

# Energy Business



## 1 Applicability

- 1.1 The Energy Business service is a multi-functional BKW customer portal through which BKW Energie AG customers (hereinafter referred to as "customer") can view relevant figures, obtain market information and conclude contracts relating to the supply of electricity, proof of origin and other services. The portal serves as an interface between the customer and BKW for all activities and interactions.
- 1.2 These Energy Business General Terms & Conditions (hereinafter referred to as "GTC") regulate customer access to the customer portal, the provision of various services by the BKW via the customer portal, and further customised services.
- 1.3 Deviating terms apply only if they have been explicitly accepted by BKW Energie AG.

## 2 Agreement components

Unless otherwise stipulated in the contract, the following documents form an integral part of this agreement in the order below, which applies in the event of contradictions:

1. The agreement or the offer;
2. These GTC;
3. The BKW Online Customer Centre Terms of Use.

## 3 Services

- 3.1 BKW provides the service via the customer portal (b2b-account.bkw.ch). Access to the customer portal is ensured via the BKW Online Customer Center. The use of the BKW Online Customer Center is governed by the "BKW Online Customer Center" terms of use.
- 3.2 In the BKW customer portal, the customer has access to all Standard Energy Business applications (hereinafter referred to as "Standard Pack"). The components of the Standard Pack can be consulted in the customer portal.
- 3.3 The customer has the possibility to purchase additional Energy Business applications and services for a fee (hereinafter referred to as "EB Options"). The costs and other terms and conditions are accepted online by the customer. These are considered an integral part of this contract. Billing is annual.

- 3.4 BKW offers the customer further paying products and services via the customer portal (e.g. electricity products, proof of origin, etc.). To do so, the parties conclude separate contracts (e.g. framework contract for the supply of energy). The customer may also be forwarded to a corresponding offer page. The product-related contractual terms and GTC published there apply.

## 4 Customer's responsibilities

- 4.1 The customer must have a suitable internet connection and a current web browser for this.
- 4.2 The customer will provide BKW with the data required to provide services free of charge and authorises BKW to collect the energy consumption values (including reactive power) for the measuring points available in the customer portal from the relevant distribution network operator on behalf of the customer and to process them. Insofar as necessary, BKW shall be entitled to use this contract to legitimize itself with the distribution network operator.
- 4.3 The customer is obliged to participate in the collection or modification of all data required for operation, and will notify BKW of any changes to this in good time (in particular, user administration). The administration of any adjustments or orders for new log-ins required due to such changes is carried out exclusively by BKW.
- 4.4 The customer is responsible for managing the access rights to his customer portal. He shall inform BKW of the persons responsible for access management (administrators). The administrators can grant and withdraw access rights to the Energy Business applications to any other person (user) on the customer portal in writing with appropriate identification (e.g. contract number or extract from the commercial register). The number of users may be limited by BKW.
- 4.5 It is the customer's responsibility to monitor the users, to publish its own terms of use for the users and to ensure compliance with the terms of use. BKW shall not check the access rights granted/withdrawn by the administrators. The customer must ensure that unauthorized persons do not access the customer portal and is responsible for protecting against access by unauthorized persons and against unauthorized and improper use or disclosure of data.

**5 Support**

In the event of any administrative or technical issues or problems with respect to the use of Energy Business, the customer may contact Energy Business Support at BKW by telephone or via the contact form. BKW Sales Support is available for telephone enquiries on 058 477 50 70 from Monday to Friday (excluding public holidays), 8 a.m. to 12 p.m. and 1.30 p.m. to 4 p.m.

**6 Access by BKW**

As far as it is necessary for the execution of this contract or another contract concluded between the parties (e.g. for customer support, troubleshooting or the purchase of products or services), the BKW employees responsible for these tasks shall have access to the applications in the customer portal.

**7 Changes to services**

BKW reserves the right to change individual parts of the services at any time (e.g. scope and form of functionalities, etc.). The customer will be notified of any changes that have a significant impact on the service provided.

