

**General Terms and Conditions for Service Agreements (Version September 2013)****1. Introductory remarks**

- 1.1 These General Terms and Conditions («GTC») govern the conclusion, content and performance of service agreements between Swissgrid Ltd as client (hereinafter referred to as «Swissgrid») and the contractor (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 demonstration 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. It may, at its discretion, submit additional alternatives. It shall itemise the value-added tax (VAT) and any fees separately in the quotation.
- 2.3 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](http://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)), of 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. Specifically, Swissgrid shall be entitled at any time to access and audit all documents of the Contracting Party which are related to the performance of the order.
- 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 release the Contracting Party from its full responsibility for its services.
- 5.3 On the request of Swissgrid, the Contracting Party shall at any time provide an accounting 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. Remuneration**

- 7.1 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 material costs as well as expenses, licence fees and public levies.

- 7.2 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.
- 7.3 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.
- 7.4 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 compensation for damages in all events.
- 7.5 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.

## 8. Interruption of work

- 8.1 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.
- 8.2 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.

## 9. Contracting Party

- 9.1 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.
- 9.2 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.

## 10. Default

- 10.1 The Contracting Party shall be in default if it fails to comply with the deadlines agreed in the contract, without further notification being required.
- 10.2 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.

- 10.3 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% of the agreed price. However, the contractual penalty shall be limited to 10% of the total remuneration claim pursuant to Section 7, 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.
  - 10.4 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.
- ## 11. Ensuring of confidentiality
- 11.1 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.
  - 11.2 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.
  - 11.3 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.
  - 11.4 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.
  - 11.5 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.

## 12. Copyright and other property rights

- 12.1 All intellectual property rights arising in connection with the performance of the contract shall remain with the Contracting Party.
- 12.2 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.
- 12.3 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.

## 13. Document storage

- 13.1 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.

## 14. Liability

- 14.1 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.
- 14.2 The parties shall be liable in accordance with Section 14.1 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.

## 15. Limitation period

- 15.1 The period of limitation for claims arising from this contract, specifically from the Contracting Party's liability for any faults, including any construction defects caused by or contributed to by the Contracting Party, shall be ten years. This period shall commence upon occurrence of the damaging event and/or, in the case of construction defects, upon acceptance of the work; in case of survey reports it shall commence upon their delivery.

## 16. Applicable law, place of jurisdiction

- 16.1 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.
- 16.2 **The place of jurisdiction shall be Aarau, Switzerland.**