General provisions

1. Scope of application
1.1. The present General Terms and Conditions are applicable to the domain of the Swiss Federal Institutes of Technology, comprising the Swiss Federal Institute of Technology Zürich (ETH Zürich), the Swiss Federal Institute of Technology Lausanne (EPFL), the Paul Scherrer Institute (PSI), the Federal Institute of Forest, Snow and Landscape Research (WSL), the Swiss Federal Laboratories for Materials Testing and Research (EMPA), the Swiss Federal Institute of Water Resources and Water Pollution Control (EAWAG) and the General Secretariat of the FIT Board ("Purchaser").

1.2. These General Terms and Conditions shall govern conclusion, subject matter and performance of the contracts for procurement of goods and services.

1.3. The tenderer accepting a purchase order (Clause 3) shall be deemed to have assented to these General Terms and Conditions.

1.4. Modifications or amendments of these General Terms and Conditions must be confirmed in writing by the purchaser.

2. Tender
2.1. The tenderer shall submit its tender (in duplicate) in reply to an invitation to tender.

2.2. Save as may otherwise be expressly provided for in the invitation to tender, the tenderer shall submit its tender, inclusive of demonstration, without remuneration.

2.3. The tenderer shall be bound by its tender for a period of three months from the date of submission.

3. Formation of contract
3.1. The purchaser shall place its purchase order in writing (in duplicate) with the tenderer. The contract shall be formed upon receipt by the purchaser of the duplicate purchase order signed for by the tenderer.

3.2. For purchase orders not exceeding CHF 10'000.--, the contract shall also be deemed formed where the tenderer does not reject the purchase order within a reasonable period of time.

4. Confidentiality
4.1. The parties agree to keep in confidence any information that is not obvious or generally available to the public. They shall be bound by this undertaking from the preaward stage on and after termination of the contract.

4.2. The tenderer may not advertise or publish this contractual relationship without the purchaser's prior written consent.

5. Assignment and pledge
5.1. The tenderer may not assign or pledge accounts receivable without the purchaser's prior written consent.

6. Compliance with labor law
6.1. When tendering for service in Switzerland, the tenderer shall comply with all occupational safety and health regulations applicable at the place of performance. The tenderer warrants that the services rendered by male and female employees are provided in compliance with the working conditions set forth in collective agreements and standard employment contracts, and will be effective or in the absence of such provisions, the working conditions customary in the region and profession concerned.

6.2. In case of non-compliance with the guidelines set forth in Clause 6.1, the tenderer shall be subject to a contractual penalty amounting to 10% of the contract price, but not inferior to CHF 5'000.-- or superior to CHF 10'000.--.

7. Applicable law and venue
7.1. The contracts shall be governed by the present General Terms and Conditions and the national law of the tenderer (the Code of Obligations).


7.3. For any disputes arising out of the performance of the contracts for procurement of goods and services, the competent court of the tenderer's seat or before any other competent court.

8. Special provisions for procurement of goods

8.1. Prices
8.1.1. The tenderer shall provide the goods for a firm-fixed price.

8.1.2. If the tenderer reduces its list prices prior to delivery of performance, the reduced prices shall be applicable to the pending purchase order and the contract price accordingly abated.

8.2. Payment
8.2.1. The payment terms shall be as set forth in the purchase order.

8.2.2. Payment of all claims must be made within 30 days of receipt of correctly rendered invoices, but at the earliest within 30 days of acceptance of the goods delivered free of defect.

8.3. Delivery and acceptance of goods shall be made, where appropriate, in accordance with the payment schedule. Payment shall be due in the region and profession concerned.

8.4. The prices of foreign tenderers shall include all delivery costs pursuant to the Contracts for the International Sale of Goods (UN Sales Convention).

8.5. The prices of foreign tenderers shall include all delivery costs pursuant to the Contracts for the International Sale of Goods (UN Sales Convention).

8.6. Goods shall be sold and delivered free of defect. Unless agreed upon in writing, no partial payments shall be made for delivery by instalments.

8.7. Advances and interest charges shall be made, where appropriate, in accordance with the payment schedule. Payment shall be due in the region and profession concerned.

8.8. The tenderer shall draw up a separate invoice for each instalment payment.

9. Place of performance and passing of risk
9.1. Place of performance shall be the destination indicated by the purchaser on the purchase order.

9.2. Risk of loss and benefit shall pass to the purchaser at the place of performance.

10. Default
10.1. In case of the tenderer failing to meet the delivery deadline agreed upon shall be immediately deemed to be in default.

10.2. In the event of default by the tenderer, the purchaser may require specific performance of the contract, if such performance is possible within a reasonable period of time and the compensation for damages is not excessively disproportionate as between the tenderer and the purchaser (Clause 10.3.).

10.3. In the event of delay, the tenderer shall be subject to a contractual penalty amounting to 1% of the contract price per complete or incomplete week of delay, but not exceeding 10% of the total price. The contractual penalty shall not relieve the tenderer from its contractual obligations, but shall be credited against the damages to be paid.

11. Warranty
11.1. Having acquainted himself with the intended application, the tenderer as specialist guarantees that the goods possess the warranted features, comply with the applicable security regulations in Switzerland and have no material or legal defect which would diminish their value or fitness for the intended purpose.

