

General Terms and Conditions of AGILITA Deutschland GmbH for AGILITA Software Products (SaaS)

1 General Scope

These General Terms and Conditions («GTC») apply to contracts for the temporary provision of standard software developed by AGILITA AG and distributed by AGILITA Deutschland GmbH («AGILITA») («Software»).

Upon conclusion of a contract for the provision of Software («Software Licence Agreement»), these present GTC will form an integral part of such contract, excluding all other provisions not expressly recorded in writing. Verbal agreements are not valid.

The terms of licence and/or of contract of the respective manufacturer shall apply to any licence or service or ePaaS of a third party (e.g. SAP) sold by AGILITA.

1.2 Deviations

To be valid, any deviation from these GTC shall require written agreement in the Software Licence Agreement.

In the event of any contradiction between the Software Licence Agreement and these GTC, the provisions of the Software Licence Agreement shall prevail.

1.3 Delimitation

Different terms and conditions of AGILITA apply to other delivery items, such as the provision of services, installation of software, parameterisation or customisation or permanent provision of software, introduction or training. Such additional services are not the subject matter of the Agreement and need to be agreed separately.

1.4 Customer's general terms and conditions

Unless expressly agreed otherwise, only these GTC shall apply to services in accordance with Section 1.1 hereof. General terms and conditions of the client shall become a part of the contract only if AGILITA has expressly consented to them in writing. This shall apply also where AGILITA fulfils an order of the client without objecting to the client's general terms and conditions referred to in the purchase order. Any provisions in validly included general terms and conditions of the customer (including, without limitation, conditions of purchase) which deviate from these GTC are expressly objected to and shall not apply.

1.5 Customer's purchase order

If, in addition to the signing of the Software Licence Agreement, the customer, for its internal handling procedures, needs to generate its own, separate purchase order, the customer shall formulate the text of the purchase order to be in compliance with these General Terms and Conditions and the provisions of the respective Software Licence Agreement.

If the customer, after conclusion of the Software Licence Agreement, sends its own purchase order to AGILITA, any deviating terms and conditions in such purchase order shall become part of the contract only if AGILITA expressly confirms them in writing.

2 Delivery

2.1 Deliverables

If AGILITA and the customer have concluded a Software Licence Agreement, AGILITA shall provide to the customer the Software specified in the Software Licence Agreement for use according to the Agreement for the term of the Agreement, including the associated online documentation in German language.

The deliverables do not include installation nor any further introduction support nor any training of the customer's employees by AGILITA. Such additional services need to be agreed separately between AGILITA and the customer.

2.2 Version

Unless otherwise agreed in the Software Licence Agreement, the version of the Software that will be supplied shall be the version current at the date of delivery that is generally released for distribution by AGILITA. The customer shall not be entitled to receive new versions of the licensed Software that are released for distribution after the delivery date.

2.3 Documentation

Together with the Software, AGILITA shall supply to the customer the documentation belonging to the Software in a printable, electronic format, unless otherwise regulated in the Software Licence Agreement.

2.4 Delivery

Unless otherwise agreed in the Software Provision Agreement, AGILITA shall deliver the Software in electronic format. Delivery shall be deemed made upon the service being made available on the platform in electronic format.

2.5 Delay in delivery

Any delivery date which may be fixed by the contracting parties shall be binding only if expressly stated in writing in the Software Licence Agreement.

Delivery shall be subject to correct and timely supply by AGILITA's own suppliers. AGILITA shall notify the customer of any delay that becomes apparent.

3 Rights of use

3.1 Rights of use

In return for full payment of the agreed remuneration, AGILITA shall grant the customer a non-exclusive right of use for the term of the Software Licence Agreement to use as intended the Software specified in the Software Licence Agreement and the documentation.

3.2 Scope of use

Scope and content of the intended use shall be determined by the agreements in the respective Software Licence Agreement and these GTC. In the event of any contradiction, the agreements in the Software Licence Agreement shall take precedence over the provisions in these GTC.

