General Terms and Conditions (GTC) of Zühlke Engineering AG

1. Scope and Applicability

(a) These general terms and conditions (the «GTC») shall govern the contractual relationship between ZÜHLKE and the CLIENT (the «PARTIES»). They shall apply to all services that the CLIENT receives from ZÜHLKE, even if in an individual case no reference is made to the GTC.

(b) The general terms and conditions of the CLIENT shall be excluded.

(c) These general terms and conditions apply exclusively to business operators, i.e., natural or legal persons or partnerships with legal capacity, which when concluding legal business transactions act in their commercial or independent professional role.

(d) Defined terms shall always have the same meaning in all documents belonging to the contract.

2. Conclusion of Contract and Parts of the Contract

(a) Offers from ZÜHLKE shall be valid for 30 days unless the offer stipulates a different period of validity.

(b) A contract between ZÜHLKE and the CLIENT (the «CONTRACT») shall be concluded as follows:

- (i) by both PARTIES signing a written contractual document (the «CONTRACTUAL DOCUMENT»);
- (ii) by the CLIENT signing ZÜHLKE'S offer, or 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 parts 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) Where 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.

(e) The offer shall have priority over the requirement specifications.

(f) Variations of the GTC shall only be valid if they are included in the CONTRACTUAL DOCUMENT.

3. Services

ZÜHLKE shall provide the services set out in the CONTRACT (the «SERVICES»). These may include the following types of services:

(a) Project services with responsibility for results (the «PROJECT SERVICES»);

(b) Consulting or other mandate services without responsibility for results (the «CONSULTING SERVICES»);

(c) Operation services (the «OPERATION SERVICES»).

4. Place of Fulfilment

Unless otherwise agreed upon, the place of fulfilment shall be the respective ZÜHLKE corporate location.

5. Scheduling

Unless explicitly agreed upon, schedules for delivery or the provision of SERVICES are not fixed deadlines.

6. Acceptance

(a) Project Services shall be inspected by the CLIENT on the agreed date. If no inspection date has been agreed upon, inspection shall take place as soon as is customary in the ordinary course of business. The CLIENT will inspect all interim results provided by ZÜHLKE (test results, documentation, specifications, program parts, etc.) on an ongoing basis and notify ZÜHLKE without delay in writing about any objections.

(b) ZÜHLKE shall be notified without delay and in writing of any detected defects.

(c) If the CLIENT fails to perform the inspection or fails to notify ZÜHLKE of detected defects in good time, the relevant services shall be deemed to have been accepted.

(d) Only defects that significantly impair the use of a Project Service («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. Insignificant Defects are, however, to be remedied by ZÜHLKE as part of their warranty obligations.

(e) Acceptance is deemed to have occurred when a Project Service is used productively.

7. Default

(a) Where ZÜHLKE fails to meet an agreed and binding deadline related to Project Services, the CLIENT may 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 may request subsequent fulfilment.

(b) All declarations by the CLIENT pursuant to paragraph 7(a) must be made in writing in order to be valid.

8. Involvement of Third Parties

8.1. Subcontractors

(a) ZÜHLKE may engage subcontractors domestically and from abroad to perform the SERVICES.

(b) The CLIENT shall be entitled to refuse subcontractors for justifiable reasons.

(c) ZÜHLKE shall be responsible for the services rendered by such subcontractors as it is for its own.

8.2. Involvement of Experts

(a) Where for certain SERVICES specialised knowledge is necessary which ZÜHLKE itself does not possess, ZÜHLKE may, with the consent of the CLIENT, transfer the performance of such SERVICES (wholly or partially) to an expert.

(b) ZÜHLKE shall not have any responsibility or be liable for the services of any experts.

(c) In the course of providing services ZÜHLKE may use cloud services and data centre services provided by third parties.

9. Use of AI

(a) ZÜHLKE may use artificial intelligence (the «AI») as auxiliary technology in providing the SERVICES.

(b) ZÜHLKE remains fully responsible for the quality, security and contractual compliance of the SERVICES.

(c) AI-generated outputs are subject to appropriate human review prior to their use.

(d) ZÜHLKE processes CLIENT information in accordance with applicable law, the contractual confidentiality obligations and ZÜHLKE's Responsible AI Use Standard.

(e) Further details regarding ZÜHLKE's AI governance are set out in the Responsible AI Use Standard, available upon request or incorporated into the CONTRACT where applicable.

