

General Terms and Conditions

for EMPAL Services and Work Performance

I.	Definitions and Clarifications.....	1
II.	General Terms and Conditions	3
	§1 Validity of these GTC-Services	3
	§2 Object of the service provision	3
	§3 Cooperation	4
	§4 Intellectual Property	5
	§5 Remuneration and payment modalities	6
	§6 Liability	6
	§7 Limitation	7
	§8 Confidentiality.....	7
	§9 Data Security	7
	§10 Other Provisions	8
III.	Supplementary Provisions for Contractual Services.....	8
	§11 Rights in case of non-performance or delayed performance of contractual services.....	8
IV.	Supplementary Provisions for Services	9
	§12 Execution of services in the form of work performances	9
	§13 Further cooperation obligations of the CUSTOMER	9
	§15 Requirements for the Specification Sheet and Inspection Test Documentation	10
	§ 15 Acceptance	10
	§ 16 Warranty	11
	§17 Change Procedure (Change Request)	12

I. Definitions and Clarifications

- As far as the General Terms and Conditions for EMPAL Services and Work Performances (hereinafter referred to as "GTC -Services") exclusively use the masculine form for certain persons or groups of persons, this is only done for reasons of simplification. The respective wording refers equally to all genders.
- According to these GTC-Services, if a declaration has to be submitted "in writing" or "in written form", this declaration - with the exception of notices of termination or withdrawal - can also be submitted by EMPAL or the CUSTOMER in text form, in particular by e-mail, to the responsible contact person of the other party.
- In all other respects, the following definitions shall apply:
"CURRENT STATE OF TECHNOLOGY" includes the technical knowledge gained up to the respective point in time, which has found its way into operational practice and is generally accepted;

"ANALYSES" refers to the analyses, investigations, evaluations and measurements of anonymized CUSTOMER DATA and/or other data and information, such as license information, technical information or such information resulting from the technical, functional framework conditions of the deployment and use of the SOFTWARE by the CUSTOMER, as described in more detail in § 4 clause 3 of the GTC Services;

"OFFERS" refers to the offer letter of EMPAL defining the content of the service provision by EMPAL. To the extent that the PARTIES expand the content of performance as a result of subsequent orders, this term shall also mean the supplemental offer in its most recently expanded form;

"WORK RESULTS" shall refer to results of agreed Services by EMPAL or other Service Providers;

"GCU" refers to the agreement on data processing on behalf, which EMPAL as processor and the CUSTOMER as controller pursuant to Article 28 of the GDPR conclude with respect to the collection, processing and use of personal data of the CUSTOMER upon signing the CONTRACT as an integral part of the CONTRACT. The GCU is available on the website at <https://www.empal-consulting.com>;

"CONSULTANTS" indicates personnel performing service provision on behalf of EMPAL

"DOCUMENTATION" indicates, collectively, the following documents: (i) the attachment called "System Approvals and Requirements"; (ii) the attachment called "Product Description"; and (iii) the Reference Manual and other provided technical documentation, each as amended from time to time;

"THIRD PARTY" refers to any natural or legal person other than the PARTIES and their RELATED COMPANIES, their salaried and freelance employees, temporary workers, and outside consultants (such as business consultants, auditors and legal advisors) engaged by the PARTIES;

"DSGVO" refers to the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data, on the free movement of such data and repealing Directive 95/46/EC;

"FORCE MAJEURE" describes any event that could not have been foreseen by the PARTIES and could not have been avoided even with the exercise of due diligence. This includes in particular natural disasters, fire and water damage, epidemics, pandemics (e.g. COVID-19), war, blockade, embargo, energy supply or operational disruptions, energy shortages, official orders, legal prohibitions or industrial action.

"CARDINAL OBLIGATION" indicates, according to § 6 clause 2 of the GTC Services, an essential contractual obligation, the fulfillment of which allows the correct execution of the CONTRACT in the first place or on the fulfillment of which the CUSTOMER regularly relies and may rely;

"CUSTOMER" refers to the contractual partner of EMPAL;

"CUSTOMER DATA" indicates the personal data or other data which the CUSTOMER enters in, processes and stores in the SOFTWARE;

"MATERIALS AND RESULTS" indicates the implementation, configuration, parameterization, master data maintenance and other service components for customizing the SOFTWARE as well as the configurations of other computer programs, technologies and hardware as well as e.g. interfaces, scripts or protocols to be set up for the CUSTOMER as well as all information, data sets and documents, including sketches, drafts, concepts, presentations - whether in print or in electronic form - which have been or will be created by EMPAL;

"MODULES" indicates the software programs of EMPAL ordered by the CUSTOMER. The MODULES are provided by EMPAL to the CUSTOMER for use in a non-parameterized state in their standard functions in accordance with a concluded CONTRACT;

"PARTY" indicates either the CUSTOMER or EMPAL as the respective contracting PARTY; both contracting parties together are referred to as "PARTIES";

"SOFTWARE" describes the entirety of software programs which EMPAL delivers to the CUSTOMER in accordance with a concluded CONTRACT in object code as MODULES for the purpose of installation and use on the CUSTOMER's system (on premise or in a cloud). The source code shall not be provided to the CUSTOMER;

"SERVICE TIMES" means the times during which EMPAL provides services on a regular basis. These are on business days from 9am to 5pm CET.

