

**GENERAL TERMS AND CONDITIONS  
SOFTWARE PACKAGE USER LICENCE  
AKANEA DEVELOPPEMENT**

The Customer is embarking on an overhaul of its IT system. It is in this context that it consulted Akanea Développement (Lyon Trade & Companies Register No. 330 573 775), in its capacity as a software package publisher, regarding the choice of a new management software package (hereinafter the "Publisher").

The Customer acknowledges having had the opportunity to ask the Publisher for a detailed presentation of the Software Package and all necessary information describing the functionalities of the Software Package.

The Customer acknowledges that it has been informed of the possibility of being assisted by the Publisher or any professional of its choice, if it considers that it is unable to use said Software Package in accordance with the terms and conditions set out herein. It is up to the Customer to take any measures necessary for the use of the Software Package and in particular to adapt its company's structures to the constraints imposed by an IT system.

It is up to the Customer to assess its own needs extremely accurately, ascertain whether they match the Software Package and ensure that it has the specific expertise to use the Software Package. Being in possession of the information necessary for making an informed decision in accordance with Article 1112 et seq. of the French Civil Code, the Customer accepts the terms hereof.

## **DEFINITIONS**

**Approved Configuration:** these terms refer to all hardware, operating systems, middleware, databases and other software with which the Publisher certifies that the Software works.

**Agreement:** the agreement consists of 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 this Agreement's reference.

In the event of any contradiction between one or more provisions contained in the documents mentioned above, the higher-ranking document shall prevail. As from its acceptance by the Customer, these General Terms and Conditions shall exclusively govern all of the licence orders placed by the Customer.

**Documentation:** this term refers to the description of the functionalities and operating instructions of the Software Package (online assistance and technical prerequisites). It is provided in electronic form in French. Any other documentation is excluded from the scope of the Agreement, including sales documentation and training documentation.

**Authorised Staff:** this term means any natural person having a subordinate relationship with the Customer and duly informed by the Customer of the right of use granted regarding the Software Package.

**Software Package:** this term applies to software packages, in the form of object code, marketed by the Publisher and including their magnetic medium and their associated Documentation and, where applicable, the development tool and its application part, for which a licence is granted to the Customer hereunder.

**Named User(s):** refers to the user(s) expressly named by the Customer from among its teams and solely authorised to use the Software Package.

## **1. PURPOSE**

The purpose of this document is to define the terms and conditions under which the Publisher grants the Customer, which accepts, a non-exclusive licence to use the Software Package defined in the purchase order (hereinafter the "Purchase Order"), on the Approved Configuration.

## **2. DURATION**

Unless otherwise agreed in the Purchase Order or in the event of termination, the user licence is granted for a period of twenty-five years from the delivery of the medium or the downloading of the Software Package.

## **3. SCOPE OF RIGHTS GRANTED**

The Customer does not acquire any other express or implied rights than those provided for in the Agreement.

### **3.1 RIGHT OF USE**

The Customer has a personal right to use the Software Package, exclusively in the form of object code, which is granted to it solely for its internal operating needs and within the limit of the Named Users.

Consequently, the Software Package must be used:

- in accordance with the provisions of the Agreement and the requirements contained in the Documentation;
- solely for the Customer's personal and internal requirements, by the Named Users, to the exclusion of any third party to its company and any use in facilities management or service bureau services or in the Cloud;
- by qualified Authorised Staff who have previously completed appropriate training in the use of the Software Package in order to obtain the desired results;
- on an Approved Configuration and a single defined environment, and for a given location site as defined in the Purchase Order (hereinafter the "Site").

Any unauthorised use by the Customer hereunder is unlawful pursuant to the provisions of Article L. 122-6 of the French Intellectual Property Code.

### **3.2 BACKUP COPY**

The Customer is authorised to make and store a single backup copy of the Software Package for security purposes and to keep it on the Site. It may not be used simultaneously with a copy of the Software Package sent by the Publisher.

Any backup copy is automatically the property of the Publisher and must mention all the retention of ownership arrangements indicated in the Software Package.

### **3.3 RIGHT OF CORRECTION**

In accordance with the law, the Publisher exclusively reserves the right to correct anomalies in the Software Package.

### **3.4 RIGHT OF DECOMPILATION**

If the Customer wishes to decompile the Software Package for the purpose of interoperability, the Parties shall jointly agree in advance on the terms and conditions for the provision of the service.

Any element of the Software Package that may be included in a separate software package remains subject to the provisions of the Agreement.

### **3.5 LIMIT TO THE USE OF THE SOFTWARE PACKAGE**

By accepting this right to use the Software Package, the Customer shall refrain from infringing the Publisher's legitimate interests.

