

## **EMAG General Terms and Conditions of Service for EMAG Software Products (as of August 2021)**

### **1. Subject Matter**

1.1. These General Terms and Conditions of Service for Software Products ("**Service Terms**") shall apply to the provision of services by EMAG GmbH & Co. KG or by the EMAG group company ("EMAG") named in the order form in connection with Software products manufactured or distributed by EMAG, in particular for:

- Software and hardware installations
- Trainings and workshops
- Individual adaptations of standard Software (Customizing), as well as
- Other consulting services

1.2. Deviating, conflicting or supplementary general terms and conditions of the Customer shall not become part of the contract, even if EMAG is aware of them, unless their validity is expressly agreed to in writing.

1.3. The services of EMAG are exclusively directed at entrepreneurs within the meaning of Section 14 para. 1 German Civil Code (BGB), i.e. natural or legal persons or partnerships with legal personality, who or which when entering into a legal transaction, act in exercise of his or its trade, business or profession.

### **2. Services of EMAG**

2.1. The type and scope of EMAG's services is determined by the agreements with the Customer, and besides by EMAG's offer and the associated order form.

2.2. The place of performance shall be the place of business of EMAG, unless otherwise agreed.

2.3. EMAG shall provide the services through qualified employees. The Customer shall have no claim to the performance of services by specific employees of EMAG unless expressly agreed otherwise.

2.4. The Customer is not authorized to issue directives to the employees of EMAG involved in the provision of services. The employees of EMAG do not enter into

any employment relationship with the Customer. The Customer shall communicate requests concerning the services to be provided exclusively to the responsible employee named by EMAG and shall not issue any directives to the other employees of EMAG. If EMAG performs the agreed services on the Customer's premises upon the Customer's request, the Customer shall ensure that EMAG's employees are not integrated into the Customer's business.

- 2.5. EMAG provides all services as services within the meaning of Section 611 et seq. German Civil Code (BGB), unless otherwise agreed between the parties.

### **3. Remuneration, Terms of Payment**

- 3.1. The amount of remuneration shall be based on the prices stated in the offer. Unless otherwise agreed, the remuneration shall be calculated on the basis of time and material expenditure.
- 3.2. Prices are in EUR and subject to the applicable value added tax.
- 3.3. The remuneration is due and payable within 14 days after receipt of the invoice.
- 3.4. Travel costs and expenses as well as other expenses shall be reimbursed in accordance with the EMAG Travel Expense Guidelines, unless otherwise agreed. Travel time shall be deemed to be working time subject to remuneration.
- 3.5. Costs for the remedy of defects and damages to products caused by improper handling by the Customer, effects of third parties or force majeure shall be borne by the Customer. The same applies to damage and malfunctions caused by the fact that the environmental conditions at the installation site, the power supply system or the equipment do not comply with the respective specifications of the Software.
- 3.6. Offsetting by the Customer with counterclaims is not permitted unless the counterclaim is undisputed or has been legally established.

### **4. Granting of Rights of Use and Conditions**

- 4.1. EMAG grants the Customer a non-exclusive, temporally unlimited, non-transferable and non-sublicensable right to use the work results protected by copyright

and created within the performance of the services for internal business purposes within the scope of the purpose intended by contract.

- 4.2. Unless expressly agreed otherwise, the Customer shall receive individually developed Software within the scope of customizing only in object code form and shall have no claim to the delivery of the source code and the development documentation for the developed Software.
- 4.3. The Customer may only use the work results for own purposes and for companies that are affiliated within the meaning of Section 15 et seq. German Stock Corporation Act (AktG).
- 4.4. The Customer does not receive any property rights to the work results. All rights to and all relevant rights in patents, copyrights, Business Secrets or other intellectual property rights shall remain with EMAG.
- 4.5. The granting of rights shall be subject to the condition precedent of full payment of the remuneration in accordance with Section 3.
- 4.6. Insofar as EMAG modifies Software provided by the Customer within the scope of this agreement or Software of the Customer is required for the creation of the contractual Software, the Customer grants EMAG a non-exclusive right of use to this Software for the duration and purposes of the customizing or development.

## **5. Customer's Obligations**

- 5.1. The Customer shall provide the cooperation required for the performance of the services by EMAG. The Customer shall allow EMAG access to perform the Services during EMAG's usual business hours. If the Customer requires the performance of services outside the usual business hours of EMAG, the Customer shall bear the associated additional costs.
- 5.2. For the performance of the services, the Customer shall provide assistants, support and technical documents as required. In addition, he shall establish the operating conditions required for the performance of the services.
- 5.3. The Customer shall ensure that employees of EMAG can perform the services without any hazards. For this purpose, the Customer shall in particular comply with the intended security measures in accordance with the applicable state and

professional association rules and safety regulations. The Customer is obliged to point out other special hazards (e.g. ex-zones, lone working, several crafts, etc.) and, if necessary, to ensure that the required supervision, coordination and instruction of EMAG's employees takes place.