"MANUFACTURER'S SOFTWARE EXTENSIONS" are results of expressly agreed services of ATOSS SOFTWARE AG (hereinafter referred to as "ATOSS"), such as customer-specific adaptations of the SOFTWARE (in object code and/or source code);

"AFFILIATED COMPANY" indicates any company which is directly or indirectly controlled by or under common control with the PARTIES. "Control" as used in this definition includes (i) direct or indirect ownership or control of more than 50% of the voting stock of such entity and/or (ii) the ability to direct or cause the direction of the management and policies of such entity;

"CONTRACT" is defined as the set of rights and obligations of the PARTIES arising, as the case may be, from (a) the OFFER, (b) these GT&C Services, (c) the GCU, and (d) the other attachments referenced in the OFFER; the CONTRACT shall be formed by written order confirmation or countersignature by EMPAL to the CUSTOMER;

"CONFIDENTIAL INFORMATION" refers to all information, including data and other materials, which EMPAL or CUSTOMER, whether communicated in writing, electronically or orally, (i) has designated as "confidential" or otherwise classified as confidential or (ii) which a reasonable THIRD PARTY would, by its nature or by reason of the circumstances, consider to be privileged and therefore confidential. Such confidential information shall include, but not be limited to, CUSTOMER DATA, information about the business activities and/or processes of the PARTIES and all software, technology and know-how of EMPAL in any form and its updates as well as the adaptations. In addition, the business model as well as the cooperation partners and suppliers of EMPAL, prices, offer documents, (marketing) ideas, brochures, advertising materials and presentations, concepts as well as all copies and records made thereof shall be considered confidential information. Not considered as confidential information is information (i) which has been expressly marked as "non-confidential" by the receiving PARTY; (ii) which the receiving PARTY has lawfully developed or acquired without any obligation of confidentiality; (iii) which is already generally known or subsequently becomes generally known without the receiving PARTY being responsible for it or this being due to a breach of CONTRACT; (iv) which is disclosed or provided to the receiving PARTY by a THIRD PARTY who is authorized to disclose it, without breach of these GTC Services; or (v) which has been released for disclosure by the disclosing PARTY with express written permission;

"WORK PERFORMANCE" shall refer to contractual services provided by EMPAL such as, in particular, software installation, parameterization, programming of interfaces, data migration and preparation of documentation;

"WORKING DAY" refers to the weekdays from Monday to Friday (excluding legally recognized public holidays at the registered office of EMPAL as well as not the 24th and the 31st of December).

II. General Terms and Conditions

§1 Validity of these GTC-Services

- Scope of Application: These GTC-Services regulate the rights and obligations regarding the provision of services under the CONTRACT between the CUSTOMER and EMPAL GmbH (hereinafter referred to as "EMPAL"). The following rules shall apply accordingly to pre-contractual relations between the PARTIES.
- Deviating, conflicting or supplementary General Terms and Conditions of the CUSTOMER shall not apply, for example, even if EMPAL does not expressly object to their application or if EMPAL provides the services without reservation in the knowledge of the CUSTOMER's General Terms and Conditions.
- These GTC Services are exclusively addressed to entrepreneurs, legal entities under public law or special public funds.
- Definitions: The definitions and clarifications set forth in Part I shall apply to these GTC Services.

§2 Object of the service provision

- General: EMPAL shall provide the CUSTOMER with the services specified in the CONTRACT or in the offer accepted by the CUSTOMER (hereinafter jointly referred to as "CONTRACT") in accordance with

the CURRENT STATE OF TECHNOLOGY. The CONTRACT shall specify the respective subjects of performance as well as the details for the provision of the services.

