

1. Miscellaneous

These General Terms and Conditions (GTCs) of Equans Switzerland Process Automation AG (hereinafter "Equans") apply to all agreed deliveries and services of Equans, irrespective of the legal nature of the relevant contract, unless otherwise agreed in writing. Any deviating or supplementary customer terms and conditions (including the GTCs) shall only apply if they have been expressly accepted by Equans in writing.

2. Scope of services

Equans undertakes to provide the goods and services agreed in the contract. Together with the contract/special order contract, these GTCs cover the entire agreement between the contracting parties. The contract/special order contract and the GTCs supersede all previous written and oral agreements between the parties in this respect. All additions or amendments to these GTCs or the contract require the written consent of both parties. This also applies to the waiver of the written form requirement. The customer shall bear the costs of all deliveries and services that are not explicitly listed in the offer as services of Equans but that are necessary for the performance of the contract in terms of organization, scheduling and technology.

3. Offer

Equans' written quotation is valid for a period of 30 days from the date of issue.

The quotation is based on the documents and information provided by the customer. If these details or documents do not correspond to the actual circumstances or if Equans has not been informed of circumstances that require different or additional materials or would have necessitated a different course of action, the corresponding (additional) costs shall be borne by the customer.

Equans reserves all rights to the product and intellectual works (in particular plans, technical drawings, contractor variants, calculations, etc.) handed over to the customer or its representatives. The customer acknowledges these rights and shall not make the documents available to third parties or use them for anything other than the contractual purpose without the prior written consent of Equans. Particular reference is made to Art. 5 and Art. 23 of the Federal Act against Unfair Competition (Gesetz gegen den unlauteren Wettbewerb, UWG). If the customer violates this agreement, it must pay Equans a fixed sum amounting to 10% of the quoted amount, but at least CHF 10,000, whereby Equans expressly reserves the right to claim damages in excess of the fixed sum. If the quotation cannot be accepted, all documents must be returned to Equans and the electronic data deleted.

4. Payment terms

An advance payment of 30% of the special order contract price is due when the order is placed or the contract signed.

Deliveries and services rendered will be invoiced immediately and become due for payment. The payment period is 30 days net after invoicing. The payment date stated in the invoice shall be deemed the due date. In the event of late payment, the customer must pay default interest of 5% p.a. from the 31st day.

Equans will not commence deliveries and services until the advance payment of 30% of the special order contract price has been made by the customer.

In the event of late payment, Equans is entitled to suspend the agreed services immediately and to demand collateral from the customer. If Equans does not receive sufficient collateral, it is entitled to withdraw from the contract and to claim damages for negative or positive contractual interests. The withholding of payments or offsetting by the customer due to any counterclaims is excluded.

5. Deadlines/delivery periods

Equans is obliged to meet the agreed and guaranteed deadlines in accordance with the contract. If the necessary conditions for the fulfillment of the contract are not guaranteed by the customer, Equans is released from its obligation to meet the deadlines set.

If a delivery date is not expressly agreed or guaranteed as fixed, it is only approximate. For deliveries of materials and equipment, the delivery deadlines of the manufacturing companies or suppliers are definitive.

6. Force majeure

Cases of force majeure entitle Equans to postpone the provision of its services for as long as the event and the elimination of its direct consequences continue. Such delays do not entitle the customer to cancel or terminate the contract and do not give rise to any claim for damages. The term 'force majeure' includes all circumstances for which neither Equans nor the customer is responsible and which make it impossible or significantly more difficult for Equans to provide the delivery or service, such as strikes, lockouts, acts of terrorism, unrest, natural disasters, import or export bans, energy or raw material shortages, epidemics and pandemics (including new COVID-19 waves), accidents, illness, war or significant operational disruptions. The costs of expediting measures shall be borne by the customer.

If the effects of the force majeure event last longer than two months, this contract may be terminated by either party. Equans shall be reimbursed in full for services already rendered.

7. Hardship clause

If significant economic disruption occurs during the execution of the contract, so that the balance of the contract is fundamentally altered and/or Equans is exposed to excessive burden, the parties shall negotiate an appropriate adjustment of the contract price. In this case, an increase in Equans' costs by more than 5% shall be deemed to be a significant economic disruption, unless this increase in costs can be offset by ordinary inflation.

8. Deliveries on site

Equans accepts no liability or warranty for materials supplied by the customer.

9. Software and expertise

The customer must only make use of the expertise they gain and any software, data, data carriers, documentation and the like themselves to the extent necessary for the intended and agreed use and not disclose or make such accessible to third parties. All rights thereto, e.g. copyright, remain with Equans or its licensors, even where the customer subsequently makes modifications to the software. The customer may create no more than three copies of the software for security and archive purposes. A number of copies exceeding this or use of the software for other purposes requires the written consent of Equans. The customer must apply the same propriety notices found on the original to all modifications and copies. The customer shall only be authorized to install and use the created and/or delivered software on the designated system platform and/or computer performance class and at the agreed number of workstations. A change in the installation and/or use in this regard requires the consent of Equans.

