

Supply of Electrical Energy in Excess of Basic Supply



PART 1

General terms and conditions

Art. 1 General terms and conditions

These General Terms and Conditions apply to the supply of BKW electrical energy to customers in excess of basic supply.

Art. 2 Duration and early termination of the power supply contract

- 2.1 The duration of the power supply contract is defined in the contract document.
- 2.2 If the Customer is in breach of his obligations, BKW shall be entitled to terminate the power supply contract by written notice subsequent to issuing a written reminder and allowing the Customer a reasonable period of time in which to remedy such breach.
- 2.3 If it is clear from the circumstances or the Customer's conduct that the Customer will not comply with a request to remedy any failure or will be unable to fulfil his obligations, the power supply contract may be terminated in writing with immediate effect.
- 2.4 Either party may terminate the power supply contract in writing with immediate effect if the continuation of the contract would constitute an unreasonable hardship for that party.
- 2.5 In the event of the Customer's insolvency, the legal relationship shall terminate without notice. The Customer shall be deemed to be insolvent if he is adjudicated bankrupt, or winding-up proceedings or other insolvency proceedings are commenced, including any debt restructuring moratorium, stay of bankruptcy etc. in respect of the assets of the Customer or the Customer declares himself insolvent.
- 2.6 In the event of early termination of the power supply contract, all relevant and outstanding obligations, particularly those concerning delivery of remaining energy quantities by BKW, shall be mutually cancelled and valued at their market value as of the termination date as follows: if the market price is higher than the price defined in the power supply

contract, BKW shall owe the Customer the corresponding difference; if, however, the market price is lower than the price defined in the power supply contract, the Customer shall owe BKW the corresponding difference. The sum of the market values of the outstanding obligations shall be added or deducted from all liabilities existing at the termination date and the aggregate amount shall be paid by the Customer or, as the case may be, by BKW in accordance with Art. 5.

Art. 3 Exchange of information and duty of disclosure

- 3.1 The Customer shall inform BKW immediately of any changes to his master data, specifying the date on which the change took effect. In particular, the Customer shall inform BKW immediately of any events, planned or unplanned, that may result in a significant change in the energy supplied (e.g. changes in production due to company holidays, reduced hours, inspection or maintenance, energy conversion, or the expansion or reduction of premises). Should points of consumption no longer be used for power consumption due to a permanent operational closure (e.g. decommissioning or cessation of use), this is to be communicated with a minimum notice period of four (4) weeks. If the Customer has agreed special conditions with the supplying grid operator (e.g. as part of a grid usage contract), this is to be communicated at the point of concluding the supply contract.
- 3.2 BKW shall be entitled to disclose information regarding consumption, billing and general contract data to third parties particularly to facilitate the recording, accounting and billing of the energy supply. Information shall only be disclosed to the extent required to facilitate the technical and commercial management and execution of the energy supply.

Art. 4 Data protection

- 4.1 BKW collects data (e.g. customer data and measurement data) that is necessary for the provision of the contractual services, especially for the execution and maintenance of its Customer relationship and for the security of its operations and infrastructure.
- 4.2 BKW stores and processes this data in order to carry

out and further develop the contractual services and to create new offers and offers relating to these services.

- 4.3 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 additional energy services in the liberalized market. BKW Group includes, for example, BKW Energie AG, ISP Group companies, Arnold Group companies and Antec Group companies, as well as all other BKW subsidiaries in Switzerland and abroad, and AEK onyx AG and its subsidiaries. An overview of BKW Group companies can be found on the Group's home page at www.bkw.ch.
- 4.4 BKW shall be entitled to involve third parties and to disclose the necessary data to said third parties. Data may also be transmitted abroad in this regard.
- 4.5 BKW and any third parties must always adhere to the relevant legislation, especially the data protection regulations. They shall take suitable steps to protect the data of the Customer and treat it as confidential.

