



## **GENERAL CONDITIONS OF BUSINESS (GCB)**

for mandates

allotted by

**Swiss Agency for Development and Cooperation (SDC)**

**(GCB/SDC)**

### **1. General provisions**

- 1.1. The present general conditions (hereinafter "GCB for mandates") shall constitute an integral part of each mandate concluded between the Swiss Agency for Development and Cooperation (hereinafter "SDC"), and a contracting party entrusted with the execution of certain services (hereinafter "the Consultant").
- 1.2. The term Consultant shall include natural persons or corporate bodies, associations and their auxiliary staff in the sense of Article 101 of the Swiss Contract Law (CL).
- 1.3. All amendments to the Contract, to the general conditions, or to the other appendices to the Contract, must be drawn up in writing.
- 1.4. The contracting parties shall be bound only by provisions in writing. Up to the completion of the Contract, withdrawal from the negotiations by either of the parties shall entail no financial obligation, each of the parties being responsible for its own expenses.
- 1.5. In case of call for tenders, the tender, including presentations, shall not be subject to payment, unless the call for tenders provides otherwise. The Consultant shall present a tender on the basis of the call for tenders. The Consultant is entitled to make additional proposals.
- 1.6. If the Consultant is a consortium, the Contract must be signed by all the members of the consortium. The members of the consortium shall assume joint responsibility. The consortium shall appoint the competent authority whose actions are binding on the consortium and which is entitled to receive payments.

## **2. Responsibility - rights and obligations of the Consultant**

- 2.1. The Consultant shall be personally responsible for the careful and diligent execution of the Contract, and for a standard of service pursuant to the contractual conditions and specifications as well as to the scientific and technical standards applicable.

The Consultant shall declare that he or she possesses experience in the field which is the object of the Contract and is cognisant of the legal basis underlying Swiss Cooperation and Humanitarian Aid. The Consultant shall do all in his or her power to ensure that the best possible use is made of the financial and technical resources available.

- 2.2. Within the framework of the Contract, SDC shall assume obligations with respect to the Consultant only. As a general rule, the Consultant shall personally fulfil the assignment with which he or she has been allotted. No commitment made by the Consultant towards a third party can become the responsibility of SDC.

Sub-contracting shall be admissible only if there is provision for it in the Contract. In respect of third parties or in the case of a sub-contract or other contract concluded by the Consultant, the Consultant remains solely responsible for third parties' acts and the latter shall in no case become the responsibility of SDC; moreover, where a sub-contract has been concluded, the Consultant shall undertake to submit to SDC copies of the contracts and terms of reference which he or she has agreed. These documents shall be attached to the Contract. The Consultant shall neither enter into nor terminate a sub-contract concerning the execution of all or part of the Contract without the agreement in writing of SDC.

- 2.3. The Consultant shall be responsible for the conduct of his or her auxiliary staff pursuant to Article 101 of the Swiss Contract Law (CL), and for the conduct of his or her sub-contractors pursuant to Article 399 of the CL. The Consultant shall not be responsible to SDC for damage due to force majeure or accidental events. The Consultant shall ensure that any sub-contracting agreements which he or she may conclude are in compliance with the Contract and that the sub-contractors do not benefit from conditions which are more favourable than those applying to SDC.
- 2.4. The Consultant shall at regular intervals inform SDC about the progress of the work and notify the latter immediately and in writing of any event which might modify the execution of the Contract as originally intended, exercise a negative influence on the execution of the Contract or endanger it in any way. In cases of emergency, the Consultant shall take all necessary provisional measures and inform SDC without delay.
- 2.5. SDC alone shall be competent to issue instructions and to require modifications.
- 2.6. The Consultant may not transfer the Contract without the written consent of SDC.
- 2.7. In the absence of written provisions to the contrary, all contractual deadlines laid down shall be considered as fixed deadlines.

In the event of non-compliance with an imperative deadline defined as such in the Contract, the Consultant shall be immediately deemed to be in default. In any other case, a reasonable extension of the deadline shall be agreed upon.

