

# Software License Terms for Downloading an Evaluation Version

HiveMQ GmbH - Software Solutions

## § 1 Scope of application, language

- (1) These Software License Terms in their version valid at the time of the customer's purchase order govern the contractual relationship between HiveMQ GmbH - HiveMQ GmbH, Postplatz 397 84028 Landshut Germany (hereinafter referred to as "Provider") and the customer who downloads the evaluation version of the HiveMQ software (hereinafter referred to as "Evaluation Software") via the Provider's website. The Provider and the customer are jointly referred to as the "Parties".
- (2) The Parties have not concluded any oral collateral agreements. These Software License Terms apply exclusively. Any terms and conditions of the customer that deviate from or are contrary to these Software License Terms do not apply; this also applies if the Provider fails to expressly object to the customer's terms and conditions.
- (3) The contractual language is English.

## § 2 Conclusion of contracts

On the Provider's website under menu item "HiveMQ", there is a submenu item "Download" that leads the customer to another website where the customer needs to enter its personal data and may then start the download process by clicking on another "Download" button. By clicking the "Download" button after entering the personal data, a contract according to these Software License Terms is concluded between the Provider and the customer.

## § 3 Customer information: correction note

On the website the customer accesses by clicking the submenu item "Download", the customer enters data in the input fields provided. The customer may correct input errors regarding their data in the input fields before clicking "Download". If they wish to cancel the download process completely, they can simply close their browser window. Otherwise, the contract between the Parties according to these Software License Terms is concluded after clicking the "Download" button.

## § 4 Customer information: storing the contract wording

The customer receives a new download link, these Software License Terms and the text of its consent to the data privacy statement by e-mail. The Software License Terms and the text of its consent to the data privacy statement are not stored for the customer.

## § 5 Subject matter of the contract: right to use, no assurance as to quality, no warranty

- (1) The customer obtains the right from the Provider to use the evaluation software offered for download free of charge according to the following conditions for the test period stated on the website. The customer is not entitled to trouble-free use of the evaluation software and is not entitled to any specific quality, freedom from defects or availability of the evaluation software. The customer uses the evaluation software at its own risk.
- (2) The software is provided for the following contractual use (purpose of use):  
The customer is entitled to test (to evaluate) the evaluation software to find out whether it is suitable for its business purposes. In doing so, however, the evaluation software must not be used in a productive environment, i.e. not commercially and not in dealings with clients or business partners of the

customer. Furthermore, the use is limited to 25 connections. An MQTT connection is deemed to start when an MQTT CONNECT command is received. The end of a connection is defined by the receipt of a MQTT DISCONNECT command or if the HiveMQ considers the connection closed in accordance with the MQTT protocol mechanisms. If the customer intends to use the evaluation software for more than 25 connections, this is only possible in arrangement with the Provider. The Provider reserves the right to decline the customer's request for the use for more connections.

- (3) Installation or consulting services are not subject matter of this contract. The customer installs and configures the evaluation software itself.
- (4) The customer cannot use the software to undertake competitive analysis and/or benchmarks.

#### **§ 6 Rights to use the evaluation software**

- (1) The Provider grants the customer the simple, non-transferable right to use the provided evaluation software in the object code as well as the other components of the evaluation software for the stipulated contractual purpose of use in accordance with the following provisions of this § 6 as well as the following §§ 7 and 8 temporarily for the duration of this contract.
- (2) The customer must not modify the evaluation software. Section 69d *UrhG* [German Copyright Act] remains unaffected.
- (3) Markings of the evaluation software, particularly copyright notices, brands, serial numbers or the like must not be removed, changed or concealed.

#### **§ 7 Reproduction of the evaluation software**

- (1) The evaluation software may only be installed on one server or workplace computer (hereinafter referred to as "computer"). The customer is authorised to reproduce the evaluation software if and as far as this is required for the intended use.
- (2) If it is not possible for the customer to use the evaluation software on the computer temporarily, particularly due to malfunctions or repair and/or maintenance work or if it is only possible to limited extent, the customer shall be entitled to use the evaluation software on an interim basis on a replacement computer. If the computer is replaced permanently, the use of the evaluation software on the new computer is permitted; the evaluation software needs to be completely removed from the previously used computer.
- (3) The customer is obliged to inform the Provider on demand about the number, the storage medium and the storage place of any copies made.
- (4) The customer's authorisation to reproduce the program codes subject to the requirements of Section 69d (1) *UrhG* (German Copyright Act) remains unaffected.
- (5) Other reproductions are not permitted.

#### **§ 8 Provision of the evaluation software to third parties**

- (1) Without the Provider's consent, the customer is not authorised to provide the evaluation software to third parties, and is particularly not authorised to sell it or provide it for rent.
- (2) The dependent use by the customer's employee and/or by other third parties subject to the customer's authority to give instructions is permitted within the framework of the intended use.

## **§ 9 Term, termination, consequences of termination**

- (1) The customer's right to use the evaluation software ends automatically upon the expiry of the test period.
- (2) The right of each party to terminate without notice for good cause remains unaffected.
- (3) Upon the expiry of the test period, the customer must not use the evaluation software any longer. All copies made from the evaluation software must be removed completely and permanently from the servers and other storage media and/or non-rewritable data carriers must be destroyed completely.

## **§ 10 Limitation of the Provider's liability**

The Provider is liable, irrespective of the legal ground, exclusively according to the following regulations.

- (1) The Provider is only liable for intention and gross negligence. The Provider is only liable for slight negligence if an essential contractual obligation is violated, the fulfilment of which makes the proper execution of the contract possible in the first place and on the compliance of which the customer may regularly rely (cardinal obligation). The Provider is only liable for foreseeable damage the occurrence of which must be expected with this type of contract. This also applies to lost profit and lost savings. Any liability for other distant consequential damage is excluded.
- (2) The limitation of the Provider's liability does not apply to injury to life, body and/or health and to liability according to the Product Liability Act.
- (3) The Provider is not liable for events of force majeure that make the rendering of the contractual services impossible or significantly impair or temporarily hinder the proper execution of the contract. Force majeure includes all circumstances not depending on the intent or influence of the contractual parties, such as acts of terror, embargo, seizure, natural disasters, strikes, official decisions or other serious and unforeseeable circumstances the contractual parties are not responsible for. A circumstance is only deemed force majeure if it occurs after conclusion of the contract.
- (4) As far as the Provider's liability is excluded or limited, this also applies to the liability of the Provider's employees, other staff members, representatives and vicarious agents.

## **§ 11 Severability clause, applicable law, place of jurisdiction**

- (1) Should individual provisions of these contract terms be invalid or non-enforceable in whole or in part or become invalid or non-enforceable after concluding the contract, this does not affect the validity of the remaining provisions.
- (2) The contracts concluded between the provider and our customers on the basis of these Software License Terms shall be governed by German law, under exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).
- (3) As far as the customer is a merchant, a legal entity under public law or a special fund under public law, any disputes arising from or in connection with a contract with the Provider are subject to the exclusive jurisdiction of the court at the Provider's registered office (Landshut). This also applies if the customer has its registered office outside the sovereign territory of the Federal Republic of Germany and the contract or claims arising from the contract can be attributed to the occupational or commercial activities of the customer.