



Procurement in Germany



Contents

Art. 1	Scope, purpose	2
Art. 2	Supplier's offers	2
Art. 3	Acceptance and conclusion of the Contract	2
Art. 4	Construction management	2
Art. 5	Delivery in general, execution, subcontracting	3
Art. 6	Agreements with other suppliers	3
Art. 7	Environmental sustainability and disposal	3
Art. 8	Delivery deadline, consequences of default	3
Art. 9	Contractual penalty	3
Art. 10	Packaging, transportation and shipment	3
Art. 11	Assembly work and occupational safety in the area of power installations	4
Art. 12	Working conditions for personnel and subcontractors, indemnity from liability	4
Art. 13	Factory tests and approvals during production of the Delivery	4
Art. 14	Assembly, commissioning and test runs	5
Art. 15	Technical documents, training	5
Art. 16	Assumption and transfer of risk	5
Art. 17	Acceptance	5
Art. 18	Functional test prior to the end of the warranty period	6
Art. 19	Replacement materials	6
Art. 20	Defect rights	6
Art. 21	Termination	6
Art. 22	Limitation period	6
Art. 23	Prices	6
Art. 24	Price guarantee	7
Art. 25	Payment terms and invoicing	7
Art. 26	Security	7
Art. 27	Liability and indemnification	8
Art. 28	Intellectual property	8
Art. 29	Insurance	8
Art. 30	Place of performance	8
Art. 31	Confidentiality	8
Art. 32	Amendments and additions	9
Art. 33	Assignment and pledging of claims	9
Art. 34	Applicable law and place of jurisdiction	9

Art. 1 Scope, purpose

- 1.1 These General Terms & Conditions of Purchase (hereinafter referred to as the **"GTCP"**) apply to BKW Deutschland GmbH and its subsidiaries that use these GTCP (hereinafter collectively referred to as **"BKW"**).
- 1.2 These GTCP apply to BKW's procurement activities within Germany, supplement the individual purchase and service contracts concluded by BKW, and are an integral component thereof.
- 1.3 In these GTCP, the contracting party (for service contracts) or the vendor (for purchase contracts) is referred to as the **"Supplier"**; BKW, as the ordering party (for service contracts) or the purchaser (for purchase contracts), is referred to as the **"Customer"**. These GTCP only apply if the Supplier is a legal entity or special fund under public law, or a natural or legal person or a partnership with legal capacity that is acting within the scope of its commercial or independent professional activities in the conclusion of a legal transaction. The service or work to be rendered or the object of purchase is referred to as the **"Delivery"**.
- 1.4 These GTCP supplement the service and purchase contracts concluded by BKW (including all components) and are an integral component thereof (hereinafter collectively referred to as the **"Contract"**). They are a component of the quote request and are included with it. By submitting its offer, the Supplier expressly acknowledges the applicability of these GTCP. Unless agreed otherwise, the GTCP that apply when the Customer places its order or the most recent version communicated in writing form a framework agreement, which also applies to similar future contracts, without the need to refer to them again in each individual case.
- 1.5 These GTCP apply exclusively. Deviating, conflicting or supplementary general terms and conditions issued by the Supplier are only considered components of the Contract if and to the extent that the Customer expressly consents in writing to the applicability of such general terms and conditions. This applies even if the Supplier refers to its own general terms and conditions in the order confirmation and BKW does not expressly object to their application.
- 1.6 The Delivery is to be installed in systems for generating, transmitting and distributing electrical energy or in a function that supports this purpose, and must ensure utmost interruption-free energy supply. The Delivery must satisfy this purpose in terms of safety, availability and service life.
- 1.7 Provided there is no express provision to the contrary in these GTCP, declarations and notices sent by the parties in text form (particularly email and fax) are sufficient for meeting the written form requirement. Statutory formal requirements remain unaffected.

Art. 2 Supplier's offers

- 2.1 The Supplier is invited to submit offers to the Customer through quote requests or tenders. In its offer it shall conform with the descriptions and intended purpose. The main offer according to the requirements specifications must be submitted as a binding offer. Deviations from the quote request or tender must be clearly identified and justified. The Supplier may offer additional variants (company variants) if it believes that such variants offer benefits for the Customer. Variants must be equivalent to the main offer in terms of use, fitness for purpose and safety. Project variants or deviations must be listed separately. When preparing the offer, the Supplier shall adhere to the statutory disclosure, notification and advisory obligations.
- 2.2 By submitting the offer, the Supplier acknowledges that it is aware of all facts and circumstances relevant to the calculation, creation and execution of the Delivery and all associated components according to the quote request or tender, and it undertakes to comply with them if its offer is accepted.
- 2.3 Quote requests or tenders of the Customer are always non-binding. Offers are prepared at the Supplier's expense. Non-consideration of the Supplier's offer does not constitute grounds for asserting claims.
- 2.4 Unless agreed otherwise, the offer is valid for the Delivery, ready for operation, according to the quote request or tender.

