

## 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, 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.



## Special Terms and Conditions of acadon AG for the Purchase of Software

### 1. Scope

1.1 These Special Terms and Conditions (STC) apply to all contracts between acadon AG (hereinafter referred to as "acadon") and the customer for the provision of software for permanent use (purchase), regardless of whether it is software developed by acadon or software from third-party providers (e.g. Microsoft) (hereinafter uniformly referred to as "software"). They only apply if the customer is a business (§ 14 BGB), a legal entity under public law or a special fund under public law. The offers are directed exclusively at businesses and not at consumers. These STC apply in addition to the General Terms and Conditions (GTC) of acadon. Insofar as the regulations in these GTC deviate from the regulations in the GTC, the regulations in the GTC shall take precedence.

1.2 Deviating, conflicting or supplementary general terms and conditions of the customer shall only become part of the contract if and insofar as 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.

### 2. Subject matter of the contract/Scope of services

2.1 The subject matter of the contract is the provision of the software listed in the respective offer or the respective order confirmation for permanent use within the customer's own IT infrastructure (on-premises). Unless otherwise specified in the respective individual agreement, the software shall be made available to the customer in object code and with the associated user documentation to the extent specified in the respective offer or the respective order confirmation at the prices stated therein.

2.2 The quality of the software is conclusively determined by the description in the offer or the order confirmation and, if applicable, the associated license certificate. The information contained therein shall be understood as descriptions of performance and not as warranties. A warranty shall only be granted if it has been expressly designated as such and agreed in writing. The customer had the opportunity to examine the scope of performance of the software listed in the offer in workshops and test installations. acadon does not owe a quality of the software that goes beyond this. In particular, the customer cannot derive such an obligation from other representations of the software in public statements or in the advertising of acadon and/or the respective third-party providers, as well as their employees or sales partners, unless acadon has expressly confirmed the quality going beyond this in writing.

2.3 The customer has informed himself about the essential functional features of the software and bears the risk as to whether this corresponds to his wishes and needs; he has sought advice on questions of doubt from acadon employees or from expert third parties before concluding the contract. The customer is solely responsible for setting up a functional hardware and software environment for the software - which is also sufficiently dimensioned taking into account the additional load caused by the software.



2.4 The source code of the software is not part of the scope of services. It may happen that the source code of the software is supplied for technical reasons. However, this does not give the customer any right to delivery, access or use of the same.

2.5 Documentation: For software of the Dynamics product family from Microsoft, the customer receives program documentation as online help. A user documentation (user manual) does not exist. User documentation (user manuals) therefore only become part of the contract if they are expressly mentioned in the offer. The customer receives a DIN A4 sheet of "Installation Instructions" as installation documentation. Further information, as well as acadon's support for the installation, can be obtained from acadon at the usual conditions. Any documentation may be available electronically and/or in English, especially for software of the Dynamics family from Microsoft. Any documentation will only be delivered in the form in which it is provided by the respective third-party supplier.

2.6 Installation: The customer is responsible for the installation of the software. acadon provides installation instructions in the size of one DIN A4 sheet and, if not expressly included in the offer, is prepared, at the customer's request, to provide the installation of the software on the basis of an agreement to be concluded separately at the then valid prices or to provide corresponding assistance services to the customer.

2.7 Instruction: Instruction of the customer's employees in the operation of the software is only owed by acadon if this has been expressly agreed between the parties in writing. At the customer's request, instruction can be ordered at the agreed hourly rates according to the offer or, if such an hourly rate has not been agreed, at acadon's respective usual hourly rates.

2.8 Software Maintenance/Maintenance: acadon owes the maintenance and care of the software only if this has been expressly agreed in writing between the parties by corresponding separate contracts. In order to keep the software up to date, to support the customer and to eliminate occurring errors, acadon recommends the conclusion of the contract "Full Service Maintenance". The customer is advised that if a maintenance contract is not concluded, the customer will not receive any updates to Microsoft Dynamics NAV and the industry solution from acadon and furthermore that the third-party supplier Microsoft will demand increased maintenance payments for the period in which maintenance services were not used if maintenance is ordered later, because updates created and delivered to other customers during this contract-free period will then also be delivered later. This can lead to substantial additional payments by the customer under the maintenance contract.

### **3. Delivery / provision of the software**

3.1 Unless otherwise agreed, acadon effects the delivery of the software by providing the customer with a download link.

3.2 The customer is recommended to install the software in a test system first, since the immediate use in real operation can lead to sensitive disturbances up to a standstill of the operational processes. The decision whether to install in the test system or in the real system is the sole responsibility of the customer.





3.3 If the Customer has ordered instruction of its employees in the operation of the software, the parties shall agree on dates for this in good time. At the Customer's option, only its key users or all employees from the specialist departments shall be instructed. The number of participants in an instruction may not exceed 8 employees so that the comprehensibility of the instruction remains guaranteed.

#### **4. Rights of use**

4.1 Upon full payment of the purchase price, the Customer shall receive a non-exclusive right to use the Software for an unlimited period of time to the extent granted in the respective offer or in the respective order confirmation and the license certificate. Territorially, the corresponding right of use shall only apply to the country of destination agreed between the parties in which the software is to be used. In the absence of an express agreement, the right of use shall be granted exclusively for the country in which the customer has its place of business.

#### **4.2 Types of Use:**

4.2.1 Concurrent User: If the offer specifies a maximum number of users who may access the software simultaneously, any use in excess of this is prohibited. In the event of additional use, the Customer shall pay a remuneration corresponding to the price of the authorization of a single person in relation to the price of the offer.

4.2.1 Named User: If use by named user is agreed, the following applies: acadon grants the customer the right to use the software for each employee named by the customer. Any use by another person, in particular by exploiting their designation or password in the program, is prohibited. In the event of a violation of this, the additional remuneration shall be based on the rules for exceeding the number of concurrent users in accordance with the above provision.

