

ZUKEN General Terms & Conditions of Business

A. General Provisions

I. General Scope

1. The following General Terms & Conditions of Business (GTC) for Zuken GmbH an Zuken E3 GmbH ("Zuken") apply to all deliveries, services, quotations and contracts with other businesses, public corporations and special funds under public law.

2. Contracting Partner's conflicting general terms and conditions shall not be integrated into the agreement, even if they are not expressly repudiated and even in the event of contractual performance by Zuken.

3. Deviations from and additions to these General Terms, as well as amendments and supplements to attached agreements and to the general terms of Zuken applying to such agreements, must be done in writing.

4. For Zuken products, the rules laid down in the price lists and catalogues of terms shall apply exclusively. For third-party performance constituting the basis for Zuken's performance, some special terms shall apply. Zuken shall not be responsible for third-party performance beyond such party's terms.

II. Preparation & Conclusion of Contracts

1. Zuken may accept offers from contracting parties within 4 weeks. Zuken's quotations are subject to alteration without notice. Contractual statements by both parties must be done in writing.

2. Zuken reserves the right to diverge from its quotation documents or from its confirmation of order when accommodating compulsory legal or technical standards.

3. The scope of performance to be rendered by Zuken shall be determined solely by the written agreements. If in doubt, the counter-signed quotation and/or Zuken's confirmation of order

shall be decisive for determining the content of the agreement.

4. Zuken is entitled to place sub-contracting orders.

5. Items provided to Contracting Partner during the preliminaries leading up to the contract shall remain Zuken's property. They may not be reproduced or made accessible to third parties. If no contract is brought about, they are to be returned or deleted and may not be used. In all other respects, the provisions of these GTC shall also apply to the pre-contractual relationship under the law of obligations.

III. Selection of Products & Services

Contracting Partner is familiar with the main features and functional properties of Zuken's products and services. Contracting Partner bears the risk of said features and functional properties meeting his wishes and requirements. If in any doubt, it must seek the advice of Zuken or competent third parties prior to concluding the agreement. Any specific instructions given by Contracting Partner must be in writing.

IV. Period for Deliveries & Services

1. Periods for deliveries and services shall be laid down in the contract.

2. As a rule, deliveries shall be made approx. 4 weeks after conclusion of the contract or after Zuken's receipt of the confirmation of order.

3. If performance is not or cannot be fixed for a particular date, Zuken shall only be in default if a reminder is sent. All reminders sent and deadlines set by Contracting Partner must be in writing in order to be effective. Subsequent deadlines set must be reasonable, or not less than at least 20 working days (Mondays to Fridays excluding public holidays).

If the expiry to no avail of a fixed deadline would entitle Contracting Partner to rescind or otherwise terminate the contract, then Contracting Partner must threaten this consequence in writing when setting the deadline.

4. Insofar as Zuken depends on information from Contracting Partner or Contracting Partner's cooperation, or is otherwise prevented from carrying out the order through no fault of its own, the periods for deliveries and services shall be deemed extended by the duration of the obstacle plus a reasonable start-up time after the obstacle has been resolved. Zuken shall notify Contracting Partner about the obstacle. This applies in particular in the event of *force majeure* and all other obstacles for which Zuken is not responsible and which have a substantial influence on the delivery or service, in particular strikes and lock-outs at Zuken's business, at Zuken's own suppliers, or at said suppliers' sub-contractors.

5. Zuken shall decide which members of staff are to be employed for the performance due, and reserves the right to substitute them at any time. When carrying out an order, Zuken may also call on the services of freelance contributors and other businesses. Zuken shall bear the same responsibility for fault on their part as for fault on its own part.

6. If services cannot be rendered for reasons for which Zuken is not to blame, then the agreed periods shall still be charged, unless Contracting Partner proves that it was possible for the Zuken staff concerned to be otherwise employed, or that *force majeure* was involved.

V. Contracting Partner's Cooperation

1. In as far as is required, Contracting Partner shall ensure that the work environment (e.g. hardware, operating system) is in accordance with Zuken's directions.

2. Contracting Partner shall cooperate free of charge to the necessary extent when the order is being carried out, e.g. by providing staff, work premises, hard- and software, data and telecommunications facilities. It shall grant Zuken access to hard- and software both directly and by means of long-distance data

transfer. It shall answer questions, check results, and thoroughly test the content of deliveries without delay for defects and usability in the specific situation before embarking on operative usage of the software.

