

## **General Terms and Conditions of Business of gadiv GmbH**

for the use of agileMantis-Expert-Components as well as for support-, software maintenance and training services concerning the agileMantis-Expert-Components (hereinafter referred to as the Software).

The purchase of the license establishes a contractual relationship between gadiv GmbH (hereinafter referred to as gadiv) and the respective customer (hereinafter referred to as the Customer) for which the following general terms and conditions (hereinafter referred to as "Terms and Conditions") shall apply.

The use of the Software requires the availability and correct installation of the following open source products: MantisBT and agileMantis. The customer is responsible for the acquisition and the correct installation of these both software products. The following Terms and Conditions don't apply to these both software products.

### **I. Scope**

These General Terms and Conditions of Business define all legal relationships between gadiv and the Customers with regard to the use of the Software agileMantis-Expert-Components and corresponding software maintenance services and the provision of other services.

General Terms and Conditions of Business of the Customer differing from these Terms and Conditions shall not apply.

Counter-confirmations with reference to the Customer's own terms and conditions of business and/or purchase are explicitly contradicted.

### **II. Terms and Conditions for Software Use (License)**

#### **1. Subject of the Contract with regard to the use of the Software**

1.1 The subject of the contractual relationship is the purchase of the Software in its object code and the granting of rights to use the Software.

1.2 The current version of the Software in its object code may be downloaded by the Customer from the gadiv website.

1.3 The Software source code is not due under this Contract (however, see Clause II. 5.). The Customer will be issued a license key as technical protection to prevent unauthorised use of the Software.

#### **2. Granting of rights and the scope of usage**

2.1 The Customer acquires from gadiv the non-exclusive, non-transferable, spatially unlimited right to use the Software for the period and the number of users which are specified in his order. The rights granted also extend to any updates and upgrades received by the Customer within the scope of the software maintenance (see Clause III, 5 below).

2.2 Notwithstanding any actions falling under §§ 69 d or 69 e UrhG (German Copyright Law) and therefore legally permitted, the Customer is not entitled to any other or further rights of use.

2.3 The granting of the rights of use in accordance with Clause II. 2.1 takes place under the suspensive condition of complete payment of the agreed remuneration according to Clause II. 3.

2.4 Reference is made to Clause II. 4 regarding the rights to use open source and freeware components.

### **3. Remuneration**

3.1 gadiv receives from the Customer a remuneration for the defined scope of usage of the Software. The remuneration is calculated in due consideration of the number of users and the period of usage. The Customer may purchase licenses for additional users or an additional period of usage at any time.

3.2 The remuneration will become due at the time of ordering the Software.

3.3 After receipt of the payment gadiv will send an e-mail to the Customer containing the license key. The license key will enable the Customer to activate the Software for the ordered scope of usage.

3.4 Trial versions of the Software are free of charge and gadiv will ship the corresponding license key via e-mail after receipt of the order. The Customer shall be permitted to order such a trial version of the Software only once. The Customer has no right to upgrade the scope of a trial version.

### **4. Open Source and Freeware Components**

4.1 gadiv uses various open source components and third party freeware components in the Software, which the Customer may use in accordance to the respective applicable open source licenses or freeware licenses. A list of used open source components and freeware components, including the appropriate license text, can be found in the Software. When using the Software the Customer shall note and comply with the license terms and conditions of the open source components and freeware components.

4.2 gadiv declares that the Software does not contain any open source components, which are licensed under the GNU General Public License (GPL) or any other open source licence with a strict Copyleft, and therefore no other software components, which are together used with the open source components used in the Software, have to be released as open source software or made accessible to third parties in the source code.

4.3 Insofar as the open source components or freeware components are used as part of the Software, gadiv warrants to the same extent as for the remaining Software, excluding any warranties for the open source products MantisBT and agileMantis, which remains by the Customer. The liability and warranty exclusions that exist in the open source licences or freeware licences remain unaffected in the relationship to the rights holders.

