

## General Terms and Conditions for the Procurement of Rolling Stock Components (GTC-RKomp)

### 1 Scope of application

- 1.1 These General Terms and Conditions (GTC-RKomp) shall apply to the procurement of
- interoperability components (pursuant to Directive 2008/57/EC art. 2 and section 5 of the relevant TSI; (IO),
  - safety-relevant components (especially pursuant to DIN 27201-1 and Directive 2008/57/EC annex VII; (SK),
  - operations-relevant components (components with effects on the reliability of vehicles and their subsystems; (BK),
  - other components (UE).
- 1.2 Definitions in the text highlighted in grey shall apply only to the procurement of (IO) and (SK).

### 2 Quotation

- 2.1 Remuneration will not be provided for visits or for drawing up quotations and drafts.
- 2.2 If the quotation deviates from the quotation requested by SBB AG (hereinafter referred to as "SBB"), the company must state this expressly. Silence on the part of SBB shall not imply its acceptance of the discrepant quotation.
- 2.3 Should the quotation not state a validity period, it shall be binding on the company for four months from the date of the quotation.
- 2.4 Subject to any provision to the contrary in the invitation to tender, SBB, its affiliates and any third parties designated by SBB when the contract is concluded shall be entitled to take delivery.

### 3 Execution

- 3.1 The place of performance shall be the delivery address specified in the contract or order.
- 3.2 The company shall provide SBB with regular updates regarding the progress of its work, shall obtain all the necessary specifications, and shall notify SBB of any circumstances that could endanger the contractual performance of services within two calendar days of becoming aware of them. The company shall also inform SBB in writing and within a reasonable period of any unclear, incorrect or missing details or contradictions in or amendments to a contract, its annexes or components, in particular with regard to SBB's list of specifications or technical requirements, standards published by standards institutes, and regulations issued by SBB and/or the UIC.
- 3.3 The company shall provide at its own expense any resources, tools and devices needed to carry out the work. It may only access SBB's installations, spare parts and IT infrastructure to the extent that this has been explicitly agreed.
- 3.4 The company shall comply with SBB's logistical and packaging specifications.  
(see <https://company.sbb.ch/en/sbb-as-business-partner/supply-chain-management/suppliers/gtc.html>)
- 3.5 The company shall document its performance in conformity with SBB's documentation requirements and shall be responsible for obsolescence management.  
(see <https://company.sbb.ch/en/sbb-as-business-partner/supply-chain-management/suppliers/gtc.html>)
- 3.6 The company shall implement a Quality and Risk Management (QRM) system that meets SBB's requirements.  
(see <https://company.sbb.ch/en/sbb-as-business-partner/supply-chain-management/suppliers/gtc.html>)
- 3.4 In case of delivery of (UE) the QRM annex shall not apply.

- 3.5 Work carried out on SBB's premises must be performed in compliance with SBB's operational regulations, in particular its safety regulations and any other internal rules. The company shall adhere to all of SBB's directives when carrying out work on electrical installations, near tracks and in SBB workshops. It shall ensure that any third parties it employs comply with these regulations and directives.

- 3.6 SBB shall be entitled to audit the performance of the company and its subcontractors.

### 4 Changes

- 4.1 Both parties may suggest changes to the agreed services, manufacturing methods or processes. To this end the company shall provide SBB with a verifiable offer within ten calendar days and shall draw its attention in writing to the consequences of the proposed changes, particularly with regard to deadlines, quality, any new evaluations and operating permits/commissioning approvals required, costs, LCCs, RAMS (pursuant to EN 50126, EN 50128 and EN 50129) or other contractual items. SBB's requirements in terms of process and product approval procedures must be respected.  
(see <https://company.sbb.ch/en/sbb-as-business-partner/supply-chain-management/suppliers/gtc.html>)

- 4.2 Changes shall not be implemented until both parties have signed an addendum to the contract.

