

General Terms and Conditions for Intershop Platform Services

valid as of June 2023

§1 Subject Matter and Contract Documents

These Terms of Intershop Communications AG (INTERSHOP) shall regulate rendering of Intershop Platform Services by INTERSHOP for cloud based online presence of a customer of INTERSHOP.

Such Service chosen by a Customer includes

- Infrastructure
- Application management
- Software as a Service

§ 2 Responsibilities of INTERSHOP

INTERSHOP shall render the Services described in this Contract. INTERSHOP shall be entitled to commission third party companies or affiliated companies as sub-contractors for provision of the Cloud or parts of them.

§ 3 Term and Termination

3.1 Term

3.1.1 The term of the Platform Services or parts of them is defined in the Contract.

3.1.2 Term shall commence upon the date of making the Platform Services available as notified by INTERSHOP after closing of a Contract.

3.1.3 Unless otherwise set forth in the Contract, term of Platform Services shall expire after the term set forth in the Contract, and shall be automatically renewed by additional 12 months periods, unless the Contract is terminated with 3 months' notice until the end of the then applicable term.

3.2 Termination with Good Cause

3.2.1. Termination with good cause by the Parties shall remain unaffected.

3.2.2 A good cause for INTERSHOP will be in particular assumed if

- Customer is in default with payment of two consecutive monthly payments for Platform Services, or a material portion of it (> 20 %) without good and justified cause;
- Customer stops his business operations, dissolves his business or is insolvent, or if insolvency, bankruptcy or similar proceedings are pending relating to its assets for a period of more than ten working days;
- in connection with rendering of Platform Services rights of any third party are violated and thus rendering of contractually agreed services or parts of them is temporarily impossible or possible only to a very limited extent;
- Customer materially jeopardizes Platform Services by neglecting duties of care imposed on him, or if he unlawfully lets any third party use them.

3.2.3 A good cause for Customer will be in particular assumed if INTERSHOP after notification by Customer in accordance with section 5.1.2 below, is unable to remedy a defect within an appropriate time-limit, and Customer cannot be expected to be bound by the Contract any longer.

3.3 Consequences of Termination

3.3.1

In the event of termination, INTERSHOP shall surrender to Customer the entire current customer data as incurred in the course of fulfilling this Contract one week prior to the end of term, at the latest. Such data shall be made available by INTERSHOP to Customer in a common data file format.

3.3.2

Any further provision of data shall be considered as additional service and will be charged additionally.

3.3.3

Any statutory obligations to retain data or records on part of INTERSHOP shall remain unaffected.

§ 4. Payment Default and Set-Off

4.1 Default

4.1.1

In the event Customer is in default with payments, INTERSHOP shall be entitled to claim default interest in the statutory applicable amount above the basic interest rate.

4.1.2

If Customer is in default with payment of contractually agreed remuneration and does not remedy the default even after receiving a reminder and setting a further deadline, INTERSHOP, notwithstanding any further rights, may restrict and/or block use of Platform Services by Customer after respective written notification of Customer.

4.2 Set-Off/ Retention

Customer shall only be entitled to set-off or retain payments if his counter-claim is undisputed or has been finally determined by a binding court order.

§ 5. Warranty and Safety

5.1 Contents

5.1.1

INTERSHOP shall warrant that any Platform Services are rendered with appropriate care and technical expertise in accordance with major aspects of relevant service description.

INTERSHOP shall therefore neither warrant uninterrupted nor trouble-free use of Platform Services. System availability rate owed by INTERSHOP shall base on the service description included in a respective Contract.

5.1.2

Customer shall notify INTERSHOP immediately of any possible disturbances of Platform Services, after becoming aware of them; such notification must be made in writing in form of a detailed description of such disturbance.

5.1.3

Upon notification in accordance with section 5.1.2 above, INTERSHOP shall be given the opportunity to remedy such default. If a remedy is materially successful, a possible violation of obligation on part of INTERSHOP shall be considered remedied. If, however, such default cannot be remedied within a reasonable period of time, Customer shall be entitled to terminate the relevant part of the Contract or the entire Contract for good cause, if the Customer cannot be expected to be bound by the entire Contract any longer (see section 3.2.3 above). If INTERSHOP is responsible for a default, Customer may claim, instead of or in addition to termination, reimbursement of damages incurred in the extent set forth in section 9 below.

