

## Aagon GTC

The following General Terms and Conditions ("GTC") apply to all contracts concluded between Aagon GmbH ("Aagon") and you as a customer ("Customer") (collectively also referred to as the "parties") for the delivery of software for permanent use ("software purchase", section II.) or temporary use ("software rental", section III.) as well as for the provision of update and support services ("update and support services", section IV.) and other services ("other services", section V.) by Aagon.

### I. General

1. Conclusion of contract, trial software, deadlines, minimum requirements for the system environment
  - 1.1. Unless otherwise stated in the offer, Customer and Aagon shall be bound to offers for two weeks.
  - 1.2. Customer has the option of using a functionally unrestricted trial version of the software, including access to the online manual, for trial purposes for an unlimited period of time. Productive use of the trial version is not permitted. Customer must confirm the EULA before starting the trial use. The EULA shall also continue to apply if Customer converts the trial installation into a productive version without reinstallation by concluding a licence agreement in accordance with these GTC. Aagon is under no obligation to provide any functionality of the software that goes beyond the functional scope of the trial version. Customer itself is responsible for checking whether the software is suitable for the intended use.
  - 1.3. If a reasonable deadline is to be set to Aagon or Customer, this shall be at least two weeks.
  - 1.4. Aagon publishes the minimum system requirements for using the software on its website.
2. Customer's (cooperation) obligations
  - 2.1. Customer shall provide Aagon with the best possible support and assistance in the provision of any services, including, without limitation, maintenance and support services. Customer shall provide Aagon with the knowledge necessary for the fulfilment of the contract, including, without limitation, information about the network structure at Customer's premises and the software environment conditions, and shall notify Aagon of any occurring changes.
  - 2.2. Customer shall use the latest software version provided to it, including updates and upgrades, unless such use involves unreasonable effort for Customer. Customer can send Aagon a request for extended maintenance or paid support.
  - 2.3. Customer shall name a maximum of two sufficiently qualified employees as technical contact persons to Aagon to ensure in particular the efficient provision of maintenance and support services. As regards maintenance and support services in particular (but

without limitation), Aagon is only obliged to render them to the contact persons named by Customer. Customer shall notify Aagon of any changes to the contact persons in good time.

- 2.4. Customer is responsible for ensuring that data are backed up in accordance with the state of the art, in particular (without limitation) before installing updates or upgrades and before carrying out troubleshooting, debugging or other work to rectify faults.
- 2.5. Customer shall not use Aagon's services and software in high-risk areas. This excludes in particular, without limitation, the use for the operation of nuclear power facilities, navigation and communication facilities of air traffic, direct life support systems or weapon systems as well as the use in safety-critical areas in which the failure of the software could lead directly or indirectly to the death or injury of people or to serious environmental or other physical damage.

### 3. Remuneration and terms of payment

- 3.1. The remuneration shall be as agreed between the parties.
- 3.2. The remuneration is subject to the applicable statutory value added tax, which must be paid on top.
- 3.3. Unless expressly agreed otherwise, invoices shall be paid by Customer within 14 days of invoicing and delivery/service provision, without deduction. Upon expiry of this payment period, Customer shall be deemed in default (*Verzug*).
- 3.4. Aagon has the right to adjust the prices to be paid to the development of the costs that are decisive for the price calculation at its reasonable discretion. Prices may be increased or reduced if, for example, labour costs, energy costs, rental costs or licence costs for the tools and operating systems used by Aagon increase or decrease. Increases in one type of cost, e.g. labour costs, may only be invoked for a price increase to the extent that they are not offset by any decreases in costs in other areas, such as energy costs. In the event of cost reductions, e.g. licence costs, Aagon shall reduce its prices if and to the extent that these cost reductions are not fully or partially offset by increases in other areas. When exercising its reasonable discretion, Aagon shall determine the respective points in time of a price change in such a way that cost reductions are not taken into account under circumstances and on conditions that are less favourable for Customer than in the case of cost increases, i.e. cost reductions shall become effective at least to the same extent as cost increases.