**In the event of delay by the Consultant in complying with a fixed, imperative deadline laid down in the Contract, a contractual penalty shall be imposed unless he or she can prove that he or she is not at fault. Such penalty for non-performance shall correspond to 1‰ of the price of the service for each day overdue, but shall not amount to more than 10% of the total cost of the services to be provided. Payment of the contractual penalty shall not discharge the Consultant from his or her contractual obligations. In the event of force majeure or if the Consultant can prove that he or she is not culpable, then no penalty is payable.**

- 2.8. The Consultant shall at all times state clearly that he or she is acting in the framework of Swiss Cooperation and Humanitarian aid. He or she shall undertake to safeguard to the full the interests of SDC and to work in favour of continuing good relations between Switzerland and the country in which the Contract is being executed by means of an appropriate course of conduct. The Consultant shall abstain from all interference in the internal affairs of the country concerned and shall strive to cooperate in a constructive manner with the administration of the country.
- 2.9. The Consultant shall state that he or she knows and observes the rules and regulations of the country of assignment.
- 2.10. The Consultant shall enter into contact with the local SDC coordinator responsible in the place where the Contract is being executed, and shall keep the latter regularly informed of his or her duties and work.
- 2.11. In case of war, internal disturbances, natural catastrophes, etc., SDC shall provide the Consultant with assistance and make arrangements for his or her repatriation.
- 2.12. The Consultant shall not engage, even without payment, in accessory activities which might be detrimental, or might be considered as such, to the execution of the Contract or to the relations between SDC and the partner country, or to both.

### **3. Procurement of material for the project**

- 3.1. In principle, purchase for the Contract of material mentioned in the budget shall be made by SDC. If such purchases are made by the Consultant, they shall be made on behalf and on the account of SDC. In this case, the procurement contracts shall be negotiated by the Consultant and sent for signature to SDC. The invoices concerned shall be addressed to the Consultant who undertakes to carry out the purchaser's obligations on behalf of and on SDC's account. The Consultant shall draw up detailed lists of material and equipment required. The provisions of the Federal Law on Public Procurement shall be applicable.
- 3.2. In the absence of any contractual provisions to the contrary, the material and equipment shall remain the property of SDC.
- 3.3. The Consultant shall treat such material and equipment in an appropriate and careful manner. He or she shall keep an inventory thereof.
- 3.4. At the end of the Contract SDC shall decide on the further use of such material and equipment. When returning the material and equipment the Consultant shall be responsible for the establishment of a transfer report within due time.

- 3.5. Discounts and rebates on the procurement of material and equipment are considered as cost reductions. The distribution of profits from the sale of material and equipment will be decided in consultation with SDC. Such profits have to be stated in the final account.

#### **4. Intellectual property - copyright**

- 4.1. Within the framework of the Contract, the result of the work of the Consultant, including rights of use and of exploitation, as well as all intellectual property rights, including copyright, and their dissemination is the reserve of SDC. At the explicit request of the Consultant, the latter's participation can be mentioned by SDC. In addition, SDC may, pursuant to a separate agreement, authorise the Consultant to use and/or exploit such intellectual property rights either free of charge or with remuneration.
- 4.2. The Consultant shall undertake to meet all requests by third parties concerning any breach of intellectual property rights and to pay any expenses arising from such violation, including any indemnification.
- 4.3. SDC shall undertake to inform the Consultant immediately of any claim for indemnification, as well as to provide it with all necessary documents for his or her defence, reserving the obligation to maintain secrecy.

#### **5. Confidentiality**

- 5.1. All verbal and written communications whether in whole or in part, between SDC, other administrative bodies of the Swiss Confederation and the Consultant shall be treated as confidential. All documents relating to the Contract, as well as other papers, information and data resulting from the Contract which are supplied to the Consultant in connection with the Contract or which the Consultant may have elaborated, must be treated as confidential and must not, either in whole or in part, be made accessible to third parties unrelated to the Contract nor used for purposes other than those for which they were supplied or elaborated. The Consultant shall draw the attention of his or her staff to the confidentiality obligation resulting from the above.
- 5.2. All publications and/or communications relating to exchange of information and documents mentioned under Article 5.1. above must be the object of prior authorisation in writing by SDC. If SDC authorises the Consultant in writing to supply information about the Contract by way of reference, or for purposes of presentation, mandate acquisition or procurement, the Consultant must undertake to provide such information accurately and mentioning the name of SDC.
- 5.3. Any communication relating to the Contract whether to the mass media or in any public form whatsoever (press, radio, television, cinema, Internet, etc.) shall be subject to authorisation in writing by SDC.
- 5.4. The provisions described above shall remain valid after expiry of the Contract.

