InLoox GmbH

End-User License Agreement (EULA) of InLoox GmbH

By using this Software Product (including installation and copy) you declare that you agree with this Agreement as a natural person and legal entity. If you do not agree with this EULA you are not entitled use the Software.

**§ 1 Validity of the Terms of Agreement**

(1) This End User License Agreement (EULA) is concluded between you – hereinafter also referred to as Customer – and InLoox GmbH – hereinafter also referred to as InLoox. The licensing / purchase of Software and obligations precedent to the Agreement shall exclusively be subject to the Terms of Agreement unless otherwise agreed. We exclusively refer to the regulations of the General Terms of Business of InLoox which are integrated into this Agreement and form an essential part of it. The Customer confirms that he has taken note of the General Terms of Business of InLoox. The regulations of the General Terms of Business are extended and/or supplemented by the objective License Terms of InLoox with regard to the use of Software and other software-specific regulations and the corresponding rights and obligations. In case the General Terms of Business of InLoox deviate from this Agreement or if they are inconsistent with it, these License Terms shall prevail.

(2) InLoox licenses/sells the enclosed Software to the Licensee (Customer) exclusively on the basis of the License Terms hereinafter. In case you do not agree with these Terms, do not open the package or seal of the Software, refrain from installing the Software, click on the “No” button of the installation process and uninstall the Software when the corresponding inquiry occurs during the installation and return the properly purchased Software together with packaging, license key and receipt voucher to the Software vendor within 30 days of the purchase of the Software. Subsequently, you will receive full reimbursement of the purchase price you paid.

**§ 2 Subject Matter of the Agreement**

(1) Subject matter of this Agreement is the granting of the rights of use in accordance with §3 depending on the type of license purchased in each case and its extent of functions. By purchasing this Software you become the owner of the Software storage medium (e.g. a CD-ROM), but not of the Software itself. The Software is licensed, not sold. The Software shall always remain the intellectual property of InLoox and/or the respective right owner. As a purchaser of the Software you shall only be entitled to use the proprietary object, i.e. to use the Software as agreed upon. InLoox grants this right of use in the form of a license.

(2) The Customer has checked whether the Software specification meets his desires and requirements before concluding the Agreement. He knows the essential functional qualities and conditions of the Software.

(3) Product descriptions and presentations in test programs are service descriptions but are not warranties. Warranties require a written statement from InLoox company management.

(4) The Customer is not entitled to receive a license for the source program.

(5) InLoox renders all deliveries and services in accordance with the state-of-the-art.

(6) InLoox reserves all rights which are not explicitly mentioned in this EULA.

(7) If the Software is marked “Not for resale” (or “Nicht zum Weiterverkauf bestimmt”) in any way it may neither be resold nor transferred.

(8) The Software may then be exclusively installed on a network server if the License purchased by the Customer is explicitly designated as “server license”. A server license entitles the Customer to operate one database (one set of logically related data) on one database management system.

(9) In the event that the Software is used in a network the Customer must ensure that there is a License for each data processing unit and/or each named user having access to the server and the possibility to use the Software. The Customer must prevent that two or more individuals gain access to the Software sharing one named user License.

(10) If the Software is marked “Corporate License” (or “Unternehmenslizenz”), the Customers is entitled to deploy or provide the Software to an unlimited amount of users within Customer’s organization. The restrictions of § 2 (8) and § 3 shall remain in effect.

(11) The Software is licensed as a whole. You may not separate its components and/or use it for distinct application on more than one computer other than described in the Software user documentation.

(12) Military usage of the Software is prohibited.

**§ 3 The Customer’s Rights to the Software**

(1) The Software, all additional programs, the symbols used, InLoox logo, written documents as well as documentation are legally protected. The copyright, patent rights, trademark rights and all other rights in goods and services as well as industrial property rights to the Software and other above-mentioned objects which InLoox makes available or hands over to the Customer as part of the process to set up and implement the Agreement are the exclusive property of InLoox in the relationship of the Parties. Should third parties be entitled to any rights, InLoox shall have the corresponding rights of use.

(2) The Customer purchases the Software in order to use it for his own purposes on a permanent basis (non-exclusive license). The Customer is entitled to use the quantities of Software for which he purchased licenses. InLoox hereby grants the Customer the right to use the programs which are necessary for these purposes as well as the right to copy programs on the main memory and hard disks as well as the right to correct errors. The Customer is entitled to make backup copies of the programs necessary for safe operation. The backup copies must be marked as backup copies. Copyright notes must not be deleted, changed or suppressed. The Customer may exclusively use the Software for each license on a standalone computer, no matter if it is a workstation, notebook or PDA except in such cases where he purchases a network license. The use of the Software also implies loading the Software into the temporary memory of a computer or similar object or installing the Software on a permanent storage medium (e.g. hard disk, DVD, CD-ROM, or similar). However, the Parties may come to differently worded agreements in an individual Agreement issued in writing.

(3) A user manual and any other documents possibly provided by InLoox may only be copied for the company’s internal purposes.

