

General Terms and Conditions of Soft-/Hardware Maintenance Services (GTC Maintenance Soft-/Hardware) of Zühlke Engineering AG



1 Preamble

These GTC govern the performance of maintenance services for HARDWARE AND SOFTWARE by Zühlke Engineering AG (hereinafter 'ZÜHLKE') as well as the rights and duties of the parties.

2 Contractual elements and precedence

The CONTRACT consists of the following documents. In the event of a conflict, the documents apply in the following order of precedence:

- (i) Provisions of the individual agreement
- (ii) These GTC of Hardware and Software Maintenance

3 Definitions

The following definitions apply:

- (a) MODIFICATIONS are services on the SOFT-/HARDWARE that take no more than three working days and can be performed by the support team itself due to its skills. MODIFICATIONS shall be billed on the basis of the fees and hourly rates set out in the individual contract.
- (b) RESPONSE TIME is the period of time during the SUPPORT TIME between receipt of the NOTICE OF DEFECTS and its acknowledgement by ZÜHLKE to the customer.
- (c) RESTORATION TIME is the period of time during SUPPORT TIME between receipt of the NOTICE OF DEFECTS (and its acknowledgement if a RESPONSE TIME has been agreed) and a provisional solution, e.g. the delivery of a VERSION, a PATCH or a reasonable workaround solution where SOFTWARE is concerned.
- (d) INFRASTRUCTURE describes technical components necessary for the provision SERVICES, such as hardware and operating software.
- (e) CHANGE REQUEST is a request for an amendment by the customer or a customer enquiry regarding ENHANCEMENTS.
- (f) PERIOD OF ACTUAL AVAILABILITY is the period of time during which the SOFTWARE OR HARDWARE functions without any CRITICAL DEFECTS. The determination of CRITICAL DEFECTS and the measurement of the PERIOD OF ACTUAL AVAILABILITY are subject to the provisions concerning the SOLUTION TIME, in which regard the maintenance window is not factored into the calculation of the PERIOD OF ACTUAL AVAILABILITY.
- (g) DEVELOPMENT CONTRACT is the CONTRACT between the parties on the basis of which the SOFT-/HARDWARE has been developed by ZÜHLKE.
- (h) MAJOR DEFECT is a DEFECT that impairs the operation or important features of the SOFT-/HARDWARE for many users of the customer's SOFT-/HARDWARE.
- (i) HARDWARE is the entirety of the physical technical components of a system.
- (j) INTERVENTION TIME is the period of time during the SUPPORT TIME between receipt of the NOTICE OF DEFECTS (and its acknowledgement if a RESPONSE TIME has been agreed) and the start of work to remedy the DEFECT.
- (k) MINOR DEFECT is a DEFECT that impairs the operation or expanded features of the SOFT-/HARDWARE for a smaller group of users of the customer's SOFT-/HARDWARE.
- (l) CRITICAL DEFECT is a DEFECT that massively impairs or completely prevents the operation or basic features of the SOFT-/HARDWARE for the majority of the users of the SOFT-/HARDWARE on the premises of the customer.
- (m) SOLUTION TIME is the period of time during the SUPPORT TIME between receipt of the NOTICE OF DEFECTS (and its acknowledgement if a RESPONSE TIME has been agreed) and the final REPAIR OF THE DEFECT (not a workaround where SOFTWARE is concerned).
- (n) DEFECT is where the SOFT-/HARDWARE deviates significantly from the product specifications set out in the DEVELOPMENT CONTRACT or the expressly agreed characteristics, resulting in limitations to the business-relevant processes of the customer. DEFECTS are categorised as either CRITICAL, MAJOR or MINOR DEFECTS.
- (o) NOTICE OF DEFECTS is the report about the DEFECT submitted by the customer to ZÜHLKE or the description of a DEFECT written by ZÜHLKE on the basis of the report submitted by the customer.
- (p) REMEDIES OF DEFECTS are the repairing of the DEFECTS in the SOFT-/HARDWARE of the customer.
- (q) PATCH is a software component designed to fix one or more DEFECTS in the VERSION of the SOFTWARE installed by the customer.
- (r) SCOPE OF WORK (SoW) is a performance description by ZÜHLKE with regard to ENHANCEMENTS of a SYSTEM or the SOFT-/HARDWARE.
- (s) SERVICE LEVELS are the performance indicators agreed between ZÜHLKE and the customer in order to guarantee the quality of the software SERVICES.
- (t) SERVICES are the services performed by ZÜHLKE on SOFT-/HARDWARE within the scope of the CONTRACT and as defined in the CONTRACT.
- (u) SOFTWARE is the computer program in the source or machine code and – where supplied to the customer by ZÜHLKE – the related documentation. The SOFTWARE is described in the individual contract.
- (v) DISRUPTION is a DEFECT caused by the INFRASTRUCTURE.
- (w) SUPPORT is the support of the customer by ZÜHLKE with the installation and operation of the SOFT-/HARDWARE. ZÜHLKE shall answer the customer's questions through its service desk.
- (x) SUPPORT TIME is the period of time during which ZÜHLKE performs SERVICES and the service desk of ZÜHLKE is available.
- (y) SYSTEM is a technically defined and essentially closed subsystem of the installed SOFTWARE.
- (z) VERSION or REVISION denotes a specific edition of the SOFTWARE OR HARDWARE that contains fixes, substantial improvements or additional features.
- (aa) CONTRACT is the contract entered into by the parties with regard to the performance of the SERVICES, consisting of the individual contract and the GTC.
- (bb) ENHANCEMENTS are enhancements of the functions of the SOFTWARE carried out by ZÜHLKE by implementing new

