

Purchase of services



Art. 1 Scope and validity

- 1.1 These General Terms and Conditions of Purchase (hereinafter "GTCP") govern the conclusion, content and execution of contracts for the purchase of services by BKW Group companies in Switzerland, in particular in the areas of consulting, planning, support and training, as well as other services with order characteristics delivered by the Agent (hereinafter "Contract").
- 1.2 Unless other provisions have been agreed for specific orders or customer groups, these GTCP shall apply.
- 1.3 In these GTCP the parties shall be referred to as the Principal and the Agent. The order, together with all components and these GTCP, shall be referred to as the "contract".
- 1.4 Unless expressly agreed otherwise in these GTCP, explanations and information conveyed by the parties via email shall fulfil the requirements for notification in writing.
- 1.5 For orders containing elements relating to contracts for work and services, the provisions in the appendix of these GTCP shall also apply. In the event of discrepancies between the GTCP and the appendix, the provisions in the appendix shall take precedence over the provisions in the GTCP.

Art. 2 Offer

- 2.1 The offer including all documentation is provided free of charge, unless otherwise stated in the request for quotation.
- 2.2 The offer is binding for the period specified in the request for quotation or offer. In the absence of such information, the Agent is bound for a period of three months from the date of the offer.

Art. 3 Conclusion of contract

- 3.1 The contract shall be concluded in writing and shall enter into force once the contractual documents have been legally signed by both parties.
- 3.2 The components of the contract and their order of precedence are governed by the contractual document. If no order of precedence is set out in the contract, the following order of precedence shall apply in the event of conflicts between the components:

1. Contractual document
 2. Appendices (excluding the offer and tender)
 3. These GTCP
 4. Tender issued by the Principal
 5. Agent quote
- 3.3 The Agent's General Terms and Conditions of Business do not constitute a part of the contract.
- 3.4 Without written authorisation from the Principal, the Agent may not bind the Principal in relation to third parties. Art. 396 Para. 2 of the Swiss Code of Obligations shall be excluded.

Art. 4 Execution

- 4.1 The Agent undertakes to execute the business assigned to it diligently, faithfully and competently.
- 4.2 The Agent guarantees that all services provided fulfil the contractual provisions and specifications and comply with the latest technology and legal requirements.
- 4.3 The Agent shall only deploy carefully selected and appropriately trained staff and shall notify the Principal in writing of the names and functions of deployed staff. In so doing, it takes particular account of the Principal's interest in continuity. It shall only replace employees with written consent from the Principal and shall replace employees who do not have the requisite specialist knowledge or who interfere with or jeopardise fulfilment of the contract within a reasonable timeframe.
- 4.4 The Agent and its employees undertake to comply with the Principal's company regulations, in particular safety provisions, working time regulations and house rules.
- 4.5 The Agent shall ensure that the employment conditions and type of service provision do not fall under Art. 12 of the Swiss Federal Act on Recruitment and Hiring of Services (AVG) of 6 October 1989. In case of doubt or if requested to do so by the Principal, the Agent shall contact the competent cantonal authorities independently before the contract is signed in order to check whether the contract is subject to the AVG. It shall inform the Principal immediately of the authority's decision.

Art. 5 Involvement of third parties

- 5.1 The Agent shall provide the services personally. Delegating activities to a third party requires written authorisation from the Principal. In any case the Agent remains liable for providing services in line with the contract. Art. 399 Para.2 of the Swiss Code of Obligations is expressly excluded.
- 5.2 The Agent shall ensure in particular that the involved third parties comply with the obligations set out in clauses 5 (involvement of third parties), 9 (social insurance schemes), 16 (confidentiality), 17 (data protection) and 18 (protection of the Principal customers' data) and that the Principal can enforce compliance with these obligations directly with the involved third parties.

Art. 6 Changes to services

- 6.1 The parties may agree changes to services and how they will affect remuneration at any time.
- 6.2 The parties undertake to record changes to services in writing, either by amending the written contract or by confirming in writing a change agreed verbally.
- 6.3 Unless agreed otherwise, the Agent shall continue its work in line with the contract while changes to services are being negotiated.
- 6.4 If the parties are unable to agree on a change to services, the contract shall remain in force in its current form.

