



## 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, hereinafter referred to as the Ordering Party) and the Contractor.

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

### 2 Contractor

2.1 Contractors may be one or several natural persons 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 shall designate the person who represents the consortium vis-à-vis the Ordering Party. The representative is solely authorised to act in the name of and for the account of the members of the consortium.

The contract must be signed by all members of the consortium. 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 is binding during the period indicated in the request for offer. Unless otherwise indicated, 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 (suppliers, subcontractors or substitutes).

4.4 If the contract (budget) designates specific employees (key personnel) to fulfil the contract, 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. 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 (suppliers, 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 of any circumstances likely to affect or jeopardise performance under 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 materials which are required to fulfil the contract and are listed in the budget are procured by the Contractor, this shall be done in the name of the Contractor and for the account of the Ordering Party. In this case the purchase contracts shall be negotiated by the Contractor and submitted to the

Ordering Party for approval before signing. The related invoices shall be 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 materials 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 a breach 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 materials with care and keep an inventory of such materials. If the materials are 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 statements it shall mention that it is carrying out a 'Swiss Confederation project'. The Contractor must also comply with the Swiss federal government's corporate design ('CD-Bund') guidelines.

## 5 Remuneration and Billing

5.1 Remuneration shall be made in accordance with Article 2 of the contract. The Contractor shall charge for the services on the basis of time spent, subject to a cost ceiling. In charging for its services, the Contractor may not exceed the cost ceiling. The Remuneration stipulated in the contract shall cover all services required to perform the contract. It shall cover, in particular, all ancillary services, all costs stipulated in the contract in connection with materials, packaging, transport, insurance, the assignment or use of rights and documentation, secretarial and infrastructure costs (overheads), social security payments, expenses, fees and public charges. Any value added tax or import tax due shall be payable together with the payment, but itemised separately in the offer, contract and invoices. Inflation is not taken into account, unless otherwise agreed.

5.2 The Contractor is obliged to submit an electronic bill to the Ordering Party if the contract value exceeds CHF 5,000 (excl. VAT), except for local contractors of the FDFA's 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 advance payment, payments shall be made in accordance with Article 3 of the contract (payment plan) 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 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 Property rights

7.1 Unless otherwise contractually agreed, all property rights (intellectual property and related rights as well as prospective entitlement to such rights) to the work produced in the fulfilment of the contract belong to the Ordering Party, subject to any non-assignable personality rights under intellectual property law.

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, e.g. exploitation, publication, sale and modification. The Ordering Party may 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 clause 7.2.

7.4 The Contractor undertakes to regulate collaboration with third parties so that any third-party proprietary rights, or rights of exploitation and use are transferred to the Ordering Party in the predefined scope.

7.5 The Contractor warrants that it and any third parties appointed by it hold all rights required in order to provide the services. The Contractor undertakes to defend any third-party claims related to infringement of proprietary rights at its own cost and risk. If a third party initiates proceedings 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. payments of damages) arising for the Ordering Party from the proceedings and any out-of-court settlement.

## **8 Workplace health and safety provisions 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), as set out in Annex 6 of the PPA.<sup>2</sup>

8.3 If the Contractor second 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 If the contractor itself or a third party engaged by it violates obligations arising from this section 8, it 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 agreed maximum total remuneration including optional goods/services, or 10% of the remuneration agreed for the subsequent 12 months in the case of permanent contracts, or 10% of the remuneration for the preceding 12 months in the case of a shorter remaining contract term, but at least CHF 3,000 per violation and no more than a total of CHF 100,000 per contract; in the case of a framework contract, this upper limit shall apply once for the entire contractual relationship.**

<sup>1</sup> SR 822.41

<sup>2</sup> SR 172.056.1

<sup>3</sup> SR 823.20

<sup>4</sup> SR 814.01

<sup>5</sup> SR 814.20

**Payment of the contract penalty shall not release the contractor from compliance with contractual obligations and shall be offset against any claims for damages.**

## **9 Social security and other insurance**

9.1 With regard to social security, the following applies to self-employed natural persons, partnerships and 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 itself 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 to statutory social security schemes directly (for Switzerland: AHV/IV/EO/ALV/UVG/BVG), insofar as they are legally payable. The Ordering Party shall pay the relevant contributions once the Contractor has reported its AHV number.