requirements in the source code or carrying out services on pieces of HARDWARE that can no longer be classed as MODIFICATIONS. ENHANCEMENTS must be agreed separately.

(cc) WORKING DAYS are the official business days at the ZÜHLKE offices.

4 Contractual subject matter and services

The object of the SERVICES is the SOFT-/HARDWARE indicated in the individual contract, as well as any and all necessary INFRASTRUCTURE and third-party products. The SERVICES comprise SUPPORT, REMEDIES OF DEFECTS for the SOFT-/HARDWARE and MODIFICATIONS. The following list of services is exhaustive. ZÜHLKE is not obliged to perform any further services.

4.1 Service desk

ZÜHLKE shall provide the customer with a service desk, whose availability during the SUPPORT TIME is defined in the individual contract and through which ZÜHLKE shall perform the following services:

- (i) Support services
- (ii) Receipt of NOTICES OF DEFECTS
- (iii) Receipt of CHANGE REQUESTS

4.2 Support

4.2.1 HARDWARE

- (a) ZÜHLKE shall support the customer in accordance with the arrangements agreed upon in the individual contract.
- (b) If HARDWARE components need to be changed as part of the SERVICES, the following applies:
 - (i) ZÜHLKE does not guarantee the availability of spare parts.
 - (ii) At the request of the customer, ZÜHLKE shall check the availability of the necessary spare parts.
 - (iii) ZÜHLKE shall notify the customer if spare parts are available. The customer shall procure the spare parts and provide them to ZÜHLKE to be exchanged.
 - (iv) ZÜHLKE shall exchange the components, in which regard all liability for third-party components is excluded.
 - (v) The customer shall dispose of components that are no longer needed in the proper manner.

4.2.2 SOFTWARE

ZÜHLKE shall assist the customer's power users – who have received special training in how to use the SOFTWARE – with the installation, configuration and operation of the SOFTWARE and shall answer any related questions. Only power users are authorised to submit support enquiries to ZÜHLKE via the service desk.

4.2.3 Joint provisions

Where it is of general interest, ZÜHLKE shall store the information it provides as part of its support services in a knowledge base that shall be made available to the customer electronically or on a web portal.

4.3 REMEDIES OF DEFECTS

4.3.1 HARDWARE

Unless agreed otherwise in the individual contract, ZÜHLKE shall endeavour to fix HARDWARE DEFECTS within a reasonable period of time.

4.3.2 SOFTWARE

- (a) Unless agreed otherwise in the individual contract, ZÜHLKE shall endeavour to fix reproducible DISRUPTIONS in the INFRASTRUCTURE on the basis of the full NOTICE OF DEFECTS submitted by the customer and within a reasonable period of time. The parties can agree on a

SOLUTION TIME in the individual contract. At the discretion of ZÜHLKE, the fix can also entail describing a reasonable workaround solution.

