



1. Application and Interpretation

- (a) These terms and conditions apply to the relationship between Zühlke Engineering Limited («Supplier») and the person requesting services from the Supplier («Client») as outlined in the accepted proposal («Work Order») accompanying these terms and conditions, and to all services to be supplied by the Supplier in connection therewith («Services»). These terms and conditions and the Work Order will, immediately on the Work Order being signed and returned by the Client to the Supplier, together form a binding agreement between the parties («Agreement»). It is acknowledged that although the Client may need to raise a purchase order in order to initiate the Services, the terms of the Agreement override any terms submitted by the Client in any such purchase order.
- (b) Headings in these terms and conditions are for convenience only and shall not affect their interpretation or construction. Any reference to the singular shall be deemed to include reference to the plural and vice-versa. Any statutory or regulatory reference shall be deemed to include all modifications and replacements thereof from time to time.
- (c) In the event of any conflict between the documents forming the Agreement the following order shall prevail (the lowest numbered taking priority):
 - (1) A document signed by both parties, varying these terms and conditions
 - (2) Work Order
 - (3) These terms and conditions
 - (4) Any purchase order

2. Services

- (a) The Supplier will use all reasonable endeavours to provide the Services identified in the Work Order to the Client. The Supplier will further use reasonable endeavours to provide the Services in accordance with such dates, milestones and/or timelines (including payment timetables) as are set out in the Work Order or as the Supplier reasonably specifies from time to time but any such dates, milestones and/or timelines are estimates only and the Supplier will not be liable for any delay or failure to perform in accordance with them..
- (b) Further services in connection with the Services may be requested by the Client and shall be provided by the Supplier subject to written agreement and amendment of the relevant Work Order. Save to the extent the parties expressly agree otherwise in writing, such additional services shall be subject to these terms and conditions and be incorporated within the Services.

3. Client Obligations

- (a) The Client shall provide Supplier in a timely manner with all information needed to fulfil the Agreement.
- (b) The Client will fulfil its obligations, using all reasonable endeavours as described in the Supplier's proposal.

- (c) Where the Client does not fulfil its obligations under this Agreement, agreed deadlines Supplier would be bound to shall no longer be binding and the Client shall compensate Supplier for additional expenses that Supplier incurs due to the Client's material breach of its cooperation obligations, such costs and expenses to be proven.
- (d) The Supplier will invoice the Client monthly in arrears in accordance with the charging basis set out in the Work Order. The Client will settle each invoice by the due date for payment set out therein. The Supplier will be entitled (without prejudice to any other right set out herein) to charge interest on overdue payments on a daily basis at the rate of 3% (three per cent) per annum above the prevailing base rate from time to time of Barclays Bank plc until the date on which payment is received by the Supplier (whether before or after any court judgment).
- (e) The Client shall promptly and free of charge provide the Supplier with all such assistance from time to time in connection with the performance of the Services as the Supplier may reasonably require, including the provision of adequate and appropriately skilled and qualified staff resources. The Client will procure at all times that its employees, agents, contractors and suppliers cooperate fully with the Supplier and do not delay or inhibit the Supplier from providing the Services in any way. The Client will ensure the health and safety of any officer, employee, agent or subcontractor of the Supplier at all times when any such person is on premises, owned, managed or otherwise under the control of the Client, subject to any prior agreed variation or extension of time.
- (f) The Client shall
 - (i) perform any client responsibilities identified in the Work Order in accordance with good industry practice within any agreed timescales or, if none, as soon as reasonably possible;
 - (ii) comply with the terms of any applicable third party licences; and
 - (iii) obtain and maintain, all necessary licences, consents, and permissions to enable the Supplier working in conjunction with the Client to perform their respective roles, responsibilities, obligations and duties under the Work Order.
- (g) The Supplier shall have no liability for failure to perform any Services or provide any related deliverables or carry out its other obligations under this Agreement and shall not be in breach of this Agreement if the Supplier is prevented, hindered or delayed in doing so as a result of any failure by the Client to comply with its obligations set out in the preceding paragraph or a Work Order

4. Ownership

- (a) The intellectual property rights in all materials and deliverables (including without limitation) object and source code, documents, data, information and records (in whatever form) (collectively «Material») specifically created by the Supplier for the Client in the performance of the Services and which are free and clear of any third party ownership or lien («Client Materials») shall vest in the Client upon receipt by the Supplier of payment of all

valid Supplier invoices in respect of the applicable Work Order. Such vesting shall not imply or grant any right which is subject to a third party patent right. The Client expressly acknowledges that such vesting is subject to all third party patent rights or rights to apply for a patent (whether existing at the date of this Agreement or in the future) and that the Client must rely on its own searches and investigations in relation to such rights.

