

# GENERAL TERMS AND CONDITIONS OF CONTRACT (GTCC) ROMANDE ENERGIE GROUP

Version of 03.01.2014

## 1. Scope and Validity

- 1.1. These General Terms and Conditions apply to the framework contract (hereinafter "the Contract") that binds the client and the contractor (hereinafter individually "the Party" and jointly "the Parties"). Any provision that alters or derogates from these General Terms and Conditions is null and void unless it is included in the Contract.
- 1.2. The General Terms and Conditions are an integral part of the Contract. By signing the Contract, the Parties declare that they have taken note of the General Terms and Conditions and accept them unconditionally.
- 1.3. The General Terms and Conditions apply, unless the Contract expressly derogates therefrom. In the event of any contradiction between the General Terms and Conditions and the Contract, the Contract will prevail over the General Terms and Conditions.

## 2. Duty of Care and Duty to Act in Good Faith

- 2.1. The contractor will use its skills in the best interests of the client and take account of the generally acknowledged good practice in its sector.
- 2.2. The contractor will avoid conflicts with its own interests and with the interests of third parties. The contractor will inform the client of any potential conflicts of interest. In the event that the contractor has already been commissioned by an entity to provide services and this activity creates a conflict of interests, the contractor shall inform the client of the nature of the services provided prior to signing the Contract.
- 2.3. The Parties agree not to offer, directly or indirectly, any benefits whatsoever to third parties and not to accept or rely on promises of gifts for themselves or for others, directly or indirectly, or other benefits.

## 3. Duty of the Contractor to Provide Information and Warn

- 3.1. The contractor will keep the client updated on the progress of the works and will in particular obtain all the relevant information. The contractor will promptly inform the client in writing of all the circumstances that are likely to hinder the proper performance of the Contract. The contractor will notify the client in writing immediately of any changes that take place in the phases or future partial phases during the performance of the Contract.
- 3.2. The contractor will inform the client in writing immediately of any divergences that are ascertained in relation to the volume of work agreed as well as all the developments which, for technical or economic reasons (e.g. new method of construction, new work process or new materials), may justify a change to the agreed services.
- 3.3. The contractor is not liable for the content of the client's instructions and assumes no liability other than that specified in the Contract. The contractor will draw the attention of the client in writing to any adverse effects of its instructions, in particular with regard to deadlines, quality and costs. The contractor will warn the client of inappropriate requirements and requests. If the client insists on an instruction despite the written warning by the contractor, the latter disclaims all liability toward the client for the consequences.
- 3.4. If, by way of exception, the client gives instructions directly to third parties, the client will inform the contractor without delay.

## 4. Recourse to third parties

- 4.1. Recourse to third parties for the purpose of performing the Contract is subject to the prior written authorisation of the client.
- 4.2. The third parties that are enlisted by the contractor are invariably deemed to be associates within the meaning of Article 101 CO. The fact that the client approves or is aware of the recourse to third parties shall have no impact whatsoever on the contractual liability of the contractor. The application of Article 399 CO is expressly excluded.
- 4.3. In the event of contractor payment difficulties, serious disputes between the contractor and third parties or other major problems, the client may, after hearing the parties concerned, pay the third parties directly or add the amount to the costs incurred by the contractor, with the effect in both cases of discharging the obligations of the contractor in this respect. The client will inform the contractor in writing in every case.

## 5. Content and Extent of the Power of Representation of the Contractor

- 5.1. The contractor is in principle not permitted to make legally binding declarations to third parties on behalf of the client.
- 5.2. For the purposes of preparing a general estimate, the contractor may, however, award individual and complete services and supplies worth up to CHF 500 (excluding VAT), independently on a case-by-case basis. The client must be informed immediately of such an order.
- 5.3. More significant awards must be made by the client.
- 5.4. The contractor is obliged to promptly forward to the client the notifications and declarations of third parties (authorities, contractors, specialists, etc.) that affect the aim of the contract (e.g. agreed quality targets and risks, difficulties of the contracting partners and requests from third parties on this matter, requests to adjust prices, warnings, etc.).
- 5.5. The contractor is obliged, as far as possible, to include the obligations in clauses 5.1 to 5.4 pertaining to the power of representation in the contracts that it concludes with third-party contractors for the purpose of performing the contract.

