

Licensing Terms for the "Texture Packer" Software - End-User License Agreement (EULA)

Preamble

Please read the following terms of the end-user license agreement on the software specified below carefully.

When you click the "Accept" button or when you install, copy or use this software in any other way, you confirm that you have read and understood the terms of this end-user license agreement and that you recognize its substantive regulations as legally binding.

If you or the company you represent do not agree with the terms of this end-user license agreement, do not install this software. If you do not agree to the applicability of any term of this end-user license agreement, you will not be authorized to use this software. By installing, copying or otherwise using software updates and/or software upgrades you will also become subject to the applicability of any additional licensing terms, which are enclosed with these updates and/or upgrades. If you do not accept those additional licensing terms, the installation, copying, or the use of these updates and/or updates is prohibited.

1. Definitions

CodeAndWeb

identifies the originator/author of the software and contractual partner,

CodeAndWeb GmbH

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89233 Neu-Ulm

Germany

District court / Registergericht: Amtsgericht Memmingen, HRB 15791

CEO / Geschäftsführer: Andreas Loew

with whom this license agreement has been concluded.

End-user or Licensee

identifies the natural person, who concludes this license agreement with CodeAndWeb for him-/herself or on behalf of a legal entity and who will be provided with a legal copy of the software by CodeAndWeb.

Software

identifies all programs and data provided to you under the name "TexturePacker".

2. Subject Matter of the License Contract

1. The subject matter of this license contract is the concession of rights to use this software according to these licensing terms and according to the respective license type, which has been purchased by the customer.
2. The license type will be determined by the scope of the provided software selected by the customer. The features of the software, as well as its scope and license price, result from the product description provided online, from the information gathered during the ordering process (product information) and from any documentation.
3. Any further details or specifications will only become an integral part of the contract when agreed upon in writing by the contractual partners.
4. Any other presentations of the software on the internet are for informational purposes only. They do not constitute a binding offer but are an opportunity to submit a binding offer of contract by placing an order.
5. You may choose from the following license types:
 - a. **TexturePacker Evaluation License:** An evaluation license (trial license) is a license (right of use) to the software, which authorizes the licensee to use all functions of the corresponding software product. A trial license, however, exclusively authorizes use of the software for testing and evaluating the software within the agreed period of time. The licensee is prohibited from using the trial license for publishing data generated within the TexturePacker evaluation license in his own products or in the software components of third parties or to use it for his own business purposes. In this case the purchase of a single user license, a volume license or a lifetime license is required.
 - b. **TexturePacker Single User License** A single user license authorizes the named user to use the software with the provided license key on two clients (hardware, computer) maximum. The (shared) use of a TexturePacker single user license by more than one named user is expressly prohibited. The license key for a specific TexturePacker single user license may not be actively installed on more than two clients at the same time.
 - c. **TexturePacker Volume License** A TexturePacker volume license authorizes the licensee to use the license key for as many additional software copies as permitted by the specified number of clients in the corresponding order confirmation or license certificate. The number of clients on which the software has been installed and for which the license key has been activated should not exceed the number of licenses. The clients may only be used by the corresponding number of users, i.e. a server installation is prohibited.
 - d. **TexturePacker Lifetime License** A TexturePacker lifetime license corresponds to the scope of the TexturePacker single user license above, but authorizes the licensee to obtain and use all upgrades of the software for the specified duration of the license agreement against payment of a separate license fee.
 - e. **TexturePacker Blogger / Framework License** The scope of a TexturePacker blogger framework license corresponds to the scope of the TexturePacker single user license. This license may only be granted after prior verification and approval by CodeAndWeb and will be granted to blog writers or framework developers. The acquisition of this license is subject to a separate request to CodeAndWeb. There is no legal claim to a TexturePacker blogger framework license.

f. TexturePacker Essential License If none of the above mentioned licenses is available, TexturePacker will activate a limited range of functions ("Essential Mode"). Within this limited range, basic functions will be activated and advanced functions will color parts of the generated textures red. TexturePacker can be installed on any number of computers in this mode.

