

Purchase of Goods



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Art. 1 Scope and validity

- 1.1 These General Terms and Conditions govern the conclusion, content and execution of contracts concerning the procurement of goods (including assembly) between the Vendor and BKW Energie AG and its subsidiaries (collectively referred to hereafter as BKW or the Purchaser) that use these GTC.
- 1.2 These General Terms and Conditions supplement purchase contracts concluded by BKW and form an integral part thereof. They form an integral part of a request for quotations and are included therein. The Vendor accepts these General Terms and Conditions by submitting a quotation.
- 1.3 The object of purchase in these General Terms and Conditions is referred to as the «Deliverable». The purchase contract together with all integral parts and these General Terms and Conditions is referred to as the «Contract».
- 1.4 Deliverables integrated into equipment for the production, transmission and distribution of electrical energy or a supporting function serving this purpose shall serve to provide an energy supply that is as free of disruptions as possible. The safety, availability and service life of the Deliverable shall be fit for this purpose.
- 1.5 In the case of Deliverables for the Mühleberg nuclear power plant, the safety requirements for a nuclear power plant must also be taken into consideration.
- 1.6 In addition, the provisions in Appendix "Special provisions for Deliverables in the Mühleberg Nuclear Power Plant" to these General Terms and Conditions shall apply in the case of Deliverables for the Mühleberg nuclear power plant. In the event of any contradiction, the provisions in the Appendix shall take precedence over the provisions of the General Terms and Conditions.

Art. 2 Quotation

- 2.1 The quotation including any demonstration is free of charge, unless otherwise stated in the request for quotations.
- 2.2 The Vendor shall indicate value added tax, if applicable, separately in the quotation.
- 2.3 The quotation shall remain binding during the time period indicated in the request for quotations. If no such indication is given, a time period of 3 months after receipt of the quotation will apply.

Art. 3 Conclusion of the Contract

- 3.1 The Contract shall be concluded in writing. Unless otherwise stated, the Contract will take effect when signed by the two parties.
- 3.2 Unless otherwise explicitly stated in the Contract, the general terms and conditions of the Vendor will not form an integral part of the Contract.

Art. 4 Delivery, assembly and inspection

- 4.1 Delivery is made by signing the delivery note at the place of performance designated by the Purchaser pursuant to Clause 10.

4.2 If the Contract also includes assembly of the Deliverable, the Purchaser shall grant the Vendor the necessary access to premises and facilities for assembly. The Vendor shall comply with the Purchaser's company rules, in particular the safety regulations and site rules.

4.3 The Purchaser shall examine the Deliverable as soon as this is feasible in the normal course of business. The Purchaser shall notify the Vendor immediately of any defects detected.

Art. 5 Packaging, transport, and disposal

- 5.1 The Vendor is responsible for proper packaging and shall inform the Purchaser if special attention needs to be paid to packaging removal or special care needs to be taken for the storage of supplied material.
- 5.2 The organization of transport ex works and insurance of the Deliverable to the contractual place of destination is included in the delivery (DDP, Incoterms 2010). Any equipment required for unloading shall be provided by the Vendor.
- 5.3 In the case of Deliverables for the Mühleberg nuclear power plant and for the transport of hazardous goods in general, the Swiss Ordinance on the Transport of Hazardous Goods also applies. Compliance with these regulations is the responsibility of the Vendor or the carrier charged with delivery and will be checked, where necessary, by the hazardous goods officer at the Mühleberg nuclear power plant.
- 5.4 The Supplier undertakes to comply with the provisions in Appendix "Sustainability Standards of BKW Energie AG 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. 6 Technical documentation, training

- 6.1 All operating instructions, drawings and other documents necessary for assembly, maintenance and operation shall be supplied to the Purchaser in duplicate, on paper and electronically, unless otherwise agreed in the Contract. All documents shall be provided exclusively in German.
- 6.2 Before conclusion of the Contract, the Vendor, as a specialist, shall notify the Purchaser of any particular known hazards in handling, using and storing the Deliverable or parts thereof. It is the responsibility of the Vendor that appropriate hazard warnings on the object of the contract should be clearly presented in the documentation and in training.
- 6.3 The Vendor will, if necessary, provide the staff of the Purchaser with initial training on safe operation and maintenance. The scope of such initial training shall be specified in more detail in the Contract.

Art. 7 Deployment of staff

The Vendor will comply with industrial safety regulations for its employees and will ensure the equal treatment of women and men in relation to

equal pay. Collective employment contracts and standard employment contracts are deemed industrial safety regulations. In the absence of such agreements, the working conditions customary in the region or the occupation shall apply.

