

Services provided by BKW Energie AG



Art. 1 Scope and validity

- 1.1 These General Terms and Conditions shall govern the conclusion, content and performance of contracts for the provision of consultancy and support services (designated as follows as the "Contract") by BKW Energie AG, provided that the Parties have not expressly agreed on contrary or deviating provisions in respect to specific services or specific client groups.
- 1.2 The Parties shall be referred to as "BKW" and "Client".

Art. 2 Offer

- 2.1 Any offer submitted by BKW to Client shall remain binding during the time period stated by BKW. If an offer has no expiry date it shall remain binding for BKW for 30 days.
- 2.2 Additional requirements of the Client which are not included in an individual offer, or which are inserted after the conclusion of the Contract, must be agreed separately.

Art. 3 Conclusion of the Contract

- 3.1 The Contract may be concluded either verbally or in writing.
- 3.2 Verbal contracts shall be confirmed in writing in all cases.
- 3.3 Unless otherwise stated, written contracts shall take effect with the legally binding signature of the Contract by all Parties. The components of the Contract and their order of precedence shall be determined in accordance with the contractual provisions.

Art. 4 Services provided by BKW

- 4.1 The purpose and content of the services shall be specified in the Contract or in the product specifications or the offer and in these General Terms and Conditions.

Art. 5 Changes in services

- 5.1 The Parties may agree changes in the services at any time.
- 5.2 Changes in services must be documented in writing either by adapting the written Contract or by written confirmation of the verbally agreed change.
- 5.3 If the Parties cannot agree on a change in services, the Contract shall continue unchanged.

Art. 6 Performance

- 6.1 The Client shall provide BKW with all information and other input needed for the due performance of BKW's contractual obligations in a timely manner. The Client shall also notify BKW immediately of any issues that may make the work of BKW more difficult.
- 6.2 The Client shall grant BKW the necessary access to its premises and supply the requisite facilities and resources as needed.
- 6.3 The Client shall ensure that any tools and materials not supplied by BKW comply with statutory provisions.

Art. 7 Involvement of third parties

- 7.1 BKW shall be entitled to involve third parties for the provision of the services. BKW shall be liable for the due diligence in the selection and instruction of the third party and shall be responsible for its services as if they were its own.

Art. 8 Use of material provided by BKW

- 8.1 The Client may only use the material provided by BKW in connection with the Contract (IT solutions, other tools, sample documents etc.) for its own purposes. Use of such material by third parties or any transfer to third parties is only permitted with the written consent of BKW.

Art. 9 Remuneration and payment conditions

- 9.1 Unless otherwise agreed in the Contract, prices and charges of BKW apply as set forth in the offer or the product specifications valid at the time of the service provision (available at www.bkw.ch). In the event of contradictions between the offer and the pricing in the product specifications, the offer shall take precedence.
- 9.2 The obligation to pay for the agreed services shall start with the acceptance of the service or with the actual use of the services by the Client.
- 9.3 Unless otherwise agreed BKW shall invoice the owed remuneration monthly. The payment period shall be 30 days net from the invoice date. If the Client does not comply with its payment obligations by the due date it shall immediately fall into default and the statutory default interest rate shall apply on all outstanding payments.

9.4 The Client may neither withhold nor reduce payments. Payments must also be made if a service has been delayed or becomes impossible for reasons not attributable to BKW.

Art. 10 Liability

- 10.1 BKW shall be liable for the true and diligent performance of its services
- 10.2 To the extent permitted by law, the liability of BKW shall be:
- a. limited to 100 % of the owed remuneration, or in the case of periodically recurring remuneration amounts, to 100 % of the remuneration to be paid annually.
 - b. excluded for any indirect or consequential losses such as loss of profit, unrealised savings and claims of third parties, consequential losses from defects or losses as a result of loss of data (with the exception of the costs of data recovery).
- 10.3 Limitation of liability and exclusion of liability shall apply to contractual, non-contractual and quasi-contractual claims.
- 10.4 This exclusion of liability shall not apply to personal injury or property damages due to gross negligence or wilful misconduct.
- 10.5 In the event of an alleged liability of BKW the Client shall report the claim to BKW immediately, otherwise a waiver of compensation shall be assumed.

Art. 11 Force Majeure

- 11.1 The Parties shall not be liable for the non-fulfilment of the Contract due to incidents or circumstances of force majeure for which the Parties are not responsible, provided that the affected Party reports the occurrence of an event of force majeure immediately and makes every reasonable effort to fulfil the contract.

Art. 12 Data protection

- 12.1 BKW will only collect data (e. g. client and read-out data) which is required for the services provision and for the performance and management of the client relationship, in particular as necessary to guarantee of a high level of service quality, or for the security of the operations and infrastructure and for invoicing purposes.

12.2 The Client hereby consents that BKW may store, evaluate and use this data for the performance and further development of the services, for the creation of customised offers as well as for the development and design of new energy services in the deregulated market.

- 12.3 BKW shall be entitled to hire third parties to do this and to make client and read-out data available to these third parties accordingly.
- 12.4 The Client acknowledges and hereby consents that data may also be transmitted abroad, whereby in all cases the applicable data protection provisions shall be adhered to.
- 12.5 The Client agrees to receive customised offers by email or to receive email for advertising purposes.

Art. 13 Assignment prohibition

- 13.1 The Client may not assign claims arising from the Contract or from these General Terms and Conditions to third parties without the consent of BKW.

Art. 14 Final provisions

- 14.1 BKW reserves the right to change these General Terms and Conditions, in full or in part, at any time. BKW shall inform the Client of changes in an appropriate manner by adhering to a notice period of one month. These General Terms and Conditions shall be published on the BKW homepage (www.bkw.ch) in the updated and valid version and can be viewed there by the Client.

Art. 15 Applicable law and jurisdiction

- 15.1 Swiss substantive law shall apply, excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG). The sole place of jurisdiction for any disputes arising from the Contract shall be Bern.