- (b) Except as set out in 4(a) above in relation to Client Materials, all other Materials and all intellectual property rights connected with the Services, which have been developed by the Supplier prior to the date of the relevant Work Order or are developed independently by the Supplier in the course of providing the Services including without limitation any copyright, registered or unregistered trademarks, service marks, topography rights, patents, registered or unregistered designs, database rights, confidential information or process and know-how, and any applications for any of the above, and any other intellectual property right recognised anywhere in the world, whether or not presently existing, and in each case all goodwill attaching thereto, either vest in the Supplier («Supplier Materials») or are licensed from third parties by the Supplier.
- (c) The Client agrees that the Supplier will have a perpetual, irrevocable, royalty-free, worldwide license to use, modify and adapt i) all Client Materials and (vesting in the Client under clause 4(a)) above, ii) any pre-existing Client or third party sourced intellectual property necessary for the purpose of exercising the Supplier's rights or performing its roles, responsibilities, duties and obligations under this agreement and performing the Services.
- (d) The Supplier will be free to use its general knowledge, skills and experience, and any know-how, methodologies and techniques that are acquired or used in the course of providing the Services.
- (e) The Supplier Materials and all advice given by the Supplier to the Client, all the methodologies used by the Supplier in working for the Client are for the use of the Client only and the Client will not use them for any purpose other than for using the Services as contemplated by and in accordance with the Agreement.

5. IP Indemnity

- (a) The Supplier will, subject to the application of clause 8.2, defend or fully settle, at its sole election and expense, any unrelated third party claim against the Client alleging that the deliverables supplied by the Supplier infringe intellectual property rights, except patents, of any such third party. In the event that any damages are finally awarded against the Client in respect of such a claim, or are agreed by the Supplier in final settlement, these will be paid by the Supplier.
- (b) The Client will indemnify and keep indemnified the Supplier and its respective officers, employees, contractors, agents, members, and successors in interest, on written demand against any losses and any other liability arising from, in connection with or in relation to any action, proceeding, claim or demand relating to any claim or allegation that the Supplier's use of any software, documents, data, plans, strategies, graphics, artworks or any other products, material or information provided to the Supplier by the Client infringes the intellectual property rights of any unrelated third party.
- (c) The respective indemnities set out in the preceding paragraphs are subject to the indemnified party («the Indemnified Party»):
 - (i) promptly notifying the indemnifying party («Indemnifying Party») of any such potential claim («IP Claim»);
 - (ii) (upon the Indemnifying Party's request) lending the Indemnifying Party reasonable assistance in the defence of such IP Claim at the Indemnifying Party's reasonable cost;

- (iii) authorising the Indemnifying Party being authorised to conduct the defence and/or settlement of such claim provided that the Indemnifying Party shall neither do nor permit anything to be done which may damage the reputation or standing of the Indemnified Party without first obtaining the prior consent of the Indemnified Party (not to be unreasonably withheld or delayed); and
 - (iv) not making any admission of liability or other prejudicial statement and not agreeing to any settlement or compromise.
- (d) The Supplier shall have no liability for any claim of infringement of intellectual property rights:
- (i) if the infringement or claimed infringement is the result of (a) the Client's modification or misuse of the relevant deliverable (by reference to the relevant feature or specification), (b) the Client's provision of deliverables to a third party, (c) the Client's failure to use enhancements or modifications offered by the Supplier to avoid infringement, (d) the use of the deliverables in association or combination with any other product, (e) the deliverables having been provided, supplied or created pursuant to a design, specification and/or instruction given by the Client;
 - (ii) caused by the Client's use of any version of software other than the latest version supplied by the Supplier, if such claim could have been avoided by the use of such supplied version; or
 - (iii) caused by the Supplier's use of any software, material, information, data, know-how, instructions or scripts provided by the Client that contain any errors or omissions.
- (e) If use of any deliverable or service by the Indemnified Party becomes or, in the opinion of the Indemnifying Party, is likely to become the subject of an IP Claim, the Indemnifying Party may at its expense and option:
- (i) modify the deliverable or service as necessary to avoid any infringement, provided that the deliverable or service (as amended) functions in substantially the same way as the deliverable or service before modification; or
 - (ii) obtain for the Indemnified Party entity the right to use such deliverable or service in accordance with this Agreement; or
 - (iii) replace all or part of the deliverable or service with functionally equivalent deliverables or documentation without any degradation in performance: or
 - (iv) (where the Supplier is the Indemnifying Party) direct the return of software and refund to the Client the element of the charges paid for such software less a reasonable amount (as agreed in writing by the Client, such agreement not to be unreasonably withheld or delayed) for the Client's use of the software up to the time of return.

