

# Dukehoff GmbH user and license terms and conditions for developers for commercial use

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## 1. General

The following terms and conditions regulate the relationship between developers acting in a commercial capacity (Developer) and Dukehoff GmbH, Munich, in relation to the use of the software module DukeScript for developing their own applications, in particular mobile software applications, as well as in respect to distributing or making available applications which have been developed using DukeScript, as well as in relation to the software module DukeScript itself.

For those using DukeScript as consumers, and these conditions notwithstanding, the statutory provisions exclusively apply.

Should any modifications to the following contractual terms and conditions be necessary on the basis of your individual business model, please contact us at the following address

**Sales@dukehoff.com**

Any requests for modifications will be considered by Dukehoff GmbH without obligation. As a general rule, requests for modification will only become an integral part of the contract if Dukehoff GmbH has expressly agreed in writing.

We contradict any deviating terms and conditions of our contract partners in relation to the execution of the contract or the use of DukeScript. In the event of doubt arising from conflicting terms and conditions, statutory regulations shall apply.

## 2. Definition of terms

DukeScript: An independent extension of a framework that is built on top of the Netbeans platform, enabling developers to execute Java applications that have been developed within this framework as well as on mobile platforms, on certain operating systems.

Ad free: Use of the licensed software without advertising cutting in at specific time intervals.

(Software-)  Software that is directly visible and easy to operate for the end user.

Application:

Mobile Application :  The application is optimised for use on mobile electronic devices with certain operating systems.

Users:  The licensee themselves or any person who is appointed by the licensee to use the licensed software for the development or further versions of applications or otherwise.

Call Home:  A program that uses an existing Internet connection to connect to a Dukehoff GmbH company server when the application is launched and transmits

certain information from this application for the purpose of storage and analysis.

Community Support:  Technical installation and access facilitation of the online forum, where users can support each other on how to deal with DukeScript through questions and answers.

Documentation: The name for Dukehoff GmbH publications, in particular material published on the website, which explains the features of the software and includes user instructions.

Hotfix Repository Access → A repository for new developments and feature enhancements as well as where bug fixes are published before official releases are made available online.

Licensor: Dukehoff GmbH, Munich.

License Key:  Refers to a software-license management tool or other device, which is used to activate and use the software for a specified period for a defined number of users according to the selected licensing model.

Splash Screen: Graphic placeholder that appears during loading or starting the software.

Online Trouble  Online ticket system for reporting errors, defects and ticket system problems with the software. (OTRS):  Message and response takes place exclusively via the system, within defined response times (see No. 10).

Software: DukeScript.

Release:  Term for corrections, improvements and new features of the software as they are made available from Dukehoff.

Consumer:  A natural person who does not act in a commercial or self-employed capacity in relation to DukeScript licensing.

### **3. Conclusion of the Agreement**

You can obtain a license or download DukeScript from our website at the URL: *www.Dukehoff.com*. By releasing and providing a download of the licensed software, Dukehoff accepts the offer to conclude a license agreement under the terms of the chosen license and these General Terms and Conditions.

### **4. Object of the contract**

The object of the contract is the DukeScript software in its current version at the time of the contract, in the chosen licensing model, with its associated features or limitations, as well as the support services.

The product description on our website and the accompanying documentation contains an up-to-date description of performance and features.

Insofar as our website contains examples of applications for the use of DukeScript, these are not a quality description of the software itself, but serve solely as a commercial illustration.

The developer or licensee alone are responsible for the possible use of DukeScript for specific projects. The same applies to the feasibility of certain applications using DukeScript.

## 5. Licensing / Granted Rights / Developer's License

Dukehoff GmbH grants the right of use of DukeScript - on condition of compliance with the contractual conditions and the timely payment of license fees due - required by you as a freelance developer or company in order to use the software according to requirements, and so that you can continue to distribute your developments under freely elected licensing conditions (exceptions: Free license / OSS license / see No. 6 below).

Depending on the selected licensing model, Dukehoff grants you a temporary right of use for a simple, and in the case of a determined time period, a temporary, non-transferable right to the use of DukeScript software for development and further versions of software applications and/or parts thereof, for specified or unspecified numbers of users. Moreover, Dukehoff grants you a fundamental and unlimited right in time and space to redistribute DukeScript as part of applications legally developed using this software and necessary related applications, without limitations or transfer, in any form, including by way of making it publicly available. Please note however the limitations under OSS license.

Depending on the license, possible use may be subject to further conditions. For details, refer to the description of the different types of license rights. (See No. 6 below)

The right to and possibility of developing applications with the software or further versions. is limited to the license period.

Applications lawfully developed during the license period continue to be legitimately executable after the license has expired and may be redistributed.