5.1.4

Any claims and rights in connection with a default shall be time-barred after six months of the date when such default has been objected to for the first time, or should have been objected to in accordance with section 5.1.2 above.

5.1.5

In all other respects, a warranty period of 12 months shall apply.

5.2 Safety

Customer understands and acknowledges that INTERSHOP does not have any control of data transmission via telecommunication facilities, including the internet, beyond the interface between the network data processing center and internet service providers. In this regard, INTERSHOP shall have no liability for data transmission.

INTERSHOP shall neither warrant secure operations of Platform Services, nor prevention of disturbances by any third party.

§ 6. Confidentiality

6.1 Confidential Information; Business and Trade Secrets

INTERSHOP and Customer shall be under an unlimited secrecy obligation to keep confidential any confidential information or business and trade secrets marked as such which come to the attention of INTERSHOP and Customer respectively in the course of the fulfilment of a Contract. Any disclosure to any third party which is not associated with fulfilment of a Contract shall only be made after written consent given by the respective other Party.

6.2 Exceptions

Such secrecy obligation shall not apply to INTERSHOP to the extent ideas, concepts, know-how, technologies and data are concerned which relate to software set-up, provision of software or Platform Services respectively, and which are already known to INTERSHOP, or have already been known outside this Contract.

6.3 Responsibilities of Employees and Other Persons Relating to Secrecy

INTERSHOP and Customer shall ensure that any persons involved in the fulfilment of this Contract shall be bound by an obligation to comply with these provisions.

6.4 Personal Data

INTERSHOP shall be authorized to process or have processed by third parties personal data entrusted to them basing on this Contract in accordance with data protection provisions. In this case Parties shall close a separate data protection agreement.

6.5 Protection of Access Data for Cloud Services

Personal access data shall not be disclosed or forwarded by Customer to any third party and shall be kept protected against any unauthorized access or use, whereas integration partners are not deemed “third parties”.

§ 7. Rights of Use

7.1 Cloud Services

As part of the provision of Platform Services, the Customer is granted a temporary, non-exclusive right of use to access the online shop and any adjustments that may have been made for the duration of the Platform Agreement concluded between the Customer and INTERSHOP, and to use the functionalities associated with the online shop in accordance with the agreement concluded using a browser for its internal business purposes and those of its Affiliates. Affiliate means, with respect to Customer, any company which is directly or indirectly Controlled by or Controls or is under common Control with the Customer. “Control” means the direct or indirect ownership of more than fifty percent (50 %) of the voting interests in such company. The term “Controlled” shall be construed accordingly.

If such Control changes to such extent that Customer does not longer have the above defined Control over an Affiliate, those Affiliates are excluded from the scope of this agreement beginning from the date of losing Control. Apart from this, such Affiliates are no longer entitled to receive services under this agreement. If Customer will be merged with another company, acquired or similar, the license is limited to those Affiliates, that would have been Affiliates before the M&A event; further new Affiliates are not covered by the license.

No further rights shall be granted to the Customer, in particular with regards to INTERSHOP standard software (operating software), customization services (i.e. individually created software) or other tools used by INTERSHOP to provide services (such as image server, mail server, Jira) or the hardware used. The customer is not entitled to make the online shop and possible adjustments available to third parties in any way and/or to have it used by third parties and/or otherwise have it made accessible to third parties. In particular, the customer is not permitted to duplicate, sell and/or rent and/or lease the online shop and/or parts or adaptations thereof for a limited period of time. Customer acknowledges the copyrights to the standard software developed by INTERSHOP.

Customer shall not be entitled to specific hardware or software specially allocated to him. INTERSHOP shall also be entitled to make the most current version of the contract software available to the Customer during the term of the contract; the most current feature list shall apply with respect to the INTERSHOP standard software selected in the packages.

7.2 Third Party Software

Relevant provisions of a service provider shall apply to third party software.

