

General Terms & Conditions (GTC) of Zühlke Engineering (Austria) GmbH

(hereinafter referred to as Zühlke)



1 Scope and Applicability

- (a) These general terms and conditions ("GTC") shall govern the contractual relationship between Zühlke and the client (together hereinafter referred to as the "Parties"), provided that the latter operates a business and the relevant business transaction is part of the client's business operations. The version of the GTC applicable at the time of the signing of the contract shall apply.
- (b) The general terms and conditions and purchase conditions of the client shall be expressly excluded for the business transaction in question and the entire business relationship, without any further additional rebuttal being required.
- (c) Defined terms shall always have the same meaning in all documents belonging to the contract.

2 Conclusion of Contract, Extent of the Contract and Validity

- (a) Offers issued by Zühlke are in general non-binding and subject to change without restriction. Offers shall be valid for 14 days unless the offer stipulates a different period of validity in writing.
- (b) A contract between Zühlke and the client (the "Contract") is concluded as follows:
 - (i) by both Parties signing a written contractual document (the "Contractual Document");
 - (ii) by the signing of Zühlke's offer or Zühlke's order confirmation based on an order submitted by the client; or
 - (iii) by implied conduct in which the client accepts services of Zühlke that are normally provided only against remuneration.
- (c) The Contract consists of the following components, which shall, in the event of contradictions, apply in the following order of priority:
 - (i) Contractual Document and/or offer or order confirmation;
 - (ii) Appendices;
 - (iii) Zühlke GTC.
- (d) All Contracts are only binding to the extent specified in the order confirmation.
- (e) If a Contractual Document exists, Zühlke's offer and the requirement specifications of the client shall only form a part of the Contract if these documents are expressly referred to in the Contractual Document.
- (f) The offer shall have priority over the requirement specifications.

3 Services

- (a) Zühlke shall provide the services defined in the Contract (the "Services").
- (b) These may include the following types of services:
 - (i) Project services with responsibility for results (the "Project Services");
 - (ii) Consulting or other mandate services without responsibility for results (the "Consulting Services");
 - (iii) Granting of license rights (the "Licenses");

- (iv) Maintenance services (the "Maintenance Services");
- (v) Operation services (the "Operation Services").

- (c) Both Parties may request changes to the Services. Where a change to Services results in additional expenses, Zühlke shall be compensated by the client.
- (d) Where an impact on costs or deadlines may be expected, Zühlke shall inform the client in a suitable manner, as a general rule prior to performing the revised Services, except for cases of particular urgency.

4 Prices, Taxes and Fees

- (a) All prices are quoted in Euro without value added tax. These solely apply to the specific order. The costs of program carriers (eg. CD's, magnetic tapes, floppy disks, streamer tapes, magnetic tape cassettes etc.) as well as any contract fees shall be billed separately. Any public charges that come into force after the conclusion of the Contract and burden Zühlke's Services may be billed additionally.
- (b) For assignments carried out away from the Zühlke domicile, travel time shall be regarded as working time. Zühlke shall also be entitled to reimbursement of travel and general expenses.
- (c) The cost for travel, per diem and overnight accommodation costs shall be invoiced separately to the client according to the valid respective rates.
- (d) Program carriers, documentation and service descriptions shall be dispatched at the expense and risk of the client. Additional training courses and explanations requested by the client will be invoiced separately. Insurance will only be arranged at the client's request.
- (e) In the event of price changes resulting from circumstances beyond Zühlke's control (collective agreements, material prices, customs duties, taxes, levies, etc.) after the order confirmation, Zühlke shall be entitled up until the acceptance of the Services by the client to make a price adjustment for the price stated in the order confirmation.

5 Remuneration, Payment modalities and Delay of client

- (a) The client shall pay Zühlke the remuneration as specified in the Contract, generally such remuneration being either calculated on a time and materials basis, as a fixed price or as a flat-rate service fee. Unless otherwise agreed, Zühlke shall be remunerated on a time and materials basis.
- (b) The client shall accept Zühlke's rates in force at the time of conclusion of the Contract.
- (c) Unless agreed otherwise, Zühlke shall invoice the Services as follows:
 - (i) Project Services: monthly according to project progress;
 - (ii) Consulting Services: monthly after performance of Services;
 - (iii) Licenses: upon delivery of the licensed object;
 - (iv) Maintenance Services: annually in advance;
 - (v) Operation Services: annually in advance.

