

## Terms Applicable to Special Developments and Certification Works

AdaCore

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# 1 AdaCore Special Development Terms and Conditions

2021-05-18

## 1.1 Scope

The following documents are applicable to any “work” specifically performed by AdaCore 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 AdaCore quote and any document attached thereto;
- (ii) The present “*AdaCore Special Terms and Conditions*”, inclusive of any document they refer to;
- (iii) The “*AdaCore 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 Party acknowledges that it has not relied on any representations or warranties except for those contained herein.

The works covered by these terms and conditions are divided into one or more deliverables, each of a specific kind such as executable software, libraries, source code, documentation, reports, coding standard or certification or qualification material.

## **1.2 Preliminary cooperation**

Before issuing a quote, AdaCore will make reasonable and good faith efforts to determine the Customer's needs and requirements for the work and the Customer will make reasonable and good faith efforts to make AdaCore aware of such needs and requirements.

Specifically, for certification or qualification material, AdaCore and the Customer will identify the certification standard, the safety level for which the material will be used, the Customer development environment, and the expected duration of the certification activities.

For special development, AdaCore and the Customer will identify the release branch to which the changes will apply.

The technical specification, delivery date, and individual prices of the deliverables are specified in AdaCore's quote or the attached Statement of Work.

## **1.3 Performance of the work**

### **1.3.1 Implementation**

In the performance of the work, AdaCore will employ personnel with appropriate professional qualification and skills, and use methods consistent with the state of the art in its business area.

AdaCore will keep the Customer informed on a regular basis of its progress and will inform the Customer diligently in case of any difficulty.

AdaCore will make reasonable effort to ensure that all deliverables comply with their specifications, as provided for hereunder. AdaCore will make reasonable effort in the preparation of reports and documentation.

### **1.3.2 Deliveries**

AdaCore will employ reasonable effort to make each deliverable available to the Customer on or before the delivery date.

Unless agreed otherwise, deliverables will be made available to the Customer using the GNAT Tracker web service.

Upon receipt of each deliverable, the Customer shall, within 10 business days, either:

- (i) Fully accept the deliverable; or
- (ii) Accept the deliverable with a list of deviations from the specification; or
- (iii) Reject the deliverable and state the reason for rejection.

In the absence of any notification of acceptance or rejection within the above 10-business-days period, the deliverable will be deemed fully accepted.

If a deliverable is accepted with a list of deviations, AdaCore and the Customer will mutually agree on a plan to correct those deviations, including a delivery date for the corrected deliverable(s), taking into account the then-current workload of AdaCore technical team and the complexity of the deviations being addressed. Acceptance of the corrected deliverable will be performed as above.

If a deliverable is rejected, AdaCore and the Customer will mutually agree on a plan to correct this deliverable. Such plan shall include delivery dates, and AdaCore shall make reasonable efforts to minimize the delivery delay.

Unless otherwise agreed, notifications of acceptance or rejection of deliveries must be made by the Customer using the reporting mechanism described in the "AdaCore Subscription Information" document.

### 1.3.3 Warranty Period

#### 1.3.3.1 Binary software, source code and technical documentation

Executable software, libraries, source code, and documentation have a warranty for the length specified in the quote or the Statement of Work (or 4 months, if they do not specify any), starting at the acceptance of the initial deliverable by the Customer, during which AdaCore will address problems, defined as differences between the specification and actual behavior of the deliverable, as follows:

- For each problem, AdaCore will make a reasonable effort to:
  - provide a workaround, which is a set of instructions describing how to circumvent a problem without changing the deliverable itself, or
  - if the deliverable is part of an AdaCore product, correct the issue in the next release, if any, of the agreed upon branch.
- For problems designated as high priority, AdaCore will make a reasonable effort to provide a corrected version of the deliverable as soon as practical.

#### 1.3.3.2 Certification or qualification material

Certification or qualification material have a warranty for the length specified in the quote (or 4 months, if they do not specify any), and starting at the acceptance of the initial deliverable by the Customer.

During the warranty period:

- AdaCore will make a reasonable effort to correct any problem identified in the artifacts that may endanger certification acceptance.
- if the Customer is supported on a GNAT Pro Assurance product for the AdaCore Software for which the certification or qualification material was prepared, and a fix to a critical bug in the certified or qualified AdaCore Software creates an inconsistency between the AdaCore Software and the certification or qualification material that may endanger certification acceptance, AdaCore will deliver a new version of the material resolving the inconsistency.