Art. 3 Acceptance and conclusion of the Contract

- 3.1 The Contract is concluded in written form. Amendments must be made in writing. This also applies to the amendment of this written form clause.
- 3.2 Unless agreed otherwise, the Contract enters into force with the legally binding signatures of both parties. The components of the Contract and their order of precedence are determined by agreements between the parties and the contractual document. In the absence of such an agreement, the following applies in the event of contradiction: the provisions of the individual Contract take precedence over the provisions of the service schedule, which in turn take precedence over those of the respective requirements specifications and, ultimately, these GTCP.

Art. 4 Construction management

If the Contract designates construction management (company entrusted with project planning and/or construction management), it shall legally represent the Customer in all matters, unless the Supplier has been informed in advance in writing of any restrictions to the authorisation.

Art. 5 Delivery in general, execution, subcontracting

- 5.1 The entire Delivery must be carried out properly and professionally in accordance with the latest technological standards and using the most suitable tools, products and materials in a way that ensures that the results meet the agreed commercial and legal conditions and are operationally suitable and efficient for the intended purpose. The Delivery must be structured/designed so that inspections and repairs can be carried out with the least time and effort (use of modular technology, standard parts, etc.). The system and its components must be brand new and manufactured in accordance with the requirements specifications for the Customer.
- 5.2 The Delivery must meet the applicable official requirements as well as the relevant technical regulations and standards in the intended destination. In particular, the Delivery must satisfy the relevant safety requirements and must be installed and operated in accordance with these requirements.
- 5.3 Subcontracting of the contractual Delivery and/or significant portions thereof to third parties (in particular subcontractors) requires the prior written consent of the Customer. Even if such consent has been given, the Supplier is liable to the Customer without limitation for the entire Delivery and service scope arising from the Contract. In particular, it bears the procurement risk for its services unless agreed otherwise in individual cases.

Art. 6 Agreements with other suppliers

The Supplier is obligated to gather information about all technical, functional and assembly-related interfaces with other suppliers in good time, to coordinate with these suppliers, and to initiate the necessary measures promptly. The Customer must be informed of the results. To this end, the Customer shall provide all affected suppliers with the corresponding contact details in good time. If an agreement cannot be reached between the parties, the Customer must be informed immediately.

Art. 7 Environmental sustainability and disposal

- 7.1 The Supplier undertakes to comply with the provisions of Appendix 1 "BKW Sustainability Standards for Suppliers". In the event of contradictions between these GTCP and the aforementioned Appendix 1, the provisions of Appendix 1 take precedence over the provisions of these GTCP.
- 7.2 If the Delivery contains environmentally problematic materials, the Supplier warrants to the Customer that it will take back the materials and properly dispose of them free of charge. This also applies for any substances and materials that are modified as a result of use.
- 7.3 Packaging, containers, etc. must be taken back by the Supplier at no charge for disposal.

Art. 8 Delivery deadline, consequences of default

- 8.1 The specified delivery deadlines are binding. Once the agreed deadline has expired, the Supplier is deemed to be in default without further notice. Partial deliveries and early deliveries are only possible by agreement.
- 8.2 If the Supplier has reason to believe that the Delivery will be late, it must immediately inform the Customer, indicating the reasons for the delay.
- 8.3 The Supplier is liable for any losses resulting from missed deadlines, unless it can prove that it was not responsible for the late (partial) performance.

Art. 9 Contractual penalty

- 9.1 If a contractual penalty is agreed for late delivery or for any other reason, the basis for calculation is the total Contract value, unless agreed otherwise.
- 9.2 If the Supplier is culpably in default, it shall pay a contractual penalty to BKW. The contractual penalty amounts to 0.3% for each day of the default, up to a maximum of 5% of the respective total Contract value. This contractual penalty is due even if the Delivery is accepted unconditionally by the Customer despite the default. Payment of the contractual penalty does not release the Supplier from fulfilment of its contractual obligations.
- 9.3 The contractual penalty is due on the penalty dates specified in the Contract or when a penalised event occurs.
- 9.4 The Supplier can only assert the failure of the Customer to render services promptly if it has requested such services in good time or if a fixed deadline has been set for such services and the Customer has not adhered to this deadline.
- 9.5 In addition to the contractual penalty, the assertion of additional claims for damages remains reserved. Contractual penalties incurred are offset against such claims for damages.
- 9.6 In cases of force majeure, such as strikes, war, natural events, official measures or prohibitions, riots, mobilisation, labour conflicts, lockouts, accidents or other significant disruptions, epidemics/pandemics, terrorist activities, etc., no contractual penalty or compensation for default is due.

