

Terms Applicable to Consulting

AdaCore

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1 General Terms and Conditions

2023-10-02

1.1 Scope

These Terms and Conditions are applicable to all purchase orders (“Orders”) for products and/or service items (individually, an “Item”) that you (the “Customer”) send to the company (the “Seller”) that issued you a quote for those Items. These Terms and Conditions can be modified or amended by specific terms and conditions applicable to each Item or contained in the Seller’s quote.

1.2 Resellers

A “Reseller” may purchase one or more Items for use by a Customer. The Reseller will provide the Seller with a Customer contact with whom the Seller will confirm product requirements. The Reseller acknowledges that it has informed the Customer that these Terms and Conditions govern the Customer’s use of each Item and has verified the suitability of each Item for the Customer’s purpose. By using each Item, the Customer acknowledges that they are aware that these Terms and Conditions are the only terms that govern their use of that Item and that they are the exclusive user of the Item and not the Reseller. The term “Buyer” below refers to either the Customer when they directly purchase the Item or the Reseller, when acting as above.

1.3 Ordering

A quote is valid for the period stated within and must be referenced by the Buyer’s Order. The sending of an Order implies acceptance of these Terms and Conditions, of specific terms and conditions applicable to the Item, and of any other conditions set forth within the quote. In particular, both the Customer and the Reseller waive their right to assert terms or conditions that contradict these Terms and Conditions.

1.4 Payment

Unless otherwise mutually agreed in writing, any payment made to the Seller must be by check or bank transfer to the Seller’s account, in the currency specified in the quote, and received within thirty (30) days from the date of the invoice.

Notwithstanding any other legal remedy, in the event that the Buyer fails to make payment within this period, the Seller reserves the right to apply an annual penalty rate of 12% interest, compounded yearly.

The Seller is also entitled to obtain reasonable compensation from the Buyer for any costs incurred due to the Buyer’s late payment. If the Seller is AdaCore SAS, this compensation will be no smaller than a fixed sum of 40 euros.

1.5 Governing Law and Jurisdiction

The Order and these Terms and Conditions are subject to the laws of:

- the state of New York, if the Seller is Ada Core Technologies Inc.;
- England and Wales, if the Seller is AdaCore Ltd.;
- France, if the Seller is AdaCore SAS or any other entity;

Failing amicable agreement between the Parties concerning any dispute arising between them regarding the interpretation, performance, termination, or any other aspect of the Order, the Parties irrevocably submit to the cognizance of the competent courts in:

- New York (United States), if the Seller is Ada Core Technologies Inc.;
- London (United Kingdom), if the Seller is AdaCore Ltd.;
- Paris (France), if the Seller is AdaCore SAS or any other legal entity.

1.6 Limitation of Liability

THE AGGREGATE CUMULATIVE LIABILITY OF THE SELLER AND ITS AFFILIATES UNDER THE PRESENT AGREEMENT FOR ANY BREACH OF ITS OBLIGATIONS HEREUNDER IS LIMITED TO THE PRICE PAID BY THE BUYER FOR THE ORDER.

BECAUSE OF THE NATURE OF BETA SOFTWARE AND CONTINUOUS RELEASES, THE SELLER AND ITS AFFILIATES EXPLICITLY DISCLAIM ANY LIABILITY WHATSOEVER REGARDING SUCH SOFTWARE AND THE PROVISION OF SERVICES FOR SUCH SOFTWARE.

THIS CLAUSE STATES THE SOLE AND EXCLUSIVE REMEDY OF THE CUSTOMER AND RESELLER FOR ANY SUCH BREACH OF CONTRACT. THE PARTIES ACKNOWLEDGE THAT THIS CLAUSE REFLECTS THE ECONOMIC BALANCE OF THEIR AGREEMENT AND IS ESSENTIAL TO THEIR CONSENT.

1.7 Indemnification

The Customer and Buyer agree to indemnify, defend, and hold harmless the Seller, its Affiliates, and their employees, officers and directors from and against any and all claims, demands, suits, damages, liabilities, losses, and expenses (including reasonable attorneys' fees and expenses) arising out of or in connection with any breach of the Customer's or the Reseller's obligations under this Agreement or any act or omission of the Customer or the Reseller that causes property damage.

1.8 Miscellaneous

1.8.1 Language

The language to be used for technical correspondence is English.

1.8.2 Default by the Customer

If the Customer or the Reseller defaults in the performance of their respective obligations, the Seller may immediately suspend any Item in the Order without refund, notwithstanding any other possible remedies. If the default is cured by the defaulting Party within fifteen (15) days of notification of such default, the delivery of such Item will continue, otherwise it may be terminated.

