



## **GENERAL TERMS AND CONDITIONS OF BUSINESS (GTC) OF THE SWISS FEDERAL DEPARTMENT OF FOREIGN AFFAIRS (FDFA) FOR MANDATES (TYPE A AND B)**

### **1 Scope of application**

1.1 The General Terms and Conditions of Business (GTC) govern the conclusion, content and performance of mandates (type A and B) between the Swiss Confederation, acting through the Swiss Federal Department of Foreign Affairs (FDFA, hereafter referred to as the Ordering Party) and the Contractor.

1.2 By submitting his offer, the Contractor accepts these GTC.

### **2 Contractor**

2.1 Contractors can be one or several natural or legal entities as well as one or several trading companies under Swiss or foreign law.

2.2 If the Ordering Party concludes the contract with several persons, these collectively constitute a consortium. In written form, the consortium designates the person who represents the consortium vis-à-vis the Ordering Party. The contract must be signed either by the representative or by all members of the consortium. The representative is expressly authorised to agree contract amendments with the Ordering Party. The consortium members shall be jointly and severally liable.

### **3 Phase prior to contract conclusion**

3.1 Until the contract is concluded, a withdrawal from negotiations shall have no financial consequences. Each party shall bear its own expenses.

3.2 Unless otherwise indicated in the request for offer, the offer is to be drawn up free of charge.

3.3 The offer binds during the period indicated in the request for offer. If it is not indicated otherwise, a deadline of six months from receipt of the offer shall apply.

### **4 Service provision**

4.1 The Contractor undertakes to perform the contract professionally and with due care, while safeguarding the interests of the Ordering Party. The Contractor undertakes to follow the instructions issued by the Ordering Party.

4.2 The Contractor undertakes to comply with the applicable legal requirements and to use the financial and technical resources available in the best possible manner.

4.3 The services to be provided under the contract shall be delivered by the Contractor in person or the Contractor's employees. Unless otherwise agreed, the Contractor must not transfer responsibility for

performing the contract to third parties (subcontractors or substitutes).

4.4 If the contract (budget) designates specific employees (key personnel) to fulfil the contract (budget), they must perform the service personally. Such persons may be exchanged only with the prior written consent of the Ordering Party.

4.5 The Contractor shall deploy only carefully selected and suitably qualified personnel. In selecting such personnel, the Contractor shall take into account the Ordering Party's interest in continuity. At the Ordering Party's request, the Contractor shall, within a reasonable period, replace employees who do not have the required expertise or will otherwise obstruct the fulfilment of the contract. If the Contractor is obliged to hire employees in order to fulfil the contract, it must do so by applying a transparent and fair recruitment process based on objective criteria.

4.6 If the Contractor is authorised to transfer fulfilment of the contract to third parties (subcontractors or substitutes), it shall conclude subcontracting agreements with them. These must accord with the contract and be within the defined budget parameters. The conditions granted to third parties must be no more advantageous than those granted by the Ordering Party to the Contractor.

4.7 The Contractor shall inform the Ordering Party at regular intervals on the progress of work. It shall immediately advise the Ordering Party in writing on any circumstances which impede fulfilment as set down in the contract.

4.8 The Ordering Party or a third party designated by the Ordering Party, as well as the Swiss Federal Audit Office, have the right to verify fulfilment of the contract and to examine all relevant documents at any time, and to request any information about it.

4.9 The Contractor shall submit to the Ordering Party the requested operational and financial reports (statements of expenses, audits etc.) in the contractually agreed form and on the contractually agreed dates.

4.10 The Contractor shall abide by the principles of orderly book-keeping. It shall observe the applicable national regulations and accounting standards of the country in which it has its domicile/head office for instance the International Financial Reporting Standards.

4.11 The following conditions apply to the purchase and handling of materials:

a. If material which is required to fulfil the contract and is listed in the budget is procured by the Contractor, this is done in the name of the Contractor

and for the account of the Ordering Party. In this case the purchase contracts are negotiated by the Contractor and submitted to the Ordering Party for approval before signing. The related invoices are sent to the Contractor, which is responsible for complying with the contractual obligations. Discounts and refunds which are granted to the Contractor when purchasing the material shall constitute a reduction in costs.

b. The Contractor is the owner of the material provided there are no other contractual provisions (e.g. rental of material). If there is a breach of contract, in particular an infringement of letter c below or any other risk to the material, the Contractor agrees to transfer upon written request from the Ordering Party any ownership. The Contractor is obliged to make this transfer immediately and to draw up a handover protocol for the material.

c. The Contractor shall handle the material with care and keep an inventory of such material. If the material is returned or passed on, the Contractor must submit a record of the handover.

d. Before the contract expiry date, the Ordering Party shall decide on the further use of the material and the allocation of any profits. The Contractor shall record any income in the final statement.

