

## General Terms and Conditions of BLS AG for the procurement of contractual services (AGB-A)

### 1 Scope of application

- 1.1 These General Terms and Conditions (GTC) govern the conclusion, content, and handling of contracts for contractual services.
- 1.2 Upon submission of the offer, these GTC shall be deemed to have been accepted by the service provider.
- 1.3 Any changes or additions must be confirmed in writing by BLS.

### 2 Offer

- 2.1 The offer including demonstration shall be provided free of charge, unless the quotation request states otherwise.
- 2.2 The service provider shall submit the offer on the basis of the quotation request. If the offer differs from the quotation request or these GTC, the service provider has to make specific reference to this.
- 2.3 The service provider shall also make specific reference accordingly if third-party property rights clearly restrict the use by BLS of services provided.
- 2.4 All documents (plans, functional descriptions, etc.) made available by BLS shall remain the property of BLS and are to be returned to it once more.
- 2.5 The offer is binding for three months following submission unless otherwise agreed.

### 3 Remuneration

- 3.1 The service provider shall provide the services at set prices or at cost subject to an upper remuneration limit (cost ceiling). It shall state the cost types and rates in its offer.
- 3.2 Remuneration applies to all services required for fulfilment of the contract. Remuneration covers in particular expenses, transfer of rights, obtaining necessary approvals, all costs of documentation and materials, packaging, transport, insurance, and unloading costs, and all official charges.
- 3.3 Following contractually compliant performance of the work and delivery/acceptance of the object of the contract at the place of delivery designated by BLS, remuneration is duly payable. Invoices are payable, unless agreed otherwise, within 30 days from the date of the invoice.
- 3.4 The service provider's invoices must be properly drafted and documented and issued in compliance with VAT requirements. If the stated requirements are not fulfilled, the invoice shall be returned for correction and the period as per point 3.3 above shall not begin to run.

### 4 Performance

- 4.1 Modifications or additions to the contract shall be made in writing and must be signed by both parties.
- 4.2 The service provider shall inform BLS on a regular basis of the progress made with work and notify it immediately in writing of any circumstances that jeopardise fulfilment in accordance with the contract. BLS is also entitled at any time to visit the service provider to get a picture of the progress made in terms of work or obtain information. The service provider shall grant BLS access to the production facilities by arrangement, in particular during working hours.
- 4.3 The service provider shall only deploy carefully selected, qualified, and well-trained personnel for service provision. Also, the service provider shall ensure its services are provided in accordance with the relevant provisions, reliably, and in a suitable and economical manner based on the intended purpose. The planning and realisation of the services and deliveries are to be performed in accordance with established principles, taking into account the state of the art and using the most suitable and high-quality materials.
- 4.4 All services and deliveries must comply with the applicable and relevant Swiss federal laws, ordinances, regulations, and their implementation provisions (Railways Ordinance, Rail Service Regulations, Technical Specifications for Interoperability, etc.) as well as the relevant EU standards. In particular for services

associated with maintenance as per the ECM (Entity in Charge of Maintenance), the requirements of Commission Implementing Regulation (EU) 2019/779, Annex II, point 9 – Contracting activities – are to be complied with.

### 5 Use of subcontractors and suppliers

- 5.1 The service provider may only use third parties with the express approval of BLS. The service provider remains responsible vis-à-vis BLS for provision of the service.
- 5.2 The third parties used by the service provider for fulfilment of the contract shall be deemed in any case to be its auxiliaries within the meaning of Art. 101 of the Swiss Code of Obligations. The agreement or awareness of BLS to or of the use of third parties shall not affect the service provider's liability under the contract or in connection with the contract.
- 5.3 In the case of financial difficulties on the service provider's part, of fundamental differences between the service provider and third parties, or of other important reasons, BLS, once the parties involved have been heard, may pay the subcontractor or subsupplier directly or deposit the amount at the service provider's cost, both with discharging effect vis-à-vis the service provider. In any case, BLS shall notify the service provider of this in writing.