Art. 10 Packaging, transportation and shipment

- 10.1 The Supplier is responsible for the proper packaging of the Delivery and must provide separate notice of any special care requirements regarding the removal of packaging materials or the storage of the delivered materials.
- 10.2 The Delivery may only be shipped after all agreed factory tests have been passed without exception and the approval required for transportation (in recorded form) has been given by the Customer. The Customer shall issue the approval for transportation without delay if all of the necessary factory tests have been passed.

- 10.3 The Customer is to be notified in good time that the Delivery is ready for shipment so the precise shipping arrangements can be agreed.
- 10.4 The Supplier is liable for the loss of or damage to materials provided by the Customer from receipt until delivery, but not for materials that were already damaged when they were delivered. The Supplier shall immediately notify the Customer in writing if it finds damage to the supplied materials.
- 10.5 Goods are transported from the Supplier to the respective destination on a "delivered duty paid" basis (DDP Incoterms 2020), including insurance. For transportation via truck, the Supplier must provide equipment for unloading (crane jib, hydraulic ramp).

Art. 11 Assembly work and occupational safety in the area of power installations

- 11.1 The Supplier is responsible for the final assembly of the Delivery. The Delivery is to be assembled under the supervision and responsibility of a head assembly technician provided by the Supplier.
- 11.2 The Customer shall ensure appropriate, industry-standard infrastructure in its assembly area.
- 11.3 Subject to any agreements to the contrary, all expenses for final assembly work as well as inspection visits by assembly supervisors of the Supplier are included in the offered price. The Customer shall provide proven experts for the assembly upon mutual agreement. The offer must specify the requirements for assembly experts in the form of workdays, qualifications and time periods. The Supplier is authorised to issue instructions to the assembly staff provided by the Customer.
- 11.4 The Supplier is aware and must comprehensively inform the employees involved that the assembly work specified in the Contract may be carried out in a power installation and that a special duty of care and safety measures must therefore be observed. In particular, the Supplier must point out the threat to life resulting from objects or body parts entering areas of live plant components.
- 11.5 When work is performed in assembly areas at the Customer's premises, the safety, accident prevention and organisation instructions that apply there must be observed; the Supplier must be made aware of these in a suitable manner in advance.
- 11.6 The safety instructions issued by the head assembly technician and the Customer's supervising employee must be adhered to strictly and precisely.
- 11.7 The Customer assumes no liability for accidents and damage caused as a result of failure to adhere to the aforementioned requirements and instructions.

Art. 12 Working conditions for personnel and subcontractors, indemnity from liability

- 12.1 The Supplier shall obtain all legally required approvals in advance for the personnel it designates to perform the Contract and is liable for all costs for doing so.
- 12.2 The Supplier shall insure all persons it deploys for assembly, commissioning and test runs against accidents at its own expense.
- 12.3 Furthermore, the Supplier shall ensure and demonstrate to the Customer upon request that all legal provisions concerning employee protection, insurance, etc. applicable at the intended destination are met and that it has duly paid all legally required levies.
- 12.4 The Supplier warrants that the wage it pays its employees for carrying out the Delivery is not below the legally prescribed minimum wage and that its employees are properly covered by social insurance. If there is concrete evidence that the Supplier has violated the provisions of the German Minimum Wage Act (MiLoG), the Customer is authorised to have compliance with the legal requirements reviewed by a neutral auditor on the Supplier's premises at its own expense, taking data protection regulations into account. If the review reveals violation of the provisions of MiLoG, the Supplier shall bear the cost of the review.
- 12.5 If the Supplier uses subcontractors to carry out the Delivery, the Supplier shall ensure that these subcontractors also comply with the provisions of MiLoG. The Supplier shall check compliance with this obligation by its subcontractors at regular intervals.
- 12.6 If claims are asserted against the Customer in connection with the Delivery by the competent authorities and/or the Supplier's employees or subcontractors, the Supplier shall indemnify the Customer against all claims upon first request. This includes the necessary legal defence and/or court and procedural costs. Further rights of the Customer remain reserved.