## **6. Acceptance of Performance**

- 6.1. The services provided by EMAG are usually services within the meaning of Section 611 German Civil Code (BGB). If services of EMAG are subject of a contract for work (Section 632 BGB) due to a separate individual agreement, the results of the services are to be accepted by the Customer immediately after performance of the services upon request of EMAG.
- 6.2. Unless otherwise agreed, the acceptance test shall take place within ten (10) working days after EMAG has informed the Customer in writing about the completion of the performance. Acceptance shall take place on the basis of the acceptance protocol provided by EMAG.
- 6.3. If the Customer does not carry out the acceptance test within the agreed period and no later acceptance date is mutually agreed, the respective services shall be deemed to have been accepted and payment of the corresponding remuneration shall become due.
- 6.4. The Customer is entitled to refuse the acceptance and to cancel the acceptance test in case of not only insignificant performance defects. If during the acceptance test significant defects of the Services are detected, EMAG shall remedy the defects of the services and provide the Customer with the defect-free services again for acceptance test.
- 6.5. The above provisions shall apply mutatis mutandis to individual parts of a work or of other service, provided that partial acceptances have been agreed therefor.

## **7. Claims for Defects**

- 7.1. The services are generally performed as a service in accordance with the agreed service description in a professional manner and with the necessary care, as it

can be expected from a comparable third party at the same location under comparable circumstances and conditions.

- 7.2. The Customer must immediately notify EMAG in writing of any defects or qualitative defaults. If the Customer does not comply with this obligation or does not comply with it in due time, claims for defects of the Customer are excluded in case of obvious defects or defaults.
- 7.3. EMAG warrants that the services performed (in particular individual Software developments) are free from third party rights that prevent the Customer from using them in accordance with the agreement.
- 7.4. In the event that defects of title exist, EMAG shall be entitled, at its own discretion, (i) to take appropriate measures to eliminate the rights of third parties impairing the contractual use of the Services or their assertion, or (ii) to modify or replace the Service in such a way that it no longer infringes third party rights, if and to the extent that the warranted functionality of the Service is not impaired thereby. In the event that third parties assert such rights, Customer shall notify EMAG thereof without undue delay and grant EMAG all powers of attorney and authority necessary for the defense against the asserted rights of the third party. Section 7.6(v) apply accordingly to the limitation of claims due to defects of title.
- 7.5. Warranty claims shall become statute-barred within 12 months after performance of the service. Insofar as the service includes the handover of an embodied consulting result, e.g. in the form of a report, the service shall be deemed to have been rendered upon handover of the embodied consulting result to the Customer.
- 7.6. Insofar as the law on works (Section 631 et seq. German Civil Code) has been agreed individually, the following provisions shall apply:
  - (i) The work results of EMAG's performance shall be accepted by the Customer upon EMAG's request without undue delay after the performance of the services in accordance with Section 6.
  - (ii) Defects of service performances occurring after acceptance shall be reported by the Customer to EMAG without undue delay with a detailed description of the effects of the respective defect (notice of defect). In the event of justified notices of defects, the Customer is initially entitled to supplementary performance within a reasonable period to be set by the Customer.

EMAG shall decide on the type of supplementary performance (remedy of defects or new production).

- (iii) Insofar as EMAG fails to remedy the defect, the Customer may, at its option and without prejudice to any claims for damages or reimbursement of expenses, demand a reduction of the agreed remuneration for the performance concerned or - insofar as the breach of duty by EMAG is not merely insignificant - withdraw from the contract with respect to the performance concerned.
- (iv) Claims due to defects of performances become time-barred within twelve months from acceptance. This shall also apply to claims for damages and reimbursement of expenses due to defects, unless they are based on intent or gross negligence of EMAG or do result in injury to life, body or health. In all other respects, EMAG's liability for damages or reimbursement of expenses due to defects shall be governed by the provisions of Section 8.
- (v) The Customer is obliged to support EMAG to the best of its ability within the scope of supplementary performance, in particular by providing the necessary information and data.
- (vi) Claims due to defects of performances expire within twelve months from acceptance. EMAG's liability for damages and reimbursement of expenses shall be governed by the provisions of Section 8.2.

## **8. Liability**

8.1. In all cases of contractual and non-contractual liability, EMAG shall be liable only in accordance with the following provisions:

- (i) in the event of intent without in the full amount,
- (ii) likewise in the event of gross negligence as well as for losses from the lack of a quality for which EMAG has given a written guarantee;
- (iii) in other cases: only for the breach of a material contractual obligation if the purpose of the agreement is jeopardized, but always limited to the amount of the foreseeable damage. The Customer and EMAG agree that the contract-typical foreseeable damage from breaches of obligations under this

agreement shall not exceed the order value. This shall also apply in the event of negligent breaches of obligations by EMAG's legal representatives, executive employees or simple vicarious agents.