## 6. Changes to the Contract

- 6.1. The client may request changes to the agreed services.
- 6.2. Changes to services and relevant adjustments to the remuneration, deadline and other aspects of the Contract shall invariably be set out and agreed in writing in an additional clause to this Contract before new services are provided. Any changes to the fees shall be determined on the basis of the calculation and initial costs plus the price increase, provided an adjustment to take account of the price increase has been agreed contractually.
- 6.3. The client is obliged to compensate the contractor for the services that were demonstrably authorised and provided before the order was changed and rendered void as a result of such change.

## 7. Key Persons

- 7.1. After the conclusion of the Contract, the key persons employed by the contractor, who are in charge of the project, may not be replaced without the authorisation of the client and only by persons with the same qualifications. This is subject to cases of illness and death of the key persons.

## 8. Remuneration

- 8.1. Fees and additional costs.

All services (including additional costs) are normally invoiced for each partial phase. If the completion of partial phases takes more than 3 months, monthly payments on account may be invoiced; they must be accompanied by the summary of services provided and the requisite proof.

For each agreed partial phase, a summary must be prepared no later than 2 months after the provision of the last service. This document will contain a checkable list of the services provided and will give the client an overview of all invoices submitted by the contractor and payments received and outstanding.

## 8.2. Costs Cap

Any overrun of the agreed costs cap is payable by the contractor, unless the client has approved a change to the order in writing or is responsible for the additional costs on other grounds.

## 8.3. Remuneration of Provisional Services

Services that have still only been agreed provisionally upon conclusion of the Contract will be referred to as such in the Contract. They are namely services that are to be provided in phases or subsequent partial phases.

Prior to their performance, the client and the contractor shall agree in writing, in an additional clause to the Contract, the subject matter and scope of these services, their remuneration and the applicable basis of calculation according to the initial costs base and calculation.

## 8.4. Fee Reductions and Deduction

In the event of additional costs and/or a cost overrun for which the contractor is liable or to blame, the client reserves the right to reduce the fees accordingly. Under no circumstances will this affect the client's entitlement to damages.

If the contractor is liable, individually or jointly and severally, for serious defects, the client may make a deduction equivalent to at least the estimated costs of rectifying the defects and damage.

## 8.5. Final Statement

The final statement must be presented in a manner that makes it easy to compare to the offer. The client will check it within 30 days and notify the contractor of the result immediately. The amount owed by the contractor is payable when the client notifies the contractor of the result of the audit.

## 8.6. Invoicing

The contractor will issue a monthly invoice for its services based on the volume of work performed for each type of service and the number of hours worked as well as the expenses incurred. The invoices must be paid without a reduction or discount, on the due date indicated on the invoice. The due date indicated on the invoice is 60 days commencing from the date of issue of the invoice.

The contractor will send its fee-based invoices to the client's accounting department, with a copy to the client's contact person.

## 9. Force majeure

- 9.1. Neither Party may be held liable for losses, damage, delays or breaches resulting from a force majeure event, i.e. an event which is beyond the reasonable control of the Party laying claim (the "Party claiming force majeure"), which it could not reasonably be expected to avoid or overcome, and which renders the Party claiming force majeure incapable of performing its obligations under the Contract.

- 9.2. As soon as the existence of a case of force majeure becomes known, the Party claiming force majeure must inform the other Party and, as far as possible and for information, notify the other Party of the extent and likely duration of its inability to perform all or part of its contractual obligations.

- 9.3. If a force majeure event occurs that is likely to last more than 10 (ten) days, the Parties shall immediately reach an agreement on the measures to be taken to mitigate the effects of the hindrance. The Party claiming force majeure shall in every case endeavour to mitigate the economic impact of the force majeure event and, throughout its duration, must keep the other Party regularly informed of the extent and likely duration of its inability to perform its obligations.

- 9.4. The Contract is automatically suspended for the duration of the force majeure event and throughout the period in which performance of the contract concluded between the parties is objectively impossible. Each party is released from its contractual obligations for the period in which performance of the contract is impossible due to a force majeure event. If the force majeure event affects only part of the agreed services, the parties are released from their contractual obligations that pertain solely to the services that are affected.

