

AJAR TECHNICAL SUPPORT
GENERAL TERMS AND CONDITIONS

AJAR S.A. A swiss company having its headquarters at Général Dufour 123, 2500 Biel/Bienne 4, Switzerland, registered with the Registre du Commerce du Jura bernois-seeland under number CH-073.3.005.092-8.

These General Terms and Conditions shall apply regardless of the additional provisions that may be included in Subscriber's documents, in particular, its general terms and conditions of purchase.

Subscriber represents that it has in its possession and has familiarized itself with all documents making up the Agreement as defined below, in the form of a 4D Partner Program membership file.

Subscriber hereby acknowledges that, throughout the term of the Agreement, Technical Support shall mean:

- regular acquisition of licenses to the Software for which it subscribes 4D technical support services;
- use of the Software in accordance with the terms and conditions of the license agreement, the related technical documentation, and, if appropriate, 4D's recommendations;
- retaining employees with the skill level necessary to use the Software, in particular with respect to the Subscriber's authorized technical support contact person(s);
- having on hand the most recent Software, which 4D specifically recommends, or at least the immediately preceding major version, for a period that may not exceed six (6) months after termination of its marketing

Further, Subscriber warrants that it is current in all payments to AJAR SA.

1. Definitions

Agreement: in decreasing order of priority, with the first-listed prevailing over the following documents in the event of a contradiction and the most recent version prevailing over the previous version in the event of a contradiction between multiple versions of the same document (Client was informed of all of the documents listed below in the form of a AJAR Technical Support subscription file prior to the conclusion of the Agreement), with which Client is familiar and all of the terms and conditions of which Client accepts, by its signature of the Subscription Form:

- the Subscription Form, including the description of the Subscription;
- the General Terms and Conditions.

Effective Date: the effective date of the Subscription, as specified in the Subscription Form.

General Terms and Conditions: these general terms and conditions for AJAR Technical Support.

Incident: a single support issue.

Party(ies): individually, AJAR or Subscriber; collectively, AJAR and Subscriber.

Software: machine-readable, computer programs and updates in executable form, to which Subscriber has duly acquired licenses.

Subscriber: the natural person or legal entity identified on the Subscription Form, represented by a natural person duly

authorized to sign the Agreement, located in France.

Subscription/Technical Support: the type of Technical Support subscribed for by Subscriber as specified in the Subscription Form.

Subscription Form: the document that designates and identifies Subscriber as a contracting party, the type of Subscription subscribed for thereby, the pricing conditions applicable for twelve (12) months, and a description of the Technical Support; to be valid, each Subscription Form must expressly refer to the General Terms and Conditions and be duly completed and signed by Subscriber; the Subscription Form constitutes a fixed order form for the Subscription.

2. Purpose

The purpose of the General Terms and Conditions is to set forth the terms and conditions under which AJAR will provide the Technical Support under the Subscription.

3. Subscription

The Subscription shall enter into effect with the signature of the Subscription Form that specifies the Subscription subscribed for and the related pricing conditions; signature of any Subscription Form implies the acceptance, without qualification, of the General Terms and Conditions.

4. Scope of the Subscription

Under the Subscription and subject to disclosure by Subscriber of its Subscriber's number and name, AJAR shall assist Subscriber in diagnosing Incidents and, in this regard, shall provide assistance in using the Software by telephone and/or e-mail during office hours defined based on the specified Subscription; Technical Support may be accessed by Subscriber from 8:30 a.m. to 12:00 a.m. And from 2:00 p.m. To 5:30 p.m. on all business days in Switzerland that are business days in Switzerland; it being agreed that such Technical Support will be provided in English or French.

Technical Support includes the recording, handling and assessment of Incidents up to the number of Incidents or hours of Incident handling specified in the Subscription Form, provided that:

Any period less than or equal to twenty (20) minutes of AJAR incident handling shall be counted as one Incident.

If AJAR feels that such activity is necessary and/or at Subscriber's request, AJAR may conduct a "technical visit" to AJAR's premises, take action that will be covered in a separate order form and invoicing at the rates in effect when the order is submitted.