Art. 13 Factory tests and approvals during production of the Delivery

- 13.1 After providing advance notice, the Customer is to be granted free access to the workshops of the Supplier and its subcontractors during regular working hours. It must be provided with all requested information and access to documents related to the status of the work, the quality of the materials used, quality, approval and final inspections, quality assurance, etc., whereby the Supplier's business secrets must be protected.
- 13.2 Programmes, methods, places of performance and the parties responsible for the costs of factory tests, trials and acceptance tests at the manufacturer's premises and/or the intended destination and location are defined in the Contract/requirements specifications. The results of any factory tests are to be recorded in a report to be signed by the Customer and the Supplier.

- 13.3 The Customer reserves the right to be present at any or all of the tests and approvals and/or to have these carried out by an official testing agency or an independent third party at its own expense and with its own tools.
- 13.4 If the Customer objects to the results of the tests, it is liable for the cost of repeating the tests if the objection proves to be unjustified. In the case of valid objections, tests requested by the Supplier, or service improvements required due to a deviation from the Contract, the Supplier is liable for all costs incurred by the Customer and any relevant third parties for the repetition of the tests and approvals.
- 13.5 The Customer is entitled to refuse the use of work components if their inspection reveals deviations from the Contract or the underlying values for the project calculations and the Customer cannot reasonably be expected to use the work components.
- 13.6 For electrical systems:
The system (parts, devices, assemblies, components) must fully meet all mechanical, electrical and statutory requirements that apply when they are used in electrical supply grids with substantial short-circuit power. They must be implemented in accordance with electrical load requirements and with electromagnetic compatibility. Based on information provided by the Customer, the Supplier is aware of the Customer's grid conditions as well as its operating and installation conditions, and shall optimally configure all of the devices, assemblies and components contained in the scope of the order.
- 13.7 The aforementioned factory tests and the implementation of the acceptance tests do not release the Supplier from its full responsibility to comply with its contractually assumed guarantees and obligations.

Art. 14 Assembly, commissioning and test runs

- 14.1 As soon as the Customer informs the Supplier that the assembly can begin after the Supplier has declared that it is ready to deliver, the Supplier shall assign the required number of assembly experts and support staff. If agreed, the specialists provided by the Customer to the Supplier must be made available at the same time.
- 14.2 The assembly of the Delivery must be carried out with as few interruptions as possible, and must be effectively monitored by the Supplier. The assembly specialists must be familiar with the Delivery, the materials and the assembly process.
- 14.3 Once the assembly work is complete, there is to be an on-site inspection followed by commissioning. The results of the on-site inspection are to be recorded in a report to be signed by the Customer and the Supplier. The specifics of any agreed test runs are detailed in the Contract.

Art. 15 Technical documents, training

- 15.1 All operating regulations, drawings and other documents necessary for assembly, maintenance and operation are to be sent to the Customer in paper form (two copies) as well as electronically. The scope of the documentation should be such that the Customer's employees can carry out all of the maintenance work on their own. All documents must be provided in German only.
- 15.2 The technical documents of both parties must be handled confidentially by each party. They may not be used for other purposes or made available to third parties without authorisation. They remain the intellectual property of the respective party.
- 15.3 The type and scope of the documentation must comply with the technical requirements specifications and is otherwise governed by the provisions of the Contract. The documents are part of the Delivery and must be provided on the agreed dates.
- 15.4 The Supplier shall provide the Customer's employees with instructions for safe operation and maintenance. The scope of the instructions and training is determined by the respective Contract.
- 15.5 In its capacity as a specialist, the Supplier must inform the Customer of any specific known dangers involved in handling, using or storing the Delivery or parts thereof prior to the conclusion of the Contract. It is responsible for ensuring that the corresponding hazard information regarding the object of the Contract is clearly presented in the documentation and the training.

Art. 16 Assumption and transfer of risk

The Supplier assumes the full risk for the entire Delivery until handover of the Delivery or, in the case of services rendered, until acceptance in accordance with Art. 17. The agreement of an additional functional test prior to the end of the warranty period does not affect this provision.

Art. 17 Acceptance

- 17.1 Compliance with any required or applicable official provisions must be demonstrated by the time of acceptance at the latest.
- 17.2 The acceptance and, if necessary, additional contractually agreed processes, tests, decisions, etc. must be recorded together with the corresponding conclusions in reports and other documents to be acknowledged and signed by both parties. After the report has been signed by the Customer and the Supplier, the Delivery is accepted and the risk is transferred.
- 17.3 Should defects become apparent, the Customer shall set the Supplier an appropriate deadline for remedying them. Another joint inspection is carried out at the end of this deadline. If no defects are found, the acceptance is completed and a report of the acceptance is to be prepared and signed by the Customer and the Supplier. The Supplier is liable for the delivery costs and expenses incurred by the Customer as a result of repeating the test.

