

## **General terms and conditions (GTC) Applicable to the Contracts for Procurement of Goods 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 for the procurement of goods (including any assembly).
- 1.2 Anyone (seller) who submits an offer to the buyer 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 buyer's quote request.
- 2.2 The seller shall indicate value added tax and transport costs separately in the offer.
- 2.3 The offer, including any demonstrations, 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 Involvement of third parties**

If the seller calls upon third parties (sub-suppliers, subcontractors) for contract performance, the seller shall impose the obligations set out in sections 4 (health and safety standards, conditions of employment and equal pay for men and women), 13 (confidentiality) and 14 (data protection and data security) on them. The seller shall remain liable for service provision in accordance with the contract by the third parties called upon.

### **4 Health and safety standards, conditions of employment and equal pay for men and women**

- 4.1 Sellers 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. Sellers 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>
- 4.2 If the seller 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.

<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



- 4.3 If the seller violates obligations arising from section 4, 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 seller from compliance with these obligations.

## **5 Place of performance and transfer of risk**

- 5.1 The buyer determines the place of performance.  
5.2 Title and risk are transferred to the buyer at the place of performance.

## **6 Materials supply, models and equipment**

- 6.1 *Materials supply:* If the buyer supplies the seller with materials needed for contract performance, these shall remain the property of the buyer. They have to be designated as such and excluded. The seller shall check the materials upon receipt. Any damage detected is to be notified to the buyer immediately in writing.  
6.2 *Models and equipment:* If the buyer provides the seller with models or equipment for offer preparation or contract performance, they may be used solely for that purpose. They shall remain the property of the buyer, have to be designated as such by the seller, have to be stored with care and have to be returned upon request.

## **7 Import regulations**

The seller ensures compliance with any export restrictions and import regulations from the place of origin to the place of delivery in accordance with the contract. The seller informs the buyer in writing about any export restrictions in the country of origin.

## **8 Handover and assembly**

- 8.1 The goods are handed over upon signature of the delivery note at the place of performance designated in accordance with section 5.  
8.2 If the contract also covers assembly of the goods, the buyer shall give the seller the necessary access to its premises.  
8.3 The seller shall comply with the internal regulations of the buyer, in particular the safety provisions and house rules.  
8.4 The buyer shall inspect the goods without delay, but no later than 30 days after delivery.

## **9 Remuneration**

- 9.1 The seller shall render the services at fixed prices.  
9.2 The remuneration covers all work which is necessary for proper performance of the contract. In particular, the remuneration covers packaging, transport and insurance costs, expenses, royalties and all public levies (e.g. value added tax).  
9.3 The seller 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.

## **10 Default**

- 10.1 If the seller 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.  
10.2 If the seller 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.

10.3 Payment of the contract penalty shall not release the seller from compliance with the contractual obligations. Contract penalties are offset against any compensation for damages.

## 11 Liability

11.1 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.

11.2 The parties shall be liable for the conduct of their auxiliaries and third parties called upon (e.g. sub-suppliers, subcontractors) in the same way as for their own conduct.

## 12 Warranty

12.1 As a specialist and being aware of the intended use of the goods to be supplied, the seller guarantees that the goods have the promised features, that they comply with the statutory regulations and that they are free of any material or legal defects which decrease their value or suitability for the intended use.

12.2 In the event of a defect, the buyer can choose between:

- deducting the value reduction from the remuneration,
- withdrawing from the contract,
- requesting flawless goods or
- requesting rectification.

12.3 The guarantee period expires 24 months after delivery and any assembly of the goods. The buyer shall immediately notify the seller in writing about defects.

12.4 If defects have to be remedied or parts replaced during the guarantee period, the guarantee will start to run for the components concerned from the time of remediation or replacement.

## 13 Confidentiality

13.1 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.

13.2 The confidentiality obligation will not apply for the buyer if it is obliged to publish the following facts and information: name and location of the seller, 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>).

13.3 Without the written consent of the buyer, the seller may not advertise the fact that cooperation exists or existed with the buyer, and the seller may not list the buyer as a reference either.

13.4 If the parties violate obligations arising from section 13 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.

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<sup>3</sup> SR 152.3

<sup>4</sup> SR 172.056.1

#### **14 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.

#### **15 Assignment and pledging**

The seller may not assign or pledge claims vis-à-vis the buyer unless the buyer 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 Application of the provisions of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (Vienna Convention)<sup>5</sup> is expressly excluded.
- 17.3 The exclusive place of jurisdiction for buyers of the central Federal Administration and the units of the decentralised Federal Administration without legal personality is Bern, and it shall be at the buyer's headquarters in all other cases.

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<sup>5</sup> SR 0.221.211.1