

## **General terms and conditions (GTC) Applicable to the Contracts for Procurement of Services Awarded by the Domain of the Swiss Federal Institutes of Technology**

### **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 consulting, planning, support and training.
- 1.2 Anyone (service provider) who submits an offer to the procuring entity is thus deemed to have accepted the present 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 procuring entity's quote request.
- 2.2 The service provider 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 three months after receipt of the offer shall apply.

### **3. Performance**

- 3.1 As a specialist, the service provider undertakes to perform the contract diligently, faithfully and competently, and guarantees that all services rendered are in compliance with the contractual conditions and specifications and the statutory requirements.
- 3.2 The service provider shall provide the procuring entity 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 procuring entity shall at all times be entitled to exercise its right of inspection and information concerning all parts of the contract.
- 3.4 The service provider shall not be empowered to represent the procuring entity in the absence of a written power of attorney; it may not commit the procuring entity vis-à-vis third parties.

### **4. Deployment of employees**

- 4.1 The service provider shall deploy only carefully selected and well trained employees who have the required authorisations. At the procuring entity's request, the service provider 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 service provider shall exchange the deployed employees only with the written consent of the procuring entity.

### **5. Involvement of third parties**

- 5.1 The service provider may call upon third parties (e.g. sub-suppliers, subcontractors, substitutes) for the rendering of its services only with the prior written consent of the procuring entity. The service provider shall remain liable for service provision in accordance with the contract by the third parties called upon.



5.2 The service provider shall impose the obligations set out in sections 4 (deployment of employees), 6 (health and safety standards, conditions of employment and equal pay for men and women), 12 (confidentiality) and 13 (data protection and data security) on the third parties called upon.

## 6. Health and safety standards, conditions of employment and equal pay for men and women

6.1 Service providers with their headquarters or a branch in Switzerland shall comply with the health and safety standards and conditions of employment applicable in Switzerland, as well as with the principle of equal pay for men and women. The conditions of employment shall be deemed to encompass collective and standard employment contracts or, where no such contracts exist, the actual conditions of employment customary for the location and occupation. Service providers headquartered abroad shall comply with the corresponding conditions applicable where the service is rendered abroad, but at least with the Core Conventions of the International Labour Organization.<sup>1</sup>

6.2 If the service provider second workers from a foreign country to Switzerland to render the service, compliance with the provisions of the Posted Workers Act<sup>2</sup> of 8 October 1999 must be ensured.

6.3 If the service provider violates obligations arising from 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 entire remuneration per case of violation, but no more than CHF 100,000 in total. Payment of the contract penalty shall not release the service provider from compliance with these obligations.

## 7. Remuneration

7.1 The service provider will render the services:

- 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, the remuneration covers the costs for the transfer of rights, documentation and materials, as well as all expenses, secretarial services, all social benefits and other insurance benefits for accident, sickness, disability or death, and public levies (e.g. value added tax).

7.3 The service provider will issue invoices in accordance with the payment plan. If no such plan was agreed, invoicing shall be after all services have been provided. Value added tax is to be indicated separately in the invoice. Unless otherwise agreed, payment will be within 30 days of receipt of the properly issued invoice.

## 8. Default

8.1 If the service provider 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 setting a reasonable grace period.

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<sup>1</sup> ILO conventions: No. 29 of 28 June 1930 concerning Forced or Compulsory Labour (SR 0.822.713.9), No. 87 of 9 July 1948 concerning Freedom of Association and Protection of the Right to Organise (SR 0.822.719.7), No. 98 of 1 July 1949 concerning the Application of the Principles of the Right to Organise and to Bargain Collectively (SR 0.822.719.9), No. 100 of 29 June 1951 concerning Equal Remuneration for Men and Women Workers for Work of Equal Value (SR 0.822.720.0), No. 105 of 25 June 1957 concerning the Abolition of Forced Labour (SR 0.822.720.5), No. 111 of 25 June 1958 concerning Discrimination in Respect of Employment and Occupation (SR 0.822.721.1), No. 138 of 26 June 1973 concerning Minimum Age for Admission to Employment (SR 0.822.723.8), No. 182 of 17. June 1999 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (SR 0.822.728.2)

<sup>2</sup> SR 823.20



- 8.2 If the service provider is in default, it shall be liable to pay a contract penalty amounting to 0.1% of the remuneration per day of delay, but no more than 10% of the entire remuneration, unless it proves that it is not at fault.
- 8.3 Payment of the contract penalty shall not release the service provider from compliance with the contractual obligations. Contract penalties are offset against any compensation for damages.

## 9. Liability

- 9.1 The parties are liable for all damages they cause to the other party, unless they can 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. sub-suppliers, subcontractors, substitutes) in the same way as for their own conduct.

## 10. Social security

If the service provider 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 service provider shall transfer to the procuring entity 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 non-transferable personal rights.
- 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 service provider. It shall grant the procuring entity a non-terminable 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 sub-licence and assign, as well as the right to process the work results.
- 11.3 The service provider guarantees that it and the third parties it calls upon are in possession of all the rights to render the 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 procuring entity.

## 12. Confidentiality

- 12.1 The parties shall treat as confidential all facts and information that are neither obvious nor generally accessible and for which an interest in maintaining confidentiality exists in good faith because of their nature. 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 procuring entity if it is obliged to publish the following facts and information: name and location of the service provider, object of the procurement and value of the contract, tender procedure carried out, date of contract conclusion and timeframe of contract execution. This shall be without prejudice to the mandatory duties of disclosure under Swiss law (e.g. as per the Freedom of Information Act<sup>3</sup> and the Public Procurement Act<sup>4</sup>).

<sup>3</sup> SR 152.3

<sup>4</sup> SR 172.056.1



- 12.3 Without the written consent of the procuring entity, the service provider may not advertise the fact that cooperation exists or existed with the procuring entity, and the service provider may not list the procuring entity as a reference either.
- 12.4 If the parties violate obligations arising from section 12 above, they shall be liable to pay a contract penalty unless they prove that they are not at fault. The penalty shall amount to 10% of the entire remuneration per case of violation, but no more than CHF 100,000 in total. Payment of the contract penalty shall not release the parties from compliance with these obligations.

### **13. Data protection and data security**

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.

### **14. Revocation and termination**

The contract may be revoked or terminated in writing at any time by either party. 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 service provider may not assign or pledge claims vis-à-vis the procuring entity unless the procuring entity 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: contractual 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.

### **17. Applicable law and place of jurisdiction**

- 17.1 Swiss law alone shall apply to the contractual relationship.
- 17.2 The exclusive place of jurisdiction for procuring entities of the central Federal Administration and the units of the decentralised Federal Administration without legal personality is Bern, and it shall be at the procuring entity's headquarters in all other cases.

Federal Procurement Conference (FPC)  
Edition: September 2016  
Status as at: September 2016