11.2. The purchaser shall examine the goods delivered within 30 days of the date of delivery.

11.3. In case of defects in the goods delivered, the purchaser may, at its option, (i) require the tenderer to remedy the defect within a reasonable period of time; (ii) reduce the price in proportion to the degree of the defects; (iii) terminate the contract or (iv) require delivery of substitute goods. The delivery of substitute goods may consist in replacing the defective components. In any case, the tenderer bears the cost of such replacement or of obtaining substitute goods.

11.4. The purchaser's warranty claims set forth in Clause 11.3 shall prevail over any warranty issues by the tenderer with respect to the purchaser's rights (for ex. exclusion of the right to cancel the contract or to reduce the price). If the tenderer's warranty extends the rights set forth in Clause 11.3 (for ex. longer warranty period), it shall be applicable.

11.5. The warranty is valid for 12 months from the date of acceptance of the goods delivered, or for a longer period if the tenderer issues such a warranty. During the warranty period, the purchaser may lodge a complaint in respect of any defect of the goods.

12. Supply of spare parts
12.1. The tenderer shall ensure that spare parts are available to the purchaser for a period of at least five years since the date of acceptance of the goods.

13. Licensed Software
13.1. In the case of licensed software ordered or delivered with the goods ordered, the purchaser shall be granted a non-transferable and non-exclusive license to use the software. All intellectual property rights shall remain vested in the tenderer or the third parties involved. If the intellectual property rights are vested in third parties, the tenderer warrants that it has the right to use and distribute the software products.

13.2. In case of infringement of intellectual property rights, clauses 17.2 and 17.3 hereunder are applicable.

14. Right to inspect
14.1. Goods to be manufactured by the tenderer, the purchaser is entitled, upon reasonable notification, to inspect quality and progress of the work at the tenderer's or his suppliers' premises. Such inspection shall not relieve the tenderer from integral performance of its contractual obligations (particularly delivery in due time and warranty obligations).

Special provisions for procurement of services

15. Prices
15.1. The tenderer shall provide the services for a firm-fixed price or on a cost-reimbursement basis with a price limit (price ceiling). In its tender, the tenderer shall indicate its cost groups and rates.

15.2. The prices shall cover all expenditure incurred by the tenderer in the proper performance of the contract. In particular, they comprise all ancillary costs such as general and administrative expenses, all social security benefits and other compensations paid for illness, invalidity and death as well as all charges including VAT. Unless otherwise agreed upon expressly in writing, the contract price shall not be adjusted on the basis of inflation.

15.3. Payments shall be due in accordance with the payment schedule. Progress payments shall be made based on accumulated costs. When due, the tenderer shall claim them by presenting an invoice. The purchaser shall pay the due invoices within 30 days of receipt of the itemized invoice or if any, of the performance evaluation agreed upon.

15.4. Clause 8.6 applies accordingly to advance payments.

16. Performance
16.1. The tenderer undertakes to perform the contract with all due diligence and efficiency. As a rule, the performance shall be specified in a statement of work.

16.2. Modifications and amendments to the contract must be agreed upon in writing.

16.3. The tenderer shall inform the purchaser regularly of progress of work and promptly notify in writing of any circumstances, which could jeopardize or hinder the performance of the contract. The purchaser shall be entitled to control and to be informed about all parts of the task assigned.

16.4. As a matter of principle, the tenderer shall carry out the task assigned using its own staff. It shall exclusively appoint carefully chosen and highly qualified personnel. In so doing, it shall take into consideration the purchaser's need for continuity. If requested by the purchaser, it shall replace within reasonable time the employees who lack the necessary qualification or endanger in any other way the performance of the contract.

16.5. Unless authorized in writing, the tenderer may neither represent, nor engage the purchaser towards third parties.

17. Intellectual property rights
17.1. All intellectual property rights arising out of the performance of this contract (provision of services) shall be the property of the purchaser.

17.2. The tenderer shall promptly defend the purchaser against any third-party claims based on alleged intellectual property rights infringement and pay any costs incurred by the purchaser in conjunction with such claims.

17.3. The purchaser shall give prompt notice, in writing, to the tenderer of any infringement claim and make available, to the extent that they must not be kept in confidence, all documents necessary for the defence.

18. Default
18.1. In the event the tenderer fails to observe deadlines agreed upon as a material contractual obligation (deadline contracts), it shall be immediately in default; in all other cases, a cure period shall be granted after notice of default.

18.2. The tenderer shall be liable for damages resulting from delay in performance.

18.3. In case of default by the tenderer, the consequences set forth in clause 10.3 shall apply accordingly.

19. Warranties
19.1. As a result, the tenderer shall be responsible for efficient and diligent execution of the contract. It undertakes to provide the services in state-of-the-art conform with the specifications and conditions of this contract.

19.2. The tenderer shall be liable for damages caused by its employees in the performance of their functions.

20. Cancellation and termination
20.1. Any of the parties shall have the right to cancel or terminate this contract at any time by giving written notice to the other party. Payment shall be due for the services rendered up to the date of termination.

20.2. The right to claim damages for untimely termination of the contract shall be reserved, but excluded for loss of profit.