



## General Terms and Conditions (GTC) of Flumerics Solutions GmbH

### 1. Scope of application and validity

(a) These General Terms and Conditions (the "GTC") govern the contractual relationship between Flumerics and the CUSTOMER (the "PARTIES"). They apply to all services which the CUSTOMER obtains from Flumerics, even if no reference is made to the GTC in individual cases.

(b) The CUSTOMER's general terms and conditions are excluded.

(c) Defined terms shall always have the same meaning in all documents forming part of the Contract.

### 2 Conclusion of the contract and components of the contract

(a) Quotations from Flumerics are valid for 30 days unless the quotation specifies a different period of validity.

(b) A contract between Flumerics and the CUSTOMER (the "CONTRACT") is formed as follows:

- (i) by both parties signing a written contract document (the "CONTRACT DOCUMENT");
- (ii) by the CUSTOMER signing the offer or an order confirmation from Flumerics; or
- (iii) by implied conduct in which the CUSTOMER accepts services from Flumerics that are usually only provided against compensation.

(c) The CONTRACT shall consist of the following components, subject to the following order of precedence in the event of any inconsistency:

- (i) CONTRACTUAL DOCUMENT or offer or order confirmation;
- (ii) Appendices;
- (iii) Terms and Conditions of Flumerics.

(d) Insofar as a CONTRACT DOCUMENT exists, Flumerics' quotation and the CUSTOMER's specifications shall only form part of the contract if express reference is made to these documents in the CONTRACT DOCUMENT.

(e) The offer shall take precedence over the specifications.

(f) Deviations from the GTC are only valid if they are recorded in the CONTRACTUAL DOCUMENT.

### 3. Benefits

Flumerics shall provide the Services specified in the CONTRACT. (the "SERVICES"). The following types of Services are eligible:

(a) Project Services with responsibility for results (the "PROJECT SERVICES");

(b) Advisory or other commissioned services without responsibility for results (the "ADVISORY SERVICES");

(c) Grant of Licence Rights (the "LICENCES");

(d) Maintenance Services (the "MAINTENANCE SERVICES");

(e) Operating Services (the "OPERATING SERVICES").

### 4. place of performance

Unless otherwise agreed, the place of performance shall be at the domicile of Flumerics.

### 5. Dates

Stated delivery and performance dates are not fixed dates unless expressly agreed otherwise.

### 6. Acceptance

(a) PROJECT SERVICES shall be inspected by the CUSTOMER at the agreed date. If no test date has been agreed, the test shall be carried out as soon as this is customary in the ordinary course of business. The CUSTOMER shall continuously check all interim results (test results, documents, specifications, programme parts, etc.) handed over to it by Flumerics and shall inform Flumerics of any objections without delay.

(b) Flumerics must be notified immediately in writing of any defects discovered.

(c) If the CUSTOMER fails to carry out the inspection or fails to notify Flumerics of any defects found, the SERVICES affected thereby shall be deemed to have been accepted.

(d) Only defects which substantially impair the use of a PROJECT SERVICE ("ESSENTIAL DEFECTS") shall entitle the CUSTOMER to refuse acceptance. All other defects shall be deemed insignificant defects ("IMPORTANT DEFECTS"), which shall not entitle the CUSTOMER to refuse acceptance, but which Flumerics shall remedy under the warranty.

(e) With the productive use of SERVICES, it shall be deemed accepted in any case.



## 7. Delays

(a) If Flumerics exceeds a bindingly agreed final deadline in the case of PROJECT SERVICES, the CUSTOMER may put Flumerics in default by means of a reminder and, setting a reasonable deadline (at least 10 working days), request Flumerics to perform subsequently.

(b) All declarations by the CUSTOMER pursuant to Clause 7(a) must be in writing in order to be valid.

## 8. Operating and intervention times

(a) MAINTENANCE and OPERATING SERVICES shall be provided by Flumerics during Flumerics' operating hours (the "OPERATING HOURS").

(b) The exact OPERATING TIMES will be agreed individually.

(c) The intervention time (the "INTERVENTION TIME") is the period between the reporting of an incident to Flumerics and the start of the processing. For the calculation of the INTERVENTION TIME, only the time elapsed during the OPERATION TIME shall be taken into account.

