Software-Nutzungsbedingungen Hoffrogge GmbH

§ 1 Geltung dieser Nutzungsbedingungen

1. Die nachstehenden Nutzungsbedingungen gelten für von der Hoffrogge GmbH (nachstehend: „Hoffrogge"), Am Spascher See 2, 27793 Wildeshausen, ihren Vertragspartnern (nachstehend: „Kunden") die jeweils vereinbarungsgemäß zum Gebrauch überlassene Software Data Manager, Range Finder®, Range Adapter®, Shelf Maker®, Store Maker®, Season Maker, Kundenspieker und/oder Mobile App Shopper Activation Mobile (SAM® / mySAM®) sowie die jeweils vereinbarungsgemäß zum Gebrauch zugänglich gemachten, web-basierten Anwendungen Shelf Organiser®, KPI-Cockpit und Query Builder (nachfolgend sämtlich auch einheitlich „Lizenz-Software").
2. Die nachstehenden Bedingungen gelten ausschließlich im Geschäftsverkehr mit Unternehmern, d.h. natürlichen oder juristischen Personen oder rechtsfähigen Personengesellschaften, die bei Abschluss des Vertrags in Ausübung ihrer gewerblichen oder selbstständigen Tätigkeit handeln (§ 14 Abs. 1 BGB), sowie ferner für juristische Personen des öffentlichen Rechts und öffentlich-rechtliche Sondervermögen. Sie gelten nicht für Verbraucher im Sinne des § 13 BGB.
3. Von diesen Nutzungsbedingungen abweichende Vereinbarungen sind nur wirksam, sofern sie schriftlich von uns besonders bestätigt werden.
4. Hoffrogge ist berechtigt, diese Software-Nutzungsbedingungen zu ändern. Änderungen dieser Software-Nutzungsbedingungen werden dem Kunden mindestens sechs Wochen vor ihrem Inkrafttreten schriftlich oder in Textform (z.B. per E-Mail) unter Angabe von Inhalt und Zeitpunkt der Vertragsänderung sowie dem nachfolgend beschriebenen Kündigungsrecht mitgeteilt. Ändert Hoffrogge diese Software-Nutzungsbedingungen einseitig, kann der Kunde den Vertrag ohne Einhaltung einer Kündigungsfrist und ohne Kosten kündigen, es sei denn, die Änderungen sind
   a) ausschließlich zum Vorteil des Kunden,
   b) rein administrativer Art (einschließlich solcher im Sinne des § 3 Ziff. 7) und haben keine negativen Auswirkungen auf den Kunden oder
   c) aufgrund gesetzlicher Änderungen erforderlich.

   Die Kündigung kann innerhalb von drei Monaten ab dem Zeitpunkt erklärt werden, in dem die Unterrichtung von Hoffrogge über die Änderung dieser Software-Nutzungsbedingungen dem Kunden zugeht. Der Vertrag kann durch die Kündigung frühestens zu dem Zeitpunkt beendet werden, zu dem die Vertragsänderung wirksam werden soll.

