

# Lizenzbedingungen

## WLAN-Accesspoint, UP

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### Lizenzvertrag für Software zur Verwendung in Geräten der Serie WLAN Accesspoint, UP

#### 0. Definitionen, Übergabe der Software

Dieser Lizenzvertrag wird geschlossen zwischen der Busch-Jaeger Elektro GmbH, Lüdenscheid, Deutschland (im folgenden: „Lizenzgeber“) und dem Lizenznehmer, z.B. durch Herunterladen der Gerätefirmware (die Teile von OSS-Komponenten enthalten kann) („Software“) des Lizenzgebers von einer Internetseite des Lizenzgebers („Internetseite“) oder mit sonstiger Bestätigung der Lizenzbedingungen.

Vor Abschluß des Lizenzvertrages ist der Lizenznehmer nicht berechtigt, die Software zu nutzen.

Die Nutzungsbedingungen für die Nutzung der Software werden im Folgenden aufgeführt:

#### 1. Vertragsgegenstand

Die Software ist nicht allein funktionsfähig. Die Software ist nur bei Installation auf den Produkten der Serie WLAN-Accesspoint, UP des Lizenznehmers („Geräte“) ordnungsgemäß verwendbar.

Dem Lizenznehmer ist bekannt, dass es nach dem Stand der Technik nicht möglich ist, eine von Fehlern vollkommen freie Software zu erstellen. Daher umfasst dieser Lizenzvertrag nur eine Software, welche im Wesentlichen mit der Produktdokumentation übereinstimmt.

#### 2. Umfang der Lizenz

Der Lizenzgeber gewährt dem Lizenznehmer für die Dauer dieses Vertrags das einfache, nicht ausschließliche und persönliche Recht (im Folgenden auch als „Lizenz“ bezeichnet), die Software auf einem oder verschiedenen Geräten des Lizenzgebers (wie in Ziff. 1 beschrieben) nach Maßgabe von Ziff. 3 zu benutzen. Eine andere oder weitergehende Nutzung ist nicht zulässig. Der Lizenznehmer ist berechtigt, ausschließlich zu Sicherungszwecken eine Sicherungskopie der Software zu erstellen, die denselben Beschränkungen und Bedingungen unterliegt wie die übergebene Software.

#### 3. Besondere Beschränkungen, Wiederverkäufer

Dem Lizenznehmer ist untersagt:

- a) ohne vorherige schriftliche Genehmigung des Lizenzgebers die Software an einen Dritten zu übergeben oder einem Dritten sonst wie zugänglich zu machen, wobei auch Vermietung und Verleih ausdrücklich untersagt sind, außer in der folgenden Weise: Durch Übergabe eines Geräts an einen Endkunden, auf dem die Software aufgespielt ist.
- b) die Software zu übersetzen oder davon abgeleitete Werke zu erstellen,
- c) die Software abzuändern (insbesondere zu bearbeiten), außer in der Weise, wie sie in der Produktdokumentation ausdrücklich für den Nutzer (Installateur bzw. Endkunde) vorgesehen ist.
- d) ohne vorherige schriftliche Genehmigung des Lizenzgebers die Software zu dekompileieren oder zu entassemblieren,
- e) vorbehaltlich der Regelung in Ziff. 2 die Software zu vervielfältigen; oder

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f) die Lizenz (außer gemäß vorstehendem Unterpunkt a) auf Dritte zu übertragen oder eine Unterlizenz zu vergeben.

Jedoch ist es einem Lizenznehmer, der Wiederverkäufer (Installateur) ist, nicht gestattet, eine (Sicherheits-) Kopie der Software zu erstellen; er hat vielmehr sicherzustellen, dass die Bestimmungen in diesem Lizenzvertrag im Hinblick auf den Lizenznehmer des Lizenznehmers („Käufer“) eingehalten werden (z.B. dass der Käufer denselben Beschränkungen im Hinblick auf das Anfertigen von Kopien unterliegt und nur eine Sicherheitskopie erstellen darf). Daher wird der Lizenznehmer entsprechende Verpflichtungen und Beschränkungen auf den Lizenznehmer in einer Weise auferlegen, welche den Lizenzgeber berechtigt, direkt gegenüber dem Käufer Ansprüche aus Verletzung dieses Lizenzvertrages geltend zu machen.