Unless otherwise provided in the Software Licence Agreement, the customer's employees authorised to use the Software shall be named in advance («Named Users»). The number of authorised Named Users shall be defined in the Software Licence Agreement. In the absence of such definition, the right of use shall be deemed to have been granted for one (1) Named User.

Named Users shall be employees of the customer who use functions of the Software directly. Unless otherwise provided in the Software Licence Agreement, any part-time stints shall be irrelevant for the determination of the number of Named Users.

The customer shall be obliged to notify AGILITA forthwith in writing whenever the assessment basis for the remuneration for the use of the Software is exceeded. If the rights of use are exceeded, the licensee shall be obliged to subsequently obtain an additional licence for the period of excess use for which a sufficient remuneration shall be payable. AGILITA shall have the right to check the number of the licensed and actual users at any time.

3.3 Copies

The customer may create as many backup copies of the Software as are necessary for proper data backup. Copyright notices of AGILITA must not be altered or removed in such copies. Moreover, copies of the Software or the associated documentation shall be permissible only to the extent they are necessary for use as intended.

3.4 New version

If (e.g. in the context of supplementary performance) the customer receives a new version of the licensed Software that replaces a version of the Software that was provided earlier, the customer's rights of use in relation to the Software provided earlier and now replaced shall expire as soon as the customer starts using the new Software for productive operations. Until such going live, the customer may use the new version of the Software as a test system in parallel with the Software provided earlier and still used for productive operations.

3.5 Limitations of use

The customer may install, load, run and use the Software only in the context of the limitations of use defined in the Software Licence Agreement and these GTC.

3.7 Intended use

Unless expressly provided otherwise in the Software Licence Agreement, the customer may use the Software only for internal business purposes. Any use in affiliated enterprises (group companies) is expressly excluded.

3.8 Operation by third parties

Should the customer wish to have the Software operated by a third-party enterprise (e.g. a hosting provider or an outsourcing company), including affiliated enterprises of the customer, for its own purposes, instead of operating the Software itself, this shall require a written agreement with AGILITA. Provided that its justified business interests are protected, in particular that the third-party enterprise comply with the contractual provisions regarding use and transfer of the Software, AGILITA shall not unreasonably refuse the conclusion of such an agreement.

3.9 Transfer

The rights of use granted under the Software Licence Agreement must not be transferred without the prior written consent of AGILITA.

3.10 Surrender of use

The customer shall not have the right to rent out, lease out or otherwise make available the Software to third parties, neither permanently nor temporarily.

The customer shall in particular not be entitled to grant sub-licences.

3.11 Time of transfer of the rights of use

The rights to use the Software granted under the Software Licence Agreement shall be transferred only upon full payment of the remuneration by the customer.

If the Software is delivered prior to complete payment of the agreed remuneration, the customer shall, for the period of time between delivery and acquisition of the right of use («Interim Period»), acquire a non-exclusive, non-transferable right to use the Software and the associated documentation to the extent otherwise agreed («Provisional Right of Use»). During the Interim Period, the customer's Provisional Right of Use can be revoked only in the event that AGILITA withdraws from the Agreement due to default in payment by the customer following an unsuccessful warning. The customer's Provisional Right of Use shall automatically expire upon acquisition of the right of use if it has not expired prior to this due to AGILITA's lawful withdrawal.

3.12 Violation of the rights of use

If the customer fails to comply with the above provisions regarding use according to the Agreement, all rights of use granted in the context of this Agreement shall expire immediately and shall automatically be returned to AGILITA. In such a case, the customer shall completely and without delay stop using the Software, delete all copies of the Software installed on its systems and delete or hand over to AGILITA any backup copies which it may have made.

