

General terms and conditions (GTC) of the Confederation for service contracts

1 Scope

- 1.1 These general terms and conditions (GTC) govern the conclusion, content and performance of contracts concerning services, especially in the areas of consultancy, planning, support and training (not construction services).
- 1.2 Anyone (contractor) who submits an offer to the client is thus deemed to have accepted these GTC. The parties may agree deviations in writing in the contract, provided they are objectively justified.

2 Offer

- 2.1 The offer is to be prepared on the basis of the client's quote request.
- 2.2 The contractor shall indicate value added tax separately in the offer.
- 2.3 The offer, including any presentations, is free of charge unless stated otherwise in the quote request.
- 2.4 The offer remains binding for the period indicated in the quote request. If there is no such indication, a period of six months after receipt of the offer shall apply.

3 Performance

- 3.1 As a specialist, the contractor undertakes to perform the contract diligently, faithfully and competently. It guarantees that all goods/services provided are in compliance with the contractual conditions and specifications, as well as the statutory requirements.
- 3.2 The contractor shall provide the client with regular information on the progress of work and shall immediately inform it in writing of any circumstances that may interfere with or jeopardise performance in accordance with the contract.
- 3.3 The client shall at all times be entitled to exercise its right of inspection and its right to information concerning all parts of the contract.
- 3.4 The contractor shall not be empowered to represent the client in the absence of a written power of attorney; it may not commit the client vis-à-vis third parties.

4 Deployment of employees

- 4.1 The contractor shall deploy only carefully selected and well trained employees who have the required authorisations. At the client's request, the contractor shall, within a reasonable timeframe, replace employees who do not have the requisite expertise or who otherwise interfere with or jeopardise performance of the contract.
- 4.2 The contractor shall exchange the deployed employees only with the client's written consent.

5 Involvement of third parties

- 5.1 The contractor may engage third parties (e.g. suppliers, subcontractors, substitutes) for the rendering of its services only with the prior written consent of the client. The contractor shall remain liable for service provision in accordance with the contract by the third parties called upon.
- 5.2 The contractor shall impose the obligations set out in sections 4 (deployment of employees), 6 (workplace health and safety provisions, employment conditions, equal pay for men and women, and environmental law), 12 (confidentiality) and 13 (data protection and data security) on the third parties called upon.

6 Workplace health and safety provisions, employment conditions, equal pay for men and women, and environmental law

- 6.1 For goods/services provided in Switzerland within the framework of contract performance, the contractor shall comply with the workplace health and safety provisions and employment conditions applicable at the place of performance, the notification and authorisation duties in accordance with the Federal Act of 17 June 2005 on Measures to Combat Illegal Employment (IEA)¹ and the provisions on the equal treatment of men and women in terms of equal pay. The employment conditions shall be deemed to encompass collective and standard employment contracts or, where no such contracts exist, the actual employment conditions customary for the location and occupation.
- 6.2 For goods/services provided abroad within the framework of contract performance, the contractor shall comply with the provisions applicable at the place of performance, but as a minimum with the Core Conventions of the International Labour Organization (ILO) in accordance with Annex 6 to the PPA².
- 6.3 If the contractor seconded workers from a foreign country to Switzerland to provide the goods/services, compliance with the provisions of the Posted Workers Act³ of 8 October 1999 must be ensured.
- 6.4 For goods/services provided in Switzerland within the framework of contract performance, the contractor shall comply with the provisions of Swiss environmental law applicable at the place of performance, namely the Environmental Protection Act (EPA)⁴, the Waters Protection Act (WPA)⁵, the Nature and Cultural Heritage Act (NCHA)⁶, the Forest Act (ForA)⁷ and the Chemicals Act (ChemA)⁸, as well as the ordinances based thereon.
- 6.5 For goods/services provided abroad within the framework of contract performance, the contractor shall comply with the environmental protection provisions applicable at the place of performance, but at least with the agreements on the environment in accordance with Annex 2 to the PPO⁹ that are relevant for the contractor's performance.
- 6.6 The contractor is obliged to contractually impose the requirements according to sections 6.1 to 6.5 above on its subcontractors.
- 6.7 If the contractor itself or a third party engaged by it violates obligations arising from this section 6, it shall be liable to pay a contract penalty unless it proves that it is not at fault. The penalty shall amount to 10% of the agreed maximum total remuneration including optional goods/services, or 10% of the remuneration agreed for the subsequent 12 months in the case of permanent contracts, or 10% of the remuneration for the preceding 12 months in the case of a shorter remaining contract term, but at least CHF 3,000 per violation and no more than a total of CHF 100,000 per contract; in the case of a framework contract, this upper limit shall apply once for the entire contractual relationship. Payment of the contract penalty shall not release the contractor from compliance with contractual obligations and shall be offset against any claims for damages.**

