

General Terms and Conditions of Business for Orders

Art. 1 General

1. These "Axpo General Terms and Conditions of Business for Orders" and the "Axpo Code for Business Partners" ("Code") in the version valid on conclusion of the agreement constitute an integral part of the Purchasing or Service Agreement.
2. In this document the Contractor (Service Agreement) or Seller (Purchasing Agreement) is referred to as "the Contractor" and the Principal (Service Agreement) or Purchaser (Purchasing Agreement) is referred to as "the Purchaser". The work to be performed or the products being purchased are referred to as "the Work".
3. The General Terms and Conditions of Business for Orders and the Code shall apply unless contradictory written terms and conditions are agreed in the specific instance. General Business Terms (conditions of delivery, assembly etc.) and a Code for Business Partners of the Contractor shall apply only if this is expressly recognized as such in writing in the agreement.
4. If there are contradictions between the agreement, the General Terms and Conditions of Business for Orders and the Code, the agreement shall take precedence and the General Terms and Conditions of Business for Orders shall take second place.
5. In addition to the General Terms and Conditions of Business for Orders and to the contractual provisions, the terms and conditions of the Swiss Code of Obligations (CO) shall apply.

Art. 2 The Work in general

1. In submitting the quotation the Contractor affirms that all facts and circumstances necessary for the calculation, design and execution of the Work, including accessories, are known to him.
2. The equipment shall be manufactured according to proven design principles, taking into account the latest state of the art of science and technology and using materials which are best suited for the purpose, to the effect that the equipment serves the purpose for which it was intended in every respect and offers a maximum of operational safety. The equipment shall be designed so as to limit overhauls and repairs to a minimum and render them executable in the shortest possible time and with minimum outlay in terms of labour and materials.
3. Moreover, the Work must in every respect comply with the corresponding statutory and official provisions as well as the relevant technical regulations.

Art. 3 Drawings, calculations and instructions

1. The Contractor undertakes to submit to the Purchaser sufficiently in advance prior to manufacturing or provision of the Work all important technical documentation such as drawings with principal dimensions, material lists, foundation plans, diagrams, testing regulations etc. in duplicate and in binding form for review and commentary.
2. In addition, the Contractor undertakes to procure all data required by third parties participating in the project sufficiently in advance and in binding, written form.
3. If, due to subsequent changes in the procedures or to the dimensions of the objects supplied by the Contractor, alteration work on the structural part of the Purchas-

er's plant or on equipment supplied by third parties becomes necessary, all consequential costs shall be borne by the Contractor insofar as the alterations were carried out without the prior authorisation of the Purchaser.

4. Submission of the documentation to and approval by the Purchaser do not release the Contractor from his responsibility to honour the contractually stipulated guarantees and obligations.
5. The Contractor undertakes to submit to the Purchaser, at the latest upon delivery of the equipment, four copies of detailed instructions for assembling, dismantling and monitoring, as well as for operation and maintenance of the entire Work.

At the latest four weeks after provisional acceptance (according to Art. 8) the Contractor shall also hand over to the Purchaser three complete and updated sets of all drawings, diagrams and other documents (of which one shall be a reproducible set in paper form and one a data carrier) which are required for a clear understanding of the functioning, operation and maintenance of the Work, as well as for the ordering of replacement parts.

