



Project 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 concerning the provision of services for projects ('Contracts') by BKW Energie AG, especially in connection with consultancy, support, planning, design and realisation, as well as the execution of entire projects for construction works (structural and civil engineering) and infrastructure facilities.
- 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;
 4. SIA 108, provided that engineering services to which this standard applies have been agreed in the Contract.
 5. SIA 118, provided that the construction works to which this standard applies have been agreed in the Contract.

Art. 4 Changes to services

- 4.1 The parties can agree on changes to services and their effects on the remuneration at any time.
- 4.2 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.
- 4.3 If the parties are unable to agree on a change to the services, the Contract shall continue in its original state.

Art. 5 Execution

- 5.1 The object and content of the services and the scope of the work are defined in the Contract or offer, the approved plans and technical information and these GTC.
- 5.2 BKW undertakes to execute the Contract professionally, carefully and in good faith.

Art. 6 Cooperation duties of the Client

- 6.1 The Client must punctually provide BKW with all information and specifications 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 shall carry out all services and deliveries for which it is responsible under the Contract punctually and to the necessary standard of quality. 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.
- 6.3 The Client shall grant BKW the necessary level of access to its premises and provide BKW with the necessary equipment and resources.
- 6.4 The Client shall ensure that instruments and materials not supplied by BKW are consistent with the statutory provisions and are state of the art.

Art. 7 Remuneration

- 7.1 The remuneration is based either on time and materials, a fixed price or an overall price. The remuneration is defined in each Contract.
- 7.2 Unless agreed otherwise in the offer, additional costs such as for materials, travel, food and accommodation, transportation or third-party services will be invoiced to the Client separately.

- 7.3 With regard to remuneration based on time and materials, any required overtime 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 an overall price 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 Additionally, with regard to overall and fixed prices the price can be changed 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, unforeseen ground conditions, 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

- 10.1 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 Property rights and licences

- 11.1 Unless agreed otherwise, BKW remains the owner of the work results and all property and proprietary rights created during the execution of the Contract.
- 11.2 BKW grants the Client a perpetual, non-terminable, transferable, non-exclusive licence that is not limited by territory or purpose.

Art. 12 Confidentiality

- 12.1 Without the consent of BKW, information or circumstances that relate to the Contract or have been obtained from BKW or third parties during the provision of the services may not be disclosed to third parties by the Client or used for any purpose other than executing the Contract. The duty to maintain confidentiality continues after the end of the Contract.
- 12.2 Unless agreed otherwise, all documents, data, work equipment and know-how transferred by BKW to the Client for the purposes of executing the Contract shall remain the sole property of BKW. The Client may only use them for its own purposes. All other types of use – e.g. duplication, use for third parties or transfer to third parties – require the written consent of BKW. Data that concerns the Contract and is stored on the computers of the Client must be deleted completely after the termination of the Contract. At the request of BKW, the documents, data and work equipment must be returned, deleted or destroyed immediately.

Art. 13 Data protection

- 13.1 BKW collects data (e.g. customer data and measurements) that is necessary for the provision of the contractual services, especially for the execution and maintenance of its relationship with the Client and for the security of its operations and infrastructure.
- 13.2 BKW will store and process this data in order to carry out and develop the contractual services and to create new offers and offers relating to these services.
- 13.3 BKW is entitled to involve third parties and to disclose the necessary data to said third parties. Data can also be transmitted abroad in this regard.
- 13.4 BKW and third parties shall always adhere to the relevant legislation, especially the data protection regulations. They shall take suitable steps to protect the data of the Client and treat it as confidential.

Art. 14 Liability

- 14.1 Wherever permissible by law, the liability of BKW
- is limited to 100% of the payable remuneration or, in cases of periodically recurring remuneration, 100% of the annually payable remuneration;
 - 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

- 15.1 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 Early termination of the Contract

- 16.1 With regard to Contracts containing elements of contracts for work and services, the Client is entitled to withdraw from the Contract at any time by issuing a written declaration. In this case, the Client must pay remuneration for the work carried out by BKW up to that point. This does not affect the statutory or contractual claims of the parties for compensation.
- 16.2 With regard to Contracts containing elements of mandate agreements, each party is entitled to terminate the Contract in writing for cause and at any time. In particular, a party has cause if:
- a. the criteria of Article 404 of the Swiss Code of Obligations (OR) are met;
 - b. the other party breaches a key provision of the Contract and fails to remedy the breach within 10 days of being prompted to do so;
 - c. an official receiver or administrator is appointed in connection with all or some of the assets of the other party, if the other party goes into liquidation (unless the party is solvent for the purposes of a merger or restructuring measure), if the other party is declared bankrupt or enters into a composition agreement with its creditors, or if anything similar happens to the party.

Art. 17 Prohibition of assignment

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

Art. 18 Legal succession

- 18.1 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.

- 18.2 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.
- 18.3 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. 19 Severability

- 19.1 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. 20 Applicable law and place of jurisdiction

- 20.1 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 **Bern**.

Additional provisions for Contracts containing elements of contracts for work and services

Art. 21 Transfer of risk

- 21.1 BKW shall bear the full risk for the entire service until it is accepted.

Art. 22 Acceptance

- 22.1 BKW shall notify the Client that the agreed works are ready for acceptance.
- 22.2 The Client and BKW shall inspect the work as soon as possible within the context of the normal course of business. The parties shall establish and sign acceptance certificates and, if necessary, other documents concerning the inspection and acceptance. If the Client does not inspect the works, they shall be considered accepted 30 days after BKW notifies the Client of their completion.
- 22.3 The Client may not refuse to accept the work due to minor defects that, for example, do not have a significant impact on functionality. BKW shall remedy such defects within the agreed deadline and notify the Client.
- 22.4 The Client can refuse to accept the works if there are significant defects. BKW shall remedy the defects and notify the Client that the works are ready to be accepted again.

Art. 23 Warranty

- 23.1 BKW guarantees that its works are of the agreed and assured quality as well as such quality as the Client can reasonably expect even without specific agreement. It is responsible for fulfilling its obligations professionally and shall perform the work carefully in line with the provisions of this Contract and the recognised codes of practice. It undertakes to use top-quality materials.
- 23.2 The warranty issued by BKW will remain valid for two years as of the acceptance of the work. The deadline begins on the day after the Client signs the acceptance certificate.
- 23.3 The Client can report defects in writing at any time during the warranty period. All notices of defects submitted during the notification period are considered punctual. Even after the expiry of the warranty period, BKW is obliged to satisfy claims resulting from the rights of the Client described below, provided that the defects were reported during the warranty period.
- 23.4 If the work is defective, BKW undertakes to remedy it within a reasonable deadline and at its own expense (subsequent improvement).
- 23.5 If the follow-up inspection reveals that BKW did not carry out the necessary remedy successfully or at all, or that BKW is in delayed despite having received a reminder, the Client can choose from the following courses of action:
- a. deduct the resulting reduction in value from the remuneration;
 - b. carry out the necessary work at the expense and risk of BKW itself or have it carried out by a third party;
 - c. withdraw from the Contract if the defect is significant.
- 23.6 Until the defect is remedied or the Contract is dissolved, any work or components thereof that have been the subject of a complaint shall remain at the disposal of the Client. Operation of the defective work can continue provisionally if this is agreed mutually between the parties.
- 23.7 The warranty shall restart for replacement deliveries and any component affected by subsequent remedy.
- 23.8 If a defect results in damage, BKW is responsible for repairing the damage as well pursuant to Art. 14.