

swisspro Automation AG  
General Terms and Conditions  
**Building automation and multimedia**

## 1 Scope

- 1.1 These General Terms and Conditions (hereinafter referred to as GTC) govern the conclusion, content and execution of contracts for the planning, installation and programming of building automation systems and multimedia technology by swisspro Automation (hereinafter referred to as the Service Provider).
- 1.2 Deviating terms only apply if they have been explicitly accepted by the Service Provider.

## 2 Offer

- 2.1 An offer is binding during the period specified by the Service Provider.
- 2.2 If an offer does not specify such a period, the Service Provider is bound to the offer for three months.

## 3 Components

The following documents form an integral part of the contract in the order below, which applies in the event of contradictions:

1. The written contract document signed by all parties. If there is no written contract document, the offer and/or order confirmation from the Service Provider shall apply.
2. The Service Provider's offer where this is not already contained within 1.
3. The plans and technical information approved by construction management and the Client.
4. These General Terms and Conditions.
5. For building technology services: the SIA-118/380 standard "General terms and conditions for building technology".
6. For building technology services: the SIA-118:2013 standard "General terms and conditions for construction works".

## 4 Deliveries and services

- 4.1 All services and deliveries (incl. limitations of service) rendered by the Service Provider are conclusively outlined in the contract document and/or the offer or in the order confirmation.
- 4.2 Any visualisations contained within the offer are based on information from images of the system, print-screens, plans, etc., and are non-binding. The Service Provider reserves the right to make construction-related modifications and changes during the planning stage. These shall be finalised with the Client prior to implementation.

## 5 Compensation

- 5.1 Compensation shall be set out in the contract document or the offer and/or order confirmation.
- 5.2 Unless otherwise agreed, work and material shall be billed based on time spent and expense incurred using the Service Provider's rates valid at the time of billing (in accordance with the contract and/or offer or order confirmation).
- 5.3 Travel expenses, transport costs and other incidental costs shall also be billed to the Client.
- 5.4 Compensation shall only cover explicitly listed system parts and works. Any additional services and changes requested by the Client shall be billed at the rates applicable for the contract or offer and/or order confirmation. Requested overtime and Sunday work shall be billed with a surcharge unless otherwise agreed.
- 5.5 The Service Provider reserves the right to pass on third-party supplier product and price changes to the Client.**
- 5.6 If overall prices are agreed, the Service Provider reserves the right to change the price if wage rates or material prices

change between the date of the offer and the execution of the contract.

- 5.7 Where fixed prices are agreed, the Service Provider shall reserve the right to amend prices due to extraordinary circumstances in accordance with Article 59 SIA-118:2013.
- 5.8 Additionally, with regard to overall and fixed prices, the price can be changed if
- a. Work deadlines have to be changed for a reason for which the Service Provider is not responsible;
  - b. The nature and scope of the agreed services change;
  - c. The materials or configuration change because the information/documents supplied by the Client prove to be inaccurate or incomplete.
- 5.9 All prices are in CHF and do not include VAT. VAT will be invoiced additionally at the applicable rate.

## 6 Terms of payment

- 6.1 Unless otherwise agreed, the following payment terms apply. Invoices for installations and deliveries shall be payable within 30 days net. For larger orders or orders covering an extended period, partial payments shall be billed in line with the progress of construction. These shall be payable within 30 days. The Client shall not be permitted to withhold or reduce payments based on complaints, claims or counter-claims not recognised by the Service Provider.
- 6.2 In the event that the Client fails to make payment by the agreed payment deadline, default interest of 5% shall apply without any special reminder on the part of the Service Provider.

## 7 Client's responsibilities

- 7.1 The Client must provide the Service Provider with all documents and information necessary for the execution of the contract. In particular, the Client must notify the Service Provider immediately of any circumstances that might impede the work of the Service Provider.
- 7.2 The Client shall carry out all duties and acts of cooperation owed under the contract punctually and professionally. Should the Client fail to do so for reasons for which the Service Provider is not responsible, the Client must reimburse the Service Provider for the resulting additional costs; the Service Provider must provide the Client with evidence of such costs.
- 7.3 The Client shall provide the Service Provider with unrestricted and secure access to the installations/systems and/or the corresponding buildings and rooms. In particular, it shall provide the necessary space required to render the service and, unless otherwise agreed, shall carry out any preliminary work required of it as the operations manager for the service object (e.g. safety precautions, etc.).
- 7.4 The provision of services may sometimes require preliminary works (electrical installations, water connections, isolations, etc.). Sufficient space must also be provided for the assembly and commissioning of the energy generator.
- 7.5 Unless otherwise agreed, the Client shall be obliged to provide a suitable internet connection and all technical facilities required for the transfer of data. The internet connection must be established via a local area network (LAN) or mobile communications (LTE); Wi-Fi connections or Powerline connections (network via socket) do not meet the relevant requirements. Where the Client makes changes to the network (e.g. changes provider, replaces hardware, etc.), it shall be responsible for any costs incurred by the Service Provider for any changes to the system required as a result of such network changes.
- 7.6 The Client is responsible for any legal obligations incumbent upon it as the owner. In particular, it must ensure safe operation and necessary maintenance of the system.

