

# **Ewellix General Conditions for technical assistance and advice**

## **1. Applicability**

These General Conditions shall apply in full on technical assistance, advice and other consultancy type services (including engineering consultancy services or application engineering services) ("Advice") provided by Ewellix to a third party ("Recipient") unless otherwise explicitly agreed in writing by Ewellix. No other provisions shall be applicable, regardless of whether they were explicitly rejected or not in any individual case. The services to be performed by Ewellix hereunder shall be conclusively deemed to be subject to these General Conditions, which shall supersede any provisions, terms and conditions contained in Recipient's purchase order or other communication from Recipient to Ewellix. Ewellix's performance is expressly conditioned upon Recipient's acceptance of these General Conditions without modification.

## **2. Scope of the Advice**

The scope, purpose and the intended use of the results of the Advice shall be determined by Ewellix, unless otherwise is agreed in writing. Ewellix shall incur no liability or obligation to the Recipient arising out of any other use or application thereof by the Recipient.

## **3. Term of provision of Advice / Fee and payment terms**

Dates or periods for the provision of the Advice are approximate and are given for information purposes only. A delay in provision of the Advice, including completion of the Advice later than the date or dates provided by Ewellix, shall not constitute a breach of contract and shall not entitle the Recipient to any remedy unless Ewellix has guaranteed a date for completion of the Advice in a written warranty which expressly modifies the provisions of these general conditions. Fees and payment terms shall be agreed separately.

## **4. Confidential Information**

Each party undertakes for itself and for its employees, agents and representatives to treat the other party's Confidential Information ("Confidential Information" shall mean any and all information related to the processes, product range, internal affairs and/or business of the parties (and their affiliates) - including but not limited to technical, practical and commercial information - that a party may disclose to the other party directly or indirectly in writing, orally, or otherwise) as strictly confidential and not disclose or communicate such Confidential Information to any third parties. Confidential Information may be disclosed only to those representatives and employees of a party to whom such disclosure is necessary for the purpose of the Advice. Ewellix shall, however, be entitled to communicate the Recipient's Confidential Information to another company within the Ewellix Group. Ewellix shall see to it that such company adheres to the provisions in these general conditions. Neither party may use the other party's Confidential Information for any other purpose than the intended use of the result of the Advice (see Section 2 above). No obligation of use, disclosure or confidentiality shall apply to information which (i) was known by the receiving party (or an affiliate of the receiving party) prior to receipt from the other party; (ii) was known to the public prior to receipt by the receiving party from the other party or which becomes known to the public subsequent to receipt from the other party through no fault of the receiving party or the receiving party's employees, agents or representatives; (iii) subsequent to receipt by the receiving party from the other party, is made available to the receiving party (or an affiliate of the receiving party) by a third party which is legally entitled to do so; (iv) if such disclosure is required by law, court order or stock regulations or (v) is developed by the



receiving party (or an affiliate of the receiving party) independently of the other party's Confidential Information. Each party shall provide proper and secure storage for the other party's written Confidential Information. All copies of the other party's Confidential Information will be returned to the other party immediately upon the request of the other party, unless such documents are required as a part of a party's internal decision making process or maintenance of company records.

## **5. Recipient 's Warranty**

The Recipient warrants that use by Ewellix of designs or instructions provided by Recipient or on behalf of the Recipient shall not cause Ewellix to infringe any patent, registered trademark, copyright, design right or similar rights protected by law. Recipient shall defend, hold harmless and indemnify Ewellix against any claims of infringement and resulting damages and expenses (including, without limitation, attorney and other professional fees and disbursements) relating to the Advice covered by this Agreement.

## **6. Intellectual Property**

Ewellix shall retain control and ownership of all inventions, designs and copyright and any other intellectual property owned, controlled or possessed by Ewellix. The Parties agree that Ewellix shall own all right, title and interest in and to all Results ("Results" shall mean any ideas, inventions, discoveries, know-how, data, documentation, reports, materials, writings, designs, computer software, processes, principles, methods, techniques and other information, recorded in any form, that are discovered, conceived, reduced to practice or otherwise generated as a result of or in connection with any Advice performed under these general conditions by or on behalf of Ewellix or the Recipient, and any patent, trade secret, copyright or other intellectual property rights pertaining to any of the foregoing). The Recipient shall make full disclosure of all Results. If and to the extent the Recipient has generated Results, the Recipient hereby assigns and transfers, without additional consideration, to Ewellix all right, title and interest in and to such Results. Ewellix shall be entitled to apply for and obtain in Ewellix's own name patents, design rights or any other legal protection on Results. The Recipient shall, and shall cause its employees and agents to execute, or cause to be executed, all papers necessary to effect the foregoing, including assignments as necessary or useful to vest all right, title and interest in and to the Results in Ewellix, without additional consideration.

## **7. Limitation of liability and indemnity**

The obligations of Ewellix arising out of the provision of the Advice are strictly limited to the professionally competent performance of the Advice. Ewellix cannot and does not make any promises, guarantees or warranties, express or implied, that the Advice will have any influence on the product or process performance or that it will improve Recipients profitability or that the product or process will be fit for a particular purpose. Ewellix further does not guarantee attainment of the intended result of the Advice. This is a commercial agreement between business entities, and, except as otherwise specifically provided herein, ALL WARRANTIES, EXPRESS AND IMPLIED, ARE SPECIFICALLY DENIED AND EXCLUDED BY Ewellix TO THE FULL AND MAXIMUM EXTENT PERMITTED BY LAW. This is an agreement for the commercial sale of services and any transfer of goods by Ewellix to Recipient is incidental to that commercial purpose. This is not a contract for the sale of goods nor should it be interpreted as such by any court, arbitration panel, government agency or legal tribunal. If Ewellix fails to provide the Advice in a professional manner then the Recipient shall promptly notify Ewellix thereof in writing, specifying the problems, and Ewellix shall promptly carry out an investigation. Ewellix shall at its own expense use reasonable endeavors to remedy a defective Advice. Ewellix's obligations shall not extend to defects which are due to the Recipient not complying with instructions given by Ewellix or which are caused by improper or abnormal use or by events outside the control of Ewellix or which are due to the Recipient having provided Ewellix with incorrect or incomplete information. The above-mentioned obligation of Ewellix to remedy a defective Advice is the only remedy available to Recipient. IN NO EVENT SHALL Ewellix BE LIABLE FOR MONETARY CLAIMS OF ANY KIND, WHETHER BASED UPON CONTRACT, TORT LIABILITY (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, FOR ANY LOSS OR DAMAGE (INCLUDING, BUT NOT LIMITED TO, LOSS OF USE, PROFITS OR REVENUE OR CLAIMS OF RECIPIENTS CUSTOMER, OR SPECIAL, INDIRECT OR CONSEQUENTIAL LOSSES, OR PENAL DAMAGES OF ANY NATURE), ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM ANY USE OR RELIANCE BY RECIPIENT OF THE ADVICE. Recipient shall



reimburse Ewellix for all costs and damages paid or payable by Ewellix to a third party as a consequence of Ewellix providing Advice to the Recipient, unless such cost and damages are due to Ewellix having been grossly negligent.

## **8. Arbitration and applicable law**

All disputes arising in connection with the provision of Advice shall be finally settled under the rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said rules supplemented as necessary by the procedural rules of law of the country of Ewellix's place of business most closely connected with the Advice. All such disputes shall be governed by the substantial law of the country of Ewellix's place of business.