

**General Terms and Conditions of Business for Purchase of Commodities
and Placement of Orders (Placement Terms)**

of

embeX GmbH, Heinrich-von-Stephan-Straße 23, 79100 Freiburg (embeX)

The following terms and conditions (version September 2013) shall apply to all contracts and deliveries between embeX as Client/Purchaser and a Contractor/Vendor (hereinafter: Contractor), in particular for orders for the development of customer-specific hardware and software solutions or part services here for, or to contracts concerning purchasing of products, works or services by embeX (hereinafter standardized: Order).

1. Selection of law and inclusion

- a) The contract and all claims and legal relationships between the parties resulting from the contractual and from the business relationship shall be subject to German law, excluding international UN purchase law (CISG) and the regulations of international private law (Introductory Law to the German Civil Code).
- b) For subsequent orders and all future business relationships pursuant to the recitals, the Placement Terms of embeX as amended at the time of conclusion in question shall apply, even if there is no express inclusion in the contract in question.
- c) General Terms and Conditions of Contractor, in particular Terms and Conditions of Sale, are expressly contradicted.

2. Conclusion of contract and performance

- a) Inquiries by embeX for a possible rendering of service by Contractor shall be non-binding requests for provision of a quotation (invitatio ad offerendum). A contract shall only originate if embeX accepts a Contractor's offer in writing within 14 days of receipt. Contractor shall be bound by its offer during the acceptance period.
- b) If embeX makes an offer for a contract expressly marked as such, it can only be accepted by Contractor in writing within 5 working days to the extent that no other period is stated.
- c) Data which embeX transmits to Contractor for the production of a quotation or for performance of an order shall be confidential and may not be forwarded to third parties independent of conclusion of a contract.
- d) Amendments to the contract, in particular with a view to contractual performances, prices or subsidiary contractual terms, shall require written form and the express approval of embeX. embeX shall not be obliged to give approval.
- e) If not stated to the contrary, all prices shall be understood net exclusive of the statutory Value Added Tax owed at the time, but inclusive of all subsidiary costs such as packaging, transport, transport insurance, all and any customs and comparable charges ("Delivery free house, customs paid").

- f) Without prior approval from embeX, Contractor shall not be entitled to have the contractual performances partly or totally rendered by third parties. In the event of approval, Contractor shall be obliged to impose the rights and duties resulting from the contract, in particular confidentiality duties, on the third party.

3. Third-party protective rights

- a) Contractor shall guarantee the compatibility with third-party protective rights of the commissioned services and results to be rendered by it. To the extent necessary, it shall examine this or have this examined at its own expense and under its own responsibility. embeX shall not be obliged to do so, but shall suitably support Contractor by the provision of necessary information on the principle of function and the specific features of the commissioned service.
- b) If claims are made against embeX on account of breaches of protective rights by the services rendered by Contractor, Contractor engages to indemnify embeX against all claims made at first demand.

4. Termination and withdrawal

- a) Contractor can only terminate the contract for good and sufficient reason.
- b) embeX can terminate the contract at any time. In such a case, Contractor shall have a claim to remuneration of the work efforts rendered until the time of termination. A further-reaching claim of Contractor shall only exist if it could have terminated the contract itself for good and sufficient reason and a claim to reimbursement would then have existed according to statutory directives.

5. Delivery, acceptance and arrears in delivery

- a) Contractor shall only be entitled to make part deliveries with express approval from embeX. Maturity of the remuneration according to Section 6 a) of the present terms shall remain unaffected.
- b) Contractor shall owe "Delivery free house and duty paid", with the acquisition of an adequate transport insurance, to the extent that nothing to the contrary is expressly agreed. Vendor shall take packaging material back at embeX' request.
- c) If dispatch delivery has been agreed in deviation here from, risk shall only pass to embeX upon hand-over to the latter.
- d) Delivery times shall be binding. Exceeding shall mean arrears in delivery insofar as Contractor cannot prove that it is not answerable for the arrears.
- e) If Contractor falls into arrears in delivery, embeX can, subject to other rights, demand damages from arrears of 0.5 % of the order value for each completed week of arrears, albeit no more than the amount of 10 % of the order value. If Contractor is only in arrears with a part of the service, only the order value due for said part shall be decisive. Both parties shall reserve the right to prove a higher or a lower damage, as the case may be.
- f) The agreed delivery dates shall be fixed dates.

6. Payment terms and counter-rights

- a) The agreed price shall only be due for payment with complete rendering of the totality of the service owed by Contractor.
- b) Due claims to payment can be fulfilled by embeX with 3% discount within a period of two weeks or purely net within 30 days.
- c) Contractor can only claim rights of retention if the counter-rights come from the same contractual relationship.
- d) Contractor shall only be entitled to offset with its claim against claims which are undisputed or are legally effective.
- e) Contractor may not assign or pledge its claims to payment against embeX.