4.3 Permitted use includes installation of the software, loading into the working memory and use by the customer as intended. The number of licenses and the type and scope of use shall otherwise be determined in accordance with the description in the respective offer or in the respective order confirmation and the license certificate. The customer is not entitled to lease or otherwise sublicense the purchased software, to publicly reproduce or make it accessible by wire or wireless means, or to make it available to third parties against payment or free of charge, e.g. by way of application service providing or as "software as a service". The transfer of a copy of the software to a third party for permanent use is only permitted under the following conditions: In this case, the customer will completely give up the use of the software, remove all installed copies of the software from his hardware and delete all copies located on other data carriers or hand them over to acadon, unless he is legally obligated to keep them for a longer period of time. Upon acadon's request, the customer shall confirm to acadon in writing that the aforementioned measures have been carried out in full or, if applicable, explain to acadon the reasons for longer retention. Furthermore, the customer shall expressly agree with the third party to observe the scope of the granting of rights in accordance with this clause 4. A splitting of purchased license volume packages is not permitted. In the event of a change of hardware, the customer shall also be obliged to remove the software from the data carriers and other hardware used to date.



4.4 The Customer shall be entitled to make a backup copy if this is necessary to secure future use. The customer shall visibly affix the note "Backup Copy" as well as a copyright notice of the manufacturer to the created backup copy. The customer shall only be entitled to decompile and reproduce the contractual software if this is provided for by law. However, this only applies under the condition that acadon has not made the necessary information available to the customer upon request within a reasonable period of time.

4.5 If the customer uses the software to an extent that exceeds the acquired rights of use qualitatively (with regard to the type of permitted use) or quantitatively (with regard to the number of acquired licenses), he will immediately acquire the rights of use necessary for the permitted use. If he fails to do so, acadon will assert the rights to which it is entitled.

4.6 In the case of third-party software, the authorization is based on the license terms of the respective third-party manufacturer, which must be observed by the customer. acadon assumes no responsibility that the software from third-party manufacturers is suitable for the customer's purposes and that the scope of the license granted by the third-party manufacturers is sufficient for the customer's purposes.

4.7 The transfer of the rights of use takes place only at the time of the complete payment of the purchase price by the customer. Until the complete payment of the remuneration, acadon revocably tolerates the use of the software by the customer. acadon can revoke the use of such software for the duration of the default if the customer is in default with the payment of the remuneration.

4.8 Copyright notices, serial numbers and other features serving to identify the program may not be removed or changed from the contractual software.

4.9 Insofar as source code is supplied, this shall only be for technical reasons. This shall not constitute any right of the Customer to deliver, inspect, copy, transfer to third parties, process or otherwise use the source code.

4.10 Documentation is supplied for the exclusive personal use of the customer. The right to copy, edit and transfer to third parties for other than the aforementioned purposes is prohibited. This does not apply to documentation written by the customer regarding the customer's adjustments. These may be further used by the customer, but likewise may not be passed on to third parties, because they may also contain know-how or intellectual property (copyrights) of acadon or the software manufacturers that is worthy of protection.

4.11 Duplication or reworking of the online help or other documents is not permitted. This does not apply to such documents that were produced by the customer itself. Reference is made to the prohibition on passing on.

## **5. Safeguards, audit right**

5.1 The Customer shall take appropriate measures to secure the software and, if applicable, the access data for online access against access by unauthorized third parties. In particular, all copies of the software as well as the access data shall be kept in a protected place.

5.2 Upon acadon's request, the customer shall enable acadon to verify the proper use of the software, in particular whether the customer is using the program qualitatively and quantitatively within the scope of the licenses purchased by him. For this purpose, the customer shall provide acadon with information, grant access to relevant documents and records, and enable an audit of



the hardware and software environment used by acadon or by an auditing company named by acadon and acceptable to the customer. Acadon may carry out the audit on the customer's premises during regular business hours or have it carried out by third parties bound to secrecy.

acadon will ensure that the customer's business operations are disturbed as little as possible by its activities on site. If the inspection reveals that the purchased number of licenses has been exceeded by more than 5% (five percent) or that the license has otherwise been used in a way that is not in accordance with the contract, the customer shall bear the costs of the inspection, otherwise the costs shall be borne by acadon. All other rights remain reserved.

## **6. Remuneration, due date**

The remuneration for acadon's services is specified in the offer or the order confirmation. It is due and payable according to the specifications in the offer or the order confirmation. If nothing is specified therein, 30 % of the total purchase price shall be due upon placement of the order and the remaining 70 % of the total purchase price shall be due upon delivery of the software (section 3.1 of these GT&C).

## **7. Warranty**

7.1 acadon warrants the agreed quality and that the customer can use the software without infringing the rights of third parties. The warranty for material defects does not apply to defects based on the fact that the software is used in a hardware and software environment that does not meet the requirements specified in the license certificate or for changes and modifications that the customer has made to the software without being authorized to do so by law, the contract or based on prior written consent from acadon.

7.2 The customer must check the contractual software for obvious defects immediately upon receipt and notify acadon of these immediately if they are present, otherwise a warranty for these defects is excluded. The same applies if such a defect becomes apparent later § 377 HGB applies.

7.3 In the event of a material defect, acadon is initially entitled to subsequent performance, i.e. at its own discretion to remedy the defect ("rectification") or replacement delivery. Within the scope of the replacement delivery, the customer will accept a new version of the software, if applicable, unless this leads to unreasonable impairments. In the case of defects of title, acadon will, at its own discretion, provide the customer with a legally unobjectionable possibility of using the software or modify it in such a way that the rights of third parties are no longer infringed.

7.4 The customer shall support acadon in determining and eliminating the defect and shall immediately grant acadon access to the documents from which the more detailed circumstances of the occurrence of the defect result.

7.5 Before asserting claims for supplementary performance, the customer shall verify with due diligence whether a defect subject to supplementary performance exists. If an alleged defect is not subject to the obligation of subsequent performance (pseudo defect), the customer may be charged for acadon's services rendered for verification and error correction at acadon's respective valid rates of remuneration plus the expenses incurred, unless the customer could not have recognized the pseudo defect even by exercising due diligence.



7.6 The place of performance for the supplementary performance is the registered office of acadon. The supplementary performance can be carried out by telecommunicative transmission of software, unless the telecommunicative transmission is not reasonable for the customer, for example for reasons of IT security.

7.7 If the customer sets acadon a deadline for performance or supplementary performance, he can only use the unsuccessful expiration to withdraw from the contract or to claim damages instead of performance if he has informed acadon when setting the deadline that he does not want to use acadon's performance after the unsuccessful expiration of the deadline. If the customer has to issue a warning instead of setting a deadline, he must also inform acadon at the same time as the warning that he no longer wishes to make use of the service after the warning has not been successful.