- 17.4 In case of disagreement between the Customer and the Supplier regarding the quality of the Delivery, the existence of defects or the responsibility for such defects, the results of control samples or tests conducted by an independent expert designated by both parties are decisive. If the expert comes to the same conclusion as the commissioning party, the other party shall bear the cost of this expert opinion.
- 17.5 The report of the acceptance of the Delivery must also include the valid date of the commencement of the warranty period if this date differs from the date of acceptance.
- 17.6 If the test run cannot be carried out within the period specified in the Contract for reasons beyond the Supplier's control, the Delivery is generally accepted within one month of completion of the assembly work and the date of the planned local inspection pursuant to Art. 14.3 of these GTCP on the basis of the reports recorded up to that point.

Art. 18 Functional test prior to the end of the warranty period

- 18.1 For deliveries (systems) for which a functional test must be carried out before the end of the warranty period in accordance with the requirements specifications, the joint inspections are carried out three months before the end of the warranty period. The conditions are set out in the respective Contract or in the technical requirements specifications.
- 18.2 Should defects become apparent, the expiry of the warranty period is suspended accordingly until all complaints have been resolved. The bank guarantee provided to secure the warranty provided by the Supplier must be extended accordingly.
- 18.3 The functional test is deemed successfully completed if the operational functionality of the Delivery as a whole is demonstrated. Again, a report must be recorded and signed by the Customer and the Supplier. This does not affect claims for defects notified by the Customer during the warranty period that have not yet been remedied or to parts that only prove to be defective during the functional test.

Art. 19 Replacement materials

- 19.1 The Supplier undertakes to specify separately in its offer the components of the Delivery that are subject to normal wear and tear as well as the parts that generally need to be replaced in the event of an accident, and to deliver these parts within the customary delivery times for a period of at least 15 years.
- 19.2 The Supplier must, without being asked to do so, notify the Customer in writing of any discontinued products by means of a "last call" notice at least 12 months prior to the last normal ordering opportunity or be able to stock and deliver suitable replacement parts for the entire life cycle of the Delivery.

Art. 20 Defect rights

- 20.1 The Customer must submit complaints about any defects in writing.
- 20.2 In the event of a defect, the Customer has recourse to the statutory warranty rights, provided there is no provision to the contrary below.
- 20.3 If the Supplier does not meet its obligation to take remedial action – by, at the Customer's discretion, correcting the defect (repair) or providing a defect-free delivery (replacement delivery) – within a reasonable period of time specified by the Customer, the Customer can correct the defect itself and demand reimbursement from the Supplier for the necessary expenditure or a corresponding advance payment. Without prejudice to Section 635(3) of the German Civil Code (BGB), the Supplier can refuse to carry out the remedial action chosen by the Customer if reproduction of the Delivery rather than repair would be disproportionate to the reported defect. In all other respects the Customer is entitled to reduce the agreed price or to withdraw from the Contract according to the statutory provisions.
- 20.4 In all other respects, the statutory provisions apply, particularly with regard to any claims by the Customer for damages and reimbursement of costs.

Art. 21 Termination

- 21.1 The parties may terminate the Contract prematurely at any time for good cause, particularly if:
- one party commits a gross contractual breach that is not discontinued or remedied despite a warning, or if
 - the other party experiences a significant deterioration of its financial situation.
- If the quality of the Delivery repeatedly fails to meet the requirements of the Customer, this also constitutes a gross breach of contract within the meaning of these GTCP.
- 21.2 Termination must be made in writing.

Art. 22 Limitation period

If the Delivery is based on a purchase agreement, any claims for defects expire within 36 months of handover; in the case of services, the limitation period is based on the statutory provisions.

Art. 23 Prices

- 23.1 All prices quoted by the Supplier are in EUR including any applicable VAT. The prices quoted are exclusive of discounts and any other rebates, unless the Supplier expressly indicates otherwise.
- 23.2 Furthermore, once the agreed prices have been paid, all services necessary for the proper performance of the Contract are deemed to have been remunerated. In particular, the prices cover all costs related to delivery and assembly, documentation and training costs, expenses, packaging, transportation, insurance and unloading costs, any licensing fees as well as public levies (e.g. VAT, prepaid disposal fees, customs duties).

- 23.3 Individual services billed on the basis of time and effort are to be invoiced at the valid assembly rates in accordance with the Contract. Billing is carried out monthly on the basis of the time and material reports approved by the Customer.
- 23.4 Any additional costs are only permitted if they result from project changes or retroactive modifications requested by the Customer. Any such changes that affect pricing must be agreed with the Customer in writing in advance. If an advance written agreement is not possible due to time constraints, the verbal agreement must be confirmed in writing within five working days. In this respect, Sections 650(b) and (c) BGB apply.