Art. 4 Inspections, tests, time schedule

1. The Purchaser and his representatives shall (by prior appointment) have free access to the Contractor's manufacturing facilities and those of his sub-contractors, and he shall be supplied with all desired information on the progress of the work, the quality of the material used etc.
2. Neither the performance of the aforementioned inspection by the Purchaser nor the performance of acceptance tests shall release the Contractor from his full responsibility for adherence to the contractually stipulated guarantees, warranties and obligations.
3. The Contractor shall submit, in good time before commencement of operations, a detailed time schedule and shall keep the Purchaser regularly informed on the progress of the Work. Any impending delivery delays shall be reported to the Purchaser immediately, and the reasons for the delays shall be explained in detail. At the same time the Purchaser shall be notified of the measures which the Contractor intends to take to ensure that commissioning of the Work can nevertheless take place on schedule.
4. If, due to extraordinary circumstances which could not have been foreseen by the Contractor and for which the Contractor cannot be held responsible, the Contractor is prevented from fulfilling his obligations to such an extent that adherence to the deadline is not possible, despite having taken all efforts and measures which could reasonably be expected of him, the Contractor undertakes to inform the Purchaser to this effect and to provide him with written verification of such circumstances without delay. In cases of force majeure the Contractor shall be entitled to a reasonable extension of the contractually agreed deadlines. The Purchaser shall decide upon the duration of the extension, which as a rule shall correspond to the duration of the delay.

Strikes, lockouts and import restrictions shall be construed as reasons for obstruction according to the meaning of these provisions insofar as the prerequisites mentioned in the first paragraph are applicable. If the Contractor neglects to inform and provide verification to

the Purchaser, the Contractor may not demand that the obstructing circumstances be taken into account thereafter.

Art. 5 Packing, storage, shipment, transport

1. Shipping readiness shall be notified to the Purchaser in writing. If shipping of the material has to be delayed beyond the contractual delivery date at the Purchaser's request, the Contractor undertakes to store the equipment in his factory or at another suitable location for a period of six months free of charge.
2. The arrival clause DDP of INCOTERMS 2010 shall apply. The transfer of risk and benefit as well as of title shall in every case be performed only at the time of the provisional acceptance pursuant to Art. 8, Para. 1. The Purchaser reserves the right to perform the transport with his own vehicles.
3. The costs for storing the Work at the destination site until assembly shall be borne by the Purchaser. Storage is the responsibility of the Contractor, and can be monitored by him. The room for the storage shall be provided by the Purchaser free of charge.

Art. 6 Employees and sub-contractors of the Contractor

1. In connection with the performance of all services, the Contractor undertakes to comply with all relevant labour, labour protection, social security and (source-)tax provisions with regard to himself and to his employees, in particular with provisions concerning the minimum wage and minimum acceptable working conditions such as work and rest periods, minimum duration of holidays, work security and health protection at the place of work, protection of pregnant employees, of women who have just given birth, children and young people, and to fully comply with non-discrimination laws, notably those concerning the equal treatment of men and women. In doing so he shall comply with applicable Swiss law and the applicable general and normal work agreements (that have been declared universally binding). He shall comply with the provisions of the Federal Act on Measures to Combat Illegal Employment (IEA).

In the case of employment agency staff, the provisions concerning the employment of employment agency staff must also be observed. The employment of agency workers from abroad is not permitted. (Art. 12 Para. 2 Recruitment Act; RecA).

In connection with services from abroad, the Contractor shall also comply with all provisions concerning foreign nationals, residence, secondment, registration, the granting of residence and work permits and labour market provisions.

If the performance of major parts of the contractually agreed services is endangered by the Contractor (or his sub-contractors) as a result of legally binding regulations imposed by the authorities, the Purchaser shall be entitled to terminate the agreement prematurely and the Contractor shall not be entitled to compensation. The notification of the termination of the agreement must be preceded by a written reminder and the granting of a period of ten calendar days in which to remedy the problem or deficiency.

2. In connection with the performance of all contractually agreed services, the Contractor is obliged to demonstrate to the Purchaser compliance with all the relevant provisions and regulations in accordance with Art. 6 Item

1 for himself and his (agency) employees by means of substantiating records and documents immediately upon request. The Purchaser reserves the right to carry out checks at any time and to take the necessary measures. In the case of services from abroad, evidence must be provided that the gainful employment is permitted in Switzerland (Art. 91 Foreign Nationals Act; FNA). This must be provided on signature of this agreement by the Contractor and at all events before the employment concerned commences.