- (b) ZÜHLKE is entitled to fix SOFTWARE DEFECTS by releasing a VERSION, a PATCH or by describing a reasonable workaround solution. CRITICAL DEFECTS shall normally be fixed with a PATCH and all other DEFECTS in the next VERSION.
- (c) ZÜHLKE is entitled to fix DEFECTS proactively.
- (d) ZÜHLKE shall document changes to the source code of the SOFTWARE systematically and manage them. Each delivery of software (VERSIONS and PATCHES) to the customer shall have a unique version number so that it can be reproduced at any time.
- (e) The parties shall agree the SERVICE LEVELS that apply to the operation of the software in the individual contract.
- (f) ZÜHLKE operates the SOFTWARE through the INFRASTRUCTURE as defined in the individual contract. Responsibility shall rest with the customer to transmit the processed customer data and access commands over the Internet to ZÜHLKE's Internet connection or that of its subcontractors.
- (g) ZÜHLKE is entitled to use additional INFRASTRUCTURE if this is necessary for the performance of the services. ZÜHLKE shall invoice the customer for the additional expenses in this regard. Where ZÜHLKE procures this additional INFRASTRUCTURE from a subcontractor, ZÜHLKE shall recharge the one-off or recurring costs invoiced by the subcontractor to the customer, plus a 10% administration fee.

4.4 Modification

MODIFICATIONS shall be carried out within a reasonable period of time at the request of the customer.

5 Enhancements and one-off support services

- (a) ENHANCEMENTS and one-off support services are not part of the CONTRACT. On the basis of a CHANGE REQUEST by the customer, ZÜHLKE shall send the customer a quotation for the requested ENHANCEMENTS or one-off support services (e.g. the installation or configuration of VERSIONS or trainings). Provided the quotation is not rejected by the customer, the parties shall enter into the contract regarding the performance of those services as follows:
 - (i) if the services will take up to five man days on the basis of the SCOPE OF WORK, the customer shall send an email to ZÜHLKE accepting the SCOPE OF WORK;
 - (ii) if the services will take more than five man days, the customer shall sign the quotation and return it to ZÜHLKE.
- (b) The performance of ENHANCEMENTS and one-off support services is subject to the General Terms and Conditions of ZÜHLKE (for contract of project and other services), with the exception that the warranty provisions do not apply to the ENHANCEMENTS and these, once accepted, shall be maintained in accordance with this CONTRACT. ZÜHLKE is entitled to refuse to carry out ENHANCEMENTS or one-off support services in justified cases.

6 Additional services

The parties can agree additional services of ZÜHLKE in the individual contract.

7 Excluded services

- (i) Repairing of damages caused by fire, water, breakage, frost or corrosion.
- (ii) Repairing of DEFECTS caused by operating errors, interventions by third parties or the user and not caused in any other way by the SOFT-/HARDWARE; these include, for example, errors caused by third-party software or systems used

by the customer unless ZÜHLKE has expressly assumed responsibility for these services in the individual contract.

- (iii) Repairing of defects in third-party components unless ZÜHLKE has expressly assumed responsibility for this service in the individual contract.
- (iv) Disaster recovery.
- (v) Sub-systems of the customer.
- (vi) Modifications to the interfaces of the SOFT-/HARDWARE to the technical system environment of the customer.
- (vii) Ensuring that a system remains compliant with changing regulatory requirements. The customer is responsible for ensuring that the systems remain compliant.

8 Subcontractors

ZÜHLKE is entitled to involve subcontractors on a national and international level in order to perform the services under this CONTRACT.

9 Prices and invoicing

- (a) The fees and hourly rates are set out in the individual contract. All prices are net and do not include value-added tax (VAT) or other duties. The individual contract shall determine when ZÜHLKE issues an invoice for services rendered.
- (b) ZÜHLKE is entitled to adjust the amount of the hourly rates, the periodic (recurring) fees such as maintenance fees and the additional expenses on the basis of changes in cost factors at the start of each new calendar year. Such adjustments shall be communicated in writing at least two months before they are due to come into effect. If the customer does not agree to the increase, they are entitled to terminate this CONTRACT regarding the SYSTEMS affected by the price increase with a three-month notice period. Such termination must be issued within 30 days of receiving notification of the increase of the affected SYSTEMS.

