

Services



Art. 1 Applicability

- 1.1 These General Terms & Conditions ('GTC') apply to BKW Energie AG and those of its subsidiaries that use these GTC.
- 1.2 These GTC govern the conclusion, content and execution of contracts ('Contracts') through the performance of services by BKW Energie AG, especially monitoring, maintenance, replacement and repair work on machines, devices and systems as well as software and hardware.
- 1.3 The parties are referred to as 'BKW' and the 'Client' in the following.
- 1.4 These GTC apply except if a deviating provision applies for a specific service or specific groups of clients.

Art. 2 Offer

- 2.1 An offer is binding during the period specified by BKW. If an offer does not specify such a period, BKW is bound by the offer for 30 days.
- 2.2 Any additional requirements of the Client that are not included in the individual offers or which are introduced after the conclusion of the Contract must be agreed separately.

Art. 3 Conclusion of Contracts

- 3.1 A Contract can be concluded verbally or in writing.
- 3.2 Verbal Contracts must always be confirmed in writing.
- 3.3 Unless provided for otherwise, written Contracts come into effect once the contractual document has been duly signed by both parties.
- 3.4 The components of the Contract and their order of precedence are set out in the contractual document. If the Contract does not set out an order of precedence, the following order applies in the event of conflicts between the components:
 1. Contract document and the appendices listed therein (excluding the quotation and the tender);
 2. Offer from BKW;
 3. These GTC.

Art. 4 Services

- 4.1 The object and content of the services and the scope of work are defined in the Contract or offer.
- 4.2 Unless agreed otherwise, any services in addition to the object of the Contract are excluded, including but not limited to delivery of equipment and rectification of defects caused by force majeure, by the Client's own fault or by a third party.
- 4.3 BKW undertakes to render the services professionally and carefully.

Art. 5 Changes to services

- 5.1 The parties can agree on changes to services and their effects on the remuneration at any time.
- 5.2 The parties must set out changes to services in writing, either by amending the written Contract or by confirming the verbally agreed change in writing.
- 5.3 If the parties are unable to agree on a change to the services, the Contract shall continue in its original state.

Art. 6 Client's responsibilities

- 6.1 The Client must provide BKW with all documents (e.g. plans, lists, operating instructions, maintenance manuals, operating procedure documentation, etc.) and information necessary for the execution of the Contract. In particular, the Client must notify BKW immediately of any circumstances that might impede the work of BKW.
- 6.2 The Client grants BKW unrestricted access to the items concerned and an unrestricted right to dispose of it. In particular, the Client shall also provide BKW with sufficient space for the performance of the services and, unless agreed otherwise, shall carry out the preliminary work for which it is responsible (e.g. safety precautions).
- 6.3 Where applicable, the Client shall supply the energy and water and dispose of wastewater.
- 6.4 The Client is responsible for fulfilling the legal obligations incumbent upon it as the owner of the items

concerned, including but not limited to appropriate operation and maintenance of the items.

- 6.5 The Client shall fulfil all duties assigned to it in a professional and timely manner. Should the Client fail to do so for reasons for which BKW is not responsible, the Client must reimburse BKW with the resulting additional costs; BKW must provide the Client with evidence of such costs.
- 6.6 The Client shall ensure that instruments and materials not supplied by BKW are consistent with the statutory provisions and are state of the art.
- 6.7 BKW is entitled to refuse to carry out or stop performance of service work if the safety of its personnel is not guaranteed or if the Client fails to fulfil its duties.

Art. 7 Remuneration

- 7.1 Remuneration shall be paid on a time and material basis or as a fixed amount and shall be defined in the contractual document.
- 7.2 Unless otherwise agreed in the offer, additional costs such as for materials, travel, food and accommodation, transportation or third-party services will be disclosed additionally in the invoice.
- 7.3 With regard to remuneration based on time and material, any overtime explicitly required by the Client shall be invoiced in line with the surcharges set out in the price lists of BKW, unless agreed otherwise.
- 7.4 All prices are in CHF and do not include VAT. VAT shall be invoiced additionally at the applicable rate.
- 7.5 If fixed remuneration is agreed, BKW reserves the right to change the price if price changes result in higher or lower costs than expected between the date of the quotation and the execution of the Contract.
- 7.6 If fixed remuneration is agreed, BKW is also entitled to carry out a price adjustment if
- the work deadlines have to be changed for a reason for which BKW is not responsible; or
 - the nature and scope of the agreed services change; or
 - the materials or configuration change because the information/documents supplied by the Client prove to be inaccurate or incomplete.

