment from its customer concurrently or reserves ownership until its customer has fulfilled its payment obligations.

4.4 The customer hereby assigns to emz e.t. all claims arising from the resale to third parties as security. Until revoked, the customer is authorized to collect these assigned claims. emz e.t. may revoke this authorization in the event of important reasons, such as payment delay, suspension of payments, insolvency proceedings, protest of a bill of exchange, or other justified indications of insolvency. emz e.t. may then disclose the assignment and collect the claims.

4.5 Retained goods may neither be pledged nor assigned as security. The customer must inform emz e.t. immediately in the event of seizure or other third-party interventions.

4.6 If the value of the security exceeds the secured claims by more than 20%, emz e.t. will release the corresponding portion upon request.

4.7 In the event of breach of obligations by the customer, particularly payment delay, emz e.t. may repossess the retained goods. Repossession does not constitute withdrawal from the contract unless expressly declared.

5. Prices / Payment Terms

5.1 Unless otherwise agreed, prices are based on the price list valid at the time of contract conclusion or on a written offer, plus applicable VAT and other taxes, duties, and tariffs.

5.2 Price changes are permitted if more than four months lie between contract conclusion and delivery and material or market prices increase. In this case, emz e.t. may reasonably adjust the prices.

5.3 Invoices are payable immediately without deduction unless otherwise agreed. The customer is in default if payment is not made within 14 days of receipt of the invoice. emz e.t. may issue reminders after due date.

5.4 From the time of default, emz e.t. is entitled to default interest of 8% p.a. above the base interest rate.

6. Delay in Delivery

6.1 Unless there is a written commitment from emz e.t. expressly designated as binding, a delivery period is considered non-binding. It begins on the day all technical and other details of the order have been clarified, any documents required from the customer have been provided, and any agreed advance payment has been received. It is extended by the period during which the customer is in arrears with its contractual obligations. If, at a binding delivery date or after expiration of a four-week grace period for a non-binding delivery date, no delivery or no delivery in accordance with the contract takes place, the customer may withdraw from the contract if it has granted emz e.t. a reasonable additional period for performance and emz e.t. has not delivered within that period. A period of four weeks shall be deemed reasonable. If emz e.t. has provided partial performance, the customer may withdraw from the entire contract only if it has no interest in the partial performance. The customer may not withdraw if the breach of duty by emz e.t. is insignificant.

6.2 Delivery or performance delays due to force majeure and all unforeseen, unavoidable events not attributable to emz e.t., even if temporary — including operational disruptions, strikes, lockouts, transport interruptions, shortages of raw materials or energy, or government actions — extend the delivery period by the duration of such obstacles, even if emz e.t. is already in delay. emz e.t. may partially or fully withdraw from the contract regarding the unfulfilled part. This also applies if such circumstances occur at suppliers or subcontractors of emz e.t. The beginning and end of such hindrances shall be communicated to the customer as soon as possible. The customer may request that emz e.t. declare whether it will withdraw or deliver within a reasonable period. If emz e.t. does not respond promptly, the customer may withdraw. Payments already made shall be refunded immediately.

7. Transfer of Risk

7.1 Delivery is always at the customer's risk. The risk passes to the customer when the goods are handed over to a carrier, freight forwarder, or upon leaving the warehouse, or upon notification of readiness for shipment, whichever occurs first.

7.2 The shipping route and method are chosen by emz e.t. unless otherwise agreed. Delivery is always uninsured. emz e.t. will insure the goods upon the customer's

request and at the customer's expense.

7.4 Delivered items must be accepted by the customer even if they show transport damage or defects, without prejudice to warranty rights. Transport damage must be confirmed by the carrier before acceptance.

8. Warranty

8.1 The warranty period is 12 months from delivery. Repair does not extend this period.

8.2 Defects or damage caused by improper operation or maintenance by the customer are excluded.

8.3 Wear parts have a warranty period of 6 months from delivery. Wear parts are components subject to regular mechanical, electrical, or chemical wear due to their use or function.

9. Claims for Defects

9.1 Products are free of material defects if they are suitable for normal use and have the usual characteristics. Minor deviations that do not significantly impair value or usability are not defects. Software defects are only essential deviations from program specifications occurring in the latest version provided. The customer is responsible for selecting, installing, and using the software unless otherwise agreed. Warranty is void if the customer or unauthorized third parties modify the equipment or software.

9.2 Upon detection of defects, emz e.t. shall provide free remedial performance within a reasonable period and may choose the method (e.g., repair).

9.3 For hardware, emz e.t. may repair or replace defective devices or parts. Before replacement, the customer shall remove all programs, data, storage media, modifications, and attachments as required. The customer must provide emz e.t. with time and access to perform repairs. After two unsuccessful attempts at correction for the same or directly related defect, the customer may reduce the price or withdraw from the contract if further attempts are unreasonable.

9.4 Software defects may be remedied by providing a new version or a workaround.

9.5 For software expanded by the customer via interfaces approved by emz e.t., warranty extends only to the interface. For altered software, no warranty applies unless the customer proves no causal connection to the defect.

9.6 Warranty claims do not cover normal wear, improper treatment, unsuitable operating materials, or external events not foreseen in the contract, as well as non-reproducible software errors.

9.7 If remediation fails, the customer may reduce the price or withdraw. In case of withdrawal, emz e.t. may claim reasonable compensation for use.

9.8 Claims for damages due to defects are excluded except in cases of injury to life, body, or health caused by emz e.t., or intentional or gross negligence. Limitation period: 1 year.