The granting of rights does not include a granting of rights to the software source code. This must be agreed in writing.

The customer shall not be authorized to process or modify the created and/or delivered software, including in particular any reverse engineering or decompilation by the customer or a contracted third party, except where this is necessary for establishing interoperability. Where any defects are attributed to changes to the Equans software that have not been carried out or instructed by Equans itself, or where defects arise that are attributed to a change in the runtime environment that has not been agreed upon with Equans, the warranty obligations on the part of Equans shall be excluded. For third-party software licenses that Equans grants to the customer, the license conditions of the relevant third-party licensor shall apply restrictively.

Should a third party bring claims against the customer due to a breach of property rights with regard to the created and/or delivered software, the customer shall inform Equans of such immediately in writing so as to allow Equans to prepare a legal defense against such claims. In such cases, the customer shall provide Equans with any relevant information necessary for the latter's legal defense and comparative settlement.

10. Review and acceptance

Unless otherwise agreed, the performance of a review and acceptance of the contractually owed deliveries and performances shall take place as follows:

Where there are corresponding contractual requirements (e.g. completion of commissioning), Equans requires the customer to perform mutual review and acceptance within a suitable timeframe. A report is created and signed by both the customer and Equans, stating that acceptance is complete. Any defects identified as part of this review must be documented in the report. The customer cannot refuse acceptance due to insignificant or negligible defects.

In the absence of a request from Equans, the customer must review the deliveries and performances within 30 days of delivery and notify Equans of any defects identified as part of the review immediately in writing. Acceptance shall be deemed as complete at the point of the review.

In the absence of such a review, acceptance shall be deemed as complete upon the technical commissioning or acceptance of the work. Warranty claims for defects that, with the application of usual care, should have been identified as part of a review that the customer failed to perform no longer apply.

11. Warranty

The customer must inspect the work (deliveries and services) within a reasonable period of time and notify Equans immediately in writing of any defects. If the customer fails to do so, the work is deemed to have been accepted without reservation. Equans is liable for defects that are not recognizable as set out below, provided that such defects are reported immediately after they have been discovered.

The warranty period is one year from the date of acceptance. For equipment, machines and software, the respective guarantee or warranty of the relevant manufacturer or supplier applies. Equans assigns the corresponding rights to the customer.

In the event of defects, Equans is entitled, at its discretion, to remedy these or to provide the services concerned again. The right of conversion is excluded in all cases. The customer must prove the defect.

Where defects are found for fully built-in components, Equans shall deliver only the defective components to the customer free of charge. However, any troubleshooting, installation, delivery/return costs arising in relation to the replacement of the defective components must be paid to Equans (in accordance with the Equans timesheets applicable at the time of the warranty) by the customer.

The warranty or guarantee period is not extended if a repair or replacement service is provided. For appliances, the delivery note is deemed to be the warranty certificate and must be kept in a safe place.

For deliveries and services made by subcontractors specified by the customer, Equans only assumes the warranty within the scope of the warranty obligation of the subcontractors concerned.

12. Initial estimate

The initial estimates and quantities stated in the calculation/tender are approximate. They may be underrun or exceeded without the customer being entitled to make changes to the unit prices set. They shall serve as a basis for calculating the quotation and are not binding for ordering materials. Invoicing shall be based on the quantities actually delivered. In the event of reduced quantities, the unit price shall be adjusted.

13. Design

If a formulation in the calculation/tender allows for different interpretations and this is not clarified in writing before the work is carried out, Equans' interpretation shall be binding.

14. Prices

Prices are quoted in Swiss francs (CHF) and are strictly net, excluding VAT, cash discounts, fees, duties, tariffs, transport costs, packaging costs and insurance.

Unless otherwise agreed, any general wage increases and general price increases for equipment and materials occurring during the performance of the contract shall be borne by the customer; any increase in VAT or other taxes and fees shall also be borne by the customer.

Deliveries and services not agreed in the basic quotation, in particular changes requested by the customer, shall be invoiced at the customer's expense.

Equans' prices for direct costs valid at the time of invoicing shall apply.

15. Intellectual property

The customer does not acquire any intellectual property rights (such as patent, trademark, copyright or design rights) from Equans or third parties. The customer only has a non-transferable (neither in use nor as a right) and non-exclusive right to use the services supplied. This may only be used for the contractual purpose. The registration of identical or similar intellectual property rights is prohibited.

Equans has the right to use and exploit for other commercial purposes the specific expertise and ideas that it has created in the performance of the service and delivery obligations, either alone or together with the customer's staff.