6. Termination

- (a) The Supplier may suspend or terminate provision of any or all of the Services forthwith on notice in writing to the Client if
 - (i) the Client fails to pay any sum due to the Supplier other party from time to time under the terms of the Agreement and that sum remains unpaid for 30 (thirty) days following written notice from the Supplier that the sum has not been paid; or
 - (ii) the Client commits any material breach of any term of the Agreement and (in the case of a breach which is capable of being remedied) has failed to remedy such breach, within 30 (thirty) days after the receipt of a request in writing from the Supplier to do so.
- (b) Either party may terminate the Agreement forthwith on notice in writing to the other party if the said other party has a receiver or

administrative receiver appointed over it or any of its undertakings or assets, or if it passes a resolution for winding-up (other than for the purposes of a bona fide scheme of solvent amalgamation or reconstruction), or if a court of competent jurisdiction makes an order to that effect, or if it becomes subject to an administration order or enters into any voluntary arrangement with its creditors, or if any similar process to any of the above is begun, or if it ceases or threatens to cease to carry on any substantial part of its business.

- (c) The Client may terminate any Services immediately on giving notice in writing to the Supplier if the Supplier commits any material breach of any term of the Agreement and (in the case of a breach capable of being remedied) has failed to remedy such breach within 45 (forty five) days after receipt of a request in writing from the Client to do so.
- (d) Any suspension or termination of a Service (however it happens) will not affect any accrued rights or liabilities of either party. Nor will it affect the coming into force or the continuing in force of any provision of the Agreement which is expressly or by implication intended to come into or continue in force on or after the termination or expiry of that Service.

7. Client Warranties

The Client warrants to the Supplier that:

- (a) no data, information, software or material of any kind supplied or made available from time to time by or on behalf of the Client to the Supplier or for the Supplier's use will breach any applicable data protection legislation or guidelines; and
- (b) any data provided by or on behalf of the Client to the Supplier in connection with this Agreement will be anonymised and, accordingly, the Client agrees not to provide the Supplier with any personal data (as such term is defined in the «Data Protection Legislation») and that in any event, it will only provide the Supplier with test and diagnostic data;
- (c) Data Protection Legislation means (i) the Data Protection Act 1998 (until such time as it is no longer in force in the UK) and (ii) to the extent applicable in the UK, the General Data Protection Regulation (EU 2016/679) («GDPR») and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time in the UK and, if applicable, (iii) any successor legislation to the GDPR or the Data Protection Act 1998 implemented in the UK.

8. Supplier Warranty and Liability

8.1. Warranty

- (a) The Supplier warrants that it will perform the Services with reasonable skill and care in a timely and professional manner. In the event that the Client, in the thirty day period following performance of the related Services by the Supplier, notifies the Supplier in writing that the performance of the Services is not in accordance with the warranty set out in the preceding sentence, the Client's sole and exclusive remedy for breach of the warranty is that the Supplier shall re-perform such Services, at the Supplier's expense, such that they conform so far as reasonably possible to the foregoing warranty.
- (b) The Supplier gives no representation or warranty that all errors, defects or deficiencies can be corrected or remedied.
- (c) All terms, conditions, representations and warranties, express or implied, not set out in the Agreement are, to the fullest extent permitted by law, excluded from applying to the Agreement, including without limitation implied warranties, terms and conditions as to performance, fitness for purpose, merchantability and satisfactory quality.

