

# General Terms and Conditions Applicable to the Contracts for Procurement of Goods and Services Awarded by the Domain of the Swiss Federal Institutes of Technology

as from 1<sup>st</sup> January 1998 (status as of 8 March 2012)

## General provisions

### 1 Scope of application

- 1.1 The present General Terms and Conditions are applicable to the domain of the Swiss Federal Institutes of Technology, comprising the Swiss Federal Institute of Technology Zurich (ETH Zurich), the Swiss Federal Institute of Technology Lausanne (EPFL), the Paul Scherrer Institute (PSI), the Federal Institute for Forest, Snow and Landscape Research (WSL), the Swiss Federal Laboratories for Materials Science and Technology (Empa), the Swiss Federal Institute of Aquatic Science and Technology (Eawag) and the ETH Board ("Purchaser").
- 1.2 These General Terms and Conditions shall govern conclusion, subject matter and performance of the contracts for procurement of goods and services.
- 1.3 The tenderer accepting a purchase order (Clause 3) shall be deemed to have assented to these General Terms and Conditions.
- 1.4 Modifications or amendments of these General Terms and Conditions must be confirmed in writing by the purchaser.

### 2 Tender

- 2.1 The tenderer shall submit its tender (in duplicate) in reply to an invitation to tender.
- 2.2 Save as may otherwise be expressly provided for in the invitation to tender, the tenderer shall submit its tender, inclusive of demonstration, without remuneration.
- 2.3 The tenderer shall be bound by its tender for a period of three months from the date of submission.

### 3 Formation of contract

- 3.1 The purchaser shall place its purchase order in writing (in duplicate) with the tenderer. The contract shall be formed upon receipt by the purchaser of the duplicate purchase order signed unconditionally by the tenderer.
- 3.2 For purchase orders not exceeding CHF 10'000, the contract shall also be deemed formed where the tenderer does not reject the purchase order within a reasonable period of time.

### 4 Confidentiality

- 4.1 The parties agree to keep in confidence any Information that is not obvious or generally available to the public. They shall be bound by this undertaking from the preaward stage on and after termination of the contract.
- 4.2 The tenderer may not advertise or publish this contractual relationship without the purchaser's prior written consent.

### 5 Assignment and pledge

- 5.1 The tenderer may not assign or pledge accounts receivable without the purchaser's prior written consent.

### 6 Procedural rules

- 6.1 When rendering services in Switzerland, the tenderer shall comply with all occupational safety and health regulations applicable at the place of performance. The tenderer warrants to ensure equal pay for male and female employees. The provisions concerning working conditions set forth in collective agreements and standard employment contracts shall be effective or in the absence of such provisions, the working conditions customary in the region and profession concerned.
- 6.2 In case of non-compliance with the guidelines set forth in Clause 6.1, the tenderer shall be subject to a contractual penalty amounting to 10% of the contract price, but not inferior to CHF 3'000 or superior to CHF 100'000.

### 7 Applicable law and venue

- 7.1 The contracts shall be governed by the present General Terms and Conditions and subsidiarily by the Swiss Code of Obligations.
- 7.2 The parties exclude expressly the application of the United Nations Convention on Contracts for the International Sale of Goods (UN Sales Convention).
- 7.3 **Venue, and for foreign tenderers place of enforcement, shall be the purchaser's seat.** The purchaser reserves the right to institute proceedings against the tenderer before the competent court of the tenderer's seat or before any other competent court.

### Special provisions for procurement of goods

#### 8 Prices

- 8.1 The tenderer shall provide the goods for a firm-fixed price.
- 8.2 If tenderer reduces its list prices prior to delivery of performance, the reduced prices shall be applicable to the pending purchase order and the contract price accordingly abated.
- 8.3 The prices shall cover all expenditure incurred by the tenderer in the proper performance of the contract. In particular, they shall include packing, carriage and insurance as well as all other expenses, license fees and taxes such as VAT.
- 8.4 The prices of foreign tenderers shall include all delivery costs pursuant to the Incoterms® 2010 DAP Delivered at Place (duty unpaid).
- 8.5 Failing specific agreement to the contrary, payment shall be made within 30 days of receipt of correctly rendered invoices, but at the earliest within 30 days of acceptance of the goods delivered free of defect. Unless agreed upon in writing, no partial payments shall be made for delivery by instalments.
- 8.6 Advances and instalment payments shall be made, where appropriate, in case of orders exceeding CHF 100'000 and conditional upon a security equal to the advance or instalment (bank guarantee). Payment shall be made as follows: one third after receipt of the purchase order duplicate and of the confirmation of security; one third after receipt of the goods ordered and one third after acceptance of the goods delivered free of defect. The tenderer shall draw up a separate invoice for each instalment payment.

#### 9 Place of performance and passing of risk

- 9.1 Place of performance shall be the destination indicated by the purchaser on the purchase order.
- 9.2 Risk of loss and benefit shall pass to the purchaser at the place of performance.

#### 10 Default

- 10.1 The tenderer failing to meet the delivery deadline agreed upon shall be immediately deemed to be in default.
- 10.2 In the event of default by the tenderer, the purchaser may require specific performance of the contract, in addition to the contractual penalty and the compensation for damages (Clause 10.3). It can also renounce the belated performance of the contract and claim compensation for the damages resulting from the delay in delivery or terminate the contract.
- 10.3 In the event of delay, the tenderer shall be subject to a contractual penalty amounting to 1% of the contract price per complete or incomplete week of delay, but not exceeding 10% of the total price. The contract penalty shall not relieve the tenderer from its contractual obligations, but shall be credited against the damages to be paid.