Consequently, it shall refrain from any type of use not explicitly provided for by law in favour of a legitimate user or not expressly authorised by the Agreement, and in particular from:

- using the Software Package or making a backup copy thereof outside the conditions stipulated herein,

- correcting or having a third party correct any anomalies in the Software Package, without the prior written consent of the Publisher,
- granting a loan, lease, assignment or any other type of provision of the Software Package or its Documentation, regardless of the means, including via the Internet,
- distributing or marketing the Software Package, whether in exchange for payment or free of charge, or using it for third party training purposes,
- decompiling the Software Package outside the conditions stipulated in Article 4.4 and in particular for the purpose of designing, producing, disseminating or marketing a similar, equivalent, or substitute software package,
- adapting, modifying, transforming or arranging the Software Package, particularly in order to create derivative features or new features of a derivative or completely new software package, except within the limits defined in the Documentation,
- transcribing or translating the Software Package into other languages, as well as modifying it even partially, in particular for use in any configuration other than the Approved Configuration.

The Customer's compliance with the above provisions is a key condition of this licence for the Publisher.

### **3.6 AUDIT**

The Customer must provide a certificate of compliant use of the Software Package under the terms of the Agreement, at the Publisher's request.

If the Customer refuses to provide such a certificate, the Publisher may conduct an on-site audit.

The Customer must also provide a list of the Named User(s) at the Publisher's first request.

If the certificate or on-site audit reveals a use which surpasses the rights acquired by less than 10%, the Customer shall then be charged the additional fees. If the difference was more than 10%, then the additional fees charged would be increased by 50% plus the audit costs incurred by the Publisher. Furthermore, if the Customer uses a function or option for which it has not acquired rights, the Publisher shall then charge the additional fees in accordance with the current price list.

Customer information collected during audit operations shall be considered as confidential information within the meaning of the "Confidentiality" article herein and may only be used for the purposes of the audit and any necessary adjustments.

### **3.7 ASSIGNMENT**

In no case may the Agreement be fully or partially assigned, for consideration, free of charge or by contribution of business assets without the Publisher's prior written consent. As such, the licences granted under its implementation cannot be assigned.

## **4. INSTALLATION OF THE SOFTWARE PACKAGE**

The Software Package is installed on the Approved Configuration under the Customer's responsibility, in accordance with the instructions provided by the Publisher in the Documentation.

However, the Publisher may install it, at the Customer's request, under a separate service agreement.

## **5. GUARANTEE**

### **5.1 SOFTWARE PACKAGE GUARANTEE**

If a maintenance agreement has not been subscribed to with the Publisher, the Publisher guarantees that the Software Package complies with its Documentation. This guarantee is valid three (3) months from the date of delivery. If any anomalies are detected during this period, the Publisher shall correct them free of charge, provided that any anomalies detected are reproducible, and that their existence has been duly notified to the Publisher within the term of the guarantee.

Services requested as a result of unauthorised interventions or modifications, operating errors, use that does not comply with the

Documentation or as a result of an anomaly caused by one of the Customer's other applications are in particular expressly excluded from the guarantee.

The above guarantee is limited and the Publisher does not guarantee that all errors shall be corrected, or that the Software Package is able to meet the Customer's individual objectives, or that it shall work in any combinations other than those stated in the Documentation, or that it shall function uninterrupted or free from errors. As such, the Parties expressly exclude under the Agreement, and the Customer accepts, the application of the legal provisions relating to the guarantee for hidden flaws or defects of the Software Package.

### **5.2 COMPUTER MEDIA GUARANTEE**

The Publisher guarantees that the computer media shall be free from defects under normal conditions of use. This guarantee is valid for ninety (90) days from the date of delivery. When the guarantee is activated by the Customer, the Publisher's liability is limited to the free replacement of defective computer media as soon as possible. The Publisher is not bound by any guarantees other than those listed above under the licence granted.

## **6. OWNERSHIP AND GUARANTEE AGAINST INFRINGEMENT**

### **6.1 OWNERSHIP**

The Publisher guarantees the Customer that it holds either the patrimonial rights to the Software Package and its Documentation, or an authorisation from the author of the Software Package and that it may therefore freely grant the Customer the right of use stipulated herein.

The granting of the right to use the Software Package does not lead to the transfer of ownership rights to the Customer. The Software Package shall remain the property of its author, regardless of the form, language, program medium, or language used.

The Customer undertakes not to infringe, directly or indirectly through third parties, the author's intellectual property rights to the Software Package. In this respect, it shall maintain in good order all the ownership and/or copyright information that may be placed on the elements comprising the Software Package and the Documentation; similarly, it shall include such information on any total or partial reproduction authorised by the Publisher, and in particular on the backup copy.

Some of the products marketed by the Publisher incorporate third-party technologies belonging to other publishers. The rights granted to these products are subject to the Customer's compliance with its various rights and obligations. If these rights and obligations are not complied with, the Publisher is entitled to take any measures necessary to put an end to the observed disturbances.