## 10. Safety Directives

- 10.1. The contractor shall take all necessary steps to ensure the safety of persons and equipment at the place of delivery or provision of the service. In addition to compliance with all legislation (for example the Swiss Federal Law on Accident Insurance, the Swiss Federal Act on Employment in Trade and Industry) and the technical regulations in force that are applicable to health (for example asbestos) and safety and hygiene, the contractor has an absolute duty to adhere to the safety regulations that are in force on the premises of Romande Energie and to familiarise itself with such regulations. The attention of the contractor is drawn to the Ordinance on Construction Works (OConstW) and compliance with the legislation on electrical installations (for example the Ordinance on Low Voltage Electrical Installations [OBT]) and the Ordinance on Strong Current).
- 10.2. The contractor will specify the techniques to be implemented and will take account of the comments made by Romande Energie concerning the incompatibilities between the specified techniques and the client's installations. The contractor agrees to instruct his personnel about the hazards associated with the client's installations as well as the hazards that are reported to the contractor by the client.
- 10.3. In the event of work on a construction site or installation work, the contractor will develop a health and safety plan [HSP] and document the emergency measures.
- 10.4. The contractor must take account of these obligations in preparing its offers and in performing the Contract. Failure to adhere to these obligations could result in suspension of the work. The resultant expenses will be payable by the contractor.
- 10.5. The client invariably reserves the right to have the work suspended immediately if the contractor repeatedly fails to comply with or seriously breaches its safety obligations.

## 11. Confidentiality

- 11.1. The Parties consider the subject matter of the Contract and all information obtained in connection with the Contract to be confidential and undertake not to divulge such data to third parties without the prior written consent of the other Party, subject to legal regulations in force obliging one Party to divulge all or part of the data to a third party. The Parties will draw the attention of their employees, who are responsible for performing the Contract, to the scope of this clause and will ensure that their employees sign a confidentiality undertaking or are bound by a duty of confidentiality as provided for in this Article.

- 11.2. In the event of a breach of the duty of confidentiality, the contractor may be bound to pay the client a penalty of CHF 30,000.-.
- 11.3. The obligations arising under this Article will also remain in force after the termination of the Contract between the Parties.

## 12. Liability of the Contractor

- 12.1. The contractor is liable under civil law for any damage that is caused by itself, its employees and/or its associates and/or its subcontractors, for which the contractor itself or its employees could be held liable under the applicable law.
- 12.2. The contractor is specifically liable in the event of a breach of its duty of care and its duty to act in good faith, failure to comply with, or breach of, the acknowledged good practice in the sector, lack of coordination or monitoring, assessment and inadequate cost control, including verification of contractor invoices, and the loss of warranty rights due to defects in the work by third-party contractors, if any, in charge of carrying out the work.
- 12.3. Incomplete documents or documents that contain errors will be rejected by the client and shall be corrected free of charge.
- 12.4. In the event of non-performance or imperfect performance, the contractor is liable to pay a contractual penalty amounting to half of the fees stipulated in the contract, regardless of whether any damage has occurred. This is subject to any damage that exceeds the amount of the contractual penalty.
- 12.5. The contractor undertakes to fully indemnify Romande Energie against any claims brought by a third party, or any action relating to liability brought by such third party for loss, damage, personal injury or property damage arising from or in connection with a breach of the Contract or these General Terms and Conditions, including, but not limited to, legal fees, court costs and other expenses incurred by the Romande Energie Group.

## 13. Interruption of the Work

- 13.1. If the client orders the work to be interrupted, the contractor will not be entitled to additional compensation.
- 13.2. If, upon resumption of the work, the delay requires changing the existing data or other additional work, these additional services and their remuneration must be agreed in writing by the Parties prior to resumption of the work.

## 14. Statute of Limitations

- 14.1. Subject to clause 14.2 below, the rights arising under the Contract are time barred after 10 years, commencing from the date of the tortious action. For expert reports, the period of limitation starts to run from the date of delivery of the documents.
- 14.2. Claims that are based on defects in property construction are time barred after 5 years, commencing from the date of acceptance of the work or a part thereof. A complaint may be brought in respect of such defects at any time during the first 2 years after acceptance (defects notification period pursuant to Article 172 of SIA Standards 118). Upon expiry of this deadline, a complaint must be submitted upon detection of such defects.