- (d) Invoices from Zühlke shall be paid at the latest 14 days after receipt of the invoice without any deductions and free of charges. For partial invoices, the terms of payment specified for the entire order shall apply.
- (e) Where orders encompass several units (e.g., computer programs and/or training sessions, completion in stages), Zühlke is entitled to submit an invoice after the delivery of each unit or Service.
- (f) Payment on the agreed-upon dates is an essential condition for delivery and for fulfilment of the Contract by Zühlke. Failure on the part of the client to comply with the agreed payment schedule entitles Zühlke
 - (i) to discontinue current work and to withdraw from the Contract. All costs connected therewith as well as loss of profit are to be borne by the client;
 - (ii) to interest on arrears at a rate of 5%;
 - (iii) to charge the client collection costs of EUR 40,00, irrespective of proof of damage.
- (g) In the event of a payment by instalment agreement, failure to pay only one instalment in full and on-time results in the entire remuneration still payable being due immediately.
- (h) The client is not entitled to withhold payment because of incomplete total delivery, guarantee or warranty claims, or complaints.

6 Delivery Dates

- (a) Unless explicitly agreed upon, schedules for delivery or the provision of Services are not fixed deadlines.
- (b) The targeted delivery dates can only be met if the client makes available to Zühlke in full, on the dates established by Zühlke, all the necessary preliminary work and documents, especially the performance specifications accepted by him and if the client fulfills his obligation to cooperate to the extent required.
- (c) Delays in delivery and cost increases that result from incorrect, incomplete, or subsequently changed data and information or supporting documentation provided to Zühlke, are not the responsibility of Zühlke and cannot result in Zühlke's being in default of delivery. Additional costs so arising are to be borne by the client.
- (d) The deadline may be extended in the event of unforeseen circumstances or circumstances beyond the control of the parties, such as force majeure, transport delays, strikes, official measures, etc..
- (e) If Zühlke fails to meet an agreed and binding deadline, the client must deliver to Zühlke a default notice, upon receipt of which Zühlke shall be in default. Setting a reasonable grace period (minimum 10 working days), the client shall request subsequent fulfilment.

7 Basis for Services Delivery and Cooperation of the Client

- (a) Individual organizational plans and programs shall be elaborated in line with the type and scope of the information, documents and accessory aids which have been made available in total by the client. Included are customary test data as well as the opportunity to test to the necessary extent, which the client shall make available on a timely basis, during normal business hours, and at his expense. If the client has already been working in real time in an operating system that is being made available for testing, the responsibility for securing the real data lies with the client.
- (b) The basis for creating custom-designed programs shall be the written performance specifications that either are provided by the client or that Zühlke writes up, at charge to the client, on the basis of documentation and information provided to him by the client. This performance catalogue is to be inspected by the client for correctness and completeness and is to be initialled by him as a sign of his assent. Requests for modifications which are made thereafter can result in separate deadline and price agreements.
- (c) The client shall provide Zühlke in a timely manner with all the information needed to fulfil the Contract.
- (d) The client creates the conditions necessary for Zühlke to perform the Services.
- (e) In particular, the client shall have the following obligations:
 - (i) cooperation in the project organisation;
 - (ii) appointing of a person responsible for the project, who has the required skills and capacity and who may only be replaced for good reasons with the consent of Zühlke;
 - (iii) timely procurement of the materials and means that are to be made available by the client, such as third party products, third party services and services that the client will perform itself;
 - (iv) if necessary, evaluation of any pre-existing rights of third parties, in particular copyright, patent, trademark and design rights;
 - (v) securing of the services of cooperational suppliers of Zühlke;
 - (vi) performance of regular data backups;
 - (vii) informing Zühlke about regulatory requirements and specific technical standards, provided that the provision of this information is not expressly assigned to Zühlke in the Contract;
 - (viii) obtaining of the necessary authorisations, permits and licenses.
- (f) If the client does not fulfil its cooperation obligations, any deadlines that Zühlke would be bound to shall no longer be binding and the client shall compensate Zühlke for additional expenses that Zühlke incurs due to the client's delay and breach of its cooperation obligations. Additionally, Zühlke is entitled to withdraw from the Contract after setting a reasonable grace period.