7.7 The Client shall also take all necessary measures to prevent any damage to existing facilities and avoid any delays. Liability on the part of the Service Provider for damage to existing facilities shall be limited to the extent allowed by law.

## 8 Transport, packaging and storage

- 8.1 Costs for the transport of materials and tools from the Service Provider's warehouse for the purposes of carrying out contracted works shall be borne by the Service Provider. Costs for other transport (e.g. material that is installed at the Client's premises or is not available from the Service Provider's warehouse) shall be borne by the Client.
- 8.2 If required, the Client shall provide a lockable, easily accessible, fireproof space on site as an interim storage facility for free.

## 9 Deadlines

- 9.1 Deadlines are only binding if expressly agreed as such by the parties in the contract and/or offer.
- 9.2 Should the Service Provider fail to meet binding deadlines, it will be in default automatically. Otherwise, the Client must provide the Service Provider with notice that it is in default by sending it a written reminder specifying a reasonable subsequent deadline.
- 9.3 A deadline is considered met if proper operation is possible and not impeded, even if follow-up work or other services are still necessary.
- 9.4 If a service cannot be rendered within the agreed deadline due to delays for which the Service Provider is not responsible, the Service Provider is entitled to revise the schedule and postpone the contractually agreed deadlines.
- 9.5 In particular, the Service Provider cannot be held responsible for delays caused by force majeure, official measures, unforeseen ground conditions, environmental incidents or delays resulting from a dependence on third parties.
- 9.6 The Service Provider shall notify the Client in writing as soon as it becomes aware of any delay.

## 10 Commissioning

- 10.1 Once assembly is complete, the Service Provider shall commission the system. Commissioning includes functional inspection and installation checks of all system components delivered by the Service Provider.
- 10.2 The Service Provider will then create a written report on the result of commissioning.
- 10.3 The Client shall be provided with the documentation required for the operation and maintenance, incl. the commissioning report.

## 11 Acceptance

- 11.1 As soon as the Client has received notification that the services are ready to be accepted, it must check the work within seven (7) calendar days and immediately report any defects to the Service Provider. If the Client fails to do so, the works shall be deemed as accepted.
- 11.2 The Client may not refuse to accept the services due to negligible defects, including in particular those that do not have a significant impact on functionality. The Service Provider must remedy any such defects by an agreed deadline. In the event of significant deviations from the contract or serious defects, the Client may refuse to accept the services, stating the reasons for doing so in writing. In such cases, the Service Provider must set out a reasonable subsequent deadline by which the deviations and/or defects must be rectified. Once rectified, the Client must be notified again that the services are ready to be accepted.
- 11.3 The parties may agree on partial acceptances.

## 12 Warranty

- 12.1 The warranty period begins upon completion and delivery of the contractually agreed services. Where mutual acceptance is documented by way of a written acceptance report, the

warranty period shall begin upon signing of the acceptance report. If there is no written acceptance report, the warranty period shall begin upon commissioning by the Client. For the delivery of devices/components (control components, etc.), the warranty period shall begin with delivery to the Client.

- 12.2 If a defect is present, the Service Provider undertakes to remedy it within a reasonable period of time and at its own expense (subsequent improvement). Where the works are proven to be defective during the warranty period and such defects are demonstrably due to poor workmanship or faulty material delivered by the Service Provider, the relevant parts shall be repaired or replaced by the Service Provider within a reasonable period. The defect must be detected during the warranty period and reported immediately once identified in order to be eligible for replacement/repair.