Art. 7 Accountability

The Agent shall inform the Principal regularly and upon request about the progress and results of its work. It shall notify the Principal immediately in writing of any issues that may impair or jeopardise contractual fulfilment.

Art. 8 Cooperation of the Principal

The Principal shall provide the Agent with all the information and input needed for contractual fulfilment in a timely manner. It shall also grant the Agent the necessary access to its premises and supply the requisite facilities and resources as needed. Any other duties to cooperate on the part of the Principal shall be set out in writing in the contractual document.

Art. 9 Sustainability Standards

The Agent undertakes to comply with the provisions in Appendix "Sustainability Standards of BKW for Suppliers". In the event of any discrepancy between the General Terms and Conditions and Appendix, the provisions in Appendix shall take precedence over the provisions of the General Terms and Conditions.

Art. 10 Place of performance

The Principal shall designate the place of performance. Unless otherwise agreed, the head office of the Principal shall be considered the place of performance.

Art. 11 Default

- 11.1 If the Agent fails to meet agreed deadlines, it is immediately considered in default, and in all other cases upon receiving a reminder.
- 11.2 If the Agent is in default, it shall be liable to pay a penalty. This shall amount to 0.5% of the total remuneration for each day of delay, but at most 10% of the total remuneration. This is also owed if the services are accepted. Payment of the penalty does not release the Agent from compliance with contractual obligations. Penalties are owed in addition to any compensation for damages.
- 11.3 All other rights of appeal in accordance with the law are reserved.

Art. 12 Liability

- 12.1 In the event of deficient service provision, the Agent shall compensate the Principal for damage caused up to a maximum of three times the total amount due in accordance with the contract, unless it can prove that it is not at fault.
- 12.2 The Agent is also liable to the same degree for the conduct of auxiliary persons, involved third parties (e.g. subcontractors, sub-suppliers) and substitutes in the same way as for its own conduct.
- 12.3 Exclusion and limitation of liability apply for both contractual and non-contractual or semi-contractual claims. The exclusion of liability does not apply for personal injury or damage due to intentional or grossly negligent conduct.

Art. 13 Force majeure

The contractual parties shall not be liable for delayed, insufficient fulfilment or non-fulfilment of the contract if this is due to incidents or circumstances of force majeure for which the contractual parties are not responsible and provided that the affected contractual party reports this immediately and makes every reasonable effort to fulfil the contract.

Art. 14 Remuneration and conditions of payment

- 14.1 The Agent shall provide the services for a fixed price or on a time and material basis with an upper limit on remuneration (cost ceiling). It shall provide information on cost types and rates in its offer.
- 14.2 The remuneration covers all work necessary for the proper fulfilment of the contract. In particular, the remuneration covers the transfer of rights, all documentation and material costs as well as expenses and public levies, such as taxes and customs duties.
- 14.3 Invoices shall be issued after the services have been rendered in full. If advance payments, instalments or part payments have been contractually agreed, the Principal may demand a guarantee from the Agent in the form of a first-class bank or insurance guarantee. Value added tax shall be indicated separately on the invoice.
- 14.4 Invoices are payable within 30 days of receipt. In the event of delayed payment, the statutory default interest applies.

14.5 If the Agent grants discounts on its services and provides services to several companies of the BKW Group, the prices of all services provided to companies of the BKW Group shall be added together to calculate the discount.