Art. 8 Terms of payment

- 8.1 Unless agreed otherwise, BKW shall submit monthly invoices for the remuneration owed. Invoices are payable (the net amount) within 30 days of the invoice date.
- 8.2 Partial payments, payment plans, etc. can be agreed for larger orders or orders covering an extended period. The individual payment deadlines and instalments are set out in the Contract.
- 8.3 The Client may neither withhold nor reduce payments. Payments must even be made if a service is delayed or rendered impossible for reasons for which BKW is not responsible.
- 8.4 Should the Client fail to meet its payment obligations punctually, it will be in default automatically and is obliged to pay BKW default interest at the statutory rate.

Art. 9 Deadlines

- 9.1 Deadlines are only binding if expressly agreed as such by the parties in the Contract.
- 9.2 Should BKW fail to meet binding deadlines, it will be in default automatically. Otherwise, the Client must provide BKW with notice that it is in default by sending it a written reminder specifying a reasonable subsequent deadline.
- 9.3 A deadline is considered met if proper operation is possible and not impeded, even if follow-up work or other services are still necessary.
- 9.4 If a service cannot be rendered within the agreed deadline due to delays for which BKW is not responsible, BKW is entitled to revise the schedule and postpone the contractually agreed deadlines.
- 9.5 In particular, BKW cannot be held responsible for delays caused by force majeure, official measures, environmental incidents or delays resulting from a dependence on third parties.
- 9.6 BKW shall notify the Client in writing as soon as it becomes aware of a delay.

Art. 10 Involvement of third parties

BKW is entitled to engage third parties to render services. BKW is responsible for taking the proper care in selecting and instructing the third party.

Art. 11 Passing of risk

The Client shall bear the full risk of the accidental loss or deterioration of the items through no fault of BKW.

Art. 12 Completion

- 12.1 After completing the services, BKW shall prepare a service report for the Client. The service report might also contain recommendations regarding the elimination of discovered defects (e.g. defective safety equipment, leaks, corrosion, etc.).
- 12.2 The Client shall inspect the services as soon as possible within the context of the normal course of business. Should the Client fail to carry out such an inspection, the services shall be deemed accepted 30 days after the Client was notified of their completion.

Art. 13 Warranty

- 13.1 BKW is responsible for fulfilling its obligations professionally and shall perform the work carefully in line with the provisions of the Contract and generally accepted practices, procedures and standards of the respective industry.
- 13.2 BKW issues a two-year warranty for materials, spare parts and services as of the full completion of each service. The warranty period commences on the day after delivery of the service report to the Client.
- 13.3 The Client must notify BKW immediately and in writing of any defects in connection with the services performed by BKW. Should the Client fail to report a defect on time, the Client forfeits its warranty rights.
- 13.4 In case of any defect, BKW undertakes to remedy it within a reasonable period of time and at its own ex-

pense (rectification). All other warranty rights (rescission or reduction) of the Client are, to the extent permitted by law, expressly excluded.

- 13.5 Any deviating warranties for third-party products must be agreed upon within the Contract.
- 13.6 The warranty does not apply to
- a. defects that existed at the time of performance of the services;
 - b. defects that could not be identified by BKW despite the careful performance of the services;
 - c. defects resulting from circumstances for which BKW is not responsible;
 - d. normal wear and tear.
- 13.7 If damage occurs as a result of a defect (indirect or consequential damage), BKW shall be held liable pursuant to Art. 14.