In both cases, AdaCore and the Customer shall agree on the delivery schedule of the corrected deliverables.

The warranty for any changes made during the warranty period ends at the end of that period.

#### 1.3.3.3 Reporting Issues

During the warranty period, the Customer will submit requests using the procedure described in the “AdaCore Subscription Information” document. An immediate email acknowledgment, containing a unique ticket number, will be automatically sent to the submitter. An AdaCore engineer will respond to such requests either by email or telephone no later than two business days following submission of the request.

### 1.3.4 Modification of the work

The Customer may notify AdaCore of its request for a change to the specifications and/or dates of some deliverables. If AdaCore accepts such change request without any change to the price, work on the remaining deliverable(s) will immediately proceed according to the accepted change request. Otherwise, AdaCore will either reject the change request or issue a new quote taking the change request into account. Work will proceed thereunder only after the Customer's acceptance thereof.

AdaCore will decide whether to accept the request and, if so, at what price, based on:

- (i) In AdaCore's sole opinion of:
  - (a) Its technical feasibility and, if applicable, consistency with development of AdaCore products and/or services and other business commitments of AdaCore; and
  - (b) human and material resources available at AdaCore; and
- (ii) Whether the work on a corresponding deliverable:
  - (a) has not started yet, or
  - (b) has started and the Customer agrees to pay for any work already performed that could not be reused when implementing the change request(s).

### 1.3.5 GNAT Tracker

"GNATtracker" provides a web interface for interaction between Users and AdaCore using industry-standard encryption for material sent in either direction. It permits:

- the downloading of software (including all Releases and deliverables under development contracts) to which the Customer is entitled and its associated documentation as soon as each is published;
- the sending of Support Requests;
- the review of and search for previous Support Requests; and

AdaCore will open the Customer's account on GNATtracker as soon as possible after receiving the Customer Information described below and will employ reasonable efforts to keep the GNATtracker service available at all times. GNAT Tracker credentials are strictly personal. The Customer, its employees, contractors, sub-contractors or any person acting on its behalf, must not disclose or share their GNATtracker credentials.

## 1.4 Payment

Prices in the quote are firm and fixed. The price of each deliverable is due upon acceptance thereof and payment shall be made according to "*AdaCore Terms and Conditions*".

## 1.5 Intellectual Property

### 1.5.1 Works of the Customer

The Customer shall be the sole owner of all changes made by AdaCore staff 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. AdaCore shall not receive any consideration other than the consideration expressed in this Agreement for such changes and this agreement shall act as that assignment.

AdaCore represents and warrants that it fully owns or is legally authorized to assign these changes to the Customer. In particular, AdaCore 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.

AdaCore 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, AdaCore 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.

AdaCore 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 AdaCore Software it uses; and
- (ii) The Customer promptly notifies AdaCore 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, AdaCore will indemnify the Customer against judgments, awards, damages and costs, including court and arbitration costs and attorney fees, finally awarded on such claims.

### **1.5.2 New works and works of AdaCore**

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

Customer acknowledges that:

- (i) AdaCore retains all rights to the changes made to AdaCore 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 AdaCore; and
- (iii) AdaCore's pricing and agreement to perform the work is based on the above acknowledgements.

AdaCore 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 "AdaCore Software License". The material listed in Appendix 1 ("*Qgen License Addendum*") is third-party material provided to the Customer by AdaCore under the terms contained in that Addendum. AdaCore grants to the Customer the right to use those components of these works that are technical documentation, reports, coding standards and certification or qualification material under the terms of the "AdaCore Documentary License".

AdaCore represents and warrants that it has the right to make these works available under the above terms. AdaCore 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 AdaCore 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, AdaCore 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.

## 1.6 Limitation of liability

The aggregate cumulative liability of AdaCore and the Customer in relation to the present work is limited to the total sum paid by the Customer hereunder. AdaCore represents, and the Customer acknowledges, that this clause is essential to AdaCore's consent to performing the work, and that the price of the work depends on this clause.

