

## Description and Terms Applicable to Subscriptions

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 Description of Subscription Services**

2023-08-09

### **2.1 Scope**

This document describes the services, referred to as a “Subscription”, provided to you (“the Customer”) by 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”). Each Subscription provides support:

- during a specified “Term”;
- for a specified set of the Seller’s “Products”, each identified by a unique part number;
- to a specified maximum number of Supported Users (as defined below);
- with all Supported Users based in the specified “Geographical Area”.

This information will be specified in a quote, an invoice, an evaluation plan, or other document sent by the Seller to the Customer or the Reseller (the “Subscription Information”). When the Seller creates a Subscription, it sends an acknowledgement containing the number of Supported Users, the starting and ending dates, and the set of supported Products.

## 2.2 Products, Releases, Users, and Support

Each Product is a development or verification tool or library, usually for a specific programming language, that executes on a specific type of host computer and generates or processes code for a specific type of target computer (which may or may not be the same as the host computer). Each Product consists of one or more software components, each of which is licensed under the terms of the “Customer License Agreement”. Each Product is part of a “Product Line”; the services provided for the “Enterprise” and “Assurance” Product Lines are described here. A Subscription only includes support for the Products included in that Subscription.

### 2.2.1 Releases, Branches, and Support Statuses

A “Release” is a version of a Product made available to Customers with Subscriptions to that Product. A “Branch” is a set of successive versions of software, which usually consists of:

- a “Preview Release”; and
- an “Initial Release”; and
- one or more “Follow-up Releases”.

Temporary Releases, referred to as “Wavefront(s)”, can be sent to a Customer to provide a correction to one or more Problem Reports or to provide access to new features. Some Preview Releases and some Wavefronts are made available to Customers as “Continuous Releases”.

Unless a Branch is designated as a “Sustained Branch”, Follow-up Release(s) will only occur within that Branch until the Initial Release of the next Branch for that Product. Any Release after that time is only available to the Seller’s Assurance Product Line Customers who have purchased support for that Branch.

A Product’s development status is either:

- “Active”, meaning that all the above types of Releases are produced;
- “Long Term Support”, meaning only Follow-up Releases and Wavefronts are produced; or
- “Baselined”, meaning no Releases are produced.

The Subscription Information identifies any Product’s Long Term Support or Baselined status. The Seller may change the status of a Product at any time.

### 2.2.2 Supported Releases

At any given time, the following Releases are “Supported”:

- Releases published during the Term of the Subscription; or
- A Release for which support is specifically included in the Subscription; or
- Releases which were Supported under a previous Subscription, provided the Subscription for that Product has been renewed without interruption; or
- Wavefronts sent to a Customer and Continuous Releases, but only until the next Initial Release of that product on the same Branch as the Wavefront.

### 2.2.3 Supported Users and Support Requests

Supported Users are those who use Products for software development purposes. Supported Users of a Product are all Supported Users of any of the Components included in such Products. Supported Users of Components are all individuals who, for software development purposes, do one of the following:

- for library Components: write code calling the library;
- for compiler, debugger, and IDE Components:
  - interact with the Component, or
  - write code that is input to the Component and check for and/or use any non-binary information contained in the output of the Component.
- for analysis Components: use the information contained in the output of the Component.

A “Support Request” is a request by a Supported User to:

- obtain advice on general software development for a programming language that is part of the Subscription or ask a question about the use of a Supported Release (together, a “Question”);
- report differences between the documented and actual behavior of a Supported Release (a “Problem Report”);
- suggest improvements to existing features or suggest new features in a Product (an “Enhancement Request”); or
- obtain an impact analysis for each change that has been made to a verification tool Product in the Assurance Product Line, including a description of the differences in test results and a description of the feature(s) affected by the change.
- adding or removing Supported Users to the Support Site, or granting and denying access rights to Supported Users on the Support Site.

“Transitive Support”, the transmission of Support Requests on behalf of, or for the benefit of, persons other than the Customer’s Supported Users, is prohibited.

## 2.3 Services Provided by Seller

### 2.3.1 Seller Support Site

The Seller provides support services to Supported Users via access to a web interface (the “Seller Support Site”) that uses industry-standard encryption and permits:

- downloading software (including all Supported Releases and deliverables under development contracts) and its associated documentation, when published; and
- sending Support Requests; and
- reviewing and searching previous Support Requests.

