

SBB AG GENERAL TERMS OF BUSINESS FOR THE PROCUREMENT OF TECHNICAL SYSTEMS, MACHINES AND APPARATUS (AGB-T)

1 Scope of application

These general terms of business (AGB) regulate the content and handling of contracts for the procurement of technical systems, machines and apparatus. They can only be changed by deviating regulations in the contractual document.

2 Offer

2.1 The offer, including demonstration and delivery of associated plans, samples and models, shall be free of charge.

2.2 If the offer differs from the request for quotes by SBB AG, the Company shall expressly point this out.

2.3 The Company itself shall check the relevant dimensions as well as all local and operational conditions at the place of performance. SBB AG will draw the Company's attention to special circumstances (work by third parties, operational restrictions, etc.).

2.4 The Company shall expressly point out if third-party industrial property rights will recognizably restrict the use of the deliveries and services by SBB AG.

2.5 All documents made available by SBB AG (plans, functional descriptions, etc.) remain the property of SBB AG and shall be attached to the offer again.

2.6 The offer is binding during the period specified by SBB AG. If the request for quotes or offer do not contain any other deadline, the Company shall remain bound for 4 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 Changes to services

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

4.2 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.

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

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 shall provide the services in accordance with SBB AG's specifications at fixed prices or on a time and material basis with an upper limit on remuneration (cost ceiling). In its offer, it shall disclose cost categories and cost rates. If it becomes apparent that the cost ceiling will be exceeded, the Company shall immediately notify SBB AG of this.

6.2 The remuneration covers all activities that are required for appropriate fulfilment of the Contract. The remuneration covers, in particular, installation and documentation costs, costs for initial instruction, expenses, licence fees, packaging, transport, insurance and unloading costs and all public charges (customs duties, VAT, etc.).

6.3 The remuneration is due upon acceptance. Different due dates are recorded in the payment plan. The Company shall claim for any fees due by means of an invoice. SBB AG makes payments due within 30 days of receipt of the invoice.

6.4 The remuneration shall only be adjusted for general price increases where this is provided for, and to the extent specified in the Contract.

7 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.

8 Intellectual property rights

8.1 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.

8.2 The proprietary rights to any work results specifically produced for SBB AG, including calculations, manufacturing drawings, drafts, source codes, program descriptions and documentation and all ideas, processes and methods developed in this context, whether in written or machine-readable form, belong to SBB AG. The complete software documentation (in particular the documented source code including overview, data and functional model and functional description) and the other documents shall be handed over to SBB AG at the latest before the joint inspection.

8.3 The remaining industrial property rights remain with the Company. SBB AG acquires a non-transferable, irrevocable, non-exclusive right to the use and exploitation of the results of the work within the context of this Contract. This right will also extend to replacement facilities, applications for testing and training purposes and to modifications, upgrades, maintenance and spare part deliveries. SBB may carry out modifications, upgrades or maintenance itself, or employ third parties to do this. It will impose a duty of non-disclosure on them and will prohibit them from using the results for any other purpose.

8.4 The Company shall defend any claims by third parties relating to infringement of proprietary rights at its own expense and risk. SBB will immediately inform the Company of any such claims and will leave responsibility for any court proceedings and for taking measures for settling the dispute in or out of court entirely in the Company's hands. Under these circumstances, the Company will assume any costs or compensation for damage awarded against SBB AG.

9 Documentation

- 9.1 At the latest before the documents are jointly checked, the Company shall give SBB AG, for operating and maintenance purposes, a complete and reproducible documentary record, in the languages and in the number of copies agreed in the Contract.
- 9.2 SBB AG may copy the documents to use in accordance with the terms of the Contract.
- 9.3 Once any errors have been corrected, the Company will update the documentation including the source code.
- 9.4 The Company undertakes an initial instruction of the staff of SBB AG. The scope of the initial instruction is described in more detail in the request for quotes or in the contractual document. In the absence of such information, instructions for operation, installation and maintenance or care are sufficient. The Company warrants that it can offer training in the optimal use of technical systems, machines and apparatus.

1 Default

- 1.1 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.

2 Contractual penalty

- 2.1 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.

- 2.2 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.
- 2.3 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.
- 2.4 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.
- 2.5 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.
- 2.6 SBB AG is entitled to offset the contractual penalty against the amount payable under the contract.

