

General terms and conditions (GTC) of the Confederation for the procurement of goods

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 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 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 six months after receipt of the offer shall apply.

3. Involvement of third parties

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

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

- 4.1 For goods/services provided in Switzerland within the framework of contract performance, the seller 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.
- 4.2 For goods/services provided abroad within the framework of contract performance, the seller 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.
- 4.3 If the seller 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.

¹ SR 822.41

² SR 172.056.1

³ SR 823.20

- 4.4 For goods/services provided in Switzerland within the framework of contract performance, the seller 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.
- 4.5 For goods/services provided abroad within the framework of contract performance, the seller 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 seller's performance.
- 4.6 The seller is obliged to contractually impose the requirements according to sections 4.1 to 4.5 above on its subcontractors.
- 4.7 If the seller itself or a third party engaged by it violates obligations arising from this 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 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 seller from compliance with contractual obligations and shall be offset against any claims for damages.**

5. Place of performance and transfer of risk

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

6. Materials supply, templates 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 *Templates and equipment*: if the buyer provides the seller with templates 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.

⁴ SR 814.01

⁵ SR 814.20

⁶ SR 451

⁷ SR 921.0

⁸ SR 813.1

⁹ SR 172.056.11

- 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 supply the goods/services at fixed prices.
- 9.2 The 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.
- 9.3 The seller 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.
- 9.4 For central Federal Administration procurements¹⁰, the seller is obliged to submit an electronic invoice¹¹ to the buyer if the contract value exceeds CHF 5,000 (excl. VAT). The buyer determines the delivery options.

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.
- 10.2 If the seller 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.**

11. Liability

- 11.1 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.
- 11.2 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.

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:

¹⁰ Art. 7 of the GAOO (SR 172.010.1)

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

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

12.3 The warranty 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 warranty period, the warranty will start to run from the time of remediation or replacement for the components concerned.

13. Confidentiality

13.1 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.

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

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 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.

13.5 Irrespective of these confidentiality agreements, the seller 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.

14. Data protection and data security

14.1 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

- 14.2 If the seller is provided with data of the buyer within the scope of contract performance, the seller 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 buyer 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 seller 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.
- 14.3 Any right of the buyer to audit the seller's security measures with regard to data protection and data security shall be the subject of a separate contractual agreement between the 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: 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 Application of the provisions of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (Vienna Convention)¹⁶ is expressly excluded.
- 17.3 If the buyer 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 buyer's registered office.

Federal Procurement Conference (FPC)

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¹⁶ SR 0.221.211.1