4 Remuneration

4.1 Remuneration

For the delivery of the Software specified in the Software Licence Agreement and the granting of the rights of use regarding use as intended, the customer shall pay to AGILITA the remuneration defined in the Software Licence Agreement. Should no remuneration for the Software be agreed in the Software Licence Agreement, the customer shall pay as remuneration to AGILITA the AGILITA list price of the Software valid at the time of conclusion of the Agreement.

4.2 Increase of the remuneration

Where the remuneration in accordance with the Software Licence Agreement also is compensation for a service by AGILITA for which AGILITA uses a third party to provide it and/or which depends on a service provided by a third party, AGILITA shall be entitled to increase the remuneration unilaterally by written notification prior to the beginning of a new contract year.

4.3 Payment terms

Subject to any provision to the contrary in the Software Licence Agreement, the invoices of AGILITA shall be due for payment without deduction (among other things, without deduction of any discount, expenses, taxes, levies etc.) within 10 days of the invoice date.

4.4 Prohibition of set-off

The customer may set off a claim, or exercise a right of retention with respect to a claim, only if the claim is undisputed or has been determined without further legal recourse.

4.5 Invoicing

Subject to any provision to the contrary in the Software Licence Agreement, the contractually agreed remuneration shall be charged in advance on a quarterly basis.

4.6 Compensation for use beyond agreed scope

If the customer uses the Software beyond the agreed scope and/or not as intended without previously having been granted appropriate rights by AGILITA, the customer shall have to pay AGILITA a compensation for such excess use in accordance with the price list of AGILITA valid at the time.

4.7 Default of payment

If the customer is in arrears with any payment, the customer shall be obliged to pay the statutory default interest in the amount of 9 percentage points on top of the basic rate of interest. Moreover, a flat rate of EUR 40 can be claimed. The right to claim further damages shall be reserved.

5 Expiry of the right of use

In all cases where the customer's right to use the Software expires (e.g. due to justified withdrawal or notice of termination), the customer shall return to AGILITA all deliveries and copies on data carriers of the Software and delete all other copies of the Software, except where the customer is under a legal obligation to preserve records for a longer period of time. In such a case, the claim to return and deletion shall be extended by the term of the legal obligation to preserve records.

The customer shall confirm completion of such return and deletion to AGILITA in writing.

6 Customer's duties to cooperate

6.1 Information

In the context of the existing contractual relationship, the customer shall provide to AGILITA promptly and free of charge all necessary information, such as information about the system environment (AGILITA PaaS platform) or a detailed error description.

6.2 Central contact persons

The customer shall appoint an employee to act as central point of contact for AGILITA. Moreover, the customer shall appoint a sufficient number of deputies of the central contact person who, like the central contact person, have in-depth knowledge of the Software and the existing system environment, so as to ensure that a competent contact person will be available at the customer's at all times.

6.3 Patches, workarounds and new release versions

The customer shall inspect patches, workarounds and new release versions for completeness of the delivery and apparent faults without delay after receipt and shall immediately notify AGILITA of any defects.

6.4 Reporting of errors

The customer shall notify AGILITA via the support of any error in the Software, providing such information as can be gathered by the customer with reasonable effort and is useful for an analysis of the error.

6.5 Access

To give AGILITA access to the Software to be installed and its system environment, the customer shall at its own expense provide the measures required on its side for the term of the Agreement.

7 Term and termination

7.1 Coming into force

Subject to any individual agreement to the contrary, the Software Licence Agreement shall enter into force upon being legally signed by all parties and shall be concluded for an indefinite period of time.

7.2 Termination

Subject to any individual agreement to the contrary, the Software Licence Agreement may be terminated by either party at the end of a calendar year by giving three months' written notice, however, for the first time at the end of the calendar year in which two full contract years have elapsed, counted from the date of coming into force of

the Software Licence Agreement. Partial termination of the Software Licence Agreement is not admissible.

7.3 Termination for an important reason

Termination for an important reason shall not be affected by the above provision.