§ 8. Intellectual Property Rights

8.1 Customer’s Duty to Inform

Customer shall agree to immediately inform INTERSHOP about any violation of protective rights by any third party, and to provide any records and information required for prevention.

8.2 Indemnification by INTERSHOP

8.2.1

In the event after closing of a Contract violations of copyrights, trademarks, patents or other commercial or intellectual property rights are claimed, and if contractually agreed use of Platform Services is thus impaired or prevented, INTERSHOP shall indemnify Customer against any and all such claims provided Customer informs INTERSHOP immediately in writing of such claims. Insofar INTERSHOP will obtain for Customer a license for further use, or upon its choice will change the material and/or services in order to ensure that no further violation occurs, or, if change of material and/or services is impossible for reasons INTERSHOP is not responsible for, will reverse the relevant business and reimburse to Customer the agreed remuneration. Any relevant drawn profit has to be surrendered by Customer.

8.2.2

Customer's right according to section 8.2.1 above shall be excluded if Customer uses material which has not been approved by INTERSHOP. The same applies if such material has been changed by somebody which is not INTERSHOP, or if Customer uses it in contradiction to agreed terms of use, unless such actions have not been the cause of the violation described in section 8.2.1 above.

8.3 Indemnification by Customer

Customer shall indemnify INTERSHOP and its vicarious agents upon first request against any claims made by any third party against INTERSHOP because of violation of protective rights, and from the time of first request will take on any further dealings with such third party, unless Customer is not responsible for such violation of protective rights. INTERSHOP shall assist and support Customer to the extent necessary. Any expenses associated with it shall be reimbursed to INTERSHOP by Customer.

§ 9. Liability

9.1 Liability for Wilful Acts and Gross Negligence

INTERSHOP shall be liable for any damage caused by wilful acts or gross negligence on part of INTERSHOP, its statutory representatives, or vicarious agents.

9.2 Liability for Major Contractual Obligations, Foreseeable Damage

Furthermore, INTERSHOP shall be liable for ordinary negligence when violating material contractual obligations. Material contractual obligations are obligations (i) the fulfilment of which enables proper implementation of this Contract in the first place, (ii) violation of which jeopardizes execution and implementation of this Contract, and (iii) in whose compliance Customer may trust as a rule (so-called material contractual obligations). In the event of violation of material contractual obligations due to ordinary negligence, INTERSHOP shall only be liable for damage which is typically foreseeable.

The Parties agree that any damage in excess of the remuneration sum paid by Customer to INTERSHOP for a respective service within the most recent 12 months shall be considered as not typically foreseeable at the time of closing of a Contract, neither in connection with rendering of Platform Services, nor taking into account specific circumstances of a precise commissioning.

INTERSHOP shall not be liable for simple negligence relating to other obligations outside the ones described in the preceding sentences.

9.3 Unlimited Liability In Case of Injuries to Life and Limb; Quality Warranty; Malice; Product Liability

The above limitations of liability shall not apply in case of injuries to life and limb, or defects after granting a guaranty for the quality of a product, and in case of maliciously withheld defects. Any liability basing on the German Product Liability Act shall remain unaffected.

9.4 Scope of Exclusion of Liability and Restriction of Liability Respectively

To the extent INTERSHOP's liability has been excluded or restricted, this shall also apply to any personal liability of employees, statutory representatives and vicarious agents.

§ 10. Customer's Duty to Collaborate

10.1 Assistance

Customer shall assist and support INTERSHOP using its best endeavors, and in particular Customer shall provide any required collaborative actions and supportive services in a timely and complete manner. Any consequences resulting from a violation of this provision shall be on account of Customer.

Details of such obligations to collaborate on part of Customer shall be set forth in a Contract, if applicable.

10.2 Other Responsibilities of Customer

Customer agrees to refrain from misusing Platform Services and agrees to comply with any applicable laws, statutory and authority bans. Provisions on indemnification in accordance with item 8.3 above shall apply accordingly.

10.3 Opportunity to Restrict CaaS Services in Case of Violations of Item 10.2

In case of a violation of section 10.2 above or if such violation is claimed by any third party respectively, INTERSHOP shall be entitled (a) to restrict Customer's access to CaaS Services, and/or (b) request Customer to remove the contents in question, or to have them removed. Further rights of INTERSHOP shall remain unaffected.