The Seller will open the Customer’s account on the Seller Support Site as soon as possible after receiving the Customer Information described below, will provide credentials for each of the Customer’s Supported Users, and will employ reasonable efforts to keep the service available at all times. The provided credentials are strictly personal: the Customer and each of its employees, contractors, sub-contractors or any other person acting on its behalf must not disclose or share their credentials for the Seller Support Site to any other person, even if such person is another employee, contractor, or subcontractor of the Customer.

The Customer agrees to use the Seller Support Site either only manually or using tools that produce no more requests than manual usage, not to access it for purposes of developing similar services, not to reverse engineer it, and not to remove or modify a copyright or other proprietary rights notice in it. The Customer additionally agrees not to use it in

violation of the law (including export or intellectual property law) or to use it to create, use, send, store, or run harmful computer code or engage in a malicious act or disrupt its security, integrity, or operation.

The Customer agrees to indemnify, defend, and hold harmless all Support Contributors 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 above.

### 2.3.2 Handling of Support Requests

During the Term of the Subscription, each Supported User can send an unlimited number of Support Requests by using the procedure described in the Subscription Information document. An email acknowledgement, containing a unique ticket number, is automatically sent to the submitter. An engineer will respond to a Support Request no later than two business days following submission of the request.

For each Problem Report on a Supported Release, the Seller will undertake a reasonable effort to:

- provide a "Workaround", a set of instructions describing how to circumvent a problem without changing the Product itself; or
- correct the issue in the next Release of the Product if it is in Active Development.

Problem reports can be designated by the Customer as "high", "medium" or "low" priority. The Customer can also report a Problem Report as "critical" if it:

- pertains to a development tool or library and involves an error or vulnerability that can produce, or can be exploited to produce, erroneous or incorrect code execution; or
- pertains to a verification tool and involves the tool failing to detect a problem; or
- prevents the evidence produced for either certification or demonstration of application integrity from being used for such a purpose.

For "critical" and "high" Problem Reports pertaining to Products which are not Baselined and for which no acceptable Workaround is found, the Seller will undertake a reasonable effort to provide a Wavefront to correct the problem as soon as possible. For Enterprise Customers, this Wavefront is based on the latest technology. For Assurance Customers on a Sustained Branch, the Customer can request either a Wavefront based on the Sustained Branch or a new Follow-up Release on that Branch.

For "critical" Problem Reports by Assurance Customers, the Seller will undertake a reasonable effort to, at its option, provide one of the above solutions or:

- provide a way to detect the Problem; or
- provide an analysis demonstrating the Problem is unlikely to occur.

Customers may also make "Enhancement Requests". The Seller will analyze each Enhancement Request and evaluate the possibility of introducing the requested feature in future Releases. However, the Seller shall be under no obligation to consider, implement, or schedule for inclusion any Enhancement Request.

The Seller encourages users of Continuous Releases to send feedback on their use of such Releases.

## 2.4 Other Obligations of the Customer

A Customer representative must provide the “Customer Information”, which contains the names and email addresses of the initial set of Supported Users. The request for this information is contained in a form applicable to the Customer’s Subscription. This form must be completed, signed, and returned to the Seller. The Seller will not open a Subscription until it has received and approved the Customer Information. The Customer is responsible for keeping the Seller informed of the current list of Supported Users, each of whom has access to the Seller Support Site. If a Supported User is permanently assigned to another project or on temporary leave from the Customer, the Customer may replace that individual at any time. Other Supported Users may only be replaced once a year or by prior permission of the Seller.

A Subscription covers a maximum number of Supported Users. If, at any point, the total number exceeds that maximum or if the Customer needs to add Supported Users based outside of the Geographical Area applicable to the Subscription, the Customer must upgrade its Subscription as instructed by the Seller.

## 2.5 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.

## 2.6 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.

## 2.7 Export Control of Customer Material

Any Customer material that requires a license under the Export Administration Regulations (EAR) of the US Bureau of Industry Standards (BIS) or regulation (EU) 2021/821 of 20 May 2021, is covered by the US Munitions List (ITAR), restricted under any other similar export-control regulations for military or dual-use goods, or is any other form of Controlled Unclassified Information shall not be sent using the Seller Support Site or e-mail. Specific guidance on how to transmit such information can be obtained through a Support Request.

## 2.8 Modifications

Extensions to the Term of a Subscription, increases in the number of Supported Users, changes to the locations where Supported Users are based (if outside the specified geographical area), and changes to the supported Products must be mutually-agreed to in writing. When applicable, the Seller will send the Customer an updated Subscription Information document corresponding to those changes.

# 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.