



# Procurement of services in Germany



## Art. 1 Scope and validity

- 1.1 These General Conditions of Purchase for the procurement of services (hereinafter referred to as "**GTCP**") apply to all business relationships between BKW Deutschland GmbH and its subsidiaries that use these GTCP (hereinafter collectively referred to as "**BKW**") and their business associates (hereinafter referred to as the "**Agent**").
- 1.2 These GTCP govern the conclusion, content and performance of contracts for the provision of services in Germany, particularly in the areas of advising, planning, support and training, as well as other services that have the characteristics of a mandate and are carried out by the Agent. They supplement the contracts concluded by BKW and are an integral component thereof.
- 1.3 These GTCP apply if the Customer is a legal entity under public law or a 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 when concluding a legal transaction.
- 1.4 These GTCP supplement the orders and contracts issued and concluded by BKW and are an integral component thereof. The order together with all its components and these GTCP are hereinafter collectively referred to as the "**Contract**". The GTCP are a component of the quote request and are included with it. Upon submitting its offer, the Agent expressly acknowledges the applicability of these GTCP. Unless agreed otherwise, the GTCP that apply when BKW places its order or the most recent version communicated in writing form a framework agreement, including for similar future contracts, without the need to refer to them again in each individual case.
- 1.5 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 also sufficient for meeting the written form requirement. Formal legal requirements remain unaffected.
- 1.6 For orders containing elements relating to work contracts, the provisions in the appendix apply in addition to these GTCP. In the event of contradictions

between these GTCP and the appendix, the provisions in the appendix take precedence of the provisions of the GTCP.

## Art. 2 Offer

- 2.1 The Agent submits its offer, including documentation, free of charge, unless stated otherwise in the quote request.
- 2.2 The offer is binding during the period specified in the quote request or the offer. If no such period is specified, the Agent remains bound by the offer for a period of one month from the date of the offer. In all other respects, quote requests from BKW are always non-binding.

## Art. 3 Conclusion of contract

- 3.1 The Contract is concluded in written form and enters into force after the contractual document has been duly signed by both parties. Amendments must be made in writing. This also applies to the amendment of this written form requirement.
- 3.2 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. Contractual document
  2. Appendices (excluding the quote and the tender)
  3. these GTCP
  4. BKW quote requests/tenders
  5. Agent's offer
- 3.3 Only the GTCP of BKW apply. Deviating, conflicting or supplementary general terms and conditions issued by the Agent shall only be considered a component of the Contract if and to the extent that BKW expressly consents in writing to the applicability of such general terms and conditions. This also applies if the Seller refers to its own general terms and conditions in the order confirmation and BKW does not expressly object to their application.
- 3.4 Without a written power of attorney issued by BKW, the Agent may not enter into any obligations with third parties on behalf of BKW.

**Art. 4 Execution**

- 4.1 The Agent undertakes to execute the transactions assigned to it faithfully, professionally and carefully.
- 4.2 It warrants that all of the services it provides comply with the contractual conditions and specifications, the latest technological standards and all relevant statutory requirements.
- 4.3 The Agent shall only use carefully selected and well-trained employees and shall inform BKW in writing of the names and functions of the employees it uses. In doing so, it shall in particular take note of BKW's interest in continuity. It shall only replace employees with the written consent of BKW and shall replace, within a reasonable period of time, employees who do not have the required specialist knowledge or who otherwise impair or jeopardise the performance of the Contract. BKW shall handle all data confidentially, adhering to the applicable statutory data protection provisions.
- 4.4 The Agent undertakes on its behalf as well as that of its employees to adhere to the operational requirements of BKW, in particular its safety, working time and organisational regulations.

**Art. 5 Use of subcontractors**

- 5.1 The Agent must provide the service itself. The Agent may only have the services that are owed under the respective Contract carried out by third parties with the written consent of BKW. In all cases, it remains responsible for the proper performance of the Contract.
- 5.2 In particular, the Agent shall ensure that third parties it engages comply with the obligations in section Art. 5 (Use of subcontractors), section Art. 9 (Social insurance), section Art. 10 (Occupational health and safety, working conditions, equal pay for women and men), section Art. 17 (Confidentiality), section Art. 18 (Data protection) and section Art. 19 (Data protection for customers of BKW), and that BKW is able to enforce compliance with these obligations directly with the third parties that are engaged. The Agent warrants that it pays its employees a wage for carrying out the agreed services that is not below the legally prescribed minimum wage and that they are properly registered for social insurance. If there is concrete evidence that the Agent is not adhering to the provisions of the German Minimum Wage Act (MiLoG), BKW is authorised to have compliance with the legal requirements reviewed by a neutral auditor on the Agent's premises, taking data protection regulations into account. If the review reveals non-compliance with the provisions of MiLoG, the Agent shall bear the cost of the review.
- 5.3 If the Agent uses subcontractors to carry out the agreed services, the Agent must ensure that these subcontractors also comply with the provisions of MiLoG. The Agent must check compliance with this obligation by its subcontractors at regular intervals.

