

## General Terms and Conditions of acadon AG

### 1. Scope, Form

1.1 These General Terms and Conditions (GTC) apply to all business relationships between acadon AG (hereinafter referred to as "acadon") and its customers. They only apply if the customer is a business (§ 14 BGB) or a legal entity under public law. acadon's offers are exclusively for business and not for consumers.

1.2 Unless otherwise agreed, the GTC in the version valid at the time of the customer's order or in any case in the version last communicated to him in text form shall also apply as a framework agreement for similar future contracts without acadon having to refer to them again in each individual case.

1.3 Deviating, conflicting or supplementary general terms and conditions of the customer shall only become part of the contract if and to the extent that acadon has expressly agreed to their validity. This consent requirement applies in any case, for example even if acadon performs the contractually owed service to the customer without reservation in knowledge of the customer's GTC.

1.4 In addition to these GTC, acadon's Special Terms of Contract (STC) apply. The GTC and STC are available at <https://www.acadon.net/agb.pdf>. Insofar as the provisions in the GTC deviate from the provisions in these STC, the provisions in the STC shall take precedence.

1.5 Individual agreements made with the customer in individual cases (including collateral agreements, supplements and amendments) shall in any case take precedence over these GTC and the STC. Subject to proof to the contrary, a written contract or the written confirmation of acadon shall be authoritative for the content of such agreements.

1.6 Legally relevant declarations and notifications by the customer **with** regard to the contract (e.g. setting of deadlines, notification of defects, withdrawal or reduction) must be made in writing, i.e. in written or text form (e.g. letter, e-mail, fax). Legal formal requirements and further proof, in particular in the case of doubts about the legitimacy of the declarant, remain unaffected.

### 2. Conclusion of contract

2.1 The offers of acadon are subject to change and non-binding. This also applies if acadon has provided the customer with catalogs, technical documentation (e.g. drawings, plans, calculations, references to DIN standards), other product or service descriptions or documents - also in electronic form - to which it reserves property rights and copyrights.

2.2 The order of the respective service by the customer is considered a binding contractual offer. Unless otherwise stated in the order, acadon is entitled to accept this contractual offer within 14 days after its receipt by acadon.

2.3 Acceptance can be declared either in writing (e.g. by sending an order confirmation) or by providing the service to the customer.

2.4 The above regulations under this clause do not apply to the order of software or services via acadon's online store. The special contractual conditions for orders via the online store apply here.

### 3. Subject matter of the contract and time of performance



3.1 The subject matter of the contract, scope of services or description of services are primarily derived from the respective individual contract or its annexes or other special agreements. acadon is entitled to provide the services through third parties.

3.2 Information on the time of performance is non-binding, unless acadon has agreed in writing to a date or deadline as binding.

3.3 If acadon cannot meet binding performance times for reasons for which it is not responsible (non-availability of the service), it will inform the customer of this immediately and at the same time inform him of the expected new performance time. If the service is also not available within the new service period, acadon is entitled to withdraw from the contract in whole or in part; acadon will immediately refund any payment already provided by the customer.

3.4 The occurrence of default in performance shall be determined in accordance with the statutory provisions. In any case, however, a reminder by the customer is required.

#### **4 General cooperation obligations of the customer**

4.1 The customer shall support acadon in the provision of the services by reasonable cooperation, as far as necessary. In particular, the customer is responsible for providing the functioning technical infrastructure required for the use of acadon's services. In addition, the customer shall provide acadon with the information and data required for the performance of the services (e.g., regarding the IT infrastructure available at the customer's premises) as well as allow acadon access to its IT infrastructure to the extent required. Insofar as acadon is dependent on the cooperation of other service providers of the customer within the scope of the service provision, the customer shall provide acadon with the contract data and powers of attorney required for the corresponding communication in a timely manner.

4.2 The customer is obligated to notify acadon immediately of any malfunctions, error messages or changes in operation relevant to acadon's services.

4.3 Insofar as the customer should have received passwords from acadon that are used to access acadon's services, the customer is obligated to change them regularly. If the customer becomes aware that an unauthorized third party has obtained knowledge of a password, the customer must inform acadon immediately and change the password immediately.