8.2. Liability

- (a) Except as expressly set out in this Agreement the Supplier's aggregate liability to the Client (including to any person claiming under or through the Client) arising out of or in connection with this Agreement shall not exceed 200% of the aggregate fees paid by the Client under the Agreement during the one year period immediately prior to the date on which the claim arose under this Agreement or the relevant Work Order. In addition, the Supplier will be liable for direct loss of or damage to the tangible property of the Client to the extent the same has been caused directly by the negligence of the Supplier, (or its employees or agents acting in the course of their employment or agency), provided that the Supplier's liability for any such loss or damage will be limited to the sum of £50,000 in aggregate.
- (b) The Supplier will not be liable to the Client or any third party in contract or in tort (including without limitation negligence) or in any other way whatsoever for any loss of profit, loss of goodwill, loss of business or revenue, loss of anticipated savings, loss of opportunity, loss or spoiling of data, loss of use of any software or equipment or (without prejudice to the specificity of the aforementioned) any special, indirect or consequential loss arising out of or in connection with any defect, deficiency or error in any Service, deliverable, equipment, software or in any associated material or documentation, or for any failure or interruption of any telecommunications facilities or network systems loss, whether or not of a kind foreseeable by the Supplier.
- (c) The limitation and exclusions applicable to the Supplier's liability in the Agreement do not apply in respect of death or personal injury caused by the negligence of the Supplier or of its employees acting in the course of their employment or in respect of any fraudulent misrepresentation made by or on behalf of the Supplier, as to each of which the Supplier's liability will be unlimited.
- (d) WITHOUT PREJUDICE TO THE GENERALITY OR OTHERWISE OF THIS CLAUSE, THE SUPPLIER WILL NOT BE LIABLE TO THE CLIENT FOR ANY LOSS OR DAMAGE ARISING OUT OF
 - (i) ANY FAILURE BY THE CLIENT TO KEEP FULL AND UP-TO-DATE BACKUP COPIES OF THE COMPUTER PROGRAMS AND DATA WHICH IT USES,
 - (ii) ANY FAILURE BY THE CLIENT TO COMPLY WITH ANY TECHNICAL PREREQUISITES SPECIFIED FROM TIME TO TIME BY THE LICENSOR OF ANY SOFTWARE OR THE MANUFACTURER OF ANY EQUIPMENT,
 - (iii) ANY ERROR OR INCOMPLETENESS IN THE DATA, INFORMATION OR OTHER MATERIAL SUPPLIED FROM TIME TO TIME BY THE CLIENT,
 - (iv) ANY FAULT IN ANY MEDIA USED BY THE CLIENT,
 - (v) ANY DELAY OR FAILURE ON THE PART OF THE CLIENT TO PROVIDE ANY DATA, INFORMATION OR MATERIAL TO THE SUPPLIER,
 - (vi) ANY DELAY OR FAILURE ON THE PART OF THE CLIENT TO NOTIFY THE SUPPLIER OF ANY ERROR IN ANY OUTPUT OR OF ANY ACTUAL OR SUSPECTED FAILURE OF, OR ERROR OR DEFECT IN THE BUSINESS SYSTEMS,
 - (vii) LOSS OR DAMAGE INCURRED OR SUFFERED BY ANY PERSON IN ANY WAY WHATSOEVER AS A RESULT OF ANY USE OR APPLICATION OF DELIVERABLES WHICH MAY BE MADE BY THE CLIENT OR ANY OTHER THIRD PARTY. OR
 - (viii) ANY DELAY OR FAILURE ON THE PART OF ANY SERVICES, HARDWARE OR SOFTWARE SUPPLIER OR MAINTAINER TO CORRECT ANY FAULT OR DEFECT OR TO PROVIDE ANY OTHER SERVICE.

- (e) Without prejudice to the generality of the foregoing, the Client agrees that the responsibility for ensuring that any Service provided by the Supplier is adequate for the Client's purposes rests entirely with the Client.