7 Remuneration

- 7.1 The contractor will render the services:

¹ SR 822.41

² SR 172.056.1

³ SR 823.20

⁴ SR 814.01

⁵ SR 814.20

⁶ SR 451

⁷ SR 921.0

⁸ SR 813.1

⁹ SR 172.056.11

- a. on a time and material basis with an upper limit on remuneration (cost ceiling); or
- b. at fixed prices.

- 7.2 The contractually agreed remuneration covers all work which is necessary for proper performance of the contract. In particular, it includes all contractually agreed ancillary deliverables, material, packaging, transport and insurance costs, the transfer or use of rights, documentation, secretarial and infrastructure costs (overheads), social benefits, expenses, fees and public levies. Any value added tax or import tax due shall be payable together with the remuneration, but must always be indicated separately in the offer, contract and invoice.
- 7.3 The contractor will issue invoices in accordance with the payment plan. If no such plan was agreed, invoicing shall be after all goods/services have been provided. Unless otherwise agreed, payment will be within 30 days of receipt of the properly issued invoice.
- 7.4 For central Federal Administration procurements¹⁰, the contractor is obliged to submit an electronic invoice¹¹ to the client if the contract value exceeds CHF 5,000 (excl. VAT). The client determines the delivery options.

8 Default

- 8.1 If the contractor fails to meet firmly agreed deadlines (expiry date transactions), it shall immediately be deemed to be in default, and in all other cases upon receiving a reminder.
- 8.2 **If the contractor is in default, it shall be liable to pay a contract penalty unless it proves that it is not at fault. The penalty shall amount to 0.1% per commenced calendar day of delay, but no more than a total of 10% of the maximum total remuneration including optional goods/services per contract and case of default, or 10% of the remuneration agreed for the subsequent 12 months in the case of permanent contracts, or 10% of the remuneration for the preceding 12 months in the case of a shorter remaining contract term at the beginning of the default. It shall be owed even if the goods/services are accepted subject to a corresponding reservation. Payment of the contract penalty shall not imply release from compliance with contractual obligations and shall be offset against any claims for damages.**

9 Liability

- 9.1 The parties are liable for all damages they cause to the other party unless they prove that they are not at fault. Liability for loss of profits is excluded.
- 9.2 The parties shall be liable for the conduct of their auxiliaries and third parties called upon (e.g. suppliers, subcontractors, substitutes) in the same way as for their own conduct.

10 Social security

If the contractor deploys employees, it shall take care of the necessary registrations for itself and its staff members with respect to social security. Self-employed persons must additionally prove when submitting their offer that they are members of a compensation fund.

11 Property rights

- 11.1 The contractor shall transfer to the client all property rights (intangible property rights and related rights and entitlements) pertaining to work results generated within the framework of contract performance. It shall refrain from exercising nontransferable personal rights.

¹⁰ Art. 7 of the GAOO (SR 172.010.1)

¹¹ <https://www.efv.admin.ch/efv/en/home/efv/erechnung/aktuell.html>

- 11.2 All property rights to work results that form part of the contract and were not generated within the framework of contract performance (pre-existing work results) shall remain with the contractor. It shall grant the client a nonterminable usage right without any restrictions in terms of time, space or substance. This shall cover all current and future types of use possible, the right to sublicense and assign, as well as the right to process the work results.
- 11.3 The contractor guarantees that it and the third parties it calls upon are in possession of all the rights to provide the goods/services in accordance with the contract. It undertakes to defend against third-party claims concerning the breach of property rights without delay and to pay all costs (including compensation for damages) arising as a result for the client.