### **5. Warranty**

5.1 In case of a defect, gadiv initially has the duty and right to subsequent performance. If the subsequent performance fails after two attempts to correct the defect the Customer can reduce their payment or withdraw from the order and/or if further legal prerequisites exist and taking into account Clause V. 1, can demand compensation subsequent performance can be carried out, at gadiv's choice by supplying a new item or by means of rectification. In the event of redhibitory defects in the Software, which are manifested in malfunctions, the rectification can also be carried out or supported by delivery or installation of an update or upgrade, if it is reasonable to expect the Customer to accept this. The Customer is obliged to install such updates or upgrades.

5.2 The warranty period for redhibitory and legal defects is equal to the period of usage as contracted. It begins when the Software is made available via license key. A right to repair of deficiencies outside Software maintenance applies only in case of deliberate intent or malicious silence with regard to a defect or insofar as gadiv has provided a guarantee for the characteristic quality of the Software. Incidentally the legal warranty claims remain unaffected, except in case of Clause V. 1..

5.3 If it becomes apparent during the defect correction that there is no defect in the Software and therefore no warranty case exists, but instead the error is due to improper installation, an unapproved application environment, intervention in the Software by the Customer or some other circumstance for which the Customer is responsible, gadiv is entitled to bill the Customer for the costs incurred on the basis of

the respective valid price list of gadiv.

5.4 gadiv don't grant any warranty for a trial version of the Software.

### **III. Terms and Conditions for Software Maintenance Services**

#### **1. Subject of the Contract with Regard to Maintenance Services for the Software**

Subject of the contractual relationship with regard to the Software maintenance is the Software, whose license of usage has been purchased by the Customer. gadiv undertakes to maintain the Software in accordance to the following provisions.

#### **2. Provision of Services**

2.1 The agreed maintenance services will only be provided to the Customer. In general, servicing and maintenance work will be carried out in Much.

2.2 gadiv is entitled to engage one or several subcontractors to provide the services.

2.3 The following are not included in gadiv's contractual maintenance services:

- Maintenance services for trial versions of the Software;
- Maintenance services which become necessary due to intervention or interference with the Software by the Customer or a third party;
- Maintenance services, which become necessary because the Customer has failed to installed updates or upgrades supplied;
- Maintenance for operation of the Software with other computer programs, except for the programs MantisBT and agileMantis;
- Maintenance services for Software which is not used under normal conditions of use;
- Restoring the Customer's files;
- Computer hardware maintenance;
- Maintenance services which become necessary due to use of unplanned hardware; and
- Adjustment of the Software to the Customer's special needs, installation of the Software, instruction in the same or the creation/modification of templates.

2.4 gadiv maintains the most current released version of the Software.

#### **3. Remuneration**

There are no additional fees for maintenance and support services.

If maintenance work is to be carried out outside of Much, the travel costs and expenses incurred will be invoiced separately.

#### **4. Maintenance Service, Removal of Malfunctions, Response and Processing Times**

4.1 The purpose of the maintenance is to maintain the readiness for use of the programs at the Customer's premises and the removal of malfunctions that occur in the programs, however, without being able to exclude any interruptions whatsoever in the readiness for use.

4.2 The maintenance service is available to the Customer between 08:00 and 16:00 CET on Mondays to Fridays, except on public holidays in Germany or North Rhine-Westphalia (hereinafter referred to as the "Maintenance Periods"). If and insofar as it is explicitly agreed, the Customer can also be entitled to some other defined availability of the maintenance service . The latter requires an individual additional written agreement between gadiv and the Customer.

4.3 gadiv will provide Customer with a special e-mail address. for all communication between the Customer and gadiv

4.4 gadiv will confirm the receipt of an e-mail with a message of a malfunction or support request within 24 hours, when the latest point of time for confirmation is lying within a Maintenance Period. Otherwise gadiv will confirm at the beginning of the next Maintenance Period. gadiv will start the analysis of the message within 48 hours after receiving the message when the latest time point for analysis onset is lying within a Maintenance Period. Otherwise gadiv will start the analysis at the beginning of the next Maintenance Period.

