

Procurement in Germany



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Art. 1 Scope, purpose

- 1.1 These General Terms & Conditions of Purchase ("GTCP") are valid for BKW Deutschland GmbH and its subsidiaries that use these GTCP.
- 1.2 These GTCP apply to the procurement by BKW Deutschland GmbH within Germany, and they supplement the individual purchase and service contracts that have been concluded and form an integral component of these contracts.
- 1.3 In these GTCP, the contracting party (for service contracts) and the seller (for purchase contracts) is referred to as "Supplier", and the ordering party (for service contracts) and the purchaser (for purchase contracts) is referred to as the "Customer". These GTCP only apply if the Supplier is an entrepreneur (Section 14 of the German Civil Code), a legal entity under public law or a special fund under public law. The service or work to be provided or the object of purchase are referred to as the "Delivery". The service or purchase contract and all of its components as well as these GTCP are referred to as the "Contract".
- 1.4 These GTCP apply exclusively. Deviating, conflicting or supplementary general terms and conditions issued by the Supplier shall only be considered a component of the Contract if and to the extent that the Customer expressly consents in writing to the applicability of such general terms and conditions.
- 1.5 The Deliveries are to be installed in systems for generating, transmitting and distributing electrical energy or in a function that supports this purpose, they must ensure an energy supply that is as troublefree as possible. Deliveries must satisfy this purpose while ensuring safety, availability and life expectancy.
- 1.6 Provided there is no express provision to the contrary in these GTCP, declarations and notices sent by the parties via email also meet the written requirement.

Art. 2 Supplier bids

- 2.1 The Supplier is invited to submit bids to the Customer through requests for quotes or tenders. The bids shall conform with the descriptions and intended purpose. The main bid according to the requirements specifications must be offered in a binding manner. Deviations from the request for quotes or the 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 bid in terms of use, fitness for purpose and safety. Project variants or deviations must be listed separately. When preparing the bid, the Supplier must adhere to the statutory disclosure, notification and advisory obligations.
- 2.2 Upon submitting the bid, the Supplier acknowledges the applicability of these GTCP.
- 2.3 Upon submitting the bid, the Supplier also acknowledges that it is aware of all facts and circumstances relevant to the calculation, creation and execution of the Delivery and all associated components in

accordance with the request for quotes or tender, and it undertakes to comply with them if its bid is accepted.

- 2.4 Bids are prepared at the Supplier's expense. Non-consideration of Supplier's bid does not constitute grounds for asserting claims.
- 2.5 Provided there is no agreement to the contrary, the bid must be for Delivery in accordance with the request for quotes or tender and ready for operation.

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 Provided there is no agreement to the contrary, the Contract enters into force after it has been duly signed by both parties. The components of the Contract and their order of precedence are set out in the written contractual document signed by all parties. In the event of a contradiction, the provisions of the Contract take precedence over the provisions of the schedule of services, the provisions of the requirements specifications and the GTCP.

Art. 4 Construction management

If the Contract designates a construction manager (company entrusted with project planning and/or construction management), it shall represent the Customer with legal effect in all matters, provided the Supplier has not communicated any restrictions in advance.

Art. 5 Delivery in general, execution, subcontracting

- 5.1 The entire Delivery must be carried out in accordance with state of the art technology, properly and professionally 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 in the shortest possible amount of time and with the least effort (use of modular technology, standard parts, etc.). The systems and their components must be brand new and manufactured in accordance with the requirements specifications for the Customer.
- 5.2 The Delivery must meet the applicable regulatory requirements as well as the relevant technical regulations and standards in the intended destination. In particular, the Delivery must comply with the relevant safety requirements and must be installed and operated in accordance with these requirements.
- 5.3 Subcontracting the contractual Delivery and/or significant portions thereof to third parties (in particular subcontractors) requires 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 if there is no agreement to the contrary in individual cases.

Art. 6 Agreements with other suppliers

The Supplier is obliged to learn 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 materials used must conform to the state of the art in terms of environmental sustainability with respect to their subsequent disposal. If, for technical and economical reasons, environmentally hazardous materials must be used, the Customer must be informed of this in writing in advance.
- 7.2 If the Delivery contains environmentally hazardous materials, the Supplier shall warrant to the Customer that it will take back the materials and dispose of them properly. This also applies for any substances and materials that are modified as a result of their use.
- 7.3 Packaging, containers, etc. must be taken back by the Supplier at no charge for disposal.

