

## EOMYS GENERAL TERMS AND CONDITIONS

- 1. Purpose.** The purpose of these General Terms and Conditions (GTC) is to define the terms under which EOMYS will provide to the Client the Software and/or the Services described in the order form.

The present General Terms and Conditions constitute an appendix of the order form regarding the Services subscribed by the Client. By signing the order form, the Client acknowledges having read the General Terms and Conditions sent as an attachment to the order form, and accepting them unconditionally. The present General Terms and Conditions are accessible at the following address <https://manatee-software.com/license/article/licence>.

### 2. Definitions.

- A. "Authentication System"** means any license key, license file, license manager, dongle, or other key provided, code, or information issued by (or on behalf of) EOMYS that is necessary to download, install, operate and/or regulate to access to the applicable Software.
  - B. "Client"** means the legal entity ordering EOMYS's products and services as part of an order form.
  - C. "EOMYS"** means EOMYS ENGINEERING SAS, a company organized under the laws of France at 121, rue de Chanzy 59260 Lille Hellemmes under SIREN number 793 135 476.
  - D. "Licensee"** means the individual, corporation, or other legal entity to which EOMYS has issued a license as described herein.
  - E. "Services"** means the products and services ordered by the Client, as part of an order form, and provided by EOMYS, as described in the General Terms and Conditions.
  - F. "Software"** means the computer software programs provided with these General Terms and Conditions (in particular MANATEE) and which are being installed together with all accompanying documentation and utilities. If the SOFTWARE is part of an EOMYS suite product, the term SOFTWARE means all of the applicable EOMYS software programs comprising the appropriate suite (including all accompanying documentation and utilities) that the Client has acquired. SOFTWARE includes all Upgrades that may be provided by EOMYS.
  - G. "Upgrade"** means any supplemental or replacement code for computer software the Client has previously licensed from EOMYS.
  - H. "User"** means a specific human being who is identified by the Licensee as a person who is authorized to use the applicable Software on behalf of the Licensee. In cases where Licensee is an individual who has obtained a license from EOMYS for his/her individual use, the Licensee and User are the same.
  - I. "Workplace"** means the Client address or the location defined by the Client in the Order Form.
- 3. Financial terms.** Invoices shall be payable to EOMYS thirty (30) days from the invoice date.

In case of lateness attributable to the Client in the fulfillment of its obligation to pay, the Client shall pay a late payment penalty to EOMYS equal to three (3) times the legal rate of interest in force and a lump sum to cover collection costs totaling forty (40) euros. In the event where the collection costs should exceed forty (40) euros, EOMYS may request additional compensation upon presentation of supporting documentation. However, lump-sum payment for collection costs cannot be required if the Client is subject to safeguarding, receivership, or court-ordered liquidation proceedings, and the judgment opening insolvency proceedings prohibits the payment at maturity of the debt that is due to EOMYS.

- 4. Termination.** These General Terms and Conditions shall automatically terminate upon failure by the Client to comply with its terms. Upon completion of these General Terms and Conditions, regardless of the reason, the Client must destroy all copies of the SOFTWARE and immediately return the dongle key at its own expense if a dongle key was provided. The Client may not, in any case, whatsoever make or retain a copy of all or any part of the SOFTWARE, on pain of being charged with infringement. Besides, the SOFTWARE must be uninstalled. Section 8 of the General Terms and Conditions remains in force after termination.

### 5. License

- 5.1 Grant of License.** In consideration of payment of the applicable fees to EOMYS, EOMYS is willing to provide the Client with a limited, non-exclusive right to use the SOFTWARE in the Workplace defined in the Order Form. EOMYS uses different Authentication Systems to provide the SOFTWARE. If the Client uses a dongle key as an Authentication System, a USB dongle key will be shipped to the Licensee once the order form is received, by registered mail with acknowledgment of receipt at the delivery address specified in the order form. This dongle key only contains some authorization codes, while the Licensee downloads the executable or script files. For each use of the SOFTWARE, a list of specific users will be defined in the Order Form as well as an Authentication System. Only users specified in this list will be allowed to contact EOMYS support. Any change of users or Workplace is subject to EOMYS prior approval. The specific use rights granted to the Client are as follows and depend upon the type of License acquired by the Client:

**Single Computer License.** The Client may install and use the SOFTWARE on a single computer in the Workplace and runs only one instance of the SOFTWARE at the same time. All of the SOFTWARE must be installed and used on the same computer. **The Client is not authorized under the single computer license to install or use any of the SOFTWARE on multiple computers, a network storage device, or other storage devices.**

**Floating License (limited number of simultaneous use).** As defined above, Licensee will provide to EOMYS a list of users allowed to use the SOFTWARE. The Client may install the SOFTWARE on several computers in a single Workplace, and the SOFTWARE can be run simultaneously by several Users within the limitation of the Authentication System provided by EOMYS.