7.8 With the exception of claims for damages, warranty claims based on material defects shall become statute-barred after one year. In the case of sale on a data carrier, the limitation period shall begin with the delivery of the contractual software, in the case of sale by means of download from the Internet after notification and activation of the access data for the download area.



## Special Terms and Conditions of acadon AG for License Maintenance

### 1. Scope

1.1 These Special Terms and Conditions (STC) apply to all contracts between acadon AG (hereinafter referred to as "acadon") and the customer for the ongoing provision of updates and upgrades (license maintenance) for software purchased under a separate contract, regardless of whether it is software developed by acadon or software from third-party providers (e.g. Microsoft) (hereinafter uniformly referred to as "software"). They only apply if the customer is a business (§ 14 BGB), a legal entity under public law or a special fund under public law. The offers are directed exclusively at entrepreneurs and not at consumers. These STC apply in addition to the General Terms and Conditions (GTC) of acadon. Insofar as the regulations in these STC deviate from the regulations in the GTC, the regulations in the STC shall take precedence.

1.2 Deviating, conflicting or supplementary general terms and conditions of the customer shall only become part of the contract if and insofar as 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.

### 2. Subject matter of the contract/scope of services

2.1 The subject matter of the license maintenance agreement offered by acadon is the ongoing provision of updates and upgrades for the Software listed in the respective offer or the respective order confirmation.

2.2 acadon will deliver the updates and upgrades for third-party software to the customer within a reasonable period of time after they have been released by the respective third-party provider.

2.3 Microsoft alone decides on changes or extensions with the MS-Dynamics license. acadon has no influence on the changes of this software by Microsoft. In particular, the following changes may occur:

2.3.1 Changes to the software due to changes in legal requirements or a change in accounting practice

2.3.2 Changes to the Software with regard to the general technical development of the end-users of the Software to achieve a better software status.

2.3.3 Changes for the purpose of troubleshooting; in the process, individual functionalities may be omitted or become more cumbersome

2.3.4 Introduction of new functionalities that entail a chargeable extension of the license.

2.4 Third-party providers reserve the right vis-à-vis acadon to determine the content of the license themselves. Likewise, the respective third-party provider alone determines when updates and upgrades are generally released for marketing. The respective third party provider also reserves the right to decide in which deployment environment the maintained license is used and the updates and upgrades may be used and, if necessary, to change the permitted hardware and software prerequisites or configurations for licenses for updates and upgrades.



The changes to these prerequisites and to the updates and upgrades are generally necessary as part of the adaptation to the progressive technological development in order to keep the third-party software up to date. In this case, it is the customer's responsibility to create the system requirements necessary for the use of the updates and upgrades.

2.5 The third-party software is a standard software product that is not tailored to the individual needs of individual software users. The Customer may only make individual adaptations of updates and upgrades if it is entitled to do so under the license agreement with which it acquired the right to use the third-party software. In this case, the customer assumes full responsibility for the commissioning of the modifications and updates. This also applies if acadon has made these changes for the customer.

2.6 The above restrictions are specified by the respective third-party provider. acadon has no influence on this. Changes to the software and change expenses subject to a charge resulting from changes to the standard software by the respective third-party provider shall be borne by the customer.

2.7 Data reconstruction and data backup: The customer is obligated to ensure sufficient data backup himself before acadon performs the services. If such a backup has not been made, the customer must inform acadon of this before the start of the maintenance work. In this case, acadon's employees will perform the data backup. The effort incurred in this process is to be additionally remunerated. The obligation to check whether the data backup was successful is incumbent on the customer.

### **3. Services not included:**

The following services are not included in the license maintenance agreement, i.e. the customer has no claim against acadon for these services without a separate agreement expressly made in the individual case.

3.1 Troubleshooting: acadon is not obligated to troubleshoot the contractual software outside of its statutory supplementary performance obligations from the license maintenance agreement as well as the separately concluded software delivery agreement. Such troubleshooting will be performed by acadon at the customer's request on the basis of a separate agreement to be concluded at the then valid prices.

3.2 Customer-specific adaptation: acadon is not obligated to customer-specific adaptations of the updates and upgrades provided with the respective license maintenance agreement. These will be provided by acadon at the customer's request on the basis of a separate agreement to be concluded at the then valid prices.

3.3 Hotline: A license maintenance contract does not include a hotline service on the part of acadon towards the customer. For such services acadon offers the conclusion of a help service contract, which must be concluded separately between the parties.

3.4 Release change and migration: The scope of services of the License Maintenance Agreement does not include support of the Customer in case of a release change or correction status as well as migration of changed systems to a system in the standard scope of delivery.



3.5 The above list is not exhaustive. It cannot be concluded from the lack of naming of services that these services are the subject of acadon's contractual obligations. The rights of the customer based on the liability for service disruptions owed by acadon under the contract remain unaffected.

#### **4. Provision of updates/upgrades**

The customer is obliged to install the updates and upgrades provided to him within a reasonable period of time. If the customer fails to do so, the possibility to escalate support requests to the respective third-party provider expires.

#### **5. Rights of use**

5.1 acadon grants the customer the rights to use the updates and upgrades provided within the scope of the license maintenance agreement to the extent they were granted to the customer by acadon for the originally provided software.

5.2 For independently executable software, the customer shall receive the rights pursuant to paragraph 1 subject to the condition subsequent to the time of the transfer of further software versions. With the transfer of any further executable software within the scope of the license maintenance agreement, the rights to the previously transferred version expire. Until the installation of the provided software, acadon tolerates the use of the previous version to the extent described in paragraph 1.

5.3 The customer may not continue to use software that has become surplus to requirements as a result of services under this contract and is obligated to permanently uninstall it, to confirm this uninstallation in writing and to return to acadon any original data carriers including backup copies that may be available for this purpose.

5.4 The provisions of paragraphs 1 to 3 also apply to services provided by acadon within the scope of subsequent performance or as a gesture of goodwill.

#### **6. Remuneration, due date**

6.1 The remuneration for acadon's services is specified in the offer or the order confirmation. It is due and payable in accordance with the specifications in the offer or the order confirmation. If nothing is specified there, the customer must make the payment within 30 days from the conclusion of the contract.