16. Liability

Equans is only liable for direct and immediate damage culpably caused by it. This applies per claim and in total up to a maximum of 100% of the contract price, but up to a maximum and total amount of CHF 500,000 (five hundred thousand Swiss francs). In case of periodic services (e.g. service), Equans is liable per claim and in total up to a maximum of 100% of the annual contractual service. Any further liability for damages of any kind and for whatever legal reason is excluded to the extent permitted by law, in particular liability for indirect and consequential damages, unforeseeable damages and pure financial losses (e.g. loss of sales, loss of profit, loss of savings, compensation claims, etc.).

The exclusion of liability and the upper liability limit do not apply to unlawful intent, gross negligence and personal injury. They also do not apply insofar as this is contrary to mandatory law.

17. Benefit and risk

Unless otherwise agreed in writing, the benefits and risks of contracts for works shall pass to the customer upon technical commissioning or acceptance of the work.

18. Termination

Both parties may terminate special order contracts or contracts for recurring services at any time by giving one month's notice. Equans shall be remunerated for services already rendered. Equans is not obliged to dismantle items. Simple contracts may be terminated by either party at any time in accordance with the statutory provisions (Art. 404 of the Swiss Code of Obligations (OR)).

19. Data protection

Collection and processing of personal data: We collect and process personal data in accordance with the provisions of the Swiss Data Protection Act (DSG) and other relevant data protection regulations. We collect and process personal data exclusively for the purposes specified in this data protection clause.

Purpose of data collection and processing: We collect and process personal data exclusively for the purposes stated in our data protection declaration on our website: <https://www.bouygues-es.ch/en/privacy/>.

Personal data will not be used for other purposes unless the data subject has expressly consented or such processing is permitted by law.

Transfer of personal data to third parties: Personal data will only be transferred to third parties if this is necessary to fulfill the aforementioned purposes or if there is a legal obligation to do so.

Before transferring personal data to third parties, we carefully check whether the data protection requirements are met and take appropriate measures to protect the data.

Right of access and rectification: The data subject has the right to obtain information about the personal data stored concerning them.

The data subject has the right to have incorrect data corrected and to request the deletion of their data, provided that there are no legal obligations to retain it.

Data security: We take appropriate technical and organizational measures to ensure the security of personal data and protect it from unauthorized access, loss or misuse.

Despite all precautions, risk to data security cannot be completely ruled out. The data subject is aware of these risks and accepts them when using our services.

Contact address for data protection enquiries: For any questions about data protection and the exercise of data protection rights, data subjects can email our data protection officer at privacy@equans.ch.

Changes to the data protection clause: We reserve the right to amend or update this data protection clause at any time. The currently valid version is available on our website and comes into force when it is published.

The data subject will be informed of any significant changes to the data protection clause and has the right to object to the processing of their data in accordance with the amended conditions.

20. Ethical concerns

Both parties are committed to maintaining the highest ethical standards in all their business activities and relationships. This includes respecting human rights, promoting fair working conditions, minimizing environmental impact, fighting corruption and complying with all applicable legal requirements. Code of ethics: <https://www.equans.com/about-us/ethics-compliance>.

As part of the performance of the contract, the parties shall comply with the same standards on their own behalf and on behalf of their contractors.

Each party reserves the right to require the other party to provide evidence of the commitments made in this clause.

Any failure to comply with the obligations contained in this clause shall constitute non-compliance, which entitles the immediate suspension and/or termination of this contract by the compliant party, at the expense of the non-compliant party.

21. Hygiene and safety

The customer must inform Equans in good time of any risks to health and safety in the workplace and draw its attention to specific regulations and standards relating to the execution of deliveries and services, the operation of the delivery item and the prevention of illness and accidents. The customer shall provide Equans with washing facilities and toilets with running water free of charge and in good repair.

The customer shall provide the necessary safety-related equipment and instructions at the place of performance.

The customer is responsible for ensuring that the facilities, buildings, pipes, etc. that are required or must be used for the provision of the services are in a condition that complies with the regulations.

Any failure to comply with the obligations contained in this clause shall constitute non-compliance, which entitles the immediate suspension and/or termination of this contract by the compliant party, at the expense of the non-compliant party.

22. Place of jurisdiction and applicable law

The exclusive place of jurisdiction for disputes arising from or in connection with this contract is at the registered office of Equans. However, Equans is also entitled to prosecute the customer at its registered office.

All contracts between Equans and the customer are governed exclusively by Swiss substantive law. The provisions of the UN Convention on Contracts for the International Sale of Goods of April 11, 1980 ("Vienna Sales Convention"; CISG) and the conflict of laws provisions of the Swiss Federal Act on Private International Law are expressly excluded.

23. Final provisions

The customer may only transfer rights and obligations under this contract to third parties with the written consent of Equans.

Should individual provisions of these GTCs be or become invalid or unenforceable, this shall not affect the validity of the remaining provisions. Equans expressly reserves the right to amend these GTCs at any time. The customer will be notified of these amended GTCs, which will be deemed to have been accepted if the customer has not raised a written objection within one month.

In the event of discrepancies between the other language versions of these GTCs, the German version shall apply.

Olten, July 1, 2024

Equans Switzerland Process Automation AG