§ 2 Nutzungsrechtseinräumung an der Lizenz-Software

1. Hoffrogge räumt dem Kunden an der jeweils vertragsgegenständlichen, dem Kunden überlassenen und/oder zugänglich gemachten Lizenz-Software ein einfaches (nicht ausschließliches), zeitlich auf die vereinbarte Nutzungsdauer beschränktes, nicht übertragbares und nicht sublizenzierbares Recht zur Nutzung für eigene unternehmensinterne Zwecke des Kunden ein. Alle Datenverarbeitungsgeräte, auf denen und/oder über welche die Lizenz-Software genutzt wird, müssen sich in unmittelbarem Besitz des Kunden befinden. Die Benutzungsmöglichkeit darf jeweils höchstens an der vertraglich vereinbarten Anzahl von Arbeitsplätzen zur Verfügung stehen. Nutzungsberechtigt ist ausschließlich die jeweils vereinbarte Anzahl vom Kunden namentlich benannter Nutzer („Named User") oder – wenn und soweit die Nutzung durch nicht benannte gleichzeitige Nutzer („Concurrent User") ausdrücklich vereinbart ist – die vereinbarte Anzahl von Concurrent Usern. Entsprechende Named User und Concurrent User dürfen nur natürliche Personen sein, die mit dem Kunden in einem Dienst-, Arbeits- oder Ausbildungsverhältnis stehen. Hoffrogge stellt dem Kunden für die jeweils vereinbarte Zahl von Nutzern eine Zugangsmöglichkeit in Form persönlicher Zugangsdaten zur Verfügung.
2. Die dem Kunden eingeräumten Nutzungsrechte an ihm überlassener Lizenz-Software beschränken sich jeweils auf die Lizenz-Software im Objekt-Code und umfassen nicht das Recht, Abänderungen, Bearbeitungen oder andere Umgestaltungen der Lizenz-Software vorzunehmen. Unzulässig ist insbesondere die Rückübersetzung des überlassenen Programm-Codes in andere Code-Formen (Dekompilierung) sowie sonstige Arten der Rückerschließung der verschiedenen Herstellungsstufen der Lizenz-Software (Reverse-Engineering); § 69e UrhG bleibt, soweit nicht abdingbar, unberührt.
3. Überlässt Hoffrogge dem Kunden Nachbesserungen (z.B. Patches oder Updates) oder eine neue Version der Lizenz-Software (z.B. Upgrades auf neue Versionen), die die zuvor überlassene Lizenz-Software ersetzen, unterliegen entsprechende Nachbesserungen/neue Versionen diesen Nutzungsbedingungen. Stellt Hoffrogge dem Kunden Nachbesserungen/neue Versionen der Lizenz-Software zur Verfügung, so erlöschen in Bezug auf die jeweilige Vorversion die Nutzungsrechte des Kunden auch ohne ausdrückliches Rückgabeverlangen von Hoffrogge, sobald der Kunde die neue Lizenz-Software installiert, spätestens jedoch binnen zwei Wochen seit Überlassung der jeweiligen Nachbesserung/neuen Version, die daher jeweils unverzüglich vom Kunden zu installieren ist, soweit nicht eine automatische Aktualisierung erfolgt.
4. Der Kunde hat keinen Anspruch auf Überlassung oder Zugänglichmachung (Download) von Vervielfältigungsstücken der web-basierten Lizenz-Software Shelf Organiser®, KPI-Cockpit und Query Builder. Web-basierte Lizenz-Software wird für die jeweils vereinbarten Benutzer stets nur über das Internet zum Gebrauch über aktuelle handelsübliche, auf Client-Rechnern des Kunden installierte Webbrowser zugänglich gemacht und setzt die ordnungsgemäße Anmeldung der jeweiligen Benutzer voraus.
5. Die dem Kunden jeweils vereinbarungsgemäß zum Gebrauch zu überlassende Software Range Finder®, Range Adapter, Shelf Maker® und/oder Store Maker® wird Hoffrogge dem Kunden jeweils auf handelsüblichem Datenträger oder zum Download zur Installation auf entsprechenden Client-Rechnern für die jeweils vereinbarte Anzahl von Named- oder ggf. Concurrent-Usern überlassen. Entsprechendes gilt für die ggf. vertragsgegenständliche Mobile App SAM von Hoffrogge, die dem Kunden zur Installation auf der jeweils vereinbarten Zahl und Art mobiler Endgeräte für die vereinbarten Nutzer überlassen wird.
6. Mit der Einräumung von Nutzungsrechten an der Lizenz-Software erwirbt der Kunde weder an dieser noch an ggf. sonst von Hoffrogge überlassenen und/oder zugänglich gemachten Inhalten, Daten und sonstigen Materialien irgendwelche Ausschließlichkeitsrechte (Exklusivrechte). Alle Urheberrechte und sonstigen Rechte an der Lizenz-Software sowie jeglichen Inhalten, Daten und sonstigen Materialien von Hoffrogge bleiben vorbehalten.
7. Von Hoffrogge überlassene Unterlagen zur Benutzung der Lizenz-Software dürfen nur für betriebsinterne Zwecke kopiert und genutzt werden.
8. Zusammen mit der Überlassung von Lizenz-Software, die dem Kunden zur Installation auf dessen Rechnern überlassen wird, werden ggf. auch solche Fremd-Software-Komponenten überlassen, die in Anlage A nebst den für diese jeweils anwendbaren Lizenzbedingungen jeweils im Einzelnen in Anlage B aufgeführt sind. Die in der Anlage B enthaltenen Lizenzbedingungen gehen in ihrem Anwendungsbereich solchen Bestimmungen dieser Hoffrogge-Lizenzbedingungen vor, deren Geltung anderenfalls der Nutzung der entsprechenden Fremd-Software-Komponenten durch den Kunden entgegenstehen oder diese ausschließen würde. Für die Änderung der Anlagen A und B durch Hoffrogge infolge von Änderungen der Verwendung neuer oder geänderter Drittsoftwarekomponenten oder des Wegfalls solcher Komponenten gilt § 1 Ziff. 4.