8 Customer's claims for defects

8.1 Material defects

8.1.1 Warranty

AGILITA warrants that at the time of delivery there are no defects in the Software that void or substantially reduce the value or fitness for use as intended under the Software Agreement. Otherwise, the Software shall be deemed to have a defect covered by warranty («Material Defect»). AGILITA does not give any further warranty. The customer acknowledges that malfunctions of the Software cannot be excluded entirely even if utmost care is exercised and that in particular uninterrupted operativeness of the Software cannot be guaranteed.

8.1.2 Obligation to examine and to give notice of defects

The customer shall be obliged to examine the Software for completeness and Material Defects without delay after delivery.

Should any Material Defect be found in the examination of the Software, the customer shall give substantiated written notice of such defects to AGILITA without delay. The written notice of defects shall in particular describe the Material Defects in detail and comprehensibly to AGILITA.

The customer shall give substantiated written notice to AGILITA immediately upon detection of any Material Defect that could not be detected by proper examination («Hidden Material Defects»).

If the customer does not, not in due time and/or not properly examine the Software, any Material Defect that would have been detectable in a proper examination shall be deemed approved by the customer. In the cases mentioned above, the customer shall not have any warranty rights.

8.1.3 Rights in the case of defects

In the event of a Material Defect, the customer shall initially only have the right to request supplementary performance within a reasonable time limit. In the context of supplementary performance, AGILITA shall be entitled to rectify the Material Defect at its option either by delivering a new Software or by eliminating the Material Defect (subsequent improvement). Admissible subsequent improvement actions shall also include measures for working around or suppressing the occurrence of a defect. Subsequent improvement of a Material Defect may at AGILITA's option also be effected by AGILITA giving the customer reasonable instructions by telephone, in text or in electronic format detailing how the Material Defect can be eliminated.

If AGILITA cannot rectify a Material Defect within a reasonable period of time or if subsequent improvement or new delivery is to be regarded as having failed for any other reason, the customer may at its option withdraw from the Agreement or reduce the remuneration. In the case of a continuing obligation, the customer shall have the right to terminate the Agreement without notice instead of the right of withdrawal. During the reasonable period of time granted for subsequent improvement or new delivery, AGILITA shall be free to decide on the number of attempts of supplementary performance. Failure of subsequent improvement or new delivery can be assumed only if AGILITA earnestly and finally refuses these actions or unreasonably delays them or if other particular circumstances apply that make it unacceptable to the customer to wait any longer.

8.1.4 No material defect

Should it be found during the fault-finding process that there was no Material Defect in the Software, AGILITA shall be entitled to charge the customer for the expenditure incurred for error analysis and error handling in accordance with the price list of AGILITA for services valid at the time. This shall apply in particular if the error reported is based on unsuitable or improper operation, faulty installation by the customer or any third party commissioned by the customer, use of the Software in a non-agreed system environment or improper intervention by the customer or any third party commissioned by the

customer into the delivery or service of AGILITA (e.g. for the purpose of error correction).

8.1.5 Period of limitation and forfeiture

With the exception of claims for damages, the customer's claims based on breach of the warranty in accordance with Section 8.1 of these GTC shall become statute-barred and be forfeited upon expiry of one year from the date of delivery of the Software.

8.1.6 Exclusion of the warranty

Further warranty claims of the customer shall be excluded to the extent permitted by law.

AGILITA shall be released from its warranty obligations to the extent to which a Material Defect in the Software is attributable to circumstances for which AGILITA is not responsible. This shall in particular also include Material Defects that are due to the fact that the Software is delivered to an environment that is operated or offered by a third party (e.g. AGILITA cloud services).

8.1.7 No guarantees

Any verbal or written statement made by AGILITA in connection with the Software (e.g. in the documentation or in other records or documents) shall not represent a guarantee, except where expressly identified as such.

8.1.8 Duty to cooperate

The customer shall support AGILITA free of charge to the necessary extent in error search and error handling, in particular provide the data, information and files necessary for the handling of a Material Defect, and in the case of a Material Defect in the Software delivered take those measures on its side that are necessary to enable AGILITA, if needed, to access the Software and its respective system environment also via remote access.

