

§ 1 Scope of the Agreement

The purpose of this agreement is to regulate the use of Intershop Communications AG (Intershop) Software (Software). Intershop is the developer and sole owner of the intellectual property, allowing usage rights of the Intershop Software as described in the purchase order ("Software") to an authorized User.

§ 2 Definitions

- 2.1 User
An authorized User of the Intershop Software who acquires or rents or uses the Software either as a direct contractual partner of Intershop or as a contractual partner of a reseller (sales partner).
- 2.2 Use/ Installation
Use means the transfer and downloading of the Intershop Software to the computer's memory, or the installation and/or the displaying and running of the Software on the computer for the purposes for which the Software is intended according to the Documentation.
"Installation" means every instance based on the Software.
- 2.3 Direct contractual partner
Is an authorized User who directly purchased Intershop Software from Intershop.
- 2.4 Application Service Provider (ASP)
Application service provider who offers Software application services to end customers using /based on Intershop Software.
- 2.5 Transaction
Transaction shall mean Intershop N creates an entry in the order table and/or an order (also called basked) is being sent from production system to another system for further processing. A production system is the system which processes or receives Transactions.
- 2.6 Online Revenue
Revenue means the total value of all transactions generated by Intershop N, excluding VAT.
- 2.7 Feature List
Describes the attributes and characteristics as well as the purpose of the Software.
- 2.8 Software
Software, consists of the Standard Software and Documentation as described in the contract. Intershop Standard Software includes: Intershop N. The standard Software Intershop N is not tailored to the User's individual requirements but produced *a priori* for a multitude of Users.
- 2.9 Documentation

Documentation comprises all documents required for understanding, describing, and appropriately using the Software. It is supplied to the User together with the Software, or the program carrier, in digital form and informs the User of the structure and use.

2.10 Sourcecode

The Sourcecode is the form in which a computer program is written by the programmer. Source code is written in a formal programming language that can be compiled into executable code or executed by an interpreter.

The term Sourcecode also includes programming work done by Intershop or a third party as part of agreements to be concluded separately.

§ 3 Scope of use

- 3.1. The Software can be licensed based on a Transaction model or Online Revenue model for perpetual or for temporary (rental) usage.
- 3.2. The Use of the Software is provided by an access to binary artifact repositories. If the User fails to pay its license or maintenance and support fees even after a second request, Intershop is entitled to block User`s access to the repositories.
- 3.3. Intershop shall grant the User – subject to payment of all amount payable in accordance with the agreement - the simple, non-exclusive right to use the Software in the volume of use specified in the agreement made between Intershop and the initial direct contractual partner. The period of time within the Software may be used can be limited, depending on the applicable licensing model. Licensing shall include the right to install and use the Software in accordance with the contract, the Feature List and the present EULA.
- 3.4. The type and number of Parameters specified in the contract and thus permitted, such as Transactions or Online Revenue must not be exceeded through the use of the Software.
- 3.5. In case the Software will be licensed for perpetual usage by Transactions or Online Revenue, the right to use is not limited in time, unless otherwise specified in the agreement. In case the Software will be licensed for a temporary usage (rental) by Transactions or Online Revenue, the right to use is limited to 3 years, unless otherwise specified in the agreement.
- 3.6. If no agreement was made regarding the scope of the use of the Software, then the use is limited to one sales-organization.
- 3.7. The User shall ensure that the above restrictions on use are observed and that the routine described under section 8 will be implemented

and functional throughout the term of the license agreement.

§ 4 Copyright

- 4.1 The User shall acknowledge the copyrights of Intershop and thus its exclusive rights of use and distribution of the Intershop Software with the exception of the provided third-party software.
- 4.2 Any not expressly permitted copying of the Software as a whole or in part, any not expressly permitted dissemination of the Software and the development of similar software or software parts using the Intershop Software (as a whole or in part) as a basis shall in particular be prohibited by law and the agreement.
- 4.3 The User shall acknowledge the brand, trademark, name and patent rights of Intershop to the Software and the associated Documentation. He shall be prohibited from removing, changing or otherwise obliterating copyright notices and notices relating to existing industrial property rights.
- 4.4 Intershop expressly points out that any violation of the copyright provisions in the present EULA is punishable¹.

§ 5 Third-party Rights

Depending on the delivered Software, third-party products may be provided. The detailed list can be obtained under the location specified in the agreement or will be attached to the agreement.

Intershop procures only the rights of use for these third-party products as required for the general use of the Intershop Software as described in the contract, and only according to the limits of the right of use.

§ 6 Decompiling and program modification

- 6.1 Retranslation of the provided program codes into other forms of code (decompiling) and other types of reverse engineering activities on the various production levels of the Software, including any program modification, by the User shall be prohibited.
- 6.2 Copyright notices, serial numbers and other features used for program identification may not be removed or changed.
- 6.3 Removal of any copy protection or similar protective routines shall not be permitted without the knowledge or collaboration of Intershop.

- 6.4 Furthermore, the User is only entitled to reproduce, alter, or decompile the Software if necessary to facilitate the interoperability of the Software with other programs, or to remove Software defects, provided the information required to do so is not made accessible by Intershop upon the User's request and the User has informed Intershop of one of the aforementioned acts in a timely manner.

§ 7 User's rights of reproduction

- 7.1 The User shall have the right to reproduce the supplied Software if such reproduction is necessary for using the Software. Necessary reproduction shall include installation of the Software from the original repositories to the mass memory of the hardware used and loading of the Software into the working memory.
- 7.2 If, for reasons of data security or to ensure rapid reactivation of the computer system after a system failure, regular backup of the entire data resources, including the computer programs used, is indispensable, the User shall have the right to make the mandatory number of backup copies required. The data carriers in question shall be indicated accordingly. The backup copies may only be used for purely archiving purposes.
- 7.3 Further reproductions, which also include output of the program code to a printer and photocopying of the manual, may not be made by the User.
- 7.4 Section 6.4 applies mutatis mutandis.