§ 3 Leistungsbeschreibungen, Verfügbarkeit

1. Die Eigenschaften der jeweils vertragsgegenständlichen Lizenz-Software von Hoffrogge sowie die Anforderungen an die vom Kunden jeweils einzusetzende, dem aktuellen Stand der Technik entsprechende Systemumgebung (Hardware, Betriebssystem-Software, ggf. Anwendungs-Software Dritter, Browser-Versionen und dgl.) ergeben sich aus den von Hoffrogge zum Zeitpunkt des jeweiligen Vertragsabschlusses über deren Lizenzierung maßgeblichen Leistungsbeschreibungen. Unberührt bleiben Rechte von Hoffrogge zu Änderungen der Lizenz-Software nach Ziff. 7.

2. Web-basierte Lizenz-Software von Hoffrogge ist durchgehend 24 Stunden, sieben Tage die Woche einsatzfähig mit einer Verfügbarkeit von 99 % im Jahresmittel. Entsprechendes gilt für Systeme von Hoffrogge, die ggf. vertragsgemäß zum Fernzugriff (z.B. Bereitstellung des Internet-basierten Dienstes „CM Toolkit Web-Service" unter der Adresse https://cmtoolkit.hoffrogge.com) durch den Kunden über andere als web-basierte Lizenz-Software bereitgestellt werden. Hiervon ausgenommen sind Ausfallzeiten durch Wartung und Software-Updates sowie Zeiten, in denen die Plattform auf Grund von technischen oder sonstigen Problemen, die nicht von Hoffrogge verursacht wurden, wie insbesondere in Fällen höherer Gewalt, des Verschuldens Dritter, Störungen auf Seiten des internen Netzwerks oder des ISP (Internet Service Providers) des Kunden oder Einschränkung des Internet-Zugangs auf Computern des Kunden durch fehlerhafte Konfiguration oder durch nicht durch Hoffrogge installierte Software und Hardware-Komponenten (z.B. Firewall, Virenscanner, VPN-Lösungen und andere) oder Nichterfüllung der von Hoffrogge definierten Systemvoraussetzung (z.B. Hardware-Eigenschaften, Betriebssystemversion und Internet-Browser-Version) über das Internet nicht zu erreichen ist. Als „erreichbar" gilt eine generelle Verfügbarkeit des Server-Dienstes „https://cmtoolkit.hoffrogge.com" über dem Internet über einen Computer, der für einen uneingeschränkten Internet-Zugriff und über einen handelsüblichen und dem Stand der Technik entsprechenden Browser (Internet Explorer, Firefox, Safari) eingerichtet ist. Die Erreichbarkeit gilt als gegeben, wenn Hoffrogge eine HTTPS-Anforderung über einen Client-Computer über das Internet an den Server von Hoffrogge senden kann, sofern die Anforderung entweder durch eine HTTPS-Antwortnachricht beantwortet wird oder wenn die Daten an eine für den Empfang vorgesehene Middleware-Anwendung weitergeleitet werden und dies jeweils innerhalb von nicht mehr als 120 Sekunden erfolgt. Dem Kunden bleibt der Nachweis vorbehalten, dass der Web-Service gleichwohl nicht erreichbar ist.