8 Hours of Operation and Intervention Times

- (a) Maintenance Services are provided by Zühlke during Zühlke's operating hours (the "Hours of Operation").
- (b) The precise Hours of Operation shall be agreed between Zühlke and the client.
- (c) The intervention time (the "Intervention Time") is the period of time that elapses between the notification of an incident to Zühlke and Zühlke's beginning to process the incident. For the purposes of calculating the Intervention Time, only the time elapsed during the HOURS OF OPERATION shall be considered.
- (d) To be binding, Intervention Times must be specified in the Contract.

9 Acceptance

- (a) Services shall be inspected and accepted by the client on the agreed date, no later than four weeks after delivery. Should the client allow four weeks to pass without accepting the Services, the delivered Services shall be deemed to have been accepted as of the last day of the stated time period. If the client uses the Services in real-time operations, the Services is thereby deemed to have been accepted by the client.
- (b) The client will inspect all interim results (test results, documentation, specifications, program parts, etc.) on an ongoing basis and notify Zühlke without delay of any objections.
- (c) Zühlke shall be notified by the client without delay, with sufficient supporting documentation and in writing of any detected defects,

- otherwise the Services in question shall be deemed to have been accepted.
- (d) Zühlke shall make efforts to correct the detected defects as quickly as possible.
 - (e) If there are significant defects that have been reported in writing, i.e., if real-time operations have not commenced or cannot be continued, a renewed acceptance of the work following correction of the deficiency is required.
 - (f) Only defects that significantly impair the use of Services ("Significant Defects") shall entitle the client to refuse acceptance. All other defects shall be considered insignificant ("Insignificant Defects"), and shall not entitle the client to refuse acceptance.
 - (g) Should it prove in the course of the work to be impossible, actually or legally, to complete the order in line with the performance specifications, it is the responsibility of Zühlke to immediately inform the client thereof. If the client does not change the performance specifications accordingly or create the conditions to make completion of the order possible, Zühlke can reject performance of the order. If the impossibility of carrying out the order is due to an omission on the part of the client or to a later change by the client in the performance specifications, Zühlke is entitled to withdraw from the order. The client reimburses Zühlke's costs and fees that are due for the work as well as any dismantling costs.

10 Performance by Third Parties

- (a) Zühlke may engage third parties, or subcontractors domestically and from abroad to perform the Services.
- (b) The client shall be entitled to refuse third parties or subcontractors for justifiable reasons.
- (c) Zühlke shall be responsible for the services rendered by such subcontractors as it is for its own.
- (d) Affiliated entities of Zühlke shall not be considered third parties or subcontractors.

11 Intellectual Property Rights

- (a) If the results of Project Services constitute a patentable invention, the client is entitled to this patent after having paid the owed remuneration. This shall not apply to intellectual property rights to embedded software (applications, which are programmed for specific hardware) and to knowledge already held by Zühlke on the contractual starting date (back-ground know-how and background patents). The client is granted a right to use these in accordance with clause 11 (b)-(d). The filing of patents is not part of the Services provided by Zühlke.
- (b) With regard to all other intellectual property rights (in particular copyrights and know-how property rights) the client shall be granted a comprehensive non-exclusive right of use after having paid the owed remuneration.
- (c) The right of use shall allow the client to use the work results for the purpose stipulated in the Contract. Unless otherwise stipulated, the right of use right is of an unlimited duration and transferable and also includes the right to edit and distribute the work results.
- (d) The client is not entitled to independently distribute standard components of Zühlke (in particular frameworks and shared libraries) in any other way than together with the work results in which such components are integrated.
- (e) If a third party product or open source software is an integral component of the Services, the license provisions of the third party manufacturer or the applicable open source license shall apply to such third party products.

