

Applicable from October 2021 for:

ARXADA AG

(hereinafter referred to as “ARXADA“)

1. Scope

1.1 These "general terms and conditions for contracts for work" ("the terms and conditions") shall apply to contracts for work within the meaning of Art. 363 ff. of the Swiss Code of Obligations which are entered into between ARXADA and the contractor ("contractor"), provided that no express provision to the contrary is made in writing in the individual order (e.g. standards of the Swiss Engineers and Architects Association). These terms and conditions shall apply only to contracts for work which are not subject to any other contractual provisions.

1.2 Different or additional terms, including in particular other terms and conditions of the contractor, shall apply to ARXADA only where they have been specifically agreed and acknowledged in writing. ARXADA's terms and conditions shall apply even where ARXADA is aware of different terms on the part of the contractor.

2. Invitation to tender and submission of tenders

2.1 On the basis of an invitation extended by ARXADA (performance specification), the contractor is requested to submit a tender (including tender presentation) at no expense to ARXADA. In the tender, the contractor shall keep precisely to ARXADA's invitation and shall specifically indicate any deviations which arise. If the contractor does not lay down any time limit in his tender, it shall be binding for the contractor for 90 days.

2.2 If the contractor determines that the work specified by ARXADA in the invitation is inconsistent with recognized rules of the art in any way or is unsuitable for the intended purpose, the contractor shall immediately notify ARXADA thereof.

2.3 By submitting its tender, the contractor acknowledges that it is aware of all specifications, facts and conditions (premises etc.) relevant to the performance of the work. Any discrepancies must be clarified with ARXADA in writing before the tender is submitted.

3. Components of the order relating to the contract for work

3.1 The respective provisions of the contract for work shall be listed in the order from ARXADA, the provisions of the order taking precedence over these terms and conditions.

3.2 An order shall be binding for ARXADA only where it has been granted or confirmed by ARXADA in writing or electronically. The same shall also apply to supplements of all kinds to orders which have been placed.

3.3 The order shall be confirmed in writing (a confirmation letter) by the contractor within 10 (ten) working days, failing which ARXADA shall no longer be bound by its order. If the contractor diverges from the order in its confirmation letter, it shall notify ARXADA thereof. Unless ARXADA specifically agrees to these divergences, ARXADA shall no longer be bound by its order.

4. Performance

4.1 When carrying out the work, the contractor has to observe the recognized rules of the art and the rules of its trade and use its own special knowledge and expertise. It must take all necessary and reasonable steps to carry out the work successfully according to ARXADA's specifications and to protect ARXADA's interests.

4.2 When carrying out the work for ARXADA, its own internal regulations, safety instructions and access guidelines shall apply in addition to these terms and conditions. In the event of any failure to comply with these regulations or any failure to comply with generally applicable regulations (Swiss Accident Insurance Institute regulations etc.), the contractor is liable for any loss suffered by ARXADA or any third parties as a result.

5. Alterations

5.1 ARXADA reserves the right to demand alterations to the work up until acceptance thereof.

5.2 If the contractor finds that, as a result of such alterations, the work cannot be completed on time and/or according to the agreed costs, it must inform ARXADA thereof immediately and provide a corresponding quote.

5.3 If the contractor fails to inform ARXADA, within five days following ARXADA's request for an alteration, that it is providing a corresponding quote, its consent to carry out the altered work without any adjustment of deadlines and costs will be assumed.

5.4 A quote provided by the contractor will be checked as quickly as possible by ARXADA. ARXADA provides the contractor with written confirmation of the approved adjustments.

6. Information

6.1 The contractor must inform ARXADA immediately of anything which might threaten the performance of the work in accordance with the contract.

6.2 In connection with the performance of the work, ARXADA and its representatives have free access to the premises of the contractor and its subcontractors. ARXADA is entitled to request information, in particular, on the status of planning, actual performance of the work, the quality of the materials used to carry it out and any other important matters.

6.3 ARXADA's exercising of its right to information does not release the contractor from its responsibility for the functional correctness and practicality of the work.

7. Price for the work

7.1 The price specified in the order is regarded as the fixed flat-rate price in payment for all work and services and includes, amongst other things, all auxiliary materials and all premises required for the work, such as site huts, office containers, tools and machinery, and all internal and external transportation and deliveries of materials. It also includes all personnel costs such as wages, fees, travel expenses, social security payments, insurance premiums, paid holiday and administrative expenditure, and the costs of obtaining work permits, welding permits, entry permits, digging permits, etc.

7.2 The flat-rate price also includes, in particular, subsidiary work and services included in the expert performance of the work and any costs, in particular costs related to customs, taxes (apart from VAT), insurance, increased prices, delivery, assembly and/or commissioning of the work.

8. Due date and payment terms

8.1 The price for the work is payable on acceptance thereof provided written confirmation has been provided stating that the subcontractors' services have been fully paid for or guaranteed.

8.2 ARXADA makes part payments, unless otherwise stipulated in the order, monthly in accordance with the progress of the work within 60 (sixty) days following invoicing.

