

## Software licence conditions ("SLC")

These software licence conditions ("SLC") apply to the relationship between Wurm GmbH & Co. KG Elektronische Systeme, Morsbachtalstrasse 30, 42857 Remscheid, registered with Wuppertal District Court, HRA 17612 (referred to below as the "licenser") and the licence holder as defined by Clause 1 of the SLC (referred to below as the "licence holder") in respect of the use of native software for mobile terminals (referred to below as the "app").

### 1. Taking of effect, scope of application, basic provisions

- 1.1. By using the app, the licence holder recognises these SLC. If the licence holder does not accept these SLC, it is not entitled to use the app. In this case, the licence holder must delete the app from the device.
- 1.2. These SLC apply exclusively. Different, conflicting or supplementary terms and conditions of business issued by the licence holder will form the basis of the usage arrangement only if and insofar as the licensor has expressly consented to their validity.
- 1.3. Use of the app is exclusively subject to the following terms, with a distinction being drawn between apps that the licensor provides in return for payment and those that it provides free of charge.
- 1.4. Licence holders can only be entrepreneurs as defined by Section 14 German Civil Code. No access is granted to consumers as defined by Section 13 German Civil Code.
- 1.5. The contractual language is German. In cases where these licence conditions or other contract-related declarations and documents are translated into languages other than German (e.g. versions provided purely for information), only the German version shall be binding.
- 1.6. The licence holder can access the SLC at any time via <https://license.wurm.de/apps/en/LicenseConditions.pdf>. The licensor will not otherwise store the SLC or other agreements made in connection with the licence holder's use of the app.

### 2. Subject matter of the contract and scope of the licence

- 2.1. The licensor provides the licence holder with the app on a permanent basis and grants the licence holder a non-exclusive, geographically and time unlimited right to use the app in accordance with these SLC, unless otherwise agreed or unless the applicable law bindingly stipulates that the licence holder is afforded more extensive rights. It is not permitted to sublicense the app or make it publicly accessible.
- 2.2. The licensor makes the app available to the licence holder on an as-is basis in the form available at the time of initial acquisition/at the time when it is first accessed. The licence holder has no right to demand specific properties and functions of the app. The licensor is under no obligation to provide any properties over and above this, unless the licensor has warranted specific properties accordingly, with a warranty only being granted if it has been expressly designated as such.
- 2.3. The licensor is under no obligation to hand over or provide access to the source code on which the app is based or any interface definitions.
- 2.4. The licence holder is only entitled to use the app for its own purposes, i.e. it is only for use by its own employees or persons it has authorised accordingly.

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- 2.5. The licence holder is permitted to install the app on a single mobile terminal over which it has a legal power of disposition. If the licence holder wishes to use the app on various terminals, a separate right of use is required for each device.
- 2.6. The third-party components implemented in the app and other constituent parts of the software are only licensed for use with the app and must not be used by the licence holder separately from the app or in a different context.
- 2.7. The right to edit the app is restricted to the preservation or restoration of an agreed app function in cases where the licensor is unable to remove defects from the app. The right to decompile the app is only granted subject to Section 69 e (1) 1 to 3 UrhG (the German Act on Copyright and Related Rights) and within the scope of Section 69 e (2) 1 to 3 UrhG or when Section 69e UrhG applies. However, a right to decompile the app only exists if the licensor has failed to make the necessary information available to the licence holder within a reasonable period on request. Beyond this, the licence holder is not permitted to decompile, reverse engineer, disassemble, translate, integrate, adapt or attempt to reduce the app to a modified form, or to create a derivative version of the app, whether in full or in part.
- 2.8. The licence holder is not permitted to disseminate the app, make it accessible to third parties; to lend, rent, or lease it; or to distribute it in any other way.
- 2.9. The licence holder is not permitted to pass the app on to third parties, unless the licence holder fully relinquishes its right of use or sells the mobile terminal that has the app stored on it.
- 2.10. No further rights of use and exploitation rights are granted in respect of the app.
- 2.11. The right of use granted under these SLC also applies – subject to the provisions of Clause 4 of these SLC – to newer versions of the app that are published following initial installation (referred to below as "updates"), unless the update is covered by its own or different licence conditions.

### **3. Rights and obligations of the licence holder**

- 3.1. As part of its due diligence obligations, the licence holder must check before installing the app whether this could lead to conflicts with other software or apps already installed on the terminal, and must make sure that it has a back-up copy of all its data. In the course of using the application, further back-up copies should be created and all additional protective measures implemented as are reasonable for preventing a potential software failure and/or loss of data.
- 3.2. The licence holder must ensure that no rights of third parties are encroached upon by exercising the agreed rights of use.