10. Cooperation of the CLIENT

(a) The CLIENT shall provide ZÜHLKE in a timely manner with all information needed to fulfil the CONTRACT.

(b) The CLIENT shall create the conditions necessary for ZÜHLKE to perform the SERVICES on time and in accordance with the CONTRACT. In particular, the CLIENT shall have the following obligations:

(i) cooperation in the project organisation;

(ii) appointment 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 means to be made available by the CLIENT such as third-party products, third party services or services that the CLIENT will perform itself;

(iv) securing and coordination of the services of secondary suppliers;

(v) evaluation and procurement of Licenses to any pre-existing rights of third parties, including in particular copyrights, patent, trademark and design rights, if this task is not expressly assigned to ZÜHLKE in the CONTRACT;

(vi) securing of services from ZÜHLKE'S subcontractors;

(vii) performance of regular data backups;

(viii) informing ZÜHLKE of regulatory requirements and specific technical standards, provided that the provision of this information is not expressly assigned to ZÜHLKE in the CONTRACT;

(ix) obtaining of the necessary authorizations, permits and licenses.

(c) If the CLIENT does not fulfil its cooperation obligations, any deadlines that ZÜHLKE would be bound to may no longer be adhered to and the CLIENT shall compensate ZÜHLKE for additional expenses and losses that ZÜHLKE incurs due to the CLIENT's delay and breach of its cooperation obligations. Unproductive time due to such a delay shall be regarded as working time.

11. Special Provisions for Product Development

(a) If a product which ZÜHLKE was involved in developing is put into mass production, the CLIENT is obliged to make clear that it is the manufacturer of the product by applying relevant labelling to the product and by clarifying this in the accompanying documentation. In the absence of any other written agreement, the CLIENT must not make reference to the involvement of ZÜHLKE, in particular neither on the labelling applied to the product nor in the documentation.

(b) The CLIENT is responsible for adhering to any obligations of the manufacturer, distributor, legal manufacturer or the like, unless these obligations have been explicitly assigned to ZÜHLKE in writing.

12. Changes to the Services

(a) Both PARTIES may request changes to the SERVICES. Where a change to a SERVICE results in additional expenses, ZÜHLKE shall be compensated by the CLIENT.

(b) 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 SERVICE, except for cases of particular urgency.

13. Remuneration

(a) The CLIENT shall pay ZÜHLKE remuneration as specified in the CONTRACT, generally such remuneration being either calculated on a time and materials basis, a time and materials basis with a cap, or as a fixed price (lump sum). In the absence of any other agreement in the CONTRACT, ZÜHLKE shall be remunerated on a time and materials basis.

(b) The CLIENT shall accept ZÜHLKE's remuneration rates in force at the time of conclusion of the CONTRACT.

(c) Value Added Tax shall be disclosed and invoiced separately.

(d) 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.

14. Invoicing

(a) Unless agreed otherwise, ZÜHLKE shall invoice the SERVICES monthly after the performance of the Services.

(b) Invoices from ZÜHLKE shall be paid within a period of 30 days from the date of the invoice. Should the invoice not be paid within this period, the CLIENT shall without further notice be in default of payment and owe interest on arrears of 5% p.a.

15. Non-Solicitation Agreement

(a) The PARTIES are not permitted to actively entice (directly or indirectly) employees of the other party to work for them. This shall apply equally to persons who performed work for the CLIENT as an employee of a subcontractor of ZÜHLKE.

(b) This non-solicitation agreement shall apply for the duration of performance of the SERVICES as well as 1 year thereafter.

(c) Where this non-solicitation agreement is violated, a contractual penalty of CHF 50,000 per violation shall be owed.

16. 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 for the PROJECT SERVICES in full.

(b) With regard to all other intellectual property rights (in particular copyrights and trade secrets) the CLIENT shall be granted a right to use (the «RIGHT OF USE») after having paid the remuneration for the SERVICES.

(c) The RIGHT OF USE shall allow the CLIENT to use the work results for the purpose stipulated in the CONTRACT. Unless otherwise specified in the CONTRACT the RIGHT OF USE is of an unlimited duration and transferable and does also include the right to edit and distribute the work results.

(d) The RIGHT OF USE is not exclusive. The CLIENT is not entitled to 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) Where a third-party product or open source software is a component of the SERVICES, the license provisions of the third party manufacturer or the applicable open source license shall apply to such third party product.

(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.

