

# GENERAL TERMS AND CONDITIONS OF SBB AG FOR THE MAINTENANCE OF FACILITIES, TECHNICAL SYSTEMS, MACHINERY AND EQUIPMENT (GTC-MAINT)

## 1 Scope of application

These General Terms and Conditions (GTC) regulate the content and performance of contracts for the maintenance of facilities, technical systems, machinery and equipment. They can only be changed by deviating regulations in the contractual document.

## 2 Offer

- 2.1 The offer shall generally be made free of charge.
- 2.2 If the offer differs from the request for quotes issued by SBB AG, the Company shall expressly point this out. The Company shall expressly note if third-party intellectual property rights might noticeably restrict its fulfilment of the order.
- 2.3 All documents made available by SBB AG (plans, functional descriptions, etc.) shall remain the property of SBB AG and shall be re-attached to the offer.
- 2.4 If the facility documentation is not available in its entirety, the Company cannot demand additional remuneration due to missing documentation.
- 2.5 The offer shall be binding during the period specified by SBB AG. If the request for quotes or the offer does not contain any other deadline, the Company shall remain bound for 6 months from the date of the offer.

## 3 Execution

- 3.1 The Company shall inform SBB AG regularly about the progress of work and shall obtain all necessary specifications. It shall immediately indicate in writing all circumstances which could jeopardize the fulfilment of the Agreement, lead to changes in subsequent phases, increase the agreed workload for the provision of the services or impair existing systems or facilities. It shall inform SBB AG about all further developments which make a change to the scope or nature of the services appear to be appropriate for technical or commercial reasons.

- 3.2 The Company shall comply with the company regulations of SBB AG, in particular the health and safety regulations and the house rules. During work in electrical systems and adjacent to tracks, it shall follow all the instructions issued by SBB AG. It shall ensure that these regulations and instructions are followed by subcontracted third parties.

- 3.3 The Company shall obtain the resources, tools and equipment required for carrying out the work at its own expense. It shall only have access to systems and spare parts of SBB AG to the extent that this has been expressly agreed.

- 3.4 The Company is not entitled to derive any claims resulting from minor interruptions in work and waiting times attributable to operation.

## 4 Place of performance

The place of performance shall be the respective location of the facility to be maintained.

## 5 Changes to services

- 5.1 SBB AG is entitled to demand that services be changed insofar as their overall character remains unaffected.

- 5.2 The change to services and any adjustments to remuneration, dates and other contractual points shall be recorded in writing in a supplement to the contractual document prior to implementation. If no such agreement is made, the provisions of the original contract shall apply. The adjustment of the remuneration shall be calculated according to the rates of the contractually agreed cost basis. If this is not possible, and no agreement is reached on the points to be adjusted, SBB AG is entitled to provide the corresponding services itself or award them to a third party.

- 5.3 Unless otherwise agreed, the Company shall continue its work as scheduled during the review of proposed changes.

## **6 Repair**

Repair work must generally be documented in an offer and may only be carried out following a written order from SBB AG. Exceptions must be agreed in advance with SBB AG.

## **7 Involvement of third parties**

- 7.1 Involvement of third parties (freelance staff, specialists, etc.) in the performance of the Contract requires the prior written consent of SBB AG.
- 7.2 In its agreements with third parties, the Company shall adopt all provisions of the present Contract that are required for the protection of the interests of SBB AG.
- 7.3 The third parties commissioned by the Company for the performance of this Contract shall qualify as auxiliary persons within the meaning of Art. 101 of the Swiss Code of Obligations (CO). Consent or acknowledgement given by SBB AG with regard to the involvement of such third parties shall not affect the Company's liability arising from or in connection with the Contract. Art. 399 para. 2 CO is explicitly excluded.

## **8 Remuneration**

- 8.1 In its offer, the Company shall state the type of remuneration and cost rates in accordance with the specifications of SBB AG.
- 8.2 The remuneration shall cover all services required for the proper performance of the Contract. All ancillary costs and any surcharges for maintenance work (e.g. night work, travel time) shall be listed in detail in the offer price sheet.
- 8.3 The Company undertakes to supply all replacement parts and tools at market prices. SBB AG shall be entitled to verify this.
- 8.4 The remuneration shall generally be due after the services have been performed. Services which are charged at a flat rate for the entire calendar year may be invoiced in the middle of the respective calendar year. Any due dates deviating from the foregoing shall be agreed separately in the Contract.