6. The source code of the software is not subject matter of the contract and specifically will not be provided.
7. The license that the software is based on, as well as the associated license key, may neither be sold nor transferred if and insofar as the software is labelled "not for sale" or "not for resale".
8. CodeAndWeb points out, that especially for reasons of system security, stability and compatibility, updates will be performed and new versions will be created or the software will be improved otherwise, where necessary. Therefore, the conditions for using the software may change over time. The provided updates and their use are subject to the terms of this agreement.
9. The use and provision of free software updates is limited in time (paragraph 8).
10. CodeAndWeb reserves the right to change the licensing terms. CodeAndWeb will inform the licensee about any changes.

3. Scope of Rights of Use Granted (License)

1. CodeAndWeb grants the licensee an unlimited, revocable, non-exclusive (simple), non-transferable, non-sublicensable right to use this software subject to the payment of any applicable license fees (paragraph 6).
2. This includes the right
 - a. to use the software, the license key and the documentation enclosed in the form in which it was provided to the licensee by CodeAndWeb;
 - b. to use the software and the associated license key in strict accordance with the terms of this agreement and under the specific conditions and limitations, which are given by the specific license type
 - c. to copy this software under the condition that all property rights, trademark symbols, copyright signs and notes and other proprietary notices will be reproduced on such a copy and that the license key for this software will not be passed to third parties
3. The software and the associated documentation, all copies, modifications, translations, components, functions and connected parts thereof will always remain property of CodeAndWeb.
4. The agreement on the scope of the license granted extends to all updates, upgrades, releases, revisions or improvements of the software, which are provided to the licensee by CodeAndWeb. The use and provision of free updates for this software after its installation and activation with the license key is limited in time (paragraph 8).

4. License Restrictions

1. The licensee is obligated to neither directly nor on behalf of a parent or affiliated company, a related company, a representative or a third party, perform the following actions with regard to the licensed software or its documentation, unless CodeAndWeb has previously given its written consent:
 - a. Use of the software, of the associated license key or of the documentation in violation of the terms of this agreement, particularly of the scope of the license type granted;
 - b. Authorization of the multiple use of software copies and of the license key, insofar as this is not permitted by a corresponding license type;
 - c. Sale, rent, licensing, sublicensing or further disposal of a part of the software or the documentation;
 - d. Providing the license keys to persons, who are not licensees, without prior written consent from CodeAndWeb. This applies to the same extent to lending, disclosing, publishing, providing or permitting the use of the license key;
 - e. Removal or modification of proprietary notices, labels or marks on a copy of the software or documentation;
 - f. Reverse engineering, decompiling, disassembling, modification, translation, attempting to find the source code or creation of adaptations (derivative works) of the software.
2. Mandatory legal provisions such as those in § 69 e Copyright Act (UrhG) will remain unaffected.

5. End-User Obligations

1. The end-user has gathered information about the main features of the software and the respective license type. CodeAndWeb has no influence over whether and to what extent the software will meet the wishes and needs of the end-user.
2. The end-user is obligated to register with correct and complete information in order to use this software where required.
3. The end-user takes appropriate measures to protect the license key against unauthorized access by third parties.
4. The end-user is responsible for preserving the confidentiality of the license key (access data) assigned. He is liable for all culpable infringements, which cause damage regarding his access, his account or his use of this software
5. The end-user is obligated to immediately inform CodeAndWeb about any suspicion of unauthorized use of the access data, i.e. an unauthorized access to the license key.

6. License Fee

1. The fee for using the software is determined by the license type selected.
2. The fee must be paid in advance.
3. CodeAndWeb reserves the right to carry out the invoicing by itself or by an invoicing company commissioned by CodeAndWeb. When using an invoicing system, this system will bill on behalf and for the account of CodeAndWeb according to the utilization of the fee-based license type.
4. In this respect, CodeAndWeb has no direct influence over the applicable payment and agreement terms.