4.5 If the Customer wants to report a malfunction by e-mail, he shall give the most detailed description of the error he can and prepare a comment in text form adding screen shots where necessary. This comment must describe the error as precisely as the Customer can. After sending the comment, gadiv will correct the malfunction within the scope of the times specified in Clause III. 4.4. A malfunction exists if the Software does not fulfil the guaranteed functions. Correction of the malfunction includes narrowing down the cause of the fault, error diagnostics and correcting the problem, if this is possible with reasonable effort. gadiv reserves the right to choose the type of malfunction correction. Should an individual malfunction not be able to be corrected, if and insofar as it is possible, gadiv will provide the Customer with a workaround.

4.6 Should it be established that the Customer caused the malfunctions due to incorrect use or improper intervention in the Software or is otherwise responsible for the malfunctions, the Customer is responsible for any consequences that arise. Further, in this case gadiv is entitled to invoice the Customer separately for the costs incurred on the basis of the respective valid price list of gadiv.

## **5. Updates and Upgrades**

The maintenance also includes the regular supply of updates and upgrades. Updates is the term used to describe further developments and debugging of the Software, upgrades are new development versions, which gadiv assigns a new version number. Downloading and installing the updates or upgrades supplied is not part of the software maintenance; the Customer is responsible for this. If the Customer fails to install the updates or upgrades, the duty to perform maintenance services can be limited in accordance with Clause 2.3,subclause 3.

## **6. Customer's Duties to Cooperate**

6.1 The Customer has the following duties to cooperate:

- The Customer shall notify gadiv of any malfunctions that occur in text form without delay.
- Within the scope of that which can be reasonably expected, the Customer shall take measures to determine, narrow down and document malfunctions. If the Customer receives suggestions from gadiv to correct a malfunction, the Customer is obliged to implement them.
- The Customer shall download and install the updates or upgrades provided by gadiv from the gadiv website
- The Customer shall download and install the specific versions of MantisBT and agileMantis, which are required for the usage of the Software.
- During maintenance work, the Customer shall allow the maintenance service unobstructed access to the computing unit on which the Software is installed, usually through remote access. In addition, the Customer shall keep the technical equipment necessary for maintenance services to be carried out on site functional, such as electricity supply, telephone connections and data transmission lines and shall make these available free of charge within the scope of the maintenance services.
- With the announcement of a malfunction the Customer shall name an employee who works at the installation site as the contact for the maintenance service.
- The Customer is solely responsible for appropriate, if necessary continuous, backing up of their content and data according to the importance of the respective data. This especially also applies to all content/data which the Customer manages themselves through and with the Software. The Customer is also responsible, in particular before all announced maintenance work by gadiv, to ensure that all data is backed up again on an external system or data carrier.

6.2 gadiv is released from the obligation to provide maintenance services as long as the Customer fails to perform their duty to cooperate and this obstructs the provision of the services concerned. Further, the Customer is responsible for any losses or damage caused by a breach of their duty to cooperate.

## **IV. Terms and Conditions for the Provision of Training Services.**

### **1. Subject of the Contract with regard to the Provision of Training Services**

The subject of the contractual relationship with regard to the provision of training services is the training of the Customer's employees for deployment and use of the version of the Software MantisBT, agileMantis and / or agileMantis-Expert-Components purchased by the Customer.

### **2. Provision of Services**

2.1 gadiv provides the scope of training services in the location agreed in written form.

2.2 The training documents and the trainers will be made available by gadiv within the scope of the provision of the training services. gadiv is entitled to use one or several subcontractors to provide the service.

2.3 The workstations required for the respective training courses will be provided by the Customer for training courses which take place on site on the Customer's premises. An individual workstation with access to the respective Software is required for each participant.

2.4 If a registration is withdrawn 14 days before the training course begins, 30 percent of the fees will be charged. If the withdrawal takes place eight days before the training begins or later, 50 percent of the fees are due. The full fee is incurred in the event of nonappearance or failure to inform of withdrawal beforehand.

