General Terms and Conditions

1 Scope

1.1 The following license terms shall apply to all deliveries by XTENTO GmbH & Co. KG, Erlanger Str. 66a, 91096 Möhrendorf, Germany ("Seller") to Buyer for the supply of software. These license terms shall apply to consumers within the meaning of § 13 BGB [German Civil Code, *Bürgerliches Gesetzbuch*] to the extent they do not explicitly state that they are to apply only to merchants. A consumer within the meaning of § 13 BGB is every natural person who enters into a legal transaction that cannot be ascribed to his or her commercial or self-employed professional activities.

1.2 Any of the Buyer's terms and conditions that differ from these terms and conditions shall have no application. Such terms and conditions shall apply only to the extent that their application has been expressly approved [by the Seller].

2 Formation of the Agreement

2.1 A sales contract is created by an order and the acceptance of that order. The description of products on the Seller's Web page does not constitute an offer to enter into a contract, but rather is an invitation to the Buyer to make an offer (*invitatio ad offerendum*). An order requires the selection of products and placing them into the shopping cart. The ordering process is initiated by entering customer information at the shopping cart, including name, address and selection of the method of payment. An order is finalized only by pressing the order button on the last view page. Only completion of the ordering process by the Buyer creates a legally binding offer to enter into a contract (order). The Buyer has the opportunity to cancel the order process at any time and to make corrections. The receipt and acceptance of the order will be confirmed immediately by the Seller by means of an email confirmation.

2.2 As a matter of principle, the Seller's product offerings will include only products that are available. Nonetheless, in individual cases the Seller reserves the right to monitor availability for incoming orders and will immediately notify the Buyer and immediately refund any payments already made by the Buyer if in exceptional cases the ordered goods are not available.

2.3 The text of the agreement will be saved. License provisions may be viewed on the Internet at any time. Order information will be sent to the Buyer by email. The Purchaser must set up a password-protected customer account in the course of placing the order. Order details in the customer account can be checked at any time.

3 Type and Scope of Services, Delivery

3.1 When the software is delivered, the Buyer acquires from the Seller the standard software designated in the order, including the data files it contains and the associated user documentation, and the rights of use governed by Section 4 are granted. The source code is not part of the contractual services.

3.2   The performance description shown on the Internet at the time of the order and the user documentation for the software designated in the order shall be controlling for the properties of the software delivered by the Seller. The Seller shall not be required to provide any software properties that go beyond this. Moreover, the Buyer may not derive any such obligation from other descriptions of the software in public statements or advertising by the producer or its employees or marketing partners unless the Seller has confirmed such additional properties in writing.

3.3   The Seller shall have the right to supply a more current version of the software than that on which the order was based if this is not inconsistent with the legitimate interests of the Buyer

3.4   The user documentation will be provided in digital form as online documentation unless providing it in printed form has been agreed upon. This is a component of the installation package.

3.5   Delivery shall be deemed to have been effected upon provision of an executable file and/or a compressed data package for downloading that contains the files required for installation. With regard to installation of the software, the Seller refers to the installation instructions described in the user documentation.

4   Granting Rights of Use

4.1   The Buyer shall have the right to copy the software to one storage device. The right to use the software obtained from an online download and the copy incorporated in one storage device shall be governed by the following provisions.

4.2   Upon delivery, the Seller shall grant to the Buyer the non-exclusive, transferable, perpetual, irrevocable and non-terminable right to use the software in any and all hardware and software environments; in particular, this means to store or load it permanently or temporarily and to display and run it. This right of use shall be geographically limited to the country of destination in which the use is to take place as agreed between the parties. Unless otherwise agreed by the parties, the country in which the Buyer has its place of business shall be deemed to be the country of destination for use.

4.3   If the Buyer exercises its right to assign the right of use, it shall impose upon the third party its contractual duties with respect to the content and scope of that right of use. The Buyer shall no longer be entitled to use the software after assignment to the third party. However, the Buyer shall have the right to keep and to use one copy exclusively for testing purposes.