3. Unterbrechungen der Verfügbarkeit, Übertragungsverzögerungen und andere Fehler der webbasierten und sonstigen Lizenzprogramme, die Hoffrogge zu vertreten hat (nachfolgend "Störungen" genannt), sind wie folgt zu klassifizieren:
    a) Unwesentliche Störungen:
        *   Kosmetische Fehler (Rechtschreibfehler auf dem Bildschirm oder im Ausdruck, visuelle Fehler auf dem Bildschirm)
        *   Geringe Unannehmlichkeiten (zusätzliche Mausklicks erforderlich, wenige Sekunden Wartezeit)
        *   Fehler mit geringer Auswirkung (z. B. Anzeige fehlerhafter Werte bei korrekten Ergebnissen)
        *   Fehler mit bestehenden Workarounds (Schritte zum Erreichen eines gewünschten Ziels mit zusätzlichen Mausklicks / Eingaben)
    b) Wesentliche Störungen
        *   Reproduzierbare Fehler in den Berechnungsergebnissen
        *   Fehler bei der Erzeugung der Bildschirm- oder Druckausgabe
        *   Unmöglichkeit der Öffnung einzelner Verkaufseinrichtungen zur Flächenoptimierung
        *   Signifikante Leistungseinschränkungen (Wartezeiten von mehr als 2 Minuten bei einfachen Aufgaben, Wartezeiten von mehr als 30 Minuten bei Batch-Aufgaben (pdf-Erstellung)
    c) Kritische Störungen:
        *   Die Anwendung kann nicht gestartet werden
        *   Die Anwendung stürzt ab (reproduzierbar)
        *   Unmöglichkeit der Durchführung von wesentlichen Anwendungsfällen (Flächenoptimierung insgesamt unmöglich, Planogramme lassen sich nicht anzeigen usw.)
        *   Reproduzierbare Fehler in den Berechnungsergebnissen
        *   Der Webservice ist nicht erreichbar

4. Hoffrogge erbringt nur 2nd und 3rd Level-Support, d.h. Hoffrogge wird nur auf Störungen reagieren, die von einer begrenzten Anzahl benannter Key-User und Systemadministratoren gemeldet werden, die gesondert zwischen den Parteien vereinbart wurden. Hoffrogge wird auf Störungsmeldungen der jeweiligen Key-User / Systemadministratoren, die über das Hoffrogge Online Ticket System (verfügbar unter https://support.hoffrogge.com/servicedesk) während der üblichen Geschäftszeiten von Hoffrogge (Montag bis Freitag von 8.00 bis 17.00 Uhr MESZ, ausgenommen Feiertage in Niedersachsen und Samstage, nachfolgend "Servicezeiten" genannt) eingehen, innerhalb der folgenden, über die Servicezeiten zu berechnenden Fristen reagieren:
    a) Unwesentliche Störungen: Zwei Werktage
    b) Wesentliche Störungen: Ein Werktag
    c) Kritischen Störungen: Vier Stunden

5. Störungen von anderer als webbasierter Lizenz-Software (z. B. lizenzierte Software, die auf Client-Computern des Kunden installiert oder auf Servern des Kunden gehostet wird) werden durch Überlassung von zur Störungsbeseitigung erforderlicher Patches, Bug Fixes, Betafixes, Betabuilds, Service Packs, Updates oder anderen neuen Versionen behoben. Die Überlassung erfolgt nach Wahl von Hoffrogge per E-Mail, durch Zurverfügungstellung zum Download oder durch Überlassung auf handelsüblichen Datenträgern.

6. Der Kunde hat nach besten Kräften an der Störungsermittlung und -beseitigung mitzuwirken. Diese Mitwirkungsverpflichtung beinhaltet insbesondere (i) die Verpflichtung, Hoffrogge unverzüglich über alle Störungen zu unterrichten und so detailliert wie möglich die Symptome der jeweiligen Störung zu beschreiben, (ii) den Vorgaben von Hoffrogge bei der Störungsermittlung und -beseitigung nachzukommen, und (iii) Hoffrogge Änderungen an eigenen IT-Systemen zu melden, die in Verbindung mit Hoffrogges Webservice verwendet werden. Der Kunde muss einen eigenen technischen Ansprechpartner benennen, der Zugriff auf das betroffene Client-System (remote oder physisch) hat. Hoffrogge ist berechtigt, insbesondere folgende Informationen und Materialien anzufordern:
    a) Störungsbericht mit detaillierter Beschreibung der Störung einschließlich:
        *   Zeit und Datum
        *   Benutzer
        *   Plattform (OS, Version)
        *   Ausgangsnummer (falls zutreffend)
        *   Erwartetes Ergebnis
        *   Tatsächliche Ergebnis
    b) Netzwerktest: Hoffrogge kann verlangen, die Netzwerkkonnektivität unter Verwendung hierfür üblicher Mittel auf der Client-Plattform zu testen (z. B. Ping, Webbrowser usw.)