In the case of services in main and/or in the ancillary construction trades, the evidence must be provided at the time of the signature of this agreement by the Contractor and at all events before the start of the performance of services and must include the following elements in the form required by the competent authorities (official forms). In exceptional cases, this requirement may be waived (repeated cooperation within the meaning of Art. 8b Para. 4 Posted Workers Ordinance; PWO) if the Purchaser agrees to this in writing.

- a. In the case of a Swiss Contractor: compliance with the minimum wage requirements (cf. Art. 2 para. 1 lit. a Posted Workers Act; PWA):
 - Declaration by the Contractor that he guarantees the minimum wage requirements for his employees, together with a list of the names of the employees designated for the work concerned or of the core workforce, with details of their classification in wage brackets, minimum wages and working hours in accordance with the applicable generally binding labour agreement and with a written confirmation by the employees that they receive the minimum remuneration foreseen for their wage bracket (self-declaration according to Art. 8b para. 1 lit. b PWO).
 - (If available) confirmation by the joint committees (Art. 8b Para. 1 lit. c PWO) of generally binding collective labour agreement that the Contractor has been subjected to checks regarding compliance with wage and employment conditions and that no infringements have been found.
 - (If available) entry of the name of the Contractor in a register kept by employers and employees or by an official body confirming that no prosecutions concerning infringements of the minimum wage and working conditions are pending and that no such infringements exist (entry in a professional register in accordance with Art. 8b Para. 1 lit. d PWO).
 - If the Contractor has been registered for less than two years in a Swiss Commercial Register and if he is unable to provide either a confirmation from the equal representation body of employers and employees or evidence of registration in a professional register: evidence that the declarations in accordance with Art. 8b para. 1 and 2 PWO have been sent to the equal representation bodies as stipulated in Art. 7 para. 1 lit. a PWA.
- b. In the case of foreign Contractors: compliance with the minimum wage conditions (cf. Art. 2 para. 1 lit. a PWA):
 - A confirmation of posting signed by the Contractor and by the employees with details of the sal-

ary in the country of origin, the foreign posting allowances and supplements in accordance with Art. 1 PWA, the assignment to a wage class and details of the minimum wage and working hours in accordance with the generally binding collective labour agreement applicable for employment in Switzerland (confirmation of posting in accordance with Art. 8b para. 1 lit. a PWO).

- c. In the case of Swiss and foreign Contractors: compliance with minimum working conditions (cf. Art. 2 para. 1 lit. b to f PWA):
- A declaration signed by the Contractor that he complies with the provisions concerning work and rest periods, the minimum duration of holidays, work safety and health protection at the workplace, protection of pregnant employees and those who have recently given birth, children and young people, and compliance with non-discrimination laws, notably those concerning the equal treatment of men and women in accordance with Art. 2 Para. 1 lit. b to f PWA (self-declaration in accordance with Art. 8b para. 2 lit. a PWO).
 - (If available) recognised certificates concerning work safety and health protection (Art. 8b para. 2 lit. b PWO).
- d. (If applicable) freelance remunerated activity in accordance with Swiss law (Art. 1a para. 1 PWA).

During the performance of services in the main and/or in the ancillary construction trades, the Contractor shall, immediately upon the Purchaser's request, provide the Purchaser with updated and officially confirmed documents at least once a year confirming compliance with the minimum wage conditions and complete payment of social security contributions for his (agency) employees. At the place of service performance (building site), he shall also make it possible for checks to be carried out concerning compliance with minimum wage conditions and minimum working conditions.

If the Contractor does not provide this evidence in accordance with Art. 6 Item 2 within ten working days upon written request by the Purchaser, he will be required to pay the Purchaser a penalty for breach of contract amounting to CHF 25'000, and the Purchaser shall be entitled to prematurely terminate the agreement, and the Contractor shall not be entitled to compensation, and to report this to the equal representation body of employers and employees. The Purchaser reserves the right to claim compensation for an amount exceeding the penalty for breach of contract.

3. The sub-contracting of work from this agreement to third parties (sub-contractors) requires the written permission of the Purchaser. The sub-contracting of work in several levels (multiple sub-contracting) is permitted only if the written permission expressly agrees to this. The written agreement must be obtained in writing from the Purchaser, before the relevant sub-contracting, together with the final contract with the sub-contractor, in any case before the relevant work starts.

