

SwissT.net - Terms & Conditions for Engineering Services

1. Applicability

The swissT.net terms and conditions apply if both parties recognise them either explicitly or tacitly. Any changes made shall only be effective if they are confirmed in writing by the supplier.

2. Means of communication

The parties communicate with each other orally, in writing or by means of electronic data exchange.

Letters, reports, drawings, plans, telefax messages, e-mails and other forms of conveying information that enable verification by means of texts or images are regarded as written means of communication. Signed means of communication refer to documents etc. that must be signed personally or must bear an appropriately qualified electronic signature.

3. Scope of performance

The order confirmation or, failing such, the offer made by the supplier shall be binding in respect of the scope and/or execution of the products and/or services.

4. Place of fulfilment and delivery

Unless a special place of fulfilment/delivery has been agreed on or is determined by the nature of the business transaction, the supplier is allowed to perform the services at the place where the supplier's own offices/business facilities are located.

If the supplier performs the services at another location, the customer shall reimburse the costs of travel and accommodation.

5. Provision of information

Each party shall provide the other with all the correct and complete information that is needed for fulfilment of the contract and for safe use of the products and services in good time and shall hand over the corresponding data carriers, samples and documents to the other party.

Each party shall check the information provided and report any detected errors to the other party immediately. If a party feels that changes have to be made to the information provided, this party must report this to the other party in writing within a useful period of time.

Any possible expenditure that is verifiably incurred due to information that is supplied late, is incorrect or incomplete or due to subsequent changes to the information shall be borne by the causer.

6. Project organisation

In view of the fact that a project requires close back-up and support during development, processing and execution of the project, the parties shall define how the project is to be organised. Unless special arrangements have been made, the following rules shall apply:

- a) Each party designates the persons responsible in this project by name. These persons can unrestrictedly represent and obligate their company in the framework of this project.
- b) The parties despatch their representatives in a project team, which is responsible for the set objectives and for monitoring the project. It also specifies the most important steps in the project.
- c) The supplier names an employee as the project manager. The latter manages the project and is responsible for planning, work assignment, coordination, controlling, project-document updates, documentation and acceptance inspections.
- d) Decisions of the project team and the directions given by the project manager are regarded as approved if neither the supplier nor the customer raises any objections within the set period or, failing such, within five working days.

7. Software and know-how

The customer is allowed to use the supplied software, the results of work, the know-how, the data carriers and documents according to the terms of an existing licence. If the customer does not possess such a licence and if the scope of the rights of use cannot be derived from the purpose of transfer, the customer and his clients/end users shall only possess the right to use the corresponding products but not the right to independently sell, distribute, duplicate, expand or alter them.

The supplier or his licensor retains ownership of and the right to use the products even if the customer subsequently changes the computer program(s), the results of work or the know-how records.

The customer shall take the necessary measures to protect computer programs, results of work and documentation against undesired access or misuse by unauthorised parties.

The customer is allowed to make the necessary back-up copies. He must mark these accordingly and keep them separately and securely.

8. Use

The customer shall be responsible for use of the products and services as well as for combining them with other products, namely with information technology systems or electrical devices and equipment. At the same time, the customer shall exercise due diligence and care and must observe all instructions of the manufacturer and supplier.

The customer is obliged to pass on all information that is relevant to safety and security to the end users in a suitable form.

9. Dates and deadlines

If dates/deadlines are not agreed on in the project time schedule, only dates and deadlines promised in writing are binding.

Dates and deadlines shall be postponed appropriately

- a) if information that the supplier needs for execution are not received by the supplier in good time or if the customer subsequently alters such information
- b) if the customer is behind schedule in the performance of the work that he has to do or in fulfilment of his contractual obligations, especially if he does not comply with the terms of payment
- c) if problems arise that are beyond the control of the supplier such as natural events, mobilisation of the armed forces, war, insurgence, epidemics, accidents and illness, substantial operating impairments, labour conflicts, delayed or defective deliveries or measures imposed by governmental authorities

A party is only permitted to perform a service before the agreed date with the consent of the other party.

In the event of delays, the party responsible for the delay is to be allowed an appropriate amount of extra time for the performance of outstanding work. If the outstanding work is not performed within this extra time and a further delay is unacceptable, the other party shall be entitled to declare the contract null and void as long as he reports this to the other party within three working days after expiry of the extra time period.

If one party is verifiably to blame for the delay, the other party shall be entitled to compensation for the actual loss in spite of subsequent fulfilment or nullification of the contract.

