

General Terms and Conditions of BLS AG for the procurement of technical systems, machinery, and apparatus

1 Scope and application

- 1.1 These General Terms and Conditions (GTC) govern the conclusion, content, and handling of contracts for the procurement of technical systems, machinery, and apparatus.
- 1.2 Upon submission of the offer, they shall be deemed to have been accepted by the supplier.
- 1.3 Any changes or additions must be confirmed in writing by BLS AG.

2 Offer

- 2.1 The offer, including demonstration and delivery of associated plans, samples, and models, shall be provided free of charge.
- 2.2 If the offer differs from the quotation request from BLS AG, the supplier shall make specific reference to this.
- 2.3 The supplier itself has to check the applicable measurements as well as all local and operational conditions at the place of fulfilment. BLS AG shall make it aware of specific circumstances (work of third parties, operational restrictions, etc.).
- 2.4 The supplier shall submit a work programme with the offer that provides an approximate indication of the timescale for the work.
- 2.5 The supplier shall specifically point out if any third-party property rights clearly restrict the use of deliveries and services by BLS AG.
- 2.6 All documents (plans, functional descriptions, etc.) made available by BLS AG remain the property of BLS AG and are to be enclosed again with the offer.
- 2.7 The offer is binding for the duration of the period stated by BLS AG. If the quotation request or offer make no reference to any other period, the supplier shall remain bound for three months from the date of the offer.

3 Performance

- 3.1 The supplier shall inform BLS AG on a regular basis regarding the progress of work and obtain all the specifications required. It shall immediately indicate all circumstances that jeopardise fulfilment in accordance with the contract or might result in impairments to existing facilities. It shall also inform BLS AG of any further developments that indicate a change may need to be made to the services for technical or financial reasons.
- 3.2 The supplier shall comply with the operational provisions of BLS AG, particularly security provisions and any house rules. It shall follow all instructions of BLS AG – in particular in the case of work in electrical facilities and next to railway tracks. It shall also extend this obligation to its subcontractors and subsuppliers accordingly.
- 3.3 The supplier shall provide at its own cost the aids, tools, and devices necessary for carrying out the work. It shall only have access to facilities and replacement parts of BLS AG insofar as this has been expressly agreed.
- 3.4 The supplier may not raise any claims on the basis of minor interruptions to work or operations-related waiting times.
- 3.5 The supplier, in the case of work at cost (day work), has to have daily reports, cards for stamping, and the like signed by BLS AG or its agents on a daily basis.

4 Remuneration

- 4.1 The supplier 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. If it becomes apparent the cost ceiling will be exceeded, the supplier shall notify BLS AG of this immediately.
- 4.2 Remuneration covers all services necessary for fulfilment of the contract. Remuneration covers in particular installation and documentation costs, costs for initial instruction, expenses,

licence fees, packaging, transport, insurance, and unloading costs, and all official charges (customs, VAT, etc.). Value added tax is to be shown separately.

- 4.3 Remuneration is payable upon acceptance. Any due dates that differ from this shall be defined in the payment plan. If remuneration is due, the supplier shall claim it with an invoice. Invoices are payable, unless agreed otherwise, within 30 days subject to a 2 per cent discount / 60 days net from the date of invoice.
- 4.4 Partial payments (down payments and interim payments for which no relevant services have yet been performed on the object of the contract) are to be secured by the supplier with abstract and irrevocable guarantees, payable upon first request by BLS AG, from a first-class bank or insurance company domiciled in Switzerland. BLS AG reserves the right in any case to decide whether it agrees with both the institution providing the undertaking and the formulation of the security offered.
- 4.5 Remuneration shall only be adjusted for inflation insofar as this is envisaged in the contract.

5 Use of subcontractors and subsuppliers

- 5.1 The supplier may only use third parties with the consent of BLS AG. The supplier remains responsible vis-à-vis BLS AG for provision of the service.
- 5.2 The third parties used by the supplier 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 AG to or of the use of third parties shall not affect the supplier's liability under the contract or in connection with the contract. Art. 399 para. 2 of the Swiss Code of Obligations is expressly excluded.
- 5.3 In the case of financial difficulties on the supplier's part, of fundamental differences between supplier and third parties, or of other important reasons, BLS AG, once the parties involved have been heard, may pay the subcontractor or subsupplier directly or deposit the amount, both with discharging effect.

6 Changes to services

- 6.1 BLS AG may request a change to services as long as this does not affect their overall character.
- 6.2 The change to the service and any adjustments in terms of remuneration, deadlines, and other contractual matters shall be defined in writing before performance in an addendum to the contract document. If no such agreement is forthcoming, the provisions of the original contract shall apply. The adjustment to remuneration shall be calculated in accordance with the approaches used for the original cost basis. If this is not possible and no agreement is forthcoming on the points to be adapted, BLS AG may have the relevant services performed by the supplier on a day work basis, provide them itself, or assign them to a third party.
- 6.3 Unless anything is agreed to the contrary, the supplier shall continue with its work as scheduled during the testing of proposals for changes.