Art. 24 Price guarantee

- 24.1 The Supplier guarantees that the prices for replacement and spare materials ordered retroactively do not exceed the prices contractually agreed in each case, taking into account standard price adjustment formulas.
- 24.2 The price adjustment formula, including base index values and source references, must be included with the offer.

Art. 25 Payment terms and invoicing

- 25.1 The precise payment terms are defined in the respective Contract. The following general principles apply.
- 25.2 There is no security (advance payment bond, performance bond, warranty retention) due for a total contractual value of less than EUR 100,000.00.
- 25.3 If a security (advance payment bond, performance bond, warranty retention) is agreed for a total Contract value of more than EUR 100,000.00, the Supplier must provide the specified security in the same amount.
- 25.4 If partial payments are agreed, the following payment terms apply, unless stipulated otherwise in the Contract:
- | | |
|----------------|---|
| 1st instalment | 30% of the Contract value after the Contract has been signed. |
| 2nd instalment | 30% of the Contract value after the factory test has been completed. |
| 3rd instalment | 30% of the Contract value after the assembly and on-site inspection have been completed.
If the on-site inspection of the system is delayed for reasons attributable to the Customer, the third instalment must be paid no later than six months after the second instalment is due. |
| 4th instalment | 10% of the total order value as well as any discrepancies from the total invoice (which must include any penalties, additional costs, etc.) after acceptance of the Delivery. |

- 25.5 Payments are only made against an invoice. A separate, auditable invoice must be submitted for each requested payment. Invoices may only be submitted after the service for which payment is being requested has been rendered in full. The document serving as proof that the service has been rendered must be included with the invoice (acknowledged delivery note, counter-signed report, approved production reports, etc.).
- 25.6 The invoices must include the reference information for the order and/or the Contract as well as information about the invoice type (advance payment, partial, final, production, price increase invoice, etc.) and be addressed to the Customer. Each invoice must include a separate item detailing the amount and percentage of the VAT.
- 25.7 Payment is due within 30 days, net. If the Customer pays within 20 days, the Supplier shall grant a 3% discount. Any counterclaims by the Customer may be offset against the invoice. The Supplier can only offset counterclaims if these have been legally established or are acknowledged and undisputed by the Customer.
- 25.8 The relevant date for calculating payment deadlines is the date on which the correct invoice is received by the Customer.

Art. 26 Security

- 26.1 The Supplier shall provide the non-interest-bearing security specified below in the form of a bank or insurance guarantee acceptable to the Customer, issued in favour of the Customer and valid for at least three months after the return date specified in the Contract. The Supplier is liable for the corresponding costs. If an extension of the term of validity becomes necessary (e.g. in the event of default, delayed approval, extension of the warranty period, etc.), the Supplier shall initiate this extension in good time. With respect to the wording, the standard text used by the issuing bank can be used, provided it is substantively consistent with the text defined by the Customer and is accepted by the Customer.
No group guarantees will be accepted.
- 26.2 The Customer can request the following security at its own discretion:
- Advance payment bond
In order to secure the advance payment amount, a bond in the amount of the advance payment can be requested with a period of validity of up to three months after the date of the Delivery at the intended destination.
 - Performance bond
In order to secure performance by the Supplier, a bond in the contractually agreed amount (10% of the total contractual value) and with a period of validity of up to three months after the date of the provisional acceptance can be requested. The security is to be returned in full or in part after both parties have signed the acceptance report.

- c. **Warranty bond**
In order to secure the Supplier's performance arising from the warranty provisions, a bond in the amount of 5% of the final (invoiced) contractual value can be requested with a period of validity until the end of the warranty period. The security is returned after the end of the warranty period if no defects to the Delivery are reported or the Supplier has fulfilled all of its warranty obligations.

Art. 27 Liability and indemnification

- 27.1 The Supplier warrants that the Delivery corresponds to the agreed specifications and the latest technological standards at the time that the Contract was concluded.
- 27.2 Furthermore, the Supplier warrants that the Delivery is free of third-party rights and that the Delivery does not breach any third-party rights. This does not apply if the Delivery is provided exclusively in accordance with the Customer's specifications.
- 27.3 The Supplier is obligated to indemnify the Customer upon first request from all liability against third parties and from third-party claims in connection with the Delivery or use thereof. This includes all associated legal defence costs. This obligation to indemnify does not apply if the claim is based on a grossly negligent or intentional breach of a duty on the part of the Customer.