## **6. Insurance and social security**

### **6.1. Self-employed persons, associations and corporations**

The Consultant shall insure himself or herself, and arrange for his or her staff and associates to be insured, against risks of illness, accident, or death arising from illness or accident (including repatriation to the country of origin). The insurance premiums involved shall be payable by the Consultant.

6.1.1. Compulsory social insurance contributions (in Switzerland: AHV/IV/EO/AIV/BVG) for the Consultant, associates and/or employees of the Consultant, must be deducted and paid to the relevant institutions.

6.1.2. The Consultant shall provide SDC with a certificate issued by his or her social security department (AHV/IV) confirming his or her self-employed status.

6.1.3. At the request of SDC, documents shall be furnished certifying the existence of adequate and appropriate insurance cover for the Consultant. The cost of such insurance shall be borne by the Consultant.

6.1.4. In the absence of a written request by SDC to the contrary, the Consultant shall take all reasonable measures to insure, under conditions acceptable to SDC:

a) all loss of or damage to SDC's property supplied or paid for in accordance with Article 3,

b) all third party liability resulting from the use of such property by the Consultant.

The cost of such insurance shall be paid by the Consultant.

### **6.2. Salaried natural persons**

6.2.1. In the case of contracts with salaried natural persons, social security contributions due shall be deducted directly by SDC. Employers' contributions shall be paid by SDC after presentation by the contracting party of his or her AHV card, to allow his or her number to be recorded.

6.2.2. At the request of any salaried natural person, where the contracting party contributes to a pension fund, on presentation of the insurance policy and related evidence SDC shall pay the employers' contribution. The insured person must present his or her insurance policy and relevant vouchers.

## **7. Operational reports**

7.1. At the dates and pursuant to the procedure stipulated in the Contract, the Consultant shall supply to SDC the operational reports required.

Operational reports shall contain not merely a simple account of facts, but also proposals for the solution of unresolved problems. They shall provide information on the state of work relating to the Contract, including the phases that have been completed. Operational reports shall be submitted to SDC and to the local coordinator responsible before the end of the month following the period under review.

7.2. The Consultant shall present a final report no later than four weeks after the completion of the work stipulated in the Contract. This report shall be drafted in terms understandable to non-scientific persons. It should be verifiable and applicable, and shall contain recommendations addressed to the mission country. Issues not suitable for inclusion in a report to the government of the country of assignment should be dealt with in a separate report to SDC.

## **8. Financial accounts - auditing**

8.1. On the dates stipulated and in accordance with the terms of the Contract, the Consultant shall present statements of accounts to SDC.

8.2. The statements of accounts shall give a detailed list of expenditure. They shall provide information on the following points:

- a) the function of the payee in the assignment framework together with the classification in the appropriate category of remuneration;
- b) an exact description of the time utilised and of the nature of the work done. The establishment's time-control sheets or cards should be attached;
- c) in the case of sub-contracting, the sub-contractor's detailed invoice, including related vouchers.

8.3. If the Contract provides for auditing of the accounts, such audit shall be carried out by an independent auditing firm external to the Consultant and approved by SDC. The auditing establishment shall satisfy itself that the accounts are complete and in conformity with the Contract. It shall certify that the accounts have been properly kept, the conformity of expenditure with project aims, and that the funds have been used effectively and economically.

8.4. Where the Contract does not provide for auditing, original vouchers shall be attached to the statements of accounts.

8.5. SDC's last payment shall be due when the final report and final statement of accounts have been submitted in proper form and approved by SDC.

8.6. The Contract shall be held to be completed when the work has been carried out in conformity with the Contract and the final payment made.

## **9. Right of examination**

9.1. SDC and the Federal Audit Office may at any time examine all aspects of and request information on all matters concerning the Contract; they may delegate this right to third parties.

9.2. In the event of any examination by SDC, by those delegated by it or by the Federal Audit Office, the Consultant shall make available all relevant documents and information.

9.3. The Consultant is required to keep all documents for a period of not less than 10 years.

## 10. Remuneration

### 10.1. General provisions

10.1.1. The Consultant shall supply services at fixed prices or at cost, with an upper price limit. Distinction shall be made by the Consultant in the offer and budget statement (Appendix) between the various categories of costs and rates.