### 6 Property rights

- 6.1 Documents and expertise that BLS makes available to the service provider for the fulfilment of the contract may only be used for strictly project-related purposes. The service provider has to extend the corresponding obligation to third parties (e.g., subcontractors). BLS reserves the right to take action against unauthorised utilisation (e.g., duplication, circulation) of documents and other breaches of its rights.
- 6.2 The property rights to work results created specifically for BLS, including calculations, drawings, drafts, source code, program descriptions, and documentation as well as any ideas, processes, and methods developed in this connection in written or machine-readable form, belong to BLS. The corresponding complete documentation and other documents are to be handed to BLS no later than delivery/acceptance.
- 6.3 Other property rights shall remain with the service provider. BLS shall receive a non-exclusive right of use for these property rights. The service provider has to ensure this in the contractual relations with subcontractors or subsuppliers. The right of use extends to the operation, maintenance, and revision of the objects of the contract, to the modification, redesign, or conversion of the objects of the contract, and also to the manufacture, further development, and procurement of replacement parts. This also applies if BLS sells on the objects of the contract.
- 6.4 If work results of the service provider or of subcontractors and subsuppliers breach third-party property rights, the service provider shall arrange at its own cost some form of agreement with the owner of the property rights or some equivalent solution. BLS shall be indemnified in full.

### 7 Maintenance of confidentiality

- 7.1 The parties shall treat as confidential all facts that are neither obvious nor generally accessible. Confidentiality is to be maintained even before conclusion of the contract and continues to apply following termination of the contractual relationship. This is without prejudice to any statutory information obligations.
- 7.2 Advertising, publications, and reference information as well as disclosures to media relating to the agreed services require the other contracting party's written consent.

### 8 Default

- 8.1 The service provider shall automatically be in default in the case of non-compliance with deadlines agreed – for default purposes – in the contract document (transactions based on delivery by a fixed date) or in other cases following a reminder granting a suitable period of grace. The agreed deadlines have been complied with if delivery/acceptance of the contractually compliant objects of the contract as per point 9 below occurs by the time defined.

8.2 The legal consequences of the debtor's default shall depend, subject to the section below, on Art. 102 – 109 of the Swiss Code of Obligations.

8.3 Besides the legal consequences as per point 8.2 above, the service provider shall owe, in the case of a debtor's default, a contractual penalty as per the conditions below. The service provider is exempt from the conventional penalty to the extent it proves it is not at fault. The service provider has to pay BLS, in the case of non-compliance with defined deadlines, a contractual penalty in the amount of 1 per mille of the agreed remuneration for each day overdue, subject to a maximum of 10 per cent of total remuneration. Payment of the conventional penalty does not release the service provider from its contractual obligations but shall be offset against any compensation relating to loss or damage in excess of the contractual penalty.

## 9 Delivery, ownership, and transfer of risk

9.1 BLS shall arrange at its own cost the transport to the service provider of any objects of the contract requiring work unless otherwise agreed in the contract document. In cases such as these, benefits and risk shall be transferred to the service provider after the arrival of the objects of the contract.

9.2 The service provider shall deliver at its own cost the contractually compliant objects of the contract (already worked on) to the place of delivery designated by BLS. BLS shall confirm arrival of each object of the contract by signing a confirmation of delivery.

9.3 Upon delivery/acceptance, ownership of the objects of the contract concerned is transferred (back) to BLS along with the benefits and risk. Ownership of any objects of the contract left with the service provider shall be retained by BLS at all times.

## 10 Testing and acceptance

10.1 Acceptance of objects of the contract delivered shall take place in each case immediately after its installation or commissioning.

10.2 If significant deficiencies are identified at the time of acceptance, these are to be rectified within a period to be jointly defined by the parties and acceptance is to be repeated.

10.3 The corresponding objects of the contract shall, however, be deemed to have been accepted in each case after three months at the latest following contractually compliant delivery as per point 9.2 above.