Only Incidents affecting the most recent unmodified current version of the Software or the immediately preceding major version for six (6) months after marketing thereof has terminated, used in the environment (hardware, operating system, software, etc.) certified or declared as compatible by 4D in the license agreement or the corresponding Software documentation, may be taken into consideration under the Subscription. AJAR reserves the right to refer Subscriber to written manuals or documents issued by 4D

when the problem has already been resolved or if it is due to insufficient familiarity with the technical documentation of the Software. In general, if Subscriber's familiarity is insufficient, AJAR reserves the right to request it to complete training at the required level and shall limit the time spent to that necessary for explanations at the skill level required to use the Software.

Third-party software, including that developed by Subscriber, is expressly excluded from the scope of Technical Support.

In no event shall the Technical Support replace the Software warranty specified in the related license agreement and which is included in electronic form on said Software, the terms and conditions of which Subscriber is deemed to have accepted without qualification prior to any Software use.

Technical Support does not include any other services that may be provided by AJAR under separate proposals and/or agreements, in particular, Technical Support of the outdated versions. "Outdated version" means any major version more than six (6) months after its marketing has terminated.

Notwithstanding the provisions of the prior paragraph, and if the Software ceases to be currently marketed during the Subscription, AJAR reserves the right to cease providing the corresponding Technical Support with three (3) months notice.

5. **Subscriber's obligations**

Subscriber hereby expressly agrees to:

- provide its Subscriber number and name as soon as possible;
- keep the AJAR Technical Support telephone number and access code confidential;
- comply with the normal terms and conditions for Software use as specified in the license agreement and the related technical documentation and strictly comply with the instructions issued by AJAR;
- provide AJAR with the name of persons authorized to request Technical Support, complete the technical acceptance of the Software and act as the AJAR single contact person(s), who must have sufficient skills to do so; any Incident encountered by Subscriber must be centralized by said authorized contact person(s) prior to being submitted to AJAR. In this regard, Subscriber must inform AJAR prior to any change in said contact person(s) and any replacement must have sufficient skill that is no less than that of the prior authorized contact person; Subscriber shall bear the expenses of any Software training that is necessary;
- cooperate with AJAR by providing it with all helpful information to fully understand the Incident and give it free access to all documents and other items deemed necessary by AJAR to provide the services covered by the Subscription; and
- not rely on AJAR's technical and commercial warranty if Subscriber develops its own applications under its sole responsibility.

6. **Confidentiality**

6.1. Subscriber expressly acknowledges that the Software structure and organization constitute commercial secrets of 4D and, in this regard, agrees to not disclose them. Subject to Subscriber's prior authorization, AJAR may use, *inter alia*, in its publications or sample databases, configuration examples or concrete case studies from Subscriber.

6.2. Subscriber agrees to treat as strictly confidential the Agreement, its amendments and all documents and/or information of any type whatsoever (in particular, commercial, technical and financial information), in any form and on any medium whatsoever (the "Confidential Information") that must be disclosed to it in performance of the Agreement.

Information shall not be deemed Confidential Information that:

- (i) is or falls into the public domain other than due to Subscriber's wrongful act or action;
- (ii) was developed by Subscriber independently and without using AJAR Confidential Information, which Subscriber must demonstrate; and
- (iii) must be disclosed pursuant to a law or police, gendarmerie and/or judicial injunction, subject to prompt written notice given to AJAR and provided that Subscriber reasonably tries to obtain a formal guarantee limiting future uses or disclosures of the information.

Subscriber agrees to only grant access to Confidential Information to those of its officers, directors, employees, agents, advisors and/or sub-contractors that must have access thereto for the successful performance of the Agreement, subject to their compliance with the confidentiality obligation set forth in this article, which Subscriber warrants.

The confidentiality obligation set forth in this Article shall remain in effect for three (3) years after the end of the Agreement for any reason whatsoever.

7. **References**

Subscriber authorizes AJAR to refer to its name and logo as a commercial reference.

8. **Financial terms and conditions**

8.1. **Technical Support Fee and Payment term and Conditions**

The Technical Support fee for the initial contractual period is specified in the Subscription Form; all contractual periods are fixed and the amounts owed in this regard irrevocable. During a Subscription, Subscriber may submit additional subscription orders at the pricing conditions specified in the Subscription Form. Technical Support invoices shall be issued by AJAR in advance for the current or future contractual period and are payable at AJAR's principal office, net, upon invoice receipt. Duties and taxes shall be paid and, if appropriate, invoiced to Subscriber at their legal rate on the invoicing date.

