

## **General Terms and Conditions of Purchase of the Emmi Group for the Maintenance of Facilities, Technical Systems, Machines and Equipment (GTCP-M)**

(Version dated 17.10.2019)

### **1. Scope of application**

These General Terms and Conditions of Purchase (GTCP-M) govern the conclusion, content and processing of contracts for the maintenance of facilities, technical systems, machines and equipment. They may only be amended by means of deviating regulations in the contractual document.

### **2. Tender**

- 2.1. The tender shall be submitted free of charge.
- 2.2. The Company shall state the VAT separately in the tender.
- 2.3. The Company shall state the type of remuneration and cost rates in the tender.
- 2.4. If the tender differs from the call for tenders issued by the Emmi Group, the Company shall draw express attention to this fact. The Company shall explicitly state if there is a risk that third-party intellectual property rights may noticeably restrict its fulfilment of orders.
- 2.5. All documents made available by the Emmi Group (plans, functional descriptions, etc.) shall remain the property of the Emmi Group and must be returned with the tender.
- 2.6. If the facility documentation is complete, the Company may not request any additional remuneration for missing documents.
- 2.7. The tender shall be binding for the period specified by the Emmi Group. Provided that no other deadline is provided in the call for tenders or in the tender, the Company shall remain bound to the stipulations contained therein for six months from the date of the tender.

### **3. Execution**

- 3.1. The place of performance shall in each case be the location of the facility to be maintained.
- 3.2. The Company shall provide the Emmi Group with regular updates on the progress of work and shall obtain all necessary specifications. It shall immediately indicate in writing all circumstances that could jeopardise contractual performance, lead to changes in later phases, increase the agreed processing effort or impair existing facilities. It shall inform the Emmi Group of any further developments that, for technical or commercial reasons, could require a change to the scope or nature of services.
- 3.3. The Company undertakes to design all components in contact with products in accordance with current EHEDG principles so that they are easy to clean.
- 3.4. The Company undertakes to draw up a declaration of conformity for materials and auxiliary materials in which synthetic nanoparticles have been used, specifying what nanoparticles have been used.
- 3.5. The Company undertakes to draw up a declaration of conformity for the plastic components used, specifying that the plastic used is harmless to the foodstuff in question.
- 3.6. The Company shall comply with the operational requirements of the Emmi Group, in particular its safety regulations and house rules. It shall ensure that these regulations and instructions are complied with by any third parties it commissions.
- 3.7. The Company shall procure the tools and equipment it needs to perform the work at its own cost. It shall have access to facilities and spare parts of the Emmi Group only to the extent that this has been expressly agreed.
- 3.8. The Company shall not be entitled to derive any claims from minor work interruptions or from maintenance carried out for operational reasons.

#### **4. Changes to services**

- 4.1. The Emmi Group may request that changes be made to individual services provided that their overall character is not affected.
- 4.2. The change to the service and any adjustments to remuneration, deadlines and other elements of the contract shall be specified in writing in an addendum to the contractual document prior to execution. If no such agreement is made, the provisions of the original contract shall apply. Adjustments to remuneration shall be calculated according to the principles of the contractually agreed cost basis. If this is not possible and no agreement is reached concerning the elements to be adjusted, the Emmi Group shall be authorised to provide the corresponding services itself or delegate them to a third party.
- 4.3. Unless otherwise agreed, the Company shall continue its work as planned while the proposed changes are being reviewed.

#### **5. Remuneration**

- 5.1. The remuneration shall cover all services that are required for the proper performance of the contract. All ancillary costs and any surcharges for maintenance work (e.g. night work, travel time) shall be listed in detail in the price sheet of the tender.
- 5.2. The Company undertakes to provide all spare parts and tools at market prices. The Emmi Group reserves the right to review this.
- 5.3. Deliveries shall be performed in accordance with INCOTERMS DAP or DDP, place of performance.
- 5.4. Remuneration shall generally become due once the service has been provided. Services which are charged on a flat-rate basis for the full calendar year may be invoiced halfway through the respective calendar year, unless alternative due dates have been stipulated in the contract. The Emmi Group shall settle payments due within 30 days of receipt of the invoice.
- 5.5. The remuneration shall be adjusted for inflation only if and to the extent provided for in the contractual document.

#### **6. Repairs**

Repair work must always be offered and may only be carried out subject to a written order from the Emmi Group. Exceptions must be agreed with the Emmi Group in advance.

#### **7. Involvement of third parties**

- 7.1. The involvement of third parties (e.g. freelance staff, specialists) for the performance of the contract shall require the prior written consent of the Emmi Group.
- 7.2. The Company shall integrate all provisions of the contract into its contracts with third parties that are necessary to safeguard the interests of the Emmi Group.
- 7.3. The third parties enlisted by the Company to perform the contract shall in all cases be deemed their associates within the meaning of Art. 101 of the Swiss Code of Obligations (CO). The Emmi Group's consent to or knowledge of the involvement of third parties shall not affect the Company's liability under or in connection with the contract. Art. 399 (2) CO is expressly excluded.