## 11 Documentation

11.1 The documentation shall provide all information necessary for safe installation, operation, maintenance, and modification of the objects of the contract.

11.2 The service provider shall hand over to BLS, no later than the time of delivery/acceptance, all relevant documents in the languages agreed and in the form agreed (in electronic form and/or in paper form).

## 12 Change to services

12.1 BLS may request a change to deliveries and services as long as this does not affect their overall character. The service provider is obliged, within ten days, to state its position in respect of the change to services requested or present a corresponding quotation or possibly explain the technical infeasibility involved in a way that can be understood.

12.2 If BLS makes a change to services and this results in an increase or reduction in costs or the conditions agreed need to be adjusted, this shall be mutually agreed in advance and set out in writing. In the absence of any agreement otherwise, the rules agreed previously shall apply to the change to services. The increase or reduction in costs shall be calculated on the basis of the original cost bases.

12.3 BLS shall compensate the service provider for justified expenditure incurred before the change to services and made redundant by this. The service provider has to notify BLS of this expenditure before the change to services is

implemented.

## 13 Deficiencies and guarantee

13.1 A deficiency is any deviation from what is contractually agreed including the elements of the contract, regardless of its cause, irrespective of any fault on the part of the service provider or the subcontractor/subsupplier, and irrespective of whether the deficiency already existed at the time of acceptance or was already identifiable at the time of acceptance. A deficiency also applies if the service or the object of the contract worked on is lacking a property that BLS might feel entitled to take for granted, in good faith, including without any specific agreement.

13.2 Subject to any provisions agreed to the contrary, liability for deficiencies and the corresponding guarantee rights shall be based on statutory provisions, in particular on Art. 367 et seq. of the Swiss Code of Obligations.

13.3 The guarantee period is 24 months. It begins from the time of acceptance of the respective object of the contract as per point 10 above.

13.4 During the guarantee period, BLS may complain about deficiencies at any time, irrespective of when the deficiencies arose or were identifiable. The complaint about a deficiency has to be in writing.

13.5 If deficiencies are remedied, a new guarantee period of 18 months from the date the remedial work was completed shall run for the remedial work and the material used for this. This guarantee period shall end, however, no later than 36 months after the time of acceptance as per point 10 above.

13.6 The service provider is not liable for deficiencies where BLS itself is at fault. BLS is itself at fault in particular in the case of defective installation, defective operation, or cases where a response or maintenance is deficient or lacking. The service provider is not liable either for deficiencies that only occur as a consequence of normal wear, inappropriate use, the use of BLS materials, inappropriate maintenance or repairs by BLS, natural disasters (or other cases of force majeure), or accidents.

## 14 BLS rights in relation to deficiencies

14.1 In the case of deficiencies during the guarantee period, BLS has the following rights in relation to deficiencies.

14.2 Remedial action: In the event of a deficiency, BLS at first only has the right to ask the service provider to rectify the deficiency within a reasonable period. If the deficiency can only be rectified by manufacturing something anew, the service provider is obliged to manufacture something anew.

14.3 The costs of rectifying the deficiency, including the costs of diagnosis, removal and installation, transport costs, and costs of remedying damage arising as a consequence of rectifying the deficiency involving the object of the contract as well as any costs incurred by BLS as a result of cooperation, shall be borne in full by the service provider. If BLS is partly at fault for a deficiency, it shall assume an appropriate share of the costs of rectifying the deficiency.

14.4 If the service provider fails to successfully rectify deficiencies within a reasonable period, BLS has the choice of:

- having the price reduced by an amount commensurate with the reduction in value of the service provided or the object of the contract;

- or, with regard to the deficient service or the object of the contract, withdrawing from the contract if it is unreasonable for BLS to accept or keep the deficient service or the deficient object of the contract at the reduced price. Upon withdrawal, BLS may demand the return of any down payment already made including interest at a rate of 5%.

## 15 Consequential loss or damage following deficiencies

Liability for consequential loss or damage following deficiencies is based on Art. 368 of the Swiss Code of

Obligations. The service provider is exempt from the obligation to provide indemnity if it proves it is not at fault.

