

# Software license agreement



between

## **ANOVA GmbH**

Joachim-Jungius-Str. 10  
D-18059 Rostock

- mentioned below as **licenser** -

and

**customer** according to the order form  
(natural or juristic person)

- mentioned below as **licensee** -

## **§ 1 Subject**

(1) The licensee acquires the right to use the basic software **ambiente® webshop**, developed by the licenser. It is an online shop for piece goods and configurable articles, with adaptable layout and content. For every operator different products from different suppliers can be provided. The provision of and access to particular manufacturer's collections cannot be guaranteed, the decision about these lies solely with the respective manufacturer. The order data are transferred to the according supplier via email. Different payment services can be provided. For the operation of **ambiente® webshop** a separate service contract has to be concluded by licenser and licensee. Layout adjustments are possible to some extent, e. g. colours, header picture. The licensee has to provide the required information (e. g. texts, header picture, price tables) and the licenser has to configure the system for a certain domain.

(2) The valid system requirements have been stated by the licenser in the user guide and in the latest product information.

## **§ 2 Exploitation rights and rights of duplication**

(1) For a non-recurring fee the licensee acquires a limited right to use **ambiente® webshop**. This right is time-unlimited but locally limited to an intended purpose (operation of the online shop under one or more domains), which has to be specified at conclusion of the contract. There will be no transfer of ownership concerning the software itself.

(2) The licensee is allowed to duplicate **ambiente® webshop**, as far as the respective duplication is necessary for the use. Necessary duplications are the one-time installation on a mass storage of the utilized computer/server- hardware as well as loading the software into the main memory.

(3) In addition the licensee can duplicate the delivered data for backup purposes. However, the licensee is allowed to create and keep only one backup copy at a time. This backup copy has to be labelled as only useable for the delivered software.

(4) If, due to reasons of data security or for providing a fast reactivation of the computer/server system after a total black-out, the rotational backup of the whole data stock including the used computer programs is necessary, the licensee is allowed to create the required amount of backup copies. The concerning data have to be labelled appropriately. The backup copies should only be used for storage and recovery.

(5) The licensee is not allowed to create more duplicates, including the output of the program code on a printer.

## **§3 Copy right, decompiling, program modifications and access protection**

(1) **ambiente® webshop**, including all contents like pictures, graphics, animations, videos, texts and example applications, as well as the program code and documentations are subject to the copy right which is held by the licenser. Copy right notices, serial numbers and other characteristics that identify the program must not be removed or modified in any case.

(2) The retranslation of the entrusted program code into other code forms (decompiling) as well as any other kind of reconstruction of the various production stages of the software (reverse engineering) including any unauthorized modification of the software, are generally prohibited.

(3) The licensee is obliged to take suitable measures to prevent unauthorized access of third parties to **ambiente® webshop**. The delivered data and the backup copies have to be stored at a place secured against the unauthorized access of third parties. The employees of the licensee have to be instructed empathetically regarding compliance with these terms and conditions and with the regulations of copyright laws.

## **§4 Surrender of use**

(1) The licensee may relinquish the software **ambiente® webshop** according to §1 either permanently or temporarily, to third parties (service provider) only if and when the licensee complies with his duty to inform the third party about the valid terms of the license. In case of surrender of use of the software to a third party, the licensee is temporarily obligated to communicate in written form the complete address of the third party to the licenser.

(2) During surrender of use the third party is allowed to use **ambiente® webshop** only within the limits of the service agreement between himself and the licensee. A simultaneous or subsequent utilization of any other kind is generally forbidden, unless it is explicitly agreed upon in a separate license agreement.

(3) A resale or trade, the rent or leasing of **ambiente® webshop** for pecuniary rewards or any other commercial exploitation are not permitted, unless it is explicitly agreed upon in a separate contract.

## **§5 Warranty and liability**

(1) The licenser guarantees that **ambiente® webshop** works on hardware systems with the system requirements specified by the licenser in the documentation details.

(2) The warranty period for software, according to §1 is 12 months. In case of evidence of defects, which limit the described functionality of **ambiente® webshop** according to paragraph (1) significantly, these will be resolved by the

licenser within the scope of the warranty. The licenser decides if this happens via a software update or a substitute delivery.