10.1.2. Unless stated otherwise in writing, prices agreed shall be fixed. Inflation shall be taken into account only if specially agreed in writing. In the event of price variations (inflation, exchange rates, etc.), these shall be stipulated in the special provisions of the Contract.

10.1.3. SDC shall pay such prices and expenses as have been contractually agreed, mentioned in the budget drawn up in accordance with the Appendix, and which can be justified by the Consultant. Only actual expenses within the budget shall be taken into consideration.

Fees and expenses shall be agreed by contract. In principle they shall be calculated on the basis of the arrangements to which Article 10.2. and 10.3 below refers. Where there is justification, and on presentation of detailed information mentioned in the budget, it shall be possible with the agreement of SDC to treat various sub-heads of the budget as lump sums.

### 10.1.4. Bank accounts

SDC payments shall be made as follows:

- a) onto a bank account specified by the Consultant, **or**
- b) to an interest-bearing account opened specially for the Project, **or**
- c) onto a bank account in SDC's name for which the Consultant has power of attorney for the purpose of making payments according to procedures stipulated in the Contract under special provisions. It shall be possible to open an account in the name of the Consultant, instead of in the name of SDC, whereby in such case the Consultant must provide SDC with a bank guarantee.

10.1.5. Any gross interest arising on the bank account shall be treated as a payment from SDC and deducted from the final account.

10.1.6. Payment shall be made only for what has been contractually agreed, and which can be justified by accounts for which the Contract provides.

### 10.2. Fees

- a) For work undertaken in Switzerland, hourly rates shall be applicable to each hour actually worked. In the case of duty journeys in Switzerland, the actual time taken for the outward and return journey up to a maximum of three hours shall count as working hours.

- b) For work undertaken abroad, daily rates shall be applicable, corresponding to a working day of eight hours (actual working time). If the work abroad exceeds ten consecutive days, a maximum of six working days shall be paid per week. Travel on SDC business, whether from Switzerland to a place abroad, or entirely abroad, shall count as working time (with a maximum of 8 hours a day). For contracts lasting more than two months monthly tariffs may be applied.

If the departure time from Switzerland to a place abroad is between 12.00 a.m. and 12.00 p.m. (travel time to the airport inclusive) and if the arrival time in Switzerland is between 12.00 p.m. and 12.00 a.m. (travel time to the place of residence inclusive) 50% of the daily fee shall be reimbursed.

### 10.3. Costs for accommodation and meals, travelling expenses and other expenses

The following expenses shall be reimbursable in respect of journeys undertaken by the Consultant for the purposes of the Contract, whether in Switzerland, in the Contract country or in a third country:

#### 10.3.1. Expenses in Switzerland

- a) Reimbursement of travelling expenses: in case of travel by railway, where a voucher is presented, the cost of a first class ticket shall be reimbursable. Where no voucher is presented, 50% of the price of a full-fare second class ticket shall be refunded. Where travel is by private vehicle, an allowance can be made equal to 50% of the price of a full-fare second class ticket; in justified cases, an allowance based on kilometres can be foreseen in advance in writing;
- b) Reimbursement of incidental travelling expenses such as duty telephone calls, telegrams, fax, visa fees, etc.;
- c) Payment of an indemnification covering the costs for accommodation and meals, based on the rates as defined in the SDC lists "Food and Hotel Reimbursement" and "Indemnification Consultants". The lists are available on the internet [www.deza.admin.ch](http://www.deza.admin.ch), chapter "Bidders", or a printed version from SDC. They form integral part of the present general conditions GCB for mandates;
- d) Reimbursement of other expenses according to the budget.