### 4. Liability for damages

- 4.1. Aagon has unlimited liability
  - a) in the event of intentional or grossly negligent misconduct;
  - b) for injury to life, limb or health;
  - c) under the provisions of the German Product Liability Act (Produkthaftungsgesetz);
  - d) if and to the extent that an express warranty or a guarantee has been given;
  - e) for the breach of an essential contractual duty (*wesentliche Vertragspflicht*, i.e. a duty the fulfilment of which is indispensable for the proper execution of the contract and

on compliance with which the contractual partner usually relies and is reasonably allowed to rely, so-called "Kardinalpflicht"), which shall however be limited to compensation for foreseeable, typically occurring damage and to an amount of EUR 500,000.00.

- 4.2. Any further liability of Aagon is excluded.
- 4.3. The above liability regulations shall also apply to the personal liability of Aagon's employees, representatives and executive bodies (*Organe*).
- 5. Confidentiality
  - 5.1. Customer is obliged to keep Aagon's confidential information strictly and absolutely secret and to protect it through appropriate technical and organisational measures. This obligation shall continue for a period of two years after termination of the contractual relationship.
  - 5.2. The confidentiality obligation shall not apply to confidential information
    - a) which was demonstrably already known to Customer when the contract was concluded or which subsequently becomes known to Customer from a third party without breaching a confidentiality agreement or statutory provisions or official orders;
    - b) which is publicly known at the time of conclusion of the contract or is made public thereafter, unless this is due to a breach of the contract;
    - c) which must be disclosed due to legal obligations or by order of a court or an authority. As far as permissible and possible, Customer who is obliged to disclose the information shall notify Aagon in advance and give Aagon the opportunity to take action against the disclosure.
  - 5.3. Customer shall only grant access to confidential information to consultants who are bound to professional secrecy or who have previously been committed to confidentiality obligations identical to those agreed in the contract. Furthermore, Customer shall only disclose the confidential information to those employees who need to know it for the execution of the contract and shall also oblige these employees to maintain confidentiality even for the period after their departure, if and to the extent this is permitted by labour law.
  - 5.4. Any culpable (i.e. intentional or negligent) breach of the above confidentiality obligations will result in an appropriate contractual penalty to be determined by Aagon, the amount of which, if in dispute, is to be reviewed by the competent court. Further claims of Aagon remain unaffected.
- 6. Non-solicitation
  - 6.1. Customer shall refrain from directly or indirectly soliciting employees from Aagon.
  - 6.2. Solicitation shall be understood as influencing an employee bound by an employment contract with the aim of persuading them to change jobs.
  - 6.3. In each single case of a culpable (i.e. intentional or negligent) breach of this obligation, Aagon shall be entitled to claim from Customer a contractual penalty of up to one year's

salary of the solicited employee, which is to be reviewed for its appropriateness by the competent court at Customer's request, unless Customer proves that it did not solicit the employee from Aagon.

- 6.4. The assertion of other claims, including, without limitation, cease-and-desist claims, claims for injunctive relief and claims for damages, shall remain unaffected thereby.

## 7. Open Source

- 7.1. The software may contain open source and third-party components.

- 7.2. Aagon ensures that the licence terms applicable to these components are complied with and passed on to Customer.

## 8. Miscellaneous

- 8.1. These GTC shall also apply to all future contracts between Aagon and Customer, even if they are not expressly referred to again.

- 8.2. Customer may only assign its rights and obligations arising from or in connection with the contract to third parties with the prior written consent of Aagon.

- 8.3. Offsetting shall only be permitted if the respective counterclaims are undisputed or have become *res judicata*.

- 8.4. Changes, amendments and additions to these GTC and all contractual provisions between Aagon and Customer must be made in text form (*Textform* acc. to § 126b of the German Civil Code – BGB). This shall also apply in the event of a change or amendment to, or waiver of this requirement. However, in any case, individual agreements shall take precedence.

- 8.5. Customer's GTC do not apply. This shall also apply if Aagon accepts an order from Customer in which Customer refers to its GTC and/or to which Customer's GTC are attached and Aagon does not reject them.

- 8.6. These GTC and the contractual relationship between Aagon and Customer shall be governed exclusively by German law, subject to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (UN Sales Convention).

- 8.7. The parties are aware that the software may be subject to export or import restrictions. In particular, there may be authorisation requirements or the use of the software or associated technologies abroad may be subject to restrictions. Customer shall comply with the applicable export and import control regulations of the Federal Republic of Germany, the European Union and the United States of America, and with all other applicable regulations. The performance of the contract by Aagon shall be subject to the proviso that there are no obstacles to contract performance due to national or international regulations of export and import law and no other legal regulations preventing contract performance.

