

Procurement of goods in Germany



Art. 1 Applicability

- 1.1 These General Terms & Conditions of Purchase for the procurement of goods (hereafter: "GTCP") are valid for BKW Deutschland GmbH and its subsidiaries that use these GTCP.
- 1.2 These GTCP govern the conclusion, content and performance of contracts for the purchase and/or delivery of movable objects (incl. assembly) between the Seller and BKW Deutschland GmbH (hereafter referred to as "BKW" or the "Buyer"). The GTCP only apply if the Seller is an entrepreneur (Section 14 BGB – German Commercial Code), a legal entity under public law or a special fund under public law.
- 1.3 These GTCP supplement the purchase contracts concluded by BKW and form an integral part thereof. They are a component of the quote request and are included with it. Upon submitting its bid, the Seller expressly acknowledges the applicability of these GTCP. Provided there is no agreement to the contrary, the GTCP that apply when the Buyer 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.
- 1.4 In these GTCP, the object of purchase is hereafter referred to as the "Delivery". The purchase contract and all of its components as well as these GTCP are referred to as the "Contract".
- 1.5 These GTCP apply exclusively. Deviating, conflicting or supplementary general terms and conditions issued by the Seller shall only be considered a component of the Contract if and to the extent that the Buyer expressly consents in writing to the applicability of such general terms and conditions.
- 1.6 If 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. The Delivery must satisfy this purpose while ensuring safety, availability and life expectancy.
- 1.7 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 Bid

- 2.1 The Seller's bid, including any further clarifications that may be necessary, is submitted at no charge, provided there is no agreement to the contrary in the Buyer's request for quotes.
- 2.2 The Seller must list the value added tax (VAT) – if applicable – separately in its bid.
- 2.3 The bid is binding during the period specified in the request for quotes. If there is no corresponding information, the Seller remains bound to its bid for a period of one month.

Art. 3 Conclusion of the Contract

The Contract is concluded in written form. Unless there is a provision to the contrary, it enters into force after it has been duly signed by both parties.

Art. 4 Handover, assembly and testing

- 4.1 The Delivery is made at the place of performance indicated by the Buyer in accordance with Art. 10, upon signature of the delivery note.
- 4.2 If the assembly of the Delivery is also part of the Contract, the Buyer shall grant the Seller access to its premises as is necessary for the installation. The Seller shall comply with the Buyer's operational requirements, in particular its safety and organisational regulations.
- 4.3 The Buyer shall inspect the Delivery as soon as possible within the context of the normal course of business. The Buyer must immediately report defects to the Seller.

Art. 5 Packaging, transport and disposal

- 5.1 The Seller is responsible for the proper packaging of the Delivery and must provide notice of special requirements regarding the removal of packaging materials or special care requirements regarding storage of the materials that are delivered.
- 5.2 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). Any equipment required for unloading shall be provided by the Seller.

- 5.3 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 problematic materials must be used, the Buyer must be informed of this.
- 5.4 If the Delivery contains environmentally hazardous materials, the Seller shall warrant to the Buyer 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.
- 5.5 Packaging, containers, etc. must be taken back by the Seller at no charge for disposal.

Art. 6 Technical documents, training

- 6.1 All operating regulations, drawings and other documents necessary for assembly, maintenance and operation will be sent to the Buyer in paper form (two copies) as well as electronically, provided there is no other agreement to the contrary in the Contract. All documents must be submitted in German only.
- 6.2 In its capacity as a specialist, the Seller must inform the Buyer 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.
- 6.3 If necessary, the Seller shall provide initial training to the Buyer's employees on safe operation and maintenance of the equipment. The scope of this initial training shall be described in more detail in the Contract.

Art. 7 Use of employees for assembly purposes

- 7.1 The Seller shall comply with health and safety regulations for its employees.
- 7.2 With respect to the performance of any agreed additional work, the Seller also warrants that it pays its employees a salary 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 Seller is not adhering to the provisions of MiLoG (German Minimum Wage Act), BKW shall be authorised to have compliance with the legal requirements reviewed by a neutral auditor at the Seller's premises, taking account of data privacy provisions.
- 7.3 If claims are asserted against BKW in connection with the contracted assembly services by the competent authorities and/or the Seller's employees or subcontractors for failure to adhere to Section 13 MiLoG, the Seller shall indemnify and hold BKW harmless from and against all claims asserted against it upon first request.

Art. 8 Remuneration

- 8.1 The Buyer shall pay the Seller the remuneration defined in the Contract for the Delivery.
- 8.2 Subject to the option of an amendment in accordance with Sections 650(b) and (c) BGB, the prices are considered fixed prices.
- 8.3 Furthermore, once the agreed remuneration is paid, all services necessary for the proper performance of the Contract shall be deemed to have been compensated. In particular, the remuneration covers all costs related to delivery and assembly, documentation and training costs, expenses, packaging, transport, insurance and unloading costs, any licensing fees as well as public levies (e.g. VAT, prepaid disposal fees, customs duties).
- 8.4 If several BKW companies utilise the Seller's services, the total turnover shall be used for calculating discounts.