#### 11 Warranty

- 11.1 Having acquainted himself with the intended application, the tenderer as specialist guarantees that the goods possess the warranted features, comply with the

applicable security regulations in Switzerland and have no material or legal defect which would diminish their value or fitness for the intended purpose.

- 11.2 The purchaser shall examine the goods delivered within 30 days of the date of delivery.
- 11.3 In case of defects in the goods delivered, the purchaser may, at its option, (i) require the tenderer to remedy the defects at no charge, (ii) reduce the price in proportion to the defects, (iii) terminate the contract or (iv) require delivery of substitute goods. The delivery of substitute goods may consist in replacing the defective components. In any case, the purchaser retains the right to claim damages.
- 11.4 The purchaser's warranty claims set forth in Clause 11.3 shall prevail over any warranty issued by the tenderer which restricts the purchaser's rights (for ex. exclusion of the right to cancel the contract or to reduce the price). If the tenderer's warranty extends the rights set forth in Clause 11.3 (for ex. longer warranty period), it shall be applicable.
- 11.5 The warranty is valid for 12 months from the date of acceptance of the goods delivered, or for a longer period if the tenderer issues such a warranty. During the warranty period, the purchaser may lodge a complaint in respect of any defect of the goods.

#### 12 Supply of spare parts

- 12.1 The tenderer shall ensure that spare parts are available to the purchaser for a period of at least five years since the date of acceptance of the goods.

#### 13 Licensed Software

- 13.1 In the case of licensed software ordered or delivered with the goods ordered, the purchaser shall be granted a non-transferable and non-exclusive license to use the software. All intellectual property rights shall remain vested in the tenderer or the third parties involved. If the intellectual property rights are vested in third parties, the tenderer warrants that it has the right to use and distribute the software products.
- 13.2 In case of infringement of intellectual property rights, clauses 17.2 and 17.3 hereunder are applicable.

#### 14 Right to inspect

- 14.1 In case of goods to be manufactured by the tenderer, the purchaser is entitled, upon reasonable notification, to inspect quality and progress of the work at the tenderer's or his suppliers' premises. Such inspection shall not relieve the tenderer from integral performance of its contractual obligations (particularly delivery in due time and warranty obligation).

### Special provisions for procurement of services

#### 15 Prices

- 15.1 The tenderer shall provide the services for a firm fixed-price or on a cost-reimbursement basis with a price limit (price ceiling). In its tender, the tenderer shall indicate its cost groups and rates.
- 15.2 The prices shall cover all expenditure incurred by the tenderer in the proper performance of the contract. In particular, they comprise all ancillary costs such as general and administrative expenses, all social security benefits and other compensations paid for illness, invalidity and death as well as all charges including VAT. Unless otherwise agreed upon expressly in writing, the contract price shall not be adjusted on the basis of inflation.
- 15.3 Payments shall be due in accordance with the payment schedule. Progress payments shall be made based on accumulated costs. When due, the tenderer shall claim them by presenting an invoice. The purchaser shall pay the due invoices within 30 days of receipt of the itemized invoice or if any, of the performance evaluation agreed upon.
- 15.4 Clause 8.6 applies accordingly to advance payments.

#### 16 Performance

- 16.1 The tenderer undertakes to perform the contract with all due diligence and efficiency. As a rule, the performance shall be specified in a statement of work.
- 16.2 Modifications and amendments to the contract must be agreed upon in writing.
- 16.3 The tenderer shall inform the purchaser regularly of progress of work and promptly notify in writing of any circumstances, which could jeopardize or hinder the performance of the contract. The purchaser shall be entitled to control and to be informed about all parts of the task assigned.
- 16.4 As a matter of principle, the tenderer shall carry out the task assigned using its own staff. It shall exclusively appoint carefully chosen and highly qualified personnel. In so doing, it shall take into consideration the purchaser's need for continuity. If requested by the purchaser, it shall replace within reasonable time the employees who lack the necessary qualification or endanger in any other way the performance of the contract.
- 16.5 Unless authorized in writing, the tenderer may neither represent, nor engage the purchaser towards third parties.

#### 17 Intellectual property rights

- 17.1 All intellectual property rights arising out of the performance of this contract (provision of services) shall be the property of the purchaser.
- 17.2 The tenderer shall promptly defend the purchaser against any third-party claims based on alleged intellectual property rights infringement and pay any costs incurred by the purchaser in conjunction with such claims.
- 17.3 The purchaser shall give prompt notice, in writing, to the tenderer of any infringement claim and make available, to the extent that they must not be kept in confidence, all documents necessary for the defence.

#### 18 Default

- 18.1 In the event the tenderer fails to observe deadlines agreed upon as a material contractual obligation (deadline contracts), it shall be immediately in default; in all other cases, a cure period shall be granted after notice of default.
- 18.2 The tenderer shall be responsible for the damages resulting from delay in performance.
- 18.3 In case of default by the tenderer, the consequences set forth in clause 10.3 shall apply accordingly.

#### 19 Warranty

- 19.1 As specialist, the tenderer shall be responsible for efficient and diligent execution of the contract. It undertakes to provide the services in state-of-the-art conformity with the provisions and specifications of this contract.
- 19.2 The tenderer shall be liable for the damages caused by its employees in the performance of their functions.

#### 20 Cancellation and termination

- 20.1 Any of the parties shall have the right to cancel or terminate this contract at any time by giving written notice to the other party. Payment shall be due for the services rendered up to the date of termination.
- 20.2 The right to claim damages for untimely termination of the contract shall be reserved, but excluded for loss of profit.