9.1 Default on payment of prices and fees on the part of the customer

If the customer defaults on the payment of prices or fees, ZÜHLKE is entitled to discontinue its services until the customer has paid all payable fees in full. ZÜHLKE reserves the right to exercise its statutory rights in the case of default.

9.2 Offsetting

The customer may not offset its own claims against ZÜHLKE without the latter's prior written consent.

10 Duties to cooperate

- (a) The customer undertakes to fulfil the following duties to cooperate, in particular:
 - (i) to provide all necessary information required by ZÜHLKE for the performance of the services;
 - (ii) to appoint a liaison with all of the necessary skills to execute the CONTRACT;
 - (iii) to report DEFECTS immediately to the service desk and document them in detail;
 - (iv) to assist ZÜHLKE in determining the cause of the DEFECTS using any possible means;
 - (v) to follow the recommendations of ZÜHLKE in order to bypass or mitigate the DEFECTS;
 - (vi) to coordinate with services of the suppliers of the third-party products and technical system environment of the customer that are named in the individual contract (e.g. to clarify the compatibility of those products and systems with

the SOFTWARE or to consult these suppliers in order to determine the cause of DEFECTS);

- (vii) to license the third-party products incorporated in the SOFTWARE in accordance with the individual contract;
 - (viii) to make employees who have received special training in how to use the SOFTWARE (power users) available as points of contact in its company for first-level support;
 - (ix) to provide and operate the technical system environment (hardware, operating systems, network, back-up);
 - (x) to grant access to the customer's premises and provide an internal workspace with standard equipment. Where specific requirements have to be met for entry (training, certificates etc.), the customer shall take the necessary steps in good time and at its own expense (e.g. training ZÜHLKE personnel);
 - (xi) to provide remote access for ZÜHLKE to the customer's SOFTWARE and provide communications connections;
 - (xii) to use the SOFTWARE in the agreed configuration;
 - (xiii) to back up data regularly, especially before the start of maintenance;
 - (xiv) to thoroughly test the VERSIONS, REVISIONS and PATCHES provided by ZÜHLKE to the customer prior to the customer using it for productive purposes;
 - (xv) to install the latest VERSION supplied by ZÜHLKE within two weeks of being notified of its availability;
 - (xvi) to take necessary precautions to guarantee the security of the systems used by the customer to access the SOFTWARE (such as ensuring the confidentiality and regular replacement of passwords, use of anti-virus software);
 - (xvii) to use the SOFT-/HARDWARE only for its intended purpose;
 - (xviii) administration of the customer's users accessing the SOFTWARE; and
 - (xix) not to use the SOFT-/HARDWARE in any way that violates the law or official regulations or ordinance.
- (b) If the customer fails in its duties to cooperate and ZÜHLKE is not at fault, the deadlines dependent on the duties to cooperate shall be postponed automatically by the length of time for which the duties to cooperate were not fulfilled; furthermore, ZÜHLKE is entitled to the reimbursement of any costs resulting from the customer's failure to fulfil its duties to cooperate.

11 Rights to the work results of the services

Unless agreed otherwise in the individual contract, ZÜHLKE or the relevant third party shall retain the intellectual property rights to the work results created through the SERVICES. If ZÜHLKE performs its SERVICES using open source software or other third-party components, the relevant provisions apply to this. Where possible, the customer shall gain a non-exclusive right to utilise these work results as far as necessary. The right of use of the customer also encompasses the right to process the results where necessary for the customer's intended purpose. The right of use is transferable. However, the customer is not entitled to sell the results. The right of processing is not transferable. The customer is entitled to receive the source code if the work result is part of the SOFTWARE. ZÜHLKE is free to use the expertise obtained through the development as long as it respects the trade secrets of the customer.