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#### 5. Drittsoftware und “Open Source Software”

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Für Programme, die unter einer „GNU General Public License“-Lizenz stehen, wird der Lizenzgeber eine maschinenlesbare Kopie des Quelltextes zur Verfügung stellen. Das Angebot auf Überlassung des Quelltextes gilt für die Dauer von drei Jahren gerechnet ab Übergabe der Software.

Hinweis: Eine Haftung oder Gewährleistung der lizenzgebenden Urheber der Open Source Software ist ausgeschlossen.

#### 6. Geltung und Dauer des Vertrags

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Der Vertrag hat eine unbegrenzte Laufzeit. Das Recht des Lizenznehmers zur Benutzung der Software erlischt

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## **7. Schadenersatz bei Vertragsverletzung**

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## **9. Sachmängel**

1. Die vereinbarte Beschaffenheit der Software zum Zeitpunkt der Übergabe bestimmt sich nach den in der Programmbeschreibung zur Software oder einer entsprechenden „Release Note“ (zusammen: „Produktbeschreibung“) enthaltenen Angaben. Erläuterungen und Beschreibungen stellen keine Garantien (insbesondere keine Beschaffenheitsgarantien) dar. Ein Sachmangel liegt zudem nur vor, wenn die normalen Betriebsbedingungen und die Anforderungen der Produktbeschreibung eingehalten worden sind.

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Die Nachbesserung erfolgt nach Wahl des Lizenzgebers durch Fehlerbeseitigung, durch Überlassung eines neuen Softwarestands oder dadurch, dass der Lizenzgeber Möglichkeiten aufzeigt, die Auswirkungen des Fehlers zu vermeiden. Ein neuer Softwarestand ist vom Lizenznehmer zu übernehmen, es sei denn, dies führt zu für ihn unangemessenen Anpassungs- und Umstellungsproblemen.

2. Zunächst ist dem Lizenzgeber Gelegenheit zur Nacherfüllung innerhalb angemessener Frist zu gewähren. Schlägt die Nacherfüllung fehl, kann der Lizenznehmer zurücktreten. Ein Fehlschlagen der Nachbesserung ist erst anzunehmen, wenn es dem Lizenzgeber auch beim zweiten Nachbesserungsversuch trotz einer schriftlich gesetzten Nachfrist nicht gelingt, den Mangel der Software derart nachzubessern, dass eine im Wesentlichen vertragsgemäße Nutzung durch den Lizenznehmer möglich ist.

3. Ansprüche des Lizenznehmers wegen der zum Zweck der Nacherfüllung erforderlichen Aufwendungen, insbesondere Transport-, Wege-, Arbeits- und Materialkosten, sind ausgeschlossen.

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4. Für Schadensersatzansprüche gilt im Übrigen Ziffer 11 (Haftung). Weiter gehende oder andere als die in dieser Ziffer 9 geregelten Ansprüche oder Rechte des Lizenznehmers gegen den Lizenzgeber und dessen Erfüllungsgehilfen wegen eines Sachmangels sind ausgeschlossen.

### 10. Gewerbliche Schutzrechte und Urheberrechte; Rechtsmängel

1. Der Lizenzgeber steht lediglich dafür ein, dass die Software in einem EU-Staat frei von gewerblichen Schutzrechten und Urheberrechten Dritter (im Folgenden: Schutzrechte) ist. Sofern ein Dritter wegen der Verletzung von Schutzrechten durch die in einem Land gemäß Satz 1 vertragsgemäß genutzte Software gegen den Lizenznehmer berechnete Ansprüche erhebt, haftet der Lizenzgeber gegenüber dem Lizenznehmer wie folgt:

a) Der Lizenzgeber wird nach seiner Wahl und auf seine Kosten für die betreffenden Lieferungen entweder ein Nutzungsrecht erwirken, sie so ändern, dass das Schutzrecht nicht verletzt wird, oder austauschen. Ist dies dem Lizenzgeber nicht zu angemessenen Bedingungen möglich, steht dem Lizenznehmer das gesetzliche Rücktrittsrecht zu. Ersatz für vergebliche Aufwendungen kann der Lizenznehmer nicht verlangen.

b) Die Pflicht des Lizenzgebers zur Leistung von Schadensersatz richtet sich nach Ziffer 11 (Haftung).

c) Die vorstehend genannten Verpflichtungen des Lizenzgebers bestehen nur, soweit der Lizenznehmer den Lizenzgeber über die vom Dritten geltend gemachten Ansprüche unverzüglich schriftlich verständigt, eine Verletzung nicht anerkennt und dem Lizenzgeber alle Abwehrmaßnahmen und Vergleichsverhandlungen vorbehalten bleiben. Stellt der Lizenznehmer die Nutzung der Lieferung aus Schadensminderungs- oder sonstigen wichtigen Gründen ein, ist er verpflichtet, den Dritten darauf hinzuweisen, dass mit der Nutzungseinstellung kein Anerkenntnis einer Schutzrechtsverletzung verbunden ist.