8.3 The final payment is made 60 (sixty) days after acceptance of the work. VAT must be shown separately on invoices.

8.4 Before the final payment is made, the contractor provides security for its liability in respect of obvious and hidden defects. The security consists of a guarantee/joint security of a renowned bank or insurance company for the sum agreed according to the order. If no such sum has been agreed, the guarantee/joint security will be for at least 10% of the total value of the order.

9. Involvement of subcontractors: admissibility and liability

9.1 The contractor shall himself perform the work.

9.2 The involvement of a subcontractor shall be permitted only with ARXADA's prior written consent. ARXADA may demand at any time that certain subcontractors be included to perform the contract. However, irrespective of whether it may/must employ subcontractors, the contractor remains technically and commercially liable with respect to ARXADA to the same agreed extent.

9.3 The contractor shall be liable in respect of subcontractors to the same extent as if he had acted himself. This also applies in particular to the subcontractors proposed by ARXADA. Additionally, the contractor shall include in the subcontracting contract those provisions regarding the order and these terms and conditions which are necessary to protect ARXADA's interests.

10. Building workers' lien and payment of subcontractors

10.1 In order to prevent the registration of building workers' liens by the subcontractors, ARXADA may at any time demand adequate securities from the contractor, in particular an irrevocable bank guarantee payable on first demand.

10.2 If the subcontractors are only inadequately guaranteed by the contractor, or not guaranteed at all, ARXADA shall be entitled to make direct arrangements for the guarantees, this being offset against the price.

10.3 ARXADA shall be entitled to pay the subcontractors direct, with offsetting against the price, where the contractor himself fails to prove that he has paid the subcontractors in full. Additionally, ARXADA shall be entitled to deposit disputed amounts and thereby be discharged.

11. Provision of materials, tools and documents 11.1 Materials, parts and components supplied by ARXADA for the performance of work shall remain ARXADA's property even after processing or assimilation. Unused materials, parts and components shall be returned to ARXADA without being requested.

11.2 ARXADA shall remain the owner of tools provided at all times. The contractor shall use the tools exclusively for carrying out the work, shall insure the tools belonging to ARXADA, at its own expense, against loss and damage and shall return the tools to ARXADA, without being requested, after carrying out the work. Additionally, the contractor shall carry out necessary maintenance and inspection work in good time at its own expense.

11.3 ARXADA shall remain the owner, at all times, of designs, illustrations, drawings, calculations and other documents. They shall be kept secret and shall not be made available to third parties without ARXADA's written consent. They shall be used exclusively for the purpose of carrying out the work and once said work has been carried out, they shall be returned without being requested.

12. Work carried out by the contractors at ARXADA's premises The contractor undertakes to ensure that anyone working on a ARXADA site in Switzerland has a valid permit to undertake gainful employment in Switzerland. Further specific instructions and regulations apply to work on a ARXADA site in Switzerland in addition to these terms and conditions. These instructions and regulations are provided before work begins and are to be complied with expressly.

13. Deadlines, costs, force majeure and contract penalties

13.1 If the contractor finds that the work cannot be completed on time and/or according to the agreed costs, it is obliged to inform ARXADA thereof immediately, giving reasons and the expected length of time needed and/or the expected difference in cost.

13.2 If the contractor fails to provide the completed work by the agreed date, it defaults without any further action by ARXADA on expiry of this deadline.

13.3 The parties shall then not be liable for the late, improper performance or non-performance of the contract if such delay or non-performance is due to events or circumstances entirely beyond the control or responsibility of the respective party and could not reasonably have been foreseen ("force majeure"), provided the party concerned gives prompt notice thereof and makes all reasonable efforts to perform the contract. If a force majeure situation persists for more than 30 days, ARXADA shall be entitled to terminate or revoke the agreement (in whole or in part) with immediate effect in writing. Moreover, ARXADA is entitled to withdraw from the contract at any time if the services ordered are no longer usable by ARXADA, taking into account economic considerations. Instead, ARXADA may purchase similar goods and/or services through third parties. The relevant quantities shall be excluded from any (minimum) quantity calculation.

13.4 If the contractor fails to meet the deadline stipulated in the order, it must pay the contractual penalty stipulated in the order. The acceptance of late delivery of the work does not include any waiver of the contractual penalty. However, payment of the contractual penalty does not release the contractor from its other contractual obligations. The right to claim further loss is expressly reserved.

14. Delivery of the work, ownership and copyright

14.1 When the work is delivered, the contractor has to assign ownership of all performance plans and data carriers associated with the work to ARXADA free of charge.

14.2 All copyright connected with the work passes to ARXADA where this is possible.

14.3 The contractor is obliged, on delivery of the work, to provide ARXADA with all work-related maintenance and operation documents and ordered spare parts.

15. Acceptance and transfer of benefit and risk

15.1 The contractor informs ARXADA as soon as it has completed the work.

15.2 Following delivery of the work, ARXADA has to check within a reasonable period whether the work is in accordance with the contract.