## 6. Licence types

The licenses offered by Dukehoff are paid monthly or annually and with single or volume licenses, except for the free license and the OSS license. The licenses are offered with different support services. Support requirements over and beyond what is offered, must be agreed separately.

*Free license:*  This is a fee-free license, which allows a user to use DukeScript for a limited period simultaneously on a terminal in the version acquired, and under certain further conditions. The license is not eligible for further releases (Releases). In terms of support services you only have access to Community Support. Use of the software is further restricted due to the implementation of ad pop-ups, a standard splash screen, and a Call Home feature.

The user is obliged to create the technical and legal conditions in which Dukehoff can also use the application developer's stored data via the Call Home feature.

Changing these settings is not permitted.

*OSS license:*  This free, open source license is reserved specifically and exclusively for developers on free open source projects. The exact terms of the license are dependent on the OS project. Regarding the project pre-conditions and terms of the license, which must be met before the license is granted, please direct any enquiries to:

**Sales@Dukehoff.com.**

**Solo license:** □ The Solo license is a one-seat license for the individual developer who can do without some premium support services. During the duration of the license, the current releases will be made available continuously via our website in the usual form. Support services are provided via the Community Support system. Other support services can be booked via a separate agreement.

**Startup license:** □ This license entitles you to work on 5 workstations simultaneously with DukeScript. In addition to the Solo license offered, general releases and support on specific issues, as well as Hotfix releases on our website are available in advance. Each authorised user has access to a specific Hotfix Maven repository.

**Business license** □ The license for businesses enables the use of DukeScript on up to 50 work stations at any one time, offering, over and above the provision of the Startup license, a supplementary but time-restricted support service via the OTRS system. The support service provides five hours per month within the license period (40 units of time / see No.10) for a certain number of licenses.

**Enterprise license** □ This license is for all companies that need more than 50 work station licenses. Over and beyond the Business license, the support volume via the OTRS system increases to ten hours (80 units of time / see No. 10). The terms and conditions shall otherwise apply.

## **7. Back-ups/User restrictions**

The developer is entitled to produce copies of the software exclusively for the purposes of backing-up. He is entitled to use the products in the context of the intended use on his hardware.

The Licensee is not permitted to remove any copyright or intellectual property rights notices contained in the software or documentation.

## **8. Releases**

The features and applications of DukeScript are constantly being improved and further versions developed. For this and other purposes, Dukehoff regularly releases error and defect fixes.

Depending on the license selected, consecutive releases will be made available for online retrieval via our website. Dukehoff decides on the timing of releases at its own discretion.

Retrospective releases are retained back to up the 3<sup>rd</sup> Generation. There is no claim to the provision of older releases.

Entitlement to releases shall not apply if

- a) the licensee has created or caused significant changes to the software,

- b) and the licensee has failed to implement all the necessary previous releases and also if this cannot be rescheduled.

## **9. Installation / Registration / License Key**

It's the user's own responsibility to download DukeScript.

To use the software, a license key is required. The license key manages the type of license and the number of authorised users. The license key can be installed on any device. It will be made available to download along with the software.

To start using DukeScript for the purposes of registration and verification of the license key, an online connection to the Dukehoff server is required; then the license check against registered device is carried out locally. Only those data necessary for checking the license key are transmitted.

DukeScript regularly checks the license key. The maximum number of devices that can be registered simultaneously is limited by the number of licenses acquired.

If you need to transfer a license to a new device, as part of the registered license volume, an online connection to the Dukehoff server is required for the cancellation of your old appliance and the release of the license. The licensee is obliged to provide the appropriate conditions for implementing the license key. Only then can proper use of DukeScript be guaranteed.

A license check can also be done in such a way that together with the software, a license server is deployed on the system of the licensee that manages permissions. The licensee must ensure he/she can access the license server from his/her workstation, in order to be able to use the software without restrictions.

The license key will be delivered by the licensor after acceptance of the licensee's commission of a license agreement. The licensee is responsible for downloading and installing the software, including the license key.

In cases where no license key is provided, the software must be unlocked with a product key. The licensee agrees to allow Dukehoff GmbH to check the license permissions in an appropriate manner in such cases. The means and manner of verification will be agreed separately.

## **10. Support**

The support services granted with the respective licenses take place during normal business hours between 9am and 5pm. The licensor may make use of commissioned companies for its customer support provision.

When using the OTRS, the response time to the ticket is set at 48 hours. The reaction time begins with the retrieval of the ticket by the licensor's processing agent and its notification to the licensee.

The license support services included with the license or added to the license are provided in time units of 7.5 minutes. With the commencement of support services for each ticket, a separate unit of time begins. Your entitlement to support by volume is solely granted per unit of time. Unused support services expire at the end of the month.

When exceeding the inclusive monthly support services that have been booked, the surplus will be charged according to the valid price list for support at an hourly rate.