- (f) Zühlke shall be free to use know-how developed during the performance of the Services provided that the business secrets of the client are protected.
- (g) Zühlke may use cloud services, data center services as well as ChatGPT, GitHub Copilot or other third-party AI as part of its service delivery.

12 Contractual Term

121 Ordinary Contractual Term

- (a) Contracts for Project Services shall end with the completion of the Services.
- (b) Zühlke may terminate Contracts for Project Services with a notice period of 14 days. In such cases, Zühlke shall be entitled to request the remuneration that is due for the part of the Services provided up to the date of the termination. The client receives all work results created up to the date of the termination, as well as the associated intellectual property rights.
- (c) Contracts for Operation and Maintenance Services are concluded for the period specified in the Contracts and terminated by observing the notice period specified therein. Unless otherwise stated, such Contracts can be terminated at the end of each month by giving three months' prior notice.
- (d) Granting of a License shall be made for an unlimited time absent other arrangements in the Contract.
- (e) Contracts for Consulting Services can be terminated at the end of each month by giving 30 days' prior notice, unless otherwise agreed.
- (f) The terminating Party shall compensate any damages the other Party incurs due to termination at an inopportune time.

122 Extraordinary Termination

- (a) Either Party may terminate a Contract extraordinarily, and without advance notice, for cause if the other Party has committed a serious breach of the Contract, or if bankruptcy or composition proceedings have been initiated towards such Party. An extraordinary termination reason may, for example, be given if a Party repeatedly or for a longer period of time defaults on payments of significant value.
- (b) At their own discretion, the non-breaching Party may refrain from termination without advance notice and alternatively notify the breaching Party of their breach and set a reasonable period to cure the breach. If the breaching Party does not cure the breach within this period, the Contract may be terminated without advance notice according to lit (a).

123 Form

Terminations must be made in writing in order to be valid.

13 Warranty

- (a) Zühlke warrants that the Services will be rendered in accordance with the Contract and state of the art technology, as well as due care and diligence. In the case of software being the Services, Zühlke warrants that the software fulfils the functions described in the accompanying documentation, provided that the software is used on the operating system described in the Contract.
- (b) In case of Maintenance Services, the provision of a certain service level does not mean that Zühlke warrants an uninterrupted, error-free operation. The agreement of a penalty clause for not reaching the agreed service level, excludes further claims for damages or warranties by the client.
- (c) The infringement warranty period is 12 months upon delivery.