Art. 15 Intellectual property and usage rights

- 15.1 Work products and all intellectual property rights (rights to intangible property and ancillary copyright as well as entitlements to such) and rights of ownership pertaining to work products generated within the framework of contract fulfilment shall belong entirely to the Principal. The Agent shall in particular transfer all moral rights to the Principal. Where this transfer faces legal barriers, the Agent shall refrain from enforcing its individual rights and shall guarantee that all those involved in the work shall also refrain from enforcing them.
- 15.2 With respect to pre-existing intellectual property rights at the time of commencement of service provision (in particular intellectual property rights of the Agent or of third parties), the Principal shall receive an unredeemable right of use without restrictions in terms of time, space and substance. This shall include all possible current and future types of use and the right to sell and the right to further develop in connection with the work products.
- 15.3 The Agent shall guarantee that the intellectual property rights of third parties are not breached in connection with service provision and the work results. It shall ensure the legitimacy and validity of transfer of intellectual property rights and granting of rights of use to the Principal in accordance with these GTC and the contract. Should the Principal be responsible for any breaches of intellectual property rights, claims brought against the Agent are excluded.
- 15.4 The Agent shall, at its own expense and risk and without delay, defend against claims by third parties concerning breach of intellectual property rights. The Agent shall inform the Principal in writing without delay of any such claims and shall not oppose the intervention of the Principal in court proceedings. If the third party enforces the claims against the Principal directly, the Agent shall participate in the dispute at the first request of the Principal in accordance with the possibilities of the relevant procedure. The Agent undertakes to bear all costs (including compensation for damages) incurred by the Principal due to the proceedings and any out-of-court settlement of the dispute. If the dispute is settled out of court, the Agent is only required to assume the agreed payment to the third party if the Agent agreed to the payment in advance.
- 15.5 If, pursuant to asserted intellectual property rights, the Principal is unable to use the contractually owed services in whole or in part, the Agent has the option of changing its services in such a way that they do not breach the rights of third parties but nonetheless

comply with the contractually owed scope of services, or of obtaining a licence from the third party at its own expense. If the Agent fails to implement any of these options within a reasonable period, the Principal may withdraw from the contract with immediate effect. The Agent shall in any case indemnify the Principal in full, irrespective of the fault; any limitation of liability agreed pursuant to clause 12.1 shall not apply.

Art. 16 Confidentiality

- 16.1 No confidential information or documents related to the contract or obtained from the Principal or third parties in the course of service provision may be disclosed to third parties or used for purposes other than providing services in accordance with the contract without the prior written consent of the Principal.
- 16.2 The confidentiality obligation shall persist after termination of the contract.
- 16.3 Without the prior written consent of the Principal, the Agent may not use the contractual relationship for advertising purposes, make it known publicly in any other way or use the Principal as a reference.
- 16.4 The documents and information handed over to the Agent shall remain the exclusive property of the Principal. Making copies is only permitted if this is provided for in the contract or if this is necessary for fulfilment of the contractually agreed tasks and work. The documents and information related to the order shall be immediately returned or destroyed at the Principal's request; data stored on the Agent's computers shall be deleted. Statutory record retention requirements and electronic backup copies on backup servers shall remain reserved.
- 16.5 The Agent undertakes to ensure that the obligations set forth in clause 16 are complied with by its staff and other third parties involved in contract fulfilment.
- 16.6 If the Agent breaches the aforementioned confidentiality obligations, it shall be liable to pay a penalty to the Principal unless it can prove it is not at fault. This penalty shall amount to 10% of the total remuneration for each breach, up to a maximum of CHF 50,000 per case. Payment of the penalty does not release the Agent from compliance with contractual obligations. Penalties are owed in addition to any compensation for damages.

Art. 17 Data protection

- 17.1 The Agent acknowledges and agrees to the Principal collecting data about it, which is required for execution of the order, reviewing performance and comparing performance with third parties. The Principal may involve third parties to this end and make such data accessible to them.
- 17.2 The Agent acknowledges and agrees that data may be transferred outside of Switzerland for this purpose, although in all cases the applicable data protection provisions shall be complied with.

Art. 18 Protection of the Principal customers' data

If the Agent obtains access to the Principal customer information for fulfilment of the contract, it shall comply with the following provisions:

- a. The Agent may only use customer data obtained while executing the order or provided by the Principal for the purposes described in the contract and shall not pass on any personal information without the written consent of the Principal and the customers concerned. The Principal may stipulate additional restrictions, for example that only anonymised data be used.
- b. The Agent shall take all appropriate technical and organisational security measures to ensure that personal data are protected from accidental or deliberate manipulation, loss, destruction or unauthorised access. In particular, data provided to the Agent by the Principal should be furnished with appropriate access protection (such as password protection) to ensure that the data can only be viewed and used by authorised persons. Personal data arising during execution of the order shall be irrevocably deleted after completion of the order.

Art. 19 Assignment and pledges

The Agent may not assign or pledge claims vis-à-vis the Principal without the written consent of the Principal.

