

# General Terms and Conditions (GT&C) Equans Switzerland Facility Management AG

## 1. Terms and conditions for all services

### 1.1 Application

These General Terms and Conditions apply to all services provided by Equans Switzerland Facility Management AG (hereinafter "Equans"), regardless of the legal nature of the applicable contract.

These General Terms and Conditions apply to the exclusion of any other Terms and Conditions of the client.

Any variations and amendments to these General Terms and Conditions need to be explicitly agreed in writing. The validity of these General Terms and Conditions will not be affected in the event that individual provisions therein shall, in part or fully, be or become invalid. The provision that is nearest to the invalid one and that is most in line with the commercial spirit and purpose of the contract will apply.

### 1.2 Orders and Gaps in the Contract

In the event that the client has placed an order with unclear delivery quantity or unclear requirements, or in the event of a re-order, amendments to the order or changed circumstances, Equans has the right to invoice at the offered price or according to expenditure (by the hour or variable by quantity). The particular contract takes precedence. Any gaps in the contract will be filled primarily by these General Terms and Conditions, secondarily by Swiss Law (Code of Obligation - Obligationenrecht) and thereafter by provisions that are in line with the commercial spirit and purpose of the contract in addition to keeping the rights and obligations of the parties in balance.

### 1.3 Payment Terms and Conditions

Payment is due within 30 days from the date of invoice. Bills of exchange, WIR and foreign currencies are not accepted as form of payment. No deductions are permitted without the prior written permission of Equans. The client waives any right to offset payment with claims outstanding against Equans. If the contract price is above CHF 50'000.00 Equans can at any time invoice progress payments for partial delivery, for already provided labour or for third party costs.

If payment is overdue Equans can, from the 31st day on, charge a late payment fee of 8% p.a. even without having issued an overdue notice. If it issues an overdue notice it will additionally charge a fee of CHF 50.00 per notice. The client in arrears is liable for any losses due to delay. Equans is entitled to hold back their services if payment is late.

All prices are net and exclusive of VAT charged separately and clearly at the prevailing rate.

### 1.4 Due dates

To be treated as a fixed date a time of delivery or time of order must be explicitly named as such. The client informs Equans of any particular legal, administrative or other particular circumstance (technical, local, ownership) at the time of order. If the client does not fulfil the necessary preparatory works and conditions to enable completion of the contract, Equans is released, to the appropriate extent, from complying with the due date. Equans can stop their services at any time if the client is in arrears. A period of grace can be agreed between the parties or can be set by the courts.

### 1.5 Force majeure

If Equans is prevented or delayed from carrying out its business due to circumstances beyond its reasonable control it is entitled to delay or defer its services for as long as such circumstances prevail. Such delays do not entitle the client to revoke or terminate the contract nor do they entitle them to compensation. Circumstances that are outside of the reasonable control, therefore, not the responsibility of either Equans or the client, and that make the performance of services impossible or unreasonable include, without limitation, industrial action, legitimate lockout, civil war, mobilisation, national crisis, acts of terrorism, unrest, natural catastrophes, ban on imports or exports, scarcity of energy or shortage of raw materials.

### 1.6 Liability

In accordance with the Swiss Code of Obligation (Obligationenrecht) Equans is liable for the accurate and careful execution of its duties. Equans' liability to the client and purchaser covers intentional, grossly negligent or deliberate damage, however, not slight negligence. Direct employees' liability is excluded. In the case of long term contracts the liability is limited to the yearly turnover (exclusive of VAT) of the contract in question, in any case not more than CHF 1million. The liability is limited to 10% of the professional fee in the case of a singular performance or a project that lasts less than a year. Equans shall not be liable to the client for financial loss, profit loss, missed savings, damages from third party claims against the customer and other direct or indirect consequential damage. Equans is also not liable if their services are used for an illegal purpose or in a way contrary to the contract.