1.8.3 Force Majeure

None of the Parties shall be liable to another for any breach of its obligations that arise due to force majeure. If such circumstances last for more than three (3) months, any Subscription or contract in the Order may be terminated by either Party upon written notification to the other Party. In this case, the Seller shall issue a partial refund to the Buyer. In the case of a Subscription, this will be the cost of the Subscription prorated by the time remaining between reception of the notice and the end of the term of the Subscription. In the case of other Items, it will be in proportion to the costs incurred by the Seller until it has received the notice.

1.8.4 Severability

In the event that any part of these Terms and Conditions is determined to be invalid, unlawful, or unenforceable to any extent, such part shall be severed from the remaining terms, which continue to be valid to the fullest extent permitted by law.

1.9 Exclusion of Trade Marks License

Nothing in an Order shall be construed as granting to the Customer or the Reseller a license to use any registered or common law trademark owned by the Seller or any third Party.

2 Consulting Terms and Conditions

2023-05-18

2.1 Scope

The following documents are applicable to any “consulting activity” specifically performed by the Seller for a Customer and, in the event of a conflict or inconsistency between their provisions, must be interpreted in the following decreasing order of precedence:

- (i) The Seller’s quote and any document attached thereto;
- (ii) The present “*Consulting Terms and Conditions*”, inclusive of any document it refers to other than those in this paragraph;
- (iii) The “*General Terms and Conditions*”;
- (iv) The statement of work of the Customer, if any.

These documents taken together constitute the entire and only agreement between the Parties with respect to the work and supersedes all other agreements or arrangements of any kind, whether written or oral or express or implied, between the Parties in relation to the work. Each of the Parties acknowledges that it has not relied on any representations or warranties except for those contained herein.

The consulting activity covered by these terms and conditions is performed by one or more “Consultants” of the Seller, the Seller’s Affiliates, and/or other third parties directly providing support services under the Seller’s control and responsibility (together, the “Support Contributors”), either on the premises of the Customer (“on-site”) or from Support Contributor’s premises (“off-site”), over the number of days identified in the Seller’s quote and involves:

- (i) providing advice to the Customer regarding the use of the Seller’s Software in the context of the Customer’s technical environment; and/or
- (ii) assisting in the implementation of “changes” to the Customer software, documentation or build environment to optimize its processing by the Seller’s Software.

2.2 Preliminary cooperation

Before issuing a quote:

- (i) The Customer shall let the Seller know of any specific access or similar requirements applicable, in particular whenever consulting is to be performed on-site in a military, classified or restricted area, and
- (ii) The Customer shall let the Seller know if the consulting activity is likely to involve disclosing to AdaCore consultant(s) any material falling under the Export Administration Regulations (EAR) of the US Bureau of Industry Standards (BIS) or within the US Munitions List (ITAR), under any other similar export-control regulations for military or dual-use goods, or is any other form of Controlled Defence Information.

The Seller shall promptly let the Customer know if it is not able to provide Consultants able to receive such information or able to comply with the access restrictions.

The Seller’s quote will specify the days when the activity will be performed, the names of the individual consultant(s) and, optionally, the nature of the consulting activity.

2.3 Performance of the work

In the performance of the consulting activities, the Support Contributors will employ Consultants with appropriate professional qualification and skills and use methods compliant to the state of the art in its business area. The Consultants will undertake a reasonable effort to address the needs of the Customers and, when on-site, will abide by any Customer safety and security regulations.

The Customer shall provide the Consultant(s) with all the information needed to perform the consulting activity.

2.4 Price and payment

In consideration for the consulting activity, the Customer agrees to pay the Seller the “consulting fees” listed in the quote, according to the payment schedule detailed therein. Fees are fixed and firm and payments shall be made according to the “*General Terms and Conditions*”.

If the consulting is on-site, the Customer also agrees to pay the amount specified in the quote for the travel and subsistence expenses of the Consultants.

2.5 Changes to consulting

The Customer may notify the Seller at any time that it requests changes in the nature or dates of the consulting activity. The Seller will, at its sole choice, either:

- (i) Accept such changes, with or without a change of consulting fee. The Seller will issue a new quotation for the modified consulting activity. In this case, the Customer will remain liable for the travel and accommodation expenses already incurred by the Seller.
- (ii) Reject such changes. The Customer then has the option of either cancelling the consulting activity, in which case the provisions of the following paragraph apply, or proceeding with the consulting under the original conditions.

2.6 Cancellation

If the consulting activity is canceled by the Customer more than thirty (30) calendar days before its planned date, the Customer will remain liable only for the travel and accommodation expenses already incurred by the Seller;

If the consulting activity is canceled by the Customer between twenty-nine (29) and eight (8) calendar days from its planned date, the Customer will remain liable for the travel and accommodation expenses already incurred by the Seller and for half of the consulting fees.

If the consulting activity is canceled by the Customer at a later stage, the Customer will remain liable for the travel and accommodation expenses already incurred by the Seller and for the entirety of the consulting fees.

