

The following Tuchschnid Terms and Conditions for Subcontractors are valid for all companies in the Tuchschnid Group, in particular:

- Tuchschnid AG, CH-Frauenfeld
- Tuchschnid Constructa AG, CH-Frauenfeld

In the following Terms and Conditions, each individual company shall be referred to as Tuchschnid. Subject to the ranking specified in Article 1 below, the following provisions represent supplements and modifications to individual points of the SIA Norm 118, 2013 version. These terms shall apply to all subcontractors, hereinafter Contractors.

#### **1. Constituent parts of the work contract and their ranking**

The documents that follow are constituent parts of the works contract, in the following hierarchy:

- 1.1 The text of the intended, i.e. signed contractual document
- 1.2 The terms of the client or his legal representatives as required by the construction project
- 1.3 The specific terms of Tuchschnid as required by the construction project
- 1.4 Plans
- 1.5 List of services including bid prices, not including the Contractor's Terms and Conditions
- 1.6 Building specifications
- 1.7 The construction schedule as subject to specific deadlines and dates specified in the contractual documents
- 1.8 The current Tuchschnid Terms and Conditions for Construction Works
- 1.9 SIA Norm 118 "General Conditions for Construction Works" 2013 version
- 1.10 Other relevant SIA Norms
- 1.11 Additional norms of other trade associations
- 1.12 The Swiss Code of Obligations

In the case of unit price contracts, the above ranking shall change, with the list of services (point 1.5) preceding the plans (point 1.4). In the event of contradictions between the individual constituent parts of contracts, the ranking shall follow the positions specified under Article 1.

The Contractor is obligated to comply with all binding laws applicable at the construction site, as well as with the instructions and regulations of the canton, the competent local government and the federal authorities, in particular those responsible for building regulations enforcement, fire safety regulations, scaffolding inspection, public health, roads and the Department of the Environment, etc.

#### **2. The Contractor's service obligation**

The subcontracting of works to third parties requires the prior written consent of Tuchschnid. The Contractor shall be liable to Tuchschnid for the works of his subcontractors in the same way as for his own. This shall apply equally in the event that the Contractor appoints a subcontractor designated by Tuchschnid.

#### **3. The Contractor's compliance with the terms and conditions of employment and payment**

The Contractor shall provide documents to substantiate his compliance with the applicable terms and conditions of employment and payments (Art. 5 EntsG (Entsendungsgesetz) [Federal Act on Assignments], and Art. 8b, para. 1 and 2 Entsv (Entsendungsverordnung) [Federal Ordinance on Assignments]). Said documents shall be provided to Tuchschnid at the latest on the signing of the contract for services. In the event that the Contractor subcontracts works to third parties approved by Tuchschnid, the Contractor is obligated to provide Tuchschnid with documents and vouchers certifying the subcontractor's compliance with minimum wage and employment terms and conditions.

#### **4. Payment for the Contractor's services**

The terms and conditions of the main contract shall apply to any additional expenses, supplements or extraordinary works. The assignment of any claims due to the Contractor under this Contract requires the prior written consent of Tuchschnid.

#### **5. Tuchschnid's right of modification**

Should Tuchschnid decide not to carry out specific contractual works, it is entitled to have these works carried out by a third party, whereby the Contractor is not entitled to amend any remaining unit prices, or to any compensation claims. In all cases of amendments to the execution of the contractual works, prior written consent must be obtained from Tuchschnid regarding all claims relating to additional or reduced costs.

#### **6. Full performance of services**

The Contractor undertakes to provide, in return for the agreed payment, all goods and services in full and as required for the complete execution of the project and/or the system, with the proper quality and functions, irrespective of whether or not the goods and services are specified in the contract for services. This shall apply in particular to such items as scaffolding, construction site facilities, measures required for health and safety, packaging, loading, unloading and transportation, incidental materials, etc.

#### **7. Construction schedule**

Interruptions to work and waiting periods do not entitle the Contractor to compensation claims.

#### **8. On-site advertising activities**

Tuchschnid's consent is required prior to the erection of any advertising hoardings. Advertising displays require the prior written approval of Tuchschnid.

#### **9. Approval**

Approval of the parts of the project delivered by the Contractor shall be given concurrently with approval of the project delivered by Tuchschnid. Until such approval is granted, the Contractor shall be liable for his works and delivered items. Until such time, the Contractor is obliged to safeguard his works through appropriate insurance policies covering damages and theft.

#### **10. Liability for hidden defects**

In the event of disputes as to whether a claim of hidden defect indeed constitutes a breach of the contractual specifications and is thus a defect within the meaning of SIA Norm 118, the burden of proof shall be on the Contractor.

