**Shrink Wrap License**

**WARNING**

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**1. License**

In consideration of your agreement to the terms of this Agreement, we grant you (the individual or entity whose name and address appears on the Registration Card) a perpetual, non-exclusive right to use the Software in accordance with clause 2 below. This license is personal to you as the purchaser or the Software and the license granted herein is for your benefit only.

**2. Permitted use**

As purchaser of the authorized copy of the Software, you may subject to the following conditions.

2.1 load the Software into and use it on a single computer (of the type identified on the package) which is under your control.

2.2 transfer the Software, on a permanent basis only, to another person by transferring all copies of the Software to that person and/or destroying copies not transferred. The other person must agree to the terms of this Agreement and on such a permanent transfer, the license of the Software to you will automatically terminate.

**3. Restrictions on use**

You may not or permit others to:

3.1 load the Software into two or more computers at the same time. If you wish to transfer the Software from one computer to another, you must erase the Software from the first hard drive before you install it onto a second hard drive;

3.2 sub-license, assign, rent, lease or transfer the license or the Software or make or distribute copies of the Software except as permitted by this Agreement.

3.3 translate, reverse engineer, decompile, disassemble, modify or create derivative works based on the Software except as permitted by law;

3.4 make copies of the Software, in whole or part, except for back-up or archival purpose as permitted in this license.

3.5 use any back-up copy of the Software for any purpose other than replace the original copy in the event that it is destroyed or becomes defective;

3.6 copy the written materials (except as provided by this Agreement) accompanying the Software;

3.7 adapt, modify, delete or translate the written material accompanying the Software in any way for any purpose whatsoever;

3.8 vary, delete or obscure any notices of proprietary rights or any product identification or restrictions on or in the Software.

**4. Undertakings**

You undertake to:

4.1 ensure that, prior to use of the Software by your employees or agents, all such parties notified of this license and the terms of this Agreement;

4.2 reproduce and include our copyright notice (or such other party’s copyright notice as specified on the Software) on all and any copies of the Software, including any partial copies of the Software;

4.3 hold all drawings, specifications, data (including object and source codes), software listings and all other information relating to the Software, confidential and not at any time, during this license or after it’s expiry, disclose the same, whether directly or indirectly, to any third party without our consent.

**5. Title**

As licensee you may own only the diskette or medium on which the Software is recorded or fixed. You may retain the media on termination of this Agreement provided the Software is erased. We shall at all times retain ownership of the Software.

**6. Warranty**

Subject to the clause 6.2, we warrant that for a period of [90] days from the date of your purchase of the Software [“the Warranty Period”).

6.1 The medium on which the Software is recorded will be free from defects in materials and workmanship under normal use. If the disk fails to conform to this warranty, you may, as your sole and exclusive remedy, obtain (at our option) either replacement free of charge or a full refund if you return the defective disk to us or to your supplier during the warranty period with a dated proof of purchase.

6.2 The copy of the Software in this package will materially conform to the documentation that accompanies the Software. If the Software fails to operate in accordance with this warranty, you may, as your sole and exclusive remedy, return all of the Software and the documentation to us or to your supplier during the warranty period, along with dated proof of purchase, specifying the problem, and we will provide you either with a new version of the Software or a full refund (at our option).

6.3 We shall not be liable under the warranties given in clause 6.1 above the if the disk or the Software fails to operate in accordance with the said warranty as result of any modifications, variations, or addition to the Software not performed by us or caused by abuse, corruption or incorrect use of the disk or Software, including use of the Software with equipment or other software that is not compatible.

**7. Disclaimer**

We do not warrant that this Software will meet your requirements or that its operation will be uninterrupted or error free. We exclude and hereby expressly disclaim all express and implied warranties or conditions not stated herein (including without limitation, loss of profits, loss or corruption of data, business interruption or loss of contracts), so far as such exclusion or disclaimer is permitted under the applicable law. This Agreement does not affect your statutory rights.

**8. Liability**

8.1 Our liability to you for any losses shall not exceed the amount you originally paid for the Software.

8.2 In no event will we be liable to you for any indirect or consequential damages even if we have been advised of the possibility of such damages. In particular, we accept no liability for any programs or data made or stored neither with the Software nor for the costs of recovering or replacing such programs or data.

8.3 Nothing in this Agreement limits liability for fraudulent misrepresentation or our liability to you in the event of death or personal injury resulting from our negligence.

8.4 You hereby acknowledge and agree that the limitations contained in this clause are reasonable in light of all the circumstances.

**9. Termination**

9.1 The Agreement and the license hereby granted to use the Software automatically terminates if you:

9.1.1 fail to comply with any provisions of this Agreement;

9.1.2 destroy the copies of the Software in your possession; or

9.1.3 voluntarily return the Software to us.

9.2 In the event of termination in accordance with clause 9.1 you must destroy or delete all copies of the Software from all storage media in your control.

**10. Severability**

In the event that any provision of this Agreement is declared by any judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable or indications of the same are received by either you or us from any relevant competent authority, we shall amend that provision in such reasonable manner as achieves the intention of the parties without illegality or, at our discretion, such provision may be severed from this Agreement and the remaining provisions of this Agreement shall remain in full force and effect.

