

**GENERAL TERMS AND CONDITIONS FOR EXPERTISE AND PROXIMITY  
AKANEA DEVELOPPEMENT**

## **FOREWORD**

The Customer has entered into a software package licence Agreement for the Software Package defined in the purchase order (hereinafter referred to as the "Purchase Order") with Akanea Développement (Lyon Trade and Companies Register No.330 573 775) (hereinafter the "Publisher").

Having defined its needs according to its structure, its organisation, the knowledge of its staff and information useful for its decision-making in accordance with Articles 1112 et seq. of the French Civil Code, the Customer wished to have customised services relating to the Software Package, the terms and conditions of which are specified below.

## **DEFINITIONS**

### **Customised Support Services**

The term "Service(s) or CSS" applies to all of the Publisher's interventions connected with the implementation of the Software Package and carried out hereunder. The Services that may be ordered hereunder are defined in the catalogue available from the Publisher.

### **Software Package**

The term "Software Package" applies to the software packages, in object code form, marketed by the Publisher and including their magnetic media and associated documentation, for which a licence is granted to the Customer under a separate Software Package Licence Agreement accepted by the Customer.

## **1. AGREEMENT DOCUMENTS**

The Agreement between the Publisher and the Customer is formed by the following agreement documents presented in decreasing order of legal value:

- these General Terms and Conditions,
- the Purchase Order whereby the Parties have agreed to order the services and that indicates the reference of these General Terms and Conditions,
- the Technical Appendix attached to the Purchase Order where applicable.

In the event of any contradiction between one or more provisions contained in the documents mentioned above, the higher-ranking document shall prevail.

The Customer acknowledges that acceptance of the Agreement has the consequence of excluding the application of its own general terms and conditions of purchase and the specific clauses appearing on its purchase orders that have not been expressly accepted by the Publisher.

No particular annotation manually added by the Customer in the Agreement or the Purchase Orders shall have any value unless it is expressly accepted by the Publisher.

## **2. PURPOSE**

The purpose of the Agreement is to define the terms and conditions under which the Publisher provides the Customer, annually and according to a predetermined number of days, with the CSS identified in the purchase order at a particular site.

## **3. DURATION**

Unless otherwise stipulated, the Agreement is entered into for a period of twelve (12) months from the signature of a Purchase Order.

The Agreement shall then be tacitly renewed for successive periods of one (1) year, unless terminated by either Party by registered letter with acknowledgement of receipt, at least three (3) months before the current period expires.

Articles 8, 9, 12 and 13 hereof shall continue to have effect according to their own terms after the Agreement expires.

The expiry of the Agreement shall not relieve the Customer of its obligation to pay the sums due under the Agreement.

## **4. DESCRIPTION OF THE SERVICES**

**4.1** For each annual period of the Purchase Order, the Customer shall have a number of CSS days available, at its request, during the annual period in question.

If all CSS are not completed during the annual period in question due to the Customer, the number of unused days shall not be carried forward to the following year. Additional services may be performed by the Publisher, at the prices in force at the time of the Customer's order. The various CSS offered by the Publisher are described on its extranet and Internet sites at [www.akanea.com](http://www.akanea.com), which the Customer can access either freely or using its login information. The Customer shall refer to the detailed description of the services to find out the scope of the services.

The Publisher shall inform the Customer that the scope of these services may change in the future. However, the Publisher guarantees the Customer that changes in this scope shall consist of an increase in the services, never a reduction.

The Customer shall be informed of any changes to the scope of its offer and its price by email. The Parties agree that any new Extranet connection shall then constitute acceptance of this new scope.

One day of intervention corresponds to a day from 9:00 a.m. to 12:00 p.m. and from 2:00 p.m. to 6:00 p.m.

**4.2** In any event, CSS do not include:

- Maintenance or support services for the Software Package (including updates), provided under a

- separate Software Maintenance Agreement, by the Publisher,
- The training services relating to the Software Package,
  - Specific services for developing or adapting the Software Package,
  - The accommodation and travel expenses of the Publisher's Consultants,
  - The costs of installing patches, updates and new versions of the Software Package;
  - The work made necessary on adaptations or developments by the installation of the update,
  - Any work or supplies not explicitly mentioned in this Agreement, including the training of the Customer's staff by telephone.

In addition, the Publisher reserves the right not to perform CSS if the following are found:

- use of the Software Package not in accordance with the documentation or with the contractual obligations incumbent upon the Customer and, in particular, the Customer's failure to follow the backup procedures recommended by the Publisher;
- non-accessibility or unavailability of the equipment on which the Software Package is installed or with which it is used;
- modification of the Software Package by the Customer or a third party without the Publisher's consent;
- change of all or part of the hardware or peripheral software making them subsequently incompatible with the Software Package, without the Publisher's prior written consent;
- failure of the computer, its peripherals or the Customer's network preventing normal operation of the Software Package.