   c)   Bildschirmfotos, welche die Störung dokumentieren

   d)   Lokale Logfiles der Software, Übermittlung per E-Mail

7.   Hoffrogge behält sich vor, Lizenz-Softwarekomponenten (einschließlich Drittsoftwarekomponenten) jederzeit zu ändern und/oder auszutauschen, soweit dies

   a)   zur Aufrechterhaltung der Vertragsgemäßheit der Lizenz-Software, insbesondere zur Fehlerbehebung oder aus Sicherheitsgründen,

   b)   zur Produktverbesserung, insbesondere zur Erhöhung der Nutzerfreundlichkeit oder der Leistungsfähigkeit der Lizenz-Software, oder

   c)   zur Einhaltung gesetzlicher Vorschriften

erforderlich und für den Kunden mit keinen Mehrkosten verbunden ist.

§ 4 Anzeige-, Sicherungs- und Obhutspflichten des Kunden, Bild-, Artikel und Stammdaten, personenbezogene Daten

1.   Der Kunde ist verpflichtet, Hoffrogge Fehler (Mängel, Störungen) der Lizenz-Software unverzüglich zu melden. Er wird hierbei die Hinweise von Hoffrogge zur Problemanalyse im Rahmen des ihm Zumutbaren berücksichtigen und alle ihm vorliegenden, für die Beseitigung des Mangels erforderlichen Informationen an Hoffrogge weiterleiten. Er hat insoweit insbesondere im Rahmen des Möglichen und Zumutbaren Fehlersymptome, Einsatzbedingungen, vorangegangene Eingaben und betroffene Arbeitsplätze mitzuteilen.

2.   Der Kunde hat regelmäßige Sicherungen aller lizenzierten Programme und der von diesen verarbeiteten Daten nach dem jeweils aktuellen Stand der Technik durchzuführen, soweit diese nicht ausschließlich als Web-Anwendung auf Systemen von Hoffrogge gespeichert sind.

3.   Der Kunde hat geeignete Vorkehrungen zu treffen, um ihm überlassene Lizenz-Software vor dem unbefugten Zugriff Dritter zu schützen. Er wird die Originaldatenträger und von ihm im Rahmen seiner allgemeinen Datensicherung erstellte Sicherungskopien der Lizenz-Software sowie die Dokumentation an einem gesicherten Ort verwahren. Er wird seine Arbeitnehmer und die sonstigen gem. § 2 Ziff. 1 zur unselbständigen Nutzung berechtigten Personen darauf hinweisen, dass die Anfertigung von Kopien über den vertragsmäßigen Umfang hinaus unzulässig ist.

4.   Der Kunde steht dafür ein, dass von ihm zum Zwecke oder im Rahmen der Nutzung von Lizenz-Software oder der Inanspruchnahme sonstiger Dienste von Hoffrogge auf Systemen von Hoffrogge gespeicherten oder Hoffrogge in andere Weise übermittelten Bild-, Artikel-, Stammdaten oder andere Inhalte (nachstehend nur „Inhalte") frei von Rechten Dritter sind. Der Kunde hält Hoffrogge von allen entgegenstehenden Rechten Dritter an entsprechenden Inhalten frei und erstattet Hoffrogge alle Schäden und Aufwendungen, die Hoffrogge aus einer Inanspruchnahme Dritter wegen der Verletzung der diesen zustehenden Rechte entstehen.

§ 5 Rechte des Kunden bei Sachmängeln

1.   Hoffrogge wird Mängel an der überlassenen Lizenz-Software einschließlich der Dokumentation beheben. Die Behebung von Mängeln erfolgt nach Wahl von Hoffrogge durch kostenfreie Nachbesserung oder Ersatzlieferung.

2.   Eine Kündigung des Kunden gem. § 543 Abs. 2 Satz 1 Nr. 1 BGB wegen Nichtgewährung des vertragsgemäßen Gebrauchs ist erst zulässig, wenn Hoffrogge ausreichende Gelegenheit zur Mängelbeseitigung gegeben wurde und diese fehlgeschlagen ist. Von einem Fehlschlagen der Mängelbeseitigung ist erst auszugehen, wenn diese unmöglich ist, wenn sie von Hoffrogge verweigert oder in unzumutbarer Weise verzögert wird, wenn begründete Zweifel bezüglich der Erfolgsaussichten bestehen oder wenn aus anderen Gründen eine Unzumutbarkeit für den Kunden gegeben ist.