### **4. Updates**

- 4.1. If the licensor does make updates available, they will be offered for download from the Apple App Store or the Google Play Store. The licence holder does not have an automatic right to the provision of updates.
- 4.2. On installing an update, the licence holder loses the right to continue using the old version.
- 4.3. Should the licence holder install an update, any claims for defects under these licence conditions shall be restricted to making improvements to the update supplied compared to the previous version.
- 4.4.

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## 5. Liability for defects

- 5.1. In cases where the licensor makes the app available to the licence holder free of charge, liability for defects is excluded. In this case, the licensor assumes no liability for defects of quality and title. This does not affect the licensor's liability in the case of intentional and malicious acts.
- 5.2. In cases where a fee has been paid to acquire the app, the licensor's liability for defects shall be determined according to the provisions below.
- 5.3. The licensor warrants any agreed properties and that the licence holder can use the app as per the contract without infringing any rights of third parties. Liability for defects of quality does not apply to defects that result from the app being used in a hardware and software environment that fails to meet the requirements specified for the app in the App Store, or to changes and modifications that the licence holder makes to the app without being authorised to do so by law, by these SLC or by virtue of having obtained written permission from the licensor.
- 5.4. The licence holder must check the app for obvious defects immediately on receipt and, if there are any, report them to the licensor immediately, otherwise liability for these defects will be excluded. The same shall apply mutatis mutandis if such a defect emerges subsequently. Section 377 German Commercial Code applies.
- 5.5. In the event of a defect of quality, the licensor is entitled – in the first instance – to provide a cure, i.e. to choose between removing the defect ("remedying the defect") or making a substitute delivery. In order to fulfil its obligation to remedy the defect, it is also sufficient for the licensor to make an update available for download. Within the context of a substitute delivery, the licence holder will – where applicable – accept a new version of the app, unless this leads to unreasonable adverse effects.
- 5.6. In the event of defects of title, the licensor may choose between obtaining a legal right of use for the app for the licence holder's benefit and modifying the app so that it no longer infringes any rights of third parties. If neither solution can be achieved, the licence holder may withdraw from the contract and, after deleting the app, will be reimbursed with the purchase price less an appropriate amount of compensation for usage.
- 5.7. With the exception of claims for damages, claims for defects of quality shall become time-barred after one year. In cases where the app is sold via an app store, the limitation period commences as soon as the download function is activated.

## 6. Liability

- 6.1. Unless otherwise stipulated by these SLC, the licensor shall be liable for any breach of contractual and non-contractual obligations in accordance with the statutory provisions. This shall apply mutatis mutandis to its legal representatives and vicarious agents, including subcontractors.
- 6.2. In cases where the licensor makes the app available to the licence holder free of charge in accordance with Clause 5.1, the licensor shall have unlimited liability for loss or damage that results from use of the app where this is due to an intentional or malicious act. For all other loss or damage, the liability of the licensor is excluded.
- 6.3. In cases where the licensor makes the app available to the licence holder in return for payment in accordance with Clause 5.2, the licensor shall have unlimited liability in the case of intent or gross negligence, for injury to life and limb, and to the extent of any warranty granted by the licensor.

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- 6.4. In the event of a slightly negligent breach of an obligation that is essential to achieving the purpose of the contract (cardinal obligation), the level of the licensor's liability shall be limited to the foreseeable loss or damage typical of the type of business concerned.
- 6.5. The licensor shall have no further liability over and above this.

## **7. Final provisions**

- 7.1. The law of the Federal Republic of Germany applies to the exclusion of the UN Convention on Contracts for the International Sale of Goods and conflict of laws rules; this does not affect Art. 3 of the Introductory Act to the German Civil Code. If the licence holder's usual place of residence is located in another country within the EU/EEA at the time when the contractual relationship is established, the choice of law in these SLC will not affect the application of mandatory legal provisions applicable in this country.
- 7.2. The exclusive place of jurisdiction for all disputes arising from and in the course of the contractual relationship is Wuppertal. The licensor is also entitled to take action against the licence holder at the court with local jurisdiction at the licence holder's registered domicile.
- 7.3. No verbal collateral agreements have been made. Changes and supplements to the SLC require the text form (Section 126b German Civil Code). This also applies when waiving the requirement for this form.
- 7.4. If individual provisions of the SLC should be or become invalid, this shall not affect the validity of the remaining SLC. The parties undertake to replace the invalid provision with a valid one that comes as close as possible to achieving the commercial purpose of the one that is invalid. The same shall apply mutatis mutandis in the event of a loophole in these SLC.

Remscheid, 2018-08-29

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