4.4 A prerequisite for the provision of services by acadon is that the customer designates qualified employees to acadon upon conclusion of the contract who are exclusively permitted to request the contractual service from acadon, in particular to make service and support calls, and who are authorized to make the decisions necessary for the execution of the contract. The customer has to inform acadon immediately about any personnel changes in this context. The customer shall ensure that the qualifications of the employees are maintained or built up in the event of a change in personnel.

4.5 In case of support, the customer is obliged to ensure in due time before the start of acadon's activities that the recorded data can be reconstructed with reasonable effort on machine-readable data carriers in case of destruction or falsification (data backup).

4.6 If acadon's access to a data backup or to the customer's IT system by way of remote maintenance or other work is required for troubleshooting or for the provision of other contractual services, which enables acadon to gain knowledge of the customer's personal data, the customer is obligated to conclude a contract processing agreement with acadon regulating the protection of personal data (Art. 28 DS-GVO) before using these services. Prior to the conclusion of such a contract regulating data protection, acadon is not obligated to begin with the provision of the named services.

4.7 If the customer does not fulfill his aforementioned duties to cooperate in whole or in part and this leads to the fact that acadon can no longer meet any agreed upon deadlines for the provision of services, the corresponding deadline agreements lose their validity. In this case, new performance



dates are to be agreed upon, taking into account acadon's resource planning. In addition, the customer is obligated to compensate acadon for additional expenses incurred due to the violation of the cooperation obligations. acadon will request the customer in writing, setting an appropriate deadline, to make up for or rectify the respective cooperation obligations. If this period expires fruitlessly, acadon is entitled to terminate the contract without notice, provided that acadon has previously threatened this in writing with the setting of a grace period. The assertion of further rights remains unaffected by the above regulations.

## **5. Remuneration and terms of payment**

5.1 The amount of the remuneration results primarily from the respective individual contract. If this is not the case, acadon's current pricelist at the time of the conclusion of the contract shall apply, plus statutory VAT.

5.2 Unless otherwise specified in the respective individual contract or the relevant STC, acadon will invoice the respective remuneration due on a regular basis. An agreed monthly or annual lump sum remuneration shall be due in advance in each case; one-time fees, variable fees as well as other remunerations shall be due after performance of the service.

5.3 If the parties agree payment by direct debit, the customer authorizes acadon upon conclusion of the contract to debit the payments to be made by him by direct debit authorization from an account specified by him. The customer is obligated to ensure sufficient coverage of the account. If the direct debit from the customer's account is not possible due to lack of funds or if the direct debit is reversed at the instigation of the customer, acadon is entitled to additionally claim the costs incurred (e.g. return debit fees) as minimum damages. In addition, acadon is entitled to charge a processing fee in the amount of € 8.00 per direct debit, unless the customer proves that no or significantly lower damages were actually incurred.

5.4 If the customer does not use or only partially uses a usage option made available to him on a flat-rate basis, the agreed remuneration shall not be reduced unless the customer is entitled to a statutory right of reduction.

5.5 The customer is only entitled to set-off if his counterclaim has been legally established, is not disputed or acknowledged by acadon or is in a close synallagmatic relationship to acadon's claim.

5.6 If it becomes apparent after the conclusion of the contract (e.g. by filing for insolvency proceedings) that acadon's claim for payment is endangered by the customer's lack of ability to pay, acadon is entitled to demand an appropriate guarantee and/or security for the fulfillment of the contract. If this does not happen within a reasonable period of time, acadon is entitled to refuse performance according to the legal regulations and - if necessary after setting a deadline - to withdraw from the contract (§ 321 BGB). In the case of contracts for the production of unjustifiable items (custom-made products), acadon can declare the withdrawal immediately; the statutory regulations regarding the dispensability of setting a deadline remain unaffected.

5.7 If the customer declares withdrawal from the contract without legal grounds prior to receipt of the goods or prior to performance of the service or if the customer finally refuses acceptance of the goods or service without legal grounds, acadon can claim damages in the amount of one third of the order sum due to non-performance. The proof of higher damages by acadon remains unaffected; however, the lump sum is to be offset against further monetary claims. The customer is permitted to prove that acadon has not incurred any damages at all or only significantly lower damages than the aforementioned lump sum.

