

General Terms and Conditions "Software Licensing"
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Software Licensing - General Provisions

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Preliminary remark

This software licence applies to the WebPQ software including the program description, operating instructions, all associated media, the documentation and all other associated written materials which A. Eberle GmbH & Co. KG, Frankenstraße 160, D-90461 Nuremberg (hereinafter also referred to as the "Licensor") makes available to the Licensee on a permanent basis. All rights of use to the software have been transferred to the Licensor. By installing, activating, copying or otherwise using the software, the user agrees to the terms of this licence agreement.

The WebPQ software uses frameworks comprising various external libraries. The licensee may use these according to the respective free licence. The respective licence conditions and any copyright notices can be viewed within the software under "Licences".

The following provisions apply to the use of the WebPQ software:

§ 1 Subject of the License

- (1) The Licensor shall provide the Licensee with the software described in the preliminary remarks on a permanent basis to the extent permitted, cf. also § 3 below.
- (2) The source code of the software is not part of the subject matter of the contract.
- (3) The Licensor's offer is expressly directed only at companies and not at consumers. Entrepreneurs within the meaning of these provisions are all natural or legal persons and partnerships with legal capacity who, at the time of conclusion of the contract, are acting in the exercise of their commercial, freelance or independent professional activity.
- (4) The software is provided for use exclusively on the basis of this contract. Any contractual terms and conditions of the Licensee shall not apply, even if the Licensor does not expressly object to them.
- (5) The Licensor does not owe any quality beyond the specification of the software. In particular, the Licensee cannot derive a corresponding obligation from any other representations of the software in public statements or in advertising, unless the Licensor has expressly confirmed the quality going beyond this to the Licensee in writing.
- (6) Guarantees given by employees of the Licensor prior to the conclusion of the contract shall only be valid if they are confirmed in writing by the Licensor's management.

§ 2 Installation of the Software, Scope of Services and Performance Requirements

(1) Depending on the agreement, the Licensee shall receive the software either on a suitable data carrier or as a download via a download link provided to him. The Licensor shall have no claim to the surrender of the source code.

(2) The software installation shall not be carried out by the Licensor, but by the Licensee itself. Irrespective of this, the Licensor offers chargeable services with regard to the initial installation, the use of which is recommended by the Licensor.

(3) It is pointed out that the functionality of the software is subject to certain system requirements, which can be viewed at www.a-eberle.de. The use of the software under deviating conditions is not permitted. The use of the software under deviating and/or lower system requirements is not guaranteed. In such cases, it is recommended to contact the Licensor in advance.

§ 3 Scope of License; Copyrights and Rights of Use; Processing Rights

(1) The Licensor is the owner of the exclusive rights of use and exploitation under copyright law of the software.

(2) The software is licensed, not sold. With the lawful acquisition of the software licence, the Licensor transfers to the Licensee a non-exclusive, perpetual, copyright right of use to the software for its own purposes and as described in this Agreement and the Documentation in accordance with the provisions of the German Copyright Act. The right of use shall not pass to the Licensee until the agreed remuneration has been paid in full. Until the agreed remuneration has been paid in full, any permission to use the software granted to the Licensee shall be revocable only.

(3) The Licensor offers various usage licences which can be viewed on the Licensor's website. If the Licensee has not selected a licence via the Licensor's website, the content and scope of the licence of use shall be set out in an offer sent to the Licensee by the Licensor and in the order confirmation sent to the Licensee by the Licensor.

(4) The licensing of an installation deviating from the above licences is not the subject of this agreement. If individual licensing is necessary, this shall be permitted by the Licensor in an individual agreement prior to installation of the software deviating from the above licences.

(5) The software is protected by copyright. The Licensee acknowledges that the software is a computer program eligible for protection within the meaning of Section 2 (1) No. 1, Section 69a of the German Copyright Act (UrhG). The Licensor shall be exclusively entitled to all rights to the software as well as to other documents provided within the scope of the contract initiation and implementation in the relationship between the contractual partners.