- The Conditions of these General Terms and Conditions for Services shall apply to all CONTRACTS concerning the provision of services by EMPAL to the CUSTOMER. The following shall apply:
 - All CONTRACTS which have as their object in particular consulting services, the performance of training courses or the establishment of basic technical services as well as the professional and technical support with regard to the installation, implementation, configuration, parameterization, master data maintenance or other measures for the customizing of the SOFTWARE of ATOSS shall be deemed to be service CONTRACTS in accordance with the applicable service CONTRACT law and shall be subject to the scope of application of this I Part, as well as additionally to the scope of application of the II. Part of these GTC Services. The conditions of the III. Part do not apply to services.
 - All CONTRACTS which (i) involve the production of non-standardized, i.e. customer-specific and newly developed special programming, which is expressly created on the basis of an individual customer request, or which involve work and services, and (ii) are expressly designated in the CONTRACT as a CONTRACT for work and services or, with respect to individual services, as work and services, shall be deemed to be CONTRACTS for work and services in accordance with the applicable law on CONTRACTS for work and services. This shall be subject to the scope of application of this Part I, and additionally to the scope of application of Part III of these General Terms and Conditions for Services. The conditions of Part II shall not apply to work and services.
 - Personnel Deployment: EMPAL shall provide the services through its own personnel or through contracted THIRD PARTIES, which shall be engaged as subcontractors for the fulfillment of the service obligations. EMPAL shall ensure that sufficiently qualified personnel is deployed in each case. EMPAL shall inform the CUSTOMER in due time about any change of the assigned personnel.
- EMPAL shall decide on the performance of the services in accordance with the provisions of the CONTRACT and shall be only responsible for the supervision and control of the deployed personnel and for the exercise of the right to issue instructions to the deployed personnel. The CUSTOMER is not authorized to issue instructions to the personnel employed by EMPAL.
- The regulations of the CONTRACT shall prevail in case of contradictions with the regulations of these GTC Services. A concluded CONTRACT for the processing of orders in accordance with Art. 28 DSGVO shall take precedence over any deviating agreements and contractual documents in its respective current version agreed between the parties, insofar as regulations on data protection are affected.
- If EMPAL is prevented from providing the service due to an event of force majeure, the performance deadlines shall be deemed extended by the duration of the hindrance and by a reasonable start-up time after the end of the hindrance ("hindrance to performance"). There shall be no breach of duty for the duration of the impediment to performance. EMPAL shall immediately notify the CUSTOMER of such hindrances to performance and their expected duration. If EMPAL is unable to provide contractual services due to such an event of FORCE MAJEURE, the CUSTOMER shall be released from the obligation to perform. If the force majeure lasts uninterruptedly for more than four weeks or if it becomes impossible for EMPAL to provide services in cases of force majeure, the CUSTOMER and EMPAL shall be released from the respective performance obligations owed.

§3 Cooperation

- Scheduling of Appointments: EMPAL shall notify the CUSTOMER in due time of the period in which the services will be provided. EMPAL shall also inform the CUSTOMER of foreseeable delays as soon as they become apparent to EMPAL. EMPAL may request a reasonable postponement of the date as well as a reasonable restart period if a circumstance beyond EMPAL's control exists and as a result the performance of the agreed services is significantly impeded, the proper performance of the CONTRACT is temporarily impeded or is impossible.
- Contact Person: Essential for the implementation of the Services by EMPAL is clear communication and coordination structures. Therefore, the CUSTOMER shall ensure the availability of a professional

and technical contact person as well as a deputy with sufficient know-how and experience regarding the agreed services, rights and decision-making competences during the performance period. The CUSTOMER shall immediately notify the COMPANY of any change of contact person or deputy contact person or their contact details, specifying a new contact person or new contact details.

- Obligations to cooperate: The implementation of the services by EMPAL requires that the CUSTOMER creates the necessary personnel and technical prerequisites in its operational sphere and provides the obligations to cooperate to the extent and in the quality of service required by EMPAL as listed below. The CUSTOMER shall in particular:
 - take appropriate measures to ensure communication between him and EMPAL (e.g. ensure that e-mails from EMPAL's known contacts are not intercepted by the spam filter);
 - provide or communicate all necessary information, copies of documents as well as processes and circumstances which may be of importance for the performance of the services to be rendered in a timely and complete manner and in the required data format.
 - to keep all information and data provided by EMPAL in the original or in copy, so that a reconstruction in case of damage or loss of data is possible at any time;
 - confirm the completeness of the information and declarations provided in a declaration formulated by the COMPANY at least in text form upon EMPAL's request;
 - as far as necessary for the performance of services, to provide or notify EMPAL in due time of work rooms and work equipment (e.g. means of telecommunication, internet and network access);
 - enable remote access to the SOFTWARE for EMPAL, in particular for the performance of the Services; in this context, the CUSTOMER shall ensure that only such personal data concerning the specific individual case can be viewed remotely by EMPAL on its customer system. If the CUSTOMER does not provide EMPAL with remote access upon EMPAL's request and no other equally suitable means is available, EMPAL may refuse the service in question and shall not be liable for any consequences resulting therefrom;
 - provide the necessary IT infrastructure, hardware and SOFTWARE including the corresponding licensing.

In addition, the CUSTOMER shall provide the required obligations to cooperate in connection with the performance of the services, unless such obligations are unreasonable for the CUSTOMER. The CUSTOMER's duties to cooperate are essential contractual duties and shall be fulfilled by the CUSTOMER at its own expense. If the CUSTOMER does not perform one of his duties to cooperate as agreed, EMPAL shall not be liable for the resulting consequences, such as additional service costs and/or delays. EMPAL may request the CUSTOMER to perform the cooperation duties within a specified period of time and may terminate the CONTRACT if the period for performance expires without success. EMPAL reserves the right to charge additional expenses caused by the CUSTOMER's non-compliance with the obligation to cooperate separately according to the applicable rates of remuneration.