- 5.4 If claims are asserted against BKW in connection with the services by the competent authorities and/or the Agent's employees or subcontractors, the Agent agrees to indemnify BKW against all claims upon first request. This includes the necessary legal defence and/or court and procedural costs. BKW reserves any further rights.

**Art. 6 Changes to services**

- 6.1 The parties can mutually agree changes to services and their effects on the fee at any time.
- 6.2 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.
- 6.3 Unless agreed otherwise, the Agent shall continue to provide its services in accordance with the Contract for the duration of the negotiations concerning the change to the services.
- 6.4 If the parties are unable to agree on a change to the services, the Contract shall continue in its original state.

**Art. 7 Accounting**

The Agent shall inform BKW at regular intervals and upon request about the progress and the results of its work. It shall notify BKW immediately in writing of all circumstances that impair or jeopardise the performance of the Contract.

**Art. 8 Collaboration of BKW**

BKW shall provide the Agent in a timely manner with all information and specifications necessary for the execution of the Contract. It shall also grant the Agent the necessary access to its premises and, if necessary, provide it with the required systems and tools. Any additional cooperation obligations on the part of BKW are expressly set out in the Contract.

**Art. 9 Social insurance**

- 9.1 If the Agent is a legal entity, it shall, as an independent company, carry out the necessary registrations at the social insurance office for itself and its employees. If it is not a legal entity, it must demonstrate that it is affiliated with a compensation fund as a self-employed person.
- 9.2 BKW is not liable for any social contributions (AHV, IV, ALV, etc.) or make any other compensation payments, particularly in the event of accident, illness, disability or death, or occupational pension contributions. In the event that the social insurance authorities do not recognise the self-employment status of the Agent, BKW may claim back any employer contributions or offset them against the Agent's fee.

**Art. 10 Occupational health and safety, working conditions, equal pay for women and men**

If the Agent has its registered office or a branch in Germany, it warrants that it complies with the occupational health and safety regulations that apply in Germany and ensures equal pay for women and men. If the Agent has its registered office outside Germany, it shall comply with the corresponding provisions that apply in the place where the service is provided.

**Art. 11 Place of performance**

BKW shall expressly name and define the place of performance in the Contract. If this is not defined, the location of BKW's registered office in Germany is the place of performance.

**Art. 12 Default**

- 12.1 If the Agent does not meet agreed deadlines with a fixed date, it is in default without further warning; in all other cases, the Agent is in default upon a reminder being issued.
- 12.2 If the Agent is responsible for a delay, it shall pay BKW a contractual penalty of 0.3% for each day of delay, up to a maximum of 5% of the respective total fee. This penalty is also due if the services are accepted by BKW after the agreed deadline. Payment of the contractual penalty does not release the Agent from having to fulfil its contractual obligations. However, contractual penalties incurred are offset against any claims for damages.
- 12.3 All other rights in accordance with statutory provisions remain unaffected.

**Art. 13 Liability**

- 13.1 Upon first request, the Agent shall be obliged to indemnify BKW from all liability against third parties and from third-party claims in connection with the agreed services and the work results or the use of these work results. The obligation to indemnify shall not apply if the claim is based on a grossly negligent or intentional breach of a duty on the part of BKW.
- 13.2 To the same extent, the Agent shall be liable for the conduct of its subcontractors, suppliers and agents, in the same way as for its own conduct.

**Art. 14 Force majeure**

The parties shall not be held liable for the late, improper or non-performance of their obligations under the Contract if such late, improper or non-performance is due to events for which the parties are not responsible or force majeure events, and the affected party reports this immediately and takes all reasonable steps to perform the Contract.