In the case of a Material Defect in the Software, the customer shall take over, and install at its own expense, a new version of the Software delivered by AGILITA, provided that the intended range of functions is preserved and the installation does not cause unreasonable adjustment or conversion problems to the customer.

8.2 Defects of title

8.2.1 Property right infringement by AGILITA

Where use as intended of the Software causes any infringement of copyright or other industrial property rights, AGILITA shall at its own expense and its own option either provide the customer with the right to continue the intended use or alter or replace the delivery or service in a way acceptable to the customer in such a way that the infringement no longer exists. Should AGILITA not be able to take any of these measures, AGILITA shall be entitled to withdraw from this Agreement. In the case of a continuing obligation, AGILITA shall have the right to terminate the Agreement without notice instead of the right of withdrawal. The customer's right to use the Software and the documentation shall expire at the time AGILITA declares withdrawal from or termination of the Agreement. Any remuneration paid for periods of time after expiry of the right to use the Software shall be refunded to the customer.

Moreover, AGILITA shall indemnify the customer from and against claims raised by the relevant property rights holder that are undisputed or have been determined without further legal recourse.

8.2.2 AGILITA's obligations

The obligations of AGILITA mentioned in Section 8.2.1. of these GTC shall apply only if

- the customer informs AGILITA in writing without delay of any infringement of a property right claimed against the customer;
- the customer supports AGILITA to a reasonable extent in the defence against the claims raised;
- the customer enables AGILITA to change or replace the delivery or service;
- the customer authorises AGILITA to conduct the defence (including acceptance of compromises) and all defensive measures, including out-of-court settlement, are reserved to AGILITA;
- the property right infringement is not based on a directive given by the customer;
- the property right infringement was not caused by the customer having altered the delivery or service of AGILITA without authorisation or having used the delivery or service in a way not in accordance with the Agreement.

The statutory warranty rights in case of defects of title shall not be affected by this.

8.2.3 Property right infringement by customer

If and to the extent to which the customer is responsible for the property right infringement, claims against AGILITA are excluded.

9 Liability for damage

AGILITA shall be liable without limitation in the case of wilful intent and gross negligence and in accordance with the German product liability act [Produkthaftungsgesetz].

In the event of ordinary negligence, AGILITA shall be liable for damage caused by injury to life, body or health.

Apart from this, the following limited liability shall apply: In the event of ordinary negligence, AGILITA shall be liable only in the case of breach of a material contractual obligation the fulfilment of which makes proper performance of the Agreement possible in the first place and discharge of which the client may typically rely on (material contractual obligation [Kardinalpflicht]). The amount of liability for ordinary negligence shall be limited to the typical damage that must be expected to occur as foreseeable at the time of conclusion of the Agreement. This limitation of liability shall also apply for the benefit of the vicarious agents of AGILITA.

10 Prevention of fulfilment by force majeure

AGILITA shall not be liable for delays in delivery and impairments of performance caused by a force majeure event.

A force majeure event shall mean any event external to the company caused by natural forces or actions of a third party which, based on human insight and experience, is unforeseeable, cannot be prevented or rendered harmless with commercially reasonable efforts even by exercising the most extreme diligence to be reasonably expected based on the factual situation and cannot be accepted by the company also due to its frequency.

Force majeure events shall include in particular the following: War, war-like events, declaration of a state of emergency, mass demonstration, strike, lawful in-house industrial action, war, terrorist attacks, unrest, acts of God amounting to catastrophe, earthquakes, pandemics (but not the COVID-19 pandemic persisting since 2019), epidemics, fire, sabotage attacks by third parties or the repeal of permits without own fault.

AGILITA shall notify the customer of the occurrence of a force majeure event.

11 Industrial property rights

AGILITA or its licensors shall be entitled to all rights (including all industrial property rights) in the Software, the modifications, updates and the associated documentation. The customer shall only be granted the non-exclusive rights to use the Software agreed in the Software Licence Agreement.