Art. 28 Intellectual property

- 28.1 All information, illustrations, drawings, calculations and other documents (including those in electronic form) and tools that the Customer makes available to the Supplier remain the property of the Customer without restriction. Property rights are only transferred on a non-exclusive basis to the extent required by the Contract.
- 28.2 The documents may only be used for production in accordance with the order. They must be kept confidential and returned unprompted once the services have been rendered.
- 28.3 Tools must be marked accordingly as the property of the Customer. The Supplier is obligated to use the tools exclusively for the production of the respective Delivery and to insure the Customer's tools at replacement value against fire, water damage and theft at its own expense. The Supplier shall carry out any necessary maintenance promptly at its own expense.
- 28.4 Copyrights and/or industrial property rights held by the parties prior to commencement of the performance of the respective Contract remain with the respective owner.

Art. 29 Insurance

- 29.1 The Supplier shall take out insurance at its own expense. At the Customer's request, the Supplier shall provide the Customer with a copy of the corresponding insurance certificate.
- 29.2 The Supplier undertakes to take out transportation insurance (including cover for unloading the Delivery at the unloading point defined in the Contract or in the requirements specifications).
- 29.3 In addition, the Supplier undertakes to take out assembly insurance.
- 29.4 For the duration of the performance of the Contract and until the end of the warranty period, the Supplier shall ensure business liability insurance with a sum insured of at least EUR 10 million per event for property damage and personal injury.

Art. 30 Place of performance

The place of performance for the Delivery is the contractually agreed destination.

Art. 31 Confidentiality

- 31.1 The parties shall treat all facts and information that they exchange with one another as confidential. This duty of confidentiality also applies prior to the conclusion of the Contract and remains in place after the end of the contractual relationship. Unless agreed otherwise in writing, the Supplier may not advertise the fact of its business relationship with the Customer and may not specify the Customer as a reference.
- 31.2 Information received by one of the parties is not deemed to be confidential information if the party can prove
- that the information was publicly known when it was made available and this fact is not the result of misconduct on its part;
 - that it obtained the information through a channel other than the other party or one of its associated companies without breaching a direct or indirect confidentiality obligation towards them, and the information was disclosed lawfully;
 - that it obtained the confidential information on its own and without breaching the above non-disclosure agreement.
- 31.3 The parties undertake to constrain their employees, subcontractors, suppliers and other third-party companies to corresponding confidentiality obligations.
- 31.4 Sharing of confidential information with other companies of the BKW Group does not constitute a breach of the duty of confidentiality.

Art. 32 Amendments and additions

- 32.1 Amendments of and additions to the Contract must be made in writing. This also applies to the amendment of this written form clause.
- 32.2 In the event of contradictions between the Contract, the GTCP and the offer, the provisions of the Contract take precedence over those of the GTCP and the latter take precedence over the provisions of the offer.

Art. 33 Assignment and pledging of claims

The Supplier's claims arising from the Contract may not be assigned or pledged without the written consent of the Customer.

Art. 34 Applicable law and place of jurisdiction

- 34.1 This Contract is subject to German law, to the complete and express exclusion of application of the Vienna Convention on Contracts for the International Sale of Goods (Vienna Sales Convention) as well as the relevant provisions of international private law.
- 34.2 The place of jurisdiction for any and all legal disputes arising from or in connection with the Contract is Berlin.

BKW Deutschland GmbH
Ehrenbergstrasse 19
10245 Berlin, Germany
Tel.: +49 30 240 00 60-10

Appendix 1 – BKW Sustainability Standards for Suppliers

Introduction

The provisions of the sustainability standards listed below apply to all activities, products and services that have been contractually agreed with BKW (hereinafter referred to as the “CUSTOMER”) and which the contractual partner provides to BKW (hereinafter referred to as the “SUPPLIER”). In the case of activities in connection with systems, the provisions apply to all phases of the system concerned, from planning, installation and operation 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, particularly those relating to competition, corruption, illegal employment and the environment.
- 1.3 The SUPPLIER undertakes to abide by a code of fair competition and refuses to engage in unfair competitive practices, such as price fixing, agreements on conditions, market sharing or coordinated practices with competitors.
- 1.4 The SUPPLIER undertakes to comply with the applicable health and safety regulations and to adhere to wage and working conditions under collective labour agreements, standard employment contracts and, in the absence thereof, customary local and professional regulations.
- 1.5 The SUPPLIER undertakes to carry out its activities in accordance with the tax regulations applicable under the respective German federal or state law and to pay taxes on time.
- 1.6 The SUPPLIER undertakes to pay the social insurance contributions due under the applicable state law (particularly health insurance, pension insurance, unemployment insurance, accident insurance and long-term care insurance), including employee contributions deducted from wages on time.
- 1.7 If the SUPPLIER is a legal entity, it is responsible for the applicable registration as an independent company for social insurance for itself and its employees. If the SUPPLIER is not a legal entity, they must prove that they have taken out health and long-term care insurance as well as all other compulsory insurance that they are required to have as a self-employed person.
- 1.8 The CUSTOMER is not liable for any social contributions or other compensation payments, particularly 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's self-employed status, the CUSTOMER may claim back any employer contributions or offset them against the remuneration.