(4) The Customer shall not be entitled to transfer the Software without the written consent of InLoox; this applies in particular in the event of sale. InLoox shall agree to the passing-on of the Software (in whole or in part) to a third party under the following conditions:

– The Customer hands over the original data storage media (if there is one), this EULA and the General Terms of Business of InLoox to the third party, deletes all other copies in particular on data storage media, in read-only memories or main memories, he definitely stops using the Software and submits a written confirmation of the fulfilment of his duties to InLoox.

– The third party declares to InLoox in writing that it has received the aforementioned components and acknowledges them as binding in the legal relationship with InLoox, noting the General Terms of Business and this EULA.

– There are no important opposing reasons.

(5) All other acts of utilisation, in particular leasing, industrial sale (unless explicitly stated otherwise by written reseller agreement/authorised dealer agreement), lease and distribution of any tangible or intangible property are prohibited without the prior written consent of InLoox. InLoox notes, that customers who violate copyright laws, are liable for all damages that occur as a result of these copyright law violations.

(6) Any subject matter of the Agreement, documents, proposals, test programs, etc. of InLoox to which the Customer gains access after conclusion of the Agreement shall be considered intellectual property and must be treated confidentially as a business and company secret of InLoox in accordance with § 9.

**§ 4 Contractual Obligation and Termination of the Agreement**

In the event of termination due to infringement of this EULA you are obliged to return or destroy all original versions and copies of the Software and all other components and to notify InLoox of the destruction in writing.

**§ 5 Obligations of the Customer**

(1) In the event that you are a business owner you undertake to inspect all delivery items of InLoox immediately upon receipt of the goods in accordance with the regulations of commercial law (§ 377 of the German Commercial Code) and to make complaints in respect of defects with an exact description of the defect, submitted in writing. Each Customer is obliged to test all modules with regard to usability in the concrete situation before starting any operative use. This also applies to programs the Customer receives in the context of supplementary performance or a possible maintenance agreement.

(2) The Customer shall take adequate precautions to counter situations where the program does not operate properly in whole or in part (e.g. by data backup, error diagnosis, regular check on the results). The Customer shall be responsible for ensuring the operation of the working environment of the program. He shall be obliged to carry out the necessary adjustments to his firewall, virus scanners or similar data protection mechanisms in his network as well as his server. InLoox shall not bear the risk of incompatibility of the Software with the software or hardware used by the Customer.

(3) You shall not be entitled to use or modify the logo and/or trademarks of InLoox unless the company management of InLoox has given its prior agreement to the use or modification of the logo in writing.

(4) Subject to the provisions of § 69 e German Copyright Act (UrhG) you may not reverse engineer, decompile or disassemble the Software.

(5) You undertake to indemnify and defend InLoox from all claims of third parties, including reasonable lawyers’ fees arising or resulting from any use of this Software against the agreement.

**§ 6 Warranty**

(1) Delivered Software possesses the agreed-upon characteristics, is suitable for the applications assumed by the contract and which are otherwise standard, and has usual quality of software of this type. Not every flaw which is connected with the Software is a defect which implies warranty rights. An impairment in the Software’s functioning which results from hardware defects, environmental conditions, improper operation and the like, is not a defect. An insignificant deterioration in quality will not be taken into account. InLoox guarantees that no rights of third parties are violated through the use of the Software by the Customer in accordance with the provisions of the contract.

(2) Customers who are consumers within the meaning of § 13 German Civil Code (BGB) have in respect to defects of the purchased good the rights set out in the German Civil Code (BGB). In case that a consumer is entitled to claim damages hereafter, § 7 applies accordingly.

(3) In all other cases of liability for defects the following terms apply:

(a) InLoox may first attempt to remedy any material defects. InLoox may choose to remedy the defect by eliminating it, i.e. also by demonstrating possibilities by means of which the effects of the defect can be avoided, or through delivery of a program which does not contain the defect. An equivalent new program version or the equivalent previous program version which had not contained the faults is to be accepted by the Customer, when this is reasonable. In the case of defects in title, InLoox shall give the assurance that it will provide the Customer with legally unchallengeable option to use either the Software or equivalent software, at its option.

(b) The Customer shall support InLoox in the analysis of faults and removal of defects by specifically describing problems which occur, providing InLoox with complete information and granting it the necessary time and opportunities to remove the defect. InLoox may also remove the defect on-site or at its place of business, at its discretion. The performance of InLoox may also take the form of remote maintenance. The Customer must ensure the necessary technical prerequisites at his own expense and, after due prior notification, provide InLoox with access to his computer equipment.

(c) InLoox may levy additional charges, when the Software is modified, employed outside the environment provided for or incorrectly operated. It may demand compensation if no defect is found or if it is incorrectly/insufficiently informed of a fault. The burden of proof lies with the Customer in accordance with § 254 German Civil Code (BGB).

(d) If InLoox ultimately refuses to remedy the defect, if it ultimately is unsuccessful or if this is unreasonable for the Customer, he may withdraw in writing from the contract or correspondingly curtail the payment and in accordance with § 7 demand damages or reimbursement of expenses.