**Cluster Option (unlimited number of simultaneous uses).** Optionally and in addition to Single Computer License or Floating License, the Cluster Option doesn't limit the number of instances which can be started at the same time on the same computer. **The Client is allowed to install the SOFTWARE on a local server so that several Users of the same Workplace can run the SOFTWARE, within the limits of the number of Users authorized by the License.**

- 5.2 Transfer.** The Client may not transfer the SOFTWARE to a third party no matter the kind of License granted.
- 5.3 Change/Swap.** The Client may ask for a change of License regarding a significant change of use. This change is submitted to EOMYS Approval. If EOMYS agrees with this request, a new order form will be signed.
- 5.4 Upgrades.** If the SOFTWARE is an Upgrade, the Client may only use the SOFTWARE if it has (at the time it receives the Upgrade) a valid license to use the pre-existing SOFTWARE. Further, the license agreement accompanying the Upgrade applies to the Client's use of the Upgrade. While the Client may continue to use the pre-existing SOFTWARE, the Client may only use it on the same machine upon which the Upgrade is used, and the License that accompanied the pre-existing SOFTWARE will continue to apply to the Client's use of the pre-existing SOFTWARE.
- 5.5 Multiple Versions.** If the SOFTWARE is distributed on a physical storage media containing multiple versions of the SOFTWARE for use with different operating systems, the Client may only use one version of the SOFTWARE in case of a single computer license.
- 5.6 Software/Hardware Key.** If the SOFTWARE requires a software key code or a hardware key (for example, with a Dongle Key **Authentication System**), the Client acknowledges that the SOFTWARE will not function without a specific, unique software key code or hardware key. This software key code or hardware key will be furnished to the Client by EOMYS, and the Client agrees that such software key code and hardware key is to be used solely with the SOFTWARE for which it is provided. While EOMYS may (in its sole discretion) provide the Client with the applicable key before receipt from the Client of the applicable license fees, the Client will remain obligated to pay such fees to EOMYS. In case of accidental loss or damage of the hardware key, EOMYS may charge the Client an additional fee up to 150€ per new key, including shipment costs depending on the Client's workplace distance from EOMYS. In case of a damaged key, the damaged key must be sent to EOMYS before EOMYS returns a new key. For hardware keys, cloning and emulating methods are forbidden.
- 5.7 Patent and Trademark Notice.** EOMYS and MANATEE are the trademarks of EOMYS ENGINEERING SAS. The Client shall not use or reproduce these trademarks without the permission of EOMYS, at risk of being charged with infringement.
- 5.8 Restrictions.** The Client may not: (i) reverse engineer, decompile, debug or disassemble the SOFTWARE (except to the extent foregoing such limitation is expressly permitted by applicable law); (ii) sub-license, lease, or rent the SOFTWARE; (iii) (other than as expressly permitted under these General Terms and Conditions) distribute in whole or part, modify or create derivatives of the SOFTWARE or applications built with the SOFTWARE; and (iv) directly or indirectly, export, re-export, download, or ship the SOFTWARE in violation of the laws and regulations of Europe and the laws and regulations of the applicable jurisdiction in which the Client uses or is downloading the SOFTWARE. Under no circumstance is shared use permitted under these General Terms and Conditions.

The Client undertakes to use the SOFTWARE: (i) in compliance with all applicable French and European laws and regulations; (ii) per the terms and conditions of these General Terms and Conditions; (iii) exclusively for the purposes specified in these General Terms and Conditions. The Client shall not use the SOFTWARE for illegal activities. The Client shall not use the SOFTWARE to design weapons. In such case, EOMYS could, at its sole discretion, terminate the use of the SOFTWARE. The Client will hold harmless EOMYS from and against any sentence as may be rendered against EOMYS in the event where the SOFTWARE would be used in violation of these General Terms and Conditions, a law or a regulation. The Client will be exclusively liable for any use of the SOFTWARE, and the Client will have no remedy against EOMYS. Besides, the Client will be responsible for safeguarding its data. The Client shall assist the Users in using the SOFTWARE. The Client will be responsible for ensuring that the Users observe these General Terms and Conditions. The Client shall not develop, commercialize, sub-lease or make available to any unauthorized third party the SOFTWARE covered by these General Terms and Conditions or a competing product. The Client undertakes to notify to EOMYS any malfunction of the SOFTWARE.