6.2 acadon is entitled to increase the remuneration with a notice period of two months to the beginning of the third month. If the price increase amounts to more than 8% within a period of 2 years, acadon will inform the customer of the intended price increase in writing. In this case, the customer is entitled to terminate this contract extraordinarily in writing with a notice period of one month before the price increase takes effect.

#### **7. Warranty**

7.1 The statutory warranty rights shall apply to the updates and upgrades provided. The warranty for material defects does not apply to defects based on the fact that the software is used in a hardware and software environment that does not meet the requirements specified in the license certificate or for changes and modifications that the customer has made to the software without being authorized to do so by law, the contract or on the basis of acadon's prior written consent.



7.2 The customer must check the updates and upgrades immediately upon receipt for obvious defects and notify acadon of these immediately if they are present, otherwise a warranty for these defects is excluded. The same applies if such a defect becomes apparent later. § 377 HGB is applicable.

7.3 In the event of a material defect, acadon is initially entitled to subsequent performance, i.e. at its own discretion to remedy the defect ("rectification") or replacement delivery. Within the scope of the replacement delivery, the customer will accept a new version of the software, if applicable, unless this leads to unreasonable impairments. In the case of defects of title, acadon will, at its own discretion, provide the customer with a legally unobjectionable possibility of using the software or modify it in such a way that the rights of third parties are no longer infringed.

7.4 The customer shall support acadon in determining and eliminating the defect and shall immediately grant acadon access to the documents from which the more detailed circumstances of the occurrence of the defect result.

7.5 Before asserting claims for supplementary performance, the customer shall verify with due diligence whether a defect subject to supplementary performance exists. If an alleged defect is not subject to the obligation of subsequent performance (pseudo defect), the customer may be charged for acadon's services rendered for verification and error correction at acadon's respective valid rates of remuneration plus the expenses incurred, unless the customer could not have recognized the pseudo defect even by exercising due diligence.

7.6 The place of performance for the supplementary performance is the registered office of acadon. The supplementary performance can be carried out by telecommunicative transmission of software, unless the telecommunicative transmission is not reasonable for the customer, for example for reasons of IT security.

7.7 If the customer sets acadon a deadline for performance or supplementary performance, he can only use the unsuccessful expiration to withdraw from the contract or to claim damages instead of performance if he has informed acadon when setting the deadline that he does not want to use acadon's performance after the unsuccessful expiration of the deadline. If the customer has to issue a warning instead of setting a deadline, he must also inform acadon at the same time as the warning that he no longer wishes to make use of the service after the warning has not been successful.

7.8 With the exception of claims for damages, warranty claims based on material defects shall become statute-barred after one year, unless the defect was fraudulently concealed. The limitation period shall begin with the provision of the respective update or upgrade. Insofar as the software provided is identical to the software already in use, the previously existing rights and the corresponding limitation period shall apply to the software parts already in use.





## **Special Terms and Conditions of acadon AG for Managed Service**

1.1 These Special Terms and Conditions (STC) apply to all contracts between acadon AG (hereinafter referred to as "acadon") and the customer for the provision of "Managed Service" services. They only apply if the customer is a business (§ 14 BGB), a legal entity under public law or a special fund under public law. The offers are directed exclusively at entrepreneurs and not at consumers. These STC apply in addition to the General Terms and Conditions (GTC) of acadon. Insofar as the regulations in these STC deviate from the regulations in the GTC, the regulations in the STC shall take precedence.

1.2 Deviating, conflicting or supplementary general terms and conditions of the customer shall only become part of the contract if and insofar as 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.

### **2. Subject matter of the contract/scope of services**

2.1 The subject matter of the contract is the provision of Managed Service performances for a limited period of time in the scope of services listed in the respective offer or the respective order confirmation for a limited period of use via the Internet as well as the granting of storage space on servers provided by acadon.

2.2 Unless otherwise agreed in the offer, acadon shall provide the following services to the customer during the term of the contract:

2.2.1 Temporary provision of hardware / data center capacities / cloud services (hereinafter collectively "Infrastructure");

2.2.2 Installation / commissioning of the infrastructure, if agreed;

2.2.3 if applicable, monitoring and other operational/support services related to the infrastructure according to the offer.

2.3 The installation and commissioning of the Cloud Services shall be the responsibility of the Customer, unless otherwise stipulated in the offer.

2.4 acadon always performs operating/support services within the scope of Managed Services during the service hours specified in the offer/price list. Unless otherwise agreed in the offer, Customer has no claim that acadon will perform activities outside the service hours, not even in the context of the installation of updates. Acadon may perform these activities outside the service hours at its own discretion and charge agreed surcharges for this.

2.5 The services provided according to these STC - apart from the service part of the temporary provision of the infrastructure - represent services, i.e. acadon owes only the activity, but not the success intended by the customer, unless acadon has contractually assured a specific success.



2.6 In case of imminent danger, for example in case of a serious security breach with regard to the infrastructure and/or in case of a virus attack of the customer's IT systems, acadon is entitled to perform activities necessary to avert the danger and to charge for them according to time and effort, even without a corresponding order. acadon will inform the customer about corresponding measures in advance, if possible.

### **3. Provision of infrastructure**

3.1 Unless otherwise agreed in the offer, acadon shall only provide the respective infrastructures and the Internet access thereto within the scope of the Managed Services. The connection of the customer to the Internet, the maintenance of the network connection as well as the quality and provision of the hardware and software required on the part of the customer is not part of the contract.

3.2 Within the scope of Managed Services, acadon can provide Cloud Services in the form of its own data centers / infrastructures or via data centers / infrastructures of third party providers. Unless otherwise agreed in the offer, acadon is not subject to any restrictions related to third-party providers and/or regions when selecting the data center / infrastructure.

### **4. Support / service level agreement**

4.1 acadon provides support for the Managed Services. Unless otherwise agreed in the offer, the service commitments pursuant to this clause shall apply.

#### **4.2 Availability regulations**

4.2.1 Downtime means the total time in hours in a year during which the infra structure is unable to respond to interaction requests from customers and/or users. Availability determines the percentage of a year during which the provided service runs without unplanned disruption. The year is a period of 365 calendar days or 8,760 hours during which the infrastructure is provisioned. The year begins on the day the infrastructure is provided and ends 365 days later. Availability per year in percent is calculated as:

$(8,760 \text{ hours} - \text{downtime}) / 8,760 \text{ hours}.$

4.2.2 The infrastructure shall be provided in each case with an availability of at least 99% as an annual average.

4.2.3 Downtime shall be excluded from the calculation of Downtime under Section 4.2.1 under the following circumstances:

- Scheduled maintenance and announced downtime, including backup intervals and scheduled maintenance and announced downtime performed by acadon / the third party provider;
- Abuse of access rights by the Customer and/or the User or other use of the Cloud Service in violation of the Cloud Service Contract Terms;
- Other issues beyond acadon's reasonable control, including: working on the system at the customer's request, restoring a current database status from a backup media or using database transaction logs, customer's failure to comply with technical usage requirements.