**11. Entire Agreement**

You have read and understand this Agreement and agree that it constitutes the complete and exclusive statement of the Agreement between us with respect to the subject matter hereof and supersedes all proposals, representations, understandings and prior agreements, whether oral or written, and all other communications between us relating thereto.

**12. Assignment**

This Agreement is personal to you and you may not assign, transfer, sub-contract or otherwise part with this Agreement or any right or obligation under it without our prior written consent.

**13. Waiver**

Failure or neglect by either party to exercise any of its rights or remedies under this Agreement will not be construed as a waiver of that party’s rights nor in any way affect the validity of the whole or part of this license nor prejudice that party’s right to take subsequent action.

**14. Law and disputes**

This Agreement and all matters arising from it are governed by and construed in accordance with the laws of England and Wales whose courts shall have exclusive jurisdiction over all disputes arising in connection with this Agreement and the place of performance of this Agreement is agreed by you to be England.

**15. Software License Registration Card**

I have read and fully understand and agree to be bound by and comply with the Agreement, a copy of which is printed overleaf.

Signed:

Dated:

Printed Name:

Title:

On behalf of:

Company:

Address:

1. This document is a single user license agreement provided in shrink wrap form and usually applicable to mass market software. Where the software is provided in a boxed fashion, usually the shrink-wrap license is printed on the outside of an envelope in which the disk or CD-ROM is placed. The intention is that by the breaking of the seal of the envelope, as well as the loading of the software onto a PC, the user is bound by the license terms. The emboldened section at the beginning of the document is designed to bring sufficiently to the attention of the user the essential license terms as well as the procedures for acceptance and rejection.
2. This is a statement of fact and draws to the attention of the user the fact that the software is being licensed on a limited basis and not ‘sold’. It also confirms that the right is perpetual (ongoing) and non-exclusive.
3. These license restrictions are typical for mass market software.
4. This clause allows the software to be loaded onto and used on a particular PC for which the software is written as well as on a PC controlled by the licensee. This language is intended to define that the PC must be owned by the user and therefore specific to the user;
5. This clause provides for the software to be copied for limited purposes and only within the general terms of the license.
6. This clause provides for the transfer of the software to another person by the transfer of all copies to that person and destroying copies not transferred. The other person must however agree to the terms of the Agreement. Once it has been transferred the license will terminate as regards the transferor.
7. These restrictions are typical for mass market software.
8. It is usual in shrink-wrap and click-wrap contracts to limit the warranty both by time and as to performance. In this instance the warranty clause also includes a limited indemnity in respect of matters which under United States law could not be excluded in any event.
9. Having already limited the usual warranties this agreement also seeks to limit liability of the licensor to the licensee. Because the limitations are unilateral given the nature of the agreement, it is important to recognize that for the terms and conditions to be binding on a consumer they must be fair and reasonable. It is equally important that the consumer agrees to their reasonableness.
10. The license is deemed to automatically terminate on the happening of specific events but other than this the license term would be perpetual subject to the expiration of copyright. It may be appropriate to express in a shrink-wrap agreement the term of the license grant in words such as:
11. ‘The software is licensed on a non-exclusive perpetual basis, subject only to termination in accordance with clause’, or alternatively:
12. ‘The software is licensed on a non-exclusive basis for the full term of copyright therein subject only to earlier termination in accordance with clause’.
13. Following discussions and negotiations where the terms are reduced to written form it is important that the parties to the final contract know what has been finally agreed and where the parameters of that contract exist.

For this reason, the final agreement should include a clause which confirms that the agreement being signed is the complete agreement and that any prior representations are not relied upon. Beware of automatically using this form of clause without considering whether prior agreements should be overridden.

1. Software providers like to have the flexibility of transferring their rights and obligations to purchasers of their companies and other parties without the customer’s consent. Some standard provider agreements specify this right and some are silent reasoning that silence on this topic will be interpreted by a court as allowing assignment. Conversely most software providers do not want the customer assigning software license agreements without express permission. Providers need to retain control over their software trade secrets in order to preserve their status as trade secrets. Also, the assignee may be a poor credit risk or unsavory character. Thus, many standard software provider agreements prohibit assignment of the license agreement as a whole and all software licenses except with the express, written permission of the provider except where the assignee is an associate of the Licensee or the Assignment is a result of re-construction or amalgamation. Some customers may want to negotiate a specific right to assign licenses to companies within their corporate group or to assign licenses to the purchaser of the business of licensee.
2. A waiver clause is useful to ensure that the fact that one party has not previously enforced a right under the contract does not prevent it from doing so in the future.
3. Because of the increase in international trade, a supplier is likely to sell throughout the world and it is important for the Agreement to indicate what law applies to the interpretation of the contract and what legal jurisdiction will apply to the settlement of disputes.

There is always the risk that a shrink-wrap license may be difficult to enforce given its unilateral nature and also the fact that it is often drawn to the attention of the licensee after the licensee has ‘purchased’ the licensed product. As a result, some suppliers also attach a software license registration card to the shrink-wrap license in the hope that by completing the card and returning it to the supplier the customer is providing further evidence of its intention to be bound by the shrink wrap license terms.