Art. 20 Applicable law and place of jurisdiction

20.1 Swiss substantive law shall apply; the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG) is hereby excluded.

20.2 Shall be the following place of jurisdiction in disputes out of or in connection with the contract:

- a. **for actions brought by the Principal: the registered office of the Principal or the registered office of the Agent;**
- b. **for actions brought by the Agent: the registered office of the Principal.**

Appendix

Additional provisions for orders that contain elements relating to contracts for work and services

1 Risk assumption

The Agent shall bear all risks for the entire performance until acceptance.

2 Acceptance

- 2.1 Protocols and if necessary further documents shall be kept regarding the acceptance and shall be signed by both parties. If provided for in the contract, the parties shall carry out the acceptance together.
- 2.2 The Agent shall indicate completion of the agreed services to the Principal in a timely manner.
- 2.3 The Principal shall inspect the services as soon as feasible according to usual business practice. It shall indicate any defects to the Agent and set an appropriate deadline by which they should be resolved. Once this deadline has expired, another inspection shall be carried out. Provided no deficiencies are apparent, the services shall be accepted. Any handover costs and expenses incurred by the repeated inspection at the Principal shall be borne by the Agent.
- 2.4 Tacit authorisation of services is excluded.

3 Warranty

- 3.1 The Agent shall guarantee that its services have all the agreed and assured characteristics as well as the characteristics the Principal may in good faith also expect without any special agreement. The Agent shall assume a warranty of two years from acceptance of the fully rendered, contractually agreed services. The warranty period begins the day after the acceptance protocol is signed by the Principal.
- 3.2 During the warranty period the Principal may report defects in writing at any time. Any notifications of defects brought during the warranty period shall in any case be deemed to be timely. Even after expiry of the warranty period, the Agent shall honour claims arising from the warranty rights of the Principal set out below, provided the defects were brought to the Agent's attention during the warranty period.

- 3.3 In the event of a defect, the Principal has the option of demanding rectification of the defect or a price reduction. If the defect is significant, the Principal may instead withdraw from the contract, provided:
 - a. the services rendered are unusable for the Principal;
 - b. or it is obvious to the Principal from the outset that a rectification will fail;
 - c. or acceptance of the services rendered would otherwise be unreasonable for the Principal. This is particularly the case if a rectification would take too long.
- 3.4 If the Principal demands rectification of the defect, the Agent shall rectify the defect by the deadline imposed by the Principal and bear the associated costs. If rectification of the defect is only possible by way of new production, then the right to rectification shall also encompass the right to new production.
- 3.5 If the inspection reveals that the Agent has failed to carry out the requested rectification of the defect, has failed to do so successfully or is in default despite receiving reminders, the Principal has the option:
 - a. of deducting the value reduction from the remuneration;
 - b. of carrying out the necessary measures itself at the expense and risk of the Agent or have such measures carried out by a third party;
 - c. of withdrawing from the contract.
- 3.6 The contested deliveries or parts thereof shall remain at the Principal's disposal until the defects have been rectified or until the Principal withdraws from the contract. By mutual agreement the defective service may continue to be operated on a temporary basis.
- 3.7 For replacements and the elements affected by a rectification, the warranty period shall recommence.
- 3.8 If damage has occurred due to the defect, the Agent shall be additionally liable for damages in accordance with clause 12.

Appendix

Sustainability Standards of BKW for Suppliers

Introduction

The following sustainability standards apply to all contractually agreed activities, products and services. In the case of activities in connection with production lines, the provisions apply to all phases of the system concerned, from planning, installation and operation right through to dismantling or retrofitting.