**Art. 15 Fees and payment terms**

- 15.1 The Agent shall provide the services at fixed prices or on a time and material basis with an upper limit on the fee (cost cap). In its offer, it shall provide the cost types and cost rates.
- 15.2 Upon payment of the fee, all contractually agreed services shall be deemed compensated. In particular, the fee covers the transfer of rights, all documentation and material costs as well as expenses and public levies, such as taxes and customs duties.
- 15.3 The services shall be invoiced after all the services have been fully provided. If prepayments, advance payments or instalment payments are agreed in the Contract, BKW may request that the Agent provide security in the form of a first-class bank or insurance guarantee. The value added tax must be shown separately on the invoice.
- 15.4 Invoices are due for payment 30 days after receipt. If payment is made by the Buyer within 20 days, the Seller shall grant a 3% discount. The statutory default interest shall be due in the event of late payment.
- 15.5 If the Agent grants discounts on its services and if several BKW companies utilise the Agent's services, the prices for all of the services utilised by the companies of the BKW Group shall be used for calculating discounts.

**Art. 16 Property rights and licences**

- 16.1 Work results and all property rights (intangible and ancillary copyrights as well as the entitlement to such rights) and ownership rights to the work results created in the framework of the performance of the Contract shall accrue in full to BKW. The Agent hereby transfers to BKW all intangible rights to the work results, unrestricted in terms of time, territory and scope, and BKW accepts the transfer. If the transfer of the rights to the work results is not possible, particularly in the case of copyrights, the Agent shall grant BKW an unrestricted, exclusive licence to use them.
- 16.2 If existing copyrights held by the Agent or a third party engaged by it are required for the use and exploitation of the work results, the Agent shall grant BKW an exclusive, unlimited, irrevocable, non-terminable and sub-licensable right to use the work results without restrictions in terms of time, territory and scope and/or it shall ensure that BKW obtains such a right from the engaged third party.
- 16.3 The Agent warrants that no third-party property rights have been breached in connection with the provision of the service or the work results that are created. It warrants the lawfulness and legal validity of the transfer of property rights and the granting of licences to BKW in accordance with these GTCP and the Contract.

- 16.4 The Agent shall defend third-party claims for the breach of property rights immediately and at its own expense. It shall inform BKW of such claims in writing immediately. BKW is entitled to join court proceedings at any time. If the third party asserts claims directly against BKW, the Agent shall, upon first request, indemnify and hold BKW harmless from all claims that have been asserted. This includes all associated legal defence costs. Upon request, the Agent shall assist BKW with any court proceedings.
- 16.5 If BKW is prohibited from using or is unable to use the contractually agreed services in full or in part because of property rights that have been asserted, the Agent must either modify its services so that they no longer breach the rights of third parties and still comply with the required scope of services, or obtain a licence from the third party at its own expense. If the Agent does not avail itself of these options within a reasonable period of time, BKW can withdraw from the Contract with immediate effect. Irrespective of who is at fault, the Agent shall fully indemnify BKW in each case, including for any legal defence costs.

#### **Art. 17 Confidentiality**

- 17.1 Without the prior written consent of BKW, confidential information and documents connected with this Contract or obtained in the course of providing the services requested by BKW or by third parties must not be disclosed to third parties or used for purposes other than the provision of the services in accordance with this Contract.
- 17.2 The duty of confidentiality continues after the end of this Contract. The duty of confidentiality shall only end when and if the confidential information disclosed to the other party has become generally known.
- 17.3 If the Agent wants to advertise the contractual relationship, wishes to disclose it in some other manner or would like to use BKW as a reference, the prior written permission of BKW is required.
- 17.4 The documents and data provided to the Agent remain the exclusive property of BKW. This applies in particular for any copyrights to the documents provided. Copies are only permitted if this is agreed in the Contract or if this is necessary for the fulfilment of the contractually agreed tasks and work. The documents and data related to the order must be returned or destroyed immediately at the request of BKW; data saved on the Agent's computers must be deleted. Statutory retention obligations and electronic backup copies on backup servers remain reserved.
- 17.5 The Agent undertakes to ensure that the obligations arising from this item Art. 17 are observed by its employees as well as any other third parties engaged in the performance of the Contract.

- 17.6 If the Agent culpably breaches the above confidentiality obligations, it shall owe BKW an appropriate contractual penalty, the amount of which is to be determined by BKW and the appropriateness of which is to be reviewed by the competent court. The payment of the contractual penalty does not release the Agent from complying with the confidentiality obligations. The contractual penalty must be paid in addition to any compensation for damages.