(d) INTERVENTION TIMES must be recorded in the CONTRACT to be binding.

## 9. Involvement of third parties

### 9.1. Subcontractors

(a) Flumerics may engage subcontractors for the provision of services.

(b) The CUSTOMER has the right to reject subcontractors, provided it can show justified reasons for doing so.

(c) Flumerics vouches for the services of such subcontractors as for its own.

### 9.2 Consultation of experts

(a) If certain SERVICES require specialist knowledge which Flumerics does not possess itself, Flumerics may, with the CUSTOMER's consent, entrust the provision of such SERVICES to an expert.

(b) Flumerics accepts no responsibility or liability for the services of any experts called in.

## 10. Cooperation of the CUSTOMER

(a) The CUSTOMER shall provide Flumerics in good time with all information required for the performance of the contract.

(b) The CUSTOMER shall create the conditions for Flumerics to be able to provide the SERVICES on time and in accordance with the contract. The CUSTOMER's obligations to cooperate include in particular:

- (i) Participation in the project organisation;
- (ii) Appointment of a project manager who is granted the necessary competences and capacity and who may not be replaced without the consent of Flumerics without good cause;
- (iii) Timely procurement of the resources to be provided by the CUSTOMER, such as third-party products, third-party services or services to be provided by the CUSTOMER itself;
- (iv) Clarification and procurement of any pre-existing rights of third parties such as, in particular, copyrights, patent rights, trademark rights and design rights, unless this task is expressly assigned to Flumerics in the CONTRACT;
- (v) Securing the services of Flumerics' ancillary suppliers;
- (vi) Carrying out regular data backups;
- (vii) Information from Flumerics on regulatory requirements and specific technical standards, unless the preparation of such information is expressly assigned to Flumerics in the CONTRACT;
- (viii) Procurement of the necessary permits.

(c) If the CUSTOMER fails to fulfil its duties to cooperate, any deadlines promised by Flumerics shall no longer be binding and the CUSTOMER shall reimburse Flumerics for any additional expenses incurred by Flumerics as a result of a breach of the duties to cooperate.

## 11. Changes in services

(a) Both PARTIES may request changes in services. If additional expenditure results from a change in services, Flumerics shall be compensated for this by the CUSTOMER.

(b) If effects on costs or deadlines are to be expected, Flumerics shall inform the CUSTOMER in a suitable form as a rule before the execution of the changed SERVICE. Cases of particular urgency are reserved.

## 12. Compensation

(a) The CUSTOMER shall pay Flumerics the compensation specified in the CONTRACT, which compensation shall generally be calculated either on a time and material basis, on a time and material basis with a cost ceiling or as a fixed price (lump sum). Unless otherwise agreed in the CONTRACT, Flumerics shall be compensated on a time and material basis.

(b) The CUSTOMER acknowledges the compensation rates of Flumerics valid at the time of the conclusion of the contract.

(c) Value added taxes shall be shown separately and invoiced. All other public charges in force at the time of the conclusion of the contract are included in the compensation. Public charges which come into force after



the conclusion of the CONTRACT and which burden the SERVICES of Flumerics may be invoiced additionally.

(d) For assignments outside the domicile of Flumerics, the travel time shall be considered working time. Flumerics shall also be entitled to reimbursement of travel expenses.

### 13. Invoicing

(a) Unless otherwise agreed in the CONTRACT, Flumerics shall invoice the SERVICES as follows:

- (i) PROJECT SERVICES: monthly according to project progress;
- (ii) ADVISORY SERVICES: monthly after service provision;
- (iii) LICENSES: upon delivery of the subject of the licence;
- (iv) MAINTENANCE SERVICES: annually in advance;
- (v) OPERATING SERVICES: annually in advance.

(b) Invoices from Flumerics are to be paid within 30 days of the invoice date. If this period is exceeded, the CUSTOMER shall be in default of payment without further reminder and shall owe interest on arrears of 5%.