## 4.3 Helpdesk

4.3.1 acadon shall set up a helpdesk for the support of the Managed Services within the support hours, which is staffed with professionally qualified and experienced personnel. Only insofar as this has been expressly agreed, a telephone on-call service is available outside the support hours. Support times and media are agreed in the offer.

4.3.2 Outside the support hours, the Customer may only report errors by telephone if this is contractually agreed. If error reports are initiated outside the support hours via e-mail or other telephone numbers, these shall only be deemed to have been made at the beginning of the following supervised support hours.

## 4.4 Interference suppression

4.4.1 Faults are assigned to the following fault classes:

- Fault class 1 comprises serious faults that prevent or unreasonably restrict the use of essential parts of the service in an expedient, economically meaningful manner ("everything is in place, nothing works"). This presupposes that the customer / user is not capable of working.
- Error class 2 comprises functional interruptions which severely restrict the application of essential parts of the service for economically reasonable use. This requires that the customer / user is restricted in his work.
- Failure class 3 includes limitations in functionality, so that the services can be used in an economically reasonable way, with some exceptions.
- Failure class 4 comprises weaknesses in the services which do not restrict use. The impairment is so slight that the services can essentially be used until further notice and the work results are usable.

4.4.2 Each error message shall be assigned to an error class by acadon at its reasonable discretion. A suggestion of the customer shall be taken into account. If acadon does not deviate from the customer's suggestion by more than one defect class, the classification shall be deemed to be mutually agreed. The customer shall be responsible for proving the lower classification.

4.4.3 The subsequent reclassification of a defect report to another defect class is only possible by mutual agreement.

4.4.4 In the event of an error, acadon will respond to the customer's error message within the support times within the agreed response time. Unless expressly agreed otherwise, the response time for error messages of error class 1 is a period of four (4) hours, for error class 2 a period of eight (8) hours, for error class 3 a period of one week and for error class 4 a period of two weeks.

4.4.5 Successful elimination of the functional impairment within the response times is not owed.

4.4.6 Decisive for the initiation of the response times is the receipt of a qualified error message from the customer by the helpdesk via the agreed contact channels.



4.4.7 An error message is only to be evaluated as qualified if the described error is reproducible, i.e. the operating situation and the working environment are described so precisely that a qualified acadon employee can trigger the error himself at any time.

4.4.8 Each error message shall also contain as precise a description as possible of the functional impairment and the time at which it was first detected. If the error occurs only at individual workstations, these shall be designated.

4.4.9 If the customer has made a change to its own system before the error occurred, this must also be reported.

4.4.10 In the case of serious errors of error classes 1 and 2, acadon begins to limit the consequences of the error immediately after the initial reaction and continues its activity outside the support time. As long as the error has not been eliminated, the service is considered unavailable, unless it turns out that the customer is responsible for the error or that the error should have been assigned to error class 3 or 4. Errors of error classes 3 and 4 shall not be considered as non-availability of the Service.

#### 4.5 Dealing with non-compliance with service levels

As far as acadon complies with service levels or only in individual cases, i.e. does not repeatedly / sustainably violate service levels, claims of the customer are excluded. In the event that service levels are not complied with, the parties shall determine the following procedure:

4.5.1 acadon notifies the customer, or the customer asks acadon to analyze the service level data.

4.5.2 acadon will immediately determine the (possible) cause of the malfunction (if known) in order to comply with the service level.

4.5.3 Unless pursuit of the failure is waived, acadon shall develop a corrective action plan, submit it to Customer for written confirmation (which shall not be unreasonably withheld or delayed), and implement it within a reasonable period of time (and in accordance with the agreed deadlines) after confirmation is given.

4.5.4 acadon has not violated service levels as far as the root cause analysis (properly performed by acadon) shows that the non-compliance with the respective service level was caused by the customer.

### 5. Rights of use for cloud services

5.1 acadon grants the customer the non-exclusive and non-transferable right to use the Cloud Services provided to the extent granted in the respective offer or in the respective order confirmation and the license certificate for the duration of the contract within the scope of the Managed Services as intended.

5.2 The number of licenses as well as the type and scope of use are determined by the description in the respective offer or in the respective order confirmation and the license certificate. The Customer is not entitled to lease or otherwise sublicense the Cloud Services, to publicly reproduce or make them accessible by wire or wireless means or to make them available to third parties against payment or free of charge.



5.3 If the customer uses the Cloud Services to an extent that exceeds the acquired rights of use qualitatively (with regard to the type of permitted use) or quantitatively (with regard to the number of acquired licenses), he will immediately acquire the rights of use necessary for permitted use. If he fails to do so, acadon will assert the rights to which it is entitled.

5.4 In the case of cloud services from third-party providers, the authorization is based on the license terms of the respective third-party provider, which must be observed by the customer.

## **6. Special obligations of the customer**

6.1 If acadon contractually assumes the installation of hardware, the customer shall provide the necessary power and network connections within reach of the operating environment at its own expense. Unless otherwise agreed or a manufacturer's specification provided by acadon upon conclusion of the contract provides otherwise, at least one conventional single-phase AC power connection with 240 volts and one Ethernet network connection shall be provided per independent computing unit (e.g. per server or workstation computer).

6.2 The customer will independently ensure a complete backup of his data files and up-to-date virus protection before acadon starts to set up hardware.

6.3 The customer shall provide acadon with access to the IT systems on which acadon provides its services at its own expense. The necessary identifiers and passwords for access with administrator rights shall be kept ready and entered upon acadon's request at the customer's discretion or handed over to acadon in writing. The customer shall provide acadon with access to data carriers and the Internet. Waiting times of acadon are to be compensated according to expenditure.