§4 Intellectual Property

- Intellectual property of EMPAL: The intellectual property, industrial property rights and all other rights of EMPAL to the provided MATERIALS AND RESULTS as well as to work results shall remain with EMPAL, unless otherwise provided in these GTC Services or otherwise expressly agreed between the contracting parties at least in text form. However, EMPAL grants the CUSTOMER a non-exclusive, non-transferable, non-sublicensable right to use the provided MATERIALS AND RESULTS for the CUSTOMER's own internal business purposes and/or to have them used by the CUSTOMER'S AFFILIATED COMPANIES for the period of use of the licensed SOFTWARE. The CUSTOMER is strictly prohibited from removing any copyright notice attached to the MATERIALS AND RESULTS provided.
- Intellectual property of the CUSTOMER: The intellectual property, industrial property rights and all other rights of the CUSTOMER to the CUSTOMER DATA and other information of the CUSTOMER as well as adaptations, modifications and further developments thereof shall remain with the CUSTOMER. However, the CUSTOMER grants EMPAL a simple (i.e. non-exclusive), non-transferable, non-sublicensable right for the duration of the CONTRACT to use the provided CUSTOMER DATA

and other information and/or to have them used by personnel of CUSTOMER'S SUBCONTRACTORS and/or subcontractors of EMPAL to the extent necessary for the performance of the CONTRACT.

- CUSTOMER DATA and other information: EMPAL may perform analyses, studies, evaluations and measurements (collectively "ANALYSES") that include anonymized CUSTOMER DATA and/or other data and information, such as SOFTWARE license information, technical information or such information that results from the technical, functional framework conditions of the deployment and use of the SOFTWARE by CUSTOMER.
- The non-anonymized, personal data contained in the CUSTOMER DATA shall - unless otherwise agreed - only be used for the provision of the contractually agreed services in accordance with the provisions of the GTC. To the extent EMPAL anonymizes and aggregates the CUSTOMER DATA, it may perform ANALYSES for the following purposes, for example: (i) to improve its product and service portfolio, technical resources and support; (ii) to research, develop and enhance professional services; (iii) to verify and ensure data integrity; (iv) to create forecasts and demand scenarios; (v) to identify and evaluate correlations and trends in industry segments; (vi) to establish and expand AI (artificial intelligence) applications; and (vii) for anonymous benchmarking. ANALYSES and the anonymized CUSTOMER DATA and other information may be automatically forwarded to EMPAL.
- EMPAL shall become the sole legal owner of the data and information obtained from the ANALYSIS at the time it is created. The intellectual property, industrial property rights and all other rights to the CUSTOMER DATA shall remain with the CUSTOMER or the other right holders.
- Work Results: EMPAL grants the CUSTOMER a simple (i.e. non-exclusive), but comprehensive, transferable and sub-licensable unrestricted right of use in terms of space and time to the WORK RESULTS resulting from work services (III. Part of these GTC Services) to use them for the CUSTOMER's own internal business purposes and/or to have them used by the CUSTOMER'S AFFILIATED COMPANIES.
- Insofar as the work performances are adaptations of the DOCUMENTATION or the training documents of EMPAL, EMPAL shall grant the CUSTOMER a simple right of use in accordance with the provisions of the license agreement between the CUSTOMER and ATOSS regarding their licensed software. Otherwise, all rights shall remain with EMPAL.

§5 Remuneration and payment modalities

- Remuneration: The details of the remuneration are basically specified in the respective CONTRACT. The amount of the remuneration to be paid shall be based on time and effort and on the service rates according to EMPAL's price list valid at the time. The PARTIES may make other arrangements in the CONTRACT. The actual time and material expended shall be recorded by EMPAL in activity reports. The CUSTOMER may inspect these activity reports upon request. All remuneration rates of EMPAL are net plus applicable taxes. EMPAL shall issue a paper or electronic invoice to the CUSTOMER for the services rendered at the end of each month at the latest.
- Due Date: Payments are due within ten (10) days after date of invoice without deduction.
- Set-Off Right: The CUSTOMER may only set off such claims that are undisputed or have been legally established.
- Expenses and Travel Costs: Travelling expenses, daily allowances and accommodation allowances shall be invoiced on a time and material basis. Travelling time is considered as working time and therefore as billable expenses.
- Appointment Cancellations: An appointment that is cancelled by the CUSTOMER ten to fifteen WORKING DAYS in advance will be charged to the CUSTOMER at a rate of 25%, and at five to ten WORKING DAYS at a rate of 50%, of the service estimate provided for the appointment. Appointments cancelled by CUSTOMER less than five WORKING DAYS in advance will be billed to CUSTOMER in full.

§6 Liability

- Unlimited Liability: EMPAL shall be liable without limitation in accordance with the statutory provisions in the event of intent and gross negligence, as well as in the event of culpable injury to life, limb or

health, in the event of violations of the Product Liability Act and to the extent of a guarantee assumed by EMPAL.