3.   Die Rechte des Kunden wegen Mängeln sind ausgeschlossen, soweit dieser ohne Zustimmung von Hoffrogge Änderungen an der Lizenz-Software vornimmt oder vornehmen lässt.

4.   Erbringt Hoffrogge Leistungen bei Fehlersuche oder -beseitigung, ohne hierzu verpflichtet zu sein, so kann Hoffrogge hierfür eine Vergütung entsprechend ihrer üblichen Sätze verlangen. Das gilt insbesondere, wenn ein Mangel nicht nachweisbar oder Hoffrogge nicht zuzurechnen ist. Zu vergüten ist außerdem der Mehraufwand auf Seiten von Hoffrogge, der dadurch entsteht, dass der Kunde ihm obliegenden Mitwirkungspflichten nicht oder nicht ordnungsgemäß nachgekommen ist.

§ 6 Rechte des Kunden bei Rechtsmängeln

1.   Hoffrogge wird den Kunden gegen alle Ansprüche verteidigen, die innerhalb der gesetzlichen Verjährungsfrist für Rechtsmängel aus einer Verletzung eines gewerblichen Schutzrechts oder Urheberrechts durch die vertragsgemäß genutzte Lizenz-Software hergeleitet werden. Für Schäden aufgrund von Rechtsmängeln, insbesondere dem Kunden gerichtlich auferlegte Kosten und Schadenersatzbeträge haftet Hoffrogge nur, sofern der Kunde Hoffrogge von solchen Ansprüchen unverzüglich schriftlich benachrichtigt hat und Hoffrogge alle Abwehrmaßnahmen und Vergleichsverhandlungen vorbehalten hat.

2.   Sind gegen den Kunden Ansprüche gemäß Ziffer 1 geltend gemacht worden oder zu erwarten, kann Hoffrogge die Lizenz-Software auf eigene Kosten in einem für den Kunden zumutbaren Umfang ändern oder austauschen. Ist dies oder die Erwirkung eines Nutzungsrechts mit angemessenem Aufwand nicht möglich, richten sich die Rechte des Kunden nach der entsprechend anzuwendenden Bestimmung des § 5.

3.   Hoffrogge hat keine Verpflichtungen, falls die Ansprüche gemäß Ziff. 1 auf vom Kunden bereitgestellten Programmen, Daten oder darauf beruhen, dass die Lizenz-Software nicht in einer gültigen, unveränderten Originalfassung oder unter anderen als den vertragsgemäßen Einsatzbedingungen genutzt wird.

§ 7 Haftungsbeschränkungen

1.   Hoffrogge haftet für zu vertretende Schäden (einschließlich vergeblicher Aufwendungen) des Kunden - gleich aus welchem Rechtsgrund - nur, sofern die Schäden vorsätzlich oder grob fahrlässig verursacht wurden, sie die Folge des Nichtvorhandenseins einer garantierten Beschaffenheit der Leistung sind, sie auf einer schuldhaften Verletzung vertragswesentlicher Pflicht (siehe Ziff. 2) beruhen, sie die Folge einer schuldhaften Verletzung der Gesundheit, des Körpers oder Lebens sind oder für die eine Haftung nach dem Produkthaftungsgesetz vorgesehen ist. Im Falle einer lediglich fahrlässigen Verletzung einer wesentlichen Vertragspflicht (siehe Ziff. 2) ist die Haftung von Hoffrogge jedoch beschränkt auf solche Schäden, mit deren Entstehung im Rahmen der Erbringung der vereinbarten Leistungen typischerweise und vorhersehbar gerechnet werden muss. Diese Beschränkung gilt nicht, soweit Schäden die Folge einer Verletzung der Gesundheit, des Körpers oder des Lebens sind.

2. Wesentliche Vertragspflichten sind solche vertraglichen Pflichten, deren Erfüllung die ordnungsgemäße Durchführung des Vertrages überhaupt erst ermöglichen und auf deren Einhaltung der Kunde regelmäßig vertrauen darf, und deren Verletzung auf der anderen Seite die Erreichung des Vertragszwecks gefährdet.

3. Im Übrigen ist die Haftung von Hoffrogge unabhängig vom Rechtsgrund ausgeschlossen.

4. Die Haftungsbeschränkungen gem. Ziff. 1 bis 3 gelten sinngemäß auch zu Gunsten der Mitarbeiter und Beauftragten von Hoffrogge.