The customer shall in particular not be entitled to further develop, decompile, disassemble or edit the Software or any part thereof (including error correction).

12 Use of know-how

AGILITA shall be entitled to use free of charge for the performance of other work for itself or for any third party any idea, concept, method and/or know-how which AGILITA has acquired by itself or in cooperation with a third party or in cooperation with the customer in the performance of individual contracts, irrespective of whether the rights thereto have been transferred to the customer in accordance with the individual contract.

13 Secrecy

AGILITA and the customer undertake and shall procure that they and their employees will treat as confidential for an indefinite period of time, and will use only in the context of the performance and processing of contracts, all information obtained prior to and in the context of the performance of the Agreement which AGILITA or the customer protect against unrestricted disclosure to third parties or which according to the circumstances of disclosure or its content is to be regarded as confidential (in particular the content of the service agreements, software to be introduced, documentations, programmes and data) («**Confidential Information**»). Section 12 of these GTC remains unaffected.

Reproduction of Confidential Information in any form is prohibited, except in the context of contract processing and to fulfil the purpose of the respective service agreement. Any reproduction of Confidential Information (where permitted) of the other party must contain all references and notes regarding their confidential or secret nature that are contained in the original.

With respect to Confidential Information of the other party (i) each party shall take all reasonable steps to treat Confidential Information as confidential and (ii) each party shall grant access to Confidential Information of the other party only those persons that need to have access for the performance and processing of contracts.

Exempted from the obligation of secrecy is Confidential Information which (i) needs to be disclosed due to legal obligations, (ii) is necessary to protect rights under the service agreement and/or these GTC, (iii) is in the public domain, (iv) has already been public at the time of disclosure to the other party and (v) becomes public after disclosure to the other party without that party's fault.

14 Data privacy

The parties undertake to comply with the applicable provisions of data protection laws.

If AGILITA is given access to the customer's EDP systems, this shall not be for the purpose of processing of personal data by AGILITA. Therefore, the customer shall protect its personal data stored on its systems in such a way that AGILITA cannot access these data or agree with AGILITA beforehand on a procedure regarding how these data shall be accessed and handled to comply with the data protection law regulations. Should this cause any additional expenses to AGILITA, such additional expenses shall be borne by the customer.

Where access to personal data of the customer for the purpose of performing a contract cannot be excluded, the customer shall conclude a commissioned data processing agreement in accordance with Art. 28 GDPR with AGILITA beforehand to comply with the data protection law regulations.

In addition to this, the AGILITA data privacy statement, as amended from time to time, shall apply (available at: www.agilita.ch).

Should, in connection with this Agreement, personal data be processed as intended by an external third party at its own responsibility, reference is made to that third party's data privacy statement as regards the data processing by that party.

15 Final provisions

15.1 Severability clause

Should any of the provisions of the Software Agreement or these GTC be or become invalid, or should a gap be found in the Agreement, this shall not affect the validity of the remaining provisions of the Software Agreement and these GTC. However, in such a case the contracting parties undertake to replace the invalid provision with a valid provision or to fill the gap with a provision coming as close as possible to the desired economic purpose.

15.2 Transfer

Transfer of the contractual relationship or any part thereof shall be permitted only with the consent of AGILITA. A change of ownership of the customer or of AGILITA (including merger, sale of the enterprise) shall not be a reason for termination and, therefore, shall not release from the obligation to fulfil the Agreement.

15.3 Governing law and place of jurisdiction

The legal relationship shall in all parts be governed by German substantive law, excluding application of conflict-of-law rules and of the provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

The contracting parties agree that Berlin, Germany, shall be the exclusive place of jurisdiction. Unless provided otherwise in the Agreement, the place of fulfilment shall be the place where AGILITA has its registered office. However, AGILITA shall have the right to sue the client at the place of the client's registered office.