§ 8 Audit- Control and inspection rights

- 8.1 Intershop or a third party appointed by Intershop shall have the right to inspect use of the Software by the User in order to determine the licensed Software and the backup copies made as well as the Transactions and/or Online Revenue and other parameters licensed therefore on which the Software is run. Therefore, the User shall enable Intershop to examine – also on-site - whether the Software is properly deployed, and in particular whether the User uses the program within the limits of the licence acquired by the User in terms of quality and quantity. Intershop reserves the right to conduct an on-site license audit after prior and appropriate notice during normal business hours. Intershop shall observe the confidentiality of the information obtained in this and safeguard the interests of the User in ensuring non-disclosure of his business secrets.
- 8.2 In case of Transaction or Revenue based license model (perpetual or rental), Intershop is also entitled to install a routine in the Software that

¹ e.g.: §§ 106 subsequ. German UrhG

is able to record, and comprise in a report, the volume of Transactions or Revenue carried out via the Software as a basis for bringing the licence fee to account. User is obliged to generate the accounting report for each calendar year and transmit them electronically to Intershop by email to the following address: tbr@intershop.de within 10 calendar days from the end of the relevant calendar year period, for evaluation. In addition Intershop reserves the right to verify proper implementation of such routine.

If the accounting report is not made available to Intershop within this period of time, Intershop shall be entitled to determine the volume of Transactions or Revenue in accordance with this EULA on-site. The User must grant Intershop access to all necessary information.

The User is obliged to make daily backups of all data relevant to invoicing and to store such backups and unmodified data until the successive invoice has been drawn up and the relative accounting report has been successfully transmitted. The User has to define one contact person who will be responsible for transmitting the reports.

The data creating the specific basis for drawing up an accounting report must be stored in unmodified form for a period of time of up to 6 months after the accounting report has been successfully transmitted to Intershop, namely in such a manner that an accounting report may be created at any time from that data. In the event that an account is disputed between Intershop and the User, the data for the contentious accounting report shall be made available without delay to Intershop upon request.

- 8.3 In case of temporary usage (rental) of the Software, Intershop reserves the right to terminate the contract without notice, if User violates any of its obligations under this EULA and/or the contract and Intershop has informed User of such violation and User has not cured such violation within the time specified by Intershop.

Notices of termination, whatever the cause, shall only be valid if in writing. The calculation of the time limits to be observed shall commence on the day of receipt by the recipient.

In the case that notice of termination is given, the User shall cease usage of the Software and remove all copies of the programme installed from his computers.

§ 9 Dissemination

- 9.1 Software licensed under perpetual license model may be provided to third parties only as a whole, permanently and after completely discontinuing his own use thereof, but not as part of continuous obligations. Before the Software can be disseminated, the written consent of Intershop shall be obtained; Intershop shall not deny said consent unreasonably.
- 9.2 Upon applying for consent, the User shall submit a written affirmation (statutory declaration in lieu of an oath) from his acquirer to the effect that the acquirer obligates himself towards Intershop to the provisions on use and dissemination as complying at said time with the existing general standard and special terms and conditions of Intershop. The User shall notify Intershop of the name and address of the acquirer.
- 9.3 The User can transfer to an acquirer only the rights to use Intershop Software that were originally granted by Intershop to the direct contractual partner. The User must ensure, via a written contract, that the limits of the rights granted by such a transfer, i.e. original rights to use software granted by Intershop, are clear to the third party.
- 9.4 Transfer of the right of use as part of a continuous obligation (e.g. rental) shall not be permitted, unless the User is an ASP (application service provider) who is entitled therefore based on an ASP partnership with Intershop and subject to the terms and conditions stipulated in this framework.
- 9.5 Software licensed by Transactions or Online Revenue may not be made available to third parties or otherwise transferred or sublicensed. Dependant use by the User's employees or any other third parties to whom the User is entitled to issue instructions is permitted if it corresponds with the Software's intended purpose.

§ 10 Contractual penalty

In the event of a breach of a fundamental obligation resulting from standard forms or the individual provisions, the User promises Intershop to pay to Intershop a penalty in the amount of 10% of the licence fees paid by the date of the breach, however no less than Euro 25,000, in every individual case of a breach, and the User is free to provide evidence of any lower or higher damage.

§ 11 Conflict

If the User also uses General Standard Terms and Conditions and the contents of these are congruent with the EULA, said General Standard Terms and Conditions should be regarded as having been agreed. Contradictory individual provisions shall be replaced by

the provisions of modifiable law. The same shall apply if the User's General Standard Terms and Conditions contain provisions that are not contained in the present EULA. If the present EULA contains provisions not contained in the User's General Standard Terms and Conditions, the present provisions of the EULA shall apply.

§ 12 Final provisions

- 12.1 The parties agree that their relationship and this Agreement shall be governed by German Federal Law regarding all legal relations entailed by this contractual relationship. UN law on sales shall not apply.
- 12.2 The parties agree to be subject to the jurisdiction of Jena.
- 12.3 All agreements representing a modification, supplement or concretization of this EULA, and any special promises and understandings, shall not be valid unless in writing and signed.
- 12.4 If a provision in the present EULA is ineffective, the effectiveness of the other provisions shall not be affected thereby. If the present EULA contains a loophole, this is to be filled by an arrangement which most approximates what the parties would have intended had they considered this point.