In the event of the approved sub-contracting of work, the Contractor must require the sub-contractor in writing to comply in at least an equivalent manner with all provisions and regulations in accordance with Art. 6 Item 1, to provide evidence of compliance in accordance with Art. 6 Item 2, and to prohibit further sub-contracting, or,

in the event of approved multiple sub-contracting, to impose these obligations on further sub-contractors. He must also require the sub-contractor to reserve the Contractor's right in accordance with Art. 6 Item 2 to carry out checks if necessary and to take necessary measures.

If the Contractor infringes the above regulations on sub-contracting by permitting the sub-contracting of work or by having work carried out by a third party (sub-contractor) without receiving previous written agreement, he will be required to pay the Purchaser a penalty of CHF 25'000. In addition the Purchaser is entitled to fully or partly revoke the Contractor's right to carry out the work and the Contractor shall not have the right to claim compensation. The Purchaser reserves the right to claim compensation exceeding the amount of the penalty.

Even though the Purchaser may permit further sub-contracting, the Contractor remains fully responsible to the Purchaser for the contractually agreed performance of the entire contractually agreed services.

4. The Contractor is fully liable to the Purchaser for compliance with Art. 6.

Art. 7 Legal consequences of late delivery

1. If the Contractor cannot meet a contractually stipulated or extended delivery date (Art. 4, Para. 4) at the specified destination site or the assembly completion date, he shall pay the Purchaser a penalty for non-performance as per Art. 160 CO. For each full week of delay this penalty shall amount to 1% of the contract price. Starting from the fourth week of delay this rate shall be doubled. The total deduction for late delivery shall be limited to max. 10% of the contract price.
The delivery date shall be deemed to have been met if notification of availability of the Work at the destination site according to Art. 5, Para. 2, or notification of completion of assembly is received by the Purchaser within the specified time.
2. The penalty for non-performance shall be deducted from the payment to be made by the Purchaser or from the last payment instalment to be made by him. Settlement or setting-off of the payment does not release the Contractor from fulfilment of other obligations pursuant to the agreement (Art. 160, Para. 2 CO).
3. The Purchaser is entitled to set a reasonable time schedule for fulfilment thereafter. If fulfilment is not achieved even on the expiry of this date, the Purchaser is entitled to forego the belated delivery and either to demand compensation for damages arising from non-performance, or to withdraw from the agreement and to demand compensation for damages due to the agreement becoming null and void. The right of recourse to Art. 108 and 366 CO is reserved. In addition, the Purchaser cumulatively retains his right to payment of the penalty for non-performance in accordance with Para. 1.

Art. 8 Assembly, commissioning and trial operation

1. Assembly, commissioning and trial operation are included in the contract price.
2. If the agreement makes provisions for separately chargeable work at cost rate, this work will be invoiced at the assembly rates valid at the time of conclusion of the agreement. The accounts for work performed on a

cost rate basis are to be cleared monthly according to the working hour reports initialled by the Purchaser.

3. The Contractor undertakes to take out accident insurance at his own cost for all employees, workers and helpers involved in assembly, commissioning and trial operations who are employed and paid by him.
4. Assembly must be performed efficiently and as far as possible without interruption, and it must be effectively supervised.

Art. 9 Provisional acceptance, warranty period, final acceptance

1. 1. On completion of assembly the Work supplied by the Contractor will be subjected to a mutual inspection by the Contractor and the Purchaser, and a trial operation will be carried out to verify that the equipment functions correctly. If the inspection and trial operation prove successful, a report will be compiled on the results of these tests and signed by both parties. The signing of the report shall constitute the *provisional acceptance* of the Work.

If provisional acceptance is delayed for reasons for which the Purchaser is responsible, then this must be performed after the Purchaser has indicated his readiness for provisional acceptance, but in any case at the latest within six months after the Contractor notified readiness for provisional acceptance.