### 14. Employment ban

(a) The CUSTOMER may only hire employees of Flumerics who were involved in the performance of the service as employees or employ them directly or indirectly as external service providers with the written consent of Flumerics. This applies in the same way to persons who have worked for the CUSTOMER as employees of subcontractors of Flumerics.

(b) The non-solicitation clause shall apply for the duration of the service provision and for 1 year thereafter.

(c) In the event of a breach of the non-solicitation clause, a contractual penalty of CHF 50,000 per breach shall be owed.

### 15. Intellectual property rights

(a) If the result of PROJECT SERVICES constitutes a patentable invention, the CUSTOMER shall be entitled to this patent as soon as it has paid the compensation owed for it. Excluded are intellectual property rights to embedded software and to knowledge which Flumerics already possessed at the beginning of the contract (background know-how and background patents). The CUSTOMER shall receive a right of use to these in accordance with section 15 (b)-(d). The patent application is not part of the SERVICES of Flumerics.

(b) The CUSTOMER shall be granted a comprehensive right of use (the "RIGHT OF USE") in respect of other intellectual property rights (in particular copyrights and know-how protection rights) as soon as the CUSTOMER has paid the compensation owed for such rights.

(c) The RIGHT OF USE permits the CUSTOMER to use the Work Results for the contractually stipulated purpose. Subject to any other provision in the CONTRACT, it shall be unlimited in time and transferable and shall also include the right of processing and distribution.

(d) The RIGHT OF USE is not exclusive. Furthermore, the CUSTOMER is not entitled to distribute standard components of Flumerics (in particular frameworks and shared libraries used) independently of the work result.

(e) If third party products or open source software are part of the SERVICES, the licence conditions of the third party manufacturer or the applicable open source licence shall apply to these third party products.

(f) Flumerics shall be free to use the know-how developed in the performance of the service, provided that the business secrets of the CUSTOMER are preserved in the process.

### 16. Material warranty

#### 16.1. Notice of defects

If the CUSTOMER discovers defects, these must be reported immediately. Otherwise the CUSTOMER loses his warranty rights.

#### 16.2. Project services and licences

(a) In the case of PROJECT SERVICES and LICENSES, Flumerics warrants that they have the agreed properties and properties required for the purpose of the CONTRACT. The warranty for SERVICES in the field of product development shall be governed by Clause 16.3, unless otherwise stated in the CONTRACT.

(b) Flumerics does not provide any warranty for the consumables and wear parts or if the SERVICES provided by Flumerics are modified by the CUSTOMER or third parties commissioned by the CUSTOMER.

(c) The warranty period is 12 months. It begins with the delivery of the work result.

(d) During the warranty period, the CUSTOMER is entitled to have defects remedied. If the SERVICE is software, defects shall be remedied exclusively within the scope of the agreed maintenance by the delivery of patches and releases.

(e) If Flumerics is not in a position to remedy an identified defect, the CUSTOMER shall be entitled, after setting a reasonable period of grace in writing, to demand a price reduction corresponding to the reduced value or - but only in the case of REASONABLE DEFECTS - to withdraw from the CONTRACT.

#### 16.3. Advisory services

Flumerics provides CONSULTANCY SERVICES with due care.



#### 16.4. Operation and maintenance services

(a) Flumerics shall provide OPERATION and MAINTENANCE SERVICES in accordance with the agreed Service Levels and with due care. An assurance of a particular Service Level does not imply that Flumerics guarantees uninterrupted, trouble-free operation.

(b) If agreed service levels are not achieved, the CUSTOMER is entitled to any agreed penalty payment. The penalty payment shall also cover any claims for damages by the CUSTOMER.

#### 17. Legal warranty

##### 17.1. Principle

(a) If a third party asserts a legal claim against the CUSTOMER for alleged infringement of intellectual property rights (the "PROPRIETARY RIGHTS INFRINGEMENT") when using the Service in accordance with the Contract, the CUSTOMER shall be entitled to a warranty of title pursuant to this Clause 17, provided that the following conditions are met:

- (i) no change to the SERVICE by the CUSTOMER or third parties commissioned by the CUSTOMER;
- (ii) immediate written notification of the alleged claim to Flumerics;
- (iii) comply with Flumerics' instructions in defending the third party claim and refrain from negotiating or making any representations to the third party without Flumerics' consent;

(b) Clause 17.1 (a) does not apply to patent infringements. Flumerics does not conduct patent searches and is not liable for patent infringements.