15.3 The work is deemed to have been accepted as soon as ARXADA has informed the contractor in writing that it is in accordance with the contract. At this point, benefit and risk of the entire work are transferred to ARXADA. Up until this point, the contractor bears all the risk and is liable for insurance, transportation, storage and assembly risk.

16. Guarantee

16.1 The contractor provides ARXADA with a guarantee that the work contains no defects, has the promised characteristics and performance and meets the specifications requested. The contractor is also responsible for ensuring that the work meets statutory requirements and that the production and use of the work does not infringe rights either of ARXADA or of third parties, such as patent rights, trademark rights or copyright.

16.2 The contractor further guarantees, that it fully complies with the latest version of ARXADA's Suppliers Code of Conduct which may be accessed via ARXADA's corporate website. (<http://www.ARXADA.com/policies>).

16.3 The contractor's guarantee also extends to all parts produced by subcontractors.

16.4 ARXADA's rights in respect of defects lapse for moving works within 2 years and for stationary constructions within 5 years (in the case of fraudulent concealment within 10 years) from acceptance thereof pursuant to Art. 15.3 of these terms and conditions. Defects discovered within this guarantee period are reported to the contractor by ARXADA. The guarantee period is extended in any case for the time required to investigate and remedy the defect. During this guarantee period, ARXADA can notify defects of any kind at any time.

Article 371 of the Swiss Code of Obligations does not apply.

16.5 Once a defect has been remedied, the guarantee period starts again for the repaired part.

17. Insurance

17.1 Unless otherwise agreed in the contract for work, the contractor undertakes, for the duration of the guarantee period, to take out employer's liability insurance, transportation insurance, assembly insurance and guarantee insurance for a total of at least CHF 5 million and to provide ARXADA, on request, with confirmation of the existence of this insurance cover.

18. ARXADA's rights with respect to defects

18.1 The contractor must immediately remedy any defects notified during the guarantee period at its own cost. Instead of remedy, ARXADA can demand a reduction in the price for the work or, where legally permissible, amendment of the contract for work.

18.2 If the contractor fails to remedy the defects within the period set by ARXADA, ARXADA can also demand remedy, a reduction in the price for the work or, where legally permissible, amendment of the contract for work.

18.3 ARXADA is entitled to remedy the notified defects itself or have them remedied by a third party, in each case at the contractor's cost, if:

- a. the contractor fails to remedy the notified defect within a reasonable period;
- b. the contractor refuses to carry out the remedial work or is unable to do so.

18.4 The right is specifically reserved to make further legal claims, particularly claims in respect of indirect losses, futile expenditure and consequential losses attributable to a defect in the work.

19. Withdrawal from the contract

19.1 Provided the work has not been completed, ARXADA can withdraw from the contract at any time.

19.2 If the reason for ARXADA's withdrawal is attributable to the contractor, ARXADA is entitled to claim compensation from the contractor and, where possible, offset these against any claims made by the contractor. ARXADA can also enter fully or partially into contracts that the contractor has agreed with subcontractors.

19.3 If the reason for ARXADA's withdrawal is not attributable to the contractor, the contractor is entitled to remuneration for the costs of work already carried out and accepted by ARXADA and for work that has been started, provided the contractor has carried this work out with justification and it has become useless to the contractor as a result of ARXADA's withdrawal. The contractor is also entitled to remuneration for reasonable contractor profit for the work carried out up until the withdrawal.

19.4 Any further claim by the contractor, in particular any claim for lost profit, is excluded if ARXADA withdraws from the contract.

20. Assignment

20.1 Rights and duties under the contract for work cannot be assigned, transferred or pledged to any third party without the prior written consent of the contractual partner.

21. Secrecy and publications

21.1 All information transferred by ARXADA to the contractor for the purpose of carrying out the contract shall be used by the contractor only for the purpose of carrying out the contract and shall not be used for other purposes or duplicated or made available to third parties.

21.2 Additionally, all information about ARXADA which the contractor acquires orally, in writing or electronically shall be kept strictly confidential by the contractor, unless such information is already publically known or becomes publically known without any contravention of the secrecy obligation. Additionally, the contractor shall ensure that his agents and the subcontractors used by him keep the information about ARXADA in a confidential manner.

21.3 Any publication or media communication relating to activities for and with ARXADA is only permissible if ARXADA has agreed to it in writing first.

22. Saving clause

If any part of these terms and conditions is or becomes invalid, the validity of the remaining provisions and the contractual agreements which have been made shall be unaffected thereby. The invalid provisions shall be replaced by an admissible agreement or statutory provision which approximates as closely as possible to the commercial purpose.

23. Applicable law and jurisdiction

23.1 Swiss law shall apply exclusively to these terms and conditions and to the order. The contractor shall comply with the statutory provisions and the instructions of the public authorities applicable at the place for the performance of the work.

23.2 The parties shall endeavour where possible to settle any disputes regarding the creation, interpretation and performance of the order by way of negotiation. **The City of Basel** (Switzerland) shall be the exclusive venue for jurisdiction. The application of the UN Convention on the international sale of goods is specifically excluded.