
License terms

Dynamicweb All-In-One Business Platform
April 1st 2018

License terms for the “Dynamicweb All-In-One Business Platform”

These license terms (the "Agreement") is a legal agreement between you (“you”) and Dynamicweb Software A/S (“Dynamicweb”), for grant of license, maintenance services, support services, and/or other services provided to you by or on behalf of Dynamicweb (the “Services”).

BY ELECTRONICALLY OR OTHERWISE ACCEPTING THIS AGREEMENT, DOWNLOADING, INSTALLING, COPYING, OR USING THE SOFTWARE IN ANY MANNER, YOU AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT. READ THIS AGREEMENT CAREFULLY BEFORE COMPLETING THE INSTALLATION PROCESS AND USING THE SOFTWARE. IF YOU DO NOT AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT, DO NOT INSTALL, COPY, OR USE THE SOFTWARE.

1. SERVICES

1.1 SCOPE.

The Services set out in this Agreement comprise grant of license, maintenance and support services and/or other services provided to you by or on behalf of Dynamicweb whether ordered from Dynamicweb or from a reseller. When subscribing to the “Services”, you automatically enter a DATA PROCESSING AGREEMENT with Dynamicweb (can be downloaded at www.dynamicweb.com/gdpr), that will be valid until the subscription for the “Services” is terminated.

1.2 FEES AND RENEWAL.

The purchase order shall state the price and the duration of the initial service period (“Service Period”) for provision of the Services. If nothing is stated the Service Period shall be 1 year from purchase. If the provision of Services has not been terminated by you by giving notice to Dynamicweb no later than 3 months prior to the expiry of the Service Period or any Extended Service Period the Service Period will automatically be renewed for an extended period of 1 year (“Extended Service Period”). The Agreement, including the license granted, is valid only for the Service Period and any Extended Service Periods and is subject to the timely and full payment of all applicable fees payable by you to the reseller or Dynamicweb as appropriate. The fees payable for the Service Period and any Extended Service Periods shall be subject to the standard price list of Dynamicweb in force at the time of purchase or renewal.

2. SOFTWARE LICENSE

2.1 GRANT OF LICENSE.

Subject to the terms and conditions of this Agreement, Dynamicweb grants to you a limited, personal, non-sublicensable, non-transferable, non-exclusive license to use the software provided by Dynamicweb (“Software”) in accordance with the Software’s technical documentation and solely during the periods and for the use specified in the purchase order and the price list. Without the prior written consent from Dynamicweb, you are not permitted to transfer the license granted hereunder to any third party, or license or outsource, all or part of the Software to, or otherwise permit the use of all or part of the Software by, any third party irrespective of whether such transfer takes place as a sale, gift, lease or otherwise.

2.2 COPIES.

In the event that you have downloaded the Software from Dynamicweb’s website or the Software has been provided to you on any media, you may not make more than the number of copies of the Software that is reasonably required for the purpose specified in Section 1, and you shall implement reasonable controls to ensure that it does not exceed the maximum number of licenses for the Software. Dynamicweb reserves the right to audit your use of the Software during normal business hours and with reasonable notice and to include means within the Software to limit Licensee’s use of the Software for the purpose specified in Section 2.

2.3 RESERVATION OF RIGHTS AND OWNERSHIP.

This Agreement applies to each copy of the Software. Dynamicweb Software A/S (“Dynamicweb Software”), Dynamicweb, and/or one or more Licensors own all title, copyright, and other intellectual property rights in the Software. The Software is licensed, not sold. This Agreement does not grant you any implied or express rights to trademarks, service marks, copyright, patent, trade secret, invention or other intellectual property right of Dynamicweb, any or Licensors or any other party, nor does this Agreement grant you the title to all or part of the Software.

2.4 LIMITATIONS ON REVERSE ENGINEERING, DECOMPILATION, AND DISASSEMBLY.

The license granted hereby is a limited, non-exclusive license to use the object code version of the Software for the purposes specified in the purchase order. You may not reverse engineer, decompile, or disassemble the Software, or export the Software in violation of applicable laws or export restrictions.

2.5 FEES.

The license granted hereby is subject to the timely and full payment of all applicable license and other fees payable by you to the reseller or Dynamicweb as appropriate.

3. MAINTENANCE AND SUPPORT

3.1 MAINTENANCE AND SUPPORT.

Dynamicweb will provide maintenance and technical support for the most recent version of the Software. Dynamicweb may provide maintenance and support for older versions of the Software, however Dynamicweb reserves the right to suspend or terminate such support at any time, with or without notice.

4. HOSTING

4.1 HOSTING SERVICES.

No hosting services are provided under this Agreement, unless stated at the Dynamicweb price list. If hosted in the Dynamicweb Cloud a separate service level agreement is available on request.

5. GENERAL TERMS

5.1 OFFER AND ACCEPTANCE.

All purchase orders are concluded directly with Dynamicweb resellers or Dynamicweb. Dynamicweb will respect any reasonable pricing schemes and periods agreed with the reseller. Any deviation from the software license set out in Section 2 shall be agreed directly with Dynamicweb.