3. Contracting Partner shall give Zuken in writing the name of a person to contact, and shall ensure that such person can be contacted by stipulating adequate means of communication. The contact person must be in a position to take or bring about on behalf of Contracting Partner any decisions required.

4. Contracting Partner shall itself be responsible for saving its data to the latest standards. Unless they have express written information to the contrary, Zuken's employees shall assume at all times that all the data with which they may come into contact has been saved.

5. Contracting Partner shall accept any disadvantages and extra costs resulting from a violation of these obligations.

VI. Remuneration, Payment, Reservation of Title

1. The remuneration shall be laid down in the written agreement, failing which it shall be determined in accordance with Zuken's price lists and catalogues of terms in force at the time. All prices shall be plus turnover tax, except in cases where turnover is exempt of turnover tax.

2. Zuken is entitled to charge for part performance. Payments shall fall due on being invoiced. No cash discounts are allowed. As from 30 days after the due date, Zuken shall charge interest, the minimum rate of which shall be the statutory rate for default interest in force at the time.

3. Time worked shall be charged on the basis of the work reports generally used by Zuken. Any objections to the details recorded in them must be made by Contracting Partner in writing within 2 weeks.

4. Travelling time, travel expenses and accommodation costs shall be charged as they occur when they are for journeys between the

location where Zuken's employee is based and the location where the employee renders services for Contracting Partner, or between Contracting Partner's various locations.

5. Contracting Partner may only offset demands that are undisputed or have been finally declared by a court of law. Contracting Partner may not assign its claims to third parties.

6. Zuken reserves title to the contractual objects and all the rights therein until such time as its demands under the contract have been met. If third parties interfere with the goods subject to reservation of title, Contracting Partner must notify Zuken in writing without delay and inform the third party about Zuken's rights.

VII. Obligation to Inspect & Give Notice of Defects

1. If Contracting Partner is a business, a public corporation or a special fund under public law, it shall assume an obligation to inspect and give notice of defects in respect of all Zuken's deliveries and services pursuant to German Commercial Code [*Handelsgesetzbuch - HGB*] ss. 377 and 378. If Zuken renders services, then this clause shall apply *mutatis mutandis*.

2. Only Contracting Partner's contact person (A.V.3) is entitled to give notice of defects. Such notice shall include a specific description of the problem, at Zuken's request in writing.

VIII. Guarantee for Defects

1. Zuken guarantees that the contractual performance shall have the agreed standards and characteristics. Insofar as no specific standards have been agreed, then Zuken shall guarantee such standards as are suitable and required for contractual usage or alternatively for normal usage. In addition, Zuken shall guarantee that no third-party rights conflict with contractual usage.

2. In the event of faulty deliveries and services, Zuken shall provide a guarantee in the form of post-performance. At Zuken's option, the delivery or service or parts thereof shall be rendered anew or replaced (subsequent delivery) or subsequently improved. Zuken's

subsequent improvement shall be by way of remedying defects, permitting use of a new version of a program, or indicating reasonable possibilities for avoiding the effects of the defect. At the same time Contracting Partner shall assist Zuken accordingly, for example by undertaking to accept a new program version if the adjustment and change-over do not result in unreasonable difficulties. This shall apply *mutatis mutandis* to faulty employment contracts.

3. For third-party products, the general terms and conditions of the third-party manufacturer shall apply with regard to any defects or post-performance.

4. For products which Contracting Partner has altered contrary to its contractual authority, Zuken shall not give any guarantee if the defect has been caused or encouraged by such alteration.

5. If post-performance pursuant to Clause 2 above finally fails, then Contracting Partner may reduce the remuneration or rescind the contract or terminate a continuous obligation without notice, provided that Contracting Partner threatens this consequence beforehand in writing giving a reasonable deadline.

6. Claims based on rights under warranties for defects shall become statute-barred one year after commencement of the statutory guarantee period.

7. Insofar as a third party asserts claims that conflict with the usufructuary rights granted under the contract, Contracting Partner must notify Zuken comprehensively in writing without delay. It authorises Zuken here and now to conduct any disputes with the third party itself, both in and out of court. If Zuken makes use of this authorisation, then Contracting Partner may not acknowledge the third party's claims without Zuken's permission. Instead of countering third-party claims, Zuken may satisfy such claims or replace the items being contested with other items in compliance with the contract. In all other respects the statutory regulations for legal defects providing for a guarantee period of 1 year shall apply.

