

# GENERAL TERMS AND CONDITIONS OF BUSINESS OF SBB AG FOR SERVICE CONTRACTS (GTC-SC)

## 1 Scope of application

- 1.1 These general terms and conditions of business (GTC-D) regulate the conclusion, content and handling of agreements on services, in particular in the areas of consulting, planning, support and training (excluding construction services).
- 1.2 Any company submitting an offer to SBB AG (the Company) thus accepts the present GTC. The parties can agree upon deviations in writing in the Agreement if these are objectively justified.

## 2 Offer

- 2.1 The offer is based on the request for offers issued by SBB AG.
- 2.2 The Company shall state the value-added tax separately in the offer.
- 2.3 The offer including any presentations shall be submitted free of charge unless specified otherwise in the request for offers.
- 2.4 The offer shall be binding for the duration specified in the request for offers. If no corresponding information is given, a period of four months after the receipt of the offer shall apply.

## 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 Use of employees

- 4.1 The Company shall only use carefully selected and welltrained employees who possess the necessary permits. On demand by SBB AG, it shall replace employees within a practicable period of time if such employees do not possess the necessary technical expertise or otherwise impair or endanger the fulfilment of the Agreement. The company shall bear any costs it incurs as a result itself.
- 4.2 The Company shall only replace the employees used upon written approval of SBB AG.

## 5 Involvement of third parties

- 5.1 Involvement of third parties (freelance staff, specialists, etc.) in the performance of the Contract requires the prior written consent of SBB AG.
- 5.2 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.
- 5.3 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.

## 6 Remuneration

- 6.1 The Company provides the services:

- a. based on time and effort with an upper limit of the remuneration (cost ceiling or cap); or
- b. at fixed prices.

- 6.2 The contractually defined remuneration covers all activities that are required for appropriate fulfilment of the Agreement. In particular, the remuneration covers the costs for transferring rights, for the documentation and material as well as all expenses, secretarial services, all social security payments and other insurance payments to cover accidents, sickness, invalidity and death, public fees (e.g. value-added tax).
- 6.3 The Company shall submit its invoice according to the payment schedule. In the event that one has not been agreed, the invoice shall be submitted following the provision of all services. The value-added tax shall be indicated separately in the invoice. Unless another arrangement is in place, payment will be made within 30 days of receipt of the correctly submitted invoice.

## 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 penalty

- 8.1 Amounts:
- in the event of breach of contract with regard to time of performance, 1 o/oo (per mill) for each day of delay, 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.

- 8.2 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.
- 8.3 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.
- 8.4 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.
- 8.5 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.
- 8.6 SBB AG is entitled to offset the contractual penalty against the amount payable under 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 Liability

- 10.1 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.

- 10.2 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.
- 10.3 Any contractual penalties shall be credited against the damages payable.
- 10.4 The parties shall support each other in the event of claims by third parties, or when asserting damages claims against third parties.
- 10.5 If a party has to pay damages to a third party, it shall be fully indemnified by the party liable in the internal relationship.
- 10.6 Any recourse against employees of the liable party is mutually excluded.

## 11 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.

## 12 Intellectual property rights

- 12.1 The Company shall transfer to SBB AG all intellectual property rights (rights to intangible assets and related rights as well as contingent rights) to the results of work which are generated in the course of fulfilment of the Agreement; this transfer shall take place at the moment when the rights are generated. It relinquishes the entitlement to exercise non-transferable personal rights. Each party shall reserve the right of use and disposal of legally not protected ideas, procedures and methods which are generated in the course of fulfilment of the Agreement.
- 12.2 All intellectual property rights to the results of work which form part of the Agreement and are not generated in the course of fulfilment of the Agreement (previously existing results of work) shall remain with the Company. It shall grant SBB AG free of charge an irrevocable right to use the results of work which is not limited either in terms of time, place or object. This comprises all current and future

possible types of use, the right to sublicensing and assignment as well as the right to processing.

- 12.3 The Company guarantees that it and all consulted third parties possess all the rights to provide its services in accordance with the Agreement. It undertakes to immediately defend claims by third parties on the grounds of violation of intellectual property rights, and to pay all the costs incurred by SBB AG (including compensation payments) as a result of such actions.
- 12.4 Intellectual property rights as well as legally not protected information (ideas, procedures, methods) and information carriers (such as documents) which SBB AG makes available to the Company for the purpose of fulfilling the Agreement are only allowed to be used by the Company within this context. At the request of SBB AG, the Company shall return information carriers and provide confirmation that it has deleted copies of the information carriers.

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

- 13.1 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 validly signed self-declaration as annexed to the contract.

## 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 SBB 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 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.

- 16.2 The parties are obliged to observe this confidentiality clause before the Contract is signed and after the contractual relationship ends.
- 16.3 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.

## **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 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.

## **19 Revocation and termination**

- 19.1 The service contract can be revoked or terminated by each party in writing at any time. The services provided up to the point when the Agreement is dissolved shall be remunerated.
- 19.2 The right to assert claims for compensation in damages due to dissolution of the Agreement at an inopportune juncture is reserved. Claims for compensation for lost profits are excluded.

## **20 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.

## **21 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.

## **22 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.

## **23 Applicable law**

The Contract shall be governed exclusively 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 11.4.1980) are explicitly excluded.

## **24 Place of jurisdiction**

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