2.5 If less than four people register the training course will be cancelled without replacement.

2.6 All prices are quoted at net rates and the respective rate of VAT current at the time of invoicing shall be added. This also applies to any travel expenses incurred. All amounts are due for payment within 30 days of the invoice date.

## **V. General Provisions**

### **1. Liability**

1.1 gadiv is liable for the Customer's losses caused deliberately or due to gross negligence, which are the consequence of the nonexistence of a guaranteed property, which are due to culpable breach of essential contractual obligations (so-called Cardinal duties), which are the consequence of culpable damage to health, physical or fatal injuries or for a liability under the Product Liability Law, according to the statutory provisions.

1.2 Cardinal duties are those contractual duties whose fulfilment is essential in order to enable proper performance of the Contract and on which the Parties to the Contract can usually trust will be complied with, and whose breach endangers achievement of the contractual purpose on the other side.

1.3 In the event of breach of a Cardinal duty the liability – provided the loss is merely due to slight negligence and does not concern fatal or physical injuries or damage to health – is limited to those losses that can be typically expected within the scope of a contractual relationship such as the one here.

1.4 The amount of liability in the cases named in Clause 1.3 is also limited per loss to half the remuneration which has been paid by the Customer for the last purchase of a license key. If the loss concerned occurs out of or in relation to services stipulated under Clause II and III of these General Terms and Conditions of Business, so the agreed remuneration for the services concerned shall be used for the calculation. If the loss arises out of or in relation to services stipulated under Clauses II and III of these General Terms and Conditions of Business, the respective remuneration applicable to these services shall be used as the basis of calculation;

1.5 Otherwise liability – for whatever legal reason – of both gadiv and its vicarious agents and assistants is excluded.

1.6 If the Customer incurs losses as the result of loss of data, gadiv is only liable insofar as the loss would not have been avoided if the Customer had backed up all relevant data as described in Clause III. 6.1.

## **2. Confidentiality**

2.1 The Customer undertakes to main secrecy regarding the content, concept and implementation of programming carried out by gadiv.

2.2 The Parties to the Contract undertake to permanently maintain secrecy regarding all information labelled confidential which they gain access to in the context of this Contract or is recognisable as business and operating secrets on the basis of other circumstances, and the content of this Contract including its annexes, not to pass on such information to third parties, record it or use it in any other way, unless the other Party to the Contract has explicitly agreed to this in writing.

2.3 The Parties to the Contract shall make suitable contractual arrangements with their employees or with persons who work for them to ensure that these persons also refrain from any use, passing on or recording of the information to be kept secret.

## **3. Final Provisions**

3.1 A Proposal submitted by gadiv automatically becomes invalid 60 days after it is submitted, without any other agreement and without any further reference.

3.2 With respect to all legal relationships arising out of the Contract and these General Terms and Conditions of Business, the Parties to the Contract agree that the Laws of the Federal Republic of Germany shall apply with exclusion of the UN Convention on Contracts for the International Sale of Goods.

3.3 The legal venue for all disputes arising out of or in connection with this Contract and the place of performance is Dortmund.

3.4 Additions and amendment to this Contract shall be made in writing. This also applies to waiving of the written form. The Parties to the Contract explicitly agree it shall not be possible to cancel the need for the written form through action implying legal intent. Assurances shall also be made in writing.

3.5 The Customer may not transfer to third parties rights or duties arising out of this Contract without the written consent of gadiv.

3.6 gadiv is allowed to reference the customer with his name and logo as well as with the acquired product on ist website and in other publications.

3.7 Should one or several provisions in this Contract be or become invalid, the validity of the remaining provisions of the Contract shall remain unaffected. The invalid provision/s shall instead be replaced by one or several legally valid provisions by way of supplementary contractual interpretation or construction, which best achieve the economic purpose identifiably pursued by the Parties to the Contract with the invalid provision/s. The same applies accordingly to the filling of any Contract loopholes.

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