- (d) The client is obligated to carefully inspect the Services for defects upon acceptance.
 - (e) Detected defects must be reported immediately, in writing and with sufficient documentation, otherwise the client's claims for warranty and damages due to the defect itself, as well as due to an error on the absence of defects are no longer applicable.
 - (f) In any case the client loses his warranty claims, if he himself or non-authorized third parties, without the written consent of Zühlke, alter the Services, or undertake their repair or attempt repair. For software Services that are subsequently altered by programmers of the client or by third parties, any existing warranty of Zühlke's is no longer applicable.
 - (g) Furthermore, Zühlke assumes no warranty for defects, failures or damages that are due to improper use, altered components in the operating system, interfaces and parameters, the use of inappropriate organizational resources and data carriers, insofar as these are stipulated, unusual operating conditions (particularly deviations from the installation and storage provisions) or damage during shipment.
 - (h) Zühlke does not provide any warranty for consumables and wear-and-tear parts.
 - (i) In fulfilment of the warranty, rectification of defects takes precedence over price reduction or rescission of the order. If the Services relate to software, it is sufficient that Zühlke provides the client with a patch or bug fix, or demonstrates reasonable workarounds.
 - (j) If the notice of defects is justified, the defects are to be remedied within an appropriate period of time, and the client is to make available to Zühlke all means required by the latter to investigate the problem and remedy the defects.
 - (k) The presumption of defectiveness in accordance with § 924 of the General Austrian Civil Code of Law (ABGB) is ruled out, as well as the right of recourse in accordance with § 933b of the ABGB.
 - (l) In the event of unsuccessful rectification of defects, the client shall be entitled to demand a price reduction corresponding to the reduced value, after setting a reasonable period of grace in writing.
 - (m) The costs for support provided, diagnosis of errors, remedying defects and failures that are the responsibility of the client, as well as other corrections, revisions and additions are to be carried out by Zühlke upon costs charged to the client. This is also the case for the remedying of errors when program revisions, additions or other interventions have been carried out by the client himself or by a third party.
 - (n) Insofar as the subject of the order is the revision or supplementation of existing programs, the warranty covers the revision or supplementation. The warranty for the original program does not thereby again come into effect.
 - (o) Zühlke does not provide any warranty for open source software or third party products. Any warranty claims of the client relating to open source software and third party products shall exist exclusively vis-à-vis the third party manufacturers and in accordance with their general warranty conditions
- (b) The existence of blatant gross negligence must be proven by the client. The shifting of the burden of proof pursuant to § 1298 ABGB is explicitly excluded.
 - (c) Liability for indirect damages, such as loss of profit, damages from interruptions to business operations, loss of data or claims made by third parties, is expressly excluded.
 - (d) Claims for damages shall lapse one year after the damage and the damaging party has become known.
 - (e) Any liability on the part of Zühlke is limited to the net order value, however in any case not exceeding EUR 200.000.
 - (f) If Zühlke provides the Services with the help of third parties and if warranty and/or liability claims arise against these third parties in this context, Zühlke hereby assigns these claims to the client. The client shall primarily resolve such claims with these third parties.
 - (g) If data backup is explicitly agreed as a service, the liability for the loss of data is in deviation from 14(c) not excluded, but is limited to a maximum of EUR 10% of the order sum or EUR 15.000 per claim for the restoration of the data. Warranty claims and claims for damages made by the client beyond what is mentioned in this contract, regardless of the legal basis, are excluded.
 - (h) The client must also check the content provided by him for its legal admissibility, in particular under competition law, trademark law, copyright law and administrative law. Zühlke shall not be liable for the legal admissibility of content if it has been provided by the client.

15 Third Party Rights / Defect of Title

- (a) If the client, using the work results in the contractually defined manner, is held liable by a third party for an asserted infringement of intellectual property rights (the "Infringement of Rights"), Zühlke provides a warranty if the following conditions are met:
 - (i) the Services have not been amended by the client itself or by a third party appointed by the client;
 - (ii) the asserted claim is notified to Zühlke in writing without delay;
 - (iii) the client follows the instructions of Zühlke in defending against the third party claim and refrains from conducting negotiations with or making commitments to the third party without the prior consent of Zühlke.
- (b) Zühlke assumes no liability for claims arising from patent infringements. Zühlke does not conduct its own patent research and is not liable for patent infringement.
- (c) Zühlke may decide at its own discretion to conduct the legal dispute with the third party or to recognise the claim of the third party and either by replacing or modifying the work result ensure that the Infringement of Rights no longer exists, or to withdraw the work results and reimburse the client the payments received for it.
- (d) Should Zühlke decide to pursue a legal dispute, the client shall allow Zühlke to conduct any legal proceedings as well as leave any negotiations aimed at reaching an amicable settlement of the legal dispute solely to Zühlke. In addition, the client shall provide Zühlke with all the necessary information and render to Zühlke all support reasonably necessary.

16 Indemnification

- (a) If a claim is brought against Zühlke by third parties or government authorities in connection with the Services, the client shall be obliged to fully indemnify Zühlke in the following cases:
 - (i) claims relating to product liability;

- (ii) claims resulting from the infringement of patents of third parties, provided that Zühlke itself was not commissioned with the patent research;
 - (iii) claims relating to damages resulting from the use of the Services outside of the contractually agreed purpose;
 - (iv) claims arising from violations of existing export regulations.
- (b) The obligation to indemnify shall not apply if Zühlke itself is responsible for the claim, due to an intentional or negligent breach of a contractual obligation.