**11. Special circumstances**

In the event that insolvency proceedings are opened against the Contractor, or if he should request a moratorium on payments, Tuchschnid is entitled to withdraw from the contract for services with immediate effect. In such a case, Tuchschnid shall be entitled to claim compensation, in particular in relation to additional costs incurred due to the new issue of works orders to other contractors necessitated by the withdrawal from the contract, as well as to the reimbursement of consequential costs arising from the withdrawal.

**12. Damage/loss of work**

Should the Contract be terminated prematurely on account of the damage or loss of the work, the Contractor shall on no account be entitled to compensation for lost profit or other damages.

**13. Construction site and building cleaning**

Contractors are responsible for the ongoing removal of refuse and for the cleanup of any contamination caused by their work, and shall bear the costs incurred. In the case of facade works, the Contractor is responsible for basic cleaning (cf. SZFF (Schweizerisches Zentrum für Fenster und Fassaden) [Swiss Centre for Windows and Facades]) Guideline 61.01). The Contractor shall be assigned a share of the cost for periodic general cleaning of the building (cf. Art. 17).

**14. Submission of bids**

The Contractor is not entitled to make any additions or modifications to tender documents. Comments, proposals (e.g. alternatives) and additions should be included separately in the cover letter for the bid. If the text of an individual item is such that different interpretations are possible, which may result in variations in terms of execution style, scope and costs, the Contractor is obliged to make specific written reference thereto in the bid submission. Should the Contractor fail to do so, the interpretation of Tuchschnid shall be binding. The submission of a bid does not entitle the Contractor to any claims against Tuchschnid. The costs of sketches or specific plans, etc., developed within the scope of the bid shall not be reimbursed. Nor shall the cost of any samples developed by the Contractor in this regard be reimbursed, unless a prior written agreement to this effect has been concluded. This applies equally to samples provided for testing. The Contractor's bid shall be binding for a period of three months from the date of submission, unless the Contractor has specifically stated otherwise.

**15. Obligation to notify**

The Contractor shall inspect all plans, list of services and building specifications with regard to their technical accuracy and consistency. Prior to accepting the job order, the Contractor shall notify Tuchschnid in writing of any inconsistencies, discrepancies and other defects as well as the potential negative consequences. Should the Contractor fail to do so, the interpretation of Tuchschnid shall be binding and the Contractor shall be liable for any defects (cf. Art. 166, SIA 118).

**16. Schedule delays**

In the event of a delayed start or an interruption of the works, the Contractor shall not justify any such delay by claiming the impossibility of performance, or of timely performance, or that such delay is beyond the Contractor's control, or is due to any other reasons such as:

- the lack of personnel
- illness, accident, or military service requirements or vacations incumbent upon his personnel or himself
- difficulties in material procurement
- circumstances that could be foreseen and allowed for by an experienced entrepreneur
- extreme weather conditions

The Contractor hereby acknowledges to Tuchschnid that the above circumstances shall not prevent the timely fulfilment of the contractually-agreed services.

**17. Shared facilities**

The Contractor agrees to the deduction of 0.5% of the total project cost to cover the costs of electricity, periodic general cleaning and the like.

**18. Right to recourse**

In the event that Tuchschnid shall be liable to a third party for damages due to a defective product or works provided by the Contractor, the Contractor undertakes to provide procedural support to Tuchschnid in the event of legal proceedings against any such third party. The Contractor further undertakes to reimburse Tuchschnid for all expenses, to the extent that the Contractor would be himself liable to the third party under statutory and contractual requirements. In the application of this right to recourse, the Contractor agrees to waive his right to object on the basis of the statute of limitation.

**19. Confidentiality**

Any technical documents provided by Tuchschnid may not be copied without written consent, including sketches, plans, drawings, samples, models or similar. The rights thereto (copyrights, patents, etc.) shall remain the property of Tuchschnid or its Principal. The documents shall not be used for, or made known to third parties without the express written permission of Tuchschnid. All other commercial and technical details as well as other operations, which are known to the supplier by the business relationship with Tuchschnid, are so long to keep a business secret absolute confidential, as these details or operations are not generally known, regardless of the behavior of the supplier. Third-party subcontractors shall be bound by this confidentiality obligation in equal measure.

**20. Place of jurisdiction and applicable law**

Exclusive place of jurisdiction for all disputes – unless otherwise agreed in writing – is Frauenfeld/TG. Tuchschnid is however entitled to initiate legal proceedings at the main business address of the Contractor, at the Contractor's branch office or at the location of any pending legal proceedings against Tuchschnid. This legal relationship shall be subject to the material law of Switzerland; the provisions of the UN Convention on Contracts for the International Sale of Goods of 11 April 1980 (Vienna UN Sales Convention) are expressly excluded.

**21. Liability**

The present version of the Terms and Conditions of Subcontractor is a translation of the original version in german. As binding applies the german edition.