**8 Remuneration**

- 8.1 The remuneration is defined in each offer or contractual document or for EB Options defined when concluding the offer.
- 8.2 On conclusion of further contracts (see section 3.3 and 3.4 above), the prices and terms set out in the separate contracts also apply.
- 8.3 All prices are in CHF and do not include VAT. VAT will be invoiced additionally at the applicable rate.

**9 Terms of payment**

- 9.1 All invoice amounts are payable within 30 days of the invoice date. All payments must be made without deduction and without any charges.
- 9.2 The customer may not withhold or reduce payments. Payments must even be made if a service is delayed or rendered impossible for reasons for which BKW is not responsible.
- 9.3 If the customer fail to meet their payment obligations punctually, it will be in default automatically and is obliged to pay default interest to BKW at the statutory rate.

**10 Involvement of third parties**

BKW is entitled to engage third parties to render services. BKW is responsible for taking the proper care in selection and instruction of the third party.

**11 Restriction of services**

- 11.1 The availability guarantee provision in the Online Customer Centre's Terms of Use applies.
- 11.2 BKW is entitled in particular not to provide services or to provide services only to a limited extent if:
- operational interruptions such as repairs, maintenance and expansion work are required;
  - measures ordered by officials must be taken.

11.3 If BKW cannot fully provide services for the reasons mentioned, the customer is still required to pay the contractual price. The customer cannot claim a reduction in price. Interruptions of more than one month are excluded. In this case, a reduction in price comes into effect, which relates to the duration and missing services.

11.4 Furthermore, BKW is entitled to stop provision of services following a previous reminder and written notification if the customer:

- does not meet their payment obligations for the services or there is no guarantee that future invoices will be paid;
- commits a serious breach of any material provisions of the agreement.

11.5 In the event that BKW suspends its services, the customer is not released from their payment obligation with respect to issued invoices or their obligation to discharge other liabilities to BKW. The customer is not entitled to any kind of compensation from the lawful restriction or discontinuation of the service by BKW.

11.6 BKW shall make the Services available to customer for its own use. Use by third parties must be requested in writing by the customer from BKW. BKW reserves the right to charge additional costs for the use of the Services by third parties, which shall be subject to a separate contract.

**12 Liability**

12.1 BKW runs Energy Business with the utmost care. BKW accepts no liability for damage resulting from improper use of the online platform by the customer or third parties, particularly from a breach of the duty of care.

12.2 The limitation of liability does not apply to personal injury and material damage brought about culpably, or for damage caused by gross negligence or wilful misconduct.

12.3 Within the framework of this contract, BKW only provides customer with its view of the current market situation and does not explicitly make any recommendations regarding the purchase or sale of physical and/or financial products.

12.4 BKW accepts no liability for the completeness, lawfulness, quality and topicality of information presented by Energy Business. BKW does not provide any guarantee that the data is made available without interruption and is fully available.

12.5 Furthermore, BKW accepts no liability for any damage that arises as a result of the data or information it has made available.

12.6 BKW's liability for damage suffered by the customer due to transmission errors, technical defects, malfunctions, interruptions (including system-related maintenance and servicing work), delays in the transmission of information (e.g. data delivery), unlawful interference in telecommunications equipment or networks by third parties, overloading of telecommunication networks, wilful blocking of electronic access by third parties or other deficiencies is excluded.

- 12.7 The limitation of liability and the disclaimer apply to contractual, non-contractual and semi-contractual claims.
- 12.8 This disclaimer does not apply to damage caused by intentional or grossly negligent conduct.
- 12.9 If the BKW is held liable, the customer is obliged to report the incident to BKW in writing immediately, otherwise a waiver of a claim to damages will be assumed.

### 13 Force majeure

The parties cannot be held liable for non-fulfilment of the agreement if it is due to events for which the parties are not responsible or force majeure, and the party concerned reports this immediately and takes all reasonable steps to execute the agreement.