7. Contract Duration and Termination of the Right of Use

1. The license agreement with the licensee is concluded for an indefinite period of time.
2. The rights of the end-user and the licensee according to paragraph 3 shall not pass to the client before complete settlement of all existing accounts receivable of a client arising from the current business relationship with CodeAndWeb or its invoicing company. Prior to this, the client has only a temporary, contractual and revocable right of use.
3. CodeAndWeb reserves the right to block the license key and thus the software use in the form of the respective license type when these obligations are violated.
4. CodeAndWeb may revoke the granted rights of use for good cause. In this case the rights granted to the client shall expire automatically with immediate effect, if and as soon as the client significantly violates the restrictions on use as specified in this agreement (paragraph 4).
5. If and insofar as the right of use will not arise or will end, the client is obligated to immediately delete all copies of the program available to him and to delete the license key. The right of CodeAndWeb to block the license key remains unaffected.

8. Updates

1. The software may need updates in order to work effectively. Updates may include new features, bug-fixes or the removal of features of the software and the accompanying documentation.
2. Updates will only be available for download and for use during the contract period.
3. CodeAndWeb will provide free updates to the licensee for a period of 12 months after downloading and activation of the license key (update period). After expiration of this period, the licensee will be obligated to pay for the use and for the provision of further updates. These costs will be determined by the specific license type and by the documented update fees, which will be displayed on CodeAndWeb's website.
4. In case of a lifetime license, the update period shall cover the entire lifetime of the software.
5. The licensee may make further use of the software versions, which have existed prior to expiration of the update period, but will not receive any further updates.
6. Updates may require additional or deviating licensing terms, which should be accepted before starting or installing the program. Updates may replace previously licensed parts of the software, but do not increase the authorized number of clients or named users within the respective license type. The updates provided to the end-user are subject to the terms of this agreement. CodeAndWeb will make reasonable efforts to inform the end-user about any significant changes of the software.

9. Warranty Rights

1. CodeAndWeb points out that the current state of technology does not allow for creating software in a way that all applications and combinations, in particular with various hardware components and software frameworks, will work flawlessly at any time.
2. Special conditions for end-users located in the European Union
 - a. When you, being the client, are living in a country of the European Union or when your company is based in a country of the European Union when purchasing the software, the following warranty rights shall apply (warranty). In case of defects in the software or the associated documentation and upon notification by the end-user, CodeAndWeb will initially provide warranty by supplementary performance. For this, CodeAndWeb will, at the end-user's own choice, either provide him with a new, defect-free software version or will remove the defect.
 - b. The assurance of a warranted feature or a guarantee shall always be in writing.
 - c. If CodeAndWeb is not willing or not in a position to provide rectification or replacement or if the action will be delayed beyond the reasonable period agreed upon with the end-user or if the action will fail due to any other reasons, the end-user shall be entitled to withdraw from the contract or may insist on a reduction of the license price. A rectification or replacement shall only be considered as not having been carried out after CodeAndWeb has been given ample opportunity for rectification or replacement and when the actions did not produce the desired success, when rectification or replacement is not possible or refused or unreasonably delayed by CodeAndWeb, or when rectification has been carried out twice without success. The right of the end-user to claim for damages under § 437 of the German Civil Code (BGB) remains unaffected.
 - d. The end-user is responsible for determining the location where the software will be used and for determining the appropriate hardware environment.
 - e. These warranty terms do not apply when the software is not used in compliance with this agreement or the documentation, when the software or parts of it have been modified by any entity other than CodeAndWeb or when a malfunctioning in the software has been caused by devices or software that have not been supplied by CodeAndWeb.
 - f. The limitation period for all claims for damages is determined by legal provisions and begins with the delivery or providing/granting of the license.
 - g. This warranty does not apply to software that has been provided to the end-user free of charge. CodeAndWeb, therefore, is not obligated to remove any defects or to pay compensation if the licensee uses a free TexturePacker evaluation license or the TexturePacker essential license.
 - h. CodeAndWeb is not liable for any damages, which arise due to omitting the installation of updates. Apart from that, the following liability provisions shall apply analogously.