## **5. OBLIGATIONS OF THE PARTIES**

### **5.1 Obligations of the Publisher**

The Publisher undertakes to:

- Determine an intervention schedule for performing the CSS, at the Customer's request;
- Perform all the Services described in the Purchase Order annually and within the specified number of days, in accordance with the terms and conditions defined in the Agreement;
- Notify the Customer in writing of all the elements it knows, that it considers likely to jeopardise the proper performance of the Services;

### **5.2 Obligations of the Customer**

The Customer undertakes to:

- Have legitimately acquired the rights to use the Software Package under a separate agreement;
- Subscribe to a separate maintenance agreement for the Software Package, on an ongoing basis;
- Have qualified staff;
- Comply with the prerequisites communicated by the Publisher;

- Appoint a contact within its staff who is available and has decision-making power with regard to the proposed solutions;
- Provide free of charge the machine time and staff necessary for testing and operation for all the CSS;
- Provide the Publisher's staff with free access to the premises where the Software Package must be installed and to its software where needed and make available to the Publisher, on the delivery date, premises with the necessary infrastructure for the electrical, network, and telephone connection of the equipment used in the performance of the Services, according to any technical recommendations indicated by the Publisher.
- Provide the Publisher with all the elements and information necessary to enable it to perform the CSS properly;
- Pay the agreed price in accordance with the Purchase Orders.

The Customer shall be responsible for the protection of collected and recorded data.

### **5.3 Shared Obligations**

The estimated duration and schedule of the CSS that may be indicated in the timetable appearing in the Purchase Order shall be established by mutual agreement between the Parties as corresponding to a realistic forecast based on the information communicated to the Publisher by the Customer. Consequently, the refinement of the Customer's needs may lead to a change in the estimation of the expenses related to the performance of the CSS. It shall be periodically monitored by the teams of the Parties in charge of the performance of the Services.

The mere exceeding of these time frames shall not result in a presumption of fault on the part of the Publisher in the performance of its obligations.

The Parties agree that maintaining the planned timetable depends on the availability of the staff, software, premises, and data that each of them undertakes to provide under the Agreement.

The Customer is informed that the Publisher's ability to perform the CSS depends on complete compliance with its own obligations.

This article is substantial for the Publisher.

## **6. FINANCIAL TERMS**

In order to benefit from the Services, the Customer undertakes to pay, annually and in advance, the fee set out in the Purchase Order.

CSS are invoiced at the beginning of the annual period. None of the Services and payments can be cancelled or refunded.

Travel and accommodation costs shall be the Customer's responsibility and invoiced according to the terms indicated in the Purchase Orders.

The payment terms are thirty (30) days after the invoice date by any electronic payment method such as Direct Debit, etc.

In addition to the lump-sum penalty of €40, any late payment shall result in the application of late payment penalties at the rate of three times the statutory interest rate calculated per day late.

Notwithstanding the provisions of Article 1342-10 paragraph 1 of the French Civil Code, it is expressly agreed that if multiple invoices are due and the Customer makes a partial payment, the Publisher shall be free to apply said payment as it sees fit.

In the event of non-payment of a single invoice by its due date, the Publisher may, without prior formal notice, demand the immediate payment of all sums remaining due to it by the Customer. The Publisher shall then have the right to suspend the performance of its Services as provided for in the Agreement until the Customer pays the invoice in question. The Parties agree that this suspension cannot be considered as a termination of the agreement due to the Publisher or give rise to any right to compensation for the Customer.

Such suspension shall not entail any change in the amount of the annual fee which remains due for the entire current period. The service shall resume as soon as the cause of suspension has been removed without an extension of the annual Service period.

No reimbursement or netting may occur without the Publisher's formal agreement.

## **7. PRICE REVISION**

The Publisher reserves the right to revise the amount of the fee annually at each renewal by applying the new rate in force.

This increase shall be applied annually on each anniversary date.

In the event of a change in the offered services, the fee may also be revised. In such case and unless otherwise instructed by the Customer by registered letter with acknowledgement of receipt no later than one (1) month after the notification of the modification, the new conditions shall automatically apply. The Agreement shall be terminated if the Parties fail to come to an agreement.

## **8. GRANTED RIGHTS**

Subject to payment for the CSS, the Publisher grants the Customer the right to reproduce all of the documentary deliverables provided in connection with the performance hereof in as many copies as it wishes, provided that this is for its own needs and only for persons employed by the Customer.

This user license is granted to the Customer for a period of twenty-five years from the date of their delivery and on French territory.

All the documentary deliverables communicated during the Agreement are and shall remain the property of the Publisher. In addition, the Customer must include on any copy all ownership and/or copyright notices that may appear on the documents provided by the Publisher.