- 8.8. The place of performance (*Erfüllungsort*) and exclusive place of jurisdiction is the registered office of Aagon.

- 8.9. Should individual provisions of these GTC be invalid, this shall not affect the validity of the remaining provisions. The parties shall endeavour to replace the invalid provision with a provision that most closely reflects the legal and economic purpose of the contract.

## II. GTC for software purchase

1. Subject matter of the contract
  - 1.1. It shall only be possible to conclude a software purchase contract if an update and support contract (section IV.) for the purchased software with a minimum term of 12 months is concluded at the same time.
  - 1.2. If the update and support contract for the purchased software was terminated or not extended and Customer later decides to conclude an update and support contract again, Customer shall first pay an amount of 50% of the software list price for the update/upgrade to the then current version and at the same time conclude a new update and support contract with a new minimum term.
  - 1.3. The purpose of the contract is the permanent provision of software for use in object code form and the granting of the rights described below in return for payment of the agreed remuneration.
2. Grant of rights, licence key
  - 2.1 Subject to the condition precedent of full payment of the agreed purchase price, Aagon grants Customer a non-exclusive, temporally and territorially unlimited right to use the purchased software.
  - 2.2 Customer receives an identification key for each of its Aagon servers. Customer's server(s) connect(s) to Aagon's licence server, which activates the modules or deactivates them when the right of use expires (due to termination of the update and support contract). The software regularly (once a day) checks the validity of the licence by querying the Aagon licence server. Customer is obliged to use the software on a system that can reach Aagon's licence server via the Internet. The software loses its operability if it cannot reach Aagon's licence server for more than 30 days.
  - 2.3 Customer is not entitled to lease, sub-license, communicate or reproduce the software by wire or wireless means, make it publicly accessible or make it available to third parties in any other way. Third parties in this sense do not include employees of Customer and persons engaged by Customer to ensure the intended use.
  - 2.4 Customer is entitled to permanently transfer the purchased copy of the software, including the documentation, to a third party, adhering to the scope of rights granted hereunder. In this case, Customer undertakes to give up the use of the software completely upon conclusion of the contract and to delete all copies of the software, unless Customer is obliged to keep them for a longer period of time. Aagon is entitled to demand information from Customer about the implementation of the measures to be carried out under the previous sentence. A splitting of purchased licence volume

packages is not permitted. If Aagon becomes aware that a licence key is being used for more than one installation at the same time, Aagon shall be entitled to deactivate the licence key. The software thereby loses its operability. The update and support contract cannot be transferred to the third party, but must be newly concluded with Aagon by the third party.

- 2.5 Customer is only entitled to decompile, copy or reproduce the contract software if this is provided for by law. However, this shall only apply on the condition that Aagon has not made the information necessary for this available to Customer upon request within a reasonable period of time.
- 2.6 If Customer uses the software to an extent that exceeds the purchased rights of use in terms of quality (as regards the type of use permitted) or in terms of quantity (as regards the number of licences purchased), Customer shall purchase the rights of use necessary for the permitted use without undue delay (*unverzüglich*). If Customer fails to do so, Aagon will assert the rights to which it is entitled.
- 2.7 Copyright notices, serial numbers and other features intended to identify the programme must not be altered or removed from the software.

### 3. Warranty

- 3.1. Aagon warrants the agreed quality and that Customer can use the software without infringing the rights of third parties. The warranty for defects in quality does not apply to defects that are due to the fact that the software is used in a hardware or software environment that does not meet the requirements specified by Aagon or in the case that Customer has changed or modified the software without being authorised to do so by law, the contract or on the basis of prior consent (in text form) by Aagon.
- 3.2. Customer must check the software for obvious defects without undue delay (*unverzüglich*) after receipt and report any such defects to Aagon without undue delay (*unverzüglich*); otherwise the warranty for these defects is excluded. This applies accordingly if such a defect becomes apparent later. § 377 of the German Commercial Code (HGB) applies.
- 3.3. In the event of a defect in quality, Aagon shall initially be entitled to provide subsequent performance, i.e. at its sole discretion to either remedy the defect (subsequent rectification – *Nachbesserung*) or deliver a replacement (replacement delivery – *Ersatzlieferung*). In the case of replacement delivery, Customer shall, if necessary, accept a new version of the software, unless this involves unreasonable impairments. In the event of a defect in title, Aagon shall, at its sole discretion, either enable Customer to use the software in a legally compliant manner or modify the software in such a way that no rights of third parties are infringed.
- 3.4. Aagon is entitled to render the warranty services either at Customer's premises or via remote maintenance. Aagon shall also be deemed to duly fulfil its obligation to rectify defects by making updates with an automatic installation routine available online and offering Customer support in solving any installation problems that may occur.