Subscriber's payments to AJAR are fixed and non-reimbursable. Unless expressly authorized by AJAR in advance, Subscriber may not effect any deduction and may not retain any amount through offset or any other means.

8.2. **Technical Support Fee adjustments**

If AJAR fails to give notice of new terms and conditions applicable to a future annual period or of termination of the Agreement in accordance with Article 9.1 of the General Terms and Conditions, the Technical Support annual fee will be automatically adjusted for each annual payment based on the LIK index (Landesindex der Konsumentenpreise) using the following formula:

$$R_n = R_0 * S_n/S_0$$

R_n = Annual Technical Support fee for year n

R₀ = Annual Technical Support fee as stated in the price list in effect on the subscription date for the initial Technical Support period

S0 = Most recent LIK index published on the Date of Entry into Effect of the Subscription

Sn = Most recent LIK index published on the Technical Support renewal date.

If the LIK index is no longer published a new index must be selected to be the closest possible to the prior index that is consistent with the spirit of the Parties when they developed the adjustment provision.

8.3. Payment incidents

Any failure to make any payment shall result, after prior formal notice which does not result in payment within five (5) business days after its receipt or, if not delivered, after its initial presentation, in late-payment interest being invoiced based on a single payment being missed using an interest rate of 10 % based on the amount not paid when due. Further, if a payment is not made, AJAR reserves the right to suspend access to Technical Support five (5) business days after the receipt date of formal notice by certified letter, return receipt requested, or if not delivered, upon the initial presentation of said letter, without notice or legal formality, without said suspension constituting a wrongful failure by AJAR to perform its contractual obligations, without prejudice to AJAR's right to terminate the Subscription Form in accordance with Article 9.2 of the General Terms and Conditions and the damages that AJAR may claim.

9. Term and termination

9.1. The Agreement shall enter into effect on the Effective Date and shall expire on the date stated in the Subscription Form, unless terminated in advance in accordance with Article 9.2 below. Sixty (60) days prior to the end of the current contractual Subscription period, AJAR shall inform Subscriber, if appropriate, of the Subscription renewal conditions applicable to the following annual period. Unless Subscriber issues other instructions or AJAR terminates Agreement by giving notice by certified letter, return receipt requested, at least thirty (30) days prior to the expiration of the current annual period, the Subscription shall be automatically renewed for twelve (12) month periods, at the terms and conditions specified by AJAR as provided for above or, if not, subject to the terms and conditions for the prior annual period using the Subscription fee adjustment specified in Article 8.2 of the General Terms and Conditions. In any event, Subscriber acknowledges and agrees that, if there are any remaining authorized Incidents under the Subscription or, if the Subscription provides for unlimited Incidents, the remaining hours compared to the twenty-one (21) hours listed in Article 4 above, said remaining Incidents or hours may not be carried over to the following annual period.

9.2. If either party breaches its contractual obligations and fails to cure said breach within thirty (30) days after receipt or, if not delivered, after initial presentation of a certified letter, return receipt requested, giving notice of the breach in question, the other Party may notify it of the termination of the Agreement by certified letter, return receipt requested, without prejudice to the damages that said other Party may claim. In addition, AJAR may terminate the Agreement, based solely on a simple notice, if the Technical Support is wrongfully used.

9.3 If the Agreement is terminated for any reason whatsoever:

- AJAR shall immediately cease providing any service under the Subscription;
- Subscriber shall return all media and/or documentation or other items provided by AJAR under the Agreement to AJAR;
- AJAR shall retain title to the amounts paid by Subscriber under the Agreement and Subscriber shall immediately

- pay AJAR all amounts owed under the Agreement; and
- the obligations that are described as surviving beyond the end of the Agreement shall remain in effect.

10. Liability

Subscriber expressly acknowledges that, under the Agreement, AJAR is subject to an obligation to allocate resources. AJAR may only be held liable for direct damages due to the performance of the Agreement and provided that Subscriber has proven direct causality between the alleged damage and the proof of a breach of AJAR's contractual obligations. Further, AJAR may not be held liable for Subscriber's wrongful acts, negligence, omission or breach. AJAR may not in any event be held liable for indirect damages and, in particular, for damages related to the provision of the Technical Support services, that consist of an increase in overhead, loss of profit, reputation, operations, data, files or software, financial losses, disruption of Subscriber's business, or due to third-party claims against Subscriber.