6.4 The Customer shall protect the usage and access authorizations for the infrastructure assigned to it or to the Users as well as identification and authentication safeguards against access by third parties and shall not pass them on to unauthorized users. He shall change passwords at regular intervals and secure access by means of multi-factor authentication wherever possible. The aforementioned obligations must also be fulfilled if the customer receives a password that serves to identify him/her to acadon when making declarations concerning the contractual relationship. Persons who use the customer's password when submitting such a declaration are deemed to be authorized by the customer to submit the respective declaration. If, due to the customer's fault, third parties use acadon's services by misusing the passwords, the customer is liable to acadon for this.

6.5 The customer shall indemnify acadon upon first request against all claims of third parties that are based on an illegal use of the infrastructure by him or that occur with his approval or that result in particular from data protection law, copyright law or other legal disputes that are connected with the use of the Standard Software. If the customer recognizes or must recognize that such a violation is imminent, there is an obligation to inform acadon immediately.

6.6 The Customer shall oblige the Users authorized by it to comply for their part with the provisions listed for the use of the infrastructure, in particular Sections 6.1 and 6.2.

6.7 To the extent necessary and reasonable, the Customer shall cooperate in any changes, e.g. by re-entering access data or by simple conversions of its systems.



6.8 The customer shall comply with / implement instructions for action, recommendations, etc. of acadon without delay.

6.9 The customer will avoid an excessive load on the infrastructure, e.g. by scripts / commands that require an excessive amount of computing power or use an above-average amount of RAM. acadon is entitled to block access to content that does not meet the above requirements. acadon will inform the customer immediately of such a measure and make the content in question accessible again as soon as the customer proves to acadon that it has been redesigned to meet the above requirements.

6.10 The customer will use acadon's services only to the extent required for proper business operations. The customer will avoid excessive use of acadon's services and capacities in order not to impair acadon's IT systems and to ensure the security of acadon's network.

6.11 If a customer endangers the security, integrity or availability of Cloud Services of acadon or if such suspicion arises at acadon due to objective evidence that serious disruptions of Cloud Services will occur, acadon may temporarily block or restrict access. The times of blocking or restriction are excluded from the calculation of downtime. This regulation also applies to so-called "Denial of Service" attacks (hereinafter "DoS attacks"), which the customer carries out via Cloud Services. The same shall apply if the threat originates via the customer's system without the customer being responsible for this. It is clarified that this provision also applies to DoS attacks for which the customer's IT systems are used by third parties.

6.12 If cloud services of acadon are used by the customer for illegal purposes (sending spam mails, online services for providing illegal content etc.), acadon can block the cloud service.

## **7. Data security**

Insofar as acadon provides cloud services in the form of its own infrastructures within the scope of Managed Services, the following regulations apply to data security:

7.1 The data stored on acadon systems are backed up daily. The backups are stored redundantly on different computers. Backup copies of the last 14 days are kept. These backups are to be understood as system backups and are not used for versioning customer data. In particular, it is not possible to perform a targeted restore for a customer on a specific data set in the past.

7.2 The customer must therefore ensure that all data, in particular data stored on acadon's servers, is backed up at least once a day by means of copies on the customer's own systems, as this data can be lost, for example, during training, repair, installation and other interventions. Data backup on servers of acadon is not sufficient to fulfill this obligation.

7.3 The customer is fully responsible for the security of the data transmitted by him to the Internet and stored at acadon. For an additional charge, which must be agreed individually, acadon can provide secured connections.

## **8. Return of the hardware**

8.1 After the end of the contract, the customer will completely return hardware in all components to acadon in a condition corresponding to the contractual use. The customer shall completely delete or destroy data inventories. The customer is obligated to confirm the complete return and deletion in writing to acadon upon request.



8.2 Upon return of the Hardware, the parties shall prepare a protocol in which any existing damage and defects of the Hardware shall be recorded. The Customer shall reimburse the costs of restoration in the event of damage or defects for which it is responsible.

8.3 The Customer shall carry out the dismantling and return transport of the Hardware. The Customer shall bear the costs for the dismantling, packaging and return transport of the Hardware. The Customer shall insure the Hardware against loss, destruction and damage in transit at its own expense.

## **9. Responsibility for content / labeling / personal data**

9.1 acadon is not obligated to check the data stored by the customer on systems provided to him for legal violations. The customer bears full responsibility for all content processed within the framework of the Cloud Services. The customer guarantees not to process and store any illegal content, in particular not to deposit or use any copyrighted works on acadon's servers without the consent of the author, nor any content that violates criminal provisions.

9.2 If the customer notices illegal content, he is obligated to immediately block and notify acadon.

9.3 acadon is entitled to block potentially illegal content on the Cloud Services used by the customer at its own discretion and to inform the customer about the blocking. If the customer does not fulfill his obligation to delete the content within ten (10) days or if he proves to acadon within this period that the content does not violate protective laws, acadon is entitled to delete it without the customer's consent.

9.4 If the customer processes personal data of third parties within the scope of this contractual relationship, the customer itself is responsible for compliance with data protection regulations. acadon will process the data processed by the customer within the scope of the cloud data only within the scope of the customer's instructions on the customer's behalf.



## Special Terms and Conditions of acadon AG for the Provision of Software as part of a "Software as a Service" (SaaS) Model

### 1. Scope

1.1 These Special Terms and Conditions (STC) apply to all contracts between acadon AG (hereinafter referred to as "acadon") and the customer for the provision of software for time-limited use within the framework of a "Software-as-a-Service" (SaaS) model, regardless of whether it is software developed by acadon or software from third-party providers (e.g. Microsoft) (hereinafter uniformly referred to as "Software"). They only apply if the customer is a business (§ 14 BGB), a legal entity under public law or a special fund under public law. The offers are directed exclusively at entrepreneurs and not at consumers. These STC apply in addition to the General Terms and Conditions (GTC) of acadon. Insofar as the regulations in these STC deviate from the regulations in the GTC, the regulations in the STC shall take precedence.

1.2 Deviating, conflicting or supplementary general terms and conditions of the customer shall only become part of the contract if and insofar as 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.

### 2. Subject matter of the contract/scope of services

2.1 The subject matter of the contract is the provision of the software listed in the respective offer or the respective order confirmation for time-limited use via the Internet as well as the granting of storage space on servers provided by acadon.

