

General Terms and Conditions for Contracts for Work and Labour (Version September 2013)

1. Introductory remarks

- 1.1 These General Terms and Conditions («GTC») govern the conclusion, content and performance of contracts for work and labour between Swissgrid Ltd as customer (hereinafter referred to as «Swissgrid») and the supplier (hereinafter referred to as «Contracting Party»).
- 1.2 If the Contracting Party submits a quotation to Swissgrid, it thereby accepts these GTC.
- 1.3 Arrangements between the Contracting Party and Swissgrid that amend or add to the GTC shall only be valid if made in writing.

2. Quotation

- 2.1 The quotation including any demonstrations shall be provided free of charge unless noted otherwise in the request for quotation or call for tenders.
- 2.2 The Contracting Party shall submit the quotation on the basis of the request for quotation or call for tenders. The manner of implementation stipulated in the specifications sheet shall be binding. In case the Contracting Party does not consider itself able to take full responsibility for the manner of implementation (in accordance with Section 25 SIA Norm 118 [1977/1991]), counterproposals must be made. Counterproposals, additions and changes to the specifications sheet must be listed as an alternative quotation by the Contracting Party in a separate accompanying document. The Contracting Party may, at its discretion, submit additional alternatives. The Contracting Party's alternative proposals must be substantiated in the quotation.
- 2.3 The Contracting Party shall itemise value-added tax (VAT) and any charges separately in the quotation.
- 2.4 The quotation shall be binding for four months from the date of receipt by Swissgrid unless otherwise specified in the request for quotation or call for tenders.

3. Performance of the contract

- 3.1 The Contracting Party undertakes to perform the contract in a workmanlike and careful manner. It shall safeguard the interests of Swissgrid to the best of its knowledge, taking into account the generally accepted standards in its specialist area.
- 3.2 The Contracting Party shall fulfil the contract personally or using its own employees and may not commit Swissgrid in respect of third parties. The Contracting Party may only assign rights and obligations, in whole or in part, with the written approval of Swissgrid. The Contracting Party shall remain responsible that services provided by contracted third parties are in conformity with the contract.
- 3.3 The Contracting Party shall only employ carefully selected and well trained staff. In doing so, it shall observe in particular Swissgrid's interest in continuity of personnel. On first request by Swissgrid, the Contracting Party shall replace employees who, in the view of Swissgrid, (i) do not possess the required

professional skills, (ii) ignore safety/security instructions or the internal rules at Swissgrid, (iii) behave improperly at the deployment location, or (iv) compromise performance of the contract in any other way.

- 3.4 The Contracting Party agrees to comply with Swissgrid's Code of Conduct as a minimum standard (respective version as published at www.swissgrid.ch). In particular, it shall avoid conflicts between its own interests and those of Swissgrid. The Contracting Party shall inform Swissgrid promptly about potential conflicts of interest.

4. Obligations to provide information on the part of the Contracting Party

- 4.1 The Contracting Party shall inform Swissgrid regularly about the progress of work. It shall immediately notify, **in writing** (meaning a strict formal requirement according to Art. 16 of the Swiss Code of Obligations (OR)), any circumstances that could jeopardise performance as specified in the contract. If changes are identified in phases or sub-phases yet to be completed, the Contracting Party shall report this to Swissgrid promptly in writing.
- 4.2 The Contracting Party shall inform Swissgrid promptly and comprehensively, in writing, about any identifiable divergences from the agreed cost and about any circumstances that make it advisable to change the agreed services, especially for technical or economic reasons.
- 4.3 Failure to comply with these duties to inform shall be deemed a waiver by the Contracting Party of any claims to additional remuneration and extension of deadlines.

5. Swissgrid's rights to monitor

- 5.1 Swissgrid shall at all times have a comprehensive right to monitor and be given information on the progress of work and all parts of the contract.
- 5.2 Swissgrid shall be entitled to check at any time, that the performance by the Contracting Party complies with the contract, either by Swissgrid itself or through a third party. The result of such inspections shall not be deemed approval of the work in respect of the Contracting Party.
- 5.3 On the request of Swissgrid, the Contracting Party shall at any time provide an account of its business conduct and shall provide all documentation, such as interim reports, calculations, etc., which it prepared in connection with the contract.