2.7 Intellectual Property

2.7.1 Works of the Customer

The Customer shall be the sole owner of all changes made by a Support Contributor to its software, build environment, documentation, articles, certification material or studies as soon as they become tangible.

The Customer shall be assigned all intellectual property rights pertaining to these changes, in particular the rights to reproduce, translate, adapt, arrange and distribute to the public, for a fee or for no fee, part or the whole of the Contributions. Such rights are assigned for all purposes, globally, and for the maximum amount of time permitted by law. The Seller shall not receive any consideration other than the consideration expressed in this Agreement for such changes and this agreement shall act as that assignment.

The Seller represents and warrants that it fully owns or is legally authorized to assign these changes to the Customer. In particular, the Seller represents and warrants that the rights to the changes have not been transferred or assigned to a third party, either exclusively or non-exclusively, are not subject to any lien, pledge or other security, and that no other person or legal entity may claim any intellectual property right to the changes.

The Seller warrants to the Customer the peaceful enjoyment of the intellectual property rights on the changes and pledges not to compromise, prevent, or encumber the enjoyment by the Customer of such rights in any manner. In particular, the Seller represents and warrants that it has not submitted and will not make any patent submissions nor holds any patents pertaining to any part or the whole of the changes.

The Seller will indemnify and keep the Customer harmless against any claim or action that the changes, or any part thereof, infringe the intellectual property right of any third party, provided that:

- (i) The Customer is not, and never was, in breach of the license applicable to the Seller Software it uses; and
- (ii) The Customer promptly notifies the Seller of any such claim; and
- (iii) The alleged infringement is not the result of any action of the Customer or a third party.

In particular, the Seller will indemnify the Customer against judgments, awards, damages and costs, including court and arbitration costs and attorney fees, finally awarded on such claims.

2.7.2 New works and works of the Seller

The Seller or one of its affiliates shall remain the sole owner of all changes made to its software, qualification material, and documentation by its staff at the occasion of the activity, including when such changes are covered by the terms of a separate subscription, consulting, or special development agreement with the Seller or one of its affiliates. Unless agreed otherwise in the quote or the statement of work, the Seller or one of its affiliates shall also remain the sole owner of all new works created as part of this agreement.

Customer acknowledges that:

- (i) The Seller retains all rights to the changes made to its Software or to new works created as part of this agreement, in particular copyright, patent, and trademark rights; and
- (ii) these works may be included, in whole or part, in one or more product(s) and/or service(s) marketed or made available by Seller or any of its affiliates; and
- (iii) The Seller's pricing and agreement to perform the work is based on the above acknowledgements.

The Seller grants to the Customer the right to use those components of these works that are executable software, libraries, and source code deliverables under the terms of the "Customer License Agreement".

The Seller represents and warrants that it has the right to make these works available under the above terms. The Seller will hold the Customer harmless against any claim that the work infringes any copyright, patent, database or trade mark rights of any third party, provided that:

- (i) The Customer is not, and never was, in breach of the applicable license; and
- (ii) The Customer notifies promptly the Seller of any such claim; and
- (iii) The alleged infringement does not result exclusively from modifications to the works made by the Customer or third parties.

If these works are found to be infringing, the Seller will, at its sole option, either:

- (i) Procure for the Customer the right to continue using the works; or
- (ii) Replace, as soon as reasonably possible, the infringing works by a non-infringing work.

2.8 Confidentiality

All Support Contributors will hold any code and technical data sent by the Customer through a Support Request in confidence and will not disclose it to third parties other than other Support Contributors or to IT vendors providing computing, storage, or networking resources to Support Contributors in the ordinary course of their business ("IT Service Providers").

The Customer acknowledges that such code is filed in the Support Contributors' information systems for the purpose of delivering the Subscription and performing regression testing during and after the Subscription. This data may also be accessible to their IT Service Providers.

If a member of the staff of a Support Contributor, while working at a Customer site, gains access to any document or information of any kind, including business, commercial, financial, or technical data, not generally known to the public and pertaining to the Customer's activities, the Seller agrees that such will be kept in confidence and protected with the same degree of care as its own confidential information, or at least with reasonable care. The recipient will not disclose this information to any third parties. If any document or information being removed or transmitted from the Customer's site is to be treated as confidential, it must be identified as such, either orally or in writing, and may be disclosed to other Support Contributors and IT Service Providers.

The Seller will ensure that Support Contributors and their employees are bound by confidentiality terms compatible with the present clause and represents and warrants that they are able to fulfill all their obligations hereunder. The Seller will also ensure that it or any other Support Contributor has confidentiality agreements with IT Service Providers sufficient to protect any data received by such provider.

The obligations of the Seller contained in this section will continue notwithstanding the expiration or termination of the Subscription.