10. Acceptance inspection

Unless a special acceptance-inspection procedure has been agreed on, the customer shall inspect all products and services himself.

The customer must report any defects immediately in writing. Products and services are regarded as

having been accepted if they are used commercially for more than twenty working days.

Hidden defects that it would not have been possible to discover during a properly conducted inspection, are to be reported in writing immediately after their discovery.

11. Defects

The supplier shall endeavour to exercise the necessary due diligence and care and to ensure that his products and services possess the assured properties. Moreover, the supplier shall be liable for their suitability to the extent that the customer informed him of their use in writing before the contract was signed.

The supplier provides no guarantees for the results that the customer wishes to achieve with the products and services. He is also not liable for damages resulting from their use.

Faults and flaws for which the supplier is not responsible such as natural wear, force majeure, improper handling, manipulation by the customer or third parties, excess wear and tear, unsuitable equipment, problems caused by other machines and systems, an unstable power supply and especially climatic conditions or unusual outside influences are excluded from the liability for defects.

The customer shall not be entitled to make claims due to a negligible defect. Defects are negligible if they do not impair the use of products and services.

In the event of substantial defects, the customer shall grant the supplier an appropriate amount of extra time for their rectification (correction or supply of a replacement). The supplier shall rectify the defects on his own premises or, if he so wishes, on the premises of the customer, who must grant him free access for this purpose. The costs of removal and installation, transport, packaging, travel and accommodation shall be borne by the customer. Replaced parts will be the property of the supplier.

The warranty period and the period of limitation of liability are each twelve months. Recognition or elimination of a defect does not mean that these periods are interrupted.

If the attempt to rectify the defect(s) is unsuccessful, the customer shall be entitled to a suitable price reduction. He is only entitled to declare the contract null and void if acceptance of the products or services would be unreasonable.

If the supplier is verifiably to blame for the defect, the customer shall be entitled to compensation for the actual damage in spite of rectification of the defect, price reduction or nullification of the contract. However, such compensation shall be limited to a maximum of twenty per cent of the value of the defective delivery. The replacement of lost profit and other asset losses are completely excluded.

12. Additional liability

Within the framework of his third-party liability insurance, the supplier shall be liable for any additional material damages and personal injury that is suffered by the customer and for which the supplier is verifiably responsible. Any further claims, namely for the behaviour of vicarious agents, are excluded.

13. Prices and terms of payment

Unless indicated otherwise, the prices are in Swiss francs excluding value added tax, levies, customs duty, transport, packaging, insurance, licences, certificates, installation, commissioning and application support. Payment is due net within thirty days after the invoice date.

If a payment deadline is tied to the acceptance inspection and if the latter is delayed due to reasons for which the supplier is not responsible, the date on which payment is due is that date on which the delivery was ready for the acceptance inspection.

The customer shall be entitled to set off counter-claims against payment of invoices only if the supplier has given his signed written consent to do so.

If the customer fails to adhere to the specified payment deadline, he shall pay eight per cent annual interest on arrears without any reminder of the due date of payment.

In the event of a delay in payment, the supplier shall be entitled to make further performance of services/supply of products (incl. the rectification of defects) dependent on suitable security to be provided by the customer, including advance payment, even if these services/products do not originate from the same legal relationship

14. Discretion

Neither of the two parties shall disclose any information relating to the business practices of the other to third parties, irrespective of whether such information is generally accessible or widely available. They must take all necessary precautions to prevent third parties gaining access to this information. On the other hand, each party is entitled to use knowledge gained in the course of their own business activities.

The parties shall impose this obligation to maintain secrecy on their employees, staff and representatives as well.

15. Data protection and back-up

It is permissible to process personal data, especially data relating to companies, customers and employees, as long as this is necessary for the development of business. Both parties shall adhere to the rules of data protection and shall take suitable organisational and technical precautions.

Each party is responsible for reliable back-up of their own data as well as of the data that is needed for performance of their services. The customer shall make a back-up of all data in good time before an employee of the supplier can gain access to his information processing system.

16. Choice of law and jurisdiction

This legal relationship is subject to Swiss law.

The place of jurisdiction is the place of business of the supplier. The supplier shall also be entitled to seek legal regress in the place of business of the customer

Swiss Technology Network – swissT.net
Industriestrasse 4a
CH-8604 Volketswil
Telephone 044 945 90 90, Telefax 044 945 90 92
E-mail: info@swisst.net, Homepage: www.swisst.net