2.2 The quality of the software is conclusively determined by the description in the offer or the order confirmation and, if applicable, the associated license certificate. The information contained therein shall be understood as descriptions of performance and not as warranties. A warranty shall only be granted if it has been expressly designated as such and agreed in writing. The customer had the opportunity to examine the scope of performance of the software listed in the offer in workshops and test installations. acadon does not owe a quality of the software that goes beyond this. In particular, the customer cannot derive such an obligation from other representations of the software in public statements or in the advertising of acadon and/or the respective third-party providers, as well as their employees or sales partners, unless acadon has expressly confirmed the quality going beyond this in writing.

2.3 The customer has informed himself about the essential functional features of the software and bears the risk as to whether the software meets his wishes and needs; he has sought advice on questions of doubt from acadon employees or expert third parties before concluding the contract.

2.4 Documentations: In the case of software from Microsoft's Dynamics product family, the customer has the option of installing a Visual Studio code locally and then accessing the technical documentation for his system after logging in accordingly. There is no user documentation (user manual). The manufacturer only provides an online help. User documentation (user manuals) therefore only become part of the contract if they are explicitly mentioned in the offer.





Any documentation may be available, in particular for software of the Dynamics family of Microsoft, electronically and/or in English. Any documentation shall only be supplied in the form in which it is made available by the respective third-party supplier.

2.5 Instruction: Instruction of the customer's employees in the operation of the software is owed by acadon only if this has been expressly agreed between the parties in writing. At the customer's request, instruction can be ordered at the agreed hourly rates according to the offer or, if such an hourly rate has not been agreed, at acadon's respective usual hourly rates.

### **3. Provision of the software**

3.1 acadon provides the customer with the software in the respective current version via the Internet against payment for the duration of the contract. For this purpose, acadon sets up the software on a server that is accessible to the customer via the Internet.

3.2 If the Customer has ordered instruction of its employees in the operation of the software, the parties shall agree on dates for this in good time. At the Customer's option, only its key users or all employees from the specialist departments shall be instructed. The number of participants in an instruction shall not exceed 8 employees so that the comprehensibility of the instruction remains guaranteed.

### **4. Rights of use**

4.1 acadon grants the customer the non-exclusive and non-transferable right to use the software as intended in the scope granted in the respective offer or in the respective order confirmation and the license certificate for the duration of the contract within the scope of the SaaS services. Spatially, the corresponding right of use shall only apply to the country of destination agreed between the parties in which the software is to be used. In the absence of an express agreement, the right of use shall be granted exclusively for the country in which the customer has its place of business.

#### **4.2 Types of Use:**

4.2.1 Concurrent User: If the offer specifies a maximum number of users who may access the software simultaneously, any use in excess of this is prohibited. In the event of additional use, the Customer shall pay a remuneration corresponding to the price of the authorization of a single person in relation to the price of the offer.

4.2.2 Named User: If use by named user is agreed, the following applies: acadon grants the customer the right to use the software for each employee named by the customer. Any use by another person, in particular by exploiting their designation or password in the program, is prohibited. In case of a violation of this, the additional remuneration is based on the rules for exceeding the number of concurrent users according to the above provision.

4.3 Permitted use includes loading the software into the working memory on the server provided by acadon, but not even temporary installation or saving of the software on data carriers of the hardware used by the customer. The number of licenses as well as the type and scope of use are otherwise determined by the description in the respective offer or in the respective order confirmation and the license certificate.



The customer is not entitled to rent out or otherwise sublicense the software, to publicly reproduce or make it accessible by wire or wireless means, or to make it available to third parties against payment or free of charge.

4.4 If the customer uses the software to an extent that exceeds the acquired rights of use qualitatively (with regard to the type of permitted use) or quantitatively (with regard to the number of acquired licenses), he will immediately acquire the rights of use necessary for the permitted use. If he fails to do so, acadon will assert the rights to which it is entitled.

4.5 In the case of third-party software, the authorization shall be based on the license terms of the respective third-party provider, which must be complied with by the Customer.

## **5. Granting of storage space**

5.1 acadon provides the customer with storage space on a server for storing his data.

5.2 acadon shall ensure that the stored data can be retrieved via the Internet.

5.3 the customer shall not be entitled to transfer this storage space to a third party for use, in part or in full, against payment or free of charge.

5.4 The customer undertakes not to store any content on the storage space, the provision, publication or use of which violates applicable law or agreements with third parties. acadon is entitled to immediately block the storage space if there is reasonable suspicion that the stored data is unlawful and/or infringes the rights of third parties. A justified suspicion of illegality and/or infringement of rights exists in particular if courts, authorities or other third parties inform acadon of this. acadon must inform the customer immediately of the block and the reason for this. The block is to be lifted as soon as the suspicion is invalidated.

## **6. Availability**

6.1 acadon guarantees the availability of the Software Service at least 99% (ninety-nine percent) on an annual basis. The Software Service is thereby not considered unavailable if the unavailability is partly or entirely caused by:

- a) own actions or negligence on the part of the customer;
- b) the customer's Internet connection;
- c) scheduled maintenance dates of which the Customer will be notified seven (7) days in advance;
- d) malfunctions of upstream providers caused, for example, by power interruptions, network failures, fire or other similar circumstances.

6.2 Unless proven otherwise, acadon's log data is authoritative for determining the degree of availability of the Software Service.

## **7. Maintenance and support**

7.1 acadon is entitled to update the software to newer versions if acadon deems this necessary for the security and functionality of the software service.



7.2 acadon does not warrant that the Software is free from errors and will function without interruption. acadon will correct errors in the acadon Software (which includes customizations) in accordance with paragraphs 3 and 4 of this section, unless such errors are caused by the Third Party Provider and/or if such errors are wholly or partially the result of:

- a) human error, negligence, misuse or intent on the part of the customer or a third party; or
- b) external causes, such as, but not limited to, fire, lightning, water damage, explosion or destruction.

7.3 The Customer is obliged to notify defects or inaccuracies in writing or in text form with a description of the defects immediately, but not later than 2 (two) weeks after their discovery.

7.4 Upon receipt of the notice, acadon shall use reasonable efforts to investigate and correct the error or inaccuracy (as soon as reasonably possible). If the notified error or inaccuracy cannot be found and/or is wholly or partly the result of a cause referred to in paragraph 2, acadon will charge the customer separately for the costs of investigating the error.

7.5 acadon provides a telephone number (the "Hotline") to provide support to Customer regarding the acadon Software, which does not include official training.