7 Documentation and instruction

- 7.1 The supplier shall provide BLS AG, before joint testing at the latest, with full and copyable documentation for operating and maintenance purposes in the languages and number of copies agreed in the contract. The same documentation shall also be provided electronically.
- 7.2 All external interfaces are to be fully documented by the supplier.
- 7.3 BLS AG may, for the purposes of the contract, copy the documentation and pass it on to third parties insofar as this is necessary for their services in favour of BLS AG.
- 7.4 If deficiencies have been rectified, the supplier shall update the documentation including the source code.

7.5 The supplier shall provide initial instruction for the personnel of BLS AG. The scope of initial instruction is described in greater detail in the quotation request or the contract. If this information is lacking, a guide for operation, installation, and maintenance is sufficient. The supplier guarantees it can offer training on the optimal use of the technical systems, machinery, and apparatus.

8 Rights to work results

8.1 Documents and expertise that BLS AG makes available to the supplier for the fulfilment of the contract may only be used for strictly project-related purposes. The supplier has to extend the corresponding obligation to third parties it commissions (e.g. subcontractors). BLS AG reserves the right to take action against unauthorised utilisation (e.g. duplication, circulation) of documentation and other breaches of its rights.

8.2 The property rights to work results specifically created for BLS AG, 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 AG. The complete software documentation (in particular the documented source code along with the overview, data and function model, and function description) and other documents are to be handed over to BLS AG prior to joint testing at the latest.

8.3 Other property rights shall remain with the supplier. BLS AG shall acquire a non-transferable, irrevocable, and non-exclusive right to use these work results in the context of the contract. The right of use extends to replacement equipment, applications for testing and training purposes, work involving changes, additions, or maintenance, and deliveries of replacement parts. BLS AG may carry out work involving changes, additions, or maintenance itself or have it carried out by third parties. It shall impose a duty of secrecy on these and bar them from any other use. BLS AG may create copies of the standard software for backup and archiving purposes.

8.4 The supplier shall contest at its own cost and risk any third-party claims for breach of property rights. BLS AG shall notify the supplier of such claims without delay and grant it exclusive leave to conduct any proceedings and take measures for the judicial or out-of-court settlement of the legal dispute. In the light of the above, the supplier shall assume the costs and damages imposed on BLS AG.

9 Testing and acceptance

9.1 At the request of BLS AG, the supplier has to provide, prior to joint testing at the latest, an abstract and irrevocable guarantee, payable upon first request by BLS AG, from a first-class bank or insurance company domiciled in Switzerland to cover its liability for deficiencies. BLS AG reserves the right in any case to decide whether it agrees with both the institution providing the undertaking and the formulation of the security offered.

9.2 Joint testing shall take place prior to acceptance. The supplier shall invite BLS AG to this in good time. A protocol, to be signed by both parties, shall be drawn up regarding testing and its results. By mutual agreement, partial acceptances are also possible.

9.3 If testing identifies insignificant deficiencies, acceptance shall take place upon conclusion of testing. The supplier shall rectify immediately the deficiencies identified and inform BLS AG that they have been rectified.

9.4 If joint testing identifies significant deficiencies (e.g. missing documentation), acceptance shall be deferred. The supplier shall rectify immediately the deficiencies identified and invite BLS AG to new testing in good time. If acceptance is deferred and the contractual acceptance deadline is missed as a result, the supplier shall automatically be in default.

9.5 Despite acceptance being deferred, the object of the contract may be left for BLS AG to use by mutual agreement, with all rights and obligations of the parties in relation to acceptance and the associated legal consequences continuing to apply.

9.6 Benefits and risk shall be transferred to BLS AG upon acceptance.

10 Default

10.1 The contracting parties shall automatically be in default in the case of non-compliance with deadlines agreed – for default purposes – in the contract (transactions based on delivery by a fixed date) or in other cases following a reminder granting a suitable period of grace.

10.2 If the supplier is in default, it shall owe a contractual penalty unless it proves it is not at fault. The contractual penalty amounts, for each day overdue, to 1‰ (per mille) subject overall to a maximum of 10 per cent of total remuneration. It is also due if the services are accepted without reservations. Payment of the contractual penalty does not exempt the supplier from the other contractual obligations; the contractual penalty is, however, offset against the compensation to be paid.

11 Guarantee

11.1 The supplier is liable for its services showing the agreed properties, as well as those properties that BLS AG might feel entitled to take for granted, in good faith, including without any specific agreement. The supplier's liability does not apply insofar as BLS AG is at fault.

11.2 The supplier guarantees that its services comply with statutory provisions and the relevant EU standards.

11.3 In the event of a deficiency, BLS AG may initially only ask for remedial action free of charge. The supplier shall rectify the deficiency within the stipulated period and bear all associated costs. If rectification of the deficiency is only possible by manufacturing something anew, the right to remedial action shall also include the right to have something manufactured anew.