Art. 5 Invoicing and payment

- 5.1 Invoices shall be issued to the Customer at regular intervals to be determined by BKW.
- 5.2 The amount invoiced shall be payable in full within 30 days of the invoice date. Invoices may only be paid in instalments with the express consent of BKW.
- 5.3 After the final date for payment, the Customer shall be charged any additional costs incurred as result of late payment (postage, debt collection, default interest, default charges, debt collection expenses, interest on late payments, connection and disconnection etc.).
- 5.4 In the event of persistent non-payment, or BKW has reason to doubt the Customer's ability or willingness to discharge his payment obligations, BKW may require the Customer to provide a reasonable advance payment or security or may invoice the Customer on a weekly basis. The Customer shall be charged any resulting costs incurred.
- 5.5 The Customer shall not be entitled to offset any amounts owed to him against amounts invoiced by BKW.
- 5.6 If any complaints or queries are raised with regard to energy metering, the Customer shall not be entitled to withhold payment of any amounts invoiced or payments on account that may be due to BKW.
- 5.7 Errors and mistakes relating to invoices and payments may be corrected at any time over a period of 5 years.
- 5.8 If there is a credit in favour of the Customer against BKW, BKW shall generate an invoice.

PART 2

Supply of energy

Art. 6 Basis for the legal relationship

- 6.1 The Customer is responsible for meeting the technical and commercial criteria required for the supply of energy.
- 6.2 The Customer may only use the energy for the agreed purpose. In particular, the Customer shall not transfer energy to third parties, with the exception of subtenants of residential premises, unless specifically authorised to do so by BKW. In the event that BKW agrees that energy may be transferred to third parties, no surcharges may be added to the prices charged by BKW.
- 6.3 In particular, the Customer is not permitted to use energy supplied by BKW for speculative purposes or for purposes of economic optimisation.

Art. 7 Scope of supply

- 7.1 BKW is solely responsible for the commercial supply of energy.
- 7.2 BKW shall supply energy to the Customer on the condition that the Customer has made effective use of his right to access the grid and has entered into valid grid connection and grid usage contracts with the distribution system operator.
- 7.3 To the extent not agreed otherwise in the power supply contract, BKW shall supply the owed quantity of energy by delivery thereof to the balance group to which the Customer's metering point is assigned under notification of the metering point defined in the power supply contract for the relevant consumption point.
- 7.4 The benefits and risk of the energy supply are transferred to the Customer at the place of performance.
- 7.5 The relevant grid operator is therefore responsible for the physical delivery of energy. If physical delivery is interrupted due to an event of force majeure, including but not limited to network faults, the Customer's obligation to take delivery of the supply shall be suspended, i.e. the Customer shall be entitled to procure the energy required from third parties and shall not owe BKW any payment in respect of energy not supplied. However, BKW shall have the right to supply any unused energy to third parties.

Art. 8 Measuring the energy supplied

- For contracts related to supply of energy to a metering point, the following applies to metering and clearing of measurement data:
- 8.1 Energy consumption is measured by the relevant distribution grid operator at the metering points. For the purposes of calculating the energy consumption and the invoices to be paid by the Customer, BKW shall rely on the consumption data transmitted directly by the responsible distribution grid operator to BKW the supplier.

- 8.2 In certain cases, the energy supplied may be determined on a flatrate basis.
- 8.3 The measurement of energy and the meters and other equipment required for such purpose (ripple control systems), the recording and supply of consumption data (measurement data) relating to grid usage and the accuracy of such data (clearing of measurement data) shall be governed by the applicable terms and conditions of the relevant distribution system operator. BKW reserves the right to invoice retrospective corrections by the distribution system operator as part of the provision of the measurement data to the Customer.

Art. 9 Suspension of energy supply

- 9.1 BKW shall be entitled to suspend the supply of energy subsequent to issuing a payment reminder and giving the Customer written notice of the time of suspension, in particular if the Customer:
- fails to meet his payment obligations to BKW or expressly refuses to pay future invoices, or where there is no guarantee that the Customer will pay future invoices,
 - fails to provide security or make any advance payment that is required within the time period specified,
 - commits a serious breach of any material provisions of these Terms and Conditions.
- 9.2 If the Customer, or the Customer's agent, deliberately circumvents the terms of charging, the Customer shall pay in full any amounts undercharged plus interest and compensation in respect of any extra work and costs incurred as a result. In such circumstances, BKW reserves the right to bring criminal charges.
- 9.3 In the event that BKW suspends its energy supply, the Customer shall not be released from his payment obligations or his obligation to discharge other obligations.
- 9.4 The Customer shall not be entitled to any form of compensation whatsoever in respect of any suspension of energy supply on legitimate grounds.