## **9 Right of SBB AG to make direct payments**

Should the Company encounter payment difficulties or should serious differences arise between the Company and the third parties it

has commissioned or SBB AG, the latter may - after consulting the parties concerned and subject to the issue of a valid invoice - pay the commissioned parties directly or deposit the amount concerned. This will in both cases release it from its payment obligation.

## **10 Intellectual property rights**

- 10.1 Documents and know-how that SBB AG makes available to the Company in the context of performing the Contract may be used strictly for project-related purposes only. The Company must impose the same obligations on any third parties (e.g. subcontractors) engaged by it. SBB AG reserves the right to institute measures against any unauthorised use (such as copying or distribution) of the documentation or against any other violation of its rights.
- 10.2 All rights to the Company's work results produced specifically for SBB AG, in particular rights to all maintenance documentation, databases, contents of databases in readable form, source code, etc., shall be transferred in full to SBB AG upon payment of the remuneration agreed for the corresponding services.
- 10.3 SBB AG shall be entitled, in particular, to continue to use, further develop and modify any designs, drafts, sketches, plans, models, etc. itself or with the involvement of third parties and to publish these under its own corporate identity.

## **11 Default**

If the company fails to meet a defined deadline or schedule (expiry-date business) stipulated in the contractual document as giving rise to a default situation, it shall automatically be in default; in other cases it shall be in default following dunning and after a reasonable extension period has been granted.

## **12 Contractual penalty**

- 12.1 If the company does not fulfil its obligation to meet a deadline, or fails to comply with workplace safety provisions (provision "Compliance with workplace safety provisions, working conditions, equal pay and environmental law"), or with integrity provisions (para. 2 or 3 of the provision "Integrity"), a contractual penalty shall be payable, unless it proves that it is not at fault.

## 12.2 Amounts:

- in the event of breach of contract with regard to time of performance, the amount specified in the provisions in the contractual document, but at most 10% of the overall compensation for a one-time service, or 10% of the compensation for 12 months in case of recurring services, unless otherwise stated in the contractual document. If a deadline which triggers a contractual penalty is postponed by mutual agreement, such deadline also applies to the contractual penalty.
- in the event of a breach of workplace safety provisions, 10% of the contract amount per case, with a minimum of CHF 3,000 and a maximum of CHF 100,000.
- in the event of infringement of integrity provisions: for each violation, 15% of the presumed amount payable under the contract affected by the breach.

12.3 If a party is in breach of confidentiality provisions, a contractual penalty shall be payable to the other party, unless it proves that it is not at fault. The contractual penalty shall be 10% of the contract amount per case, with a minimum of CHF 3,000 and a maximum of CHF 100,000.

12.4 If a framework agreement is in place, the amount payable for the yearly needs in the previous year shall be used as the basis for calculating the contractual penalty. In the first year of the contract or if nothing was paid in the previous year, the amount payable for planned yearly needs shall be used as the basis instead.

12.5 Payment of a contractual penalty does not exempt the company from its other contractual obligations, and is still payable even if performance is accepted without reservation.

12.6 SBB AG may also assert claims for damages which it incurs, unless the company proves that it is not at fault. The contractual penalty shall be credited against any damages payable.

12.7 SBB AG is entitled to offset the contractual penalty against the amount payable under the contract.

## 13 Warranty

13.1 The company warrants to SBB AG that its goods/services

- have the agreed properties for known and bona fide foreseeable purposes,
- shall be rendered in a professional manner and
- comply with the relevant statutory and official regulations and are state-of-the-art.

13.2 A defect is any deviation from the contract, irrespective of whether the company is at fault.

13.3 In the event of a defect, SBB AG may initially only demand rectification free of charge. The company shall remedy the defect within the specified appropriate period and shall bear all resulting costs. In cases where the defect can only be rectified by remanufacturing the system, the right to demand rectification shall also include the right to remanufacturing.

13.4 If the company fails to carry out the requested rectification within the specified deadline, or does not do so successfully, SBB AG may, at its own discretion:

- continue to demand rectification or replacement delivery;
- deduct a proportionate amount corresponding to the loss of value;
- claim possession of the necessary documents and information (in particular the source code) insofar as no legal or contractual provisions prevent this, and take the necessary measures itself or have them carried out by a third party at the company's expense and risk, though this only applies in the case of significant defects;
- or withdraw from the contract, though this only applies in the case of significant defects.