6. Swissgrid's right to instruct

- 6.1 Swissgrid shall be entitled to issue instructions to the Contracting Party within the scope of contract performance. The Contracting Party shall notify Swissgrid **in writing** (meaning a strict formal requirement according to Art. 16 OR) of the detrimental consequences of its instructions, in particular with regard to deadlines, quality and costs, and shall advise against any inexpedient instructions and requests. Should

Swissgrid maintain its instruction **in writing** (meaning a strict formal requirement according to Art. 16 OR) despite prior written warning by the Contracting Party, the Contracting Party shall not be liable for the consequences.

7. Performance of the work

- 7.1 Swissgrid shall define in the contract the work to be performed by the Contracting Party. At the time the work is handed over, the Contracting Party shall deliver to Swissgrid a complete set of documentation in the agreed languages and agreed quantity, electronically or in hard copy, in a form that can be copied.
- 7.2 Any additional works not envisaged in the contract but considered necessary in the course of implementation must be offered in writing, approved and ordered **in writing** (meaning a strict formal requirement according to Art. 16 OR) prior to the start of such works. These supplementary quotations shall be calculated on the same basis and price basis as the main quotation. They shall be subject to the same terms and conditions in their entirety. Moreover, Swissgrid may at any time request a change to agreed services, and additional services. It shall in this case remunerate the Contracting Party for proven and approved work which occurred prior to the change to the order and has been rendered useless by the change.
- 7.3 If Swissgrid requests a change to aspects of the work to be performed, the Contracting Party shall inform Swissgrid within ten working days, **in writing** (meaning a strict formal requirement according to Art. 16 OR) whether the change is possible and what effect it would have on the services to be provided and on the remuneration and deadlines. The Contracting Party may not refuse consent to a proposed change by Swissgrid if the change is objectively possible and the overall character of the performance to be provided remains intact. Swissgrid shall decide within ten working days from receipt of the notification whether the change shall be implemented. If the Contracting Party wishes to make a change, Swissgrid may accept or reject the relevant request within ten working days from receipt of the notification.
- 7.4 Should the Contracting Party be of the view that an instruction or change of plan is to be classified a change of order in terms of Section 84 SIA Norm 118 [1977/1991], it shall notify Swissgrid **in writing** (meaning a strict formal requirement according to Art. 16 OR) within seven calendar days of receipt of the instruction or change of plan. In the absence of such notification by the Contracting Party, Swissgrid shall be entitled to assume that any instructions issued merely constitute further specification of the originally agreed works. Where the change of order could potentially have a significant impact on the works – in particular with regard to compliance with time periods and deadlines or with regard to the price of the work – the Contracting Party shall inform Swissgrid accordingly prior to implementing the change of order. Failure to provide this information shall be deemed a waiver by the Contracting Party of any claims which may have arisen from the change of order, specifically extensions of time periods, adjustments of deadlines or additional remuneration.

- 7.5 The Contracting Party shall continue its work as specified in the contract while requests for change are being examined, unless Swissgrid issues instructions to the contrary.

8. Acceptance procedure

- 8.1 The Contracting Party shall notify Swissgrid of completion of the works by sending a written acceptance request. Any agreed interim inspections or additional acceptance procedures shall be notified in the same manner. The Contracting Party shall obtain written confirmation of the acceptance procedure and the agreed date. The acceptance procedure shall be recorded in a protocol and the protocol signed by both parties.
- 8.2 The contracting parties shall agree the acceptance procedure and the date of acceptance.
- 8.3 If no defects are apparent during the inspection, the performance shall be accepted when the protocol is signed. If only immaterial defects are apparent during the inspection which do not, or only insignificantly, impair use of the work, performance shall nonetheless be accepted when the protocol is signed. The Contracting Party shall remedy the identified defects as part of the warranty services.
- 8.4 Should material defects become apparent during inspection which render commissioning of the work unreasonable, acceptance shall be deferred and the parties shall agree a new acceptance date after rectification of the identified defects. If this inspection also reveals material defects and if the parties fail to agree on how to proceed, the contract shall end and all payments shall be refunded. Claims for damages are reserved.
- 8.5 Upon acceptance of the work, the Contracting Party shall submit a declaration by its subcontractors and suppliers confirming that they have been paid for their services in accordance with the concluded contracts and that they waive the right to register a construction worker's lien where this would be permissible due to the nature of the matter.
- 8.6 If, despite a reminder, Swissgrid does not conduct an acceptance inspection within a reasonable period of grace, due to reasons for which it is responsible, the performance shall be considered as accepted.

