



swiss made  
software

# 1 Terms of use for the *swiss hosting* logo

## 1.1 License

swiss made software GmbH hereby grants the non-exclusive, non-transferable and non-sublicensable right to use the *swiss hosting* logo to market their own services in accordance with these terms of use.



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In particular, the License Holder is entitled to use the logo online as part of the description of its services, to offer services using the logo, and to use the logo on business correspondence and in advertising.

## 1.2 Conditions of use for the logo

The following conditions must be met before a License Holder can market their services with the *swiss hosting* logo:

1. The License Holder and its management must be legally and physically situated in Switzerland (see Art. 49 (1) Markenschutzgesetz [Trademark Protection Act]).
2. The hosting of services designated with the *swiss hosting* logo must be 100 percent hosted in a data center in Switzerland, applicable to all:
  - applications offered,
  - personal data affected,
  - factual data affected (business information, financial data, research results etc.),
  - and backup copies.

Data protection and data security requirements must be subject to Swiss law.

3. If the License Holder offers software as a service (SaaS), only those for which the host also meets the requirements mentioned above can carry the *swiss hosting* logo.
4. Access to the hosting environment and/or the data for operation from abroad and administration by the host must be protected in such a way that data remains entirely in Switzerland and cannot be accessed or claimed by a foreign organization or government, no matter whether directly or indirectly. This also applies to foreign companies within the Group. It is assumed in the context of point 4 that, in the case of foreign shareholdings, individual shareholders or contractually organized groups of shareholders amounting in total to more than 33 percent of the voting rights have the option to access and inspect the hosting environment and/or data.



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In individual cases, proof must be provided to the License Holder that there are technical and/or organizational measures in place that make access impossible.

In the case of colocation providers that are at least partially owned by foreign entities, it is not to be assumed the hosting environment and/or data may be accessed, provided that the devices are managed by the Customer, the devices are owned by the Customer, and that these are located in Switzerland. It is also not to be assumed that the hosting environment and/or data may be accessed by third parties if employees normally employed in Switzerland have maintenance access to these devices during trips abroad, provided that these are secured in line with the latest technological standards (VPN or similar).

5. In the case of mixed offerings (where hosting located both within Switzerland and abroad is possible), the logo may only be used for offerings that fully meet the criteria. The intended audience must be able to clearly distinguish between the offerings that do and do not meet the criteria.

The logo can also be used for offerings where payment functionality can only be provided with the involvement of foreign providers, provided that all other requirements restricting the use of the logo are met. Cooperation with foreign providers for the purposes of enabling payments is therefore permissible.

However, this fact must be made transparent to users.

By entering into this agreement, the License Holder is confirming that they meets the above criteria. If the License Holder ceases to meet the requirements during the term of this agreement, the logo must be immediately and completely removed immediately and swiss made software must be informed without being asked.

In case of doubt, swiss made software GmbH reserves the right to specify the criteria for assessing the character of the services at its own discretion and to prohibit the use of the logo in borderline cases with immediate effect.

### **1.3 Sanctions for breaching this agreement**

Improper use of the *swiss hosting* label is a punishable offense (see Art. 64, Markenschutzgesetz [Trademark Protection Act]; Art. 23 UWG [Unfair Competition Act]). Use of the *swiss hosting* logo without concluding this user agreement with swiss made software GmbH is prohibited (Art. 67 of the Markenschutzgesetz [Trademark Protection Act]).

If swiss made software GmbH, deems that the License Holder has deliberately misused the logo, then swiss made software GmbH may make this knowledge public at their discretion.

If a partner to this agreement violates a provision in accordance with section 1.1 and/or 1.2, it shall owe swiss made software GmbH a contractual penalty of CHF 25,000.



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Payment of the contractual penalty does not release the contractual partner from fulfilling the criteria for using the logo. The right to make further claims is reserved.

Termination of this agreement will not lead to a waiver of the sanctions in accordance with this section 1.3.

#### **1.4 Responsibility and trust**

The obligations under this agreement come into force with the confirmation of the completion of this agreement by swiss made software GmbH and are valid to the end of the calendar year.

The agreement can be terminated by either party to the end of the calendar year, otherwise their contract will be automatically extended for a further year.

If the conditions cease to be met during the year, the License Holder must inform swiss made software immediately and remove the logo. The annual fee will not be refunded either in whole or in part.

Each party is entitled to terminate the agreement for good cause at any time without notice. Good cause is deemed to exist in particular where the other party breaches the contractual obligations incumbent upon them and has been asked to cease this breach of the agreement by giving 30 days' notice, but this has been to no avail.

The Licensor is also entitled to terminate the agreement with immediate effect if the License Holder violates the rights associated with this logo, or supports third parties in an attack on the logo.

#### **1.5 Annual fee**

The annual fee to be paid corresponds to the level selected by the contractual partner:

- a. CHF 120 for Level 1 (use of the logo for marketing and communication purposes, name and link published on [www.swissmadesoftware.org](http://www.swissmadesoftware.org))
- b. CHF 550 for Level 2 (like Level 1, but with your own microsite and access to the services listed on [www.swissmadesoftware.org](http://www.swissmadesoftware.org) for Level 2)

The annual fee is owed in advance and payable no later than 30 days after receipt. Prices are exclusive of VAT. From the due date, interest on accrued on arrears at a rate of 5% without the need for a reminder.

swiss made software GmbH can adapt these prices with a notice period of 45 days to the end of each one-year contract period.



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## **1.6 Third party rights and infringements**

swiss made software GmbH is unaware of any legal defects in the logo. However, it does not guarantee the legal validity of the logo. Further, it offers no warranty that the use of the logo does not infringe the rights of third parties or cause damage to third parties.

Should a third party take action against the License Holder's use of the logo, the License Holder must immediately notify the Licensor.

The License Holder remains obliged to pay the agreed fees, even if a third party attacks inventory and/or use of the logo obliges the user to pay the agreed fees. Fees already paid cannot be reclaimed.

If the License Holder discovers that a third party is using a symbol which could possibly infringe the rights of swiss made software GmbH, he is obliged to inform swiss made software immediately.

## **1.7 Miscellaneous**

The License Holder undertakes not to register and/or use any mark that is confusingly similar to the logo either during this term or after termination of this agreement. Logos with a different color but a similar shape can also be considered confusingly similar. The License Holder will transfer the rights to such marks to swiss made software GmbH free of charge upon first request.

Should a provision of this agreement be invalid or the agreement contain a loophole, the legal validity of the remaining provisions shall remain unaffected. In the event of an invalid provision, this is to be replaced with a valid provision that comes close as possible to the economic purpose intended by both parties. This applies analogously the other way around.

The agreement may also be amended, in particular regarding the criteria listed in section 1.2, by a unilateral notification sent by swiss made software GmbH via email with a notice period of 30 days from the end of each month. If the License Holder is disadvantaged by this amendment, the License Holder shall have an extraordinary right of termination, which it must exercise before the changes come into effect; otherwise the amendment shall be deemed to have been accepted. In the event the right of termination is exercised, the logo must be immediately and completely removed and swiss made software must be informed without needing to ask.

All other changes and/or amendments to this agreement must be made in writing.

This agreement is subject to Swiss law in form and content.



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This agreement has been provided in two languages, German and English. The English version is provided for information purposes. While every effort has been made to ensure that this is a complete and accurate translation, should there be any differences in meaning between the two language versions, the German text shall prevail.

The exclusive place of jurisdiction for all disputes arising from and in connection with this agreement is Basel.

Date: \_\_\_\_\_ Place: \_\_\_\_\_

Signature: \_\_\_\_\_ Company: \_\_\_\_\_