### 5 Payment and financial terms

- 5.1 The agreed prices shall be fixed prices (flat rates).
- 5.2 Prices will only be adjusted to inflation in so far as this is stipulated in the contract. If no such provision has been agreed, no price adjustments shall be made.
- 5.3 The agreed prices shall cover all services necessary for the satisfactory fulfilment of the contract.
- 5.4 Deliveries are to be made in accordance with INCOTERMS 2020 DDP, [place of performance].
- 5.5 Remuneration shall be due once the components have successfully passed an incoming goods inspection and an invoice issued according to SBB's requirements has been received. SBB generally makes payments due within 30 days.

### 6 Intellectual property rights

- 6.1 All documentation and information provided to the company shall remain the property of SBB and must be treated as confidential. The company must impose the same confidentiality obligations on any third parties commissioned by the company.
- 6.2 Property rights to work products manufactured specifically for SBB, as well as all processes and methods developed in this context, shall become the property of SBB on delivery. All software documentation (particularly the documented source code including the overview, data model and function model, as well as the functional description) and all other documentation must be provided to SBB no later than on the initial delivery of the relevant components.
- 6.3 Property rights to work products not specifically manufactured for SBB, standard software, pre-existing ideas, processes and methods, and documentation (subject to section 6.4) shall remain the property of the company. SBB shall acquire a transferable, irrevocable, non-exclusive right, unlimited in time or geographic location, to use these for their intended purpose, particularly to maintain, recondition and replace components or to operate, refit, renew, repair and maintain rail vehicles. This right of use shall also extend to replacement facilities, applications for

testing and training purposes, modifications, upgrades, maintenance and spare part deliveries. SBB may carry out modifications, upgrades or maintenance itself, or employ third parties to do so. SBB shall impose a duty of non-disclosure on such third parties and shall prohibit any ulterior use.

6.4 Property rights to work products created jointly by SBB and the company shall belong jointly to SBB and the company or the third parties consulted by the latter. Neither contractual partner shall charge licence fees and either party may transfer its rights to third parties, or grant third parties rights of use, without the consent of the other party.

6.5 The company shall defend any third-party claims made against SBB or other recipients of its services alleging the infringement of property rights at its own expense and risk. SBB shall inform the company of such claims immediately and shall leave it to handle any dispute either in or out of court. SBB shall reasonably assist the company wherever possible, but the company shall bear any costs incurred by SBB in this respect. The company shall undertake to participate in the dispute at SBB's first request and as far as the relevant code of procedure allows. The company shall undertake to assume all costs (including compensation payments) incurred by SBB or other recipients of its services as a result of the case and/or any out-of-court settlement of the legal dispute. However, the company shall be entitled at its discretion either to take measures to eliminate the breach of property rights, provided that such measures do not affect the fitness for purpose of the goods supplied, or to acquire the necessary property rights.

## 7 Default

7.1 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.

## 8 Contractual penalties

8.1 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.

8.2 Amounts:

- in the event of breach of contract with regard to time of performance, after a waiting period of three calendar days, 0.5% of the belated delivery value for each day of delay, but at least CHF 200, unless otherwise agreed. The maximum amount for contractual penalties in cases of delay amounts to 10% of the belated delivery value for each delivery.

No contractual penalties shall apply to the delayed delivery of (UE).

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.

8.3 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.

8.4 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.

8.5 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.

8.6 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.

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

## 9 Warranties and guarantee

9.1 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.

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

9.3 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 re-manufacturing the system, the right to demand rectification shall also include the right to re-manufacturing.

9.4 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.

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

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

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

9.8 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.

9.9 Any spare part deliveries and associated costs during the warranty period shall be deemed to be a rectification of defects unless the company can prove the contrary.

## 10 Serial defects

10.1 A serial defect shall be deemed present if the same or similar defects occur repeatedly in more than 5% of the same components with the same specifications, but in at

least three (3) identical components. If a serial defect is found, the parties shall immediately reach an agreement on how to organise a recall of all the items affected by the serial defect, and shall set forth appropriate measures in writing.

- 10.2 If SBB notifies a serial defect, the notice shall apply to all the components with the same specifications, regardless of whether the notice has been submitted within the notification period for the individual component in question.
- 10.3 For serial defects, the notice period starts on the date of contractual delivery of the first delivery and continues until 2 years after contractual delivery of the last delivery of components with the same specifications or functions, subject to a maximum of 5 years following contractual delivery of the said component.