## 15. Intellectual Property

- 15.1. The contractor warrants and represents to the client that the results of its work in connection with the Contract – in particular all software (including the source code), studies, documents, texts, plans, samples and photos – made, produced, designed, invented or created by the contractor, alone and/or in association with the client are original and do not infringe any existing copyrights or other intellectual property rights that are owned by third parties.
- 15.2. The contractor warrants and represents to the client that it has obtained all the authorisations that are required to use the components owned by third parties in the results of its work. If necessary, the contractor will, on request, provide the client with a copy of the written authorisations of third parties.
- 15.3. The contractor grants the client a right to use the work for its own purposes. This right namely includes the right to reproduce, copy, edit, alter, adapt, translate, change or distribute the results of the work, irrespective of the form. The contractor agrees to sign all documents and other instruments that are necessary to prove or confirm this assignment, on request and at the expense of the client. The contractor will not claim a right to the results of its work. This right exists for an indefinite period and is non-exclusive, free of charge and irrevocable.
- 15.4. All intellectual property rights to the project (study, results, plan, software, etc.) belong to the client. In the event that changes are made to the construction work, the client is also entitled to request copies of the plans and invoices from the contractor.

## 16. Storage of Documents

- 16.1. The contractor, or each member of the working group, as the case may be, will store all the documents relating to this Contract, the original versions of which have not been provided to the client, free of charge for at least 10 years, and in the condition in which they were provided, commencing from the date of expiry of the Contract

## 17. Early Termination of the Contract

- 17.1. The Contract may be terminated by either Party, with or without a reason, subject to 30 days' notice. The Parties may terminate the Contract with immediate effect for cause. The fees and costs of the services provided by the contractor are payable by the client, without any increases, until the Contract is terminated.
- 17.2. The Contract must be terminated in writing.
- 17.3. In the event of early termination, the Party that terminates the Contract shall compensate the other Party for the loss caused pursuant to Article 404 paragraph 2 CO, with the exception of lost profit.
- 17.4. Termination is not deemed to be early if the contractor has given the client or the client has given the contractor a reasonable ground for terminating the Contract.
- 17.5. Furthermore, termination of the Contract by the client is not regarded as early termination if:
- the loans are not approved or released by the legislative or executive authority or another authority;
  - the authorisations have not been obtained;
  - one or more key persons employed by the contractor, whose collaboration is crucial for the project, are replaced without the consent of the client or without meeting the conditions specified in clause 6 above.

## 18. Miscellaneous Provisions

- 18.1. Unless otherwise agreed in writing by the client, all documents will be drafted in the French language.
- 18.2. Any changes made to the Contract shall be in writing.
- 18.3. The Contract binds the Parties that have signed it as well as their legal or contractual successors.

- 18.4. If one or more provisions of the Contract prove to be incomplete or invalid, this shall not affect the validity of the remainder of the Contract. In this case, the Parties to the Contract are obliged to replace the incomplete or invalid provision with a valid term which is equivalent to or matches the aim and commercial purpose of the incomplete or invalid provision as closely as possible.

- 18.5. Neither Party is permitted to assign or delegate all or part of its rights or obligations provided for in the Contract without the prior written consent of the other Party. Any assignment or delegation that is made without such consent would be invalid. However, the Parties are authorised to assign all or part of the rights and obligations arising under the Contract to any company that belongs to their respective group.

## 19. Applicable Law, Jurisdiction

- 19.1. These General Terms and Conditions and the Contract shall be governed by Swiss law, in particular the provisions of Articles 394 et seq. CO on agency contracts.
- 19.2. Any disputes arising from the conclusion, interpretation, fulfilment, termination or breach of these General Terms and Conditions and the Contract, which cannot be settled amicably, will be referred to the exclusive jurisdiction of the courts of Morges, Canton of Vaud.
- 19.3. The French version of these general terms and conditions shall prevail .

Read and accepted, on \_\_\_\_\_

Surname & first name : \_\_\_\_\_

Role : \_\_\_\_\_

Signature :

Company stamp :

### Registered Office / Purchasing Department:

Romande Energie SA  
Rue de Lausanne 53  
1110 Morges - Switzerland  
Tél. +41 (0)21 802 92 60  
Fax +41 (0)21 802 92 55

ROMANDE  
ENERGIE