4.4   The Buyer shall have the right to make one copy of the software as a backup. Copying the software for distribution for its intended use or for proper data protection constitutes a part of its intended use.

4.5   The Buyer shall not have the right to translate the software into another code or make any changes in the code unless this is permissible under legal provisions.

4.6   The Buyer shall have the right to decompile the software only within the limitations of § 69 e UrhG [German Copyright Act, *Urhebergesetz*] and only if the Seller, after written notice with a reasonable deadline, has not provided the data

and/or information required to establish interoperability with other hardware and software.

4.7 Any supplements or updates provided by the Seller to the Buyer in connection with the warranty or separately agreed software maintenance shall be subject to the provisions of these license terms.

4.8 If the Seller provides updates, the powers conferred upon the Buyer under those license terms shall expire even without an explicit demand for return by the Seller if and to the extent the Buyer puts the update to productive use. However, the Seller shall grant to the Buyer a reasonable transitional period during which both versions of the contract goods may be used at the same time.

4.9 The Buyer agrees that XTENTO may use buyer's name and logo (as well as name and logo of the client/store the software is purchased for) in presentations, marketing materials, customer lists and on the internet, unless you request otherwise.

5 Installation, Training, Software Maintenance

There shall be no duty to provide installation, training and software maintenance unless this has been expressly agreed upon. Claims for defects shall remain unaffected.

6 Purchase Price, Terms of Payment

6.1 All prices are exclusive of the statutory value-added tax applicable at the time of purchase. The Buyer shall have the opportunity to select from various forms of payment unless a particular form of payment has been specified. The available payment options can be found on the Seller's Web page.

6.2 Delivery shall be made only against advance payment unless otherwise agreed to the contrary.

6.3 The purchase price shall be due and payable without any deductions immediately upon invoicing.

6.4 The Buyer shall be entitled to a right of set-off only to the extent that its counterclaim is undisputed or has been established as final and absolute by a court of law. The Buyer shall be entitled to assert a right of retention only for counterclaims arising out of this contractual relationship.

7 Consumers' Right to Cancel

7.1 The following shall apply exclusively to consumers within the meaning of § 13 BGB, that is, natural persons who enter into a legal transaction for a purpose that cannot be ascribed to their commercial or self-employed professional activities:

Right to Cancel
You may cancel your contractual agreement in writing (e.g., letter, fax, email) within 14 days without stating any reasons or – if you received the item prior to expiration of the time limit – also by simply returning the item. The time limit shall commence upon receipt of these instructions in written form, upon delivery of the

goods but not prior to the receipt of the goods by the recipient (in the case of repeat deliveries of equivalent goods, not prior to receipt of the first partial delivery) and also not prior to the discharge of our duty of disclosure pursuant to Article 246 § 2 in conjunction with § 1, paragraphs 1 and 2 EGBGB [Introductory Law to the German Civil Code, *Einführungsgesetz zum Bürgerlichen Gesetzbuch*], as well as our duties under § 312g paragraph 1 sentence 1 BGB in conjunction with Article 246 § 3 EGBGB. The timely dispatch of the cancellation notice or return of the goods shall be sufficient to preserve the cancellation notice period.

The cancellation notice shall be directed to: XTENTO GmbH & Co. KG, Erlanger Str. 66a, 91096 Möhrendorf, Germany, or by email to info@xtento.com.