- 8.2. The limitations of liability pursuant to Section 8.1 not apply in the event of liability for personal injury and liability under the German Product Liability Act (ProdHG).
- 8.3. EMAG is free to raise the objection of contributory negligence.
- 8.4. Apart from that, any liability for damages on the part of EMAG, irrespective of the legal basis, is excluded. The above limitations of liability also apply to claims for reimbursement of expenses.
- 8.5. Section 7.5 apply mutatis mutandis to the limitation period, with the proviso that the statutory limitation period shall apply to claims under Section **Fehler! Verweisquelle konnte nicht gefunden werden.**lit. **Fehler! Verweisquelle konnte nicht gefunden werden.**and Section 8.1The limitation period pursuant to sentence 1 shall commence at the point in time specified in Section 199 para. 1 of the German Civil Code (BGB). It shall commence at the latest upon expiry of the maximum periods specified in Section 199 para. 3 and para. 4 of the German Civil Code (BGB).

## 9. Force Majeure

If EMAG's failure to meet deadlines is due to force majeure or other malfunctions for which EMAG is not responsible, e.g. significant health hazards (e.g. pandemics and epidemics, radioactive radiation), war, terrorist attacks, riots, similar current threat situations, industrial disputes, also with regard to EMAG's subcontractors, or due to regulatory actions, such as import and export restrictions, or due to business disruptions, the time limits for the provision of the services shall be extended for EMAG for the duration of the hindrance or EMAG shall be optionally entitled to withdraw or partially withdraw from the agreement.

## 10. Confidentiality and Data Protection

- 10.1. The contracting parties are obligated to treat all Business Secrets within the meaning of Section 2 No. 1 of the German Act on the Protection of Business

Secrets (GeschGehG) of the respective other party, of which they become aware in the course of the execution of the contract, as strictly confidential and to use them only for the contractually agreed purposes. Both contracting parties shall be obliged to contractually bind their employees involved in the projects as well as third parties, if any, to confidentiality accordingly. Upon request, these non-disclosure agreements shall be presented to the other party. The contracting parties shall take appropriate confidentiality measures to keep the Business Secrets of the other party confidential.

- 10.2. If information is requested from a public institution which affects Business Secrets of the other party, this party must be informed immediately and, if possible, before the information is released to the public institution.
- 10.3. The rights and obligations in Section 10.1 and Section 10.1 shall not be affected by the termination of the agreement. Both contracting parties shall be obliged to return or destroy confidential information of the other party upon its request upon termination of the agreement.
- 10.4. The foregoing obligations shall not apply to Business Secrets which (i) were already known or generally accessible to the other party at the time of its communication by the other party; (ii) became known after the day of receipt without a fault of the other party; (iii) became known from a third party in a manner which is not unlawful and without restriction as to secrecy or exploitation; (iv) is independently developed by a party without use of the other party's Business Secrets; (v) is required to be disclosed by law, governmental order or court order, provided that the disclosing party promptly notifies the other party and assists the other party in defending such order; or (vi) to the extent that the disclosing party is required by law, governmental order or court order to disclose such information, the disclosing party promptly notifies the other party and assists the other party in defending such order or (vi) is permitted to be used or disclosed pursuant to the extent of mandatory legal provisions or this agreement.
- 10.5. EMAG complies with the rules of data protection, especially when EMAG is granted access to the customer's operation or hardware and Software. EMAG does not intend to process or use personal data of the customer. If access by



EMAG to personal data cannot be excluded, the customer will conclude an agreement with EMAG in accordance with the requirements of Article 28 of the EU Data Protection Regulation (GDPR) and inform EMAG of this requirement in writing.

## **11. Final Provisions**

- 11.1. Should one or more provisions of these Service Terms be or become invalid or should these Service Terms contain omissions, the validity of the remaining provisions shall remain unaffected. In this case, the contracting parties undertake to work towards a valid agreement that comes as close as possible in economic terms to the invalid or missing agreement, if had the contracting parties known of its invalidity or absence.
- 11.2. There are no ancillary agreements to these Service Terms. Amendments and supplements to these Service Terms must be made in writing. This formal requirement can only be waived by written agreement.
- 11.3. These Service Terms and all obligations arising hereunder shall be governed by and construed in accordance with the laws of the Federal Republic of Germany, excluding its conflict of laws principles and the UN Convention on Contracts for the International Sale of Goods (CISG).
- 11.4. The exclusive place of jurisdiction for all legal disputes arising from or in connection with these Service Terms shall be the registered office of EMAG GmbH & Co. KG, Austraße 24, 73084 Salach, Germany, or the registered office of the EMAG Group company named in the order form. However, EMAG shall also be entitled to sue at the Customer's general place of jurisdiction.
- 11.5. These Service Terms are executed in the German and English languages. In the event of any inconsistencies, the German version shall prevail.