## **16 Replacement parts management / Obsolescence**

- 16.1 The service provider guarantees the supply of replacement parts as per the list to be provided by the service provider regarding replacement parts procurement for ten years from acceptance of the service or delivery. All transport costs and charges of any kind for the delivery of replacement parts are included in the designated price. The guarantee period for replacement parts is 24 months and starts with use of the replacement part – but ends no later than 36 months after delivery of the replacement part. If original parts are no longer available, the service provider shall arrange a compatible replacement and ensure it is integrated into the system free of charge.
- 16.2 If it becomes apparent that replacement parts will not be available before the agreed period expires, the service provider shall inform BLS in the case of changes to products at least six months in advance and in the case of product discontinuations at least twelve months in advance and give it the opportunity to place a final order. Upon delivery of the final order, the service provider shall leave BLS, free of charge, all relevant documents and further aids that allow BLS to manufacture itself, or have manufactured, the replacement parts for its own needs. If the service provider breaches these obligations when stopping deliveries of replacement parts, BLS is entitled to invoice the service provider for the costs it incurs when subsequently developing suitable replacement parts.

## **17 Insurance**

- 17.1 The service provider shall take out, as a minimum, a liability insurance policy in the amount of CHF 5 million per claim event and per year for physical injury, damage to property, and any resulting financial loss. BLS is entitled at any time to request suitable proof from the service provider.

## **18 Procedural principles**

- 18.1 For services in Switzerland, the service provider undertakes to guarantee occupational safety provisions and working conditions at the place of performance as well as the equal treatment of women and men in terms of equal pay. For services abroad, the service provider undertakes to comply with the fundamental conventions of the International Labour Organisation (ILO).
- 18.2 BLS Ltd. is under an obligation to report on non-financial matters pursuant to Art. 964a et seq. of the Swiss Code of Obligations (OR). It and its subsidiaries (incl. BLS Netz AG) are subject to the due diligence and reporting obligation regarding minerals and metals from conflict areas and child labour pursuant to Art. 964j et seq. OR. The service provider undertakes to provide the information requested by BLS for the fulfilment of these obligations in full and in writing within the set deadline and to comply with these obligations itself, insofar as it is subject to them.
- 18.3 The service provider undertakes to extend these requirements to the third parties it commissions.
- 18.4 If the service provider does not comply with the procedural principles, it shall owe a contractual penalty. It amounts to 10 per cent of the contract amount, subject to a minimum of CHF 3,000.00 and a maximum of CHF 100,000.00.

## **19 Guaranteeing integrity**

- 19.1 The parties undertake to take all necessary measures for the avoidance of corruption so that, in particular, no gratuities or other benefits are offered or accepted.
- 19.2 In the event of failure to comply with this obligation, the service provider has to pay BLS a contractual penalty. This amounts to 10 per cent of the total remuneration per infringement, subject to a minimum of CHF 3,000.00.
- 19.3 The service provider acknowledges that an infringement will generally lead to the cancelling of the surcharge and to an early dissolution of the contract for important reasons by BLS.

## **20 Assignment and pledging of claims**

- 20.1 The service provider's claims may neither be assigned nor pledged beyond the group without the written consent of BLS.

## **21 Attempt to reach agreement and severability clause**

- 21.1 The parties undertake in principle to resolve by mutual consent any lack of clarity or differences of opinion relating to collaboration or implementation of the contract.
- 21.2 Any invalidity of individual clauses in the contract shall not affect the validity of the contract as a whole. If it is subsequently established that the present contract involves an omission, the partners agree to find a rule that integrates into the existing structure as well as possible.

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

- 22.1 Swiss law is the only applicable law. The provisions of the Vienna Sales Convention (United Nations Convention on Contracts for the International Sale of Goods, concluded in Vienna on 11 April 1980; CISG) are expressly excluded.
- 22.2 The exclusive place of jurisdiction is Bern.