## **9. WARRANTY AND LIABILITY**

### **9.1 Warranty**

The Publisher undertakes to perform the Services in accordance with the standard practices of its profession, its know-how, its experience, and its expertise.

In the context of the performed Services, the Publisher shall be bound only by an obligation of means. In the event of non-compliant Services, the Publisher shall again perform the services due, and if the Publisher cannot provide these services, it shall refund any amount already paid for the order not fulfilled.

The above warranties are limiting, and the Publisher does not guarantee the correction of all errors or that the Adaptations will operate uninterrupted or without errors or its ability to meet the Customer's particular objectives.

### **9.2 Liability**

The Publisher shall not be held liable for any delay in the performance of the Services. In addition, the Publisher cannot be held liable for any reckless application or lack of application of the instructions for use provided as part of telephone support or advice not provided by the Publisher itself.

In no event shall the Publisher be liable for the destruction or deterioration of files or programs. The Customer shall be responsible for protecting against these risks by making the necessary backups.

In no event shall the Publisher be liable to the Customer or third parties for indirect damages such as operating losses, commercial damages, loss of customers, loss of orders, any commercial disturbance, loss of profit, damage to the brand image, or losses of data and/or files. In any event, and irrespective of the basis of the Publisher's liability, damages and any compensation owed to the Customer by the Publisher for any cause whatsoever may not exceed the sums paid by the Customer under the Purchase Order concerned.

In addition, in the event of personal injury caused by the Publisher or one of its employees, the Publisher shall compensate the victim in accordance with the applicable legal provisions.

It is expressly agreed between the Parties, and accepted by the Customer, that the provisions of this clause shall continue to apply even in the event of cancellation hereof found by a court decision that has become final.

The provisions of these terms and conditions establish an allocation of risks between the Publisher and the Customer. The price reflects this allocation as well as the described limitation of liability.

## **10. FORCE MAJEURE**

The liability of the Parties shall be fully discharged if the non-performance by either party of part or all of its obligations results from a case of force majeure.

Initially, cases of force majeure shall suspend the performance of the Agreement, and the Parties shall meet to determine how their relations will continue.

If cases of force majeure last more than one (1) month, the Agreement shall be terminated automatically, unless otherwise agreed between the Parties.

The following are expressly considered to be cases of force majeure or unforeseeable events, in addition to those usually recognised by the case law of the French courts: blockage, disruption, or congestion of telecommunications networks, poor quality of the electrical current, blocking of means of transport or supply for any reason whatsoever, inclement weather, epidemics, earthquakes, fires, storms, floods, water damage, governmental or legal restrictions, as well as legal or regulatory changes in the forms of marketing.

#### **11. TERMINATION**

If one of the Parties breaches an obligation provided for in the Agreement, not repaired within fifteen (15) calendar days from the sending of a registered letter with acknowledgement of receipt, the other Party may assert the termination of the Agreement without prejudice to any damages that it could claim hereunder.

In addition, in the event of non-payment of sums owed by the Customer, not the subject of reasoned reservations, and explicitly reported to the Publisher, the Publisher may terminate the Agreement automatically and without delay after having notified the Customer by registered letter with acknowledgement of receipt, which shall not prevent the Publisher from making every effort to recover its debts.

#### **12. CONFIDENTIALITY**

Each Party undertakes, with regard to the content of the provisions of the Agreement as well as the other Party's information that it may learn in the performance of the Agreement, as long as this information is economically, technically, or commercially sensitive or declared as such by either Party, to keep it strictly confidential and refrain from communicating it to anyone, except for the purposes strictly necessary for the proper performance of the Agreement, and to refrain from using it, directly or indirectly, or allowing it to be used by a third party under their control for any purpose other than the proper performance of the Agreement.

In the context of a professional activity, the Customer undertakes to take, with respect to its staff and any outside person who has access to the Software Package, all necessary measures to ensure the secrecy, confidentiality, and respect for the rights of ownership of the Software Package.

The Software Package and its documentation as well as the Adaptations are designated as confidential.

The Parties shall be bound by this obligation until the data in question become public knowledge, unless the Party concerned provides prior, express approval of the waiver of confidentiality.

#### **13. NON-SOLICITATION OF STAFF**

The Customer waives the right to hire or employ, directly or through an intermediary, any employee of the Publisher, regardless of his or her specialisation and

even if the initial solicitation is initiated by said employee. Any concealed remuneration is also prohibited. This waiver shall be valid for the duration of the Agreement and for a period of two (2) years from its expiry. If the Customer fails to respect this obligation, it undertakes to compensate the Publisher by immediately paying it a lump sum equal to the gross salaries that this employee received during the twelve (12) months preceding his or her departure.

