

# General Terms and Conditions of Business for Orders

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## Art. 1 General

1. These "General Terms and Conditions of Business for Orders" constitute an integral part of the Purchasing or Service Agreement.
2. In this document the Contractor (Service Agreement) or Seller (Purchasing Agreement) is referred to as "the Contractor" and the Principal (Service Agreement) or Purchaser (Purchasing Agreement) is referred to as "the Purchaser". The work to be performed or the products being purchased are referred to as "the Work".
3. The General Terms and Conditions of Business for Orders are applicable unless written agreements to the contrary have been concluded in specific cases. General business terms (conditions of delivery, assembly etc.) of the Contractor are only valid to the extent that they have been expressly accepted in the agreement.
4. If there are contradictions between the General Terms and Conditions of Business for Orders and the individual agreement, the provisions set out in the individual agreement shall take precedence.
5. In addition to the General Terms and Conditions of Business for Orders and to the contractual provisions, the terms and conditions of the Swiss Code of Obligations (CO) shall apply.
6. Amendments to the Purchasing or Service Agreement must be mutually agreed in writing to become effective.

## Art. 2 The Work in general

1. In submitting the quotation, the Contractor affirms that all facts and circumstances necessary for the calculation, design and execution of the Work, including accessories, are known to him.
2. The Contractor declares that it has knowledge and experience as well as financial, technical and staff capacity necessary for the execution of the Work.
3. The equipment shall be manufactured according to proven design principles, taking into account the latest state of the art of science and technology and using materials which are best suited for the purpose, to the effect that the equipment serves the purpose for which it was intended in every respect and offers a maximum of operational safety. The equipment shall be designed so as to limit overhauls and repairs to a minimum and render them executable in the shortest possible time and with minimum outlay in terms of labor and materials.
4. Moreover, the Work must in every respect comply with the corresponding statutory and official provisions as well as the relevant technical regulations.

## Art. 3 Drawings, calculations and instructions

1. The Contractor undertakes to submit to the Purchaser sufficiently in advance prior to manufacturing or provision of the Work all important technical documentation such as drawings with principal dimensions, material lists, foundation plans, diagrams, testing regulations etc. in duplicate and in binding form for review and commentary.
2. In addition, the Contractor undertakes to procure all data required by third parties participating in the project sufficiently in advance and in binding, written form.
3. If, due to subsequent changes in the procedures or to the dimensions of the objects supplied by the Contractor, alteration work on the structural part of the Purchaser's plant or on equipment supplied by third parties becomes necessary, all consequential costs shall be borne by the Contractor insofar as the alterations were carried out without the prior authorization of the Purchaser.
4. Submission of the documentation to and approval by the Purchaser do not release the Contractor from his responsibility to honor the contractually stipulated guarantees and obligations.
5. The Contractor undertakes to submit to the Purchaser, at the latest upon delivery of the equipment, four copies of detailed instructions for assembling, dismantling and monitoring, as well as for operation and maintenance of the entire Work. At the latest four weeks after provisional acceptance (according to Art. 8) the Contractor shall also hand over to the Purchaser three complete and updated sets of all drawings, diagrams and other documents (of which one shall be a reproducible set in paper form and one a data carrier) which are required for a clear understanding of the functioning, operation and maintenance of the Work, as well as for the ordering of replacement parts.

#### **Art. 4 Inspections, tests, time schedule**

1. The Purchaser and his representatives shall (by prior appointment) have free access to the Contractor's manufacturing facilities and those of his sub-contractors, and he shall be supplied with all desired information on the progress of the work, the quality of the material used etc.
2. Neither the performance of the aforementioned inspection by the Purchaser nor the performance of acceptance tests shall release the Contractor from his full responsibility for adherence to the contractually stipulated guarantees, warranties and obligations
3. The Contractor shall submit, in good time before commencement of operations, a detailed time schedule and shall keep the Purchaser regularly informed on the progress of the Work. Any impending delivery delays shall be reported to the Purchaser immediately, and the reasons for the delays shall be explained in detail. At the same time the Purchaser shall be notified of the measures which the Contractor intends to take to ensure that commissioning of the Work can nevertheless take place on schedule.
4. If, due to extraordinary circumstances which could not have been foreseen by the Contractor and for which the Contractor cannot be held responsible, the Contractor is prevented from fulfilling his obligations to such an extent that adherence to the deadline is not possible, despite having taken all efforts and measures which could reasonably be expected of him, the Contractor undertakes to inform the Purchaser to this effect and to provide him with written verification of such circumstances without delay. In cases of force majeure the Contractor shall be entitled to a reasonable extension of the contractually agreed deadlines. The Purchaser shall decide upon the duration of the extension, which as a rule shall correspond to the duration of the delay. Strikes, lockouts and import restrictions shall be construed as reasons for obstruction according to the meaning of these provisions insofar as the prerequisites mentioned in the first paragraph are applicable. If the Contractor neglects to inform and provide verification to the Purchaser, the Contractor may not demand that the obstructing circumstances be taken into account thereafter.