(3) The licenser shall be liable for any damages due to defects of title and the absence of warranted properties, for intention and gross negligence also by his statutory representatives and senior managers. The liability for slight incapacity, for any negligence of other vicarious agents as well as for the breach of a cardinal obligation caused by slight negligence, will be restricted to five times the license fee and to such damages that are typically foreseeable in connection with the licensing of the software. The burden of proof for damages suffered rests on the licensee.

(4) Liability for loss of data is limited to the typical costs of recovery that would be incurred for the creation of backup copies at regular intervals commensurate with the risk.

(5) The licenser is not liable for any results or for their qualification to a particular purpose arising from the use of **ambiente® webshop** at the licensee, for occasional or particular damage, loss of profits or savings.

## **§ 7 Obligation of examination and notification**

(1) The licensee shall examine the delivered software within ten (10) working days after delivery, especially with regard to the completeness of the relevant data and manuals, and the proper functioning of the basic program information. Any defects which are established in the aforesaid process, or which are determinable, shall be reported to the licenser by registered letter within the specified period. The notice of defects should include a description of the defects in as much detail as possible.

(2) Defects that are not discernible during the proper inspection described above must be reported within ten (10) business days after discovery, in accordance with the notice requirements set down in paragraph 7(1).

(3) In the event that the obligation to inspect and give notice of defects is violated, the software shall be deemed to be approved with regard to the relevant defect.

## **§ 8 Property reservation and termination**

(1) The licenser shall retain title to the data and documentation sent to the licensee until complete payment of all claims from his contractual relationship existing at the time of delivery or arising later.

(2) In the event of culpable default of payment by the licensee or in the event of a serious breach of this agreement the assertion of the retention of title by the licenser is not considered to be a rescission of the contract, apart from if the licenser informs the licensee of this explicitly.

(3) By the licenser asserting the retention of title, the licensee's right to use **ambiente® webshop** and the delivered data and documentation expires. All program copies made by the licensee according to §2 must be deleted, the delivered data and documentation must be returned to the licenser.

## **Data usage and data protection under this contract**

ANOVA strictly adheres to the legal provisions of the EU General Data Protection Regulation in the collection, processing and use of personal data. We collect, process and use personal data only insofar as they are necessary for the establishment, actual form and change of legal relationship (inventory data.) After performance in full of the contract, the data are first stored under consideration of tax and commercial retention periods and then deleted after the deadline, provided that the licensee has not consented to further processing and use.

At any time, the licensee has the right to be informed of its stored data, their origin and receiver and the purpose of data processing as well as the right to correction, deletion and blocking. For this purpose and for further questions on the subject of personal data, he can always contact us at the following address.

## **Information according to the EU General Data Protection Regulation (GDPR) for those affected**

### **Responsible terms of Art. 4 No. 7 GDPR is**

**ANOVA GmbH**, Joachim-Jungius-Strasse 10, D-18059 Rostock  
Tel: +49 381 2026 02 20, Fax: +49 381 2026 02 21, info@anova.de

## **Final clause**

Should individual provisions of this contract be or become ineffective in whole or in part, this shall not affect the validity of the remaining provisions. The parties hereby agree that in this case the invalid provision shall be replaced by an effective provision which comes as close as possible to the economic purpose of the invalid provision. The same applies to any gaps in the contract. In the event of a dispute arising out of this contract, the parties shall, before carrying out any legal proceedings (lawsuit), conduct conciliation in accordance with the arbitration rules of the *Hamburger Schlichtungsstelle für IT-Streitigkeiten* in the version in force at the time of the initiation of conciliation. The arbitration procedure shall serve to settle the dispute in whole or in part, provisionally or finally. If an agreement is not reached before the conciliation office, the appeal to the ordinary courts has been opened.

The assignment of claims that are not monetary claims is only permitted with the prior written consent of the other party. The consent may not be unfairly refused. A right of retention can only be asserted for counterclaims from the respective contractual relationship. The contracting parties can only set off against claims that have been legally established or are undisputed.

There are no subsidiary agreements to this contract. General terms and conditions of the parties, moreover, do not apply to this contract. This also applies if such conditions are not expressly contradicted. Changes and additions to this contract must be in writing. This formal requirement can be waived only by written agreement.

The law of the Federal Republic of Germany applies. The exclusive place of jurisdiction for all disputes arising out of or in connection with this contract is Rostock. ANOVA is also entitled to sue at the general place of jurisdiction of the licensee.