9.9 If a complaint proves unfounded, the customer must reimburse emz e.t. for costs incurred.

9.10 After any installation, repair, or intervention, the customer must check and document the functionality of data backups.

9.11 If the customer is in default with a significant payment, emz e.t. may withhold remedial performance.

9.12 If remediation is possible only at disproportionate cost, emz e.t. may refuse it; the customer may then reduce the price or withdraw.

10. Warranty for Delivered Software

10.1 The customer shall inspect the delivered standard software immediately upon delivery and notify emz e.t. in writing without delay of any obvious defects. The license terms of emz e.t. for the delivered standard software apply; resale is not permitted unless expressly authorized.

10.2 emz e.t. warrants for a period of 12 months from delivery of the data carriers that the software essentially corresponds to the program description in the accompanying documentation. Since it is not technically possible to produce completely error-free software for all application scenarios, the software is considered free of defects if it is fundamentally usable in accordance with the program description and user manual.

10.3 The warranty is void if the customer or third parties commissioned by the customer make any changes to the database structure of the delivered software application or execute SQL scripts that modify data in the database of the software application. Exception: modifications or SQL scripts previously approved in writing by emz e.t.

10.4 If functions or performance features described in the documentation are not fulfilled, the written defect notification must describe the defect and its manifestation with sufficient detail to allow verification (e.g., error messages) and exclusion of operating errors (e.g., description of steps taken).

10.5 If the customer makes a warranty claim and it is determined that no defect exists or that the defect is not covered by warranty, the customer shall reimburse emz e.t. for the incurred costs at the applicable rates. This applies especially when the reported defect is caused by the customer's hardware, operating systems, databases, or networks.

10.6 In the event of a justified defect notification, emz e.t. may choose to remedy the defect or supply replacement software. Defect correction may involve installing a new software version or providing a workaround, provided usability in accordance with the program description is restored. After two failed attempts to correct the same or directly related defect, the customer may withdraw from the contract or reduce the price, if the defect is so significant that the software cannot be used in its essential functions.

10.7 If the customer is in default with payment of a substantial portion of the fee, emz e.t. may withhold remedial performance until an appropriate portion—considering the defect—has been paid.

10.8 If rectification is only possible at disproportionate cost, emz e.t. may refuse it. In such case, the customer may reduce the purchase price.

10.9 Claims for damages due to defects in the software are excluded, except for claims arising from injury to life, body, or health caused by emz e.t., and other damages caused intentionally or by gross negligence by emz e.t. or its agents. Limitation period: 1 year.

10.10 After installation, defect corrections, maintenance, or any other intervention by emz e.t., the customer must immediately verify and document the functionality of its data backup systems.

11. Manual / Documentation

Information in the manual/documentation and/or advertising material relating to a product or available accessories is non-binding, especially because products are subject to continuous updates and may refer to future developments.

12. Liability

12.1 emz e.t. is liable for damages resulting from injury to life, body, or health caused by negligent or intentional breach of duty by emz e.t. or its agents. For other damages or expenses, emz e.t. is liable only for intentional or grossly negligent breaches. Mandatory liability under the Product Liability Act remains unaffected. Liability for breach of essential contractual obligations also remains, but is limited to foreseeable, typical damages, except in cases affecting life, body, or health or involving gross negligence. There is no shift in burden of proof to the customer.

12.2 emz e.t. assumes no responsibility for damages resulting from the customer's failure to create up-to-date data backups or otherwise ensure timely and cost-effective data recovery. In the event of damage to data carriers, liability does not include the effort required to recover lost data or information.

13. Third-Party Intellectual Property Rights

13.1 For the territory of the Federal Republic of Germany, emz e.t. assumes that contractual use of the products does not infringe third-party intellectual property rights.

13.2 If a third party asserts claims against the customer for infringement of industrial property rights or copyrights (hereinafter: "IP rights") caused by products supplied by emz e.t., and the customer's contractual use is impaired or prohibited, emz e.t. shall, at its discretion and expense, either modify or replace the products to avoid infringement while maintaining essential specifications, or indemnify the customer against license fees owed to the third party.

13.3 If emz e.t. does not eliminate the third-party rights, the customer may reduce payment or withdraw from the contract. Further claims are excluded.

13.4 The customer must notify emz e.t. immediately in writing of any third-party IP claims, refrain from acknowledging such claims, and conduct any legal dispute only in agreement with emz e.t. If the customer discontinues use of the product to mitigate damages, it must inform the third party that this does not constitute acknowledgment of infringement.

13.5 The customer has no claims if the infringement is attributable to its own actions, specific customer requirements, non-documented use, or modification or combination of the product with non-emz e.t. products.

14. Special Contractual Provisions

14.1 Neither party may use business or trade secrets or other confidential information of the other party for purposes unrelated to the contract, nor disclose such information to third parties without prior written consent.

14.2 The customer may assign rights from its business relationship with emz e.t. only with written consent from emz e.t.

14.3 The customer may offset or exercise retention rights only against claims that are legally established or undisputed by emz e.t.

15. Final Provisions

15.1 The contractual relationship is governed by German law. The United Nations Convention on Contracts for the International Sale of Goods (CISG, 11 April 1980) does not apply.

15.2 Side agreements, amendments, or supplements must be made in writing.

15.3 If individual provisions of contracts based on these GTC are invalid in whole or in part, the remaining provisions remain unaffected unless maintaining the contract would constitute unreasonable hardship.

15.4 The place of jurisdiction for all disputes arising from or related to contracts based on these GTC is Nabburg or the court locally competent for Nabburg.