#### **Art. 18 Data protection**

- 18.1 The Agent acknowledges and accepts that BKW collects data about it that is required for the implementation of the order, the review of the service and a comparison of services with third parties. BKW shall be entitled to involve third parties for this purpose and, in the course of doing so, to make the data available to these third parties solely for the aforementioned purpose. Any third parties shall be contractually obligated to maintain confidentiality.
- 18.2 The Agent acknowledges and accepts that data may also be transmitted outside Germany for this purpose, although the applicable data protection regulations will always be observed.

#### **Art. 19 Data protection for customers of BKW**

If the Agent receives access to information about BKW customers for the purpose of performing the Contract, it undertakes to comply with the following provisions:

- a. The customer data collected by the Agent in the course of carrying out the order or provided to it by BKW may only be used for the purposes specified in the Contract, and no personal information must be shared without the written consent of BKW and the affected customer. BKW is entitled to impose additional restrictions; for example, it may indicate that data may be used only in anonymised form.
- b. The Agent shall take all appropriate technical and organisational security measures to ensure that personal data is protected against accidental or intentional manipulation, loss, destruction or access by unauthorised parties. In particular, the data provided by BKW to the Agent shall have appropriate access protection (such as password protection) to ensure that only authorised persons may view and use the data. The personal data collected must be permanently deleted after the end of the order.

#### **Art. 20 Assignment and pledge**

The Agent may not assign or pledge claims against BKW without the written consent of BKW.

**Art. 21 Changes and additions**

Amendments of and additions to the Contract must be made in writing. This also applies to the amendment of this written form clause.

**Art. 22 Applicable law and place of jurisdiction**

German law applies, with the exception of the UN Convention on Contracts for the International Sale of Goods (CISG). In the event of disputes in connection with the Contract, Berlin is the exclusive place jurisdiction. However, BKW shall be entitled to initiate proceedings at the Agent's general place of jurisdiction. Overriding statutory provisions remain unaffected.

## Appendix – Additional provisions for orders containing elements relating to service contracts

### 1 Transfer of risk

The Agent shall bear the full risk for the entire work until it is accepted.

### 2 Acceptance

2.1 The parties shall keep and sign reports and, if necessary, other documents concerning the acceptance. If contractually agreed, the parties shall carry out the acceptance together.

2.2 The Agent shall notify BKW in a timely manner that the agreed services are ready.

2.3 BKW shall inspect the services as soon as possible within the context of the normal course of business. It shall notify the Agent of any defects and set an appropriate deadline for remedying these defects. Another review is carried out at the end of this deadline. If no defects are identified, the acceptance is deemed completed. The delivery costs and expenses incurred by BKW as a result of repeating the test shall be borne by the Agent.

2.4 Tacit approval of the services is excluded.

### 3 Warranty

3.1 The Agent warrants that its services have the agreed and promised features as well as the characteristics for the intended use that BKW can expect even without a separate agreement. The warranty is provided and remains valid for two years from acceptance of the fully rendered contractual services. The deadline begins on the day after BKW signs the acceptance certificate.

3.2 BKW can report defects in writing at any time during the warranty period. All notices of defects submitted during the notification period are considered timely. Even after the expiry of the warranty period, the Agent is obliged to satisfy claims resulting from the rights of BKW described below, provided that the defects were reported during the warranty period.

3.3 In the event of a defect, BKW shall have recourse to the statutory warranty rights, provided there is no provision to the contrary below.

3.4 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, BKW may correct the defect itself and demand reimbursement from the Supplier for the necessary expenditures or a corresponding advance payment. Without prejudice to Section 635(3) of BGB, the Supplier may refuse to carry out the remedial action chosen by the Customer if producing the work again rather than repairing it is out of proportion to the reported defect. In addition, according to the statutory provisions, the Customer is entitled to reduce the agreed price or to withdraw from the Contract. Furthermore, in accordance with the statutory provisions, the Customer is also entitled to claim compensation for damages and expenses.

3.5 Until the defect is remedied or it withdraws from the Contract, BKW shall continue to be able to dispose of any work results or parts thereof that are the subject of a complaint. Operation of the defective work result can continue provisionally if this is agreed mutually between the parties.

3.6 The warranty shall restart for replacement deliveries and any component affected by repair.

### 4 Prices

The fixed price defined in Article 15.1 does not affect an adjustment of the fee for elements relating to service contracts in accordance with sections 650(b) and (c) BGB.