



## General Terms and Conditions for Purchasing

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### Art. 1 - Scope of Application

- 1 These General Terms and Conditions for Purchasing apply to all orders (supplies and services) by companies belonging to the Implenia Group (Implenia) from suppliers, service providers, or other third party set companies (Partner Companies).

### Art. 2 - Offers by Partner Companies

- 1 It is incumbent upon the Partner Company to carry out all necessary review procedures prior to submitting its offer. It may under no circumstances rely upon a defect, an omission in the description of the promised performance, or a lack of sufficient explanatory notes.
- 2 The offer by the Partner Company must reach Implenia within the time limit set for the call for tenders/request for offers.
- 3 By submitting its offer, the Partner Company acknowledges that it has been informed as to all documents and information required for the preparation of the offer.
- 4 Where the Partner Company is of the opinion that certain project-specific prerequisites are of critical importance for performance of the agreement, it shall make express mention thereof when submitting its offer.
- 5 The Partner Company shall be bound by its offer for a period of six months commencing on the day on which the offer is submitted.

### Art. 3 - Order confirmation, General Terms and Conditions of the Partner Company

- 1 Confirmation of orders shall be sent to Implenia without delay.
- 2 Where the order confirmation diverges from the order, the Partner Company shall include in the order confirmation a clear indication of the divergences. Implenia shall be bound by such changes only where it has given its express written consent. An unconditional acceptance of delivery of supplies or services shall not be construed as consent.
- 3 The General Terms and Conditions of a Partner Company shall not apply unless they have been recognized in writing by Implenia. A reference in orders from Implenia to the offer documents of a Partner Company shall not be taken to imply any recognition of the General Terms and Conditions, or any other of the Partner Company's commercial conditions.

### Art. 4 - Deliveries

- 1 Deliveries shall be made, unless otherwise agreed, unloading included, to the shipping address. This shall be the place of performance.
- 2 Each delivery shall be accompanied by a bill of delivery, which shall include the order number and project/reference number of the Partner Company, and a description of the contents of the delivery by type and quantity.
- 3 Packaging and transport materials are to be removed by the Partner Company immediately following delivery. Where the Partner Company fails to perform this obligation, Implenia shall be entitled to dispose of such materials at the Partner Company's expense.
- 4 It shall be incumbent upon the Partner Company to satisfy all applicable national and international export, customs, and foreign trade regulation requirements for all supplies and services delivered, and to obtain the required export permits, unless applicable law

prescribes that the obligation to request export permits lies not with the Partner Company, but with Implenia or a third party.

- 5 Equipment is to be accompanied by technical descriptions and user manuals, in German, French, and Italian, free of cost. The identification plate for the EC Declaration of Conformity is to be affixed in keeping with the applicable regulations.
- 6 For software products, performance of the delivery obligation is complete only upon delivery of the complete (end-user) technical documentation for the system. Delivery of programs designed especially for Implenia shall include delivery of the source code. All copyrights and distribution rights shall remain with Implenia.

### Art. 5 - Delivery periods and deadlines, late deliveries

- 1 The delivery periods and/or deadlines stated in the orders shall be binding. Determinant for observance of delivery periods or delivery deadlines shall be the receipt of the goods free of defect at the place of performance, as defined in Art. 4, or – where the law governing independent contractor contracts (*Werkvertrag*) applies – acceptance of delivery.
- 2 In the event that circumstances of any kind prevent the Partner Company from performance within the agreed delivery period or at the agreed delivery deadline, Implenia is to be notified immediately, as soon as the situation becomes known, and informed as to the causes and the anticipated effects. Such notice shall not release the Partner Company from its obligations.
- 3 Implenia shall be entitled, without contingency upon any fault on the part of the Partner Company, and without contingency upon proof of an actual loss, to deduct a penalty of 0.1% of the total order value for each calendar day commenced by which the delivery of supplies or services is overdue, to a maximum of 10% of the total order value. Implenia reserves the right to demand compensatory damages beyond the amount of the penalty. In the event of late delivery, Implenia shall be entitled, after having granted a reasonable additional period for performance, to rescind the agreement. This shall apply even in the event that a late partial delivery had previously been accepted unconditionally by Implenia. Where a fixed time for performance has been agreed, the requirement of granting of an additional period for performance shall not apply.
- 4 Where prior to expiration of the delivery period it becomes possible to foresee that the Partner Company will be unable to make proper delivery of its supplies or services by the contractually agreed deadline, Implenia shall be entitled, at the expense and risk of the Partner Company, to take all steps necessary in order to forestall an impending breach.
- 5 Premature deliveries, deliveries made outside the delivery receiving hours indicated by Implenia, as well as partial or surplus deliveries, must be approved in advance.
- 6 Additional costs for partial deliveries shall, unless expressly agreed otherwise, be included in the agreed consideration.