IX. Liability

1. Zuken shall only pay damages or compensation for wasted expenditure irrespective of its legal ground as follows:

- a) In case of injury to life, limb or health and for claims arising from the German Product Liability Act [*Produkthaftungsgesetz - ProdHaftG*], the statutory provisions shall apply.
- b) In case of intent and under a guarantee granted by Zuken, Zuken's liability is unlimited.
- c) In case of gross negligence, Zuken's liability is limited to the typical damage foreseeable at the time of conclusion of the contract.
- d) In case of breach of a major obligation due to slight negligence of Zuken, Zuken's liability is limited to the typical damage foreseeable at the time of conclusion of the contract. A major obligation within the meaning of this section is an obligation whose fulfilment is necessary for the performance of the contract, on the fulfilment of which Contracting Partner regularly relies and may rely and whose breach endangers the achievement of the purpose of the contract.

2. The defence of contributory negligence shall remain unaffected. Contracting Partner shall in particular have the obligation to back up data and to defend against malware in accordance with the state of the art.

3. The above limitations of Zuken's liability shall also apply to Zuken's employees, representatives, organs or agents assisting Zuken in performing its obligations.

5. For all claims for damages or compensation for wasted expenditure against Zuken in case of contractual or non-contractual liability, the time bar comes into effect after a period of one (1) year. That period begins at the point in time laid down in German Civil Code [*Bürgerliches Gesetzbuch - BGB*] s. 199. The time bar comes into effect not later than five years after the claim has arisen. The provisions of sentences 1 to 3 of this section IX. 5. shall not apply to liability in case of intent, gross negligence, injury to life, limb or health or under the German Product Liability Act [*Produkthaftungsgesetz - ProdHaftG*].

X. Confidentiality, Data Protection

1. Each of the parties to the contract undertakes to treat all and any information received from the other confidentially, and only to use same insofar as this is required for the execution of an order.

2. Contracting Partner may only make the contractual objects accessible to staff and other third parties insofar as this is required for exercising the right to usage that has been granted. Otherwise it shall keep all other contractual objects secret. In writing Contracting Partner shall instruct all persons to whom it grants access to the contractual objects about Zuken's rights in the contractual objects and about the obligation to keep them secret, and it shall obligate such persons to comply with this obligation to observe secrecy.

3. Zuken will process the Contracting Partner's data required for the performance of the contract in compliance with the data protection regulations.

XI. Final Provisions

1. Amendments and supplements to the contract must be done in writing in order to be effective. No verbal ancillary agreements have been reached.

2. If any individual provisions are ineffective, this shall not affect the validity of the remaining provisions. Any invalid provision shall be replaced by a clause to be determined by the parties that is effective and approximates as nearly as possible the meaning and purpose of the invalid provision.

3. Exclusive venue for all and any disputes arising from and in connection with the existing contracts between the contracting parties and from and in connection with these General Terms & Conditions shall be Munich.

4. German law shall apply exclusively. CISG is excluded.

B. Special Provisions

I. Delivery of Standard Software

1. Delivery Item

1.1

Zuken delivers software in accordance with its product specifications as given in the documentation and in the price lists and catalogues of terms for Zuken products. Unless otherwise agreed, standard software shall be supplied in the latest version available on the date of delivery.

1.2

Only the specifications given in the documentation shall be decisive for the standards and characteristics of the delivered item. Reference is made to Section A.III above of these General Terms & Conditions. Zuken shall not owe any standards and characteristics beyond the specified standards and characteristics of the software. Contracting Partner may not derive any such obligation from other presentations of the software in Zuken's published statements or advertising materials, unless Zuken has expressly confirmed such further standards and characteristics in writing.

2. Rights

2.1

Zuken shall be exclusively entitled to all rights in the software, in particular copyrights, rights in inventions and technical protective rights, except for Contracting Partner's rights pursuant to Section B.I.3 below.

2.2

Contracting Partner is prohibited by law and by contract from making copies of the software, passing on the software, or using the Zuken software for developing similar software, unless this has been expressly allowed.

3. Contracting Partner's Rights

3.1

Contracting Partner shall be granted a non-exclusive usufructuary right in the standard software including the software documentation, entitling it to use the programs for their designated usage on a computer or on a fixed number of work stations if applicable. Any usage of the programs by Contracting Partner beyond the agreed scope must be agreed with Zuken beforehand in writing. The right of

usage is restricted to the software products specified in the contract, even if Contracting Partner is able in technical terms to access other software products.