#### **8. Right of the Emmi Group to make direct payments**

If the Company encounters payment difficulties or if serious differences arise between the Company and third parties commissioned by it or the Emmi Group, the latter may, after consulting the parties involved and receiving a valid invoice, pay the commissioned third parties directly or deposit the amount in question, both with exempting effect.

#### **9. Intellectual property rights**

- 9.1. Documents and know-how that the Emmi Group makes available to the Company for the performance of the contract may only be used strictly for project-related purposes. The Company shall make the corresponding obligation binding on any third parties it commissions (e.g. subcontractors). The Emmi Group reserves the right to take action against unauthorised use (such as reproduction, distribution) of its documents and other

infringements of the rights to which it is entitled.

9.2. All rights to the Company's work results produced specifically for the Emmi Group (in particular, to all maintenance records, databases, contents of databases in readable form, source code, etc.) shall be transferred in full to the Emmi Group upon payment of the fee agreed for the services in question.

9.3. The Emmi Group shall be authorised in particular to reuse, further develop and modify concepts, drafts, sketches, plans, models, etc., either itself or with the involvement of third parties, and to publish them under its own corporate identity.

## **10. Default and contractual penalty**

10.1. In the event of non-compliance with the deadlines and dates agreed in the contractual document as giving rise to default (transactions subject to expiry dates), the Company shall automatically be deemed to be in default; in all other cases, after a reminder has been issued, the Company shall be granted a reasonable period of grace.

10.2. If the Company is in default, it shall be liable to pay – insofar as contractually agreed – a contractual penalty if it cannot prove that it is not at fault. The contractual penalty shall also be due if the services are accepted without reservation. Payment of the contractual penalty shall not release the Company from its other contractual obligations; the contractual penalty shall, however, be charged against the compensation for damages that is due.

10.3. The contractual penalty shall be 1 % of the total remuneration per week of delay commenced, but not more than 5 % in total.

10.4. The Emmi Group shall be authorised to offset the contractual penalty against the remuneration.

## **11. Warranty**

11.1. The Company assures the Emmi Group that its services exhibit the agreed properties as well as those properties the Emmi Group might reasonably expect in good faith without any special agreement. The Company's liability shall lapse insofar as the Emmi Group is at fault.

11.2. A defect is any deviation from the subject of the contract, irrespective of the fault of the Company.

11.3. If a defect is found, the Emmi Group may request that it is rectified at no cost. The Company shall rectify the defect within the prescribed deadline and shall bear any costs arising therefrom.

11.4. If the Company fails to rectify the defect as requested or the corrective action is not successful, the Emmi Group may at its discretion:

- decrease the remuneration in line with the reduced value delivered;
- withdraw from the contract, but only in the case of a major defect;
- demand the return of the necessary documents (namely the source code) – insofar as there are no legal or contractual provisions to the contrary – and take the appropriate measures itself or have them taken by a third party at the Company's expense and risk, but only in the case of a serious defect.

11.5. Defects must be notified within 60 days of discovery. Warranty rights shall lapse two years after acceptance. Once the notified defects have been rectified, the warranty periods for the repaired parts shall start anew. Claims for maliciously concealed defects may be asserted up to ten years after acceptance.

## **12. Liability**

12.1. The Company shall be liable for all damages it causes to the other contracting party unless it can prove that it is not at fault.

12.2. The Company shall be liable for the conduct of its associates and involved third parties (e.g. suppliers, subcontractors, substitutes) as for its own.

## **13. Provisions under labour law**

13.1. The Company undertakes to comply with the conventions of the International Labour Organisation (ILO) and shall not employ any workers under 15 years of age. Countries covered by ILO Convention 138 as developing countries and permitted to employ workers of at least 14 years of age are excluded from this regulation.

13.2. The Company shall contractually impose the obligations of this section on any third parties enlisted by it to perform the contract.

13.3. The Emmi Group shall notify the Company of any breaches of these obligations and may demand corrective action. If the Company fails to take such corrective action or if such corrective action is not possible, the Emmi Group shall either suspend or terminate the contract at its discretion.

#### **14. Integrity**

14.1. The contracting parties shall take appropriate measures to ensure compliance with the law and regulations. They undertake in particular to comply with the principles and rules outlined in the Emmi Group Code of Conduct. Insofar as these principles and rules are substantially equivalent to those stipulated in the Company's code of conduct, compliance with the latter shall suffice.

14.2. The contracting parties undertake to take all necessary measures to prevent corruption so that no improper benefits or other advantages are offered or accepted.

14.3. The Emmi Group shall notify the Company of any breaches of these obligations and may demand corrective action. If the Company fails to take such corrective action or if such corrective action is not possible, the Emmi Group shall either suspend or terminate the contract at its discretion.

14.4. The Company shall contractually impose the obligations of this section on any third parties enlisted by it to perform the contract.

#### **15. VAT / Customs**

15.1. The Company undertakes to comply with Swiss VAT legislation.

15.2. The Emmi Group may demand corrective action if this obligation is breached. If the Company fails to take such corrective action or if such corrective action is not possible, the Company shall bear all resulting costs (e.g. taxes, customs duties).