Art. 14 Liability

- 14.1 To the extent permitted by law, the liability of BKW
- a. is limited to 100% of the payable remuneration or, in cases of periodically recurring remuneration, 100% of the annually payable remuneration;
 - b. is excluded for indirect or consequential damage such as lost profit, unrealised savings, third-party claims, consequential damage caused by defects or damage caused by loss of data (with the exception of the costs of restoring data).
- 14.2 The limitation and exclusion of liability apply to contractual, non-contractual and semi-contractual claims.
- 14.3 This exclusion of liability does not apply to personal injury or damage to property caused by intentional or grossly negligent conduct.
- 14.4 If the Client holds BKW liable, it is obliged to report its claim to BKW in writing immediately, otherwise BKW shall assume that the Client is waiving its claim to damages.

Art. 15 Force majeure

The parties cannot be held liable for the non-fulfilment of the Contract if it is due to events or circumstances of force majeure for which the parties are not responsible and if the affected party reports this immediately and takes all reasonable steps to execute the Contract.

Art. 16 Data protection

- 16.1 BKW collects data (e.g. client and measurement data) necessary for the performance of the contractual services, including but not limited to the execution and maintenance of the relationship with the Client and the security of its operations and infrastructure.
- 16.2 The Customer hereby agrees that all data related to this contract as well as supplemental data available within BKW or from third parties may be used within the BKW Group for analysis of the services provided (customer profile), for personalised advertising campaigns, for customer contacts (e.g. recalls) and for the development and structuring of products and services of BKW Group. An overview of BKW Group companies and their activities can be found on the Group's home

page at www.bkw.ch. **The Customer shall have the right to withdraw his consent at any time.**

- 16.3 BKW is entitled to engage third parties and to disclose the necessary data to those third parties. In this context, transmission of collected data abroad may also be possible.
- 16.4 BKW and any third parties must always comply with relevant legislation, including but not limited to data protection regulations. They shall take suitable steps to protect client data and treat it as confidential.

Art. 17 Confidentiality

- 17.1 The parties shall treat all facts and information that are neither public knowledge nor generally accessible as confidential. In case of doubt, they must be treated as confidential. Confidentiality must be observed even before the conclusion of the Contract and this obligation shall remain in effect even after the termination of the Contract. This does not apply to statutory duties of disclosure.
- 17.2 Unless agreed otherwise, the documents, service reports, data, work instruments and know-how transferred by BKW to the Client as part of the execution of the Contract shall remain the exclusive property of BKW. The Client may only use them for its own purposes. Any other use (e.g. reproduction, utilisation for third parties or disclosure to third parties) requires the written consent of BKW. Data that concerns the Contract and is stored on the computers of the Client shall be deleted completely after the termination of the Contract. At the request of BKW, the documents, data and work equipment shall be returned, deleted or destroyed immediately.

Art. 18 Prohibition of assignment

The Client may not assign claims under the Contract or these GTC to third parties without the consent of BKW.

Art. 19 Legal succession

- 19.1 The parties agree to transfer all rights and duties from this contract to any legal successors. The parties are jointly liable for any damages that arise as the result of a breach of this duty.
- 19.2 A legal succession is permitted only with the consent of the other party. The consent can only be refused if an important reason justifies the rejection of the third party, in particular if the third party does not offer adequate assurance of the proper fulfilment of this contract.
- 19.3 The transfer of the agreement to group companies of BKW does not require the consent of the other party. The term 'group companies' refers to companies in which BKW directly or indirectly holds more than a 50% stake or which it controls in any other way.

Art. 20 Severability

If, at any time, any provision of the Contract is or becomes illegal, invalid or unenforceable, in any respect, under the law of any relevant jurisdiction, neither the

legality, validity nor enforceability of the remaining provisions of this Contract shall be in any way affected or impaired thereby. The Parties undertake to replace any illegal, invalid or unenforceable provision with a legal, valid and enforceable provision which comes as close as possible to the invalid provision as regards its economic intent.

Art. 21 Applicable law and place of jurisdiction

Swiss substantive law applies, with the exception of the UN Convention on Contracts for the International Sale of Goods (CISG). **The place of exclusive jurisdiction** for disputes in connection with the Contract is **Berne**.