13.5 Warranty rights shall expire within 2 years of performance.  
For products that are stored as inventory by SBB AG, warranty rights shall expire within 2 years of installation, and no later than 3 years after the date of contractual delivery to SBB AG.

13.6 If a defect is fraudulently concealed, warranty rights may be asserted in the 10-year period following the start of the warranty period.

13.7 Once a reported defect has been rectified, the warranty period shall start anew for the repaired component.

13.8 Defects may be reported at any time during the warranty period. If there is a dispute as to whether an alleged defect actually constitutes a deviation from the contract and is therefore a defect as defined in the contract, the burden of proof shall lie with the company.

13.9 If the Company has completed the works, any spare part deliveries and associated costs during the warranty period shall be deemed rectification of defects unless the Company can prove the contrary.

## 14 Liability

14.1 The company is liable for all damages, including damages as a result of

- missed deadlines,
- defects, including, in particular, consequential damages,
- other breaches of contract,

unless it proves that it is not at fault.

14.2 The company is liable for the actions of auxiliary persons (e.g. its employees, substitutes, subcontractors, suppliers, or sub-suppliers) as if such actions were its own.

14.3 The liability of the parties for personal injury shall be unlimited. Liability for property damage and pure financial loss due to ordinary negligence is limited as follows:

- missed deadlines: 20% of the annual remuneration, the minimum amount payable being CHF 50,000.
- defects, including, in particular, consequential damages: for property damage, 3 x the annual remuneration, the minimum amount payable being CHF 100,000; for pure financial loss, 1 x the annual remuneration, the minimum amount payable being CHF 50,000.
- other breaches of contract: 1 x the annual remuneration, the minimum amount payable being CHF 50,000.

14.4 The limitations of liability do not apply if statutory liability applies.

14.5 Any **contractual penalties** shall be credited against the damages payable.

14.6 The parties shall support each other in the event of **claims by third parties**, or when asserting damages claims against third parties.

14.7 If a party has to pay damages to a third party, it shall be fully **indemnified** by the party liable in the internal relationship.

14.8 Any recourse against **employees** of the liable party is mutually excluded.

## 15 Compliance with rules on health and safety at work, terms of employment, equal pay and environmental law

The company undertakes to comply with rules on health and safety at work, terms of employment, equal pay and the legal provisions applicable at the place of performance concerning environmental protection and the conservation of natural resources in accordance with the self-declaration annexed to the contract/order.

## 16 Integrity

16.1 The contract parties shall take appropriate measures to ensure conformity with laws and regulations. In particular, they agree to adhere to the guidelines and rules contained in the SBB Code of Conduct ([SBB Company - Code of Conduct SBB](#)). Provided that these guidelines and rules are defined in a code of conduct of the Company in a substantially equivalent manner, then compliance with the latter shall suffice.

16.2 The contract parties undertake to take any such measures as are required to avoid corruption so as to ensure that no impermissible payments or other benefits are offered or accepted.

16.3 The Company agrees to take all measures necessary to prevent impermissible bid-rigging agreements to the detriment of SBB AG (e.g. price, market sharing, bid-rotation agreements) and to refrain from such agreements.

16.4 The Company shall contractually impose the obligations according to this clause upon the third parties it involves in order to fulfil the Contract.

16.5 The Company additionally acknowledges that any infringement of the obligations contained in paragraphs 2 and 3 will generally result in it being excluded from the tender process or cancellation of any orders awarded as well as the early termination of the Contract by SBB AG for important reasons.

## **17 Audit**

- 17.1 SBB AG is entitled to conduct an audit in order to check the Company's compliance with the obligations contained in the "Integrity" clause as well as compliance with further significant obligations either themselves or through an independent auditing company of its choice. SBB AG cannot request such audit more than once per calendar year without due cause. SBB AG shall inform the Company of the execution of the audit in writing, unless SBB AG perceives imminent danger.
- 17.2 The Company can request that the audit be carried out by an independent third party. In this case, too, the Company shall bear the costs of the audit if it is determined in the audit that the Company has violated the obligations pursuant to the "Integrity" clause or other significant contractual obligations to SBB AG.
- 17.3 If the audit is not carried out by SBB AG itself, then in the audit report SBB AG is only informed of whether the Company has complied with its contractual obligations, unless a violation has occurred. In this case, SBB AG has a comprehensive right to inspection of the information relevant to the violation.
- 17.4 The Company shall contractually impose the obligations according to this clause upon the third parties it involves in order to fulfil the Contract.