2. Compliance with the official regulations shall be verified at the latest prior to provisional acceptance.
3. The warranty period commences on the date of the provisional acceptance; at the same time ownership of the Work is transferred to the Purchaser.
4. The warranty period amounts to two years. The expiry of this period marks the *final acceptance*, insofar as the operating performance of the Work as a whole has been verified. A report is to be compiled upon final acceptance and must be signed by both parties. Approval of the Work in connection with final acceptance does not apply to deficiencies to which objections were filed during the warranty period and which, up to the time of the final takeover, have not yet been eliminated, as well as for parts which proved to be deficient only at the time of final acceptance.

If, for reasons for which the Purchaser can be held responsible, commissioning - and hence also provisional acceptance - are delayed, the warranty time shall be extended to a maximum of three years from notification of readiness for shipping.

5. In the event of deficiencies having to be rectified or replacement deliveries made, the warranty period for the parts affected by these measures begins on the day of the rescheduled provisional acceptance. In the case of major work, alterations and replacement part deliveries which are of fundamental importance for the functioning of the Work, a new warranty period shall be accorded for the entire consignment. The new warranty period shall, however, in no case last for more than five years after the initial provisional acceptance of the delivery or a part thereof.

Art. 10 Warranties

1. The Contractor warrants that the design and workmanship will be free from deficiencies, and that the equipment in its entire scope will function correctly. During the warranty period the Contractor will, as quickly

as possible and at his own cost, repair or replace (if necessary with parts of another suitable design) all parts and equipment which show defects in design, material, workmanship or assembly or which otherwise fail to meet the contractual stipulations.

2. Indirect advantages which ensue for the Purchaser as a result of rectification of deficiencies shall not be charged to the account of the Purchaser. Excepted from the warranty are normal wear and tear in the case of wearing parts and damages attributable to inadequate supervision or operating errors on the part of the plant personnel (despite correct and clear instructions in the documentation).

Art. 11 Legal consequences of non-adherence to warranties, liability for damage

1. If the consignment shows substantial deficiencies or non-conformance with the agreement to the extent that the Purchaser cannot use the goods or reasonably be expected to accept them, the Purchaser may refuse to accept the consignment, withdraw from the agreement and demand compensation for damages.
2. Should the deficiencies or non-conformance with the agreement be less substantial, the Purchaser shall allow the Contractor a reasonable period of time in which to carry out the required improvements as warranty work. If, within this time period, the deficiencies are not rectified or rectification is unsuccessful, the Purchaser is entitled to perform the warranty work himself or have it performed by a third party at the cost of the Contractor. If, instead, the Purchaser forgoes rectification of the deficiencies, or if it is only possible to rectify part of the deficiencies, the Purchaser is entitled to deduct an appropriate amount from the price corresponding to the reduction in value.

Art. 12 Bearing of risk, insurance, liability for damages

1. The Contractor bears the full risk for the entire Work up to provisional acceptance.
2. The Contractor is responsible for insuring the Work against the usual transport and storage risks, as well as assembly risks up to provisional acceptance. At the Purchaser's request the consignment will be insured for the account of the Contractor.
3. The Contractor shall be liable for all damages inflicted on the Purchaser through the delivery, the Contractor or the Contractor's personnel, with the exception of consequential damage such as power failures, production stoppages, loss of profits and other indirect damages. Liability for material damages and pecuniary losses is limited to CHF 10,000,000.00 per order. For orders with a value of over CHF 10,000,000.00, the cap on liability shall be agreed separately in each case.

Art. 13 Prices, terms of payment, securities

1. The specified prices are lump-sum fixed prices in Swiss Francs for the contractually stipulated, completed and accepted Work. The prices include all the Contractor's personnel and material outlay for the contractually stipulated scope of work.
2. No down payment or advance payment shall be made for orders amounting to less than CHF 100,000.00. The Purchaser can request a bank or insurance guarantee in accordance with Para. 6.

