

## **EU Data Act Addendum (Cloud) supplementing the General Terms and Conditions of shopware AG**

### **1. Scope, incorporation and relationship to the GTC**

1.1 This EU Data Act Addendum (“Addendum”) supplements the General Terms and Conditions of shopware AG (“GTC”), as amended from time to time. It governs the rights and obligations of the parties in connection with the use of data processing services within the meaning of Chapter VI of Regulation (EU) 2023/2854 (“EU Data Act”), in particular cloud services (SaaS and/or PaaS) provided by Shopware to the Customer.

1.2 To the extent this Addendum deviates from or supplements the GTC, the provisions of this Addendum shall prevail only within the scope of application of the EU Data Act. In all other respects, the GTC shall remain unchanged.

1.3 This Addendum applies exclusively to agreements under which Shopware provides the Customer with cloud services (“Cloud Service” as defined below). This Addendum does not apply to pure self-hosting / on-premises scenarios; in such cases, only the GTC shall apply.

1.4 Terms not separately defined in this Addendum shall have the meaning set out in the GTC (in particular with regard to “Products”, “Self-Hosting” and “Cloud”).

1.5 shopware provides the supplementary information required under the EU Data Act (in particular regarding data categories, export formats, interoperability information, technical requirements and, where applicable, applicable jurisdictions pursuant to Article 28 EU Data Act) in an up-to-date information overview (“Data Act Info Hub”). The Data Act Info Hub is available at: [EU Data Act – Information on Switching Cloud Services | Shopware | Shopware](#).

To the extent this Addendum refers to technical information or specifications, the information provided in the Data Act Info Hub shall apply on a supplementary basis, without restricting the Customer’s rights under the EU Data Act.

### **2. Definitions for the purposes of the EU Data Act**

2.1 “Data Processing Service” within the meaning of this Addendum means any service provided by Shopware as a cloud service that enables the processing of digital content or data for the Customer and falls within Chapter VI of the EU Data Act.

2.2 “Cloud Service” means the products and services provided by Shopware as cloud services (in particular SaaS and/or PaaS), under which Shopware provides the technical infrastructure and platform for operating the shopware software and which qualify as a Data Processing Service within the meaning of Chapter VI of the EU Data Act.

2.3 “Cloud Component” means Shopware’s contractual performance obligations relating to the provision and operation of the Cloud Service (including hosting, platform and other infrastructure services), but excluding the granting of the Software Licence within the meaning of Clause 2.4.

2.4 “Software Licence” means the grant of rights of use to the shopware software pursuant to the GTC and the relevant Order Form, irrespective of whether the software is used as a self-hosting / on-premises variant or as part of a Cloud Service.

2.5 “Switching” means the switch requested by the Customer from the Data Processing Service provided by Shopware

(a) to another provider of a data processing service, or

(b) to the Customer’s own ICT infrastructure or that of a third party engaged by the Customer,

in each case within the meaning of Articles 23 et seq. of the EU Data Act.

2.6 “In writing” within the meaning of this Addendum shall have the meaning set out in Clause 1.4 of the GTC.

### **3. Switching rights and termination (Articles 23 and 25 EU Data Act)**

3.1 The Customer is entitled to request Switching within the meaning of Clause 2.5 at any time during the term of the contract in accordance with Articles 23 et seq. of the EU Data Act. The Customer may submit a Switching request in writing (within the meaning of Clause 1.4 of the GTC) to shopware via the ticketing system. This right relates exclusively to the part of the services that is provided as a Data Processing Service within the meaning of Chapter VI of the EU Data Act (the Cloud Component). The Software Licence remains unaffected, provided the Customer is entitled under the GTC and the respective agreement to continue using the shopware software in the target environment (e.g. self-hosting / on-premises or with another hosting / PaaS provider).

After receipt of a Switching request and expiry of any applicable notice period (Notice Period), the Customer may notify shopware in writing whether it

(a) wishes to switch to another provider of a Data Processing Service, or

(b) wishes to switch to the Customer's own ICT infrastructure or that of a third party engaged by the Customer, or

(c) requests, following completion of the Switching, deletion of the Customer data processed as part of the Cloud Component, unless statutory retention obligations or other mandatory legal reasons prevent such deletion.

shopware will take the Customer's notice into account as well as the further steps required to carry out the Switching and/or deletion in accordance with the requirements of the EU Data Act.

3.2 The agreement regarding the Software Licence remains unaffected and continues unchanged. In the event of Switching, shopware is obliged to enable data switching for the Cloud Component. Upon successful completion of the Switching, the Cloud Component of the contract shall be deemed terminated pursuant to Article 25(2)(c) EU Data Act ("Switching Date"). The Customer shall submit the Switching request and the related termination of the Cloud Component in writing (Clause 1.4 GTC). shopware shall confirm the Switching Date to the Customer in writing.

3.3 Until the Switching Date, the Customer remains obliged to pay the contractually agreed fees for the Cloud Component. From the Switching Date onward, the fees for the Cloud Component shall cease to apply. Fees for the Software Licence are not affected by the termination of the Cloud Component and remain payable.