#### **Art. 5 Packing, storage, shipment, transport**

1. Shipping readiness shall be notified to the Purchaser in writing. If shipping of the material has to be delayed beyond the contractual delivery date at the Purchaser's request, the Contractor undertakes to store the equipment in his factory or at another suitable location for a period of six months free of charge.
2. The arrival clause DDP of INCOTERMS 2020 shall apply. The transfer of risk and benefit as well as of title shall in every case be performed only at the time of the provisional acceptance pursuant to Art. 8 Para. 1. The Purchaser reserves the right to perform the transport with his own vehicles.
3. The costs for storing the Work at the destination site until assembly shall be borne by the Purchaser. Storage is the responsibility of the Contractor and can be monitored by him. The room for the storage shall be provided by the Purchaser free of charge.

#### **Art. 6 Legal consequences of late delivery**

1. If the Contractor cannot meet a contractually stipulated or extended delivery date (Art. 4, Para. 4) at the specified destination site or the assembly completion date, he shall pay the Purchaser a penalty for non-performance as per Art. 160 CO. For each full week of delay this penalty shall amount to 2% of the contract price. The total deduction for late delivery shall be limited to max.10% of the contract price. The delivery date shall be deemed to have been met if notification of availability of the Work at the destination site according to Art. 5 Para. 2 or notification of completion of assembly is received by the Purchaser within the specified time.
2. The penalty for non-performance shall be deducted from the payment to be made by the Purchaser or from the last payment instalment to be made by him. Settlement or setting-off of the payment does not release the Contractor from fulfilment of other obligations pursuant to the agreement (Art. 160, Para. 2 CO).
3. The Purchaser is entitled to set a reasonable time schedule for fulfilment thereafter. If fulfilment is not achieved even on the expiry of this date, the Purchaser is entitled to forego the belated delivery and either to demand compensation for damages arising from non-performance, or to withdraw from the agreement and to demand compensation for damages due to the agreement becoming null and void. The right of recourse to Art.108 and 366 CO is reserved. In addition, the Purchaser cumulatively retains his right to payment of the penalty for non-performance in accordance with Para. 1.

#### **Art. 7 Assembly, commissioning and trial operation**

1. Assembly, commissioning and trial operation are included in the contract price.
2. If the agreement makes provisions for separately chargeable work at cost rate, this work will be invoiced at the assembly rates valid at the time of conclusion of the agreement. The accounts for work performed on a cost rate basis are to be cleared monthly according to the working hour reports initialed by the Purchaser.
3. The Contractor undertakes to take out accident insurance at his own cost for all employees, workers and helpers involved in assembly, commissioning and trial operations who are employed and paid by him.

4. Assembly must be performed efficiently and as far as possible without interruption, and it must be effectively supervised.

#### **Art. 8 Provisional acceptance, warranty period, final acceptance**

1. On completion of assembly the Work supplied by the Contractor will be subjected to a mutual inspection by the Contractor and the Purchaser, and a trial operation will be carried out to verify that the equipment functions correctly. If the inspection and trial operation prove successful, a report will be compiled on the results of these tests and signed by both parties. The signing of the report shall constitute the *provisional acceptance* of the Work. If provisional acceptance is delayed for reasons for which the Purchaser is responsible, then this must be performed after the Purchaser has indicated his readiness for provisional acceptance, but in any case, at the latest within six months after the Contractor notified readiness for provisional acceptance.
2. Compliance with the official regulations shall be verified at the latest prior to provisional acceptance.
3. The warranty period commences on the date of the provisional acceptance; at the same time ownership of the Work is transferred to the Purchaser.
4. The warranty period amounts to 48 months. The expiry of this period marks the *final acceptance*, insofar as the operating performance of the Work as a whole has been verified. A report is to be compiled upon final acceptance and must be signed by both parties. Approval of the Work in connection with final acceptance does not apply to deficiencies to which objections were filed during the warranty period and which, up to the time of the final takeover, have not yet been eliminated, as well as for parts which proved to be deficient only at the time of final acceptance. If, for reasons for which the Purchaser can be held responsible, commissioning - and hence also provisional acceptance - are delayed, the warranty time shall be extended to a maximum of 60 months from notification of readiness for shipping.
5. In the event of deficiencies having to be rectified or replacement deliveries made, the warranty period for the parts affected by these measures begins on the day of the rescheduled provisional acceptance. In the case of major work, alterations and replacement part deliveries which are of fundamental importance for the functioning of the Work, a new warranty period shall be accorded for the entire consignment. The new warranty period shall, however, in no case last for more than five years after the initial provisional acceptance of the delivery or a part thereof.