### Art. 6 - Transfer of risk, title, acceptance of delivery

- 1 The transfer of risk shall occur for supply deliveries that include assembly or installation, and for services, upon acceptance of delivery; and for deliveries without assembly or installation upon reception at the shipping address indicated by Implenia (place of performance, as defined in Art. 4).

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- 2 Title to the service or supplies delivered shall transfer to Implenla upon delivery of the service or supplies. Any prolongation or extension of title retention is excluded.

### Art. 7 - Pricing

- 1 The prices indicated in the order shall be fixed prices. Included in the price shall be, in particular, costs for freight, packaging, and material testing procedures. Claims based on additional deliveries of supplies and/or services may be asserted only subject to prior written agreement between the Parties on the ordering of such additional supplies and/or services. Additional claims for amounts beyond the prices indicated in the orders shall otherwise be excluded.
- 2 Barring prior written agreement, no consideration shall be paid for any further outlays of any kind, including, in particular, offers or presentations.

### Art. 8 - Invoicing, conditions of payment

- 1 Invoices, including an indication of the order and project/reference number shall be forwarded immediately following shipment of the goods. Where goods are delivered to construction sites, a separate invoice for each construction site shall be prepared. Value added tax is to be shown separately.
- 2 Payments shall be subject to:
  - a) proper delivery and accuracy of prices and calculations;
  - b) further conditions as set forth in any framework agreements.
- 3 In the presence of any defect subject to warranty, Implenla shall be entitled to withhold payment in an amount triple that of the costs required for remediation of the defect.
- 4 Subsequent to delivery of the supplies/services, to receipt of all contractually required documents and of a reviewable invoice, Implenla shall make payment of the amount due within 45 calendar days of receipt of the invoice, unless otherwise agreed. Where an invoice is rejected, for whatever reason, the designated payment period shall not commence before a corrected invoice has been received from the Partner Company.
- 5 Payments or use/deployment shall not be construed as acknowledgment of the supplies or services as being in conformity with the agreement.

### Art. 9 - Warranties and liability

- 1 Insofar as warranties and liability are concerned, the provisions of SIA Norm 118 ("General Terms and Conditions for Construction Work"; 1977/1991 version) shall apply, that is specifically, articles 165 to 180, Chapter 6 of which is declared to be applicable, insofar as not otherwise expressly stipulated in the following.
- 2 The Partner Company has a duty to furnish the work free of material and legal defects. It warrants that all supplies that it delivers and services that it provides shall, at the time when delivery is made or the service is provided, be in keeping with the state of the art, the relevant legal provisions, and the regulations and guidelines of authorities and trade associations. With regard to impending amendments to any legal norms or other regulations of which it becomes cognizant, the Partner Company shall inform Implenla in writing without delay.
- 3 Where a delivery is defective, Implenla shall have the choice between demanding that the Partner Company remedy the defect and having it furnish a substitute (in partial modification of SIA Norm 118, art. 169, para. 1). In such case the Partner Company shall be obliged to bear all necessary outlays for the remedying of the defect and for making substitute performance. Implenla

expressly reserves the right to claim compensatory damages and, specifically, to claim damages in lieu of performance.

- 4 The Partner Company shall, upon first request, discharge Implenla from any claims that third parties – for whatever legal cause – may assert against Implenla due to a material or legal defect to or to any other fault in a product delivered by the Partner Company, and the Partner Company shall indemnify Implenla for the necessary costs arising out of legal pursuits in this connection.
- 5 The Partner Company assigns to Implenla any warranty claims it may hold against previous suppliers. Such assignment is accepted by Implenla. It shall be the duty of Partner Company, until such time as otherwise instructed by Implenla, to exercise such warranty rights on Implenla's behalf.

### Art. 10 - Non-infringement of third party rights

- 1 The Partner Company represents that no third-party rights and, in particular, no third-party intellectual property rights, oppose the use as intended of the goods and services ordered. In the event that Implenla is subjected to any claims for a potential infringement of third-party rights, such as, e.g., copyrights, patents, or other intellectual property rights, the Partner Company shall discharge Implenla of any such claims and any payments in connection therewith.

