

Specific terms and conditions for software licensing

ementexx GmbH

1. Scope of application

- 1.1 The following specific terms and conditions for software licensing 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 delivery and/or provision of software ("software") to be used by the customer.
- 1.2 These terms and conditions shall also apply to all future transactions involving the delivery and/or provision of software, even if they are not expressly agreed upon again.
- 1.3 The software to be licensed 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 or delivers the goods 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 software specifications are based on the product description valid at the time of the conclusion of the contract.
- 2.2 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.
- 2.3 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.
- 2.4 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. During this activation process, data is transmitted to verify that the licence is used correctly.
- 2.5 **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.
- 2.6 **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.

3. Rights of use

- 3.1 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").
- 3.2 **CLOUD ONLY:** The right of use is limited in duration to the term of the hosting contract.
- 3.3 **ON-PREMISE ONLY:** The right to use the software is limited to the territory of the European Union.
- 3.4 All other rights are reserved to ementexx.
- 3.5 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.
- 3.6 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.
- 3.7 **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.
- 3.8 If the review provided for under Sections 3.6 and 3.7 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.
- 3.9 **ON-PREMISE ONLY:** When making hardware changes, the customer shall delete the software from the previously used data carriers and other hardware.
- 3.10 **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.
- 3.11 **ON-PREMISE ONLY:** In the case of additional use without consent (in particular, where the software is installed simultaneously on multiple 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.
- 3.12 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.
- 3.13 The source code of the software is not included within the scope of the contract.

4. **Reproduction rights and multiple uses**

- 4.1 **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.
- 4.2 **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.

5. **Installation, instruction, training and maintenance**

- 5.1 **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.
- 5.2 Where ementexx provides optional installation, setup, instruction and training services, these shall be governed by the GTC and the respective specific terms and conditions.

6. **Software protection**

- 6.1 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.
- 6.2 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.
- 6.3 **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.
- 6.4 **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.
- 6.5 **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.
- 6.6 **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.

- 6.7 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.

- 6.8 Commercial subleasing of the software is prohibited.

7. **Retention of title**

- 7.1 **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.
- 7.2 **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.
- 7.3 **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.
- 7.4 **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.
- 7.5 **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.