9.3 The Contractor shall, at its own expense, take out appropriate and reasonable liability and theft insurance (in particular, covering the use of, damage to and loss of the materials in accordance with clause 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 as confidential all facts and information which are not widely known or in the public domain and which, due to their nature, the parties have an interest, in good faith, in keeping confidential. If in doubt, facts and information must be handled as confidential.

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

<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 performance. This shall be without prejudice to the mandatory duties of disclosure under Swiss law (e.g. under the Freedom of Information Act,<sup>10</sup> the Public Procurement Act<sup>11</sup> and the Public Procurement Ordinance<sup>12</sup>).

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

10.4 Unless written 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.

**10.5 If one of the parties violates the confidentiality obligations above, it shall be liable to pay a contract penalty to the other party unless it proves that it is not at fault. Per violation, the penalty shall amount to 10% of the maximum total agreed remuneration including optional goods/services, or 10% of the remuneration agreed for the subsequent 12 months in the case of permanent contracts, or 10% of the remuneration for the preceding 12 months in the case of a shorter remaining contract term, but no more than CHF 50,000 in total per case. Payment of the contract penalty shall not imply release from compliance with contractual obligations and shall be offset against any claims for damages.**

10.6 Irrespective of these confidentiality agreements, the contractor and persons acting on its behalf may be deemed auxiliaries of an authority and thus be subject to official secrecy. A breach of official secrecy is punishable under Article 320 of the SCC<sup>13</sup>.

## 11 Data protection and data security

11.1 The parties undertake to observe the provisions of the Swiss Data Protection legislation and to ensure that any data arising in connection with the performance of the contract is effectively protected from access, inspection or processing by unauthorised third parties.

11.2 If the contractor is provided with data of the client within the scope of contract performance, the contractor shall be obliged to return such data after termination of the contract and to irrevocably delete or destroy it on both primary and secondary media (test or backup media, etc.). The deletion or destruction of the data shall be carried out in accordance with the currently recognised state of the art and shall be confirmed to the client in writing upon request. The return, deletion or destruction of the data must take place within 30 days after contract termination. If the data on backup media cannot be deleted, the backups must be protected in accordance with the recognised state of the art and must be deleted or destroyed within one year at the latest. If the contractor is subject to a legal obligation to retain data, the return, deletion or destruction of

the data subject to this retention obligation must take place within 30 days after the end of the retention period.

11.3 Any right of the client to audit the contractor's security measures with regard to data protection and data security shall be the subject of a separate contractual agreement between the parties.

11.4 Personal data may only be processed for the purposes of, and to the extent required for, the performance and implementation of the contract. The Contractor acknowledges that the Ordering Party shall evaluate the quality of the services provided.

## 12 Default

12.1 If the contractor fails to meet firmly agreed deadlines (expiry date transactions), it shall immediately be deemed to be in default, and in all other cases upon receiving a reminder.

**12.2 If the contractor is in default, it shall be liable to pay a contract penalty unless it proves that it is not at fault. The penalty shall amount to 0,1% per commenced calendar day of delay, but no more than a total of 10% of the maximum total remuneration including optional goods/services per contract and case of default, or 10% of the remuneration agreed for the subsequent 12 months in the case of permanent contracts, or 10% of the remuneration for the preceding 12 months in the case of a shorter remaining contract term at the beginning of the default. It shall be owed even if the goods/services are accepted subject to a corresponding reservation. Payment of the contract penalty shall not imply release from compliance with contractual obligations and shall be offset against any claims for damages.**

## 13 Liability

13.1 The parties shall be liable for all damages they cause the other party unless they prove they are not at fault. Liability for personal injury shall be unlimited. In every case, liability shall be limited to the actual and substantiated extent of the damage. Liability for loss of profit is excluded.

13.2 The parties shall be liable for the conduct of their employees and any third parties called upon (e.g. suppliers, subcontractors and substitutes) in the same way as for their own conduct.

13.3 The contractor shall impose the obligations set out in sections 4 (deployment of employees), 8 (workplace health and safety rules, working conditions, equal pay and environmental law), 10 (confidentiality) and 11 (data protection and data security).

## 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.

<sup>10</sup> SR 152.3

<sup>11</sup> SR 172.056.1

<sup>12</sup> SR 172.056.11

<sup>13</sup> SR 311.0

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. The right is reserved to claim damages in connection with termination of the contract at an inopportune juncture. 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 sole applicable law is substantive Swiss law.

16.2 The exclusive place of jurisdiction shall be **Bern**, Switzerland.