12 Escalation and dispute resolution procedures

If a difference of opinion should arise between the parties in connection with this CONTRACT, the parties shall make all reasonable efforts and, in particular, initiate an escalation procedure in order

to come to an out-of-court settlement. However, both parties are entitled to take legal action at any time. The escalation levels shall be determined in the individual contract.

13 Warranty

Where legally permissible, warranty for the SERVICES and the work results produced through them (including MODIFICATIONS and ENHANCEMENTS) is completely excluded.

14 Third Party Intellectual Property Rights

- (a) If the customer is sued by a third party for an alleged violation of intellectual property rights while using the service in a manner consistent with the contract (the "INFRINGEMENT OF RIGHTS"), the customer shall be entitled to a warranty of title in accordance with these provisions as long as the following criteria are met:
 - (i) the service has not been modified by the customer or a third party engaged by the customer;
 - (ii) the asserted claim is notified to ZÜHLKE in writing without delay;
 - (iii) the instructions of ZÜHLKE are followed in connection with defending against the third-party claim and no negotiations or promises are entered into with or made to the third party without the consent of ZÜHLKE.
- (b) This clause does not apply to patent infringements. ZÜHLKE does not carry out patent research and cannot be held liable for patent infringements.
- (c) The customer shall not be entitled to a warranty of title if an INFRINGEMENT OF RIGHTS was not evident to ZÜHLKE despite due care having been exercised.
- (d) The term of the warranty of title is 12 months. It shall commence upon delivery.
- (e) 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.
- (f) If ZÜHLKE decides to continue the legal dispute, the customer shall leave ZÜHLKE in charge of the proceedings and the negotiations aimed at reaching an amicable settlement to the legal dispute. Furthermore, it shall provide ZÜHLKE with the necessary information and provide ZÜHLKE with reasonable support.

15 General warranty for open source and third-party products

No warranties of any kind are provided for open source software or third-party products. The warranty rights of the customer for open source software and third-party products exist exclusively vis-à-vis the third-party developers and are subject to their terms of warranty.

16 Liability

- (a) Regardless of the legal grounds, the liability of ZÜHLKE is limited to CHF 100,000 for damage suffered by the customer due to a culpable breach of contract by ZÜHLKE.
- (b) All liability for data losses, lost profits, unrealised savings, third-party recourse claims, damage caused by business interruptions and all indirect damage and consequential damage is excluded.
- (c) The liability limit set out in this section does not apply to personal injuries or damage caused through intent or gross negligence. The liability of ZÜHLKE for such damage is unlimited.
- (d) If the parties have agreed a reduction in fees for a failure to adhere to the RESPONSE or SOLUTION TIME in an individual contract, all

damage resulting from failure to adhere to the RESPONSE or SOLUTION TIME shall be considered covered by the agreed fee reduction by ZÜHLKE.

17 Force majeure

- (a) If force majeure should prevent one party from fulfilling some or all of its contractual obligations, the affected party shall be exempted from its liability for non-fulfilment for as long as the force majeure continues to exist.
- (b) Force majeure is any external event that affects the parties and over which the parties have no control. In particular, the following are considered cases of force majeure: disruptions to the public power supply, communications infrastructure and transport routes, government measures, viruses or hacking, fire, extreme weather conditions, epidemics/pandemics, nuclear and chemical accidents, earthquakes, war, terror attacks, strikes, sabotage, etc.

18 Export controls

- (a) Deliveries and services are subject to the condition that their execution is not prevented by obstacles due to national or international regulations, especially export control regulations, embargoes and other restrictions.
- (b) The parties undertake to supply all information and documents that are required for exporting, shipment and importing. Delays caused by export checks or approval procedures shall render dates and delivery deadlines invalid.
- (c) If the necessary permits are not granted, the contract shall be considered not concluded with regard to the parts in question; claims for compensation are excluded in this regard, as are claims due to the aforementioned missed deadlines.