(c) Indemnification shall, in addition to reimbursement of legitimate third party claims, include all the costs arising from the contesting of third party claims.

17 Force Majeure

- (a) If a Party is prevented from fulfilling its contractual obligations in whole or in part due to force majeure, the Party concerned shall be released from its liability due to non-performance as long as the force majeure event continues.
- (b) Force majeure refers to external events that have an effect on the Parties and over which the Parties have no influence. Situations of force majeure include in particular: Disruptions of the public power supply and the communications and transportation infrastructure, government measures, viruses or hacking attacks, fire, extraordinary weather conditions, epidemics, nuclear and chemical accidents, earthquakes, war, terrorist attacks, strikes and sabotage etc.
- (c) If a force majeure event lasts more than 30 days, either Party may terminate the Contract retroactively as per the date the force majeure event occurred. Services performed up until that date shall be remunerated.

18 Non-Solicitation Agreement

The parties to the contract obligate themselves to reciprocal loyalty. They will not hire away staff or employ, including by way of third parties, staff of the other party to the contract who have worked on the realization of the projects, during the duration of the contract or for 12 months after the end of the contract. A party to the contract in violation of this clause is obliged to pay lump-sum damages in the amount of one annual salary of the employee.

19 Data

- (a) Regarding the processing of information from the client (the "Client Data"), Zühlke acts as data processor. The sole owner of the Client Data is the client.
- (b) Zühlke pledges to keep personal data confidential and to take the necessary technical and organisational data protection measures, as defined in the applicable data protection regulations (GDPR; DPA).
- (c) Zühlke will also ensure that its employees and assistants are bound by such confidentiality requirements.

20 Confidentiality

- (a) The Parties undertake to maintain confidentiality regarding all facts, information and data about which they become aware in connection with this business relationship and regarding which the other Party has an interest in keeping confidential. The duty of confidentiality shall survive the termination of the Contract for as long as an interest in confidentiality exists.
- (b) Information that is generally known or that has been made available to a Party by a third party, irrespective of the business relationship, shall not be deemed to be subject to confidentiality.

- (c) The Parties shall ensure that their employees, auxiliary personnel and subcontractors are obligated to comply with these confidentiality obligations.
- (d) The obligation to maintain confidentiality applies towards third parties. Affiliated companies of the respective Party are not considered to be third parties.
- (e) Zühlke may list the client as a reference client, and use its logo, in advertising material and on the website. A more detailed account of the client relationship shall require the consent of the client.
- (f) The parties agree that the use of cloud services and third party data centre services shall not constitute a breach of confidentiality. The confidentiality obligations shall also apply beyond the termination of the agreement.

21 Severability

Should individual terms of this contract be or become inoperative, this will not affect the remaining terms of this contract. The parties to the contract will work in a spirit of partnership to find an arrangement that approximates as nearly as possible the inoperative terms.

22 Reduction by Half

The right to contest a contract due to reduction by half according to § 934 ABGB (laesio enormis) is excluded.

23 Assignment

Claims against Zühlke may not be assigned without consent.

24 Right of retention

The client is not entitled to retain remuneration.

25 Set-off

The client is not entitled to set-off any claims it may have against Zühlke.

26 Requirement for written form

Changes or amendments of these GTC, as well as oral side agreements, shall only become part of the Contract, if Zühlke confirmed this in writing. This shall also apply for the waiver of this written form requirement.

27 Jurisdiction and Applicable Law

- (a) Insofar as not otherwise agreed in writing, Austrian law applies exclusively, with the exclusion of reference clauses in private international law and the UN Convention on Contracts for the International Sale of Goods (CISG). Place of fulfilment shall be the corporate location of Zühlke Engineering (Austria) GmbH in Vienna.
- (b) In contentious matters the responsible local court of Zühlke Engineering (Austria) GmbH's corporate location in Vienna has exclusive jurisdiction. For sales to consumers within the meaning of the consumer protection law, the above terms are valid solely insofar as the consumer protection law does not contain mandatory provisions to the contrary.