## **6. Liability of acadon**

6.1 Unless otherwise provided in these GTC including the following provisions as well as the relevant STC, acadon is liable for a breach of contractual and non-contractual obligations in accordance with the statutory provisions.



6.2 acadon is liable for damages - regardless of the legal grounds - within the scope of fault liability in case of intent and gross negligence. In the case of simple negligence, acadon is liable, subject to statutory limitations of liability (e.g. care in own affairs; insignificant breach of duty), only

a) for damages resulting from injury to life, body or health,

b) for damages resulting from the violation of an essential contractual obligation (obligation, the fulfillment of which enables the proper execution of the contract in the first place and on the compliance with which the contractual partner regularly relies and may rely); in this case, however, acadon's liability is limited to the compensation of the foreseeable, typically occurring damage.

6.3 The limitations of liability resulting from 6.2 also apply to breaches of duty by or in favor of persons whose fault acadon is responsible for according to statutory provisions. They do not apply insofar as acadon has fraudulently concealed a defect or has assumed a guarantee for the quality and for claims of the customer under the Product Liability Act.

6.4 acadon is not liable for the loss of data insofar as the damage is due to the customer's failure to perform data backups and thereby ensure that lost data can be restored with reasonable effort.

## **7. Contract term/Termination for continuing obligations**

7.1 Unless otherwise stipulated in the respective individual contract or the relevant STC, the contractual term for continuing obligations shall be one year. The contractual relationship shall be automatically extended by one year in each case if it is not terminated in writing by one of the contracting parties no later than six months before its expiry.

7.2 However, the right of both parties to extraordinary termination within the scope of continuing obligations shall remain unaffected in all cases. In particular, good cause shall be deemed to exist if the customer is in arrears with more than two instalments (in the case of monthly payment) or (in the case of annual payment) is more than 14 days in arrears and this arrears continues for more than two weeks after receipt of a reminder from acadon, in which the latter has threatened termination or reserved the right to do so.

## **8. Confidentiality**

8.1 "Confidential Information" shall mean all information and documents of a Party which are marked as confidential or which are to be regarded as confidential under the circumstances, in particular information about products of the respective Party, including object codes, documentation and other records, operational processes, business relationships and know-how.

8.2 The parties undertake to keep confidential information of the other party strictly and unconditionally secret and to protect it by appropriate technical and organizational precautions.

8.3 Such confidential information shall be exempt from the confidentiality obligation in para. 2,

a) which were demonstrably already known to the recipient at the time the contract was concluded or subsequently become known to it from a third party, without this violating a confidentiality agreement, statutory regulations or official orders;

(b) which are public knowledge at the time of the conclusion of the contract or are made public thereafter, unless this is due to a breach of this contract;

c) which must be disclosed due to legal obligations or by order of a court or authority. To the extent permissible and possible, the recipient obligated to disclose shall inform the other party in advance and give it the opportunity to object to the disclosure.

8.4 The parties shall only grant access to Confidential Information to those consultants who are subject to professional secrecy or to whom obligations corresponding to the confidentiality obligations of this Agreement have previously been imposed. Furthermore, the parties shall only disclose the Confidential Information to those employees who need to know it for the performance of this



Agreement and shall also oblige such employees to maintain confidentiality to the extent permissible under employment law for the period after their departure.

## **9. Choice of law and place of jurisdiction**

9.1 The laws of the Federal Republic of Germany apply to these GTC, the STC and the contractual relationship between acadon and the customer, excluding international uniform law, in particular the UN Convention on Contracts for the International Sale of Goods.

9.2 The place of performance is acadon's place of business.

9.3 If the customer is a merchant within the meaning of the German Commercial Code, a legal entity under public law or a special fund under public law, the exclusive - also international - place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship is acadon's place of business. acadon is, however, also entitled in all cases to file suit at the customer's place of business. Overriding statutory provisions, in particular regarding exclusive jurisdiction, remain unaffected.

## **10. Final provisions**

10.1 There are no verbal ancillary agreements.

10.2 The customer may transfer rights and obligations arising from or in connection with this contract to third parties only with acadon's written consent.

10.3 The customer may only assert a right of retention due to counterclaims arising from the respective contractual relationship.