Art. 8 Delivery deadline, consequences of delay

- 8.1 The specified delivery deadlines are binding. Following the agreed deadline, the Supplier shall be deemed late 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.

Art. 9 Contractual penalty

- 9.1 If a contractual penalty for delayed delivery or for any other reason is agreed in writing, the basis for calculating the contractual penalty shall be the total contractual amount, unless agreed otherwise.
- 9.2 The contractual penalty shall be due on the penalty dates specified in the Contract or when a penalised event occurs.
- 9.3 The Supplier may only argue the failure of the Customer to timely provide services 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.
- 9.4 The Customer reserves the right to assert contractual penalties until the due date for the final payment instalment in accordance with section 25.4. Payment or offsetting of the contractual penalty does not release the Supplier from fulfilling its other contractual obligations.

9.5 The assertion of additional claims for damages remains reserved in addition to the contractual penalty. Contractual penalties that have been incurred shall be used to offset claims for damages.

9.6 In cases of force majeure, such as strikes, war, natural events, government measures or prohibitions, riots, mobilisation, labour conflicts, lockouts, accidents and other significant interruptions of operations, epidemics, terrorist activities, etc., no contractual penalty or compensation for delays shall be due.

Art. 10 Packaging, transport and shipment

- 10.1 The Supplier is responsible for the proper packaging of the Delivery and must provide separate notice of any special requirements regarding the removal of packaging materials or regarding 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 transport (in recorded form) has been given by the Customer. The Customer must issue the approval for transport without delay if all of the necessary factory tests have been passed.
- 10.3 The Customer shall be notified in good time that the Delivery is ready for shipment so the precise shipping arrangements can be agreed.
- 10.4 The Supplier shall be 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 must immediately notify the Customer in writing if it finds damage to the supplied materials.
- 10.5 The organisation of the transport from the factory and the insurance for the Delivery to the destination according to the Contract is included in the scope of delivery (DDP Incoterms 2010). For shipments transported via truck, the Supplier must provide equipment for unloading (crane jib, hydraulic ramp).

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

- 11.1 The Supplier is responsible for the final installation of the Delivery. The installation is carried out under the supervision and responsibility of a head technician provided by the Supplier.
- 11.2 The Customer shall provide appropriate infrastructure in the 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 are included in the bid price. The Customer may provide proven experts for the assembly upon mutual agreement. The bid must include the need for assembly experts in the form of man days, qualifications and time periods. The Supplier shall be authorized to issue instructions to the assembly staff provided by the Customer.
- 11.4 The Supplier is aware and must provide comprehensive information to the employees involved that the assembly work specified in the Contract will be

carried out in a high-voltage installation and that special duty of care and safety measures must therefore be observed. In particular, the Supplier must point out that it is life-threatening if objects or body parts come into the area of plant components that are under current voltage.

- 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 technician and the supervising employee of the Customer must be strictly adhered to.
- 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, release from liability

- 12.1 The Supplier shall obtain all legally required approvals in advance for the personnel designated by it to perform the Contract and shall bear all of the costs to do so.
- 12.2 The Supplier must insure all of the persons deployed by it for assembly, commissioning and test runs against accidents at its own expense.
- 12.3 Furthermore, the Supplier must 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 all legally required fees have been duly paid by it.
- 12.4 The Supplier warrants that it pays its employees a salary for carrying out the Delivery that does not fall below the legally required minimum salary and that this salary is subject to regular social insurance contributions. If there is concrete evidence that the Supplier is not adhering to the provisions of MiLoG (German Minimum Wage Act), the Customer shall be authorised to have compliance with the legal requirements reviewed by a neutral auditor at the Supplier's premises, taking account of data privacy provisions.
- 12.5 If the Supplier uses subcontractors to carry out the Delivery, the Supplier must ensure that these subcontractors also comply with the provisions of MiLoG. The Supplier must 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 for failure to adhere to Section 13 MiLoG, the Supplier shall indemnify and hold the Customer harmless from and against all claims asserted against it upon first request.

Art. 13 Factory tests and approvals during Delivery

- 13.1 After providing advance notice, the Customer shall have 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 shall be recorded in a report to be signed by the Customer and the Supplier.
- 13.3 The Customer reserves the right to be present during some 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, the cost to repeat the tests shall be borne by the Customer if the objection proves to be unjustified. In the case of valid objections, tests conducted at the request of the Supplier or because the Supplier must improve a service deviating from the Contract, the Supplier shall bear all of costs incurred by the Customer and any third party involved for the repetition of the test.
- 13.5 The Customer shall be entitled to refuse the use work components if their inspection reveals deviations from the values specified in the Contract or in 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 knows the Customer's grid conditions as well as its operating and installation conditions, and optimally configures 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, the Supplier must delegate the required number of assembly experts and assistants. If agreed, the specialists provided by the Customer to the Supplier must be made available at the same time.
- 14.2 The assembly work must be carried out efficiently and with as few interruptions as possible, and must

be effectively monitored by the Supplier. The assembly specialists must be familiar with the materials and how to assemble them.