- 3.5. Customer's right, at its discretion, to either reduce the purchase price (*Minderung*) or withdraw from the contract (*Rücktritt*) in the event that the defect rectification or replacement delivery has failed twice remains unaffected. There is no right of withdrawal from the contract in the case of insignificant defects.
- 3.6. All warranty claims for defects in quality other than claims for damages are subject to a limitation period of one year. The limitation period begins with the activation of the modules by Aagon.
- 3.7. In the absence of a current update and support contract, Customer shall not be entitled to support services and new programme versions beyond the statutory warranty.
- 4. Right of audit
  - 4.1. Customer shall take suitable measures to protect the software and, where applicable, the access data for online access from access by unauthorised third parties. In particular, all copies of the software and the access data must be kept in a secure place.
  - 4.2. At Aagon's request, Customer shall enable Aagon to check the proper use of the software, which shall include, without limitation, the right to check whether Customer uses the programme within the limits of the licences purchased by it both in terms of quality and quantity. For this purpose, Customer shall provide Aagon with information, grant Aagon access to relevant documents and records and enable Aagon or an auditing company designated by Aagon and acceptable to Customer to carry out an audit of the hardware and software environment used. Aagon may carry out the audit at Customer's premises during Customer's regular business hours or have it carried out by third parties bound to secrecy. Aagon will ensure that Customer's business operations are disturbed as little as possible by its on-site activities. If the audit reveals that the number of licences purchased has been exceeded or that the software is being used in any other way contrary to the contract, Customer shall bear the costs of the audit; otherwise the costs shall be borne by Aagon. All other rights are reserved.

### III. GTC for software rental

- 1. Subject matter of the contract
  - 1.1. The purpose of the software rental contract is the temporary provision of the software for the term of the contract, together with the granting of the rights required for its use in accordance with the contract, in return for payment of the agreed rent in accordance with these GTC.
  - 1.2. The number of the rental software licences shall be agreed between the parties.
  - 1.3. Installation, configuration and customisation services are not included in the software rental contract, but can be agreed separately between the parties as a service.
- 2. Grant of rights, licence key
  - 2.1. Subject to the condition precedent of full payment of the agreed rent, Aagon grants Customer a non-exclusive, non-transferable and non-sublicensable right to use the

rented software, temporally limited to the term of the contract and unlimited in territory. The grant of the rights of use is subject to the condition subsequent that Customer does not enable the required check of the validity of the licence key in accordance with the following paragraph.

- 2.2. Customer receives an identification key for each of its Aagon servers. Customer's server(s) connect(s) to Aagon's licence server, which activates the modules or deactivates them when the right of use expires. The software regularly (once a day) checks the validity of the licence by querying the Aagon licence server. Customer is obliged to use the software on a system that can reach Aagon's licence server via the Internet. After the right of use has expired, the software can no longer be installed and operated by Customer. The software also loses its operability if it cannot reach Aagon's licence server for more than 30 days.
- 2.3. In addition, Customer is only entitled to reproduce, copy, adapt, edit or decompile the software if this is permitted by law and only if Aagon has not made the information necessary for this available to Customer upon request.
- 2.4. If Customer is in breach of any of the foregoing provisions, all rights of use granted under the contract shall become immediately ineffective and automatically revert to Aagon. In this case, Customer must immediately and completely stop using the software, delete all copies of the software installed on its systems and delete any backup copies made or hand them over to Aagon. In this case, Aagon shall also be entitled to deactivate the software.

### 3. Rent

- 3.1. Customer is obliged to pay the agreed rent for the provision of the software.
- 3.2. Unless otherwise agreed, the rent owed by Customer shall be paid in advance for one year at a time.