9. Warranty and guarantees

- 9.1 The Contracting Party warrants that the work has the assured characteristics as agreed and warranted, as well as those characteristics that Swissgrid could expect in good faith, even without a particular agreement. The Contracting Party furthermore warrants that it shall hand over any work under this contract with all assured, agreed and in good faith to be expected characteristics for use as specified, and that the work complies with the relevant statutory provisions.
- 9.2 If there is a defect, Swissgrid may in its sole discretion either demand remedy or deduct an amount from the remuneration corresponding to the reduction in value. If Swissgrid requires remedy, the Contracting Party shall remedy the defect within the time limit set by Swissgrid and shall bear the resulting costs. If it is only possible to remedy the defect by preparing a new item, the right to remedy shall also extend to the right to preparation of a new item. Where the Contracting

Party fails to perform the requested remedy, or fails to perform it within the specified time period, Swissgrid may, without further notice and in its sole discretion,

- a. deduct an amount from the remuneration corresponding to the reduction in value;
- b. perform remedy itself or through a third party at the expense and risk of the Contracting Party; in this case the Contracting Party shall be under obligation to surrender all documents and plans to Swissgrid;
- c. withdraw from the contract.

9.3 Assertion of claims for consequential damages is expressly reserved and shall be governed by the provisions in Section 17.

9.4 The Contracting Party warrants (meaning an independent guarantee in accordance with Art. 111 OR) that it and third parties contracted by it possess all the rights to provide the services as specified in the contract. It is entitled in particular to grant Swissgrid the rights to the work results to the extent agreed in the contract.

9.5 The Contracting Party warrants (meaning an independent guarantee in accordance with Art. 111 OR) that it shall use and copy all documentation provided by Swissgrid, including documentation in electronic format, only for the purposes of service performance. In this respect, Swissgrid warrants that use of the documentation by the Contracting Party does not infringe any third-party property rights.

10. Remuneration

10.1 The remuneration stipulated in the contract shall be compensation for all services to be provided for proper performance of the contract. Remuneration shall in particular also cover the transfer of rights, all documentation and cost of materials as well as expenses, licence fees and public levies.

10.2 Any overrun of an agreed cost ceiling shall be borne by the Contracting Party unless Swissgrid has given its **written** (meaning a strict formal requirement according to Art. 16 OR) consent to a change in the order, or it can be proved that Swissgrid is demonstrably responsible for the additional costs.

10.3 Services that cannot be defined conclusively when the contract is signed shall be identified as such in the contract. Swissgrid and the Contracting Party shall agree on the content and scope of these services as well as their remuneration and calculation basis, using the original basis for costing and calculation. This shall be done prior to performance of the services, in a written supplement to the contract.

10.4 Swissgrid reserves the right to deduct from the fee any additional costs and/or cost overruns for which the Contracting Party is responsible. Swissgrid shall remain entitled to claim for compensation in all events.

10.5 If the Contracting Party is responsible for the occurrence of defects, Swissgrid may retain an amount equal to not less than the estimated cost of remedying the defect plus the estimated loss or damage.

11. Interruption of work

11.1 Interruptions of work ordered by Swissgrid or by the public authorities shall not entitle the Contracting

Party to any additional compensation. However, any deadlines or periods of grace that would otherwise give rise to default pursuant to the contract shall be extended for the duration of the interruption of work.

11.2 If, when the work is resumed, the delay makes it necessary to revise the existing basis or if additional costs become necessary in any other way, these additional services and their remuneration shall be agreed in writing between the parties before the work is resumed.

12. Contracting Party

12.1 If the Contracting Party is a legal entity, it shall make the necessary registrations as an independent company for itself and its employees with the social security agencies. If the Contracting Party is not a legal entity, it must prove, on submission of the quotation, that it is a member of a compensation fund as a self-employed person.

12.2 The Contracting Party is responsible for all social security contributions (in particular old-age and survivors' insurance (AHV), disability insurance (IV), unemployment insurance (ALV)) or other compensation benefits, particularly in the event of accident, illness, disability and death in connection with the agreed services; Swissgrid does not accept any responsibility in this respect.

13. Default

13.1 The Contracting Party shall be in default if it fails to comply with the deadlines agreed in the contract, without further notification being required.

13.2 If obligations are not met within a reasonable period of grace granted by Swissgrid, Swissgrid may withdraw from the contract with immediate effect by notifying the Contracting Party in writing. Swissgrid may, in its sole discretion, pay remuneration for the services provided prior to the dissolution of the contract, subject to the condition that they were carried out as specified in the contract and they are of use to Swissgrid.