This limitation of liability does not apply to cases of:

- (i) Gross negligence; or
- (ii) Willful acts; or
- (iii) Wrongfully caused death or bodily injury.

This clause states the sole and exclusive remedy of the Customer with respect to such claims.

## 2 AdaCore Software License

2021-05-18

These AdaCore Licensing Terms (the "License") set forth the terms under which "AdaCore", provides the software Components made available to the Customer under any AdaCore Subscription.

### 2.1 Definition of the Software

This license covers any software Component supported by AdaCore as part of its Subscription, including any tools and libraries, whether in binary or source form. Such software is referred to in the remainder of this License as "AdaCore Software".

### 2.2 Software License

AdaCore Software is subject to terms of the GNU General Public License (GPL) or alternative similar licensing conditions that can be found with such Components. AdaCore Software library units are subject to the GPL and additional permissions that can be found with such Components. The Customer has a non-exclusive, worldwide, perpetual license to use AdaCore Software under the terms of such licenses.

During the period of a Subscription, AdaCore represents and warrants to the Customer that:

- AdaCore has the right to distribute AdaCore Software under the terms in this license.
- The Customer may make any needed copies of AdaCore Software for the use of engineers on the Customer's project, and any copies needed for archival, backup or other similar purposes.
- The Customer can execute any of the copies of AdaCore Software on any computing equipment used by its project. In particular, the Customer can execute any number of copies of AdaCore Software servers located on premises, on the Cloud, or as part of automated processes.
- There are no restrictions on the use of the AdaCore Software library units that are linked with the Customer's programs or on the use of Customer programs generated by AdaCore Software. The Customer may copy, modify and distribute those programs in any manner without requiring any additional permission from AdaCore, or payments thereto. In particular, such programs can be proprietary, secret, or classified.

- AdaCore will provide source code for the current version of AdaCore Software at no charge through its GNAT-tracker service.

## 2.3 Export Control

AdaCore represents and warrants that, as of the time of order, all products or deliveries made pursuant thereto are classified as EAR99 or under a Commerce Control List Export Control Classification Number with no license required (NLR) under the US Export Administration Regulations. AdaCore will provide on demand the Export Control Classification Number applicable to their products.

## 3 AdaCore Documentary License

2021-05-05

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

### 3.1 Definition of the Material

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

This license does not apply to software deliverables, which are subject to the “AdaCore Software License”.

### 3.2 License

AdaCore 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) AdaCore Material is incorporated in whole or part in a document containing significant content other than such AdaCore Material; and
  - (b) an acknowledgement is made that parts of the document were produced by AdaCore; and
  - (c) AdaCore is not identified as author of the whole document; and
  - (d) Warranty and liability disclaimers contained in AdaCore 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.

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



### **3.3 Export Control**

AdaCore represents and warrants that, as of the time of its quote, all products or deliverables are either classified as EAR99 or under a Commerce Control List (CCL) Export Control Classification Number (ECCN) with no license required (NLR) under the US Export Administration Regulations. If requested, AdaCore will provide the ECCNs applicable to its products.

## **4 AdaCore Terms and Conditions**

2021-05-03

### **4.1 Scope**

These Terms and Conditions are applicable to all purchase orders issued to the AdaCore legal entity you are doing business with (“AdaCore”) as specified on AdaCore’s quote, for a product and/or service item (the “Item”) provided by AdaCore, except where these Terms and Conditions are modified or amended by specific terms and conditions applicable to the Item, or by AdaCore’s quote.

### **4.2 Resellers**

A “Reseller” may purchase one or more Items for use by the “Customer”. The Reseller will provide to AdaCore a contact person at the Customer to 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 that it 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 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 acting as above.

### **4.3 Ordering**

This Quote is valid for the validity period stated within and must be referenced by the Buyer’s Purchase Order. Sending of the Order implies acceptance of these Terms and Conditions, of specific terms and conditions applicable to the Item, and of any condition set forth within the Quote. In particular, both the Customer or Reseller waive their right to assert terms or conditions that contradict those specified in Buyer’s Order.

### **4.4 Payment**

Any payment made to AdaCore must be made in the currency specified in the quote, unless otherwise mutually agreed in writing. Payment must be made by the Buyer within thirty (30) days from the date of the invoice, by check or bank transfer to AdaCore’s bank account.