### 4. Due diligence obligations of Customer

- 4.1. Customer is obliged to take suitable measures to ensure that unauthorised third parties cannot access the software, the documentation and other accompanying materials supplied.
- 4.2. In particular, Customer is obliged to keep all existing copies of the software and all associated documentation in a secure place protected from unauthorised access by third parties.

### 5. Warranty

- 5.1. Aagon warrants that the contractually agreed quality of the software will be maintained during the term of the contract and that no rights of third parties conflict with the contractually agreed use of the software.
- 5.2. Customer must report any defects discovered in the software or documentation to Aagon at least in text form without undue delay (*unverzüglich*).



- 5.3. Aagon is obliged to remedy the reported defects in the software and the documentation within a reasonable period of time. As to the remedy of defects, Aagon has the right to choose at its sole discretion either subsequent defect rectification (*Nachbesserung*) or replacement delivery (*Ersatzlieferung*). Aagon is also entitled to provide a workaround that avoids the defect if remedy of the defect is only possible with disproportionate effort.
- 5.4. Customer must provide Aagon with the necessary access to the software and the documentation - also by means of remote maintenance - for the purpose of remedying the defect.
- 5.5. Aagon is not obliged to adapt the software to changed operating conditions and technical and functional developments (e.g. in the case of changes to the hardware or the operating system). Customer can receive such updates or upgrades for a separate fee.
- 5.6. Strict (no-fault) liability for defects existing at contract conclusion according to § 536a subs. 1 of the German Civil Code (BGB) is excluded.
- 6. Term, termination
  - 6.1. The software rental contract is concluded for one year. It is extended by one additional year at a time if it has not been terminated beforehand by either party giving three months' notice, effective as of the end of the respective term. Termination may also relate to individual modules only. Different terms and notice periods can be agreed individually.
  - 6.2. In addition, either party can terminate the software rental contract in writing for cause without observing a notice period. Cause that entitles Aagon to terminate the contract shall include, without limitation, the case that Customer violates the rights of use by using the software beyond the extent permitted by the contract and fails to discontinue the violation within a reasonable period of time after receiving a warning from Aagon.
  - 6.3. Notice of termination must be given in text form.
- 7. Return and deletion
  - 7.1. After termination of the rental relationship, Customer shall stop using the software and delete or return to Aagon the software as well as all programme copies and all documentation, materials and other documents provided to Customer. In particular, Customer shall completely and irrevocably delete all installed programme copies and any stored documentation from all its IT systems and furnish proof thereof to Aagon upon request.
  - 7.2. Any use of the software after the end of the rental relationship is impermissible. If Customer uses the software beyond the end of the rental relationship, Customer shall be obliged to pay compensation for use in the amount of the previously agreed rent.

#### IV. GTC for update and support services

- 1. Subject matter of the contract

- 1.1. Under the update and support contract, Aagon provides services that are necessary to maintain and restore the readiness for operation of the software in its respective current version ("support"), as well as updates and enhancements to the software ("update").
- 1.2. The following services are excluded from support:
  - a) Elimination of faults/damage which are caused by an intervention by Customer or third parties or in connection with such interventions; which are attributable to the use of system requirements other than those approved by Aagon; or which are caused by non-compliance with installation instructions for system components or for devices or by improper handling or operation for which Aagon is not responsible (*nicht zu vertreten haben*).
  - b) Software that has been modified by programming work carried out by Customer and programme parts that are not part of the original version of the software or whose function depends on other programmes.
  - c) Software that is not used under the operating conditions specified by Aagon.
  - d) Versions that are older than the current programme version.
- 1.3. Aagon offers the following additional services in accordance with section V. of these GTC based on a separate order and against separate remuneration:
  - a) Support in the rectification of damage that is attributable to one of the cases listed in the foregoing paragraph 1.2;
  - b) Installation and/or implementation of updates or upgrades to the software;
  - c) Creation and support in the creation of client commands and reports;
  - d) Instruction and training of employees;
  - e) Customisation of the software according to Customer's wishes;
  - f) On-site service at Customer's premises.
2. Support
  - 2.1. Aagon will eliminate software errors that occur during the term of the update and support contract in accordance with the following provisions.
  - 2.2. Aagon is entitled to provide the support services by means of remote maintenance or remote diagnosis, provided that this does not represent a disadvantage for Customer, in particular if this does not exceed the time required for the provision of the corresponding support service on site, if there are no risks for IT security and the technical requirements at Customer are met.
  - 2.3. Aagon will publish the service hours and contact channels for support on its website.
3. Update/Upgrade
  - 3.1. Aagon ensures that the software is always adapted to the recognised state of the art. For this purpose, new programme versions shall be made available to Customer. Customer is obliged to install the latest programme versions within 30 days of the release.
  - 3.2. The subject of the update and support services owed under the contract is the respective current programme version.