2. Ansprüche des Lizenznehmers sind ausgeschlossen, soweit er die Schutzrechtsverletzung zu vertreten hat. Ansprüche des Lizenznehmers sind ferner ausgeschlossen, sofern die Schutzrechtsverletzung durch spezielle Vorgaben des Lizenznehmers, durch eine vom Lizenzgeber nicht voraussehbare Anwendung oder dadurch verursacht wird, dass die Lieferung vom Lizenznehmer verändert oder zusammen mit nicht von dem Lizenzgeber gelieferten Produkten eingesetzt wird.

3. Bei Vorliegen sonstiger Rechtsmängel gelten die Bestimmungen der Ziffer 9 (Sachmängel) entsprechend.

4. Weiter gehende oder andere als die in dieser Ziffer 10 geregelten Ansprüche des Lizenznehmers gegen den Lizenzgeber und dessen Erfüllungsgehilfen wegen eines Rechtsmangels sind ausgeschlossen.

### 11. Allgemeine Bestimmungen in Abhängigkeit vom Sitz des Lizenznehmers

#### Abschnitt A:

**Die Bestimmungen dieses Abschnitts A gelten (nur) für Lizenznehmer, die ihren Sitz oder gewöhnlichen Aufenthaltsort in Deutschland haben:**

#### a.1 Verjährungsfrist für Nacherfüllungsansprüche

Ansprüche auf Nacherfüllung verjähren in 12 Monaten. Die Frist beginnt ab Übergabe der Software für den Lizenznehmer. Die Frist gilt nicht, soweit das Gesetz gemäß §§ 438 Abs. 1 Nr. 2 (Bauwerke und Sachen für Bauwerke), 479 Abs. 1 (Rückgriffsanspruch) und 634a Abs. 1 Nr. 2 (Baumängel) BGB längere Fristen vorschreibt, bei Vorsatz, arglistigem Verschweigen des Mangels sowie bei Nichteinhaltung einer Be-

schaffenheitsgarantie. Die gesetzlichen Regelungen über Ablaufhemmung, Hemmung und Neubeginn der Fristen bleiben unberührt.

## **a.2 Haftung**

1. Soweit nicht anderweitig in diesem Lizenzvertrag geregelt, sind Schadensersatzansprüche des Lizenznehmers, gleich aus welchem Rechtsgrund, insbesondere wegen Verletzung von Pflichten aus dem Schuldverhältnis und aus unerlaubter Handlung, ausgeschlossen.

2. Dies gilt nicht, soweit wie folgt gehaftet wird:

- a) nach dem Produkthaftungsgesetz,
- b) bei Vorsatz,
- c) bei grober Fahrlässigkeit von Inhabern, gesetzlichen Vertretern oder leitenden Angestellten,
- d) bei Arglist,
- e) bei Nichteinhaltung einer übernommenen Garantie,
- f) wegen der schuldhaften Verletzung des Lebens, des Körpers oder der Gesundheit oder
- g) wegen der schuldhaften Verletzung wesentlicher Vertragspflichten.

Der Schadensersatzanspruch für die Verletzung wesentlicher Vertragspflichten ist jedoch auf den vertragstypischen, vorhersehbaren Schaden begrenzt, soweit nicht ein anderer der vorgenannten Fälle vorliegt.

3. Eine Änderung der Beweislast zum Nachteil des Lizenznehmers ist mit den vorstehenden Regelungen nicht verbunden.

## **a.3 Anwendbares Recht**

Dieser Vertrag einschließlich seiner Auslegung unterliegt deutschem Recht unter Ausschluss des Übereinkommens der Vereinten Nationen über Verträge über den internationalen Warenkauf (CISG) und der Verweisungsnormen des Internationalen Privatrechts.

## **a.4 Streitbeilegung**

Alleiniger Gerichtsstand ist bei allen aus dem Vertragsverhältnis unmittelbar oder mittelbar sich ergebenden Streitigkeiten der Sitz des Lizenzgebers. Der Lizenzgeber ist jedoch auch berechtigt, am Sitz des Lizenznehmers zu klagen.