Art. 8 Payment

- 8.1 The Vendor shall receive payment for the Deliverable from the Purchaser as stipulated in the Contract (fixed price or price cap).
- 8.2 The prices are deemed to be fixed prices, unless otherwise agreed.
- 8.3 The payment shall cover all services necessary for the fulfilment of the relevant Contract. Payment covers in particular the transfer of all rights, all costs for the Deliverable and assembly thereof, the costs of documentation and training, expenses, the costs of packing, transport, insurance and unloading, any license fees, levies or charges to public authorities (e.g. VAT, prepaid disposal charges, customs duties).
- 8.4 Should several BKW companies use the services of the Vendor, the calculation of discounts shall be based on total sales.

Art. 9 Invoicing and payment

- 9.1 Payments are made against invoices only. The Vendor shall issue an invoice for the Deliverable addressed to the Purchaser after the transfer of risk to the Purchaser. The respective invoice shall be enclosed with the document recognized as proof of performance (acknowledged delivery note, countersigned protocol, approved time and materials reports, etc.). Invoices shall be marked with the reference data of the purchase order and/or Contract as well as information about the invoice type (part or final invoice, etc.). In addition, the amount and percentage of VAT, where applicable, shall be listed separately.
- 9.2 The payment terms and payment deadlines agreed in the Contract shall apply. If no payment deadline is stated in the Contract, payment will be net without deduction, due within 30 days. If partial payments are agreed, the following terms of payment shall apply unless otherwise stated in the Contract:
- | | |
|----------------------------|--|
| 1 st instalment | of 30% of the purchase price after the Contract has been signed. |
| 2 nd instalment | of 70% of the purchase price as well as any difference in price according to the total invoice (taking account of any penalties, additional costs, etc.) after transfer of benefits and risks. |
- 9.3 Payments are due on receipt of the correct invoice by the Purchaser.
- 9.4 Should advance payments be agreed, the Purchaser may request securities from the Vendor.
- 9.5 Payment calculation shall be subject to any possible counterclaims by the Purchaser.

9.6 Place of performance and transfer of risk

- 9.7 The Purchaser shall specify the place of performance. Unless otherwise agreed, the place of performance shall be the place of delivery or assembly.
- 9.8 Benefits and risks shall transfer to the Purchaser upon delivery at the place of performance. If assembly by the Vendor has been agreed, said transfer will take effect after assembly.

Art. 10 Default

- 10.1 In case of non-compliance with firm deadlines (delivery due by a fixed date), the Vendor shall be deemed in default immediately; in other cases after a reminder granting a reasonable grace period.
- 10.2 The Vendor shall be liable for any damage caused by missed deadlines, unless he can prove that he is not at fault.
- 10.3 If the Vendor is in default, he shall owe a contractual penalty, unless he proves that he is not at fault. Said penalty shall amount to 2% per day in default, but not more than 10% of the total sum. The contractual penalty shall be payable even if services are accepted without reservation. Payment of the contractual penalty shall not exempt the Vendor from the fulfilment of contractual obligations; said penalty is due in addition to any damages owed.

Art. 11 Warranty

- 11.1 The Vendor guarantees to the Purchaser that the Deliverable has the agreed and guaranteed qualities necessary for its intended use and meets the respective statutory requirements. The warranty period is two years from the date of delivery, unless a longer warranty period has been agreed in the Contract. The period of statutory limitation corresponds to the duration of the warranty and shall be extended according to the provisions on warranty period extension.
- 11.2 In the event of a defect, the Purchaser has the choice to make a deduction from the payment corresponding to the reduction in value, to demand remedy of the defect, or to demand delivery of non-defective goods (replacement delivery). In the event of significant defects, the Purchaser may withdraw from the Contract.
- 11.3 If the Purchaser demands remedy of the defect or a replacement delivery, the Vendor shall provide a remedy within the scheduled period and shall bear all costs arising. If providing a remedy is only possible by means of a partial remanufacture, the right to remedy the defect also includes the right to produce a newly manufactured product. If the Vendor fails to remedy the defect or make a replacement delivery or fails to do so successfully, the Purchaser may choose to make a deduction from payment corresponding to the reduction in value, to have the necessary measures undertaken by the Vendor or a third party at the expense and risk of the Vendor, or in case of significant defects, to withdraw from the Contract.