9. Confidentiality

- (a) The provisions of this clause 9 shall apply in addition to any separate non-disclosure agreement (NDA) agreed between the parties, which is expressed to continue after the execution of this agreement. In the event of any conflict the provisions of the NDA shall have precedence.
- (b) Each party agrees not, without the written consent in each case of the other party, to disclose any non-public information in any form obtained by a party pursuant to the Agreement, whether orally, in writing or otherwise, including without limitation any trade secrets, processes, data, information, material or documents in whatever form (material or otherwise) relating to the administration, business, finances, operations, plans or intentions of the other party, together with all information derived from any such information and any other information clearly designated by the disclosing party as being confidential to it (whether or not it is marked «confidential»), or which ought reasonably be considered to be confidential («Confidential Information») regarding the said other party to any third party or use Confidential Information for any purpose whatsoever other than the purpose for which such Confidential Information was provided and as contemplated by the Agreement.
- (c) Long stop
The obligations of this clause 9 shall remain in effect for a period of three (3) years from the conclusion of the Services or, if later, payment by the Client.
- (d) Parent companies and subsidiary companies as well as affiliated companies of a party are not considered as third parties.
- (e) Each party will procure that each of its employees and agents who may be exposed to such Confidential Information is aware of their obligations to keep such information confidential.
- (f) Notwithstanding the aforementioned, each party may disclose such Confidential Information pursuant to any applicable law or court order or governmental or regulatory request; and to its legal, accounting and other professional advisors to whom the provision of such information is necessary to ensure the proper performance of this Agreement, provided in each instance that the parties to whom such disclosure is made undertake that they shall abide by confidentiality obligations no less restrictive than those set out herein. The confidentiality provisions of this clause shall not extend to information which is publicly known, or which becomes publicly known, otherwise than as a result of breach of this clause, known to the receiving party without an obligation of confidentiality attaching to it, independently developed by the receiving party (as to which the burden of proof shall be on the party claiming such independent development), or rightfully obtained by the receiving party from a third party free lawfully to disclose the information to the receiving party without any obligation of confidentiality attaching to its further disclosure.

10. Publicity

On the successful outcome of the project as agreed by both parties, the Client agrees to participate in certain PR activities with Supplier in order to describe the Client's use of the Supplier's Services. The activities include but are not limited to written case study, video case study, testimonial advertisement and being a reference customer.

11. General

- (a) During the time of the Agreement and for a time period of one year after the completion thereof, the Client and Supplier hereby declare and agree that they will not mutually canvass any persons in the service or occupation of the other party who contributed to the Services and will not solicit such persons for employment provided this will not prevent either party from making appointments resulting from unsolicited approaches or approaches following general advertising campaigns.
- (b) The Supplier shall be entitled to sub-contract its obligations hereunder in whole or in part in its sole discretion, provided that it shall at all times remain directly and personally liable to the Client for the performance of all such sub-contracted obligations.
- (c) Any notice permitted or required to be provided pursuant to the Agreement may be delivered by email (except in relation to disputes) personally or by registered mail or, in each case to the address of the recipient set out in the Work Order, unless that information has been updated by written notice from one party to the other in accordance with this clause. Any notice delivered by hand shall be deemed to have been delivered when received. Any notice delivered by registered mail shall be deemed to have been delivered on the day its receipt is acknowledged by signature by or on behalf of the intended recipient. Any notice delivered by email shall be deemed to have been delivered on the day of transmission (in the jurisdiction of the recipient), as evidenced by a read receipt from the recipient's email.
- (d) Neither the Client nor Supplier may assign, sublicense or otherwise transfer, in whole or part, any of its rights or obligations under the Agreement without the prior written consent of the other Party not to be unreasonably withheld or delayed.
- (e) This Agreement and any documents to which it refers contains and sets out the entire agreement and understanding of the parties relating to the subject matter hereof and supersedes all prior oral or written agreements, understandings or arrangements relating to the subject matter of this Agreement. The Client warrants to the Supplier that it has not been induced to enter into the Agreement by any warranties or representations except those expressly contained in the Agreement. The Client waives any claim for breach of any representation and for any misrepresentation, save in respect of any fraudulent misrepresentation.
- (f) Neither party will be liable for any delay or failure in performing its obligations under the Agreement (except an obligation to make payment) if that delay or failure is caused by circumstances beyond its reasonable control, and the party so delaying will be entitled to a reasonable extension of time for the performance of its obligations.
- (g) The Agreement may be varied or amended only by a document signed by both of the parties.
- (h) No failure by either party to enforce any rights hereunder shall constitute a waiver of such right then or in the future. Any waiver of any term of this Agreement shall be effective only in the instance and for the purpose for which it is given. No breach of any provision of this Agreement shall be waived or discharged except with the express written consent of the party not in breach. The rights and remedies herein provided are cumulative with, and not exclusive of any rights or remedies provided by law.
- (i) If any provision of the Agreement for any reason is or becomes invalid, illegal or unenforceable in any respect under the law of any jurisdiction, the validity, legality and enforceability under the law of that (and that of any other) jurisdiction of any other provision, shall not be affected or impaired in any way thereby.

- (j) The Agreement shall be governed by and construed in accordance with English law, and the parties irrevocably submit it the exclusive jurisdiction of the English Courts.