- Liability in case of simple negligence: Provided that § 6 No. 1 applies, EMPAL shall be liable in case of a simple negligent breach of an obligation, the fulfilment of which is a prerequisite for the proper performance of the CONTRACT or on the observance of which the CUSTOMER regularly relies and may rely ("CARDINAL OBLIGATION"), limited to the amount of foreseeable damage typical for the CONTRACT.
- Specification: Within the cases of § 6 No. 2 EMPAL's liability is limited to € 25,000 irrespective of the legal ground.
- Exclusion of Liability: In all other aspects EMPAL's liability is excluded. Except in the cases of § 6 No. 1, EMPAL shall in particular not be liable for loss of profit, loss of savings, damages from claims by THIRD PARTIES and other indirect and consequential damages. Excluded from this are court-imposed costs and compensation amounts which EMPAL assumes in accordance with § 17 No. 1 of these GTC Services in connection with assertions of industrial property rights by THIRD PARTIES. EMPAL shall not be liable for consequences based on the CUSTOMER's failure to use the services in accordance with the purpose of the CONTRACT and these GTC Services.
- Force Majeure: EMPAL shall not be liable for events of FORCE MAJEURE that make it significantly more difficult for EMPAL to perform the services, temporarily obstruct the proper performance of the CONTRACT or make it impossible.
- As far as EMPAL's liability is excluded or limited in accordance with the above, this shall also apply to the liability of the legal representative bodies and vicarious agents, in particular for EMPAL's employees.

§7 Limitation

With the exception of claims due to intent or gross negligence or due to culpable injury to life, body or health, a limitation period of one (1) year shall apply to liability claims and, in the case of work services, to warranty claims (III. Part § 17 of these GTC Services) against EMPAL. The limitation period shall commence from the statutory commencement of the limitation period.

§8 Confidentiality

The PARTIES shall be obligated to treat all CONFIDENTIAL INFORMATION obtained within the scope of the contractual relationship as confidential for an unlimited period of time, in particular not to disclose it to THIRD PARTIES or to use it for purposes other than contractual purposes. If disclosure to THIRD PARTIES is necessary for the exercise of rights or for the performance of the CONTRACT, these THIRD PARTIES shall be obliged to comply with confidentiality obligations which are essentially comparable with this § 8. The receiving PARTY may disclose CONFIDENTIAL INFORMATION by way of exception as far as it has to disclose the CONFIDENTIAL INFORMATION due to a mandatory legal, judicial or official decision. Prior to disclosure, the PARTY which has received the CONFIDENTIAL INFORMATION undertakes to inform the other PARTY in writing without undue delay of the order to disclose the CONFIDENTIAL INFORMATION, so that the other PARTY can take legal action in due time to prevent or limit the disclosure. If it appeals, the other PARTY shall continue to be bound by the confidentiality obligation as long as the appeal has a suspensive effect. The disclosing PARTY shall inform the receiving PARTY of the filing of an appeal.

§9 Data Security

EMPAL and the CUSTOMER have concluded a GPC in accordance with the provisions of the German Data Protection Act (DSGVO) by signing the CONTRACT. All processing of non-anonymized, personal CUSTOMER DATA shall be carried out by EMPAL on behalf of the CUSTOMER on the basis of the GPC.

When EMPAL performs services, the CUSTOMER shall ensure that only personal data relating to the specific individual case (e.g. for professional and technical support with regard to configurations) are accessible remotely for EMPAL.

The transmission of non-anonymized, personal CUSTOMER DATA (e.g. test data, employee master data, etc.) to EMPAL via transmission and communication channels that have not been mutually agreed upon in advance is not permitted.

§10 Other Provisions

- **Written Form:** Amendments and supplements to the CONTRACT must be made in writing in order to be effective. This shall also apply to the waiver of the written form requirement or the waiver of this written form clause itself.
- **Form of Termination and Withdrawal:** The declaration of termination or - exclusively in the case of work performances - of withdrawal shall be made in writing; text form, e.g. by e-mail or fax, shall not be sufficient.
- **Changes to the CONTRACT:** EMPAL is entitled to change or amend the terms of the CONTRACT, as far as this does not affect the equivalence relationship agreed upon at the conclusion of the CONTRACT with regard to essential parts of the CONTRACT to the disadvantage of the CUSTOMER and the changes are reasonable for the CUSTOMER. The right to make adjustments shall extend in particular to changes with regard to (i) technical developments, (ii) changes to the legal framework, (iii) adjustments to the regulations on the handling of personal data, (iv) the elimination of an equivalence disruption that has arisen subsequently or (v) the elimination of regulatory gaps (e.g. in the event of unforeseeable, changed circumstances). EMPAL will notify CUSTOMER in advance of any proposed changes. The changes shall be deemed accepted by the CUSTOMER if the CUSTOMER does not contradict EMPAL at least in text form within six (6) weeks after the change notification. In the change notification EMPAL shall also inform the CUSTOMER of the intended significance of its conduct.
- **Transmission:** The CUSTOMER shall not be entitled to assign or transfer the CONTRACT or any of its rights and obligations to THIRD PARTIES without EMPAL's prior written consent. EMPAL may transfer the CONTRACT to a COMPANY CONTRACTING with EMPAL.
- **Non-solicit:** The CUSTOMER shall not solicit, hire or otherwise employ CONSULTANTS of EMPAL or its AFFILIATED COMPANIES for its own or any other purpose during the preliminary discussions and during the term of the CONTRACT as well as for a period of two years after the termination of the discussions or the CONTRACT. The prohibition shall also apply to the attempt of the aforementioned acts.
- **Choice of Law, Place of Jurisdiction:** All claims arising out of or in connection with the CONTRACT shall be governed exclusively by the law of the place of EMPAL's registered office; the application of the "Uniform Law on the International Sale of Goods" (United Nations Convention on CONTRACTS for the International Sale of Goods) is expressly excluded. The exclusive place of jurisdiction for all disputes arising from or in connection with the CONTRACT shall be at the registered office of EMPAL.