#### 10.3.2. Expenses going abroad and abroad

- a) Travelling expenses: in principle, the Consultant should order any air ticket from the Travel Center at the Federal Department of Foreign Affairs. If the air ticket is obtained by the Consultant, this must be done in agreement with the Travel Center. In this case, SDC shall reimburse the Consultant the actual cost of a direct return flight from Switzerland, or a third country, to the country of assignment, against vouchers. For flights to destinations at a distance of less than 3000 miles, SDC shall reimburse the cost for an air ticket in economy class. For flights to destinations at a distance of 3000 miles or more, SDC shall reimburse the cost for an air ticket in business class. If the journey is interrupted by at least one night in a hotel, the respective routes, concerning mileage, are calculated separately.  
If the Consultant is accompanied by employees of SDC, he/she is entitled to the same class of air ticket as they are.
- b) Reimbursement of necessary incidental travelling expenses, such as train fares, the cost of travel by car or taxi, porters, visas, duty telephone calls, telegrams, airport taxes, etc.;



- c) Payment of an indemnification covering the costs for accommodation and meals, based on the rates as defined in the SDC lists “Food and Hotel Reimbursement” and “Indemnification Consultants”. The lists are available on the internet [www.deza.admin.ch](http://www.deza.admin.ch), chapter “Bidders”, or a printed version from SDC. They form integral part of the present general conditions GCB for mandates.
- d) Baggage sent by air: the cost of overweight of accompanied luggage shall be met only exceptionally, in cases where the baggage is necessary to execute the Contract, and a special request is made.
- e) Tariffs applicable to Swiss or foreign staff abroad with foreign personnel or foreign firms shall be those applying in the fiscal domicile of such staff. Such fiscal domicile shall be certified.

## **11. Provisions resulting from the Federal Law on Public Procurement**

- 11.1. For services supplied in Switzerland, the Consultant shall undertake to comply with the provisions of the Federal Law on Public Procurement (RS 172.056.1).
- 11.2. For services supplied in Switzerland, the Consultant shall undertake to comply with the provisions relating to worker protection and working conditions in force at the place where the service is supplied. The Consultant shall guarantee equality of treatment between men and women in respect of salaries. Working conditions shall be deemed to mean conditions which are contained in collective agreements and in labour contracts, or similar, or, if such agreements and contracts do not exist, working conditions usual in the region and the profession concerned.
- 11.3. **A contractual penalty may be levied if the Consultant does not comply with the principles contained in Article 11.2 above. Such penalty shall amount to 10% of the contractual value of the services concerned and may amount to a sum between CHF 3,000.-- and CHF 100,000.--.**
- 11.4. When there is a lack of free competition and the market value of the Contract is in excess of CHF 1 million, or when the conditions laid down in the Directive of the Federal Department of Finance of 28 April 1997, concerning the Right to Examine in the Case of Federal Procurement are present, the Consultant guarantees SDC the right to examine the calculations of cost. Such right of examination shall be stipulated in the Contract.

## **12. Termination of the Contract**

- 12.1. In the event of non-compliance or breach by one of the parties of the obligations binding upon it, the other party may terminate the Contract with immediate effect. The Contract may be revoked or repudiated at any time. Swiss Contract Law is applicable.

- 12.2. Respect for democratic principles and fundamental human rights as set out in particular in the Universal Declaration of Human Rights inspires the internal and external policies of Switzerland and the Beneficiary State, and constitutes an essential element of co-operation between Switzerland and the Beneficiary State. If the Beneficiary State violates this essential element, SCD shall inform the Consultant of the situation and the measures contemplated. If such violation continues or if no solution has been found with the Beneficiary State, SDC may take appropriate measures, including the termination of the present contract. In such cases, the parties undertake to take all possible measures to reduce as far as possible the cost of interrupting the contract and abandon any claim for damages going beyond payment of expenses actually incurred.
- 12.3. If events constituting force majeure (natural disaster, etc.) prevent the execution of the Contract, either party may terminate the Contract with effect from the moment when it becomes impossible to carry it out. In this case a final report, together with a final account of the costs of the project, must be drawn up by the Consultant. SDC shall be responsible for the costs arising from the premature suspension of the Contract.

**13. Duration of the Contract**

The Contract shall end when each of the parties has fulfilled its contractual obligations, but at the latest on the date of the final payment by SDC, which cannot be made until after reception of the final report and the final financial statement of accounts, audited or unaudited as provided in the Contract, and approval of these documents by SDC.

**14. Relationship between the Contract and these General Conditions**

The provisions of the Contract take precedence over these General Conditions.

**15. Protection of personal data**

The Consultant takes note that SDC will evaluate the quality of the services provided and agrees that these data may be treated within the SDC in accordance with the terms of the Swiss law on the protection of data of June 19th, 1992 (RS 235.1). He/she has the right to consult these evaluations according to the above-mentioned law.