3. If, in the case of an order exceeding the amount of CHF 100,000.00, a down payment or an advance payment has been agreed, the Contractor shall provide, at no cost to the Purchaser, a security for the Purchaser's down payment or advance payment. The down payment or advance payment will be transferred within 30 days after receipt of the Contractor's order confirmation and a bank or insurance guarantee acceptable to the Purchaser (sample form of the Purchaser). The security shall be regarded as security for the payment to be made by the Purchaser up to provisional acceptance. It will be released by the Purchaser after the report has been signed (Art. 8, Para. 1).
4. If the Work is delivered in instalments, the payment instalments become due according to the stipulated payment schedule.
5. Payment of any agreed differences between the basic price and the final contract price will be made within 60 days following provisional acceptance and the final invoice. If provisional acceptance is delayed due to reasons for which the Contractor cannot be held responsible, the difference will become due six months after the scheduled provisional acceptance.
6. 10% of the final delivery shall remain unpaid as a warranty retainer until the warranty period has expired, or it will be paid with the last instalment after receipt of a bank or insurance guarantee acceptable to the Purchaser (sample form of the Purchaser).
The warranty retainer shall serve as security for the obligations of the Contractor ensuing from the warranty provisions. It will be released by the Purchaser when the warranty has expired if the Work is free from deficiencies or if the Contractor has completely fulfilled his warranty obligations. The warranty retainer shall not accrue interest.
7. Payments shall be made 30 days net after receipt of the invoices. The due dates of the individual payments shall be notified by the Contractor.

Art. 14 Proprietary rights

1. Pursuant to the Swiss Copyright Act, the copyrights pertaining to the Work shall be retained by the Contractor, unless the latter is expressly compensated for their transfer.
2. From the time of conclusion of the agreement onwards the Purchaser shall acquire all rights, unlimited in place or time, which are necessary for the initialisation, commissioning, operation, utilisation, servicing, maintenance and renovation of the Work, in particular ownership (within the meaning of Para. 1), application, utilisation,

licensing and amendment rights. To this end, the Contractor shall grant the Purchaser non-exclusive and non-transferrable rights. Free utilisation for test purposes is permitted. The source code of software is not a part of the transfer of rights.

3. If a third party asserts claims against the Purchaser relating to the goods and services of the Contractor on the grounds of a breach of intellectual property rights, the Purchaser must inform the Contractor without delay. The Contractor shall be liable vis-à-vis the Purchaser for all third-party legal claims arising out of the contractual fulfilment and is obliged to conduct any possible legal proceedings at his own expense on behalf of the Purchaser and to indemnify the Purchaser in respect of any possible losses. The Contractor shall ensure that such third-party claims do not cause any delays to the contractual fulfilment for the Purchaser and he shall be comprehensively liable vis-à-vis the Purchaser for any possible losses arising out of any such delay in the contractual fulfilment. The Purchaser undertakes to cooperate to the extent required by law in order to minimise the level of any such losses which he may thereby incur.

Art. 15 Subsequent deliveries, overhauls, repairs

1. The Contractor undertakes to perform any subsequent deliveries within the warranty period according to the conditions of the agreement and at reasonable prices. Furthermore, at the request of the Purchaser the Contractor shall perform any necessary overhauls and repairs to the Work supplied by him at reasonable prices after the warranty period has expired.

Art. 16 Applicable law, place of jurisdiction, disputes

1. This agreement shall be governed by Swiss law. The application of the United Nations Sales Convention on Contracts for the International Sale of Goods (UN Sales Convention, in force since 1 March 1991) is expressly excluded in full.
2. **The parties agree to Baden, Canton of Aargau, Switzerland, as the place of jurisdiction.**
3. If the parties cannot agree on an arbitration court, disputes arising between the Purchaser and the Contractor shall be handled by the regular courts; the right of appeal to the federal court is reserved.
4. Differences of opinion do not entitle the Contractor to interrupt the work or to refuse to perform any work or deliveries pursuant to the contract. Likewise, the Purchaser is not entitled to withhold payments which have become due.