(c) The claim for warranty of title shall not apply if Flumerics was not aware of an infringement of the PROPRIETARY RIGHTS even with due diligence.

##### 17.2. Warranty of title: Flumerics' SERVICES

(a) The legal warranty period is 12 months. It begins at the time of delivery.

(b) Flumerics may, at its sole discretion, decide to settle the dispute with the third party or to accept the third party's claim and either procure for the CUSTOMER the right to continue to use the SERVICES by replacing or modifying them so that the PROPRIETARY RIGHTS INFRINGEMENT no longer exists, or take back the SERVICES and refund to the CUSTOMER the remuneration paid for them.

(c) If Flumerics decides to conduct the legal dispute, the CUSTOMER shall leave the conduct of the proceedings as well as the negotiations on an amicable settlement of the legal dispute to Flumerics. In addition, the CUSTOMER shall provide Flumerics with the necessary information and support Flumerics in a reasonable manner.

#### 18. Warranty for open source and third-party products

Any warranty for open source software and third-party products is excluded. The CUSTOMER's warranty rights for open source software and third-party products exist exclusively against the third-party manufacturers and in accordance with their warranty provisions.

#### 19. Liability

(a) Flumerics shall be liable for damages to the CUSTOMER resulting from a culpable breach of contract by Flumerics, irrespective of the legal grounds, up to an amount of CHF 20,000.

(b) Liability for loss of profit, unrealised savings, recourse claims by third parties, damages from interruptions of operations and for all indirect and consequential damages is excluded.

(c) The limitation of liability set out in this clause does not apply to personal injury or to damage caused intentionally or by gross negligence. Flumerics shall be liable for such damage without limitation.

(d) Insofar as Flumerics' liability is limited, this shall also apply to the liability of its employees and subcontractors.

#### 20. Indemnification

(a) If a claim is made against Flumerics by third parties or by government authorities in connection with SERVICES, CUSTOMER shall indemnify Flumerics in the following cases:

- (i) Claims arising from product liability;
- (ii) claims for infringement of third party patent rights, unless Flumerics itself has been commissioned with the patent search.
- (iii) Claims for damages in connection with the use of the SERVICES outside the specified purpose of the contract.

(b) The obligation to indemnify shall not apply if Flumerics itself is responsible for the claim due to intentional or negligent breach of a contractual obligation.

(c) In addition to compensation for justified third-party claims, indemnification also includes Flumerics' legal costs.

#### 21. Force majeure

(a) If a PARTY is prevented from performing all or part of its contractual obligations due to force majeure, the PARTY concerned shall be discharged from its liability for non-performance for as long as the force majeure circumstance persists.

(b) Force majeure refers to events that affect the PARTIES from the outside and over which the PARTIES have no control. Cases of force majeure are in particular:



Disruptions to the public power supply, the communications infrastructure and transport routes, government measures, virus or hacker attacks, fire, extraordinary weather conditions, epidemics, nuclear and chemical accidents, earthquakes, war, terrorist attacks, strikes and sabotage, etc.

(c) If the Force Majeure Event lasts more than 30 days, either PARTY may terminate the CONTRACT retroactively to the date of the Force Majeure Event. Services rendered up to that time shall be compensated.

## 22. Data

(a) When processing information from the CUSTOMER (the "CUSTOMER DATA"), Flumerics shall be deemed to be the order processor. The holder of the CUSTOMER DATA is the CUSTOMER.

(b) Flumerics undertakes to process CUSTOMER DATA exclusively on behalf of the CUSTOMER and in accordance with data protection legislation and any applicable special laws (banking supervision, protection of professional secrecy, telecommunications legislation).

(c) Flumerics may use the services of appropriately qualified third parties for this purpose.

(d) CUSTOMER DATA may be demanded by the CUSTOMER at any time. Furthermore, the CUSTOMER may at any time demand by written declaration that Flumerics deletes CUSTOMER DATA.

