

General Terms and Conditions Building Services

January 2022

1. General

1.1. These General Terms and Conditions apply if they are attached to the offer or the order confirmation issued by EQUANS or have otherwise been declared applicable. Any terms and conditions of the Customer to the contrary are only valid if EQUANS has explicitly declared them applicable in writing.

1.2. Any further provisions attached to the offer, or the order confirmation issued by EQUANS take precedence over these General Terms and Conditions in the event of inconsistencies.

2. Offer and basis for the offer

2.1. The offer and the project have been developed based on the information provided by the Customer. If the information or the documents provided by the Customer do(es) not match the actual conditions or if EQUANS was not informed of circumstances that would have required different or additional material, a different design or a different type of execution, then the corresponding (additional) costs (e.g., those required to make any necessary changes) are borne by the Customer.

2.2. The offer or the order confirmation, including any appendices, lists all the deliveries and services to be executed by EQUANS.

2.3. Brochures and catalogues are not binding unless agreed otherwise. Information contained in technical documents prepared by EQUANS or third parties is only binding if an explicit assurance has been given in this regard. Any assured performance (performance value, etc.) must, however, be explicitly designated as such.

2.4. EQUANS reserves all rights to documents provided to the Customer/the latter's representatives (in particular to plans, technical drawings, etc.). The Customer acknowledges these rights and shall not make the documents accessible to third parties or use them for a purpose other than the purpose for which they were provided to the Customer, either in full or in part, without the prior written consent of EQUANS. Reference is made, in particular, to Articles 5 and 23 of the Swiss Federal Act of 19 December 1986 on Unfair Competition (UCA; *Bundesgesetz vom 19. Dezember 1986 gegen den unlauteren Wettbewerb, UWG*). If the offer cannot be considered, all documents are to be returned to EQUANS.

3. Provisions that apply and conditions at the destination

3.1. The Customer shall provide EQUANS with information on the provisions and standards relating to the execution of the deliveries and services, the operation of the delivery item, and the health and safety of personnel in a timely manner before the order is placed.

3.2. The Customer shall provide EQUANS with washing facilities and toilets free of charge.

3.3. The Customer shall ensure that those facilities and instructions that are relevant from a safety perspective are in place at the service provision location.

3.4. The Customer is responsible for ensuring that the facilities, buildings, pipes, etc., to which the provision of services by EQUANS relates are in a condition that complies with the relevant provisions.

4. Prices

4.1. The offer is based on the wages paid at the time the offer is prepared. In the absence of any agreement to the contrary, any general wage increases occurring during the execution period, as well as general price increases affecting materials, are borne by the Customer; any increases in value added tax or other taxes and fees (e.g., heavy goods vehicle charge, HGVC; *leistungsabhängige Schwerverkehrsabgabe, LSVA*) are assumed by the Customer. Price subject to escalation: lump-sum prices are subject to inflation based on the Zurich construction cost index and the wage cost index. The reference date is the date of the offer.

4.2. The prices apply subject to the condition that the work is performed and can be completed, without interruption, during standard local working hours and that the facility can then be put into operation without delay. In cases involving overtime work based on the Customer's instructions or for reasons for which the Customer is responsible, the statutory surcharges and surcharges payable under collective employment contracts are paid by the Customer. Work and services that have not been agreed in advance, in particular changes or other additional work requested by the Customer, are calculated on a time and material basis based on the standard prices that apply in the industry.

4.3. The Customer pays remuneration, calculated on a time and material basis, for any additional services that have to be performed due to incorrect or missing information in the provided documents or due to the building structure on which the services are being performed.

5. Payment terms

5.1. In the absence of any explicit provision to the contrary, payments are due subject to no deductions as follows:

- One-third of the contract price at the time the contract is concluded
- One-third after the assembly work begins
- The remainder based on the ratio of the work performed to the overall performance.

5.2. Invoices are due for payment within 30 days of their issue date. The payment deadline stated in the invoice is considered the payment deadline.

5.3. If the Customer is in arrears with a payment for whatever reason, or if circumstances give rise to serious concerns on the part of EQUANS regarding receipt of the payments from the Customer in full or on time, EQUANS is authorised, without further ado and without restricting its statutory rights, to suspend the further execution of the contractual work and to demand that the Customer furnish security. If EQUANS does not receive sufficient security, it is entitled to rescind the contract and claim damages.

5.4. In addition, if the Customer fails to adhere to the agreed payment deadlines, the Customer is liable to pay interest of 8% as of the agreed due date, without any reminder having to be issued. The right to claim further damages remains reserved.