Notwithstanding any other existing legal remedy, in the event of the default by the Buyer to pay the Price within this period, an annual 12% penalty rate can be applied forthwith.

AdaCore will also be entitled to obtain reasonable compensation from the Buyer for any recovery costs incurred due to the Buyer’s late payment. If you are doing business with AdaCore SAS, this compensation will be no smaller than a fixed sum of 40 euros.

AdaCore may also suspend forthwith the delivery of the Item to the Customer.

## 4.5 Governing Law and Jurisdiction

The present contract is subject to the laws of:

- the state of New York, if you are doing business with Ada Core Technologies Inc.;
- England and Wales if you are doing business with AdaCore Ltd.;
- France, if you are doing business with AdaCore SAS or any other AdaCore 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 you are doing business with Ada Core Technologies Inc.;
- London (United Kingdom), if you are doing business with AdaCore Ltd.;
- Paris (France), if you are doing business with AdaCore SAS or any other AdaCore entity;

## 4.6 Limitation of Liability

THE AGGREGATE CUMULATIVE LIABILITY OF ADACORE UNDER THE PRESENT AGREEMENT FOR ANY BREACH OF ITS OBLIGATIONS HEREUNDER IS LIMITED TO THE PRICE PAID BY THE BUYER FOR THE ITEM. BECAUSE OF THE PURPOSE OF BETA SOFTWARE AND CONTINUOUS RELEASES, ADACORE EXPLICITLY DISCLAIMS ANY LIABILITY WHATSOEVER REGARDING 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.

## 4.7 Confidentiality and Privacy

AdaCore will handle any code sent by the Customer during the delivery of an Item in accordance with the description of services for that item. In addition, Customer acknowledges that such code is filed in AdaCore's information system for the purpose of delivering the Item and for performing regression testing during and after the delivery, and accessible by the IT providers used by AdaCore in the normal course of its business, under its control and responsibility.

Information exchanged between AdaCore and Customers of the GNAT Developer Product Line will be available to other GNAT Developer Customers and may be made available to the public. AdaCore will use all other information exchanged with Customers only during the delivery of the Item for the purpose of delivering the Item and providing commercial information to the User. AdaCore may share such information with partner companies to answer specific requests pertaining to the products or services of such companies. Customer acknowledges that this information is filed in AdaCore's information system for the above purposes.

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

For the Purpose of delivering its products and services, AdaCore collects Personal Data of persons affiliated with the Customer ("Customer Personal Data") and may not be able to adequately provide its products and services without having such data. AdaCore will process all Customer Personal Data in accordance with the requirements of the GDPR and any other applicable legislation regarding the protection of personal information (together, "the Privacy Laws"). All related AdaCore companies 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 AdaCore Privacy Policy accessible at <http://www.adacore.com/privacy>.

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

Any Customer 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 shall not be sent using GNATracker or e-mail. Specific guidance can be obtained through a Support Request.

The obligations of AdaCore contained in this section will continue notwithstanding fulfilment of the order.

## **4.8 Miscellaneous**

### **4.8.1 Language**

The language to be used for technical correspondence is English.

### **4.8.2 Default by the Customer**

If the Customer or Reseller default in the performance of its obligations, AdaCore may immediately terminate any Subscriptions or contracts in this order without refund, notwithstanding any other possible remedies. However, if the default is cured by the defaulting party within fifteen (15) days of notification of such default, such Subscriptions or contracts will continue.

### **4.8.3 Force Majeure**

None of the Parties shall be liable to the other in respect of anything which may constitute a breach of its obligations arising by reason of force majeure. If such circumstances last for more than three (3) months, any subscription or contract in this Order may be terminated by either Party. In this case, AdaCore shall refund the Buyer part of the Price, in proportion of the costs incurred by AdaCore (i.e. refund for a Subscription will be equal to the Subscription Charge prorated to the time left in the Subscription).

### **4.8.4 Severability**

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

### **4.8.5 Interpretation**

These Terms and Conditions must be interpreted in combination with the quote and the specific terms and conditions applicable to the Item.

#### **4.9 Exclusion of Trade Marks License**

Nothing in this Order shall be construed as granting to the Customer or Reseller a license to use the GNAT Pro trademark, or any other trademark owned by AdaCore or any third Party.