3 Acceptance

- 3.1 Before acceptance, a joint inspection is carried out. The Company invites SBB AG to do so in good time. A record of the inspection and its results shall be drawn up and signed by both parties. Acceptance in several parts is also possible, subject to agreement by both parties.
- 3.2 If the inspection reveals insignificant defects, acceptance shall take place at the end of the inspection. The Company shall immediately remedy the defects found and notify SBB AG of their rectification.
- 3.3 If the joint inspection reveals significant defects (e.g. missing documentation), acceptance shall be postponed. The Company immediately remedies the identified deficiencies and invites SBB AG in a timely fashion to a new inspection. If acceptance is postponed and the contractual acceptance date is thereby exceeded, the Company shall be in default without further ado. Remuneration for

the service due shall only be payable upon successful acceptance.

3.4 If the acceptance inspection is not successfully completed also on the second attempt, SBB AG may – without prejudice to the right to claim damages – at its choice:

- a. continue to insist on rectification or
- b. reduce the remuneration by an amount commensurate with the reduced value or
- c. demand that the necessary documents (specifically the source code) be handed over – as long as no legal or contractual provisions prevent this – and carry out the necessary measures itself at the cost and risk of the Company or arrange for them to be carried out by a third party or
- d. withdraw from the contract.

The commencement of productive use shall not be construed as acceptance unless confirmed in writing by SBB AG.

3.5 Despite postponement of acceptance, the subject matter of the Contract can be transferred to SBB AG for use by mutual agreement, in which case all rights and obligations of the parties with regard to acceptance and its legal consequences shall remain in effect.

4 Warranty

4.1 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.

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

4.3 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.

4.4 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.

4.5 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.

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

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

4.8 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.

4.9 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.

5 Liability

5.1 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.

- 5.2 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.
- 5.3 Any contractual penalties shall be credited against the damages payable.
- 5.4 The parties shall support each other in the event of claims by third parties, or when asserting damages claims against third parties.
- 5.5 If a party has to pay damages to a third party, it shall be fully indemnified by the party liable in the internal relationship.
- 5.6 Any recourse against employees of the liable party is mutually excluded.

6 Technical after-sales service

- 6.1 The Company guarantees SBB AG the supply of spare parts for at least 10 years from the date of acceptance. A different delivery period for spare parts shall be provided for in the contractual document.
- 6.2 At the request of SBB AG, the Company shall provide maintenance to the subject matter of the Contract, during a period of 8 years after expiry of the two-year limitation period for the rights in respect of defects, in accordance with a maintenance contract to be concluded separately.
- 6.3 If bankruptcy proceedings are instituted against the Company within 10 years of acceptance or if it wishes to discontinue the supply of spare parts during or after this period, it shall inform SBB AG in good time and give the latter the opportunity to place a final order. It shall then provide SBB AG, free of charge, with its documentation (descriptions, plans, complete software documentation, etc.) and auxiliaries (gauges, models, special tools, etc.) for the manufacture of spare parts for its own needs. If it is not possible to manufacture new spare parts, the Company undertakes to search for a replacement product free of charge and to clarify its implementation.
- 6.4 The Company's deliveries and services within the scope of technical after-sales service after expiry of the limitation period for the rights in respect of defects shall be subject to payment and shall be provided on competitive terms.

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

- 7.1 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.

8 Integrity

- 8.1 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.
- 8.2 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.
- 8.3 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.
- 8.4 The Company shall contractually impose the obligations according to this clause upon the third parties it involves in order to fulfil the Contract.
- 8.5 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.

9 Audit

- 9.1 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.

- 9.2 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.
- 9.3 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.
- 9.4 The Company shall contractually impose the obligations according to this clause upon the third parties it involves in order to fulfil the Contract.

10 Confidentiality

- 10.1 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.
- 10.2 The parties are obliged to observe this confidentiality clause before the Contract is signed and after the contractual relationship ends.
- 10.3 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.

11 Data protection

- 11.1 The parties undertake to comply with the provisions of Swiss data protection law.
- 11.2 Personal data may only be processed for the purpose and to the extent necessary for fulfilling and executing the Agreement.

- 11.3 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.
- 11.4 Unless approved by SBB AG in writing, the Company must not disclose personal data of SBB AG to third parties.
- 11.5 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.
- 11.6 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.

12 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.

13 Use and risk

The transfer of use and risk to SBB AG takes place at the place of performance.

14 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.

15 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.

16 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.

17 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.

18 Place of jurisdiction

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