5.5. The right of the Customer to withhold or offset payments in view of any counterclaims is excluded.

6. Deadlines

6.1. The Parties agree on deadlines for the service provision after the contract has been concluded. If an agreed deadline is not met, EQUANS is deemed to be in default after a written reminder is issued by the Customer. Agreed deadlines apply subject to the condition that:

- the status of the structural/on-site work to be performed by the Customer allows for the timely commencement of work and allows work to continue unhindered thereafter;
- no unforeseeable obstacles arise that EQUANS cannot avoid despite exercising reasonable care, irrespective of whether these obstacles arise at the level of EQUANS, the Customer or a third party. Such obstacles include, by way of example, epidemics, pandemics, mobilisation, war, riots, significant interruptions of operations, accidents, industrial disputes, delayed or incorrect deliveries of necessary materials, actions or failures to act on the part of the authorities, and natural phenomena;
- defective or delayed services rendered by third parties do not stand in the way of the provision of the services;
- the services to be rendered by the Customer are rendered in a timely manner and in accordance with the contract;
- the Customer provides the documents required for the performance of the assignment (e.g., plans) in a timely manner, in full, and with accurate content;
- the Customer is not in arrears with the on-site work the Customer is responsible for performing;
- any required official permits are issued in a timely manner;
- the Customer adheres to the payment terms.

6.2. If EQUANS is in default due to a delay that it can be proven to be responsible for, the Customer sets an appropriate grace period of at least two weeks in writing for the provision of the service.

6.3. If this grace period is not adhered to for reasons for which EQUANS is responsible, the Customer is entitled to refuse to accept the delayed part of the delivery insofar as there is no longer any reasonable prospect of performance.

6.4. The Customer has no rights and claims in connection with delayed deliveries or services other than those explicitly stated in section 6. This restriction does not apply to unlawful intent or gross negligence on the part of EQUANS. If a contractual penalty is agreed for cases involving default, an overall upper threshold corresponding to 5% of the price of the services to which the default relates applies in all cases.

7. Transfer of benefits and risk

Benefits and risk pass to the Customer at the time of unloading at the assembly site.

8. Services to be rendered by the Customer

The Customer is obliged to cooperate in the provision of the services. In particular, it must provide EQUANS with the required access and is responsible for all deliveries, work and services that are not explicitly specified in the offer as services to be rendered by EQUANS, for example for:

- Insurance, surveillance of materials and tools
- Building protection: the Customer shall take all necessary measures and implement all necessary controls to protect the building, its facilities and fixtures, etc., from any damage (delivery of boards, covers, etc., to protect stairs, floors, windows, etc.); in particular, the Customer is responsible for taking the necessary safeguards to prevent any damage in connection with welding operations (e.g. initial training regarding rooms, objects and materials that pose a fire hazard, etc., removing or covering flammable materials, providing fire extinguishers, where appropriate deploying a night surveillance team).
- Official permits, fees: submission of applications and plans to the fire authority; obtaining any other official permits, paying the necessary fees.
- Scaffolding, lifting equipment: erecting scaffolding and providing – free of charge and on loan – lifting equipment and timbers or any available construction crane, lifts, or elevators for transporting heavy goods, etc., including assistance in this regard.
- General structural work
- Insulation, panelling, trimming
- Ventilation of boiler houses and central boiler rooms
- Electrical installations, inlet and outlet pipes
- Painting works
- Energy and media, in particular electricity and water.

9. Inspection and formal acceptance of the deliveries and services

9.1. The Customer shall inspect deliveries and services within a reasonable period and inform EQUANS of any defects in writing without delay. If the Customer fails to do so, the deliveries and services are deemed to have been formally accepted and approved. EQUANS is, however, only liable for hidden defects under the warranty pursuant to section 10 if such defects are reported as soon as they are identified.

9.2. The performance of a formal acceptance test and the definition of the conditions that apply in this regard require a corresponding agreement.

9.3. The deliveries and services are also deemed to have been formally approved if the agreed acceptance test cannot be performed on the date planned for reasons for which EQUANS is not responsible or if the Customer refuses to grant formal acceptance without being entitled to do so, or if the Customer refuses to sign an acceptance record that is consistent with the facts, or as soon as the Customer or a third party uses the deliveries or services of EQUANS.

10. Warranty, liability for defects

10.1. The warranty period for deliveries and services is one year from the time of formal acceptance pursuant to section 9. If appliances are used in shift operations or are subjected to other higher loads, the warranty period is six months. If longer warranty periods are agreed, the warranty period for devices and appliances, such as engines, refrigeration systems, pumps, fans, electrical appliances and control devices, oil-fired equipment and the associated work is nevertheless one year, or six

months in shift operations. All the Customer's claims based on defects become statute-barred after the expiry of these periods.

If software services, in building automation, are included in the contract, then a warranty and limitation period of six months applies to these software services. In cases involving third-party software, only the warranty and licensing provisions of these third parties apply.

In cases involving deliveries made by subcontractors, the warranty is always limited to the scope of the warranty granted by these subcontractors vis-à-vis EQUANS and to the warranty period, less a notification period of one month.

10.2. In cases involving replaced or repaired parts, the warranty period commences anew and lasts for a period of six months from the time of the replacement or completion of the repair work, but for no more than 18 months after the time of formal acceptance in accordance with section 9.

10.3. The contractual requirements, including assured characteristics, are deemed to have been fulfilled if they are fulfilled at the time of formal acceptance in accordance with section 9. If the Customer asserts claims based on defects after the time of formal acceptance, the burden of proving that the defects already existed at the time of formal acceptance is on the Customer.

