

General Terms and Conditions of Business for Services

Art. 1 General

1. These General Terms and Conditions of Business for Services govern the conclusion, content and settlement of legal agreements pertaining to services, in particular planning services, engineering services, consultancy services, studies, monitoring, technical services and management as well as other services rendered by the Contractor for the Principal which have the nature of an order.
2. The General Terms and Conditions of Business for Services and the Axpo "Code for Business Partners" ("Code") in the version valid at the conclusion of the agreement are an integral part of the agreement.
3. The General Terms and Conditions of Business for Services and the Code shall apply unless contradictory written terms and conditions are agreed in the specific instance. General Business Terms 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 Services and the Code, the agreement shall take precedence and the General Terms and Conditions of Business for Services shall take second place.

Art. 2 Performances

1. The nature and scope of the services either correspond to the accepted offer (order) or shall be regulated in the contractual document.
2. Contractual amendments or supplements shall be made in writing.

Art. 3 Execution

1. The Contractor undertakes to fulfil the legal agreement professionally and diligently. He shall protect the interests of the Principal to the best of his knowledge and ability.
2. The Contractor shall keep the Principal regularly informed about the progress of the work and shall notify him immediately in writing of any circumstances which might influence contractual fulfilment. The Principal shall at all times be entitled to control and to demand information about all aspects of the order. The Contractor shall immediately inform the Principal comprehensively in writing about apparent deviations from the agreed processing workload as well as all further developments which, for technical or economic reasons, make changes to the agreed performances appear advisable.
3. At the request of the Principal the Contractor may at any time be required to present a statement of account pertaining to his business management, and shall provide all documents such as interim reports, calculations etc. which he has drawn up within the context of the legal agreement.
4. The Contractor shall inform the Principal in writing about any detrimental consequences of his instructions, in particular with respect to deadlines, quality and costs, and shall warn the Principal about inappropriate orders and requests.

Art. 4 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-contractor) as a result of legally binding regulations imposed by the authorities, the Principal shall be entitled to terminate the contract 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 Principal compliance with all the relevant provisions and regulations in accordance with Article 4 Item 1 for himself and his (agency) employees by means of substantiating records and documents immediately upon request. The Principal 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.

If the Contractor does not provide this evidence in accordance to Art. 4 Item 2 within ten working days upon written request by the Principal, he will be required to pay the Principal a penalty for breach of contract amounting to CHF 25'000, and the Principal 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 employ-

ers and employees. The Principal reserves the right to claim compensation for an amount exceeding the penalty for breach of contract.

3. The Contractor shall fulfil the order essentially in person, and may not involve the Principal in any obligations to third parties. The sub-contracting of work from this agreement to third parties (sub-contractors) requires the written permission of the Principal. 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 Principal, before the relevant sub-contracting, together with the final contract with the sub-contractor, in any case before the relevant work starts. The Contractor shall deploy only carefully selected and well-trained employees. In this respect he shall pay particular attention to the desire of the Principal to maintain continuity. At the request of the Principal the Contractor shall, within a reasonable period, replace employees who do not possess the necessary professional expertise or who otherwise impair the contractual fulfilment. 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. 4 Item 1, to provide evidence of compliance in accordance with Art. 4 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. 4 Item 2 to carry out checks if necessary and to take necessary measures.

If the Contractor infringes the above regulations on further 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 Principal a penalty of CHF 25'000. In addition the Principal 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 for this reason. The Principal reserves the right to claim compensation exceeding the amount of the penalty.

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

The Contractor is fully liable to the Principal for compliance with Art. 4. The third parties engaged by the Contractor to fulfil the legal agreement shall in all cases be deemed to constitute his vicarious agents within the meaning of Art. 101 of the Swiss Code of Obligations; CO. The approval or acknowledgement of the Principal in respect of the engagement or replacement of third parties shall not affect the liability of the Contractor arising out of or in conjunction with the legal agreement. Art. 399 Para. 2 CO shall be expressly excluded.

Art. 5 Remuneration

1. The Contractor shall render the performances at fixed prices or on a time and materials basis with an upper limit on the level of remuneration (cost cap). He shall report the cost types and cost rates in his offer.

If the effective cost reaches 80% of the cost cap, the Contractor must report this to the Principal in writing without delay. In his report the Contractor must specify whether the services can be rendered within the agreed cost cap, or whether the cost cap is likely to be exceeded, and to what extent. If this is the case, then the Contractor must simultaneously provide the Principal with grounds for the cost overrun as well as the sum of the expected expenditure for the contractually-compliant rendering of the agreed scope of performances. In the absence of the prior written approval of the Principal, the agreed cost cap may not be exceeded under any circumstances.