7. Guarantee and warranty

- a) Contractor shall supply free of defects in quality and title and shall guarantee the contractually agreed property (property guarantee).
- b) Requirements with a view to product property in the placement documents, product descriptions, diagrams or quality specifications shall be owed by Contractor as agreed properties alongside generally customary quality and service standards.
- c) In the event of a defect, embeX shall firstly have a claim to subsequent performance, in which context embeX can choose between reworking and new delivery at its own option.
- d) Contractor shall bear all the expenditure necessary for examination of the defectiveness and the subsequent performance, in particular transport, travel, working and materials costs, even if the object or the work has been taken to or used at a place other than that of the contractual success.
- e) To the extent that embeX is obliged towards third parties for warranty or liability on account of a defect for which Contractor is liable towards embeX, embeX shall inform Contractor without delay. Contractor shall reimburse embeX for the necessary expenditure for fulfilment of the third party's claims resulting from said defect or hold embeX harmless to this extent.
- f) The duties from complaints pursuant to § 377 German Commercial Code can be fulfilled by embeX within one week.
- g) Further-reaching claims according to statutory provisions, in particular the right to self-attendance, reduction, withdrawal, reimbursement of vain expenditure or damages shall remain unaffected.
- h) In the event of an unjustified request for remedying, embeX shall only be liable for all and any damage of Contractor if acknowledged or if gross negligence led to failure to recognize that a defect did not exist.

8. Liability

- a) As damages in lieu of performance or as reimbursement of vain expenditure, embeX can demand a lump-sum of 10% net of the value of the order or the part

service in question. Proof of higher or lower damages shall be reserved for the parties.

- b) Own expenditure incurred by embeX on the occasion of a warranty or damage incident from processing of claims shall be reimbursed at € 90/hours. Proof of higher or lower damages shall be reserved for the parties.
- c) Insofar as claims are made against embeX by third parties on account of a cause of damage located in Contractor's area according to the Production Liability Act or medications law, Contractor shall hold embeX harmless against such claims to reimbursement.

9. Barring by limitation

- a) Barring by limitation for claims of embeX against Contractor shall be 3 years to the extent that no longer barring by limitation is provided for by law.
- b) Payment claims of Contractor for the agreed remuneration shall be barred by limitation in 12 months.

10. Development results

- a) All development results occurring in the performance of the order shall be assigned to embeX for exclusive, free-of-charge, extensive and geographically and temporally unlimited use and exploitation.
- b) This shall also apply to inventions or improvements made in or on the occasion of the performance of the order, insofar as embeX does not reject the assignment. In all cases, the inventor's remuneration shall be borne by Contractor.
- c) Insofar as use of inventions or protective rights applied for or granted thereon is necessary within the framework of the exploitation of the development results which existed with Contractor before the start of the services commissioned in the individual contract, embeX shall be granted a simple license, limited to the exploitation of said rights in the development result, with the authorization to grant sub-licenses, the remuneration of which has already been contained in the total price. In the event of protective rights not being notified, the freedom of charge shall no longer apply.

11. Retention of title and rights, confidentiality

- a) embeX reserves all rights to information, knowledge, material or immaterial objects and rights transmitted to Contractor within the framework of the preparation or performance of the contract. Contractor shall not be entitled to forward what it has received to third parties or to use it for purposes other than those stated according to the contract. After the ending of the contract, the objects received shall be returned to embeX upon request or deleted or destroyed, as the case may be, by Contractor.
- b) Relative to the contractual relationship in question, Contractor can supply under retention of title. Retention of title relative to a current account or the business relationship as well as multiple reservations shall not apply.

12. Miscellaneous

- a) Place of performance and place of jurisdiction for all obligations and disputes arising from and in connection with the present contract shall be Freiburg im Breisgau.
- b) The contracting parties engage to cooperate in the performance of the order and to provide one another with all the required information and ancillaries. Documents provided for the performance of the order shall be returned to the other party without delay upon request following the ending of the order. Further, each party shall confirm in writing upon request that documents, data media etc. containing documents and information provided for the performance of the order have been destroyed irretrievably.
- c) Both parties guarantee confidentiality and secrecy.
- d) Person-related data of Contractor shall be stored by embeX in the scope necessary for performance of the order and for attending to customer relationships.
- e) Contractual language is German. If the contract or the present terms are translated into another language for better understanding, only the German-language version shall be decisive and binding in cases of doubt.