### **4. Shopware's obligations in connection with Switching (Articles 23 and 24 EU Data Act)**

4.1 Shopware supports the Customer with Switching in accordance with Articles 23 et seq. of the EU Data Act. In particular, and to the extent required by law, this includes:

(a) providing the Customer's exportable data, digital content and digital assets in a structured, commonly used and machine-readable format;

(b) providing the technical information required for interoperability with the target system to the extent required under the EU Data Act;

(c) implementing the technically necessary measures for the orderly discontinuation of the Cloud Component as of the Switching Date.

4.2 Shopware shall perform the Switching services required under the EU Data Act without undue delay. shopware is entitled to coordinate reasonable timeframes and steps for Switching with the Customer, provided these are compatible with Article 25(4) EU Data Act.

The notice period (Notice Period) for Switching shall not exceed two (2) months.

shopware will generally complete the Switching successfully within thirty (30) calendar days after receipt of the Switching request, provided the Customer has performed the required cooperation obligations in due time. Statutory permissible extensions remain unaffected.

4.3 Services that go beyond the mandatory support services required under the EU Data Act (e.g. extensive migration projects, consulting or customisation services) may be offered by Shopware to the Customer as additional services subject to separate remuneration in accordance with the GTC.

4.4 The performance of Switching requires the timely and complete cooperation of the Customer in accordance with Clause 7 of the GTC (e.g. provision of required information, documents and access credentials). If Switching is delayed due to missing cooperation, the applicable time limits shall be extended accordingly.

4.5 The Customer is entitled to request a reasonable extension of the time limits scheduled for Switching if this is necessary for the successful execution of the Switching (Article 25(5) EU Data Act).

shopware is not obliged, in the course of Switching, to disclose or transfer information, data or digital assets to the extent and for as long as such disclosure or transfer would

- (i) endanger trade secrets of shopware or third parties within the meaning of applicable law,
- (ii) impair the information security or integrity of shopware's or third parties' systems, or
- (iii) violate third-party rights (including intellectual property rights or data protection rights).

This includes in particular data and information that relate exclusively to the internal functioning, monitoring, telemetry, diagnostics or security of the platform ("Internal Functioning Data").

shopware will ensure that these restrictions do not unreasonably hinder or delay Switching and will, where legally required, provide suitable alternatives or equivalent information to enable interoperability within the meaning of the EU Data Act.

## **5. Fees, price reduction and Early Termination Fees**

5.1 In the event of Switching, Shopware is obliged, from the Switching Date onward, to grant the Customer an appropriate price reduction on the originally agreed fees to the extent those fees relate to the Cloud Component. The price reduction shall be calculated on the basis of the portion of the contractually agreed fees that Shopware internally allocates to the Cloud Component ("Cloud Share"). shopware shall provide the Customer, upon request, with a comprehensible calculation of the Cloud Share.

5.2 Without prejudice to Clause 5.1, Shopware is entitled, in the event of early termination of the Cloud Component due to Switching ("Early Termination"), to charge a lump-sum compensation ("Early Termination Fee"). This shall be calculated on the basis of the remaining term of the current contract period at the time the termination becomes effective and the fees still outstanding until the regular end of the term, insofar as they relate to the Cloud Share ("Outstanding Fees"):

- (a) remaining term up to and including 25% of the originally agreed term: 60% of the Outstanding Fees;
- (b) remaining term of more than 25% up to and including 75% of the originally agreed term: 75% of the Outstanding Fees;
- (c) remaining term of more than 75% of the originally agreed term: 85% of the Outstanding Fees.

5.3 Irrespective of the Early Termination Fee, the Customer's obligation to pay ongoing fees attributable to the Cloud Component shall cease in any event from the Switching Date onward.

5.4 Statutory rights of rescission, termination, reduction or damages of the Customer remain unaffected to the extent they are not validly restricted by non-mandatory law and the GTC.

## **6. Data export, retention and deletion**

6.1 Shopware will make the Customer's exportable data, digital content and digital assets available for retrieval in the format provided pursuant to Clause 4.1 for a period of at least thirty (30) days after the Switching Date ("Retrieval Period"), unless statutory retention obligations or contractual obligations require otherwise.

6.2 After expiry of the Retrieval Period, Shopware will delete the Customer's data from productive systems and backup systems in accordance with the GTC, the applicable data processing agreement and any statutory retention periods.

## **7. Final provisions**

7.1 This Addendum does not restrict or extend the Customer's mandatory rights under the EU Data Act; it merely specifies them in the relationship between the parties. To the extent this Addendum falls short of mandatory requirements of the EU Data Act, the mandatory requirements shall apply directly.

7.2 In all other respects, the GTC remain unchanged; in particular, the provisions on liability, warranty, service description and contract term continue to apply unless expressly modified by this Addendum.

7.3 To the extent the GTC or Order Forms refer to termination rights and payment obligations, those provisions shall apply supplementarily in the relationship between the Software Licence and the Cloud Component, unless modified by this Addendum.