7.6 The Hotline is available on weekdays that are not public holidays in North Rhine-Westphalia, i.e. continuously from Monday to Friday from 9:00 a.m. to 4:00 p.m. with the exception of December 24, December 31 and Rosenmontag (Shrove Monday) in Germany.

7.7 Only the authorized person, as specified by Customer in the Data Sheet, is entitled to receive support via the Hotline. Customer shall have the right to change this authorized person subject to eight (8) days' notice and provided that the new authorized person attends training related to the acadon Software.

## **8. Obligations of the customer**

8.1 The Customer undertakes not to store any illegal content or content that violates the law, official requirements or the rights of third parties on the storage space provided.

8.2 The Customer shall be obliged to prevent unauthorized access by third parties to the protected areas of the Software by taking appropriate precautions. For this purpose, Customer shall, to the extent necessary, instruct its employees to comply with copyright law. In the event that services of acadon within the scope of SaaS services are used by unauthorized third parties using the customer's access data, the customer shall be liable for any fees incurred thereby within the scope of civil liability until receipt of the customer's order to change the access data or notification of the loss or theft, provided that the customer is at fault for the access of the unauthorized third party.

8.3 Notwithstanding acadon's obligation to back up data, the customer itself is responsible for entering and maintaining data and information required to use the SaaS services.

8.4 The Customer is obliged to check information for viruses or other harmful components before entering it and to use state-of-the-art virus protection programs for this purpose.



8.5 Customer is obligated to regularly change all passwords used to access the SaaS Services. 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.

8.6 The contents stored by the customer on the storage space designated for him may be protected by copyright and data protection laws. The customer hereby grants acadon the right to make the contents stored on the server accessible to the customer during the customer's queries via the Internet and, in particular, to reproduce and transmit them for this purpose and to be able to reproduce them for the purpose of data backup.

8.7 acadon is not liable for damages that are due to the fact that the customer installs his own apps or apps from third party providers that have not been previously approved in writing by acadon.



## Special Terms and Conditions of acadon AG for Helpservice Services

### 1. Scope

1.1 These Special Terms and Conditions (STC) apply to all contracts between acadon AG (hereinafter referred to as "acadon") and the customer for helpdesk services with respect to the software purchased under a separate contract, regardless of whether the software was developed by acadon or software from third-party providers (e.g. Microsoft) (hereinafter uniformly referred to as "Software"). They only apply if the customer is a business (§ 14 BGB), a legal entity under public law or a special fund under public law. The offers are directed exclusively at entrepreneurs and not at consumers. These STC apply in addition to the General Terms and Conditions (GTC) of acadon. Insofar as the regulations in these STC deviate from the regulations in the GTC, the regulations in the STC shall take precedence.

1.2 Deviating, conflicting or supplementary general terms and conditions of the customer shall only become part of the contract if and insofar as 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.

### 2. subject matter of the contract/scope of services

2.1 The subject matter of the Helpservice contract offered by acadon is the hotline service for the software listed in the respective offer or the respective order confirmation .

2.2 acadon maintains a hotline. The aforementioned hotline is available to customers who have concluded a help service contract with acadon at any time from Monday to Friday from 9:00 a.m. to 4:00 p.m. on working days that are not holidays at the respective acadon locations providing support. Excluded from the support are Christmas Eve, New Year's Eve and Shrove Monday. acadon makes every effort to answer the customer's calls in the aforementioned period as quickly as possible. However, it may happen in individual cases that there are longer waiting times due to an increased volume of inquiries. Therefore, acadon does not guarantee immediate availability. Within the framework of the hotline acadon is available to the customer for information by telephone, regardless of whether the subject of the inquiry is program errors, operating errors or faults from third parties.

2.3 The customer can use the aforementioned services exclusively in relation to the contractually agreed, i.e. to the software listed in the respective offer or the respective order confirmation. acadon endeavors to support the customer appropriately in his request or problem solution. However, acadon does not owe a certain success.

2.4 At the latest at the beginning of the contract, the customer must name an authorized person in writing to acadon who is authorized to use the hotline. When using the hotline, this person must then legitimize himself accordingly at the beginning of the call.



2.5 Data reconstruction and data backup: The customer is obligated to ensure sufficient data backup himself before acadon performs the services. If such a backup has not been made, the customer must inform acadon of this before the start of the maintenance work. In this case, acadon's employees will perform the data backup. The effort incurred in this process is to be additionally remunerated. The obligation to check whether the data backup was successful is incumbent on the customer.

### **3. Services not included:**

The following services are not included in the Helpservice contract, i.e. the customer has no claim against acadon for these services without a separate agreement expressly made in the individual case.

3.1 The services of Helpservice are not available for malfunctions or damages caused by the following circumstances:

- Intentional action by the user or third parties commissioned by the user
- Short circuit, overvoltage or inductions
- Accident, fire, lightning, explosion, implosion or extinguishing, knocking down, clearing out or loss in these events.
- Interventions by unauthorized persons
- Smoldering and braising
- Water, moisture or flooding
- Burglary, theft, robbery, looting or sabotage
- War events of any kind or internal unrest
- Nuclear energy
- Earthquakes and other cases of force majeure.
- Repair work/replacement caused by the fact that repair work or modifications have been carried out on the equipment by the user or by third parties without the written consent of acadon.
- User services that are attributable to the fact that the cause of the defect was a product that is not the subject of this Agreement

3.2 Release change and migration: The scope of services of the help service contract does not include the support of the customer in case of a release change or correction status as well as the migration of changed systems to a system in the standard scope of delivery.

3.3 The above list is not exhaustive. It cannot be concluded from the lack of naming of services that these services are the subject of acadon's contractual obligations. The customer's rights based on acadon's liability for service disruptions owed under the contract remain unaffected.



#### **4. Remuneration, due date**

4.1 The remuneration for acadon's services is specified in the offer or the order confirmation. It is due and payable in accordance with the specifications in the offer or the order confirmation. If nothing is specified there, the customer must make the payment within 30 days from the conclusion of the contract.

4.2 acadon is entitled to increase the remuneration with a notice period of two months to the beginning of the third month. If the price increase amounts to more than 8% within a period of 2 years, acadon will inform the customer of the intended price increase in writing. In this case, the customer is entitled to terminate this contract extraordinarily in writing with a notice period of one month before the price increase takes effect.