3. Special conditions for end-users located in the US. When you, being the client, are living in the US or when your company is based there when purchasing the software, the following warranty rights shall apply (warranty).
 - a. CodeAndWeb guarantees that the software licensed under this agreement will work substantially in compliance with the documentation for the period of sixty (60) days from the moment of the installation and activation with the license key ("warranty period"), including upgrades, which are provided within the warranty period for the rest of the warranty period.
 - b. In case of a violation of the preceding limited warranty, CodeAndWeb undertakes to repair or replace the software or, if CodeAndWeb considers such a repair or replacement as commercially inappropriate, to refund the corresponding license fee.
 - c. The preceding limited warranty does not apply when the software is not used in compliance with this agreement or the documentation, when the software or parts of it have been modified by any entity other than CodeAndWeb or when a malfunctioning in the software has been caused by devices or software which have not been supplied by CodeAndWeb.
 - d. This warranty does not apply to software which has been provided to the end-user free of charge. CodeAndWeb, therefore, is not obligated to remove any defects or to pay compensation if the licensee uses a free TexturePacker evaluation license or the TexturePacker essential license.
 - e. THE PRECEDING WARRANTIES ARE THE ONLY WARRANTIES APPLYING TO THE END-USER, INsofar AS HE IS LOCATED IN THE US AND THEY ARE IN LIEU OF ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, IN PARTICULAR WARRANTIES OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, OF PROPERTY RIGHTS, AND NON-INFRINGEMENT OF THE PROPERTY RIGHTS OF THIRD PARTIES.
 - f. EXCEPT FOR THE LIMITED WARRANTY PREVIOUSLY SET OUT, THE SOFTWARE WILL BE SUPPLIED "AS IS". CodeAndWeb DOES NOT PROVIDE ANY WARRANTY OR GUARANTEE REGARDING ITS USE OR PERFORMANCE AND DOES NOT GUARANTEE, THAT THE OPERATION OF THE SOFTWARE WILL BE FAIL-SAFE, FREE OF INTERRUPTIONS, ERRORS OR DEFECTS, OR THAT THE SOFTWARE WILL PROTECT FROM ANY POTENTIAL THREATS.

10. Liability

1. Special conditions for end-users located in the **European Union** When you, being the client, are living in a country of the European Union or when your company is based there and you have purchased the software in such a country, the following liability provisions shall apply (liability).
 - a. CodeAndWeb shall always be liable to the client
 - for damages caused deliberately or due to gross negligence by CodeAndWeb or by legal representatives or performing agents of CodeAndWeb as well as
 - under the German Product Liability Act and
 - for death, bodily injury or health damage, which lie in the responsibility of CodeAndWeb, its legal representatives or performing agents or
 - in case of the assurance of a guaranteed quality or a warranted characteristic.
 - b. CodeAndWeb, its legal representatives and performing agents shall not be liable in case of slight negligence. This does not apply insofar as there is a culpable violation of cardinal obligations or substantial contractual obligation. Cardinal obligations or substantial contractual obligations are obligations of CodeAndWeb, which must be fulfilled in the first place in order to enable the proper implementation of this contract and on the performance of which the client may regularly rely on, i.e. obligations, which may endanger the attainment of the purpose of the contract when violated.
 - c. In case of losses of data CodeAndWeb shall not be liable to the extent described above. The provisions, which substantiate a mandatory liability of CodeAndWeb to the extent described above, remain unaffected.
 - d. There is no further liability of CodeAndWeb. This shall also apply to lost profits and missed savings. Liability for other remote consequential damages is excluded.
 - e. The limited liabilities above shall also apply to the personal liability of the employees, representatives and representative bodies of CodeAndWeb.
2. Special conditions for end-users located in the **US**. When you, being the client, are living in the US or when your company is based there and you have purchased the software in such a country, the following liability provisions shall apply (liability).
 - a. THE LIABILITY OF CodeAndWeb TOWARDS THE LICENSEE DUE TO ANY DAMAGES IS LIMITED TO DIRECT DAMAGES AND WILL NOT EXCEED THE AMOUNT THE LICENSEE ORIGINALLY HAS PAID FOR THE SOFTWARE.
 - b. IN NO EVENT SHALL CodeAndWeb OR LEGAL REPRESENTATIVES OF CodeAndWeb BE LIABLE FOR ANY INCIDENTAL, INDIRECT, CONCRETE (PREDICTABLE) DAMAGES, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING BUT NOT LIMITED TO PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; LOST PROFIT, BENEFIT OR LOSS OF DATA; OR DUE TO BUSINESS INTERRUPTIONS), EVEN THOUGH CodeAndWeb OR THE REPRESENTATIVES OF CodeAndWeb HAVE BEEN INFORMED ABOUT THE POSSIBILITY OF SUCH DAMAGES.