4.12 In fulfilling the contract, the Contractor must always clearly state that it is acting on behalf of the Swiss Confederation. In all public statement he shall mention that he is fulfilling a "Swiss Confederation project". The Contractor must also comply with the Swiss Federal CD guidelines.

## 5 Billing and Compensation

5.1 Compensation is based on Article 2 of the contract. The Contractor shall charge the services according to a basis fee with a cost ceiling. The Contractor is entitled to spend up to the ceiling cost. The compensation shall cover all services required to fulfil the contract. Inflation is not taken into account, unless otherwise agreed.

5.2 The Contractor is obliged to submit an electronic bill to the FDFA if the contractual value exceeds CHF 5,000 (excl. VAT), except for local Contractors of the FDFA representations abroad.

Information on the electronic billing system is available at [www.e-rechnung.admin.ch](http://www.e-rechnung.admin.ch).

5.3 With the exception of any money allowance, payments shall be made in accordance with Article 3 of the contract within 30 days of the Ordering Party's approval of the respective operational and financial reports.

5.4 Expenses for accommodation and meals are according to the Fact sheet on compensation for fees and expenses of December 2015, which is part of the contract (available at: <https://www.eda.admin.ch/eda/en/fdfa/fdfa/auftraege/informationen-downloads/contract-documents-fdfa.html>). The rates are offered by the Contractor.

## 6 Taxes and charges (incl. Value Added Tax/VAT)

6.1 The Contractor shall pay all legally required taxes and levies arising from the contract, including the Value Added Tax (VAT).

6.2 If the contractually agreed services are subject to VAT, the Contractor must inform the Ordering Party immediately. For services subject to VAT which are provided by third parties, the Contractor must make a pre-tax deduction i.e. it shall deduct the VAT charged by third parties on their invoices.

6.3 The Contractor is the only responsible to refund the VAT according to the laws of the respective partner country.

## 7 Copyright

7.1 Unless otherwise contractually agreed, all copyrights (intellectual property and performance rights as well as prospective entitlement to such rights) to the work produced in fulfilment of the contract belong to the Ordering Party. Intellectual property rights which are not legally transferable are reserved.

7.2 The Ordering Party has the unlimited right to dispose of all the results of the work whenever, wherever and however it wishes. The right of disposal covers all possible current and future rights of use, viz. usage, publication, sale and modification. The Ordering Party can contractually agree to grant the Contractor rights of use to the results of the work.

7.3 Pre-existing rights of the parties remain unaffected. If pre-existing intellectual property rights of the Contractor are exercised in fulfilment of the contract, the Ordering Party shall be granted a non-exclusive, transferable right of use for an unlimited time, irrespective of location and content, which enables it to exercise the rights of use and disposal as set out in Section 7.2.

7.4 The Contractor undertakes to regulate collaboration with third parties so that any rights of protection or use held by such third parties are transferred to the Ordering Party in the predefined scope.

7.5 The Contractor shall defend third-party claims related to infringement of copyright at its own cost and risk; if a third party lodges a suit against the Contractor, the Contractor must immediately inform the Ordering Party in writing to this effect. If the third party lodges claims directly with the Ordering Party, the Contractor shall at the request of the Ordering Party get involved in the dispute. The Contractor shall bear all costs (incl. damage compensation) arising for the Ordering Party from the proceedings and any out-of-court settlement.

## 8 Workplace safety and employment conditions, equal salary treatment for men and women and environmental law

8.1 For services provided in Switzerland within the framework of contract performance, the Contractor shall comply with the workplace health and safety provisions and employment conditions applicable at the place of performance, the notification and authorisation duties in accordance with the Federal Act of 17 June 2005 on Measures to Combat Illegal

Employment (IEA)<sup>1</sup>, the provisions on the equal treatment of men and women in terms of equal pay and the environmental law. The employment conditions shall be deemed to encompass collective and standard employment contracts or, where no such contracts exist, the actual employment conditions customary for the location and occupation.