### **6.2 GUARANTEE AGAINST INFRINGEMENT**

In the event of a claim concerning the Software Package's infringement of an intellectual property right in France, the Publisher may, at its own choice and expense, either replace or modify all or any part of the Software Package or obtain a user licence for the Customer, provided that the Customer has complied with the following conditions:

- the Customer has accepted and performed all of its obligations under this document,
- the Customer has notified the Publisher in writing, within eight weeks, of the action for infringement or the declaration having preceded this action,
- the Publisher is able to defend its own interests and those of the Customer, and to do so, the Customer collaborates faithfully with the Publisher by providing all the elements, information, and support necessary to carry out such a defence.

If none of these measures is reasonably feasible, the Publisher may unilaterally decide to terminate the licence for the infringing Software Package and refund to the Customer the fees paid for said licence.

The Publisher shall not assume any liability if the allegations relate to:

- the use of a version of the Software Package other than the unmodified current version, if the judgement against it could have been avoided by the use of the unmodified current version,
- the combination and implementation, or use of the Software Package with programs or data not supplied by the Publisher.

The provisions of this article define all of the Publisher's obligations in respect of infringement of patents and copyright owing to the use of the Software Package.

## **7. LIABILITY**

The Software Package shall be used under the sole direction, control, and responsibility of the Customer.

The Parties hereby agree that the Publisher is subject to a best efforts obligation.

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.

It is the Customer's responsibility to make regular backups, under its direction, of all data processed directly or indirectly by the Software Package.

Under no circumstances shall the Publisher be held liable for any contamination by any virus of the Customer's files and the potentially harmful consequences of such contamination.

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 in return for the right to use the Software Package.

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

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

## **8. PRICES AND PAYMENT**

The user licence is granted to the Customer subject to the total payment of the agreed fee mentioned in the Purchase Order.

This fee shall be paid under the terms and conditions of the Purchase Order

Payments shall be made by Electronic Bill of Exchange, or any other electronic means of payment such as Direct Debit, Transfer, Cheque, etc.

If the Customer requests financing through a credit institution, it must provide the Publisher with a delegation of payment in order to confirm that said institution has taken charge of the financing. The Agreement shall only be definitively formed with the Publisher's prior written consent to said delegation and, where applicable, after the Customer has paid the advance payment provided for in the Agreement.

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 addition to the lump-sum penalty of €40 fixed by decree, any late payment shall result in, eight (8) days after a formal notice has remained unsuccessful, the application of late payment penalties at

the rate of three times the statutory interest rate calculated per day late.

In the event of non-payment of an 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, and suspend the execution of any orders or deliveries in progress. No netting may occur without the Publisher's formal agreement.

## **9. CONFIDENTIALITY**

The Parties may have access to the other party's confidential information under the Agreement. Confidential information includes the terms and prices of the Agreement, the Software Package and any other information indicated as such.

Confidential information does not include information which, in the absence of fault, is in the public domain, information which the receiving Party had in its possession prior to its disclosure, without having received it from the other Party, information which is communicated to the Parties by third parties, without a confidentiality condition, and information which each Party independently develops.

The Party to which confidential information is communicated shall preserve its confidentiality with no less care than that which it provides for the preservation of its own confidential information and may not communicate or disclose it to third parties, except with the prior written consent of the other Party or to the extent possibly required by law. The Parties agree to take all reasonable steps to ensure that confidential information is not communicated to their employees or contractors in violation of the Agreement. The terms of this obligation shall be valid for the entire period of validity of the Agreement and for two (2) years following its end.

All documents communicated by the Publisher hereunder shall remain its exclusive property and shall be returned to it upon its simple request.

## **10. TERMINATION**

### **10.1 TERMINATION FOR BREACH**

Should the Customer breach any of its obligations under this document, the Publisher may serve formal notice by registered letter with acknowledgement of receipt to remedy this breach within a maximum period of thirty (30) days.

If at the end of this thirty (30) day period, the breach has not been remedied, the Publisher may automatically terminate this licence, by registered letter with acknowledgement of receipt, subject to any damages it may claim, which does not prevent the Publisher from making every effort to recover its debts.

### **10.2 CONSEQUENCES OF TERMINATION**

No later than eight (8) clear days after this licence is terminated, the Customer shall return to the Publisher the Software Package and any copies made of all or any part of this Software Package and its Documentation.

## **11. EXPORT**

The Customer undertakes to strictly comply with the export laws and regulations in force in France and the United States.

## **12. 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.

*Declarations and approvals necessary for use of the Software Package:* The Customer shall be responsible for obtaining all

administrative and regulatory authorisations or approvals that may be necessary for the implementation of the Software Package. This is particularly true of obligations related to the application of the French data protection law if personal information is managed using the Software Package that is the subject hereof.

*Relations between the Parties:* The Publisher may also provide maintenance services and services relating to the Software Package as may be agreed under separate agreements. All the services provided by the Publisher in this respect shall be the subject of separate commercial proposals, and the Customer may acquire the Software Package without acquiring maintenance or other services.

*References:* The Publisher may mention the Customer's name for the promotion of the Software Package.

*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

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

It is understood that these General Terms and Conditions supersede 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.

*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 this licence 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 or any of the companies of the group to which it belongs before any court on this basis.

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

This document 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.**