Art. 9 Invoicing and payment

- 9.1 Payments are only made against an invoice. The Seller shall submit an invoice for the Delivery addressed to the Buyer after the transfer of risk. 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.). The invoices must include the reference information for the order and/or the Contract as well as information about the invoice type (partial, final invoice, etc.). In addition, VAT, if applicable, must be included as a separate item detailing the amount and percentage.
- 9.2 The contractually agreed payment terms and payment deadlines apply. If no payment deadline is specified in the Contract, payment is due within 30 days, net. 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 | 70% of the order amount as well as the difference in accordance with the total invoice (which shall take account of any penalties, additional costs, etc.) after the transfer of benefits and risk. |
- 9.3 The relevant date for calculating payment deadlines is the date on which the correct invoice is received by the Buyer.
- 9.4 If advance payments are agreed, the Buyer may demand a security from the Seller. The details of such securities are agreed separately.
- 9.5 Any counterclaims by the Buyer may be offset against the invoice.

Art. 10 Place of performance and transfer of risk

- 10.1 The Buyer designates the place of performance. Provided there is no agreement to the contrary, the place of delivery and/or assembly is considered the place of performance.
- 10.2 The risk is transferred to the Buyer upon handover of the Delivery in the place of performance. If it is agreed that the Seller will carry out the assembly, the handover will take place after the assembly.

Art. 11 Default

- 11.1 In the event of failure to meet binding deadlines (fixed dates), the Seller shall immediately be in default; in all other cases, this shall be the case if the Seller has received a reminder notice and an appropriate extension of the deadline has been granted.
- 11.2 The Seller shall be liable for all damages arising from failure to adhere to the deadlines if it cannot prove that it is not responsible for the delay.
- 11.3 If the Seller is in default, it shall owe a contractual penalty if it cannot prove that it is not responsible for the delay. The contractual penalty shall be 0.3% for each day of the delay, up to a maximum of 5% of the total remuneration. The contractual penalty shall also be due even if the Delivery can be accepted without reservation despite the delay. Payment of the contractual penalty does not release the Seller from the fulfilment of its contractual obligations. However, any contractual penalties paid by the Seller shall be offset claims for damages.

Art. 12 Warranty

- 12.1 The Seller warrants to the Buyer that the Delivery has the agreed and promised features required for its intended use and that it meets the relevant statutory requirements. The warranty period is three years from the handover of the Delivery, provided there is no other warranty period or further guarantee specified in the Contract.
- 12.2 If there is a defect, the Buyer may initially choose between repair of the defects and a replacement delivery of defectfree goods.
- 12.3 If the Buyer chooses repair of the defects or a replacement delivery, the Seller must remedy the defects within a reasonable deadline set for it. If the defect can only be remedied through a partial new production, the right to repair shall also include the right to new production. The costs incurred by the Seller for the assessment and remedial action (including any removal and installation costs) shall be borne by it, even if it is determined that there are no actual defects. The Buyer's liability for compensation in the event of the unjustified requests for the remedy of defects remains reserved; however, it shall only be liable if it knew or, as a result of gross negligence, did not know that there were no defects.
- 12.4 If the Seller does not carry out the requested repair or replacement or does not do so successfully, the Buyer may, at its discretion, reduce the value of remuneration accordingly, carry out the necessary

measures itself at the expense and risk of the Seller or have them carried out by a third party at the expense and risk of the Seller or, in the event of serious defects, withdraw from the Contract.

Art. 13 Liability

- 13.1 The Seller shall be liable without limitation for damages resulting from injury to life, body or health for which it is responsible within the scope of statutory provisions. The same applies for other damages caused by an intentional or grossly negligent breach of duty.
- 13.2 In addition, the Seller shall be liable for property damage for which it is responsible arising from or in connection with the Contract, or its failure to properly perform the Contract, in an amount of EUR 1,000,000.00 (one million euros). If the order volume according to the Contract is more than half a million euros, the Seller's liability shall be twice the order value, provided there is no other liability limit agreed in the Contract.
- 13.3 The Seller shall be liable for any damage caused by its actions or as a result of defects in the Delivery, including any consequential damages, unless it can prove that it is not responsible for such damages. The Seller shall be liable for agents of all types, in particular for subcontractors and their employees, in the same way as for its own conduct. Claims for product liability remain unaffected.

Art. 14 Confidentiality

- 14.1 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.
- 14.2 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 obligation of confidentiality towards one of the latter and that it was lawful to disclose this information;
 - that it obtained the confidential information on its own and without breaching the above non-disclosure agreement.
- 14.3 The parties shall procure that their employees, subcontractors, suppliers and other third-party companies adhere and maintain the confidentiality obligations contained herein.

14.4 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. 15 Data protection and data security

The Seller undertakes to adhere to all relevant data protection regulations. It agrees to take all economically reasonable and technically and organisationally feasible measures to ensure that all data accumulated while performing the Contract is effectively protected against unauthorised access by third parties.

Art. 16 Amendments and additions

- 16.1 Amendments of and additions to the Contract must be made in writing. This also applies to the amendment of this written form clause.
- 16.2 In the event of contradictions between the Contract,

the GTCP and the bid, the provisions of the Contract shall take precedence over those of the GTCP and the latter shall take precedence over the provisions of the bid.

Art. 17 Assignment and pledge of claims

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

Art. 18 Applicable law and place of jurisdiction

- 18.1 The Contract is subject to German law to the exclusion of international private law, in particular the United Nations Convention on Contracts for the International Sale of Goods.
- 18.2 The exclusive place of jurisdiction for any and all legal disputes arising from or in connection with the Contract is Berlin.