10.4 Obligation to Inform

10.4.1

INTERSHOP shall notify Customer in advance of any anticipated measures according to section 10.3 above, and grant Customer an appropriate time-limit to remedy such violations before INTERSHOP performs any of the measures described in section 10.3. This shall not apply if such measure does not allow any delay.

10.4.2

Customer shall immediately notify INTERSHOP if circumstances occur in connection with rendering of Platform Services which might result in claims against Customer or INTERSHOP. Upon INTERSHOP's request, Customer shall immediately provide any information associated with such circumstances.

10.5 Customer Responsibility

Customer shall be responsible for any contents of internet presence. Customer shall represent toward INTERSHOP that he has obtained any relevant rights and will not violate any third party rights respectively. Customer permits INTERSHOP to host, use, process, display and/or transmit its contents in order to be able to render the Platform Services under this Contract.

Customer further represents toward INTERSHOP that its contents do not include any viruses, Trojans, worms or other harmful or damaging program routines.

Customer shall be responsible for admissibility of contractually agreed data collection, data processing and data use by INTERSHOP and its sub-contractors. Customer represents toward INTERSHOP that he is authorized to dispose of any data collected in order to enable INTERSHOP to perform its contractually agreed data protection law-related obligations.

10.6 Reference list

The customer agrees that Intershop may add the customer to its reference list. Any additional publications have to be approved by the customer.

§ 11. Other Rights and Obligations

11.1 Settlement of Disputes

Any possible disputes or complaints shall be settled amicably, if possible. In particular, each Party shall enable the other Party to fulfil its obligations within a reasonable time-limit before it initiates legal steps because of non-fulfilment of contractual obligations.

11.2 No Transfer of Rights

As far as no deviating provisions have been expressly agreed, Customer shall not be entitled to market Platform Services, or parts of it, under this Contract, or to make them available to any third party.

§ 12. Change of Contract

12.1 Services

INTERSHOP in its reasonable discretion may change and amend fees and terms and conditions for the Platform Services by written notification with 90 days' notice and effective for the future.

Increase of remuneration shall be based on general increase of expenses for INTERSHOP and shall be restricted to a maximum of 10% p.a. relating to the same quantity of accounting.

Any changes of terms and conditions of Platform Services shall on principle refer to new commissions, extensions or renewals, unless a change is required for legal purposes at an earlier stage.

In case of a unilateral change of Contract according to the above provisions, Customer shall be entitled to terminate the Contract with 30 days' notice of effectiveness of such change. However, this shall only apply if and to the extent such a change of terms and conditions of the Platform Services is unacceptable for the Customer. Termination requires written form.

12.2 Other Changes of Contract

Besides, any changes of this Contract require written agreement.

§ 13. General

13.1 Protective Clause

Any deliveries and performances by INTERSHOP shall be exclusively subject to INTERSHOP's standard terms and conditions of business. We object to Customer's standard terms and conditions of business.

13.2 Applicable Law; Place of Jurisdiction

Laws of the Federal Republic of Germany shall be applicable with exclusion of the UN Contract on International Sale of Goods (CISG).

Exclusive place of jurisdiction relating to any disputes resulting from this business relationship towards businessmen and public law legal entities, or public law special funds shall be Jena, unless another place of jurisdiction is stipulated by law.

13.3 Severability

Should individual provisions be or become, partly or wholly, invalid, or if this Contract contains a legal gap, the validity of the Contract in its entirety and the effectiveness of the remaining provisions shall remain unaffected. In such case, the contractual Parties agree to negotiate a provision which comes as close as possible to the mutual interests of the Parties as vested in this Contract.

13.4 Written Form Requirement

Any agreement which includes a change of, amendment to or specification of the terms and conditions of this Contract as well as any termination notice shall be made in writing. This written form requirement shall also apply to a cancellation of this written form requirement clause.

13.5 Completeness

Upon closing of this Contract all previous oral and written agreements relating to the subject matter of this Contract shall become invalid.