4. Remuneration

Customer shall pay the agreed remuneration (monthly flat rate) for the update and support services in advance for one year at a time. If the contract term is more than one year, the remuneration shall be calculated annually in advance for the following year.

5. Contract term, termination

5.1. The contract is concluded for at least twelve months. The parties may also agree a binding period (minimum term) of 24 or 36 months. The contract is extended by another twelve months at a time after the end of the minimum contract term if it is not terminated by either party giving three months' notice, effective as of the end of the respective term.

5.2. Customer may terminate the update and support contract for individual modules by giving three months' notice, effective as of the end of the respective contract term. In this case, Customer shall discontinue the use of the terminated modules after the end of the contract term. Aagon shall be entitled to deactivate the terminated modules. Customer will no longer receive any support for terminated modules from this time on. The purchase price will not be refunded.

5.3. Notice of termination must be given in text form.

5.4. After termination of the update and support contract, Customer will no longer receive any support services or new programme versions.

**V. GTC for other services**

1. Subject matter of the contract, remuneration, employees

1.1. Aagon provides services in the form of training ("training") and support services for the installation and customisation of the Aagon software according to the wishes and needs of Customer ("services").

1.2. Aagon is not obliged to bring about a particular result and does not assume any project responsibility and/or responsibility for a particular outcome.

1.3. Aagon may provide the agreed services at Customer's premises or remotely via remote maintenance/video conference, as agreed with Customer from time to time.

1.4. Payment shall be made on an hourly or daily rate basis as agreed between Aagon and Customer.

1.5. Customer is not entitled to claim the assignment of a specific employee, unless expressly agreed otherwise. The designation of a project manager or a contact person in Aagon's offer shall not be deemed to constitute such an agreement. Customer has no right to issue instructions to Aagon's employees.

2. Services

2.1. Aagon provides support in the use of the Aagon software as well as in the individual customisation of the Aagon software to Customer requirements as a service against payment of the agreed remuneration.

- 2.2. Unless otherwise agreed, Customer must book a time quota for services with Aagon. Customer must pay the booked time quota in advance. Customer can then call up the agreed services from Aagon within the agreed period until the time quota is reached. A time quota that has not been called up shall expire at the end of the period agreed for the call-up.
- 2.3. Subject to the condition precedent of full payment of the agreed remuneration, Customer shall receive a non-exclusive, non-transferable, temporally and territorially unlimited right to use all service results.
- 3. Training
  - 3.1. Aagon provides training services against payment of the agreed remuneration.
  - 3.2. Customer shall pay Aagon the full amount of the remuneration before the training starts.
  - 3.3. If a training is conducted exclusively for one customer and
    - a) if the agreed training date is cancelled by Customer up to 28 days before the start of the training, Customer shall only pay the costs already incurred and proven by Aagon, for example for room rental or travel expenses, provided that Customer agrees a new training date within the next six months after the cancelled date. If this is not the case, Aagon shall be entitled to withdraw from the training contract and claim a flat-rate compensation of 20% of the training remuneration in addition to the costs incurred, including but not limited to room rental and travel expenses;
    - b) if the agreed training date is cancelled by Customer less than 28 days before the start of the training, Aagon shall be entitled to withdraw from the training contract immediately and claim a flat-rate compensation of 50% of the training remuneration in addition to the costs incurred, including but not limited to room rental and travel expenses.
  - 3.4. If a training is conducted for several customers,
    - a) any customer may withdraw from the training contract up to 14 days before the start of the training against payment of a processing fee of € 100.00 per participant;
    - b) withdrawal within the 13-8 days before the start of the training is possible against payment of 50% of the training remuneration;
    - c) withdrawal within the 7 days or less before the start of the training is only possible against payment of the full training remuneration.