5.2 USE OF NAMES AND MARKS.

You hereby grant Dynamicweb a non-exclusive right and license to use your name, trade names, trademarks, and service marks (collectively, "Customer Marks") (a) on their web sites, and (b) in printed and online advertising, publicity, directories, newsletters, and similar communications. If you so choose, you may use Dynamicweb's trade name, trademarks, and service marks (collectively, "Dynamicweb Marks") in advertising and publicity in conjunction with the offering of Customer Content using the Software, provided that you shall submit copy to Dynamicweb for its prior written approval, and provided further that under no circumstances shall such use imply that Dynamicweb endorses, sponsors, certifies, approves or is responsible for Customer Content.

5.3 TAXES.

All fees for Dynamicweb Products are exclusive of all sales taxes or VAT.

5.4 SECURITY.

You are responsible for your own security when using the Services and Dynamicweb provides no Services in relation to security.

5.5 OTHER OBLIGATIONS.

You must inform all employees and others with access to the Software of the terms of this Agreement and are responsible for the compliance of your employees and others with the terms of this Agreement.

5.6 INDEMNITY.

You agree that Dynamicweb shall have no liability whatsoever for any use you make of the Services. You shall indemnify and hold harmless Dynamicweb from any third party claims, damages, liabilities, costs and fees (including reasonable attorney fees) arising from your use of the Services as well as from your failure to comply with any term of this Agreement.

5.7 LIMITED WARRANTY.

Dynamicweb warrants that the Services will perform in all material respects the functions described in the specifications contained in the documentation for a period of ninety (90) days from the date of receipt. AS TO ANY DEFECTS DISCOVERED AFTER THE NINETY DAY PERIOD, THERE IS NO WARRANTY OR CONDITION OF ANY

KIND. Notwithstanding the foregoing, Dynamicweb will provide supplements or updates to the Software, including without limitation, service packs or hot fixes (if any) during and after the expiration of the ninety day Limited Warranty period. Each such supplement, update, service pack or hot fix shall be covered by the same limited warranty for a period of ninety (90) days from the date it is issued. During the Limited Warranty period, Dynamicweb or its authorized reseller will undertake to correct any reported error within a reasonable time. This Limited Warranty is void if failure of the Software has resulted from machine malfunction, by software malfunction not caused by Dynamicweb or Licensors, by modification not made or authorized by Dynamicweb or Licensors, or from your or your agents' failure to comply with all instructions given in connection with the Software, accident, misuse, misapplication, abnormal use or a virus. Dynamicweb does not warrant that the Software will meet your requirements, that the Software will operate in combination with other software and/or any updates or modifications thereof (even if you have obtained a module permitting the combination of such software with the Software), that the operation of the Software will be uninterrupted or error-free, or that all error conditions will be corrected.

5.8 DISCLAIMER OF IMPLIED WARRANTIES.

The Limited Warranty that appears above is the only warranty made to you and is provided in lieu of any other express or implied warranties. EXCEPT FOR THE LIMITED WARRANTY AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, DYNAMICWEB, AND EACH OF ITS LICENSORS PROVIDE THE SOFTWARE AND SUPPORT SERVICES (IF ANY) AS IS AND WITH ALL FAULTS, AND HEREBY DISCLAIM ALL OTHER WARRANTIES AND CONDITIONS, WHETHER EXPRESS, IMPLIED, STATUTORY, OR ARISING BY CUSTOM OR TRADE USAGE, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, RELIABILITY OR AVAILABILITY, ACCURACY OR COMPLETENESS OF RESPONSES, OF RESULTS, OF WORKMANLIKE EFFORT, OF LACK OF VIRUSES, AND OF LACK OF NEGLIGENCE. THERE IS NO WARRANTY OR CONDITION OF TITLE, QUIET ENJOYMENT, QUIET POSSESSION OR NON-INFRINGEMENT WITH REGARD TO THE SOFTWARE.

5.9 EXCLUSIVE REMEDY; LIMITATION OF LIABILITY.

Dynamicweb's entire liability and your exclusive remedy for any breach of this Limited Warranty or for any other breach of this Agreement or for any other liability relating to the Services shall be, at Dynamicweb's sole and absolute option, repair or replacement of the Services that does not meet the Limited Warranty set forth in Section 5.9 within a reasonable time period. Any replacements will be warranted for the remainder of the original warranty period or thirty (30) days, whichever is longer. Notwithstanding any damages that you might incur for any reason whatsoever (including, without limitation, all damages referenced herein and all direct or general damages in contract or otherwise), the maximum liability of Dynamicweb, Dynamicweb Services, a Licensor and/or any other of Dynamicweb's suppliers shall be limited to the license fees you paid to Dynamicweb for the portion of the Services causing the liability. The foregoing limitations, exclusions and disclaimers shall apply to the maximum extent permitted by applicable law, even if any remedy fails to make you whole.