(6) The creation of copies of the software by the Licensee is permitted exclusively for backup purposes (backup copy) and may also be used exclusively for these purposes. The backup copy shall be marked as such and provided with the copyright notice of the original data carrier, insofar as this is technically possible. It is expressly prohibited to copy or reproduce the software in whole or in part in its original or modified form or in a form mixed with other software or included in other software.

(7) The Licensee is only permitted to make modifications, extensions and other alterations to the Software within the meaning of Section 69c of the German Copyright Act (UrhG) if these are permitted by law as being indispensable. Reverse engineering and disassembly are only permitted in the cases permitted by law. Decompiling of the software is only permitted in accordance with §69e UrhG. The licensee may not otherwise attempt to make the source code of the software accessible. A claim for surrender of the source code is excluded.

(8) Copyright notices, trademarks, other marks, other reservations of rights and other features serving to identify the programme, including those of third parties, contained in the software may not be changed or made unrecognisable.

(9) If the contractual use of the software is impaired by property rights through no fault of the Licensor, the Licensor shall be entitled to refuse the services affected thereby. The Licensee shall be informed of this immediately by the Licensor and the Licensee shall be given access to his data in an appropriate manner. In this case, the licensee shall not be obliged to pay. Other claims of the Licensee shall remain unaffected.

§ 4 Demo Version

- (1) The use of the demo version of the software is possible without licensing.
- (2) The distribution of the demo version is permitted subject to the following provisions:
 - a. the distribution shall be made in its entirety, including all licence conditions and txt files.
 - b. The distribution must take place in setup-compressed form so that the installation can be carried out without errors.
 - c. File changes may not be made.
 - d. The distribution may only take place if it is marked as a demo version.

§ 5 Transfer of the User Right

- (1) Unless otherwise agreed in an individual contract, the Licensee may only transfer the right to use the software to a third party with the prior written consent of the Licensor and only under the conditions of this contract.
- (2) The lending, leasing, sub-licensing, duplication, exhibition, publication, other making available to the public and translation of the software as well as the documentation, even in part, is prohibited.
- (3) The Licensee is obliged to pass on all copies of the software and the documentation, including any existing backup copy. If a backup copy, if any, is not passed on to the third party, it must be destroyed by the Licensee.
- (4) The Licensee's right to use the software shall expire upon transfer.

§ 6 Modifications; Updates; Maintenance

- (1) The Licensor shall be entitled to update the software at its own discretion. There shall be no entitlement to programming and provision of an update.
- (2) The Licensee shall receive any necessary updates of the software free of charge in the form of downloads made available within the first year after acquisition of the licence.
- (3) Customer-specific adaptations of the software are neither covered by the support nor by the provision of necessary updates and must be ordered separately. The same applies to extensions to the functionality of the software.

§ 7 License Fees

- (1) The Licensee is obliged to pay a licence fee for the use of the software, the amount of which is specified by the Licensor in the current price list as well as the offer and order confirmation of the Licensor and which can be communicated by the Licensor upon request.
- (2) Unless otherwise agreed, payment obligations, general conditions for invoicing as well as general tax conditions of the price according to the general terms and conditions of the licensee, which are included in the offer and order confirmations, shall be complied with.

§ 8 License Term; Termination

- (1) The licence is granted to the Licensee by the Licensor for an unlimited period.
- (2) The Licensee's right to use the Software shall expire even without termination if the Licensee substantially violates any of the terms and conditions contained in this Agreement and continues to commit the act of violation even after receipt of a warning issued by the Licensor. In this case, the Licensee shall be prohibited from further use of the Software; in addition, the Licensee shall be obliged to uninstall and permanently delete the Software.
- (3) If the Licensee's right of use ends, the Licensee shall be obliged to destroy any original data carriers handed over, including documentation and - if available - all copies of the software as well as all copies of written material and to provide proof of complete destruction at the request of the Licensor.

§ 9 Warranty

(1) The software shall be provided to the Licensee free of material defects and defects of title. In the event of a defect, the Licensee shall be entitled to the statutory warranty rights for a period of 12 months in accordance with the following provisions.