10.4. The warranty will lapse if the Customer or third parties make inappropriate changes or perform inappropriate repairs, or if, if a defect has occurred, the Customer does not take all appropriate measures to minimise the damage without delay and does not give EQUANS the opportunity to remedy the defect.

10.5. In cases involving defects, EQUANS always has the right to rectify the defects with a reasonable period first. If requested to do so by the Customer in writing, EQUANS undertakes to remedy or replace deliveries that become defective or unsuitable for use before the expiry of the warranty period, where it is proven that these issues are attributable to poor material, defective design or defective execution, at its discretion within a reasonable period. Replaced parts will become the property of EQUANS unless the rights to these parts are explicitly waived.

10.6. If the measures to rectify the defects are unsuccessful, either in full or in part, the Customer is entitled to an appropriate reduction in the price. If the defect is so severe that the deliveries or services cannot be used for the purpose specified or can only be used to a significantly reduced degree, then the Customer has the right, following a failed attempt by EQUANS to rectify the issue, to refuse to accept the defective part of the deliveries or services.

10.7. Warranty and liability on the part of EQUANS excludes all damage that cannot be proven to have been caused by poor material, defective design or the defective execution of the deliveries or services. By way of example, damage caused by facilities, buildings, pipes, etc., to which the provision of services by EQUANS relates that are not in a condition that complies with the relevant provisions, natural wear and tear, defective maintenance, failure to comply with operating regulations, excessive stress, unsuitable operating material, chemical or electrolytic influences, construction or assembly work not performed by EQUANS, or damage caused by other factors for which EQUANS is not responsible are excluded.

10.8. Furthermore, EQUANS provides no warranty and assumes no liability for the function, performance, quality, etc., of facilities, appliances, and other materials and services that were not supplied or rendered by EQUANS under the applicable contract.

10.9. In addition, EQUANS provides no warranty and assumes no liability for damage caused by frost and fire, unsuitable fuels, overloading, water shortages, defects affecting boilers due to the discharge and deposits of limescale, erosion, cavitation, etc., or affecting water heaters, boilers, pipes or other system parts due to corrosion, e.g., rust, caused by acid, alkalis, gases, air, salt or oxygenated water, etc., or by other chemical or electrical influences.

10.10. The Customer has no rights and claims in connection with defects affecting the service delivery other than those explicitly stated in sections 9 and 10.

10.11. EQUANS is only liable for claims asserted by the Customer due to inadequate advice, etc., or due to breaches of any secondary obligations in the event of unlawful intent or gross negligence.

10.12. Except in cases involving unlawful intent or gross negligence, EQUANS does not assume any liability for damage to facilities and buildings of the Customer or third parties, to material provided by the Customer or third parties or for any third-party claims against the Customer.

11. Exclusion of further liability of EQUANS, upper liability limit

These General Terms and Conditions state all the provisions governing contractual breaches and their legal consequences, as well as all claims of the Customer, irrespective of the legal grounds on which they are asserted. In particular, all claims to damages, reduction of the purchase price, cancellation or rescission of the contract that are not explicitly referred to herein are excluded. The Customer does not, under any circumstances, have claims to compensation for damage caused by the manipulation of items that do not belong to the contractual scope of performance, caused by interruptions of operations, loss of production, loss of use, loss of orders, loss of profit or other indirect or direct damage or consequential damage.

In addition, in cases involving orders with an order value of up to CHF 500,000.00, liability on the part of EQUANS for claims asserted by the Customer, irrespective of the legal grounds on which they are asserted (including claims for damages, contractual penalties and hold-harmless obligations), is limited to a maximum of the order value. In cases involving order values more than CHF 500,000.00, maximum liability on the part of EQUANS is stated in the order or order confirmation. If no maximum liability has been stated, EQUANS assumes liability up to an amount of CHF 500,000.00.

The exclusion of and upper limit for liability does not apply in cases involving unlawful intent or gross negligence. Nor do they apply in the event of mandatory legal provisions to the contrary.

12. Data Protection

The customer shall ensure that the applicable data protection and security provisions are complied with. In particular, the customer is obliged to process personal data disclosed to him or accessible to him only to the extent and exclusively for the purposes necessary for the performance of the contract. Furthermore, the customer shall take the technical and organisational measures necessary to ensure data protection and data security and shall ensure that employees and third parties comply with the relevant provisions. The customer agrees that the Supplier may process personal data and disclose it to third parties in Switzerland and abroad for the purpose of processing orders and maintaining business relations.

13. Assignment

The assignment of claims of the Customer against EQUANS is excluded.

14. Place of jurisdiction and applicable law

14.1. The place of jurisdiction for all claims arising under this contract is Zurich, Switzerland. EQUANS is, however, entitled to assert claims against the Customer in the place where the latter's registered office is located.

14.2. The legal relationship is subject to Swiss substantive law. The United Nations Convention on Contracts for the International Sale of Goods (CISG) does not apply.