8.2 For services provided abroad within the framework of contract performance, the Contractor shall comply with the provisions applicable at the place of performance, but as a minimum with the Core Conventions of the International Labour Organization (ILO)<sup>2</sup>.

8.3 If the Contractor seconded workers from a foreign country to Switzerland to provide the services, compliance with the provisions of the Posted Workers Act<sup>3</sup> of 8 October 1999 must be ensured.

8.4 For services provided in Switzerland within the framework of contract performance, the Contractor shall comply with the provisions of Swiss environmental law applicable at the place of performance, namely the Environmental Protection Act (EPA)<sup>4</sup>, the Waters Protection Act (WPA)<sup>5</sup>, the Nature and Cultural Heritage Act (NCHA)<sup>6</sup>, the Forest Act (ForA)<sup>7</sup> and the Chemicals Act (ChemA)<sup>8</sup>, as well as the ordinances based thereon.

8.5 For services provided abroad within the framework of contract performance, the Contractor shall comply with the environmental protection provisions applicable at the place of performance, but at least with the agreements on the environment in accordance with Annex 2 of the PPO<sup>9</sup> that are relevant for the Contractor's performance.

8.6 The Contractor is obliged to contractually impose the requirements according to sections 8.1 to 8.5 above on any third parties consulted with a view to contract performance.

**8.7 If the Contractor or one the third parties consulted with a view to contract performance violates obligations arising from section 8, the Contractor shall be liable to pay a contract penalty unless it proves that it is not at fault. The penalty shall amount to 10% of the total remuneration per violation, but no more than CHF 100,000 in total. Payment of the contract penalty shall not release the Contractor from compliance with these obligations.**

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<sup>1</sup> SR 822.41

<sup>2</sup> ILO conventions: No. 29 of 28 June 1930 concerning Forced or Compulsory Labour (SR 0.822.713.9), No. 87 of 9 July 1948 concerning Freedom of Association and Protection of the Right to Organise (SR 0.822.719.7), No. 98 of 1 July 1949 concerning the Application of the Principles of the Right to Organise and to Bargain Collectively (SR 0.822.719.9), No. 100 of 29 June 1951 concerning Equal Remuneration for Men and Women Workers for Work of Equal Value (SR 0.822.720.0), No. 105 of 25 June 1957 concerning the Abolition of Forced Labour (SR 0.822.720.5), No. 111 of 25 June 1958 concerning Discrimination in Respect of Employment and Occupation (SR

## 9 Social security and other insurances

9.1 With regard to social security, the following applies to self-employed natural persons, partnerships or legal entities (Mandate Type B):

a. The Ordering Party is under no obligation to make social security contributions (for Switzerland: Old Age and Survivors' Insurance/AHV, invalidity insurance/IV, loss-of-earnings insurance/ EO, obligatory accident insurance/UVG, obligatory occupational pension plan/ BVG) or any other compensatory benefits for illness, accident, invalidity and death. The Contractor must insure himself and its employees against the economic consequences of such risks in the country in which it customarily operates and in the country of assignment, including relocation to the country in which it customarily operates. The cost of insurance premiums shall be borne by the Contractor.

b. Self-employed natural persons shall provide the Ordering Party with an official confirmation that proves their self-employed status. If the activity governed by this contract is subsequently classified by the responsible compensation fund as non-self-employed, the Contractor undertakes to refund to the Ordering Party the employer contributions payable by the latter to the social insurance authorities.

9.2 The relevant social security provisions apply to non-self-employed natural persons (Mandate Type A): The Ordering Party shall pay the employer's contributions and deduct the employee's contributions for payment directly to the legal social security authorities (for Switzerland: AHV/IV/EO/ALV/UVG/BVG), provided there is a legal liability to do so. The Ordering Party shall pay the relevant contributions once the Contractor has reported its AHV number.

9.3 The Contractor shall, at its own expenses, take out an appropriate and reasonable liability and theft insurance (in particular, covering the use, damage to and loss of the material in accordance with Section 4.11). At the Ordering Party's request, the Contractor shall produce an insurance certificate to this effect.

## 10 Confidentiality

10.1 The parties shall treat all facts and information which is neither widely known nor in the public domain as confidential. If in doubt, facts and information must be handled as confidential.