## **18 Confidentiality**

- 18.1 The parties shall treat as confidential all information and data relating to the contractual relationship that is not already common knowledge or in the public domain, even if it is not specifically designated as confidential. In case of doubt, this confidentiality clause shall apply to all information and data. All legal obligations of disclosure remain reserved.
- 18.2 The parties are obliged to observe this confidentiality clause before the Contract is signed and after the contractual relationship ends.
- 18.3 The confidentiality obligation extends to third parties. The communication of confidential information within the Company's own group of companies or to involved third parties, such as an insurer, does not constitute a violation of the confidentiality obligation. This applies to the Company to the extent that the communication is required for the fulfilment of the contract.

## **19 Data protection**

- 19.1 The parties undertake to comply with the provisions of Swiss data protection law.
- 19.2 Personal data may only be processed for the purpose and to the extent necessary for fulfilling and executing the Agreement.
- 19.3 SBB AG shall remain the exclusive owner of its personal data that is supplied by SBB AG or on behalf of SBB AG in connection with this Agreement.
- 19.4 Unless approved by SBB AG in writing, the Company must not disclose personal data of SBB AG to third parties.
- 19.5 The Company undertakes to take and continuously implement all financially reasonable and appropriate technical and organisational measures and precautions (in particular regarding its staff) in order to protect (personal) data and to safeguard it against unauthorised or unlawful processing, unintentional loss, unintentional destruction or inadvertent damage.
- 19.6 At the request of SBB AG, in particular in cases when personal data is transferred outside Switzerland or the European General Data Protection Regulation (EU GDPR) applies, the Company shall process personal data on the basis of a supplemental agreement on data protection.

## **20 Statements to the media (incl. social media, references) and use of the SBB logo**

Statements to the media regarding the Contract and use of the SBB name and/or logo are permissible only with the express agreement of SBB AG. Any statements to third parties that are within the public domain (in particular references) shall be placed on the same footing as statements to the media.

## **21 Social welfare**

The Company shall make all the necessary applications to the social welfare institutions for itself and its employees. If the Company is a sole proprietorship ("Einzelfirma"), it must present SBB AG with a document from the responsible compensation fund ("Ausgleichskasse") confirming that it works on a self-employed basis. SBB AG is not liable to the Company or its employees for any payments into social welfare schemes (AHV, IV, EO, ALV etc.) or for any other compensation

payments, particularly in the event of sickness, invalidity or death.

## **22 Termination for good cause**

22.1 The contracting parties may terminate a Contract for good cause, which makes continuation of the Contract unacceptable, at any time without notice. If the Contract is terminated early, remuneration for services performed in accordance with the Contract shall be owed on a prorated basis up to the date of termination. Any further claim for compensation, in particular a claim for loss of profit, shall be excluded in all cases.

22.2 The following circumstances in particular shall be considered good cause justifying early termination of the Contract by SBB AG:

- if the Company has committed a significant breach of its contractual obligations and such breach is not remedied within 30 days of written notice. Significant breaches of contract shall include, in particular, non-compliance with current statutory provisions, repeated non-compliance with agreed deadlines or the agreed intervention time for remedying a fault, as well as defective performance of the Contract;
- if the Company repeatedly fails to comply with operational requirements or repeatedly fails to comply with instructions issued by SBB AG;
- if bankruptcy or insolvency proceedings are initiated against the Company.

## **23 Delivery of replacement parts**

The Company undertakes to ensure the delivery of replacement parts on competitive terms for 10 years from the date of commissioning.

## **24 Prohibition on assignment and pledge**

Claims due to the Company may neither be assigned nor pledged to third parties without the written consent of SBB AG.

## **25 No waiver**

If a party defers or postpones the enforcement of claims or does not exercise or only partially exercise its rights, this does not constitute a waiver of these or future claims. A

valid waiver requires a written declaration from the waiving party.

## **26 Written form**

The initial drawing up of the Contract and any amendments and additions to the Contract and to integral elements of it must be in writing and be signed by both parties, for the purposes of which an electronic signature shall be deemed to be equivalent to a handwritten signature.

## **27 Applicable law**

The contract shall be governed exclusively by Swiss law. The provisions of the Vienna Convention (United Nations Convention on Contracts for the International Sale of Goods, concluded in Vienna on 11 April 1980, CISG) and any applicable rules of private international law that refer to other legal systems are explicitly excluded.

## **28 Place of jurisdiction**

The courts in **Berne** shall have sole jurisdiction in disputes arising from or in connection with this Agreement.