**5.9 Copyright; No Other Licenses.** The SOFTWARE is owned by EOMYS and is protected by applicable copyright laws and international treaty provisions. Therefore, the Client must treat the SOFTWARE like any other copyrighted material. The Client should not copy the SOFTWARE even for backup or archival purposes. All rights not expressly granted to the Client in these General Terms and Conditions are reserved to EOMYS. These General Terms and Conditions will not confer upon the Client any intellectual property rights to the SOFTWARE, which will remain the full and exclusive property of EOMYS. The Client undertakes to immediately notify EOMYS any act of infringement of the SOFTWARE of which it may become aware, in which case EOMYS would be free to take any such action as he may deem appropriate. Further, and without limiting the previous, no license or any right of any kind is granted under any EOMYS patents (whether identified herein or not) or other intellectual property rights of EOMYS concerning any other product(s) of EOMYS or any third party, including without limitation, the right to use any of these other products.

**6. Maintenance.** Maintenance Services shall be provided under the rates and conditions described in the order form and/or another agreement. The maintenance service of MANATEE software starts from the date of the reception of the Authentication System by the Customer. The Customer is informed that Maintenance must be continuous throughout the use of the Software. Therefore, any late renewal will cause Maintenance to resume from the last actual maintenance day, and the Customer will consequently have to pay the sums due under the uncovered period to ensure the effective continuity of Maintenance.

**Contact details:** EOMYS can be contacted at the following address: [manatee@eomys.com](mailto:manatee@eomys.com). The EOMYS team is available from Monday to Friday from 9 am to 5 pm (French time), excluding French public holidays. EOMYS is bound by an obligation of means regarding the provision of the Services, including the performance of the maintenance Services. EOMYS undertakes to anticipate or resolve any problem within the context of these maintenance Services as soon as possible.

**7. Consulting.** EOMYS may provide consulting Services to Licensee, which shall be limited to implementation, configuration, and software enablement Services. Consulting Services shall be provided under the conditions described in the order form and/or another agreement. Rates and conditions of the consulting Services are described in the order form and/or another agreement.

The Client will benefit from an initial package of hours for consulting detailed in the order form, including telephone support to answer specific questions and development. Beyond this set of hours, the Client may subscribe to overtime, for an amount set per additional hour described in the order form, in which case EOMYS will send a cost estimate.

**Contact details:** EOMYS can be contacted at the following address: [manatee@eomys.com](mailto:manatee@eomys.com). The EOMYS team is available from Monday to Friday from 9 am to 5 pm (French time), excluding French public holidays. EOMYS is bound by an obligation of means regarding the provision of the Services, including the performance of the consulting Services.

**8. Technical publications.** If the Client publishes technical papers based on the findings originating or deriving from the use of the SOFTWARE, the papers and abstracts should be reviewed and validated by EOMYS, and the name of EOMYS software should be explicitly stated in the body of the text, and not only as a reference at the end of the paper; the name of the software developer should be mentioned as EOMYS ENGINEERING; the name of EOMYS software should be stated as a registered trademark (e.g., MANATEE®); the website of MANATEE software ([www.manatee-software.com](http://www.manatee-software.com)) should be mentioned together with the software name. A typical sentence fulfilling these constraints is, therefore, "[...] these results were obtained using the MANATEE® software v2.01 developed by EOMYS ENGINEERING ([www.manatee-software.com](http://www.manatee-software.com))".

**9. Limited Warranty.** EOMYS is bound by an obligation of means regarding the provision of the Services. EOMYS warrants, for the Client's benefit alone, that for ninety (90) days from the beginning of the Maintenance as defined in Section 6 of the Order Form (i) the SOFTWARE will perform substantially following the accompanying written materials, and (ii) the medium on which the SOFTWARE is recorded will be free from defects in materials and workmanship under regular use and service. Any replacement SOFTWARE will be warranted for the remainder of the original warranty period or thirty (30) days, whichever is longer. Some states/jurisdictions do not allow limitations on duration of an express or implied warranty, so the above or any other restriction provided herein may not apply to the Client. In such event, such warranties are limited to the minimum warranty period allowed by applicable law. When returning the SOFTWARE under warranty to EOMYS, the Client agrees to pay expenses for shipment to and from EOMYS. The Limited Warranty is avoiding if failure of the SOFTWARE has resulted from accident, abuse, misapplication, improper settings, third party products (i.e., hardware or Software) used by the Client which are not intended by EOMYS for use with the SOFTWARE, utilization of an improper hardware or software key (if applicable), or unauthorized Maintenance of the SOFTWARE.