(2) Functional impairments of the software resulting from the hardware environment and software environment used by the Licensee, incorrect operation(s), disruptions of computer networks, external defective data or other reasons attributable to the Licensee's sphere of risk shall not constitute defects.

(3) The Licensor shall not assume any warranty for software modified by the Licensee. This shall not apply insofar as the Licensee can prove that the modification(s) made by him is/are not the cause of the defect that has occurred.

(4) In the event of material defects within the scope of the warranty obligation, the Licensor shall, at its discretion, either remedy the defect or provide a replacement delivery. Subsequent performance may also be effected in particular by providing a new software version or another new program version and by the Licensor showing the Licensee how to avoid the effects of the defect. The Licensee may not refuse subsequent performance by the Licensor on the grounds that the provision of a new software version or another new program version would lead to a reasonable adjustment effort.

§ 10 Liability

(1) Outside the warranty for material defects and defects of title, the Licensor shall be liable without limitation to the extent that the cause of the damage is based on intent or gross negligence.

(2) For the slightly negligent breach of obligations, the breach of which jeopardises the achievement of the purpose of the contract, as well as for breaches of obligations, the fulfilment of which is essential for the proper performance of the contract and the observance of which the licensee regularly relies on (cardinal obligations), the licensor shall be liable to the extent of the damage which is foreseeable and typical according to the type and scope of the business in question. In particular, the Licensor shall be liable for loss of data only to the extent of the expense incurred if the Licensee has carried out regular and application-adequate data backups and thereby ensured that lost data can be restored with reasonable effort. Otherwise, liability for slight negligence is excluded.

(3) The liability of the Licensor for compensation of indirect damage, in particular for loss of profit, shall only exist in the case of intent or gross negligence.

(4) The above limitations of liability shall not apply in the event of injury to life, limb or health, in the event of fraudulent concealment of a defect and in the event of a defect following the assumption of a guarantee of quality. Liability under the Product Liability Act remains unaffected.

(5) The limitations of liability set out above shall also apply to the personal liability of any employees, representatives, vicarious agents and bodies of the licensor.

(6) The liability of the Licensor for consequential harm caused by a defect on the legal grounds of positive breach of contract is excluded if and insofar as the liability of the same does not arise from a breach of duties essential to the fulfilment of the purpose of the contract.

§ 11 Limitation

(1) Claims of the Licensee due to material defects or defects of title shall become statute-barred within 12 months from handover/delivery. Excluded from this are claims for damages due to injury to life, body or health and/or claims for damages due to damage caused by gross negligence or intent on the part of the Licensor. In this respect, the statutory limitation periods shall apply.

(2) Statutory claims in rem for surrender by third parties in the event of fraudulent intent on the part of the Licensor shall remain unaffected by this.

§ 12 Applicable Law; Place of Jurisdiction

(1) All amendments and supplements to the licence agreement shall be made exclusively in writing; they shall be signed by both parties in a legally binding manner. The written form requirement shall also apply to amendments to this requirement itself.

(2) The Licensee shall have the right of set-off and the right of retention only in respect of claims which are undisputed by the Licensor or which have been finally adjudicated; otherwise they shall be excluded.

(3) The parties are aware that software may be subject to export and import restrictions. In particular, there may be licensing requirements or the use of the software or associated technologies may be subject to restrictions abroad. The Licensee shall comply with the applicable export and import control regulations of the Federal Republic of Germany, the European Union and the United States of America, as well as all other relevant regulations. The Licensor's performance of the contract is subject to the proviso that no obstacles based on national and international regulations of export and import law as well as no other statutory provisions prevent performance.

(4) The invalidity of individual provisions shall not affect the validity of the remainder of the licence agreement. A wholly or partially invalid and unenforceable provision shall - as is hereby expressly agreed - be deemed to be amended so as to preserve it to the fullest extent permitted by applicable law in terms of time and subject matter. In any event, both parties undertake to agree on a substitute clause in place of any invalid or unenforceable provision which, in a permissible and enforceable manner, closes the contractual loophole within the meaning of this Agreement.