

GENERAL TERMS AND CONDITIONS OF BUSINESS OF SBB AG FOR THE PROCUREMENT OF GOODS (GTC-PG)

1 Scope of application

- 1.1 These general terms and conditions of business (GTC-G) regulate the conclusion, content and handling of agreements on the procurement of goods (incl. any installation thereof).
- 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 and the transport costs separately in the offer.
- 2.3 The offer including any demonstration 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 Involvement of third parties

- 3.1 Involvement of third parties (freelance staff, specialists, etc.) in the performance of the Contract requires the prior written consent of SBB AG.
- 3.2 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.
- 3.3 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.

4 Place of performance and transfer of risk

- 4.1 SBB AG designates the place of performance.
- 4.2 The transfer of use and risk to SBB AG takes place at the place of performance.

5 Material delivery, templates and purchaser-provided services

- 5.1 *Material delivery:* If SBB AG supplies material to the Company for fulfilment of the Agreement, such material shall remain the property of SBB AG. It shall be identified as such and segregated. The Company shall check the material upon receipt. Any identified damage must be notified to SBB AG in writing without delay.
- 5.2 *Templates and purchaser-provided services:* If SBB AG provides the Company with templates or purchaser-provided services for the purpose of preparing the offer or fulfilling the Agreement, such items shall be exclusively used for this purpose. They shall remain the property of SBB AG, be identified as such by the Company, stored carefully and returned on demand.

6 Import regulations

The Company guarantees that it will comply with any export restrictions and import regulations from the place of origin to the place of delivery, according to the Agreement. The Company shall inform SBB AG in writing about export restrictions of the country of origin.

7 Handover and installation

- 7.1 The handover of goods takes place upon signature of the delivery note at the place of performance designated according to section 4.
- 7.2 If the Agreement also includes installation of the goods, SBB AG shall grant the Company access to its premises as required for this purpose.
- 7.3 The Company shall comply with the company regulations of SBB AG, in particular the

health and safety regulations and the house rules.

- 7.4 SBB AG checks the purchased item without delay, however at the latest within 30 days of delivery.

8 Remuneration

- 8.1 The Company provides the services at fixed prices.
- 8.2 The remuneration covers all activities that are required for appropriate fulfilment of the Agreement. In particular, the remuneration covers the packaging, transport and insurance costs, expenses, licence fees as well as all public fees (e.g. value-added tax).
- 8.3 The Company shall submit its invoice according to the payment schedule. In the event that none has 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.

9 Default

- 9.1 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.

10 Contractual penalty

- 10.1 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.
- 10.1 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.

- 10.2 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.

- 10.3 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.

- 10.4 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.

- 10.5 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.

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

11 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.

12 Liability

- 12.1 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.

- 12.2 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.
- 12.3 Any contractual penalties shall be credited against the damages payable.
- 12.4 The parties shall support each other in the event of claims by third parties, or when asserting damages claims against third parties.
- 12.5 If a party has to pay damages to a third party, it shall be fully indemnified by the party liable in the internal relationship.
- 12.6 Any recourse against employees of the liable party is mutually excluded.

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 If a defect is fraudulently concealed, warranty rights may be asserted in the 10-year period following the start of the warranty period.
- 13.4 Once a reported defect has been rectified, the warranty period shall start anew for the repaired component.
- 13.5 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.

- 13.6 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.

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

- 14.1 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 selfdeclaration as annexed to the contract.

15 Integrity

- 15.1 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 – [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.
- 15.2 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.
- 15.3 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.
- 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.
- 15.5 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.

16 Audit

- 16.1 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.
- 16.2 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.
- 16.3 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.
- 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.

17 Confidentiality

- 17.1 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.
- 17.2 The parties are obliged to observe this confidentiality clause before the Contract is signed and after the contractual relationship ends.
- 17.3 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.

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 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.

20 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.

21 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.

22 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.

23 Place of jurisdiction

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