Art. 12 Liability

- 12.1 The Vendor shall be liable for any personal injury for which it is accountable in accordance with the statutory provisions. The Vendor shall further be liable for any property damage for which it is accountable and for any other damage resulting from or in connection with the Contract or non-fulfilment thereof up to an amount of CHF 1,000,000 (one million Swiss francs). Should the contract volume be greater than half a million Swiss francs, the liability of the Vendor shall be twice the contract value, unless an alternative liability limit is agreed in the Contract.
- 12.2 The Vendor shall be liable for any damage caused by its conduct or by defects in the Deliverable, unless the Vendor can prove that it is not responsible. In the case of auxiliary persons and external consultants as well as their employees, the Vendor shall be liable in the same way as for its own conduct. Claims under product liability remain unaffected.

Art. 13 Confidentiality

- 13.1 The parties shall maintain confidentiality with respect to all facts and information which are neither common knowledge nor accessible to the general public. This obligation of confidentiality shall be observed both before the Contract is concluded and after the contractual relationship ends. In the absence of a written arrangement to the contrary, the Vendor may not advertise the fact that it is in collaboration with the Purchaser and may not use the Purchaser as a reference.
- 13.2 The parties shall procure that their staff, subcontractors, suppliers and other external consultants adhere to the confidentiality obligations set forth herein.
- 13.3 An exchange of confidential information within the BKW group does not violate the obligation of confidentiality.

Art. 14 Data protection and data security

The Vendor undertakes to comply with the provisions of Swiss data protection legislation. The Vendor further undertakes to take all possible technical and organizational precautions that are economically feasible to effectively protect any data that may

accrue in the execution of the Contract from unauthorized access by third parties.

Art. 15 Intellectual property rights

If the goods to be delivered are produced by the Vendor according to the instructions of the Purchaser, the Purchaser shall be entitled exclusively to any intellectual property rights, in particular copyrights and patent rights arising from the production of the goods.

Art. 16 Changes and amendments

- 16.1 Changes and amendments to the Contract shall be in writing.
- 16.2 In the event of any contradiction between the Contract, the General Terms and Conditions and the quotation, the provisions of the Contract shall take precedence over those of the General Terms and Conditions and the latter over those of the quotation.
- 16.3 If individual provisions of the Contract are ruled invalid or not legally binding by a competent court, such ruling shall not affect the validity of the remaining provisions. In such case, the parties shall reach an agreement by replacing the respective provision with an effective provision that most closely approximates to the commercial objective of said invalid provision.

Art. 17 Assignment and pledging of claims

The Vendor may not assign or pledge any claims arising from the Contract without the written consent of the Purchaser.

Art. 18 Applicable law and place of jurisdiction

- 18.1 The Contract is subject to Swiss law. Application of the UN Convention on Contracts for the International Sale of Goods (Vienna Convention) and the reference norms of international private law are completely and expressly excluded.
- 18.2 **Shall be the following place of jurisdiction in disputes out of or in connection with the contract:**
- a. for actions brought by BKW: Berne or the registered office of the Supplier;
 - b. for actions brought by the Supplier: Berne.

Appendix

Special provisions for services in the Mühleberg nuclear power plant

1 Services provided by the Mühleberg Nuclear Power Plant

The services listed below according to this Appendix shall be provided by the Purchaser.

- 1.1 In the event that Deliverables and installations are subject to regulatory approval procedures, contact with the authorities shall be through the nuclear power plant. If additional costs arise due to the authorities failing to give clearance, the Vendor shall notify the nuclear power plant immediately.
- 1.2 Obtaining approval for overtime and additional work at night and on Sundays.
- 1.3 Activation of units and systems.
- 1.4 Unloading all new parts as well as transfers between locations within the site shall be the responsibility of the Nuclear Power Plant.

- 1.5 Carrying out all the necessary radiation protection measures including radiation protection briefings for all staff deployed in accordance with the regulations governing radiation protection applicable at the Mühleberg nuclear power plant.
- 1.6 The nuclear power plant shall provide the following facilities and/or equipment free of charge:
 - Area for construction site facilities
 - Water supply and wastewater disposal facilities
 - Power supply for containers
 - First-aid and emergency medical supplies from existing facilities
 - Lifting equipment including their operation
 - Fire protection equipment in the plant buildings and on the site
 - Radiation protection material such as monitors at the entrance to the controlled area, dosimeter equipment, protective clothing including cleaning, safety shoes, helmets, covering materials etc.
 - Construction site surveillance
 - ID system
 - Restaurant for staff

Appendix

Sustainability Standards of BKW Energie AG 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 selfemployed 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 selfemployed, 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 potentially 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:
- a. always meet the latest standards in terms of protection of human health and conservation of the environment;
 - b. present no problems in ecological terms and from a health point of view with regard to their subsequent demolition or dismantling and disposal;
 - c. 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.