#### **16. Audit**

16.1. The Emmi Group is entitled to audit the Company's compliance with the obligations under the section "Integrity" as well as with other key obligations, either itself or through an independent audit firm it appoints. The Emmi Group may not request such an audit more than once per calendar year without good reason. The Emmi Group shall notify the Company in writing that an audit is being conducted, unless the Emmi Group perceives an imminent danger.

16.2. The Company may request that the audit be conducted by an independent third party. The Company shall bear the costs of the audit in this case as well if it is determined during the audit that the Company has breached the obligations under the section "Integrity" or other key obligations towards the Emmi Group.

16.3. If the audit is not conducted by the Emmi Group itself, the audit report shall merely inform the Emmi Group whether the Company is fulfilling its contractual obligations, unless a breach has been committed. In this case, the Emmi Group shall have a comprehensive right to inspect the information relevant to the breach.

16.4. The Company shall contractually impose the obligations of this section on any third parties enlisted by it to perform the contract.

#### **17. Confidentiality**

17.1. The contracting parties shall treat as confidential all information and data arising out of the contractual relationship which are neither common knowledge nor accessible to the general public, even if these are not marked as confidential. In case of doubt, all information and data should be treated as confidential. This shall remain subject to any legal obligations to inform.

17.2. The obligation to maintain confidentiality shall apply even prior to conclusion of the contract and shall continue to apply after termination of the contractual relationship.

17.3. The obligation to maintain confidentiality shall apply to third parties. There shall be no breach of confidentiality if confidential information is forwarded within the Company or to involved third parties. This applies for the Company insofar as the information needs to be forwarded to perform the contract.

- 17.4. If one party breaches the obligation to maintain confidentiality, it shall be liable to pay the other party a contractual penalty if it cannot prove that it is not at fault. This shall be 10 % of the contract amount per case, but at least CHF 3,000 and no more than CHF 100,000. Payment of the contractual penalty shall not release the parties from their obligation to maintain confidentiality; the contractual penalty shall, however, be charged against the compensation for damages that is due.
- 17.5. In the case of master agreements, the remuneration paid for the annual requirement in the previous year shall serve as a basis for calculating the contractual penalty. In the first year of the contract or in years where no remuneration was paid in the previous year, the remuneration for the planned annual requirement shall apply.
- 18. Statements to the media (including social media, testimonials) and use of the Emmi Group logo**
- Statements to the media in connection with the contract and use of the name and/or logo of the Emmi Group shall require the express consent of the Emmi Group. Statements to third parties which are accessible to the general public (in particular testimonials) shall be deemed equivalent to statements to the media.
- 19. Social security contributions**
- The Company shall take care of all necessary registrations for itself and its employees with the relevant social security institutions. In the case of sole proprietorships, the Company shall be required to provide the Emmi Group with confirmation of self-employment from its compensation office. The Emmi Group shall not owe the Company and its employees any social security contributions (old age, disability, loss of income, unemployment, etc.) or any other compensation payments, in particular in the event of illness, disability or death.
- 20. Termination for good cause**
- 20.1. The contracting parties may terminate the contract without notice for good cause if said cause makes it untenable to continue the contract. If the contract is terminated prematurely, the remuneration for services provided pursuant to the contract up to the point of termination shall be due pro rata. There shall be no further entitlement to compensation – especially to lost earnings – under any circumstances.
- 20.2. The following situations in particular shall be considered good cause justifying premature termination of the contract by the Emmi Group:
- If the Company has breached its contractual obligations in a serious manner and this breach is not remedied after appropriate written request within 30 days. A serious breach of contract shall include in particular non-compliance with applicable legislation, repeated non-compliance with the agreed deadlines and dates or with the agreed intervention period for rectifying faults, and poor performance of the contract;
  - If the Company repeatedly fails to comply with operational requirements or repeatedly disregards instructions given by the Emmi Group;
  - If bankruptcy or administration proceedings are initiated against the Company.
- 21. Delivery of spare parts**
- The Company undertakes to ensure the delivery of spare parts at competitive conditions for ten years from the date of commissioning.
- 22. Ban on assignments and pledges**
- Claims accruing to the Company may neither be assigned nor pledged without the written consent of the Emmi Group.
- 23. No waiver**
- If a party holds off on or defers its right to assert a claim or does not exercise its rights or does so only in part, this shall not constitute a waiver of these or future claims. A waiver shall require a written



declaration by the waiving party in order to be valid.

**24. Written form**

The conclusion of or amendments and additions to the contract and the components thereof shall require the written form and signature by both contracting parties in order to be valid.

**25. Applicable law**

This contract is subject exclusively to Swiss law, to the exclusion of provisions regarding conflicts of law. The provisions of the Vienna Sales Convention (United Nations Convention on Contracts for the International Sale of Goods (CISG), concluded in Vienna on 11.04.1980) are expressly excluded.

**26. Jurisdiction**

The competent courts in Lucerne shall have exclusive jurisdiction in disputes arising out of or in connection with the contract.