17. Warranty

17.1. Notification of Defects

The CLIENT shall notify ZÜHLKE immediately upon detecting defects. Otherwise, the CLIENT shall lose its warranty rights.

17.2. Project Services

(a) In the case of Project Services, ZÜHLKE warrants that these shall have the agreed properties and shall be suitable for the contractually described use. The warranty for PROJECT SERVICES in the area of product development shall be based on paragraph 17.3 unless specified otherwise in the CONTRACT.

(b) ZÜHLKE shall not provide any warranty for consumables and wearables or when the PROJECT SERVICES provided by ZÜHLKE were modified by the CLIENT or a third party commissioned by the CLIENT.

(c) The warranty period shall be 12 months and shall begin with the delivery of the work results.

(d) During the warranty period, the CLIENT shall be entitled to remedy of defects. Where PROJECT SERVICES relate to software, the remedy of defects shall occur as part of the separate maintenance agreement by delivery of patches and releases.

(e) Where ZÜHLKE is unable to remedy a defect, the CLIENT shall, upon setting a reasonable deadline in writing, be entitled to a reduction of the price corresponding to the impact in value or – in the event of SIGNIFICANT DEFECTS only – to withdraw from the CONTRACT.

17.3. Consulting Services

ZÜHLKE shall provide CONSULTING SERVICES with due care and diligence.

18. Warranty of Title

18.1. Principle

(a) If a claim is made against the CLIENT by a third party for alleged infringement of Intellectual Property Rights ("IPR INFRINGEMENT") in the course of the Client's use of the Project Services in accordance with the Contract, the Client shall be entitled to indemnification in accordance with this Clause 18 provided that the following conditions are met:
   (i) the work results of the PROJECT 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 the third-party claim and refrains from negotiations with or commitments towards the third party without the consent of ZÜHLKE.

(b) Paragraph 18.1 (a) does not apply to patent infringements. ZÜHLKE does not conduct patent research and is not liable for patent infringements.

(c) If the alleged INFRINGEMENT OF RIGHTS proves to be unjustified, the CLIENT shall reimburse ZÜHLKE the costs and expenses caused by the defense of the third-party claims.

17.8. Services provided by ZÜHLKE

(a) The infringement warranty period shall be 12 months and shall begin with delivery of the SERVICES.

(b) ZÜHLKE may decide at its own discretion to conduct the legal dispute with the third party or to recognize the claim of the third party and either by replacing or modifying the work result of the PROJECT SERVICES ensure that the INFRINGEMENT OF RIGHTS no longer exists, or to withdraw the work results of the PROJECT SERVICES and reimburse the CLIENT the payments received for it.

(c) Should ZÜHLKE decide to conduct the legal dispute, the CLIENT shall, insofar as legally permissible, 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 necessary information and render to ZÜHLKE all support reasonably necessary.

19. General Warranty for Open Source and Third-Party Products

ZÜHLKE does not make any general warranty for open-source software or third-party products. Any general 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.

20. Liability

(a) ZÜHLKE shall be liable, regardless of the legal reason, for damages incurred by the CLIENT due to a culpable breach of CONTRACT by ZÜHLKE for an amount up to CHF 200,000.

(b) Liability for loss of profits, unrealized savings, damages from interruptions of operations as well as for any and all indirect and consequential damages shall be excluded.

(c) The limitation of liability stipulated in this paragraph does not apply to personal injury or to damages caused intentionally or by gross negligence. For such damages, ZÜHLKE shall be liable without limitation.

(d) As far as ZÜHLKE's liability is limited, this also applies to the liability of employees and subcontractors.

21. 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 resulting from 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 upon 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 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.

22. Force Majeure

(a) Where 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 over which the PARTIES have no control. Situations of force majeure include in particular: Disruptions of the public power supply and the communication and transportation infrastructure, war, government measures, viruses or hacker attacks, fire, extraordinary weather events, epidemics, nuclear and chemical accidents, earthquakes, terrorist attacks, strikes and sabotage etc.

(c) Where a force majeure event lasts more than 30 days, either PARTY may terminate the CONTRACT retroactively as per the date the force majeure occurred. SERVICES performed up until this date shall be remunerated.

23. Data

(a) ZÜHLKE shall be the mandated data processor with regard to the data of the CLIENT (the «CLIENT DATA»). All CLIENT DATA shall solely belong to the CLIENT.

(b) ZÜHLKE undertakes to process the CLIENT DATA solely on behalf of the CLIENT and in accordance with the applicable data protection legislation as well as with any applicable special laws (banking laws, professional secrecy, and telecommunications legislation).