## 11 Liability

- 11.1 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.
- 11.2 The company is liable for the actions of **auxiliary persons** (e.g. its employees, substitutes, subcontractors, suppliers, or subsuppliers) as if such actions were its own.
- 11.3 The liability of the parties for **personal injury** is **unlimited**; the liability of the parties for **property damage and financial loss** due to ordinary negligence is limited to **CHF 10 million / CHF 20 million.**
- 11.4 In the event of ordinary negligence, the parties shall not be liable for loss of earnings.
- 11.5 The limits on liability and exclusions of liability do not apply if statutory liability applies.
- 11.6 Any **contractual penalties** shall be credited against the damages payable.
- 11.7 The parties shall support each other in the event of **claims by third parties,** or when asserting damages claims against third parties.
- 11.8 If a party has to pay damages to a third party, it shall be fully **indemnified** by the party liable in the internal relationship.
- 11.9 Any recourse against **employees** of the liable party is mutually excluded.

## 12 Insurance

- 12.1 The company shall guarantee that it has and will continue to have appropriate professional indemnity insurance or business liability insurance for personal injury and material damage as well as the resulting financial losses for the duration of the contract.
- 12.2 The sum insured shall at least be CHF 10 million / **CHF 20 million** per insured event per year.

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

- 13.1 For services in Switzerland, the Company undertakes to guarantee rules on health and safety at work and terms of employment at the place of performance, equal pay as well as the legal provisions applicable at the place of performance concerning environmental protection and the conservation of natural resources. Working conditions are considered to be those defined in the Swiss Federal Act on Measures to Combat Illegal Employment and the Swiss Federal Act on Employees Posted to Switzerland, together with collective and standard employment contracts and, in the absence of the latter, the actual working conditions customary for the location and type of employment. For work performed abroad, the company shall agree to abide

by the core conventions of the International Labour Organization (ILO). The company shall undertake to transfer responsibility for these requirements to any third parties it commissions.

## 14 Integrity

- 14.1 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 ([www.sbb.ch](http://www.sbb.ch) – [SBB Code of Conduct](#)). 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.
- 14.2 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.
- 14.3 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.
- 14.4 The Company shall contractually impose the obligations according to this clause upon the third parties it involves in order to fulfil the Contract.
- 14.5 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 ABB AG for important reasons.

## 15 Audit

- 15.1 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.
- 15.2 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.
- 15.3 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.
- 15.4 The Company shall contractually impose the obligations according to this clause upon the third parties it involves in order to fulfil the Contract.

## 16 Confidentiality

- 16.1 Throughout the duration of the contract and for a period of five (5) years thereafter, the parties shall treat as confidential all information and data arising from the contractual relationship that is not already common knowledge or in the public domain, even if it is not specifically designated as confidential. This shall not apply to legal disclosure obligations or to the use of confidential information by SBB and its affiliates for the purposes of using the components as intended, particularly their maintenance, reconditioning and replacement, and to operate, refit, renew, repair and maintain rail vehicles.
- 14.3 The company may not refer to its business relations with SBB without the prior written consent of SBB.

## **17 Data protection**

- 17.1 The parties undertake to comply with the provisions of Swiss data protection law.
- 17.2 Personal data may only be processed for the purpose and to the extent necessary for fulfilling and executing the Agreement.
- 17.3 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.
- 17.4 Unless approved by SBB AG in writing, the Company must not disclose personal data of SBB AG to third parties.
- 17.5 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.
- 17.6 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.

## **18 Assignment and pledge ban**

Receivables due to the company may not be assigned or pledged without the written consent of SBB.

## **19 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.

## **20 Applicable law and place of jurisdiction**

- 20.1 These GTC shall be exclusively governed by Swiss law. The provisions of the Vienna Convention (the United Nations Convention on Contracts for the International Sale of Goods/CISG concluded in Vienna on 11 April 1980) shall be expressly excluded.
- 20.2 The courts in **Berne** shall have sole jurisdiction over disputes arising from or in connection with these GTC.