- 14.3 After the work has been completed, there will be an on-site inspection followed by commissioning. The results of the on-site inspection shall be recorded in a report to be signed by the Customer and the Supplier. The specifics of any test run that is agreed 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 will be sent to the Customer in paper form (two copies) as well as electronically. The scope of the documentation should enable the Customer's employees to carry out all of the maintenance work on its own. All documents must be submitted 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 party that created them.
- 15.3 The type and scope of the documentation must comply with the technical 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 Contract.
- 15.5 In its capacity as a specialist, the Supplier must inform the Customer of any specific known dangers involved in handling, using and storing the Delivery or parts thereof prior to the conclusion of the Contract. It is responsible for ensuring that the corresponding relevant hazard information regarding the subject matter of the Contract is clearly presented in the documentation and the training.

Art. 16 Assumption of risk and transfer of risk

The Supplier shall bear the full risk for the entire Delivery until handover of the purchase object or, in the case of services performed, until acceptance in accordance with section 17. The agreement of an additional functional test prior to the end of the warranty period shall not affect this provision.

Art. 17 Acceptance

- 17.1 Compliance with regulatory requirements must be demonstrated no later than prior to acceptance.
- 17.2 The acceptance and, if necessary, additional key processes, tests, decisions, etc. must be recorded together with the corresponding conclusions in reports and other documents 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 If there are defects, the Customer shall set the Supplier an appropriate deadline to remedy 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 prepared and signed by the Customer and the Supplier. The delivery costs and expenses incurred by the Customer as a result of repeating the test shall be borne by the Supplier.
- 17.4 In case of disagreement between the Customer and the Supplier regarding the quality of the Delivery, the presence of defects or the responsibility for such defects, the results of control samples or tests conducted by an independent expert designated by both parties shall be decisive. The costs of such procedures shall be borne by the party who proved to be wrong.
- 17.5 The report of the acceptance of the Delivery shall also set forth the valid date of the commencement of the warranty period if this date is not the same as the date of acceptance.
- 17.6 If, for reasons for which the Supplier is not responsible, the test run cannot be carried out within the period specified in the Contract from the end of the commissioning, the acceptance will generally take place within one month after completion of the final inspections that are possible and necessary before the actual commencement of operations (test run) on the basis of the reports recorded to that point.

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

- 18.1 For 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 Contract or in the technical requirements specifications. The final acceptance of the functional test is carried out immediately before the end of the warranty period.
- 18.2 If there are defects or if the services are not completely fulfilled, the acceptance of the functional test shall be postponed until all of the problems have been remedied. The end of the warranty period is postponed accordingly. The bank guarantee provided to secure the warranty provided by the Supplier must be extended accordingly.
- 18.3 The functional test shall be accepted if the operational functionality of the Delivery as a whole is demonstrated. Once again, a report must be recorded and signed by the Customer and the Supplier. Such approval of the Delivery shall not apply to defects notified 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 agrees to specify separately in its bid the system parts that are subject to normal wear and tear

as well as the parts that would 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 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 deliver suitable replacement parts for the entire life cycle of the system.

Art. 20 Rights arising from defects

- 20.1 The Customer must submit complaints about any defects in writing.
- 20.2 In the event of a defect, the Customer shall have 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 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.

Art. 21 Termination

- 21.1 The parties may terminate the Contract at any time for good cause, in particular 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.
- 21.2 Termination must be made in writing.

Art. 22 Statute of limitation

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

Art. 23 Prices

- 23.1 Prices are quoted in EUR and do not include VAT. Price quotes must include all allowances and discounts.
- 23.2 Provided there is no agreement to the contrary and subject to the option of an amendment in accordance with Sections 650(b) and (c) BGB, the prices are considered fixed prices, post paid to the intended destination (DDP Incoterms 2010) and include all

material and intangible expenses, ancillary costs, delivery expenses and costs for unloading.