11.4 If the supplier fails to take the requested remedial action or fails to do so successfully, BLS AG has the choice of:

- having the remuneration reduced by an amount commensurate with the reduction in value,
- or withdrawing from the contract, although only in the case of significant deficiencies,
- or requesting the required documents (namely the source code) – insofar as no statutory or contractual provisions preclude this – and carrying out the relevant measures, at the cost and risk of the supplier, either itself or having them carried out by a third party, although this only applies in the case of significant deficiencies.

11.5 Complaints about deficiencies are to be raised within 60 days of their discovery. Rights in relation to deficiencies shall lapse within three years of acceptance. Following rectification of the deficiencies complained about, the time periods applicable to the repaired part shall start again. Claims relating to maliciously concealed deficiencies may be asserted for ten years from acceptance.

11.6 Maintenance services and replacement part deliveries by the supplier during the limitation period shall be deemed to constitute rectification of the deficiencies unless the supplier proves the contrary.

12 Liability

12.1 The contracting parties are liable for any loss or damage arising from missed deadlines unless they prove they are not at fault.

12.2 If loss or damage has occurred as a result of a deficiency, the supplier shall be liable for compensation unless it proves it is not at fault.

12.3 The contracting parties are liable for other breaches of contract unless they can prove they are not at fault.

12.4 The contracting parties are liable for the behaviour of their auxiliaries (e.g. employees, third parties) as if it were their own.

12.5 The supplier 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.

13 Technical follow-up support

- 13.1 The supplier guarantees BLS AG delivery of replacement parts for at least ten years from acceptance. Any other period for the delivery of replacement parts is to be stipulated in the contract.
- 13.2 The supplier, at the request of BLS AG, shall maintain the object of the contract for seven years, following expiry of the three-year limitation period for rights in relation to deficiencies, as per a separate maintenance contract to be concluded.
- 13.3 In the case of insolvency proceedings being opened in relation to the supplier within ten years of acceptance or if it wishes to cease delivery of replacement parts either during or after the expiry of this period, it shall inform BLS AG in good time and give it opportunity to place a last order. It shall then leave BLS AG its documentation (descriptions, plans, complete software documentation, etc.) and aids (training material, models, special tools, etc.) free of charge for the purpose of creating replacement parts for its own needs. If it is not possible to make new replacement parts, the supplier undertakes to look for a replacement product free of charge and clarify how this can be implemented.
- 13.4 The supplier, as part of follow-up support, shall ensure it is possible to make configuration and design changes for at least ten years following acceptance.
- 13.5 Deliveries and services by the supplier in the course of technical follow-up support, after expiry of the limitation period, shall be subject to remuneration and provided on competitive terms.
- 13.6 In the case of insolvency proceedings being opened in relation to the supplier within ten years of acceptance or if it stops follow-up support or can no longer provide it on competitive terms either during or after the expiry of this period, the documents needed for follow-up support must, at the request of BLS AG, be given to BLS and any internal interfaces via which BLS AG wishes to connect components from third-party suppliers must be disclosed and documented by the supplier in exchange for reimbursement at cost. For this purpose, these documents may be deposited at the cost of BLS AG with a custodian to be determined jointly by the parties. Also, tools needed for follow-up support must be made available at cost at the request of BLS AG.

14 Procedural principles

- 14.1 For services in Switzerland, the supplier undertakes to guarantee occupational safety provisions and working conditions at the place of performance as well as equal treatment of women and men in terms of equal pay. For services abroad, the supplier undertakes to comply with the fundamental conventions of the International Labour Organisation (ILO).
- 14.2 The supplier undertakes to extend these requirements to the third parties it commissions.
- 14.3 In the event of a breach of these obligations, the supplier shall owe BLS AG a contractual penalty. This amounts to 10 per cent of the contract amount per case, subject to a minimum of CHF 3,000.00 and a maximum of CHF 100,000.00.**

15 Guaranteeing integrity

- 15.1 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.
- 15.2 In the event of failure to comply with this obligation, the supplier has to pay BLS AG a contractual penalty. This amounts to 10 per cent of the total remuneration per infringement, subject to a minimum of CHF 3,000.00.**
- 15.3 The supplier 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 AG.

16. Maintenance of confidentiality

- 16.1 The contracting 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.

- 16.2 Advertising and publications relating to contract-specific services require the prior written consent of BLS AG.

17 Prohibition of assignment and pledging

The supplier may neither assign nor pledge its claims under this contract without the written consent of BLS AG.

18 Modifications to the contract, inconsistencies, and partial invalidity

- 18.1 Modifications and additions to the contract, as well as its cancellation, require the written form.
- 18.2 In the event of inconsistencies between provisions, the following order of priority applies: contract document, GTC, quotation request, offer.
- 18.3 If any individual provisions of the contract prove to be invalid or illegal, this shall not affect the validity of the contract. The provision concerned should be replaced in this case with an effective provision that comes as close as possible from an economic perspective.

19 Applicable law and place of jurisdiction

- 19.1 Swiss law is the only applicable law.
- 19.2 The United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (Vienna Sales Convention SR 0.221.211.1) is expressly excluded.
- 19.3 The exclusive place of jurisdiction is Bern.