Consequences of Cancellation
In the case of an effective cancellation, the mutually received benefits must be returned and, if applicable, any profits that have been derived (*e.g.*, interest) must be surrendered. If you cannot return or surrender to us the rendered service and benefits (e.g., benefits from use) or are able to return them only in part or in deteriorated condition, you must compensate us for the loss in value. You must compensate us for any loss in value due to deterioration of the item and for the use made only to the extent that the use or deterioration is attributable to treatment of the goods that goes beyond testing their properties and functionalities. "Testing properties and functionalities" means testing and trying out the goods in question in a way that is possible and customary in a shop setting. Goods suitable for shipment by parcel delivery are to be returned at our expense and risk. Goods not suitable for shipment by parcel delivery will be picked up at your address. The duty to reimburse payments must be discharged within 30 days. This time period shall commence upon dispatching either your cancellation notice or the goods; for us it commences with their receipt.
End of the Cancellation Instructions

7.2 There shall be no right to cancel in the case of delivery of goods that are made according to customer specifications or that are clearly tailored to personal needs or that, based on their nature, are not suitable for return. In particular, this shall apply to the shipment of software provided by way of downloading (download).

8 Warranty

8.1 Under the rules for the sale of goods, the Seller warrants the agreed properties of the contract goods and also the fact that the Buyer's use of the contract goods within the scope of the agreement in the country in which they were originally purchased does not violate the rights of any third parties.

8.2 In the event of material defects, the Seller shall initially fulfill its warranty obligations with respect to defects through remedial performance. To this end the Seller shall at its option give the Buyer new, defect-free software or shall remedy the defect. It shall also be deemed a remedy of the defect when the Seller points out to the Buyer reasonable options for avoiding the effects of the defect.

8.3 In the event of defects in title, the Seller shall fulfill its warranty obligations through remedial performance. To this end the Seller shall at its option provide the Buyer with a legally correct possibility of using the delivered goods or the replaced or modified equivalent contract goods.

8.4 The Buyer promises to accept a new software version if the scope of its functionality is maintained and acceptance does not result in significant disadvantages.

8.5 If two attempts at remedial performance are unsuccessful, the Buyer shall have the right to set a reasonable grace period for remedying the defects. In so doing, it shall expressly and in writing call attention to the fact that in the event of repeated failure it reserves the right to withdraw from the contract and/or to demand damages. If remedial performance during the grace period is also unsuccessful, the Buyer may withdraw from the contract or reduce the compensation unless the defect is minor.

8.6 If the Seller performs services in the course of troubleshooting or remedying defects without being obligated to do so, it may demand compensation for this in accordance with its customary rates. In particular, this shall apply in cases where a defect cannot be verified or cannot be attributed to the Seller. The Seller must also be compensated for additional expenses that are incurred because the Buyer has not properly fulfilled its duty to cooperate.

8.7 The limitation period for all warranty claims is one year and shall commence upon delivery.

8.8 The statutory limitation periods shall apply in the case of intentional acts or gross negligence by the Seller, fraudulent concealment of a defect, personal injury or legal defects within the meaning of § 438 paragraph 1 no. 1 a BGB, as well as guarantees (§ 444 BGB); the same shall apply in the case of claims under the German Products Liability Act.

9 Liability

9.1 The Seller shall be liable without limitation for all damages in cases of intentional acts or gross negligence as well as in cases of the absence of guaranteed properties.

9.2 In cases of ordinary negligence, the Seller shall be liable without limitation in cases of injury to life, limb or health. If the Seller incurs a delay in performance due to ordinary negligence, impossibility of performance, or material breach, liability shall be limited to the foreseeable damages typical to this type of contract.

9.3 Liability is precluded in all other respects with the exception of mandatory liability under the German Products Liability Act [*Produkthaftungsgesetz*].

10 Final Provisions

10.1 The following shall be applicable solely to merchants: The exclusive venue for all disputes arising under and in connection with this agreement shall be the Seller's place of business. If the Seller brings a legal action, it shall also have the right to choose the venue at the Buyer's business office. The right of both parties to seek temporary injunctive relief before a court of competent jurisdiction under the legal provisions shall remain unaffected.

10.2 German law shall apply exclusively to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

10.3 Entering into this agreement as well as subsequent amendments and supplements to this agreement must be in writing in order to be effective.