Training in the use of the software is not part of customer support; it is subject to separate training conditions.

Dukehoff offers further support services with a separate agreement and remuneration.

### **11. Duty of Cooperation/Conditions**

The developer is obliged to adequately participate in the performance of the contract, in particular he/she is obliged during the license period to immediately download releases that have been made available.

The DukeScript libraries implement interfaces from the NetBean platform/NetBean IDE. The licensing of this software is done independently and is the sole responsibility of the developer. The conditions of use of the NetBean platform/IDE may differ from these conditions. Dukehoff solely guarantees the terms of DukeScript.

### **12. Contract period**

The contract term is equivalent to the agreed license period. The originally agreed license period extends automatically if the underlying contract is not terminated on time. For an annual license, these are extended by a maximum of one year.

Contracts where there is a monthly license basis must be cancelled with a notice period of 7 days at the end of the month.

Contracts on an annual license basis have a notice period of eight weeks at maturity.

### **13. Warranty**

Dukehoff only guarantees the contractual agreed condition of DukeScript. For physical or legal defects that do not have their origin in the contractual agreed condition of DukeScript, no warranty or liability is assumed.

If the quality and contractual use of the software falls short of the agreed contract condition, the licensee is obliged to give Dukehoff GmbH the possibility to fix this within a reasonable period. The fix is usually delivered through new releases in a timely manner. The licensee must notify us of errors immediately in a comprehensible format and shall provide the relevant information for the bug-fixing via OTRS. The licensee will support Dukehoff GmbH with troubleshooting, within reasonable limits. There is no guarantee for defects which are not reproducible by Dukehoff GmbH.

If, despite repeated efforts, Dukehoff does not succeed in remedying the defect or bypassing it so that the software can be used according to the product description, the licensee is entitled to demand a reduction in the agreed remuneration or withdraw from the contract, in accordance with statutory regulations.

#### **14. Indemnification**

The parties are mutually liable for intent or gross negligence for themselves and all their legal representatives or agents for unlimited damages caused. In case of slight negligence, the parties have unlimited liability in the case of injury to life, limb or health. The parties are mutually liable - for whatever legal reason - also for their employees and third parties used by them, for damage cause directly to property or goods up to a maximum of twelve monthly instalments of usage-based compensation.

#### **15. Property Rights**

The licensee alone is responsible for complying with the license conditions and the protection of intellectual property rights of software other than that which is licensed here, in the development and distribution of applications with DukeScript. In this respect warranty is excluded.

#### **16. Terms of payment/Retention of title**

All agreed fees are payable immediately after invoicing, in addition to VAT and without deductions.

Recurring charges shall be payable monthly with monthly licenses and for each quarter in advance with annual licenses. Subsequent payments must be submitted by the 3<sup>rd</sup> day of the valid period, without the need for additional separate bills.

The granting of rights and/or the transfer of ownership of products is subject to the condition precedent of full settlement of the amount owed and due.

#### **17. Data Protection**

Where data, and in particular personal data, are collected and stored by the licensee, these are required for billing purposes and verification of the license key. Furthermore, data without personal reference is collected and analysed for the development and improvement of DukeScript. Further details are contained, if applicable, in a privacy policy.

#### **18. Amendments to the Terms and Conditions and Price Lists**

Changes to the Terms and Conditions or price lists are communicated to the licensee separately. In the event that changes are made to the detriment of the licensee, this will be notified in any case in writing. The amendments shall be deemed approved if the licensee does not object in any case in writing within one month after receipt of the notification. The right to object is indicated separately.

In case of a reasonable increase in the price of continuing obligations, Dukehoff GmbH retains the option to continue the contract with the previous conditions in the event of objection by the customer, or terminate with a notice period of 3 months. Until the effective date of termination, the old provisions continue to apply.

Changes in legal VAT rates, regardless of the above provision, entitle the company to a corresponding change in the price.

### **19. Choice of Law and Place of Jurisdiction**

In the event of any dispute arising from this contract, the place of jurisdiction is the Dukehoff GmbH registered office, if

- a) the licensee is a merchant or
- b) the licensee has no general jurisdiction in the Federal Republic of Germany or
- c) the licensee is a legal entity under public law.

Dukehoff is entitled to sue at any other statutory place of jurisdiction.

The law of the Federal Republic of Germany, excluding the UN Sales Convention, applies.

### **20. Final Provisions**

Additional agreements must be made in writing.

If any provision of this contract is invalid, the remaining provisions will thus not be affected in their legal effectiveness. In such cases the invalid provision must be replaced with one that has the effect of corresponding to the intended sense and purpose of the interests of all parties and whose content is workable.

Munich, October 2015   □ Dukehoff GmbH