Art. 10 Liability

- 10.1 Liability shall be governed by applicable mandatory provisions of law.
- 10.2 Except as expressly provided otherwise in any agreement, any further liability is here-by excluded. In particular, there shall be no entitlement to compensation of indirect damages, such as consequential damage/loss, lost profits, lost data, etc. or damages incurred as a result of interruptions to or restrictions on the supply of energy, provided that there was no grossly negligent or intentional conduct.

Art. 11 Force majeure

- 11.1 If one of the parties is prevented, in full or in part, from fulfilling its obligations arising from this contract for reasons of force majeure, the contract shall remain in effect. The affected party is released from its liability concerning non-fulfilment of its

contractual obligations insofar and as long as the force majeure event continues, providing:

- the affected party informs the other party of the occurrence and detailed circumstances of the force majeure event as it arises, and
 - the affected party makes all reasonable efforts to remedy the non-fulfilment.
- 11.2 For the purposes of this contract, force majeure events may include exceptional, unavoidable operational failure or measures imposed by the authorities which affect the generation, supply and/or transmission of electricity, disruption in national or international interconnected operation, official intervention, exceptional weather conditions (extreme drought, exceptional flooding or exceptionally low water levels), earthquake, landslide, avalanche, general strike, sabotage, etc.
- 11.3 In the aforementioned cases, the contracting party is released from its duty to fulfil its contractual obligations for the duration of the event. Circumstances of any kind that BKW cannot reasonably be expected to remedy also count as force majeure. If BKW uses third-party networks or systems for the fulfilment of its contractual obligations, under this contract an event concerning such networks and systems that meets the definition of force majeure as set out in Art. 11.2 is also regarded as force majeure in favour of BKW.

Art. 12 Statutory levies and taxes

- 12.1 All agreed prices and fees are not inclusive of taxes, levies or any charges arising from recommendations and instructions from industry associations and/or the national grid company. The paying party is responsible for any applicable taxes, levies and other charges (VAT, etc.) for this supply and service. The same applies to costs arising from statutory support measures for renewable energies.
- 12.2 Additional taxes, levies, charges and general fees of any kind that may apply to electricity supplies in the future (e.g. CO2 levy, electricity tax, etc.) are the sole responsibility of the paying party.

Art. 13 Cost-effectiveness clause

- 13.1 In the event of changes to statutory, regulatory or industry-specific framework conditions (e.g. price mechanisms from Swissgrid balance energy and EPEX SPOT, Swissgrid clearing fees, etc.) that have an impact on the price of electrical energy, BKW may adjust prices with three months' advance warning in an amount consistent with the impact of the changes. BKW shall inform the Customer of changes in an appropriate manner. Art. 15 applies accordingly.
- 13.2 In the event of significant changes to economic and/or technical circumstances that were relevant to the conclusion of the power supply contract or if, during the term of the power supply contract, circumstances arise that could not have been foreseen or taken into account at the time of conclusion of the power supply contract yet which have a significant impact on the

economic and/or technical aspects of the power supply contract, the parties shall in good faith amend this contract accordingly.

PART 3

Miscellaneous provisions

Art. 14 Assignment of the legal relationship

- 14.1 The parties agree to transfer all rights and duties under this power supply contract to any legal successors. The parties are jointly liable for any damages that arise as the result of a breach of this duty.
- 14.2 A legal succession requires the consent of the other party. Such consent shall only be refused if there is a material reason that justifies the rejection of the third party, namely if the third party does not offer adequate assurance of the proper fulfilment of this power supply contract.
- 14.3 The transfer of the power supply contract 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. 15 Amendments

BKW reserves the right to amend the Terms and Conditions at any time. BKW shall inform the Customer in advance in a suitable manner of changes to the Terms and Conditions. If the changes result in a financial disadvantage for the Customer, he may reject the change, stating the reason why, and terminate the power supply contract prematurely as at the date when the change enters into effect. Art. 2.6 shall apply. If he fails to do this, the Customer accepts the changes.

Art. 16 Applicable law, disputes

- 16.1 The power supply contract is subject to Swiss law.
- 16.2 Any disputes arising out of or in connection with the power supply contract shall be governed by the public authorities with competent jurisdiction.
- 16.3 The place of jurisdiction shall be Bern.

Art. 17 Entry into force

These Terms and Conditions enter into force on 1 November 2020.