(e) Insofar as the above has not been otherwise agreed, further liability on the part of InLoox within the meaning of liability for defects is excluded. In particular, liability for defects does not apply if and to the extent that the Software is improperly used by the Customer or used in a defective or incompatible hardware or software environment. The same applies in the event that the Customer undertakes unauthorised modifications of the Software.

(g) The statute of limitation for claims for defects is one year as of the statutory commencement of the limitation period.

**§ 7 Liability**

The following limitations of liability apply in case of claims for damages of the Customer arising from liability for defects or from any other reasons:

(1) InLoox is liable for intent and gross negligence in accordance with the statutory provisions. The same applies to injury of life, body or health as well as to claims arising from warranties or from the German Product Liability Act (Produkthaftungsgesetz, ProdHaftG).

(2) Moreover, InLoox is only liable for culpably infringing contractual obligations the fulfilment of which renders a correct execution of the contract possible, and the Customer can always trust on said material obligations being observed (cardinal obligation). This includes, in particular, the obligation to fulfil a performance free from defects. In this case InLoox’s liability is limited to the loss or damage foreseeable upon conclusion of the contract.

(3) A further liability of InLoox is excluded.

(4) Should the liability for damages on the part of InLoox be excluded or reduced, this shall also apply with regard to personal liability for compensation for damages on the part of its employees, representatives and persons employed in auxiliary tasks.

(5) The right to contest the charge of contributory negligence remains open to InLoox. It is pointed out to the Customer that, within the framework of his obligation to exercise diligence, before using the Software for the first time, he must test whether the installation of the Software might lead to particular interference with pre-installed software, and that he must further ensure back-up of his data before the first installation as well as during the course of operations and, in the case of a suspected fault in the Software, that he implements all additional reasonable measures required for security.

(6) The statute of limitation for claims of the client who is not a consumer is one year as of the statutory commencement of the limitation period.

(7) The conditions of this paragraph apply mutatis mutandis to component manufacturers of the Software.

**§ 8 Software Updates and Upgrades**

At the sole discretion of InLoox, users may be provided with updates and upgrades to the Software. InLoox retains the right to provide upgrades for a fee. Upon installation of an upgrade, users shall not use, separate or transfer the previous version to a third party separately. Unless InLoox provides other terms and conditions with an update or upgrade, the terms and conditions of this EULA shall continue to apply. Users may refuse to accept an update or upgrade. However, upon release of an update or upgrade, InLoox may have no further obligation to support the previous version.

**§ 9 Start and End of the Customer’s Rights**

(1) The ownership of the supplied items and the rights in accordance with § 2 and § 3 shall not be transferred to the Customer until complete payment of the purchase price. Before that, he only has a preliminary right of use in accordance with the law of obligations, revocable in accordance with § 9 (2).

(2) InLoox shall be entitled to revoke the rights in accordance with § 2 and § 3 for important reasons, in particular for the reasons specified in § 3 of the General Terms of Business of InLoox or to terminate the Agreement respectively. An important reason particularly exists if the Customer does not effect the due payment, if he continues to infringe the obligations under § 2 and § 3 of this Agreement in a substantial way, despite written reminders, or in the event that a petition of bankruptcy has been filed in respect of the Customer’s assets.

(3) If the right of use in accordance with § 3 in conjunction with § 2 does not occur or if it should end, InLoox shall be entitled to demand from the Customer the return of the provided goods or demand a written assurance that they have been destroyed and that all copies have been destroyed, along with the written assurance that this has been effected.

**§ 10 Secrecy**

(1) The Contracting Parties undertake to treat all objects they receive from the other Contracting Party or objects they gain knowledge of (e.g. software, documents, information) which are legally protected, contain business or company secrets or are designated as confidential, confidentially - even beyond the expiration of the Agreement, unless these objects are publicly known without any infringement of the obligation of secrecy. The Contracting Parties shall store and save these objects in such a way that any unauthorised access by third parties is excluded.

(2) The Customer permits access to the subjects of the Agreement only by his personnel or third parties requiring access in order to perform their assigned tasks. He shall inform these persons about the need for these objects to be kept confidential.

**§ 11 Applicable law, legal venue**

The law of the Federal Republic of Germany shall be applicable, excluding the United Nations Convention on Contracts for the International Sale of Goods. The place of performance and legal venue for all disputes arising from and in connection with this Agreement shall be the registered office of InLoox GmbH (Munich, Bavaria) for agreements with business owners (traders). This also applies if the Customer does not have a general place of jurisdiction in Germany or if his place of residence or usual abode is unknown at the time the proceedings are brought forth.

**§ 12 Safeguarding Clause**

If any provision of this Agreement should be or become invalid, such invalidity shall not affect the validity of the other provisions of this Agreement even if essential provisions are concerned. The Parties agree to replace the invalid provision by a legally effective regulation which comes as closest to the contractually stipulated legal and economic intent of the invalid provision and ensures the operability of the Agreement in the sense of what both Parties had intended. The same shall apply in the event that the Parties have not discovered a gap in the provisions at the time the Agreement was concluded or if such a gap becomes known or occurs later. In that case, the Parties shall be obliged to generate a written supplement to the Agreement in the sense of the aforementioned.