1 Social and Economic Principles

- 1.1 The SUPPLIER undertakes to respect human rights within its own sphere of influence and not to be complicit in human rights violations.
- 1.2 The SUPPLIER undertakes to comply with the laws of the applicable legal system, in particular those relating to competition, corruption, illegal employment and the environment.
- 1.3 The SUPPLIER undertakes to abide by a code of fair competition, refusing to engage in unfair competitive practices, such as arrangements on price fixing, agreements on conditions, market sharing or agreed practices with competitors.
- 1.4 The SUPPLIER undertakes to comply with the applicable health & safety regulations and to adhere to the wage and working conditions under the collective labour agreements, the standard employment contracts and, in the absence thereof, the customary local and professional regulations.
- 1.5 The SUPPLIER undertakes to carry out its business operations in accordance with the tax regulations applicable under the respective national law and to pay the relevant taxes in due time (in Switzerland: e.g. cantonal and communal taxes, national tax, value added tax).
- 1.6 The SUPPLIER undertakes to pay the social security contributions applicable under the respective national law (in Switzerland: e.g. OASI, IV, LEC, FAK, TC, OPA and AIA) in due time, including the employee contributions deducted from wages.
- 1.7 If the SUPPLIER is a legal person, it shall carry out the necessary registrations as an independent company for social insurance for itself and its employees. If it is not a legal person, it must prove that it is affiliated to a compensation fund as a self-employed person.
- 1.8 The CONTRACTOR is not liable for any social contributions (Old Age and Survivors' Insurance, Disability Insurance, Unemployment Insurance, etc.) or other compensation payments, in particular in the event of accident, illness, disability or death, or any occupational pension contributions. In the event that the social insurance authorities do not recognise the SUPPLIER as self-employed, the CONTRACTOR may claim back any employer contributions or offset them against the fee.
- 1.9 The SUPPLIER undertakes to respect the intellectual property rights of third parties.

- 1.10 The SUPPLIER undertakes to disclose information as relevant and appropriate at regular intervals about its business activities, operating results, social welfare issues, environmental issues and foreseeable risks.
- 1.11 The SUPPLIER agrees to impose a duty on its subcontractors to comply with the provisions set out in section 1.

2 Basic Principles Relating to Employees

- 2.1 The SUPPLIER undertakes to promote equal opportunities and equal treatment of all employees regardless of gender, nationality, sexuality, denomination, origin, skin colour or other personal characteristics.
- 2.2 The SUPPLIER undertakes, in accordance with ILO Conventions 138 & 182, not to employ any workers against their will and not to recruit any workers who are below the relevant minimum age.
- 2.3 The SUPPLIER undertakes to recognise the freedom of assembly of its employees and to comply as a bare minimum with the applicable regulations laid down in the respective national legal systems. The European Convention on Human Rights (ECHR) and the Universal Declaration of Human Rights (UN Covenants I & II) must be observed in all cases.
- 2.4 The SUPPLIER undertakes to ensure the health and safety of its employees by adhering to the statutory limits and safety precautions and by appropriate and regular training input.
- 2.5 The SUPPLIER undertakes to ensure that its employees are adequately remunerated and receive the statutory national minimum wage as well as the social benefits and other support contributions applicable in the region and shall guarantee equal treatment of men and women regarding pay.
- 2.6 The SUPPLIER domiciled or established in Switzerland undertakes to comply with the health and safety regulations applicable in Switzerland (maximum weekly working time, rest periods and breaks). The health and safety regulations are deemed to be collective labour agreements and normal employment contracts; where no such contracts exist, the local or customary working conditions for the industry shall apply. SUPPLIER domiciled outside Switzerland shall comply with the relevant provisions applicable where the services are rendered.
- 2.7 If the SUPPLIER second workers from abroad to Switzerland in order to perform the services, the provisions of the Secondment Act of 8 October 1999 shall be complied with.
- 2.8 The SUPPLIER agrees to impose a duty on its subcontractors to comply with the provisions set out in section 2.

3 Environmental Principles

- 3.1 The SUPPLIER undertakes to avoid harmful or disagreeable effects on living beings and their habitats insofar as this is technically and operationally possible and economically feasible. Measures are to be planned and put in place in accordance with the precautionary principle to prevent poten-

tially negative effects at source. In cases where negative effects cannot be prevented, it shall essentially be necessary to deploy the best available standards of technology to separate chemically and/or physically modified elements (water, soil, air) from unmodified elements and to keep them separate (no mixing) with due regard for the environment.