You recognize and agree that the warranty disclaimers and liability and remedy limitations in this Agreement are material bargained for bases of this Agreement and that they have been taken into account and reflected in determining the consideration to be given by each party under this Agreement and in the decision by each party to enter into this Agreement.

5.10 EXCLUSION OF INCIDENTAL, CONSEQUENTIAL AND CERTAIN OTHER DAMAGES.

To the maximum extent permitted by applicable law, in no event shall Dynamicweb, or any of their respective affiliates, licensors or suppliers, be liable, whether in contract, tort, or otherwise, for any special, incidental, punitive, indirect, or consequential damages whatsoever (including, but not limited to, damages for loss of profits or goodwill or confidential or other information, for business interruption, for personal injury, for loss of privacy, for failure to meet any duty including of good faith or of reasonable care, for negligence, and for any other pecuniary or other loss whatsoever) arising out of or in any way related to the Services, or otherwise under or in connection with any provision of this Agreement, even in the event of the fault, tort, misrepresentation, strict liability, breach of contract or breach of warranty of Dynamicweb or any of its affiliates or suppliers, even if advised of the possibility of such damages.

5.11 TERMINATION.

This Agreement is effective until terminated as set out in this Agreement.

Dynamicweb has the right to terminate the Agreement immediately if you are in material breach of this Agreement. Upon any breach of this Agreement by you, Dynamicweb may immediately terminate the license granted to you pursuant to this Agreement. Upon termination of this Agreement for any reason, you shall immediately stop using the Services and, where applicable, destroy and remove from all computers, hard, networks, and other storage media all copies of the Software. All Sections which by their content and meaning are meant to survive the termination of this Agreement shall so survive.

In case this Agreement and the license granted herein is terminated by you for any reason or by Dynamicweb following your breach of this Agreement, if the license fee has been paid in full at the time of termination, no refund shall be issued by Dynamicweb.

5.12 APPLICABLE LAW.

This Agreement shall be governed by the laws of Denmark, without giving effect to the principles of conflict of laws thereof. Any dispute arising out of or in connection with this Agreement, including any disputes regarding the existence, validity or termination thereof, shall be settled by arbitration administered by The Danish Institute of Arbitration in accordance with the rules of arbitration procedure adopted by The Danish Institute of Arbitration and in force at the time when such proceedings are commenced.

5.13 ENTIRE AGREEMENT; SEVERABILITY.

This Agreement constitutes the entire agreement between you and Dynamicweb relating to the Services, and they supersede all prior or contemporaneous oral or written proposals, offers, agreements, arrangements, understandings or commitments with respect to the subject matter. To the extent the terms of any Dynamicweb policies or programs for support services conflict with the terms of this Agreement, the terms of this Agreement shall control. If any provision of this Agreement is held to be void, invalid, unenforceable or illegal, the other provisions shall continue in full force and effect.

5.14 ASSIGNMENT.

You may not assign this Agreement without the prior written consent of Dynamicweb, which Dynamicweb may refuse in its sole discretion. Any attempt by you to assign this Agreement without prior written permission shall be deemed null and void. Dynamicweb may assign this Agreement in whole or in part at any time.

5.15 ADDITIONAL TERMS.

This Agreement may not be supplemented, amended or modified without the written consent of Dynamicweb. Under no circumstances will the preprinted terms of any purchase order or any other terms apply to this Agreement unless expressly and specifically agreed to in a writing duly signed by Dynamicweb. No waiver of the terms and conditions of this Agreement will be binding on Dynamicweb unless made in writing and signed by Dynamicweb. No failure or delay on the part of Dynamicweb in exercising any right will operate as a waiver, nor will any single or partial exercise of any right by any party preclude any other or further exercise of any other right.

6. EDUCATIONAL PROGRAM

6.1 INTRODUCTION

This Section 6 applies to you, if you have been qualified by Dynamicweb to participate in an educational program, under which a license to use the Software for educational purposes has been granted ("**Educational License**").

The terms set out above in Sections 1 to 5 of this Agreement shall also apply to Educational Licenses, but in case of any conflicts between this Section 6 and Sections 1 to 5 this Section 6 shall take precedence.

6.2 SERVICES

The Educational License comprises a license to use the Software only. No maintenance and support services and/or other services are provided to you by or on behalf of Dynamicweb as part of the Educational License.

The Educational License shall be valid for a period of 1 year from when the Educational License was granted, after which it shall automatically terminate. If you wish to renew the Educational License for another year, you must contact Dynamicweb.

The Educational License will be provided to you by Dynamicweb free of charge.

6.3 LIMITED RIGHT OF USE

The Educational License to use the Software is granted to you in accordance with Section 2.

You are permitted to use the Software solely for educational and noncommercial purposes. You are not permitted to use the Software for any administrative activities that are not directly related to instruction or education or for any form of revenue-generating or for-profit purposes.

Any use of the Software in conflict with this Section 6.3 shall be considered a material breach of the Agreement.