Any operational obligation (e.g. oils, heatings) remains with the client. Equans is also not liable for consequences to construction and building defects, or for neglected maintenance or missed investments by the client.

### 1.7 Non-solicitation agreement

The client agrees to refrain from employing Equans' employees, for their own interest or for third parties. If employees of Equans are employed directly or indirectly by a contractual party during or before one year has passed since the end of the contract compensation of CHF 50'000.00, per employee, will be due to Equans.

## 2. Delivery Terms

### 2.1 Delivery

Delivery is completed at the client's location. The client is liable for transport and delivery risk and charges.

### 2.2 Default of acceptance

If the client is in default of accepting goods or works, these will be stored at their expense or sold freely.

### 2.3 Reservation of Title

Goods and works will remain in the ownership of Equans until fully paid for. Equans can inform third parties accordingly or register the reservation of title in the respective register. The client acknowledges that Equans reserves the right to remove or take back the goods.

### 2.4 Acceptance, inspection and warranty

Delivery or installation at place of delivery, as well as commissioning, counts as delivery and needs to be confirmed by the client. The parties can complete an acceptance certificate. The client must inspect and test the goods and works at their own expense immediately after delivery. If defects are found they must be communicated in writing to Equans within 14 days after delivery. If there is a delay in communicating the defect the client's statutory rights will expire. In the event that the delivered goods or works prove to be defect, Equans has the option to remedy the defects, exchange the defect goods for defect free ones or offer a price reduction.

The client will not carry out a substitute performance until two written warnings giving a reasonable grace period have been delivered and no rectification has been carried out. The warranty expires if the client or a third party change, repair or process the delivered goods, if the delivered goods are being used in a manner contrary to its purpose or if a notice of defect is delayed.

## 3. Conditions of services

### 3.1 Employees, machines and tools

Equans will use the necessary number of properly trained and qualified employees or third parties to fulfil the agreed services. The client is not entitled to give direct instructions to the deployed employees or third parties. If services are performed on the premises of the client, the client will commit to providing complimentary and sufficient provision of the appropriate infrastructure, such as water, electricity, space and access.

### 3.2 Ownership, confidentiality

All information, data and intellectual works, such as documents, projects, drawings, concepts, programs etc. that have been left with the client are the ownership of Equans. They cannot be shared with unauthorised third parties, particularly a competitor. All information, data and intellectual works that have been left with the client, have been produced or have originated in the course of an existing contract must be handed back free of charge to Equans immediately and fully upon first request, on data carriers customary to the industry. The parties commit to non-disclosure of prices during and beyond the existence of the contract.

### 3.3 Default in acceptances

The client will be liable for damages incurred by Equans because it has not provided them with contractually agreed work necessary for Equans to provide their services or if it does not give Equans the access necessary to provide its services.

### 3.4 Completion

The client must immediately contest defective work in writing if services have been poorly executed. Any claims arising from defective services, that do not satisfy the provisions of the contract, must be claimed in writing within 30 days of a written complaint.

### 3.5 Additional Terms for recurring services

#### 3.5.1. Price Clause

The pricing current at the time of the agreement will serve as the basis for any price adjustments. Equans is entitled at any time to adjust the prices to the development of the nominal wage index (Wirtschaftszweig: Sektor 3, Dienstleistungen [www.bfs.admin.ch](http://www.bfs.admin.ch)) and/or to any minimum salary and other conditions which are mandatory under the applicable Collective Bargaining Agreement.

#### 3.5.2. Termination

Recurring services are subject to mandate law. Both parties can give notice at any time on the last day of the month with a 6 month notice period.

### 3.6. Forum and applicable law

The courts of Zurich, Switzerland will have jurisdiction. The contract is governed exclusively by Swiss private law under the exclusion of the United Nations Convention on Contracts for the International Sale of Goods of 11. April 1980 (UN Sales Convention CISG)

In the event of any discrepancies between the other languages versions of these terms the German version shall prevail.

Zurich, 14 July 2017

Equans Switzerland Facility Management AG