#### **Art. 9 Warranties**

1. The Contractor warrants that the design and workmanship will be free from deficiencies, and that the equipment in its entire scope will function correctly. During the warranty period the Contractor will, as quickly as possible and at his own cost, repair or re-place (if necessary, with parts of another suitable design) all parts and equipment which show defects in design, material, workmanship or assembly or which otherwise fail to meet the contractual stipulations.
2. Indirect advantages which ensue for the Purchaser as a result of rectification of deficiencies shall not be charged to the account of the Purchaser. Excepted from the warranty are normal wear and tear in the case of wearing parts and damages attributable to inadequate supervision or operating errors on the part of the plant personnel (despite correct and clear instructions in the documentation).

#### **Art. 10 Legal consequences of non-adherence to warranties, liability for damage**

1. If the consignment shows substantial deficiencies or non-conformance with the agreement to the extent that the Purchaser cannot use the goods or reasonably be expected to accept them, the Purchaser may refuse to accept the consignment, withdraw from the agreement and demand compensation for damages.
2. Should the deficiencies or non-conformance with the agreement be less substantial, the Purchaser shall allow the Contractor a reasonable period of time in which to carry out the required improvements as warranty work. If, within this time period, the deficiencies are not rectified or rectification is unsuccessful, the Purchaser is entitled to perform the warranty work himself or have it performed by a third party at the cost of the Contractor. If, instead, the Purchaser forgoes rectification of the deficiencies, or if it is only possible to rectify part of the deficiencies, the Purchaser is entitled to deduct an appropriate amount from the price corresponding to the reduction in value.

#### **Art. 11 Bearing of risk, insurance, liability for damages**

1. The Contractor bears the full risk for the entire Work up to provisional acceptance.
2. The Contractor is responsible for insuring the Work against the usual transport and storage risks, as well as assembly risks up to provisional acceptance. At the Purchaser's request the consignment will be insured for the account of the Contractor.
3. The Contractor shall be liable for all damages inflicted on the Purchaser through the delivery, the Contractor or the Contractor's personnel, with the exception of consequential damage such as power failures, production stoppages, loss of profits and other indirect damages. Liability for material damages

and pecuniary losses is limited to CHF 10'000'000 per order. For orders with a value of over CHF 10'000'000, the cap on liability shall be agreed separately in each case.

#### **Art. 12 Prices, terms of payment, securities**

1. The specified prices are lump sum fixed prices in Swiss Francs for the contractually stipulated, completed and accepted Work. The prices include all the Contractor's personnel and material outlay for the contractually stipulated scope of work.
2. No down payment or advance payment shall be made for orders amounting to less than CHF 100'000. The Purchaser can request a bank or insurance guarantee in accordance with Para. 6.
3. If, in the case of an order exceeding the amount of CHF 100'000, a down payment or an advance payment has been agreed, the Contractor shall provide, at no cost to the Purchaser, a security for the Purchaser's down payment or advance payment. The down payment or advance payment will be transferred within 60 days after receipt of the Contractor's order confirmation and a bank or insurance guarantee acceptable to the Purchaser (sample form of the Purchaser). The security shall be regarded as security for the payment to be made by the Purchaser up to provisional acceptance. It will be released by the Purchaser after the report has been signed (Art. 8, Para. 1).
4. If the Work is delivered in instalments, the payment instalments become due according to the stipulated payment schedule.
5. Payment of any agreed differences between the basic price and the final contract price will be made within 60 days following provisional acceptance and the final invoice. If provisional acceptance is delayed due to reasons for which the Contractor cannot be held responsible, the difference will become due six months after the scheduled provisional acceptance.
6. 10% of the final delivery shall remain unpaid as a warranty retainer until the warranty period has expired, or it will be paid with last instalment after receipt of a bank or insurance guarantee acceptable to the Purchaser (sample form of the Purchaser). The warranty retainer shall serve as security for the obligations of the Contractor ensuing from the warranty provisions. It will be released by the Purchaser when the warranty has expired if the Work is free from deficiencies or if the Contractor has completely fulfilled his warranty obligations. The warranty retainer shall not accrue interest.
7. Payments shall be made 60 days net after receipt of the invoices. The due dates of the individual payments shall be notified by the Contractor.