The right of usage shall be granted for an indefinite period.

3.2

Contracting Partner may only use the software for its own purposes and for the purposes of associated companies as defined in German Stock Corporation Act [*Aktiengesetz - AktG*] s. 15. Operating a computer centre for companies other than group companies is not allowed.

3.3

Either the programs are fitted with an access restriction to prevent usage beyond that agreed in the special contractual provisions, or Contracting Partner shall be given a dongle. If programs are fitted with a dongle, then Contracting Partner shall only use the programs with the dongle, and it shall not use any programs for circumventing it. Loss of a dongle is to be reported immediately; any replacements will incur costs.

3.4

Contracting Partner may only copy programs in whole or in part for the purpose of making back-ups and insofar as the making of copies is expressly permitted in order to enable efficient operation within the agreed scope of usage or in accordance with the documentation. The same shall apply to the documentation and other accompanying material provided.

3.5

The removal of a dongle and similar program protection mechanisms, if present, is not allowed unless the dongle impairs error-free usage of the program and Zuken, in spite of receiving notification to this effect by the customer giving an exact description of the error occurring, cannot or will not remedy the error within a reasonable period. Contracting Partner must inform Zuken in detail and in writing about the change made and its extent in the program. Performing such acts may only be left up to third parties operating commercially and potentially competing with Zuken if Zuken does not wish to make the desired program change in return for adequate payment, or, in the event of imminent danger, if

it is impossible for Zuken to make the changes in time. Contracting Partner must give Zuken sufficient time to check the assignment of the order, and it must disclose the name of the third party to be commissioned.

Copyright notices, serial numbers and other features for the purpose of program identification may in no event be removed or altered.

If hardware is changed, Contracting Partner must delete the programs from the hardware used hitherto.

3.6

Contracting Partner is under obligation to report to Zuken in advance and in writing all and any changes affecting its right of use or the remuneration.

3.7

In respect of software which it has purchased, Contracting Partner may only permit third-party usage as a whole provided it fully and finally relinquishes its own right of usage. Allowing temporary usage is prohibited. Permitting usage of the software as a whole shall require written consent from Zuken.

3.8

The amount to be paid by Contracting Partner only applies to usage of the programs to the agreed extent. Over-usage that must be reported without delay shall be paid for in accordance with Zuken's price list in force at the time. If no such report is made without delay, then for each extra copy or each extra user Contracting Partner shall pay 150% of the remuneration pursuant to the price list applicable.

II. Advisory Services, Software Maintenance & Servicing

1. Object of the Agreement

1.1

In accordance with the respective specifications of performance, Zuken provides advisory services, software maintenance, servicing, and standard and customised trainings for the Zuken components listed in its Contract on Advisory Services, Software Maintenance, Servicing & Training.

These services require use of a minimum hardware configuration defined by Zuken, and the operating system and application software versions prescribed by Zuken, as well as

availability of a means of loading that is acceptable to Zuken.

1.2

In order to enable Zuken to render said services, Contracting Partner shall grant the persons acting under instruction to Zuken full and unhindered access to the contractual objects if Zuken is of the opinion that an on-the-spot analysis is called for. Contracting Partner shall provide workplaces within a reasonable distance of the equipment and enable Zuken to use all other apparatus, items of equipment and accessories free of charge. If necessary it shall provide operating staff along with service staff, and allow individual system components to be isolated from the system set-up so as to locate the problem. In particular, it shall ensure that a telephone and a fax are available free of charge in the direct vicinity of the place where the maintenance is being done.

1.3

Contracting Partner shall provide functioning long-distance data transfer facilities free of charge.

At Zuken's request, Contracting Partner shall provide all the data and information required in order to analyse the problem free of charge and without delay. Zuken is under obligation to treat such data confidentially.

1.4

For the analysis of problems between system components of which one is not covered by a service contract with Zuken, Contracting Partner shall provide qualified support free of charge at Zuken's request.

1.5

Services for software maintenance shall only be rendered for the last software version supplied and for the preceding version. Each software version can be identified by the number written after the full stop in its name. Contracting Partner must keep all its installations fully maintained at all times, or terminate maintenance as a whole in accordance with the relevant provisions.