#### **14. RELATIONS BETWEEN THE PARTIES**

Unless otherwise provided in writing, the Customer shall be responsible for the project management of the Services performed under this agreement. The Publisher warrants that it performs its Services using qualified personnel, under the conditions provided for by law, and that it is not subject to the provisions of the French labour code that prohibit undocumented or illegal work. The Services provided under the Agreement may relate to the licence to use the Software Package, which the Customer acquires under a separate agreement. Said agreement referenced with the Publisher shall govern the use of the Software Package. All Services acquired from the Publisher shall be offered separately from the licence.

#### **15. ASSIGNMENT OF THE AGREEMENT**

Under no circumstances may the Customer fully or partially assign the Agreement free of charge or for a consideration.

#### **16. MISCELLANEOUS PROVISIONS**

*Personal data:* The applicable conditions concerning personal data are defined in the appendix entitled "Conditions for the processing of personal data applicable to software packages installed at the Customer's sites as well as the associated services"

*Statistical Data:* The Customer expressly agrees that the Publisher may use the data collected from the Customer's use of the Software Package and previously anonymised for statistical purposes and for the improvement of the Software Package provided that such data do not constitute personal data.

*Notifications:* All notifications required by the Agreement shall be made by registered letter with acknowledgement of receipt and shall be deemed validly made at the addresses indicated in the Purchase Order in question unless a change of address notification has been provided. Notwithstanding the notifications provided by registered letter with acknowledgement of receipt, the Parties agree that information relating to the entry into or performance of the agreement may be sent by email. In particular, in accordance with Article 1126 of the French Civil Code, the Customer acknowledges that the Publisher may send to it by email any notification relating to the evolution and modification of the Agreement. The Customer therefore expressly accepts the use of this mode of communication. The Parties agree that emails exchanged between them shall constitute valid evidence of the content of their exchanges and commitments.

*Partial invalidity:* The declaration of nullity or ineffectiveness of any stipulation of the Agreement shall not automatically entail the nullity or ineffectiveness of the other stipulations unless the balance of the agreement is changed.

*Commitments of the Parties:* The Parties agree that the validation of the purchase order, the entry into and renewal of the agreement, as well as the payment of fees and/or invoices issued mean that the Customer has read and accepted the General Terms and Conditions in force as of the date of such validation, entry into or renewal of the Agreement, or payment. The Customer is hereby informed that these General Terms and Conditions are accessible from the [www.akanea.com](http://www.akanea.com) website in accordance with Articles 1125 and 1127-1 of the French Civil Code.

Previous versions of the Terms and Conditions from the [www.akanea.com](http://www.akanea.com) website are also available on the [www.akanea.com](http://www.akanea.com) website. The Parties agree that such provisions are for informational purposes only and do not imply the applicability of its earlier versions.

It is understood that these General Terms and Conditions cancel and replace the General Terms and Conditions previously accepted between the parties having the same purpose and in the course of performance. They take precedence over any unilateral document of one of the Parties, including the Customer's purchase order. However, any specific conditions provided for in the Purchase Order duly signed by both Parties shall be applicable to the Software Packages exclusively designated in said document. Any particular annotation manually added by the Customer shall have value only if it is expressly accepted by the Publisher.

*Modifications of the Services:* Requests for modifications from the Customer relating to the Services performed under the Agreement shall be made in writing. This condition generally applies to any request for a change, including planning or specification changes. A new quote shall then be presented by the Customer to the Publisher.

*Unforeseeable Events:* Notwithstanding Article 1195 of the French Civil Code, in the event of an unforeseeable change of circumstances upon entry into the agreement rendering the performance excessively onerous for the Customer, the Customer shall not be entitled to a renegotiation of the agreement.

*Waiver:* The failure of one Party to take action against a breach by the other Party of any one of the obligations set out herein cannot be construed as a waiver of the obligation in question in the future. The Customer irrevocably waives any request, claim, right, or action against the Publisher relating to the performance of the Agreement made more than twelve (12) months after the occurrence of the causal event and therefore irrevocably waives the right to bring any action against the Publisher before any court on this basis.

*References:* The Publisher reserves the right to include the Customer's name on a list of references.

## **17. LAW AND ASSIGNMENT OF JURISDICTION**

This Agreement is governed by French law.

**IN THE EVENT OF A DISPUTE, AND AFTER AN ATTEMPT TO FIND AN AMICABLE SOLUTION, EXPRESS JURISDICTION SHALL BE CONFERRED ON THE PARIS COMMERCIAL COURT EVEN IF THERE IS MORE THAN ONE DEFENDANT OR IN THE EVENT OF A THIRD-PARTY NOTICE, EVEN FOR URGENT OR PROTECTIVE MEASURES, IN SUMMARY PROCEEDINGS OR BY MOTION.**

**IF THE CUSTOMER OBJECTS TO A MOTION FOR AN ORDER TO PAY, EXPRESS JURISDICTION IS ALSO ASSIGNED TO THE PARIS COMMERCIAL COURT.**