5. Unberührt bleiben weitergehende Haftungsbeschränkungen und –ausschlüsse nach individuell zwischen Hoffrogge und dem Kunden geschlossenen Rahmen- und Einzelverträgen.

§ 8 Lizenzdauer, Beendigung des Lizenzverhältnisses

1. Soweit zwischen den Parteien nichts Abweichendes vereinbart ist, beginnt die initiale Vertragslaufzeit mit Überlassung bzw. Zugänglichmachung der jeweils vertragsgegenständlichen Lizenz-Software (das jeweils frühere Datum ist maßgebend) und endet mit Ablauf des Kalenderjahres, in dem die Überlassung bzw. Zugänglichmachung erfolgte. Das Vertragsverhältnis verlängert sich danach automatisch für jeweils ein weiteres Kalenderjahr, sofern das es nicht zuvor von einer der Parteien mit einer Frist von sechs Monaten zum Ende der jeweiligen Laufzeit gekündigt wird.

2. Die Kündigungsrechte des Kunden nach § 5 Ziff. 2 dieser Nutzungsbedingungen bleiben unberührt.

3. Das Recht jeder Partei zur außerordentlichen Kündigung aus wichtigem Grund bleibt unberührt.

4. Kündigungen bedürfen zu ihrer Wirksamkeit der Schriftform.

§ 9 Einspielung von Updates

Unterlässt es der Kunde, eine Aktualisierung, die ihm zur Aufrechterhaltung der Vertragsgemäßheit der Lizenz-Software (einschließlich Sicherheitsaktualisierungen) bereitgestellt worden ist, unverzüglich zu installieren, so haftet Hoffrogge nicht für einen Mangel, der allein auf das Fehlen dieser Aktualisierung zurückzuführen ist, sofern

a) Hoffrogge den Kunden über die Verfügbarkeit der Aktualisierung und die Folgen einer unterlassenen Installation informiert hat
und
b) die Tatsache, dass der Kunde die Aktualisierung nicht oder unsachgemäß installiert hat, nicht auf eine dem Kunden bereitgestellte mangelhafte Installationsanleitung zurückzuführen ist.

§ 10 Rückgabe/Löschung

1. Bei Beendigung des Vertragsverhältnisses hat der Kunde Hoffrogge die Lizenz-Software auf den Originaldatenträgern einschließlich Dongles, Handbüchern und etwaigen weiteren Dokumentationen zurückzugeben. Gegebenenfalls erstellte Kopien des von Hoffrogge überlassenen Programms sind unverzüglich vollständig und endgültig zu löschen. Die Löschung ist schriftlich zu bestätigen.

2. Hoffrogge kann statt der Rückgabe auch die Löschung der Lizenz-Software einschließlich jeglicher Kopien hiervon sowie die Vernichtung der überlassenen Handbücher und Dokumentationen verlangen.

3. Jede Nutzung der Lizenz-Software nach Beendigung des Vertragsverhältnisses ist unzulässig.

§ 11 Geheimhaltung

1. Der Kunde verpflichtet sich gegenüber Hoffrogge, alle ihm anvertrauten, zugänglich gemachten oder sonst bekannt gewordenen Geschäfts- und Betriebsgeheimnisse von Hoffrogge unbefristet geheim zu halten sowie weder aufzuzeichnen noch weiterzugeben oder zu verwerten. Geschäfts- und Betriebsgeheimnisse sind alle geschäftlichen, betrieblichen, organisatorischen und technischen Kenntnisse, Vorgänge und Informationen, die von Hoffrogge als vertraulich bezeichnet sind und/oder nach sonstigen Umständen als vertraulich erkennbar sind und alle nur dem unternehmensinternen Gebrauch dienenden Dokumente und Materialien. Zu den Geschäfts- und Betriebsgeheimnissen von Hoffrogge, die der Kunde geheim zu halten hat, zählen insbesondere technische Daten, Know-how, Funktionsumfang und Funktionalitäten der Software von Hoffrogge sowie insbesondere deren Quellcodes und andere IT-bezogene Informationen, die Hoffrogge dem Kunden überlässt, zugänglich macht oder sonst offenbart.