(c) For this purpose, ZÜHLKE may employ the services of accordingly qualified third parties.

(d) The return of any CLIENT DATA may be demanded by the CLIENT at any time. The CLIENT may furthermore at any time by way of written notice request that ZÜHLKE deletes CLIENT DATA.

24. Confidentiality

(a) The PARTIES undertake to maintain confidentiality of all facts, information and data become known to them in connection with a CONTRACT and whose confidentiality the other PARTY has an interest in. The duty of confidentiality shall also include the prohibition of use for non-contractual purposes.

(b) The duty of confidentiality shall survive the termination of the CONTRACT for as long as an interest in confidentiality exists.

(c) Information that is generally known or independently of the contractual relationship lawfully acquired by a PARTY shall not be deemed confidential. Moreover, statutory disclosure requirements are reserved.

(d) The PARTIES ensure that their employees, auxiliary personnel and subcontractors are obligated to comply with these confidentiality obligations.

(e) The obligation to maintain confidentiality applies towards third parties. Affiliated companies of the respective PARTY are not considered to be third parties. An affiliated company is each company which directly or indirectly controls ZÜHLKE, is controlled by it or is jointly controlled together with it. "Control" pursuant to this definition means direct or indirect ownership or control of more than 50% of the voting shares of the relevant company.

(f) ZÜHLKE may list the CLIENT as a reference CLIENT in advertising material. A more detailed account of the CLIENT relationship shall require the prior consent of the CLIENT.

(g) The PARTIES agree that the use of cloud services and third-party data center services shall not constitute a breach of confidentiality. The confidentiality obligations shall also apply beyond the termination of the agreement.

25. Export Control

The CLIENT undertakes to comply with all applicable export control regulations, customs regulations and foreign trade regulations of the European Union, Switzerland, and other countries ("FOREIGN TRADE REGULATIONS") relating to the SERVICES in all respects.

26. Contractual Term

26.1. Ordinary Contractual Term

(a) CONTRACTS for PROJECT SERVICES shall end with the completion of the SERVICES.

(b) ZÜHLKE may terminate a CONTRACT for PROJECT SERVICES with a notice period of 14 days. In this case, ZÜHLKE shall be entitled to the remuneration due up to the date of termination of the CONTRACT.

(c) CONTRACTS for CONSULTING SERVICES shall be terminable at any time, it being understood that the terminating PARTY shall compensate any damages the other PARTY incurs due to termination at an inopportune time.

26.2. Extraordinary Termination

(a) Either PARTY may terminate a CONTRACT extraordinarily and without advance notice if the other PARTY has seriously violated the CONTRACT or if bankruptcy or debt restructuring proceedings have been initiated against it. 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 its 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 paragraph 26.2 (a).

26.3. Form

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

27. Changes to Legal Frameworks

In the event of changes to the legal frameworks that significantly affect the relationship between services and remuneration provided for in the CONTRACT, the PARTIES shall negotiate in good faith to adjust the affected CONTRACT provisions.

28. Final Provisions

28.1. Form

(a) Changes or amendments to the contractual provisions must be in written form and signed by both PARTIES in order to be valid. Signing can be done using an electronic signature, which is equivalent to a handwritten signature.

(b) Notwithstanding the foregoing, changes to SERVICES of minor importance may be agreed upon in meetings of project committees, through the exchange of e-mails or in a similar manner.

28.2. Assignment

A CONTRACT as well as the individual rights and obligations arising therefrom shall only be transferred or assigned with the consent of the other PARTY.

28.3. Settlement

The CLIENT may not offset claims for asserted damages against claims of ZÜHLKE for compensation.

28.4. Partial Invalidity

The invalidity or contestability of one or more provisions of a CONTRACT shall not void the validity of the remaining provisions. The PARTIES shall endeavor in such a case to replace the invalid or contestable provision with another valid and legally enforceable provision that reflects in its legal and commercial content as close as possible the repealed provision.

28.5. Jurisdiction and Applicable Law

(a) A CONTRACT shall be subject exclusively to the laws of Switzerland under the exclusion of the United Nations Convention on Contracts for the International Sale of Goods and the Swiss Federal Statute on Private International Law.

(b) The ordinary courts of Zurich, Switzerland, shall have exclusive jurisdiction with respect to any and all disputes arising from or in connection with a CONTRACT.