- 23.3 If individual services are billed on the basis of time and effort, such services shall be invoiced at the valid rates in accordance with the Contract. Such production work must be invoiced monthly on the basis of the hourly and material reports approved by the Customer.
- 23.4 Additional costs will be accepted only if they arise from project changes or from changes requested retroactively by the Customer. Such changes 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 subsequently will not be above the prices used in the order, taking account of the standard sliding scale price formulas.
- 24.2 The sliding scale formula, including the base index values and source, must be included with the bid.

Art. 25 Payment terms and invoicing

- 25.1 The precise payment terms are defined in the Contract. The following general principles apply.
- 25.2 For a total contractual value of less than EUR 100,000.00, there is no security (advance payment bond, performance bond, warranty retention).
- 25.3 If a security (advance payment bond, performance bond, warranty retention) is agreed for a total contractual value of more than EUR 100,000.00, the Supplier must provide the specified security in the agreed amount.
- 25.4 If partial payments are agreed, the following payment terms apply, subject to provisions to the contrary in the Contract:
- | | |
|----------------|--|
| 1st instalment | 30% of the order amount after the Contract has been signed. |
| 2nd instalment | 30% of the order amount after the factory test has been completed. |
| 3rd instalment | 30% of the order amount after the on-site inspection has been completed.
If the on-site inspection of the system to be carried out by the Customer is delayed, the third instalment must be paid no later than six months after the second instalment is due. |
| 4th instalment | 10% of the order amount as well as any difference according to the total invoice (which shall take account of 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 can only be submitted after the service for which payment is being requested has been provided in full. The document serving as proof that the service has been provided must be included with the invoice (acknowledged delivery note, countersigned 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. Any counterclaims by the Customer may be offset against the invoice. The Supplier can only offset counterclaims if these claims have been determined in a legally binding manner or are uncontested.
- 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 following non-interest-bearing security 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 corresponding costs shall be borne by the Supplier. If an extension of the term of validity becomes necessary (e.g. in the event of a delay, delayed approval, extension of the warranty period, etc.), the extension must be initiated by the Supplier 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 may request the following types of security:
- a. 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.
 - b. 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 will be returned in full or in part after both parties have signed a report recording the provisional acceptance.

- 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 will be returned after the end of the warranty period if no defects in 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 of the order as well as the state of the art technology as of the date of the conclusion of the Contract.
- 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 for Deliveries that are made exclusively in accordance with the Customer's specifications.
- 27.3 The Supplier shall indemnify the Customer upon first request from all liability against third parties and from third-party claims in connection with the Delivery or the use of the Delivery. The obligation to indemnify shall not apply if the claim is based on a grossly negligent or intentional breach of obligation on the part of the Customer.

Art. 28 Insurance

- 28.1 Insurance must be taken out by the Supplier at its own expense. At the Customer's request, the Supplier shall provide the Customer with a copy of the corresponding insurance certificate.
- 28.2 The Supplier is obliged to take out transport insurance (including cover for unloading the Delivery at the unloading point defined in the Contract or in the requirements specifications).
- 28.3 In addition, the Supplier undertakes to take out installation insurance.
- 28.4 For the duration of the performance of the Contract and until the end of the warranty period, the Supplier must have business liability insurance with a cover amount of at least EUR 10,000,000.00 per event for property damage and personal injuries.

Art. 29 Place of performance

The place of performance for the Delivery is the intended destination in accordance with the Contract.

Art. 30 Confidentiality

- 30.1 The parties shall treat all facts and information that they exchange with one another as confidential. This duty of confidentiality also extends to times before the Contract and is concluded and remains in place after the end of the contractual relationship. Unless

there is a written agreement to the contrary, the Seller may not advertise that it is engaged in a collaboration with the Buyer and may not list the Buyer as a reference.

- 30.2 Information received by one of the parties is not deemed to be confidential information if the party can prove
- a. that the information was publicly known when it was made available and this fact is not the result of misconduct on its part;
 - b. 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 obligation of confidentiality towards one of the latter and that it was lawful to disclose this information;
 - c. that it obtained the confidential information on its own and without breaching the above non-disclosure agreement.

30.3 The parties shall procure that their employees, subcontractors, suppliers and other third-party companies adhere and maintain the confidentiality obligations contained herein.

30.4 There shall be no breach of the duty of confidentiality if confidential information is shared with other companies of the BKW Group (with BKW AG as top company).

Art. 31 Applicable law and place of jurisdiction

31.1 This Contract is subject to German law. The 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 are expressly and completely excluded.

31.2 The **exclusive place of jurisdiction** for any and all legal disputes arising from or in connection with the Contract **is Berlin**.