If the Principal does not agree in writing to the new, raised cost cap within 5 working days, then he must inform the Contractor within the same deadline whether he wishes to waive further services or whether the Contractor is to continue rendering his services until the cost cap has been reached. If the Principal gives no response, the latter shall be applicable. The Contractor may continue to invoice the expenses incurred up until the date of the waiver or the date on which the cost cap is reached.

2. Remuneration shall be in Swiss francs and shall settle all performances which are required for the proper fulfilment of the legal agreement. The remuneration shall in particular cover all incidental costs such as expenses, secretarial services, all social benefits and other compensatory benefits for illness, disability and death as well as official fees (e.g. VAT). Inflation shall be taken into account only by special written agreement.
3. Invoices for remuneration shall be issued monthly on a time and materials basis. In the case of fixed prices, invoices will be issued following the rendering of the performances or in accordance with the payment schedule, insofar as an arrangement of this nature has been agreed. Invoices must be paid within 30 days following receipt.
4. If the Contractor renders the performances on a time and materials basis, he shall deliver reports initialled by the Principal together with the invoice.
5. If payment instalments (down-payments and advance payments) are agreed, the Principal may demand securities in the form of a bank or insurance guarantee from the Contractor free of charge in the case of orders worth over CHF 100,000.00.

Art. 6 Safeguarding confidentiality

1. The contracting parties shall treat all facts which are neither obvious nor in the public domain as confidential. Confidentiality must be safeguarded even before the legal agreement is concluded, and shall remain in force after the ending of the contractual relationship. Statutory disclosure obligations remain reserved.
2. If the Contractor is planning to publicise this contractual relationship or to use this for advertising purposes, he must first obtain the written consent of the Principal.

Art. 7 Default

1. In the event of failure to adhere to the default deadlines specified in the contractual document, the Contractor shall automatically be deemed to have defaulted. In other cases a warning will be issued and a reasonable period of grace will be set.

2. If fulfilment is not realised by the end of the period of grace, the Principal may withdraw from the legal agreement by sending written notification to the Contractor. The performances rendered prior to the dissolution of the legal agreement must be remunerated.
3. If the Contractor defaults, then he shall owe a contractual penalty amounting to 0.5% of the remuneration for each day of the arrears, although no more than 10% of the total remuneration. Payment of the contractual penalty shall not release the Contractor from his contractual obligations. In cases of force majeure no contractual penalty shall be owed.

Art. 8 Liability, Insurance

1. The Contractor shall be liable for the faithful and careful execution of the order, and shall guarantee that his performances correspond to the contractual conditions and specifications as well as to the current state of the art and technology.
2. He shall be liable for any damage caused by his employees in the exercise of their tasks.
3. For the duration of the order the Contractor undertakes to maintain liability insurance cover amounting to at least CHF 5 million, to maintain this insurance cover for the duration of the legal agreement and to automatically present the corresponding valid insurance certificates to the Principal.

Art. 9 Termination of the contractual relationship

1. The order may be rescinded by either contracting party at any time in writing. The performances rendered prior to the contractual dissolution must be remunerated.
2. Compensation claims brought on the grounds of untimely contractual dissolution remain reserved. Compensation for loss of earnings is excluded.

3. Following the termination of the contractual relationship the Contractor must automatically return all documents received from the Principal as well as all work results, both written as well as in machine-readable form.

Art. 10 Assignment and pledging

1. Claims arising out of the present legal agreement to which the Contractor is entitled may not be assigned or pledged without the prior written consent of the Principal.

Art. 11 Proprietary rights

1. All of the proprietary rights to intellectual property which arise during the contractual fulfilment (rendering of the service) belong to the Principal. The Contractor shall contractually ensure that the personnel deployed by him and by any commissioned third parties are not entitled to any copyrights or patents pertaining to work results.
2. The Contractor undertakes to fend off immediately the claims of third parties brought on the grounds of a breach of proprietary rights and to assume all the costs, including compensation, which the Principal incurs in this conjunction.
3. The Principal undertakes to inform the Contractor about such claims without delay, and to provide him with all documents which can be used in his defence, insofar as this is compatible with confidentiality obligations.

Art. 12 Applicable law and place of jurisdiction

1. The contractual relationship shall be governed by Swiss law.
2. **The place of jurisdiction is Baden AG, Switzerland.**
3. Disputes between the Principal and the Contractor, insofar as the parties do not agree to a court of arbitration, shall be settled by the ordinary courts; the right of appeal to the Federal Court remains reserved.