III. Supplementary Provisions for Contractual Services

§11 Rights in case of non-performance or delayed performance of contractual services

If the services are not provided in accordance with the CONTRACT and for which EMPAL is responsible, EMPAL shall be obliged to provide the services concerned in accordance with the CONTRACT upon explicit complaint by the CUSTOMER. The CUSTOMER's complaint must be made in writing to EMPAL and at the latest within two (2) weeks from the date of knowledge or from the date on which the CUSTOMER should have become aware without gross negligence. If EMPAL still fails to provide the services in accordance with the CONTRACT, the CUSTOMER shall be entitled to terminate the CONTRACT without notice, provided that (i) the provision of the services fails for reasons for which the CUSTOMER is not responsible and (ii) the CUSTOMER has given EMPAL a reasonable period of grace in writing and this period has expired without success.

In this case EMPAL shall be entitled to remuneration for the services already rendered up to the effective date of the termination. The remuneration shall only be forfeited for those services for which the

CUSTOMER is able to prove, at the latest within two (2) weeks after his notice of termination, that these services are not usable and of no interest to them. Further claims of the CUSTOMER are excluded. The aforementioned exclusion shall not apply in the case of claims based on intent or gross negligence or culpable injury to life, limb or health. The right to extraordinary termination remains unaffected.

IV. Supplementary Provisions for Services

§12 Execution of services in the form of work performances

- **Explicit Designation:** EMPAL shall provide work and services (i) only in connection with the production of non-standardized, i.e. customer-specific and/or newly developed special programming and comparable WORK AND DONE SERVICES, which are expressly created on the basis of an individual customer request and (ii) are expressly designated in the CONTRACT as a work and services CONTRACT or in relation to individual services as work and services. EMPAL and the CUSTOMER shall therefore expressly and unambiguously identify the relevant services in the CONTRACT with reference to their contractual relationship. In the absence of an explicit designation, the PARTIES have agreed upon the services specified in the CONTRACT as services under a service CONTRACT in case of doubt and the conditions under this III. Part shall not apply.
- Unless expressly marked as such in the CONTRACT, specifications regarding the quality of the WORK RESULT are not declarations of warranty.
- **Scope of Delivery:** If the object of the work performance is a customized programming, the delivery of a documentation of the work performance rendered as well as the release of the source code shall only be owed if this has been expressly agreed between the PARTIES in the CONTRACT. In the event of such a contractual provision, the source code shall be handed over exclusively by deposit with an independent depository.
- If the release of a RESULT OF WORK is only possible insofar as the source code of the SOFTWARE must also be disclosed, the release of source code by EMPAL shall also be effected exclusively by deposit with an independent depository under conclusion of a separate deposit agreement. The costs and fees for the deposit, including any initial or further review of the WORK RESULTS, shall be covered by CUSTOMER.
- **Deadlines and Dates:** relating to the completion and provision of WORK RESULTS deadlines and dates shall be explicitly identified in the CONTRACT as "Binding Completion Dates". Otherwise dates and deadlines are not binding for EMPAL.
- If the CUSTOMER does not perform his duties to cooperate (cf. § 3 and § 14) or any other required support service as agreed or on time and if, as a result, deadlines and dates cannot be met according to the previous planning, corresponding deadlines and dates shall lose their validity. In this case, the PARTIES shall agree on new deadlines and dates taking into account EMPAL's resource planning. This shall apply in particular if, for example, the preparation of a specification is planned by EMPAL and the CUSTOMER does not release it until after the scheduled date or if the CUSTOMER has not submitted the required information to EMPAL in due time. The same applies if a subsequent change to the specifications or changes to the CUSTOMER's system environment make it impossible or difficult to provide the service on time.

§13 Further cooperation obligations of the CUSTOMER

In addition to the provisions in § 3 of these General Terms and Conditions for Services, the CUSTOMER shall perform further duties of cooperation when performing services in the form of work. These include in particular:

- a) the transmission of a complete set of specifications (including catalog of requirements and service descriptions); in this regard, the CUSTOMER shall ensure that the data processing infrastructure for the integration of the WORK RESULTS is described to the required scope in the service description and corresponds to the CURRENT STATE OF THE TECHNOLOGY;
- b) the provision of test data for the performance of acceptance tests;

- c) the provision of sufficiently qualified as well as experienced personnel and resources from IT and the relevant business units during the performance period, so that questions can be clarified without delay and/or internal requirements in the business operations of the CUSTOMER can be implemented without delay;
- d) the management of third parties and coordination of contacts with third parties, especially regarding the provision of information on third PARTY systems.

The specific scope of the information referred to in a) and b) shall be specified in the CONTRACT. This information must be available to EMPAL in a binding version in a timely manner prior to the commencement of services.