2. Prices, Payments

2.1

The costs for software maintenance, advisory services, servicing and training are given in the written contractual agreements, failing which Zuken's price lists in force at the time shall apply.

2.2

Fees for advisory services, software maintenance and servicing lasting for less than one month shall be invoiced on a *pro rata* basis depending on the actual number of calendar days. Except in the case of training services, which shall be invoiced immediately on completion, bills shall be sent out at least one month in advance. If Contracting Partner specifically so requests, invoices can be sent further in advance but without any discounting of interest.

2.3

The initial fees for advisory services, software maintenance and servicing shall be due when such services commence on a *pro rata* basis for the period as provided for under Item 2.2. above. Thereafter they shall be due in advance on the third working day of each further period.

2.4

If Contracting Partner is more than 8 calendar days in arrears with any payment or part payment that is due, then interest at the statutory rate laid down in BGB s. 288 shall be paid on the outstanding amount from that day onwards, unless Contracting Partner proves that less or no damage has been caused by the delay. Claiming higher damages is not excluded.

2.5

If more time and effort are required (e.g. due to failure to perform the obligation to cooperate mentioned above), then Zuken shall be entitled to charge extra costs.

2.6

Software maintenance fees shall be automatically increased or reduced by 1 April of each year, without any request, in the same proportion as the Harmonized Index of Consumer Prices (HICP) established by the Statistical Office of the European Union (Statistisches Amt der Europäischen Union (Eurostat) compared to the level at the start of software maintenance services (base 2015 = 100).

2.7

If Zuken alters the fees for advisory services, software maintenance and servicing, then such altered fees may be charged as from the date on which notice of termination pending the change of contract may be given.

3. Term of Contract on Advisory Services, Software Maintenance, Servicing & Training

3.1

The term of the training contract shall be laid down by written agreement. Contracts on advisory services, software maintenance and servicing shall come into force on being signed by both contracting parties or on Zuken's confirmation of order, and may not be terminated by either party until the end of a period of twelve months from the commencement of services. Thereafter the entire contract or separate listed items may be terminated by either party giving six months' notice to the end of the respective calendar quarter.

3.2

Notice of termination must be given in writing.

3.3

If the fees are altered, then Contracting Partner shall be notified about the new fees in writing at least 8 weeks in advance; said new fees shall be effective as from the end of the calendar quarter. If Contracting Partner fails to agree to the new fees, then it may terminate the contract by the last day of the next calendar quarter following receipt of the notification of the change (preclusive period), giving three months' written notice to the end of the next calendar quarter. In this case, the fees shall not be increased before the end of the term of the contract.

3.4

For system components subsequently included in the contract, the first minimum term shall apply, unless continuation of the contract cannot reasonably be expected due to notice in respect of other components being given in accordance with the contract.

3.5

Zuken may terminate the contract without notice:

- if Contracting Partner is more than 30 days in arrears with a payment or part payment that is due;
- if considerably more time and effort is required because the equipment has been used by persons not instructed by Contracting Partner;
- if more time and effort is required due to alterations being made to the hardware and/or software without Zuken's prior approval, or due to hardware and/or software not covered by the contract on advisory services, software maintenance and servicing being connected or used, or if the

hardware has been moved to another location without due notification, or if an update to the system components not maintained by Zuken that is required for technical reasons and expressly requested by Zuken is not carried out without sufficient good reason

- if the equipment's environmental conditions do not correspond to the installation guidelines laid down by the hardware manufacturer,
- if there is any other important cause.

4. Cancellation & Postponement of Training Courses

4.1

If registrations for training courses are cancelled up to 14 days before the respective course begins, a cancellation fee of 50% of the course fee will be charged; thereafter the cancellation fee shall be 80% of the course fee.

4.2

Failing a minimum number of 3 participants, Zuken reserves the right to postpone the date of a course, giving one week's advance notice.

5. Copyright on Training Course Materials

The training course materials contain information that is protected by copyright. Zuken reserves all the rights thus ensuing or all the rights ensuing from the separate parts, e.g. usage, translation, reprinting or copying. Without Zuken's written permission these materials and parts thereof may not be reproduced or processed, copied, circulated or used for public presentation, in particular by electronic means.

6. No Obligation to Render Services or Performance

Zuken is under no obligation to render performance under the respective contract if Contracting Partner is in arrears with payment or in default with other obligations under the respective agreement.