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In other cases, permission to use a particular library in non-free programs enables a greater number of people to use a large body of free software. For example, permission to use the GNU C Library in non-free programs enables many more people to use the whole GNU operating system, as well as its variant, the GNU/Linux operating system.

Although the Lesser General Public License is Less protective of the users' freedom, it does ensure that the user of a program that is linked with the Library has the freedom and the wherewithal to run that program using a modified version of the Library.

The precise terms and conditions for copying, distribution and modification follow. Pay close attention to the difference between a "work based on the library" and a "work that uses the library". The former contains code derived from the library, whereas the latter must be combined with the library in order to run.

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"Source code" for a work means the preferred form of the work for making modifications to it. For a library, complete source code means all the source code for all modules it contains, plus any associated interface definition files, plus the scripts used to control compilation and installation of the library.

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   (For example, a function in a library to compute square roots has a purpose that is entirely well-defined independent of the application. Therefore, Subsection 2d requires that any application-supplied function or table used by this function must be optional: if the application does not supply it, the square root function must still compute square roots.)

These requirements apply to the modified work as a whole. If identifiable sections of that work are not derived from the Library, and can be reasonably considered independent and separate works in themselves, then this License, and its terms, do not apply to those sections when you distribute them as separate works. But when you distribute the same sections as part of a whole which is a work based on the Library, the distribution of the whole must be on the terms of this License, whose permissions for other licensees extend to the entire whole, and thus to each and every part regardless of who wrote it.

Thus, it is not the intent of this section to claim rights or contest your rights to work written entirely by you; rather, the intent is to exercise the right to control the distribution of derivative or collective works based on the Library.

In addition, mere aggregation of another work not based on the Library with the Library (or with a work based on the Library) on a volume of a storage or distribution medium does not bring the other work under the scope of this License.

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This option is useful when you wish to copy part of the code of the Library into a program that is not a library.

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If distribution of object code is made by offering access to copy from a designated place, then offering equivalent access to copy the source code from the same place satisfies the requirement to distribute the source code, even though third parties are not compelled to copy the source along with the object code.

5. A program that contains no derivative of any portion of the Library, but is designed to work with the Library by being compiled or linked with it, is called a "work that uses the Library". Such a work, in isolation, is not a derivative work of the Library, and therefore falls outside the scope of this License.

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When a "work that uses the Library" uses material from a header file that is part of the Library, the object code for the work may be a derivative work of the Library even though the source code is not. Whether this is true is especially significant if the work can be linked without the Library, or if the work is itself a library. The threshold for this to be true is not precisely defined by law.

If such an object file uses only numerical parameters, data structure layouts and accessors, and small macros and small inline functions (ten lines or less in length), then the use of the object file is unrestricted, regardless of whether it is legally a derivative work. (Executables containing this object code plus portions of the Library will still fall under Section 6.)

Otherwise, if the work is a derivative of the Library, you may distribute the object code for the work under the terms of Section 6. Any executables containing that work also fall under Section 6, whether or not they are linked directly with the Library itself.

6. As an exception to the Sections above, you may also combine or link a "work that uses the Library" with the Library to produce a work containing portions of the Library, and distribute that work under terms of your choice, provided that the terms permit modification of the work for the customer's own use and reverse engineering for debugging such modifications.

You must give prominent notice with each copy of the work that the Library is used in it and that the Library and its use are covered by this License. You must supply a copy of this License. If the work during execution displays copyright notices, you must include the copyright notice for the Library among them, as well as a reference directing the user to the copy of this License. Also, you must do one of these things:

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    b) Use a suitable shared library mechanism for linking with the Library. A suitable mechanism is one that (1) uses at run time a copy of the library already present on the user's computer system, rather than copying library functions into the executable, and (2) will operate properly with a modified version of the library, if the user installs one, as long as the modified version is interface-compatible with the version that the work was made with.

    c) Accompany the work with a written offer, valid for at least three years, to give the same user the materials specified in Subsection 6a, above, for a charge no more than the cost of performing this distribution.

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Version 2, June 1991

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The source code for a work means the preferred form of the work for making modifications to it. For an executable work, complete source code means all the source code for all modules it contains, plus any associated interface definition files, plus the scripts used to controlcompilation and installation of the executable. However, as a special exception, the source code distributed need not include anything that is normally distributed (in either source or binary form) with the major components (compiler, kernel, and so on) of the operating systemon which the executable runs, unless that component itself accompanies the executable.

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