## 23. Secrecy

(a) The PARTIES undertake to keep confidential all facts, information and data of which they become aware in connection with a CONTRACT and in the confidentiality of which the other PARTY has an interest. The obligation to maintain secrecy also includes the prohibition of use for non-contractual purposes.

(b) The confidentiality obligation shall apply beyond the termination of the contract as long as there is an interest in confidentiality.

(c) Information which is generally known or which is lawfully acquired by a PARTY irrespective of the contractual relationship is not subject to confidentiality. Furthermore, the statutory duties of disclosure shall remain reserved.

(d) The PARTIES shall ensure that their employees, auxiliary persons called in and subcontractors are obliged to comply with the confidentiality obligations.

(e) The duty of confidentiality exists against third parties. Wholly-owned subsidiaries and parent companies of the respective PARTY are not considered third parties.

(f) Flumerics may list the CUSTOMER as a reference CUSTOMER in advertising material. Any further presentation of the CUSTOMER relationship in terms of content requires the prior consent of the CUSTOMER.

## 24. Contract duration

### 24.1. Ordinary term of contract

(a) CONTRACTS for PROJECT SERVICES shall terminate upon completion of the SERVICE.

(b) Flumerics may terminate CONTRACTS for PROJECT SERVICES with 14 days' notice. In this case, Flumerics shall be entitled to demand the remuneration accruing up to the time of termination of the contract.

(c) CONTRACTS for OPERATION and MAINTENANCE SERVICES shall be concluded for the period specified in the CONTRACT and may be terminated with the period of notice specified therein. In the absence of an express provision, such CONTRACTS may be terminated with a notice period of 3 months to the end of each month.

(d) The grant of a LICENCE shall be for an indefinite period unless otherwise agreed in the CONTRACT.

(e) CONTRACTS for CONSULTANCY SERVICES may be terminated at any time and the terminating PARTY shall compensate the other PARTY for any damage caused by untimely termination.

### 24.2. Extraordinary termination

(a) Either PARTY may terminate a CONTRACT extraordinarily and without notice for good cause if the other PARTY has seriously breached the CONTRACT or if bankruptcy or composition proceedings have been instituted against it. Good cause shall be deemed to exist, for example, if a PARTY repeatedly or over a longer period of time defaults in payment.

(b) At its discretion, one PARTY may refrain from termination without notice and give the other PARTY a warning, setting a grace period. If the other PARTY still fails to perform by the end of the grace period, the contract may be terminated without notice in accordance with lit (a).

### 24.3. Form

Cancellations must be made in writing to be valid.

## 25. Obligations upon termination of the contract

Upon termination of OPERATING SERVICES and MAINTENANCE SERVICES, Flumerics shall hand over all CUSTOMER DATA to the CUSTOMER. In addition, Flumerics will assist the CUSTOMER, upon specific request and against additional compensation, if the CUSTOMER wishes to transfer OPERATING SERVICES to its own organisation or to another service provider.

## 26. Amendment of the legal framework

If the legal framework conditions change and the contractual relationship between services and consideration is significantly affected as a result, the



PARTIES shall negotiate in good faith on the adjustment of the affected contractual provision.

## **27. Final provisions**

### **27.1. Writing**

(a) Amendments or additions to the contractual provisions must be in writing and signed by both PARTIES in order to be valid.

(b) Reserved are changes in services of minor importance, which can be agreed in meetings of project committees, by the exchange of e-mails or in a similar way.

### **27.2. Assignment**

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

### **27.3. Settlement**

The CUSTOMER may not set off alleged claims for damages against claims for compensation by Flumerics.

### **27.4. Partial nullity**

The invalidity or voidability of one or more provisions of a CONTRACT shall not invalidate the remaining provisions. In such a case, the PARTIES shall endeavour to replace the invalid or voidable provision by another valid and enforceable provision which comes as close as possible to the legal and economic content of the invalid or voidable provision.

### **27.5 Jurisdiction and applicable law**

(a) A CONTRACT shall be governed exclusively by Swiss law to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 and the Federal Act on Private International Law.

(b) Any disputes arising out of or in connection with a CONTRACT shall be subject to the exclusive jurisdiction of the courts of Zurich.