12 Confidentiality

- 12.1 The parties shall treat as confidential all facts and information that are neither obvious nor generally accessible and for which, by their nature, there is an interest in maintaining confidentiality in good faith. In case of doubt, facts and information are to be treated confidentially. The confidentiality obligation shall exist before the contract is concluded and shall persist after termination of the contractual relationship.
- 12.2 The confidentiality obligation will not apply for the client if it is obliged to publish the following facts and information: name and address of the contractor, item(s) procured and mandate value, award procedure carried out, date of contract conclusion and commencement, and timeframe of contract execution. This shall be without prejudice to the mandatory duties of disclosure under Swiss law (e.g. as per the FoIA¹², PPA¹³, PPO¹⁴).
- 12.3 Without the written consent of the client, the contractor may not advertise the fact that cooperation exists or existed with the client, and the contractor may not list the client as a reference either.
- 12.4 If one of the parties violates the confidentiality obligations above, it shall be liable to pay a contract penalty to the other party unless it proves that it is not at fault. Per violation, the penalty shall amount to 10% of the maximum total agreed remuneration including optional goods/services, or 10% of the remuneration agreed for the subsequent 12 months in the case of permanent contracts, or 10% of the remuneration for the preceding 12 months in the case of a shorter remaining contract term, but no more than CHF 50,000 in total per case. Payment of the contract penalty shall not imply release from compliance with contractual obligations and shall be offset against any claims for damages.**
- 12.5 Irrespective of these confidentiality agreements, the contractor and persons acting on its behalf may be deemed auxiliaries of an authority and thus be subject to official secrecy. A breach of official secrecy is punishable under Article 320 of the SCC¹⁵.

13 Data protection and data security

- 13.1 The parties undertake to comply with the provisions of Swiss data protection legislation and to effectively protect data arising in the framework of contract performance against unauthorised access by third parties.

¹² SR 152.3

¹³ SR 172.056.1

¹⁴ SR 172.056.11

¹⁵ SR 311.0

- 13.2 If the contractor is provided with data of the client within the scope of contract performance, the contractor shall be obliged to return such data after termination of the contract and to irrevocably delete or destroy it on both primary and secondary media (test or backup media, etc.). The deletion or destruction of the data shall be carried out in accordance with the currently recognised state of the art and shall be confirmed to the client in writing upon request. The return, deletion or destruction of the data must take place within 30 days after contract termination. If the data on backup media cannot be deleted, the backups must be protected in accordance with the recognised state of the art and must be deleted or destroyed within one year at the latest. If the contractor is subject to a legal obligation to retain data, the return, deletion or destruction of the data subject to this retention obligation must take place within 30 days after the end of the retention period.
- 13.3 Any right of the client to audit the contractor's security measures with regard to data protection and data security shall be the subject of a separate contractual agreement between the parties.

14 Revocation and termination

The contract may be revoked or terminated in writing at any time by either party. Goods/services provided up to the time of termination of the contract must be paid for. Claims for compensatory damages due to contract termination at an inopportune time remain reserved. Compensation for loss of profits is excluded.

15 Assignment and pledging

The contractor may not assign or pledge claims vis-à-vis the client unless the client has consented in writing.

16 Contract amendments, inconsistencies and partial invalidity

- 16.1 Amendments and addenda to the contract as well as cancellation of the contract must be in writing.
- 16.2 In the event of inconsistencies between the provisions, the following order of precedence shall apply: contract document, GTC, quote request, offer.
- 16.3 If individual provisions of the contract prove to be invalid or unlawful, this shall not affect the validity of the contract. In such cases, the provision in question shall be replaced by an effective provision that is as equivalent as possible in economic terms. The same shall apply in the event of a gap in the contract.

17 Applicable law and place of jurisdiction

- 17.1 The contractual relationship shall be governed exclusively by substantive Swiss law.
- 17.2 If the client is a unit of the central Federal Administration or a unit of the decentralised Federal Administration without legal personality, the exclusive place of jurisdiction shall be **Bern**; in all other cases, it shall be at the client's registered office.

Federal Procurement Conference (FPC)

Edition: September 2016

Status as at January 2024