### 12.3 The Service Provider warranty shall not apply

- a. If the Client or a third party not authorised by the Service Provider improperly carries out work on the system. Any warranty claims shall be void if the Client attaches non-approved auxiliary equipment or carries out or has carried out by a third party any non-approved interventions and/or repairs on the system without the explicit consent of the Service Provider;
- b. **For defects in individual system component or software made by third parties and for which a separate manufacturer warranty applies (manufacturer warranty). The warranty provisions and periods of the manufacturer as outlined in the product information sheets or explicit mentions in the offer shall apply exclusively for such components and software;**
- c. For normal wear and tear;
- d. **For faults or deviations from the scope of services due to changes / software updates carried out by the manufacturer.**

## 13 Liability

- 13.1 Wherever permissible by law, the liability of the Service Provider is
- a. Limited to 50% of the payable remuneration or, in cases of periodically recurring remuneration, 50% of the annually payable remuneration. In any case, however, liability shall be limited to a maximum of CHF 1,000,000.00;
- b. Excluded for indirect or consequential damage such as lost earnings, unrealised savings, third-party claims, consequential damage caused by defects or damage caused by loss of data.
- 13.2 The Service Provider refuses liability for any damage to existing, concealed lines that it had or could have had no knowledge of. Liability on the part of the Service Provider for damages or consequential damages arising as a result of false or missing information is excluded.
- 13.3 The Service Provider shall not be liable for any damages and delays arising in relation to materials that are hazardous to health. In particular, the Service Provider cannot be made liable for asbestos removal (see section **Fehler! Verweisquelle konnte nicht gefunden werden.** above).
- 13.4 The Service Provider shall not be liable for any unlawful content of data stored with itself or any misuse of such data by third parties. This excludes cases of participation with direct or indirect intent.
- 13.5 The limitation of liability and the disclaimer apply to contractual, non-contractual and semi-contractual claims.
- 13.6 This disclaimer does not apply to personal injury or damage to property caused by intentional or grossly negligent conduct.
- 13.7 If it holds the Service Provider liable, the Client is obliged to report the incident to the Service Provider in writing immediately, otherwise the Service Provider shall assume that the Client is waiving its claim to damages.

## 14 Ownership, property rights and licences

Plans, calculations, cost estimates, etc., are all property of the Service Provider. Reproduction or disclosure to third parties is not permitted without consent. Works and goods shall remain the property of the Service Provider until payment in full.

## 15 Software rights

- 15.1 The Service Provider shall retain all property rights relating to the software (including source code), program descriptions and written or machine-readable documentation made available to the Client.
- 15.2 The Client shall be authorised to use the software on the defined hardware. The Service Provider or licence provider shall always retain all copyrights to the software. The rights of use of the software shall not include any claim to upgrades or delivery of new software releases.
- 15.3 To the extent that the rights accrue to third parties, the Service Provider guarantees that it has the necessary rights of use and distribution. The Client shall have no general entitlement to the source code (and/or parts thereof) or program descriptions (special agreement).
- 15.4 The Client shall acquire the non-transferable and non-exclusive right to apply or use the software in the scope agreed in the contract document.
- 15.5 During a hardware failure, the Client shall have the right to use the software on substitute hardware without additional payment.
- 15.6 The Service Provider cannot guarantee that the software can be used without small interruptions and errors and under any operating conditions.

## 16 Data protection

- 16.1 The Service Provider collects data (e.g. client data and measurements) that is necessary for the provision of the contractual services, especially for the execution and maintenance of its relationship with the Client and for the security of its operations and infrastructure.
- 16.2 The Service Provider will store and process this data in order to carry out and develop the contractual services and to create new offers and offers relating to these services.
- 16.3 The Client hereby agrees that the data in this contract as well as supplemental data available at the Service Provider or from third parties may be used within the BKW Group for analysis of the services provided (client profile), for personalised advertising campaigns, for client contacts (e.g. recalls) and for the development and structuring of products and services in the BKW Group's area of activity. The latest overview of BKW Group companies and their areas of activity can be found on the Group's home page at [www.bkw.ch](http://www.bkw.ch). **The Client may revoke this permission at any time.**
- 16.4 The Service Provider is entitled to engage third parties and to disclose the necessary data to those third parties. Data can also be transmitted abroad in this context.
- 16.5 The Service Provider and any third parties must always adhere to the relevant legislation, especially the data protection regulations. It shall take suitable steps to protect the data of the Client and treat it as confidential.

## 17 Prohibition of assignment

The Client may not assign claims under the contract or these GTC to third parties without the consent of the Service Provider.

## 18 Legal validity

If individual provisions of the GTC or the contract are or become invalid, or if they contain an unintentional loophole, the validity of the remaining provisions remains unaffected. Such a provision will be replaced or a loophole closed with a legally valid provision that the parties would have agreed with due consideration of their legal and economic interests as well as the meaning and purpose of the contract with respect to such a provision or loophole.

## 19 Applicable law and place of jurisdiction

Swiss substantive law applies, with the exception of the UN Convention on Contracts for the International Sale of Goods (CISG). **The place of exclusive jurisdiction** for disputes in connection with the contract is **the Service Provider's headquarters**.

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