- 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 also impose a duty on its sub-contractors to comply with the provisions set out in Art. 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 and 182, not to employ workers against their will and not to recruit workers who are below the relevant minimum age.
- 2.3 The SUPPLIER undertakes to recognise its employees' freedom of assembly and, at a minimum, to comply with the applicable regulations set out in the respective national legal systems. The European Convention on Human Rights (ECHR) and the Universal Declaration of Human Rights (UN Covenants I and 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 through appropriate and regular training and awareness measures.
- 2.5 The SUPPLIER undertakes to ensure that its employees receive adequate pay as well as the statutory national minimum wage, social benefits and other support contributions, and shall guarantee equal pay for women and men.
- 2.6 If the SUPPLIER has its registered office or a branch in Germany, it undertakes to comply with the occupational health and safety regulations applicable in Germany (maximum weekly working time, rest periods and breaks). In the absence of such occupational health and safety regulations, the local or industry-standard working conditions apply. If the SUPPLIER has its registered office outside Germany, it shall comply with the relevant provisions applicable where the services are rendered.
- 2.7 If the SUPPLIER sends workers from abroad to Germany in order to perform the services, it shall comply with the provisions of the Act on Mandatory Working Conditions for Workers Posted Across Borders and for Workers Regularly Employed in Germany (AEntG).
- 2.8 The SUPPLIER agrees to constrain its subcontractors to comply with the provisions set out in Art. 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 pre-cautionary principle to prevent potentially negative effects at source. If negative effects cannot be prevented, chemically and/or physically modified elements (water, soil, air) must be separated and kept separate from unmodified elements (prohibition of mixing) in accordance with the latest technological standards and treated in an environmentally responsible manner.
- 3.2 The SUPPLIER undertakes to use resources (including water and energy) efficiently, to minimise emissions and waste, and to monitor and continuously improve performance in these areas.
- 3.3 The SUPPLIER undertakes to comply with the relevant local environmental legislation (e.g. at the place of production, place of installation, place of performance, etc.). Unless specified in greater detail in the relevant legislation, limits are to be understood as absolute values and must be met at all times (not on average). If the latest technological standards allow for measures in excess of the minimum legal requirements, these are to be observed instead. Should the SUPPLIER fail to meet its obligations despite a formal warning of illegal circumstances, the CUSTOMER is 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 its employees by means of instruction, briefing and regular training.
- 3.5 The SUPPLIER agrees to also constrain 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 scientific findings regarding the protection of human health and environmental sustainability;
- b. do not present environmental or health problems with regard to subsequent demolition, dismantling and disposal;
- c. can be professionally dismantled and preferably reused or recycled.

If, for technical and economic reasons, environmentally problematic materials must nonetheless be used, the SUPPLIER shall declare these materials at the time of submitting the offer.

4.2 Water cycle management and renewable sources of energy

The SUPPLIER undertakes to reuse waste water (treated where applicable) or renewable energy sources to meet its 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 that 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) that comply with the latest technological standards wherever possible in terms of air pollution control, exhaust air and odour control. The SUPPLIER also agrees to optimise transportation processes and 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 and ensure the clearance, sorting, storage, return and disposal of all waste, containers, receptacles and packaging, etc. at its own expense and in compliance with the legal requirements and the conditions of permits and of the CUSTOMER.

4.7 Non-ionising radiation

The SUPPLIER undertakes to use suitable equipment to minimise radiation that has an adverse effect on the environment or on human health.

4.8 Noise emissions

The SUPPLIER is obligated to limit any noise generated in the context of the project work to the lowest technically feasible level. All health and 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 that 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 are to be relocated where necessary. Removal of vegetation, sealing of soil surfaces, exposure of roots, installations and drains within the forest line should be avoided wherever 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 Transportation and storage of hazardous materials and dangerous goods

In its storage and transportation of hazardous materials and dangerous goods, the SUPPLIER undertakes to comply with the legally stipulated limits and with the regulations on the storage and transportation of dangerous goods, to take precautions for the handling of accidents, to constrain its transportation subcontractors accordingly, 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.