- 3.2 The SUPPLIER undertakes to be sparing in its use of resources (e.g. water and energy) and to minimise emissions and waste generation, duly putting measures in place for monitoring and continuous improvement in this respect as well.
- 3.3 The SUPPLIER undertakes to comply with the relevant local environmental legislation (e.g. place of production, place of installation, place of performance, etc.). Unless specified in more detail in the relevant legislation, limits shall be understood to be absolute values and must be met at all times (not on average). If the latest available technology permits such treatment as goes beyond the minimum requirements of the law, this is to be preferred. Should the SUPPLIER fail to meet its obligations despite a formal warning of illegal circumstances, the CUSTOMER shall be entitled to restore due and proper conditions or to have such conditions restored at the risk and expense of the SUPPLIER.
- 3.4 The SUPPLIER hereby confirms that the employees concerned are aware of and will comply with the applicable environmental legislation. The SUPPLIER undertakes to raise awareness among the employees in this respect by means of instruction, briefing and regular training.
- 3.5 The SUPPLIER agrees to impose a duty on its subcontractors to comply with the provisions set out in section 3.

4 Environmental Criteria

- 4.1 Raw materials, resources and supplies
The SUPPLIER shall only use raw materials, resources and supplies that:
- always meet the latest standards in terms of protection of human health and conservation of the environment;
 - present no problems in ecological terms and from a health point of view with regard to their subsequent demolition or dismantling and disposal;
 - can be professionally dismantled and preferably reused or recycled.
- If the SUPPLIER is required to use ecologically problematic materials for technical and economic reasons despite best efforts in this regard, however, these must be declared when submitting the bid.
- 4.2 Water cycle management and renewable sources of energy
The SUPPLIER undertakes to give preference to the reuse of waste water (treated where applicable) or to renewable sources of energy to meet its own water and energy requirements as soon as this is technically possible and economically viable.

- 4.3 Water pollution control and waste water
The guidelines for water pollution control must be observed during the execution of the project. The SUPPLIER undertakes to discharge waste water properly at its own expense and, where it can legally be returned to a body of water, to minimise the chemical and physical changes with regard to environmental impact and protection of human health. The SUPPLIER also undertakes to store substances which are hazardous to water in accordance with the relevant regulations.
- 4.4 Air pollution, exhaust air and odour control
The SUPPLIER undertakes to use only such vehicles, machines and equipment (including combustion, combined heat and power generation and emergency power plants) which conform as far as possible to the latest standards with regard to air pollution control, exhaust air and odour control. The SUPPLIER also agrees to optimise transportation processes and transport routes from an environmental point of view.
- 4.5 Soil pollution and contaminated sites
The SUPPLIER undertakes to prevent soil pollution by avoiding the use of non-biodegradable or persistent substances whenever possible (e.g. in protective treatments, propellants, fuels, petroleum products, solvents, pesticides, etc.) and by taking all appropriate measures to prevent the introduction of foreign substances, artificial deposits or other contaminants into the soil.
- 4.6 Waste
The SUPPLIER undertakes to organise the clearance, sorting, storage, return and disposal of all waste, containers, receptacles and packaging, etc. at its own expense and to ensure that the above operations are carried out in conformity with the law and in compliance with the conditions imposed in the permits and by the CUSTOMER.
- 4.7 Non-ionising radiation
The SUPPLIER undertakes to use suitable equipment to minimise radiation which has an adverse effect on the environment or on human health.
- 4.8 Noise pollution
The SUPPLIER is obliged to limit any noise generated in the context of the project work to the lowest level which is technically possible. All health & safety and noise control regulations must be strictly observed.
- 4.9 Ecosystems and protected habitats
The SUPPLIER undertakes to minimise such cases of adverse impact as are within its control and to take appropriate measures in cases where the latest findings in environmental science show that ecosystems and protected habitats may be endangered along with their ecologically valuable resources and protected species. Protected species may have to be relocated. Removal of vegetation, sealing of soil surfaces, exposure of roots, installations and drains within the forest line are to be avoided as far as possible.
- 4.10 Emergency precautions and hazard prevention
The SUPPLIER undertakes to ensure that the necessary emergency precautions and hazard prevention

measures are in place to keep environmental pollution, physical injury and damage to property to a minimum in the relevant events.

4.11 Transport and storage of hazardous materials and dangerous goods

In connection with the storage and transport of hazardous materials and dangerous goods, the SUPPLIER undertakes to comply with the legally stipulated limits and with the regulations on the storage and transport of hazardous goods, to take precautions for the management of accidents, to impose the relevant duties on transport subcontractors, and to permit the dangerous goods safety advisers authorised by the CUSTOMER to verify compliance. The SUPPLIER also undertakes to train all employees in the safe handling of hazardous and harmful substances.