13.3 For each full and each commenced calendar day beyond the agreed due date, the Contracting Party shall be liable to pay Swissgrid a **contractual penalty** of 0.1 per cent of the agreed price. However, the contractual penalty shall be limited to 10 per cent of the total remuneration claim pursuant to Section 10, plus VAT. The contractual penalty shall also apply if, and for as long as, one or several material defects in the service to be provided by the Contracting Party have not been remedied. Where the damage caused by the delay exceeds the amount of the contractual penalty, Swissgrid shall be entitled to claim the effective damage caused by the delay, under assumption of fault on the part of the Contracting Party. In addition, Swissgrid shall be entitled to demand full contract performance. In deviation from Art. 160 (2) OR, the contractual penalty shall be due despite any unconditional acceptance by Swissgrid.

13.4 Swissgrid shall be entitled to deduct the contractual penalty from any claim for remuneration by the Contracting Party. Where the deducted contractual penalty is disputed, the Contracting Party shall nevertheless not be released from its duty to perform the contract in its entirety and without interruption. No contractual penalty shall be owed in the event of force majeure.

14. Ensuring of confidentiality

- 14.1 The contracting parties shall treat as confidential all information and documentation which they obtain in connection with this contractual relationship and which is not obvious or in the public domain. The parties shall be responsible for ensuring that these provisions are also complied with by all employees, auxiliary personnel, contracting parties and other third parties.
- 14.2 Confidentiality shall be observed even before contract conclusion. This obligation shall continue to apply for ten years after the termination of the contractual relationship, irrespective of the reasons for terminating the contractual relationship, and of the terminating party. Statutory obligations shall continue to apply.
- 14.3 The contracting parties may process data (e.g. addresses, credit rating details, information about services and quotations) that they obtain in connection with the present contractual relationship within the scope of the business contact. The contracting parties assume that the data transfer and processing will involve cooperation with third parties within Switzerland and abroad.
- 14.4 If the Contracting Party wishes to use this contractual relationship for advertising purposes, or publish about it, the prior written approval of Swissgrid shall be required.
- 14.5 Should a contracting party or a third party engaged by it breach the above confidentiality obligations, it shall be liable to pay the other party a contractual penalty. In each case this shall amount to 10% of the total remuneration, although not more than CHF 50,000. Payment of the contractual penalty shall not release the offending party from its obligations of confidentiality. Claims for damages are reserved.

15. Copyright and other property rights

- 15.1 All intellectual property rights arising in connection with the performance of the contract shall remain with the Contracting Party.
- 15.2 Swissgrid shall be granted a non-exclusive, transferable license, without restriction in terms of time, location and matter, to the copyrights and property rights, which shall enable it to use and dispose of the work product.
- 15.3 Swissgrid shall be granted a transferable, non-exclusive license, without restriction in terms of time, location and matter, in relation to pre-existing property rights to parts of agreed work product. This license shall enable it to use and dispose of the work results.

16. Document storage

- 16.1 The Contracting Party shall store all documents and documentation that relate to this contractual relationship and that have not been passed to Swissgrid as originals for at least 10 years from the date on which the contract ends. The documentation shall be stored free of charge in the same condition as when it was prepared.

17. Liability

- 17.1 Each party shall be liable for damages caused to the other party, unless it can prove that it was not at fault. At all events, liability shall be limited to the proven damage that was actually incurred. As far as legally

possible, liability for indirect damage, consequential damage or lost profit shall be excluded.

- 17.2 The parties shall be liable in accordance with Section 17.1 for the conduct of their employees and other auxiliary personnel and third parties they contract for performance of the contract (e.g. suppliers, sub-contractors, substitutes) as for their own staff. Any acknowledgement or approval of the contracting of third parties shall not affect the liability of the Contracting Party pursuant to or in connection with the contract. Art. 399 (2) OR is expressly waived.

18. Limitation period and time limits for notification of defects

- 18.1 Subject to Section 18.2 beneath, all claims resulting from the contract shall become time-barred after ten years from the date of the action causing the damage.
- 18.2 Claims resulting from defective work shall lapse after two years; claims from defects in construction work shall lapse after five years. The time period shall commence upon acceptance of the work. Any claims for defects may – subject to the limitation period applicable to warranty claims – be asserted at any time.

19. Applicable law, place of jurisdiction

- 19.1 Swiss law shall apply. Application of the UN Convention on Contracts for the International Sale of Goods (CISG) of 11 April 1980 (Vienna Convention) is excluded expressly and fully.
- 19.2 **The place of jurisdiction shall be Aarau, Switzerland.**