11. Privacy

1. Regarding the protection of personal data, the parties are obligated to observe the provisions of the Privacy Act and to commit their employees, who are connected with the contract and its execution, to comply with the regulations concerning data secrecy as described under § 5 BDSG (Federal Data Protection Act), unless they already have a general obligation to this.
2. In addition to this, CodeAndWeb will collect and use client-related data only to the extent which is necessary to execute this contract.
3. CodeAndWeb indicates that it does not have any influence on the data protection provisions and requirements of any invoicing companies. In this respect, the data protection provisions of the corresponding provider, which are applicable at the time of invoicing and payment, shall apply.
4. While using the software, the end-user may use a reporting function or may submit a support request to CodeAndWeb. For providing support, the entry of an e-mail address is required in order to contact the end-user. For executing the support and for processing the reporting, CodeAndWeb uses the provider "zendesk" (<https://www.zendesk.com>) located in the US.
5. The end-user agrees that concerning support requests and reporting functions the e-mail address of the end-user will be submitted to the provider "zendesk" (<https://www.zendesk.com>). In the event that the end-user does not desire such data processing, he may not use the support and reporting function in the software.
6. Apart from that, the client always has the option of asking CodeAndWeb for stored data related to him, to change this data or to delete it.

12. Applicable Law

1. If the end-user has purchased the software in the European Union, German Law shall apply. In this case, the application of the UN Convention of Contracts for the International Sale of Goods will be excluded.
2. If the end-user has purchased the software outside the European Union, the locally applicable law may apply. In this case, the respective substantive laws may apply for the interpretation of the contract.

13. End-User's Contractual Right to Return Software

1. The software will be offered to the end-user for download. Therefore, a right for withdrawal for the benefit of consumers does not exist. The right for withdrawal does not exist for contracts concerning the delivery of goods, which due to their nature are not suited for being returned. This includes the aforementioned software TexturePacker.
2. Apart from this, however, CodeAndWeb grants the end-user a right to return the software within 30 days. If the end-user should notice within this period, that after the installation of the software and after the activation of the license key, the software or the selected license type does not suit his purposes, CodeAndWeb will refund the license fee. CodeAndWeb will then block the license key. The right to continue to use the free TexturePacker evaluation license or the TexturePacker essential license shall remain unaffected.

14. Final Provisions

1. The languages of this contract are German and English.
2. The provided software (incl. accompanying material) is legally protected. The copyright, patent rights, trademark rights and all other ancillary copyrights in the software and in other objects, as well, which CodeAndWeb provides or makes accessible to the customer for the initiation and execution of a contract shall belong exclusively to CodeAndWeb.
3. Agreements that deviate from these terms of use - including this clause - shall be in writing.
4. For all disputes arising from or in connection with this contract, including the effectiveness of the contract, the sole competent court of jurisdiction shall be the Landgericht Ulm (District Court of Ulm), to the extent permitted by law. CodeAndWeb reserves the right to take legal action against the end-user at his place of business as well.
5. The regulation of § 139 of the German Civil Code (BGB) shall be waived.
6. If any provisions of this contract prove ineffective or unenforceable, the validity of the remaining provisions of this contract shall be unaffected. In this case, the invalid or ineffective provision must be replaced by a new regulation, which meets the intended purpose and shall apply from the beginning of the ineffectiveness.
7. Insofar as provisions are concerned, which are essential or cannot be omitted without endangering the purpose of this contract, the contracting partners commit themselves, under consideration of the intended purpose, to interpret, to correct or to replace the contract with another effective and enforceable provision so that its commercial and legal purpose may be attained.

Effective: 05/2015