§15 Requirements for the Specification Sheet and Inspection Test Documentation

Specification Sheet: The specification sheet conclusively describes the requirements placed by the CUSTOMER on the WORK RESULT (including performance description, development and documentation guidelines, etc.). In order to be mandatory towards the COMPANY, the specification must be agreed upon in the CONTRACT as an integral part of the CONTRACT.

Inspection Test Documentation: The inspection test documentation shall be prepared by the CUSTOMER based on the performance specification and shall be acknowledged by signature of both parties. The inspection documentation conclusively describes all inspection tests, their execution as well as the definition of defect categories and a description of the inspection criteria, if they are met, the work performances are ready for inspection. Depending on the schedule and requirements, the acceptance test documentation shall be confirmed by signature of both PARTIES no later than four (4) weeks before the start of the inspection tests.

Commissioning: If EMPAL is commissioned with the preparation of the specifications and/or the inspection test documentation, this shall be done in accordance with the applicable rates of remuneration. The prepared documents shall become obligatory upon release by the CUSTOMER. The CUSTOMER shall release the documents immediately after submission by EMPAL or reject the release stating reasons. If the CUSTOMER does not declare release within ten (10) WORKING DAYS after submission of the performance specification or the inspection test documentation, the respective submitted documentation shall be considered released and shall become a binding part of the CONTRACT. Changes to the performance specification and/or the inspection test documentation may only be agreed after release in accordance with the change procedure (§ 18 of these GTC Services).

§ 15 Acceptance

Provision: EMPAL shall provide the CUSTOMER with the WORK PERFORMANCE specified in the CONTRACT as work performance for acceptance. The CUSTOMER shall thereupon inspect and test them without delay and declare acceptance, provided that there are no material defects preventing acceptance.

Acceptance Test: The tests and acceptance shall be based on the inspection test documentation or, if no inspection test documentation is available, using the agreed performance documentation and the functionalities and requirements defined in the reference manual, user manuals and technical documentation.

The defects found during the acceptance test are classified into three (3) defect categories:

Shortage Category 1 - serious shortages, this means e.g. shortages, which lead to the fact that the WORK RESULTS as a whole cannot be used as well as shortages in key functions of the WORK RESULTS, which lead to the abortion of the entire application.

Shortage Category 2 - medium shortages this means e.g. shortages in the WORK RESULTS, which do not belong to the shortages listed in the shortage category 1 and are nevertheless so substantial that an acceptance and a shortage removal in the context of the guarantee are not reasonable, since operation-critical functions are not without substantial shortages. The defect cannot be circumvented by organizational means.

Shortage category 3 - minor shortage means e.g. shortages which do not have a significant effect on the functionality and usability of the WORK RESULTS. The use of the WORK RESULTS is not or only insignificantly restricted.

If defects of shortage categories 1 and 2 occur, EMPAL shall be entitled to eliminate these defects during the acceptance test or to work around them in such a way that the WORK RESULT can be used at least in the sense of shortage category 3.

If defects of shortage categories 1 and 2 continue to occur despite EMPAL's attempts to eliminate them, the CUSTOMER shall be entitled to terminate the acceptance test and to request EMPAL to eliminate the shortages and EMPAL shall be obliged to eliminate them without delay and to make the respective WORK RESULT available for acceptance again after elimination of the shortages.

Defects of defect category 3 shall not prevent acceptance and shall be eliminated under warranty.

Declaration of Acceptance: If there are no major defects of category 1 or 2 which prevent acceptance, the CUSTOMER shall declare acceptance in writing within 14 calendar days after provision by EMPAL. Any defects found shall be documented. If the CUSTOMER has not refused acceptance within this period of time stating at least one defect of defect category 1, acceptance shall be assumed to have been declared upon expiry of the period of time. Acceptance shall also be considered declared when the CUSTOMER starts productive use with the WORK RESULT.

§ 16 Warranty

EMPAL's warranty shall be governed by the provisions under this § 17 EMPAL warrants that the WORK RESULTS are free from THIRD PARTY PROPERTY RIGHTS (defects of title) and free from defects of quality. The WORK RESULTS shall be free from material defects if they substantially meet the agreed requirements. EMPAL shall be released from its warranty obligations if the CUSTOMER has used the WORK RESULT contrary to the provisions of the CONTRACT or if a defect in the WORK RESULT has been caused by an act or omission of the CUSTOMER. This is the case, for example, if a defect is due to unauthorized processing or modification of the WORK RESULT by the CUSTOMER. In all other respects the CUSTOMER shall support EMPAL in the elimination of defects within the scope of what is reasonable. EMPAL is not obliged to provide any warranty regarding to any required licensing by THIRD PARTIES.