The confidentiality obligation will not apply for the Ordering Party if it is obliged to publish the following

0.822.721.1), No. 138 of 26 June 1973 concerning Minimum Age for Admission to Employment (SR 0.822.723.8), No. 182 of 17 June 1999 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (SR 0.822.728.2)

<sup>3</sup> SR 823.20

<sup>4</sup> SR 814.01

<sup>5</sup> SR 814.20

<sup>6</sup> SR 451

<sup>7</sup> SR 921.0

<sup>8</sup> SR 813.1

<sup>9</sup> SR 172.056.11

facts and information: name and address of the Contractor, object of the procurement and value of the contract, tender procedure carried out, date of contract conclusion and commencement, and timeframe of contract execution. This shall be without prejudice to the mandatory duties of disclosure under Swiss law (e.g. as per the Freedom of Information Act<sup>10</sup>, the Public Procurement Act<sup>11</sup> and the Public Procurement Ordinance<sup>12</sup>).

10.2 The confidentiality obligation shall apply prior to conclusion of the contract and remain in force after the contract expires.

10.3 Unless consent is given by the Ordering Party, the Contractor must not advertise the fact that a cooperative relationship exists with the Ordering Party nor give the Ordering Party as a reference.

10.4 The parties shall impose the existing obligations on its employees and to any third parties involved.

**10.5 If a party violates these obligations, it shall pay the other party a contractual penalty unless it can prove that it is not to blame. In the event of a violation, the contractual penalty shall amount to 10 percent of the total compensation but no higher than CHF 100,000 per case. Payment of the contractual penalty shall not constitute an exemption from the aforementioned obligations. The contractual penalty shall be taken into account in any damage compensation.**

## 11 Data protection

11.1 The parties undertake to observe the provisions of the Swiss Federal Law on Data Protection. They agree to take all economically acceptable as well as technically and organisationally possible precautions to ensure that any data associated with the contract fulfilment are protected effectively against unauthorised access, publication and further processing. Legal obligations to disclose and publish information are reserved.

11.2 Personal information must be processed only for the purpose of, and to the extent required for, the performance and fulfilment of the contract. The Contractor acknowledges that the Ordering Party evaluates the quality of the services provided.

11.3 The parties shall impose the pre-existing obligations on its employees and any third parties involved.

## 12 Default

12.1 Unless otherwise contractually agreed, the Contractor shall be in default if it does not observe the contractually agreed deadlines after receiving a warning to this effect.

**12.2 If the Contractor is in default, it shall be liable to a contractual penalty unless it can prove that it was not to blame. This penalty shall amount to 0.1% of the total remuneration for each day the Contractor is in default, but no higher than 10 percent of the total compensation.** This shall also be payable in the event that the services are accepted

subject to reservation. Payment of the contractual penalty shall not exempt the Contractor from the contractual obligations. The contractual penalty shall be taken into account in any damage compensation.

## 13 Liability

13.1 The parties shall be liable for all damage which they cause the other party unless they can prove they were not to blame. Liability for injury to persons shall be unlimited. In every case, liability is limited to the effective and substantiated extent of the damage. Liability for loss of profit is excluded.

13.2 The Contractor shall be liable for the conduct of its employees and any third parties consulted with a view to contract performance (e.g. subcontractors and substitutes) as well as for its own behaviour.

## 14 Contract amendment, termination and partial invalidity

14.1 Amendments and supplements to the contract and its annexes, as well as its termination, must be made in writing.

14.2 The contract may be terminated in writing by either party at any time. The services provided until the date of termination of the contract shall be compensated. Claims for damage arising from inopportune termination of the contract are reserved. Compensation for loss of profit is excluded.

14.3 If individual provisions of the contract prove to be invalid or unlawful, this shall not affect the validity of the contract. In such cases, the provision in question shall be replaced by an effective provision that is as equivalent as possible in economic terms. The same shall apply in the event of a gap in the contract.

## 15 Assignment and pledging

The rights due to the Contractor from this contract may not be assigned or pledged without the written consent of the Ordering Party.

## 16 Final provisions

16.1 The applicable law is the Swiss law, with the exclusion of conflict of law provisions. The provisions of the UN Convention on Contracts for the International Sale of Goods dated 11 April 1980 (Vienna Convention)<sup>13</sup> shall not apply.

16.2 The exclusive court of jurisdiction shall be Bern, Switzerland.

<sup>10</sup> SR 152.3

<sup>11</sup> SR 172.056.1

<sup>12</sup> SR 172.056.11

<sup>13</sup> SR 0.221.211.1