If AJAR is held liable for any reason whatsoever, the total amount of compensation that AJAR may be required to pay Subscriber under the Subscription may not exceed (all amounts and all damages taken together), the amount, excluding VAT, paid by Subscriber for the Subscription Form for the current contractual period, regardless of the type of or legal basis for the claim and the proceedings used to determine liability. In any event, Subscriber shall be solely responsible for backing up its data; AJAR may not be held liable for any damage to information, programs, files or databases due to its activities under the Subscription

11. Personal data

AJAR shall take all necessary precautions to protect the confidentiality of Subscriber's personal data. In this regard, AJAR shall comply with the then-current SR 235.1 Federal Act on Data Protection of June 19, 1992 governing data protection in Switzerland. Subscriber shall have the right to access and correct personal information related to it. Subscriber shall also have the right to challenge, for legitimate reasons, the processing of personal data related to it and to use said data for, *inter alia*, commercial purposes. Any request to exercise the access, correction or challenge right must be made in writing, be signed by Subscriber, include the address to which the reply must be sent, along with documentation supporting its identity, and be sent to the following address: AJAR SA - Rue Général Dufour 123 - CH2500 Biel/Bienne 4 - Switzerland. AJAR must respond within two (2) months after receipt of Subscriber's request, provided that said request is sufficiently specific and contains all the information necessary to reply; if not, AJAR shall request Subscriber to supplement it.

12. General

As each of the Parties retain their full and complete independence, neither Party may validly bind the other Party nor conclude agreements on behalf and/or in the name of the other Party. Similarly, the Agreement does not create, and shall not be interpreted as creating, a joint venture between the Parties or establishing an agency relationship between them. The Parties agree, each with respect to itself, to comply with all applicable laws and regulations. Subscriber shall be prohibited from selling, assigning or otherwise transferring, in whole or in part, the rights and obligations arising under the Agreement, for consideration or at no cost, in any form whatsoever, without AJAR's prior, express authorization. AJAR reserves the right to sell, assign or transfer to a third party, in any form whatsoever, the rights and obligations arising under the Agreement, without formality.

The Parties shall not be deemed liable or to have breached the Agreement if a force majeure event occurs, *i.e.*, any event outside of their control, in whole or in part, and, in particular and without limitation, work conflicts that result in a general or partial strike or disruptions to shipping or supply such as fire, flood, earthquake, storm, insurrection, war or telecommunications networks. Initially, the force majeure event shall suspend contractual obligations, with the exception of Partner's payment obligation, which shall remain fully applicable. Once the effects of the force majeure event cease, said obligations shall resume for the remaining term after the suspension date, plus the duration of the suspension. If the effects of a force majeure event continue for more than forty-five (45) days, either Party may terminate the Agreement, without either Party having any right to compensation.

In addition to the types of proof allowed under Swiss law, computer files, data, messages and logs retained in the IT systems of each Party, under reasonable security, will be admitted as proof of the communications, agreements and payments made by the Parties. Log retention shall be presumed, absent proof to the contrary, if reasonable security measures have been taken and if the messages, data and documents are routinely recorded on a long-term, non-modifiable medium.

If one or more provisions of the Agreement is/are deemed to be invalid or held as such under any law, regulation or final judicial decision, it will be deemed non-written and the other provisions shall retain their force and effect. The Parties shall

replace the provision in question, in good faith, with a valid provision with equivalent effect.

The fact that either party fails to rely on any whatsoever of the provisions of the Agreement shall not subsequently be interpreted as a waiver of the provision in question.

The Agreement expresses the complete agreement of the Parties as of its Effective Date and replaces any contemporaneous prior verbal or written provision related to the same subject matter. All changes to the Agreement must be made in an amendment signed by a duly authorized representative of each of the Parties.

The Agreement has been prepared in English. If the Agreement is translated, only the English version shall have contractual value. Further, all communications between the Parties related to the performance of the Agreement must be made in English or French.

13. Applicable Law and disputes

The Agreement, and any subsequent instruments, shall be governed by Swiss law. AJAR and Subscriber agree to try to amicably resolve any dispute that arises regarding the interpretation or performance of the Agreement. If it cannot be resolved, the dispute will be resolved exclusively before the Swiss Court of 2500 Biel/Bienne, notwithstanding multiple defendants or third-party proceedings. This jurisdiction shall also apply to urgent proceedings.