#### **Art. 13 Proprietary rights**

1. Pursuant to the Swiss Copyright Act, the copyrights pertaining to the Work shall be retained by the Contractor, unless the latter is expressly compensated for their transfer.
2. From the time of conclusion of the agreement on-wards the Purchaser shall acquire all rights, unlimited in place or time, which are necessary for the initialization, commissioning, operation, utilization, servicing, maintenance and renovation of the Work, in particular ownership (within the meaning of Para. 1), application, utilization, licensing and amendment rights. To this end, the Contractor shall grant the Purchaser non-exclusive and non-transferrable rights. Free utilization for test purposes is permitted. The source code of software is not a part of the transfer of rights.
3. If a third-party asserts claims against the Purchaser relating to the goods and services of the Contractor on the grounds of a breach of intellectual property rights, the Purchaser must inform the Contractor without delay. The Contractor shall be liable vis-à-vis the Purchaser for all third-party legal claims arising out of the contractual fulfilment and is obliged to conduct any possible legal proceedings at his own expense on behalf of the Purchaser and to indemnify the Purchaser in respect of any possible losses. The Contractor shall ensure that such third-party claims do not cause any delays to the contractual fulfilment for the Purchaser and he shall be comprehensively liable vis-à-vis the Purchaser for any possible losses arising out of any such delay in the contractual fulfilment. The Purchaser undertakes to co-operate to the extent required by law in order to minimize the level of any such losses which he may thereby incur.

#### **Art. 14 Subsequent deliveries, overhauls, repairs**

The Contractor undertakes to perform any subsequent deliveries within the warranty period according to the conditions of the agreement and at reasonable prices. Furthermore, at the request of the Purchaser the Contractor shall perform any necessary overhauls and repairs to the Work supplied by him at reasonable prices after the warranty period has expired.

#### **Art. 15 Business Ethics**

1. The Contractor hereby warrants that it will not, directly or indirectly, and it has not knowledge that other persons will, directly or indirectly, make any payment, gift or other commitment to its customers, to

government officials or to agents, directors and employees of the Purchaser or any other party in a manner contrary to applicable laws (including but not limited to the U.S. Foreign Corrupt Practices Act and the UK Bribery Act) and shall comply with all relevant laws, regulations, ordinances and rules regarding bribery and corruption.

2. Nothing in these terms and conditions shall render the Purchaser liable to reimburse the Contractor for any such consideration given or promised.
3. The Contractor's material violation of any of the obligations contained in this Clause "Business Ethics" shall entitle the Purchaser to terminate this agreement with immediate effect and without prejudice to any further right or remedies on the part of the Purchaser under this agreement or applicable law. The Contractor shall indemnify the Purchaser for all liabilities, damages, costs or expenses incurred as a result of any such violation of the above-mentioned obligations and termination of this agreement.
4. The Contractor shall ensure that it receives in due time a copy of the Purchaser's Code of Conduct. The Contractor is aware that he may download the Code of Conduct also from Purchaser's Internet Homepage. The Contractor agrees to perform, and shall ensure that all of its agents, employees, directors and subcontractors perform, its contractual obligations under this agreement with substantially similar standards of ethical behavior."

#### **Art. 16 Data Protection**

The parties shall adhere to the relevant provisions of the GDPR at all times. The parties acknowledge that either party may collect, process, use and disclose data of the staff, managers, and other employees of the other party for all purposes relating to the business relationship between the parties. Each Party shall be solely responsible for informing its staff, managers and other employees of the collection, processing, use and disclosure of their personal data by the other party and shall, therefore, where necessary, seek the consent of its staff, managers and other employees and maintain adequate records thereof. Furthermore, the parties shall mutually and expressly authorize each other to process data regarding the other party in any form and to disclose such data to any group company or involved third parties abroad. Such recipients can also be located in countries which may not have an equivalent data protection law in place. The parties expressly agree to data transmission in such countries. In such cases, data protection shall be ensured with the group companies or third parties through contractual standardized data protection clauses pursuant to Art. 46 Abs. 2 lit. c GDPR.

The parties expressly declare that such consent is on hand; each party shall be entitled to request the declaration of consent from the other party at any time.

#### **Art. 17 Information Management Incidents**

The Contractor shall react adequately in case of an information or cyber security incident. The contractor agrees to report such incidents including personal data breaches according to art 33 GDPR affecting Zehnder or any of its affiliates or subsidiaries immediately and not later than 48 hours after having detected such incident. These incidents shall be reported to [security@zehndergroup.com](mailto:security@zehndergroup.com). The notification shall at least contain the information set forth in Art. 33 (3) GDPR. The notification to Zehnder does not exempt the Contractor from a notification to the supervisory authority as set forth in Art. 33 GDPR.

#### **Art. 18 Applicable law, place of jurisdiction, disputes**

1. This agreement shall be governed by Swiss law. The application of the United Nations Sales Convention on Contracts for the International Sale of Goods (UN Sales Convention, in force since 1 March 1991) is expressly excluded in full.
2. The parties agree to Aarau/Aargau, as the exclusive place of jurisdiction
3. Differences of opinion do not entitle the Contractor to interrupt the work or to refuse to perform any work or deliveries pursuant to the contract. Likewise, the Purchaser is not entitled to withhold payments which have become due.