### Art. 11 – Termination of Agreement for just cause

- 1 Implenla shall be entitled to rescind the agreement at any time for just cause.
- 2 As just cause shall be considered, in particular:
  - late delivery, as defined in Art. 5, above;
  - failure to execute delivery of substantial elements of the supplies or services in conformity with the Agreement, or repeated and grievous negligence in the performance of contractual obligations;
  - breach of an essential provision of the Agreement or of these General Terms and Conditions for Purchasing on the part of the Partner Company;
  - entry of the Partner Company into a situation in which it is no longer able to properly fulfill its financial obligations;
  - filing of a court application on the part of the Partner Company for bankruptcy or composition proceedings, or the opening of a suit for bankruptcy or composition proceedings against the Partner Company.
- 3 In the event of a termination for just cause the Partner Company shall not be entitled to any claims to consideration for services or supplies not yet delivered, or to indemnification of any kind.

### Art. 12 - Confidentiality, advertising

- 1 It shall be incumbent upon the Partner Company to preserve the confidentiality of all images, drawings, calculations, and other documents and information obtained in connection with the order and its execution. They may be disclosed to third parties only with the prior written consent of Implenla, unless the Partner Company is constrained to make such disclosure in compliance with statutory or regulatory provisions. The duty of confidentiality also extends to personal data. The confidentiality duty shall apply also following termination or failure of the agreement; it shall be extinguished at such time and to such extent as the technical know-how contained in the images, drawings, calculations, and other documents provided have become common knowledge. Upstream suppliers shall be made subject to the same duty.

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- 2 The parties undertake to treat all non-obvious commercial and technical details to which they are made privy through their business dealings with each other as trade secrets. Upstream suppliers shall be made subject to the same duty.
- 3 Reference to the business relationship between Implenla and the Partner Company may be made in the Partner Company's advertising materials, etc., only with the prior written consent of Implenla.

### Art. 13 - Exclusion of set-off and assignment

- 1 No assignment, pledging, or setting-off of claims held by the Partner Company against Implenla shall be permitted.

### Art. 14 - Working conditions

- 1 Throughout the duration of the Agreement, the Partner Company undertakes to comply with the provisions in force at the place of production and at the place of performance, pursuant to Art. 4, governing working conditions, collective bargaining or wage agreements between the unions and the professional associations, and social insurance payments, and with the provisions governing occupational safety and health, and to execute all requisite administrative formalities. Upon request by Implenla the Partner Company shall produce documentation certifying that it is not in arrears in the payment of its contributions to the employee compensation funds (AHV, IV, SUVA, etc.), of family allowances, and of occupational pension fund contributions. Until such time as the required certification has been produced, Implenla shall be entitled to withhold an appropriate sum.
- 2 Where the Partner Company engages subcontractors, pieceworkers, or upstream suppliers, the Partner Company shall contractually oblige them to comply with the work and wage conditions as set forth in paragraph 1. This obligation shall apply, specifically, also for subcontractors, pieceworkers, or upstream suppliers with domicile or registered office in a foreign country.

### Art. 15 - Compliance with the Unreported Employment Act

- 1 The Partner Company undertakes to comply with the provisions of the Federal Act on Measures for the Prevention of Unreported Employment (*Bundesgesetz über Massnahmen zur Bekämpfung der Schwarzarbeit*) and the relevant statutory provisions on its implementation. The Partner Company warrants that it will comply with all registration and permit requirements devolving from the laws on social insurance, withholding of taxes, and aliens.
- 2 In the event that Implenla suffers any injury as a result of any violation of the Federal Act on Measures for the Prevention of Unreported Employment and its implementation ordinances by the Partner Company, the Partner Company shall indemnify Implenla there against in full.

### Art. 16 - Compliance with Anti-Trust Act and anti-corruption measures

- 1 The Partner Company undertakes to comply with the provisions of the Federal Act on Trusts and other Limitations on Competition (*Kartellgesetz*, Anti-Trust Act) and the relevant statutory provisions for its implementation.
- 2 The Partner Company further undertakes neither to proffer bribes to officials, employees, company members, agents, or other auxiliaries of Implenla or of another company, nor to accept bribes.
- 3 The Partner Company shall fully indemnify Implenla against any injury due to a violation of the Anti-Trust Act or of the prohibition of bribery. The term injury includes, but is not restricted to, financial loss, loss of gain, indirect and consequential damages, etc.

### Art. 17 - Applicable law and jurisdiction

- 1 For any disputes arising in connection with the formation, interpretation, and performance of this agreement, exclusive jurisdiction shall be that of the courts of Zurich. Implenla shall be at liberty to address, in lieu thereof, the ordinary courts of the place at which the Partner Company has its registered office or domicile.
- 2 Agreements subject to these General Terms and Conditions for Purchasing, and these General Terms and Conditions for Purchasing shall be governed exclusively by the substantive law of Switzerland. Application of the provisions of the Vienna Convention (UN Convention on Contracts for the International Sale of Goods of 11 April 1980/1 March 1999) is expressly excluded.

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