### 14 Confidentiality

- 14.1 The parties shall treat all facts and information that are neither public knowledge nor generally accessible as confidential. In the event of doubt, it must be treated as confidential. Confidentiality must be observed even before the conclusion of the agreement and this obligation shall remain in effect after the termination of the agreement.
- 14.2 Information on contractual content may be disclosed to third parties only with the written consent of the other party. This does not include disclosure to authorities due to a legal obligation.
- 14.3 The parties are obliged to treat all data and knowledge of business processes and content obtained through the contractual relationship as confidential, and to not disclose to third parties any documents or data marked as requiring protection by one of the contracting parties throughout the term of this agreement.

### 15 Intellectual property rights

- 15.1 All market information elements and content are protected by intellectual property rights (copyright law, patent law, design law, etc.). It belongs exclusively to BKW or BKW Group companies, which take all measures to safeguard these rights. Third-party rights remain reserved.
- 15.2 Use of and access to BKW's online platform does not grants any rights to the further use of elements.
- 15.3 Market information elements and content may be used for internal, non-commercial purposes only, and must not be made available to third parties in any way. If elements are reproduced in any way, either in whole or in part, BKW must be explicitly named. BKW's explicit consent must be given before any republication.

### 16 Term

- 16.1 The contract may be terminated in writing with three (3) months' notice to the end of a calendar year.
- 16.2 If the agreement is terminated, the data uploaded by the customer to Energy Business and the customer's access to Energy Business will be deactivated at the

end of the term. The customer will still have access to the Online Customer Centre. Deactivation of access is based on the Online Customer Centre's Terms of Use.

### 17 Extraordinary termination

- 17.1 If one party does not meet its contractual obligations, the other party is entitled to terminate the agreement in writing with a notice period of 10 days to the end of the month, following a prior reminder and written notification that sets a reasonable deadline for remedy of the defect. If, based on the circumstances or the behaviour of a party, it transpires that a reminder or written notification will not be followed, or that the party will be unable to meet its obligations, the agreement may be terminated by registered letter with immediate effect.
- 17.2 In the event of the customer's insolvency, the agreement may be terminated without notice. The customer will be deemed to be insolvent if they are 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 if they declare insolvency.

### 18 Prohibition of assignment

The customer may not assign claims under the agreement or these GTC to third parties without the consent of BKW.

### 19 Succession in title

- 19.1 The contracting parties agree to transfer all rights and duties from this agreement to any legal successors. The contracting parties are jointly liable for any damages that arise as the result of a breach of this duty.
- 19.2 Legal succession is possible only with the consent of the other contracting party. Consent can be refused only if an important reason justifies the rejection of the third party; namely, if the third party does not offer an adequate guarantee of the proper fulfilment of this agreement.
- 19.3 The transfer to Group companies of BKW does not require the consent of the other contracting party. The term "Group companies" refers to companies in which BKW directly or indirectly holds a stake of more than 50% stake, or which it controls in any other way.

### 20 Legal validity

If individual provisions of the GTC or the agreement are or become invalid, or if they contain an unintentional loophole, the validity of the remaining provisions remains unaffected. Such a provision will be replaced or a loophole closed with a legally valid provision with which the contracting parties would have agreed with due consideration of their legal and economic interests, and the meaning and purpose of the agreement with respect to such a provision or loophole.

**21 Changes to the GTC**

**BKW reserves the right to amend the GTC at any time.** BKW will inform the customer in advance in an appropriate manner of changes to the GTC. If the changes result in a financial disadvantage for the customer, they may reject the change, stating the reason, and terminate the agreement as at the date when the change enters into effect. **If they fail to do this, the customer accepts the changes for all services covered by these GTC that they obtain from BKW.**

**22 Applicable law and place of jurisdiction**

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 Agreement is **Bern**.