Claims in Case of Property Rights of Third Parties (Defects of Title): EMPAL shall defend the CUSTOMER against all claims which a THIRD PARTY may have against the CUSTOMER due to an infringement of a copyright or other industrial property right in connection with the contractual use of the WORK RESULT and shall indemnify the CUSTOMER against the reasonable costs and damages imposed by the court in accordance with § 6 (Liability). This cumulatively requires that the CUSTOMER (i) informs EMPAL immediately after becoming aware of the assertion of the claims by the THIRD PARTY in writing, (ii) at no time acknowledges the alleged infringement of property rights or makes a comparable admission of guilt, (iii) leaves EMPAL the sole control over the defense and settlement negotiations of the claims with the THIRD PARTY and (iv) supports EMPAL to the reasonable extent in the defense of the claims. In the event of litigation or arbitration with the THIRD PARTY, the CUSTOMER shall leave the conduct of the litigation/arbitration to EMPAL, grant power of representation to the attorney appointed or designated by EMPAL and provide the attorney with information to the extent required. Insofar as the CUSTOMER cannot completely transfer the judicial and extra-judicial legal defense to EMPAL, the CUSTOMER shall instead grant EMPAL's sole control over this in the internal relationship; EMPAL shall then carry out the legal defense in agreement with the CUSTOMER. If it is legally established or if there is a reasonable suspicion that the RESULTS OF WORK or parts thereof are subject to the rights of a THIRD PARTY, EMPAL may, at its own expense and at its own discretion, either acquire the rights of the THIRD PARTY for the parts concerned or replace or modify the parts concerned in such a way that they no longer infringe the rights of the THIRD PARTY but still substantially meet the agreed requirements.

Material Defects: A prerequisite for the assertion of claims for defects is the reproducibility or detectability of the material defects. The CUSTOMER shall report material defects to EMPAL without delay, stating the information known to him and useful for detection, as well as take suitable measures which facilitate the detection of the material defect and avert or reduce its effects. EMPAL shall eliminate material defects at its discretion. EMPAL is entitled to provide the CUSTOMER with equivalent services or an equivalent workaround solution via download as a remedy of defects, unless this is not reasonable for the CUSTOMER. If the rectification fails even after the third attempt or if EMPAL does not succeed in providing a workaround solution in order to make the WORK RESULTS usable for the CUSTOMER in

accordance with the agreed requirements, the CUSTOMER shall be entitled to reduce the remuneration for the defective WORK RESULT, to carry out a substitute performance or to withdraw from the CONTRACT, insofar as the CUSTOMER cannot reasonably be expected to continue the CONTRACT due to the material defect. If EMPAL has performed a partial performance, the CUSTOMER may only withdraw from the entire CONTRACT if he has no interest in the partial performance. The CUSTOMER may not withdraw from the CONTRACT if the breach of duty is insignificant. If EMPAL is at fault, the CUSTOMER is entitled to claim damages or reimbursement of futile expenses in accordance with § 6 of the GTC Services.

§17 Change Procedure (Change Request)

Changes or additions to the services specified or released in the CONTRACT may be agreed by the change procedure in accordance with the following provisions:

Request: Both the CUSTOMER and EMPAL may initiate the change procedure at any time by submitting a written request describing the desired changes or additions to the services specified or already released in the CONTRACT. The request must contain sufficient information to allow a final evaluation of the scope and impact of the requested change in services.

Revised Tender: If the CUSTOMER submits a request for a change of services, EMPAL will review the request with regard to feasibility, time required, possible additional costs and will submit a written additional offer to the CUSTOMER within a period of two (2) weeks based on EMPAL's applicable rates. If the aforementioned period is not sufficient due to the complexity or scope of the request, EMPAL shall notify the CUSTOMER thereof prior to the expiry of the deadline and shall submit the supplementary offer as soon as possible. The supplementary offer shall in particular take into account the following information:

- The technical and functional effects with reference to the scope of services that may result from the implementation of the change in services, in particularly (i) an adjustment of the estimate of effort and (ii) additional cooperation obligations of the CUSTOMER, if applicable, as far as they are foreseeable by EMPAL in the exercise of due diligence;
- possible effects on deadlines and dates and, if applicable, a proposal for a suitable period for the implementation of the change in performance;
- other circumstances which the CUSTOMER reasonably requires in order to be able to make a well-founded decision regarding the supplementary offer.

Acceptance: The CUSTOMER shall be notified by EMPAL within two (2) weeks whether it accepts the supplementary offer. Until the acceptance of the supplementary offer EMPAL is entitled and obliged to provide the originally agreed services, unless the CUSTOMER requests a suspension of services. If the CUSTOMER accepts the supplementary offer, EMPAL shall implement the changes in performance on the basis of the supplementary offer. If the CUSTOMER rejects the supplementary offer, EMPAL shall carry out the performance to the originally agreed extent.

Costs: If the CUSTOMER submits a request for a change in performance, the CUSTOMER shall separately compensate EMPAL for the resulting expenses for the investigation of the desired change in performance and for the preparation of the supplementary offer as well as any downtime costs (neutral times). If EMPAL makes a request for a change in performance because the change is factually necessary for the performance of the service and if this circumstance was not recognizable to the COMPANY when the order was placed in compliance with its duties of care, the additional costs for the supplementary offer shall also be carried by the CUSTOMER. In all other cases, the investigation of the desired change in performance and the preparation of the supplementary offer shall be free of charge for the CUSTOMER.