## **Abschnitt B:**

**Die Bestimmungen dieses Abschnitts B gelten (nur) für Lizenznehmer, die ihren Sitz oder gewöhnlichen Aufenthaltsort nicht in Deutschland haben:**

### **b.1 Verjährungsfrist für Mängel**

Ansprüche wegen Mängeln verjähren in 12 Monaten ab Übergabe der Software.

### **b.2 Haftung**

Ungeachtet anderslautender Bestimmungen in diesem Lizenzvertrag ist eine Haftung des Lizenzgebers (einschließlich der Haftung seiner Mitarbeiter, Gehilfen oder Nachunternehmer) – gleich aus welchem Rechtsgrund (z.B. im Zusammenhang mit Mängeln, Verzug, Schutzrechten, Freistellung) – wie folgt begrenzt:

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- a) Der Lizenzgeber haftet in keinem Fall für entgangenen Gewinn, Ausfall von Einnahmen, Nutzungsausfall, Produktionsausfall, Kapitalkosten oder Kosten, die mit einer Betriebsunterbrechung verbunden sind, den Verlust erhoffter Einsparungen oder für indirekte oder Folgeschäden oder Verluste, gleich welcher Art;
- b) Die Gesamthaftung des Lizenzgebers im Hinblick auf alle Ansprüche die im Zusammenhang mit der Erfüllung oder Nichterfüllung unter diesem Vertrag entstehen können, wird in keinem Fall 100 % der betreffenden Lizenzgebühr übersteigen.

Die vorstehenden Haftungsausschlussbestimmungen gelten nicht für rechtswidrige Absicht oder grobe Fahrlässigkeit des Lizenzgebers, jedoch gelten sie auch für rechtswidrige Absicht oder grobe Fahrlässigkeit von Hilfspersonen.

### **b.3 Anwendbares Recht**

Dieser Vertrag einschließlich seiner Auslegung unterliegt Schweizer Recht unter Ausschluss des Übereinkommens der Vereinten Nationen über Verträge über den internationalen Warenkauf (CISG) und der Verweisungsnormen des Internationalen Privatrechts.

### **b.4 Streitbeilegung**

Alleiniger Gerichtsstand ist, wenn der Lizenznehmer Kaufmann ist, bei allen aus dem Vertragsverhältnis unmittelbar oder mittelbar sich ergebenden Streitigkeiten der Sitz des Lizenzgebers. Der Lizenzgeber ist jedoch auch berechtigt, am Sitz des Lizenznehmers zu klagen.

## **12. Schlussbestimmungen**

Es gelten ausschließlich diese Bedingungen. Davon abweichende oder sie ergänzende Bedingungen des Lizenznehmers sind für den Lizenzgeber unverbindlich, auch wenn der Lizenzgeber nicht widerspricht. Dies gilt auch für den Fall, dass der Lizenznehmer angibt, nur zu seinen Bedingungen den Vertrag schließen zu wollen.

Änderungen und Ergänzungen der Lizenzbedingungen bedürfen der Schriftform.

Sollten einzelne Bestimmungen des Vertrages unwirksam werden, wird die Gültigkeit des Vertrages im übrigen davon nicht berührt. Die unwirksamen Bestimmungen sollten durch eine ihrer wirtschaftlichen Zielsetzung am nächsten kommenden Regelung ersetzt werden.

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OSS component: Iptables  
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3. You may copy and distribute the Program (or a work based on it, under Section 2) in object code or executable form under the terms of Sections 1 and 2 above provided that you also do one of the following:

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Also add information on how to contact you by electronic and paper mail.



If the program is interactive, make it output a short notice like this when it starts in an interactive mode:

```
Gnomovision version 69, Copyright (C) year name of author
Gnomovision comes with ABSOLUTELY NO WARRANTY; for details
type `show w'. This is free software, and you are welcome
to redistribute it under certain conditions; type `show c'
for details.
```

The hypothetical commands ``show w'` and ``show c'` should show the appropriate parts of the General Public License. Of course, the commands you use may be called something other than ``show w'` and ``show c'`; they could even be mouse-clicks or menu items--whatever suits your program.

You should also get your employer (if you work as a programmer) or your school, if any, to sign a "copyright disclaimer" for the program, if necessary. Here is a sample; alter the names:

```
Yoyodyne, Inc., hereby disclaims all copyright
interest in the program `Gnomovision'
(which makes passes at compilers) written
by James Hacker.
```

```
signature of Ty Coon, 1 April 1989
Ty Coon, President of Vice
```