2.9 Privacy

For the purpose of this section, “Personal Data” has the same meaning as it does under the European regulation 2016/679 (“the GDPR”). “Controllers” here refers to the Seller and its Affiliates, which the Customer acknowledges are collectively a joint controller under the GDPR.

For the Purpose of delivering its Products and services, the Controllers collect Personal Data of persons affiliated with the Customer and may not be able to adequately provide their Products and services without having such data. The Controllers will process all such data in accordance with the requirements of the GDPR and any other applicable legislation regarding the protection of personal information (together, “the Privacy Laws”). The Controllers will unanimously agree on and implement appropriate technical and organizational measures and dedicate the required resources to both ensure and demonstrate that its processing is performed in accordance with both Privacy Laws and the Controllers’ Privacy Policy, accessible at <http://www.adacore.com/privacy>.

The Customer also acknowledges that the Controllers may use third-party data processors operating on their behalf and their control for part or all of its processing. The Controllers will ensure that such third parties also fulfill the requirements imposed by Privacy Laws.

3 Customer License Agreement

2023-04-30

These terms (this “License”) set forth the conditions under which software (“Licensed Software”), including any tools and libraries, whether in binary or source form, is provided to you (the “Customer”) as part of a purchase order (“Orders”) accepted by the company (the “Seller”).

3.1 Software License

Licensed Software is subject to terms of free software or open source licenses (FLOSS licenses) such as the GNU General Public License (GPL), the Apache 2.0 license, or alternative similar licenses (the “Underlying Licenses”).

Unless specified otherwise, library units are subject to additional permissions such as those contained in the GCC Runtime exception or the LLVM exception.

The specific license for each software component can be found with such component or in any software bills of material provided by the Seller.

Licensed Software is usually provided as part of a “Subscription”, which includes support services for a fixed term, or as part of a development contract. During the term of a Subscription or the warranty period of a development contract, the Seller represents and warrants to the Customer that:

- At the time it distributed the Licensed Software, it had the right to make such a distribution under these terms.
- The Customer has a non-exclusive, worldwide, royalty-free, perpetual license to use Licensed Software under the terms of the Underlying Licenses.
- Each Underlying License includes the following permissions:
 - The Customer may make any needed copies of Licensed Software for the use of engineers on the Customer’s project as well as for archival, backup or other similar purposes.

- The Customer can execute any copy of Licensed Software on any computing equipment used by its project. In particular, the Customer can execute any number of copies of Licensed Software on servers located on its premises or on the cloud, including as part of automated processes such as continuous integration pipelines.
- Neither Seller nor any third party impose any restrictions on the use of the Licensed Software library units that are linked with the Customer’s programs or on the use of programs generated by the Customer using the Seller’s software. The Customer may copy, modify, and distribute those programs in any manner without requiring any additional permission from the Seller or any other entity or payments thereto. In particular, such programs can be proprietary, secret, or classified. As an exception, this is also applicable to Rust library units provided that the conditions in Section 4 of the Apache 2.0 license are met.

3.2 Export Control of Licensed Software

The Seller represents and warrants that, as of the time of Order, all Licensed Software is classified as EAR99 or under a Commerce Control List Export Control Classification Number (ECCN) with No License Required (NLR) under the US Export Administration Regulations. The Seller maintains a list of the ECCNs applicable to each of its Products, which is made available to the Customer.

4 Documentary License

2023-05-23

These Licensing Terms (the “License”) set forth the terms under which the Seller grants a non-exclusive, worldwide, perpetual license for material delivered to the Customer under a Special Development contract.

4.1 Definition of the Material

Unless agreed otherwise, this license covers any deliverable provided by the Seller under a Special Development contract that qualifies as documentation, certification or qualification material (collectively the “Seller Material”).

This license does not apply to software deliverables, which are subject to the “*Customer License Agreement*”.

4.2 License

The Seller Material is licensed, under any of the following terms at the option of the Customer, or under alternative licensing conditions that can be found with such Material:

- (i) the GNU General Public License (GPL) version 3, or any later version published by the FSF, or
- (ii) the GNU Free Documentation License version 1.3, or any later license published by the FSF, or
- (iii) the Creative Commons Attribution, Share-Alike license, version 4.0, as published by the Creative Commons Foundation, or
- (iv) any other terms of the Customer’s choosing, provided that:
 - (a) the Seller Material is incorporated in whole or part in a document containing significant content other than such Seller Material; and
 - (b) an acknowledgement is made that parts of the document were produced by the Seller; and
 - (c) the Seller is not identified as author of the whole document; and
 - (d) warranty and liability disclaimers contained in the Seller Material are preserved;

- (e) such other terms, if they permit redistribution of this document to third parties, require that any further redistribution satisfies (b), (c), and (d) above.

The Seller represents and warrants to the Customer that it has the right to distribute the Seller Material under the terms in this License.