19 Non-disclosure and return obligations

- (a) The customer and ZÜHLKE shall maintain secrecy on all information about the other party deemed to be confidential by that party to which they become privy during tendering and during the term of the contract. This obligation applies in particular to business and manufacturing secrets. This obligation expires five years after the termination of the contractual relationship. All documentation, whether in the form of paper, electronic material or in any other form, whether in copy or original, containing information concerning the other party that falls under this obligation to maintain secrecy shall be returned in its entirety after completion of this contract. The party under a duty to return material shall however be entitled to keep safely, under lock and key, single copies of the documentation to be returned. Such single copies may only be employed for compliance with statutory obligations or used in cases of legal disputes.
- (b) The non-disclosure obligation exists with regard to third parties. Wholly owned subsidiaries, parent companies and affiliates of a party do not count as third parties.

20 Data protection

- (a) The customer acknowledges that ZÜHLKE may engage subcontractors to perform the services and that such subcontractors may perform their services abroad and in accordance with their own privacy policies. The customer confirms its acknowledgement of and agreement with these privacy policies.
- (b) ZÜHLKE undertakes to treat personal data – especially data relating to employees, customers or business partners of the customer – with the greatest of care and as confidential, to only use the personal data for the purpose of executing this CONTRACT and in compliance with the instructions issued by the customer in this regard, and not to allow third parties that are not required to fulfil the contract to access the data in any manner, either fully or

partially. ZÜHLKE shall adhere to the relevant provisions of the Swiss Federal Act on Data Protection when handling personal data and, in particular, shall implement appropriate organisational and technical measures to prevent the unintended modification, destruction or disclosure of the personal data.

- (c) The customer shall fulfil obligations to notify the Swiss Federal Data Protection and Information Commissioner independently, where such obligations exist in connection with the processing of personal data relating to the customer.

21 Prohibition on soliciting, hiring or otherwise engaging personnel

- (a) During the term of the contract and for one year thereafter, the solicitation, direct or indirect employment or any use of the services of employees or agents of ZÜHLKE who have been entrusted to perform SERVICES requires the prior written consent of ZÜHLKE.
- (b) The customer shall pay ZÜHLKE a contractual penalty of CHF 50,000 for every violation of the ban on solicitation, employment or other engagements. Payment of the contractual penalty does not release the customer from its duty to continue fulfilling the breached obligation and does not prevent ZÜHLKE from claiming compensation for further damage.

22 Termination

22.1 Ordinary Termination

The term of this CONTRACT is fixed for the minimum term set out in the individual contract. The CONTRACT can be terminated in writing by either party with a notice period of three months, but not before the end of the minimum term. If the CONTRACT is not terminated, it shall renew automatically by another 12 months.

22.2 Extraordinary Termination

Both parties are entitled to terminate this CONTRACT in writing without adhering to a notice period if the other party

- (i) becomes insolvent;
- (ii) applies for debt rescheduling and restructuring proceedings, signs a composition agreement or undergoes a similar procedure under bankruptcy or insolvency law;
- (iii) ceases its business activities.

22.3 Compensation

In all cases, the customer shall remunerate ZÜHLKE for all services rendered in accordance with the CONTRACT up to the dissolution of the CONTRACT.

22.4 Handover of SOFTWARE and customer data

Where Zühlke performs SERVICES relating to the operation of the SOFTWARE, the customer commits to download the SOFTWARE and the customer data by the end of the notice period for termination at the latest. Upon the expiry of the notice period for termination, ZÜHLKE is entitled to erase the SOFTWARE and customer data as well as all back-up copies on the INFRASTRUCTURE without further notice.

22.5 Migration support

If necessary, ZÜHLKE shall assist the customer upon completion of the CONTRACT with the migration of customer data. ZÜHLKE shall offer the corresponding services to the customer.

23 Final provisions

23.1 Assignment and transfer

The CONTRACT or individual right and duties arising from it may only be assigned or transferred to third parties (including

affiliates) with the prior written consent of the other party; such consent may not be refused without good reason.

23.2 Written form

Any and all amendments and supplements to the CONTRACT in addition to all ancillary agreements must be made in writing and signed by both parties in order to be effective.

23.3 Applicable law and place of jurisdiction

- (a) The CONTRACT is subject exclusively to Swiss law, excluding the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 and the Swiss Federal Act on Private International Law (IPLA).
- (b) The place of exclusive jurisdiction for disputes arising from or in connection with this CONTRACT is Zurich.