**10. Customer Remedies.** EOMYS's sole obligation (and the Client's sole remedy) concerning the previous Limited Warranty shall be to, at EOMYS's option, return the fees paid or repair/replace the SOFTWARE, provided that EOMYS receives written notice of applicable defects during the warranty period. The Client may not bring an

action to enforce remedies under the foregoing Limited Warranty more than one (1) year after the accrual of such cause of action.

**11. No Other Warranties.** Except as expressly set forth above, the Software is provided "as is" without warranty of any kind, and no other warranties, either expressed or implied are made for the Software, including but not limited to any implied warranties of merchantability, fitness for a particular purpose, title or non-infringement, or any other warranties that may arise from the usage of trade or course of dealing. EOMYS does not warrant, guarantee, or make any representations regarding the use of or the results of the use of the Software in terms of correctness, accuracy, reliability, or otherwise and does not warrant that the operation of the Software will be uninterrupted or error-free. EOMYS expressly disclaims any warranties not stated herein.

**12. Limitation of Liability.** The entire liability of EOMYS and its licensors, distributors, and suppliers are set forth above. To the maximum extent permitted by applicable law, in no event shall EOMYS and its licensors, distributors, and suppliers be liable for any damages, including, but not limited to, any special, direct, indirect, incidental, exemplary, or consequential damages, expenses, lost profits, lost savings, business interruption, lost business information, or any other damages arising out of the use or inability to use the SOFTWARE, any technical support Services relating to the SOFTWARE, or related hardware even if EOMYS or its licensors, distributors, and suppliers have been advised of the possibility of such damages. The Client acknowledges that the applicable fees and prices reflect this allocation of risk. Because some states/jurisdictions do not allow the exclusion or limitation of liability for consequential or incidental damages, the above limitation may not apply. If the previous limitation of liability is not enforceable because the SOFTWARE, the Services, or the hardware is determined by a court of competent jurisdiction in a final, non-appealable judgment to be defective and to have directly caused bodily injury, death, or property damage, in no event shall EOMYS's liability for property damage exceed the greater of 10,000€ (EUR.) or the license fee paid for the SOFTWARE. In any case, EOMYS may not be held liable in any way whatsoever for damages related to a case of force majeure, including, without limitation, industrial strife, pandemic, etc.

**13. Compliance/Audit.** The Client agrees to make all relevant records available for review by EOMYS during its regular business hours to permit EOMYS (upon reasonable notice to the Client) to verify the Client's compliance with the terms and conditions of these General Terms and Conditions. Further, if the Client is a business or another entity, the Client agrees that upon the request of EOMYS or EOMYS's authorized representative, the Client will promptly document and certify in writing to EOMYS that the Client and its employees' use of the SOFTWARE complies with the terms and conditions of these General Terms and Conditions. EOMYS may (upon written notice) inspect the use of the SOFTWARE during the Client's regular business hours to ensure its compliance with these General Terms and Conditions. If the results of any such inspection indicate the underpayment by the Client of applicable fees due and payable to EOMYS, the Client shall: (i) immediately pay such amounts to EOMYS and (ii) reimburse EOMYS for the cost of such inspection.

**14. Confidentiality.** Each Party undertakes to treat in strict confidence any confidential information disclosed or any information to which such Party may have had access in connection with the performance of the Services, unless such information should be public, for the full term hereof and for 5 (five) years following expiry thereof. The Parties also undertake to cause their staff members, employees, affiliated companies, sub-contractors, if any, to observe this clause.

**15. Personal data.** The Services incidentally include the processing of personal data regarding the applicable regulations necessary for the performance of the Services. The Parties shall respect the legislation in force, in all its developments, concerning the processing of personal data.

**16. Data ownership.** The Client is the owner of the data transmitted to EOMYS as part of the Services. EOMYS undertakes to use the data transmitted by the Client only within the framework of the Services.

**17. Governing Law/Dispute.** These General Terms and Conditions and any disputes or claims arising out of or in connection with its subject matter are governed by and construed per the laws of France. Intending to find a solution to any dispute arising in the performance of these General Terms and Conditions, the Parties agree to meet within 15 (fifteen) days from the receipt of notice by registered letter with acknowledgment of receipt from either Party. If, after 30 days from this meeting, or if no conference is organized within the period specified above, the Parties are unable to agree on a compromise or solution, the dispute shall then be submitted to the Courts having jurisdiction for the city of Lille in France, notwithstanding multiple respondents or the introduction of third Parties.

© 2013-2021 EOMYS ENGINEERING SAS. All Rights Reserved.