

# Supply of electrical energy outside of basic supply



## Part 1 General Terms and Conditions

### Art.1 Scope

These General Terms and Conditions (GTC) apply to the supply of electrical energy by BKW Energie AG (hereinafter referred to as "BKW") to customers (hereinafter referred to as "Customer") outside of basic supply.

### Art.2 Duration and termination of the Power Supply Contract

- 2.1 The duration of the Power Supply Contract is defined in the contract document (delivery period).
- 2.2 If the Customer is in breach of their obligations, BKW shall be entitled to terminate the Power Supply Contract in writing subsequent to issuing a written reminder and allowing the Customer a reasonable period of time to properly fulfil their obligations.
- 2.3 If it is evident from the circumstances or the Customer's conduct that they will not comply with a request to remedy any failure or will be unable to fulfil their obligations, the Power Supply Contract may be terminated in writing with immediate effect.
- 2.4 The Customer is entitled to terminate the energy supply contract prematurely subject to the deadlines set out in Art. 3.1 and Art. 3.3. The termination must be declared in writing. If the customer fails to notify BKW of premature termination in good time, BKW reserves the right to assert claims for damages.
- 2.5 In the event of the Customer's insolvency, the Power Supply Contract shall terminate without notice. The Customer will be deemed to be insolvent if they are declared 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.
- 2.6 In the event of early termination of the Power Supply Contract or if the Customer does not enter into the Power Supply Contract, all relevant and outstanding obligations, particularly those concerning the delivery of remaining energy quantities by BKW, shall be mutually cancelled. The Customer agrees to pay a termination fee to BKW if the following condition is met. The termination fee is determined by BKW as

- follows: The remaining energy quantities according to the contract term are evaluated using the consumption profile that was decisive for the procurement of the contractually agreed quantity of energy when the contract was concluded. The valuation is at the discretion of BKW. If the valuation is lower than the price defined in the Power Supply Contract, the Customer shall pay BKW the corresponding difference. The Customer may request that a valuation be obtained from a maximum of two independent market participants. Of all the evaluations received including BKW's, the one most favourable for the customer will apply. If no valuations are received from independent market participants, BKW's valuation will apply.
- 2.7 The amount to be paid by the Customer in the event of early termination consists of the outstanding claims at the time of termination and the sum resulting from the valuation of the outstanding electricity quantities. The Customer shall pay the final amount in accordance with the provisions of Art. 5.
  - 2.8 If, before the start of the power supply, the Customer declares that they do not wish to adhere to the contract or if it can be inferred from their behaviour that they do not wish to adhere to the contract, the provisions on early termination shall apply mutatis mutandis.
  - 2.9 BKW reserves the right to assert additional claims for damages.

### Art.3 Exchange of information and duty of disclosure

- 3.1 The Customer shall inform BKW immediately of any changes to their master data, stating the date on which the change took effect. The Customer shall inform BKW immediately of any events, planned or unplanned, that may result in a significant change in the energy supply (e.g. changes in production due to company holidays, reduced hours, inspection or maintenance, energy conversion, structural extensions or downsizing, installation of energy production systems, heat pumps, battery storage, charging stations, etc.).
- 3.2 If the Customer has agreed special arrangements with the supplying grid operator (e.g. as part of a grid usage contract), these must be communicated at the point of concluding the supply contract.

- 3.3 If consumption points are no longer active as a result of permanent closure (e.g. decommissioning or discontinuation of use) or a change of location, or if the Customer joins a self-consumption group (ZEV) with its consumption point or participates in a local electricity community (LEG), this must be communicated with a minimum notice period of four (4) weeks. The provisions on early termination in accordance with Art. 2.6 shall apply mutatis mutandis.
- 3.4 BKW shall be entitled to disclose consumption, billing and contract information to third parties, particularly for the recording, accounting and billing, provided that this is necessary to facilitate the technical and commercial execution of the power supply contract.

#### **Art. 4 Data protection**

- 4.1 BKW collects data (e.g. customer and measurement data) that is necessary for the provision of the contractual services, particularly for the execution and maintenance of its relationship with the Customer, as well as for the security of its operations and infrastructure.
- 4.2 BKW stores and processes this data to carry out and develop the contractual services and to create new offers and offers relating to these services.
- 4.3 The Customer hereby agrees that the data in this contract, as well as additional data available at BKW or from third parties may be used within the BKW Group for analysing the services provided (customer profiles), for personalised advertising campaigns, for customer contacts (e.g. recall actions) and for the development and structuring of additional energy services in the deregulated market. The BKW Group includes, for example: BKW Energie AG, the companies of the BKW Building Solutions Group, the BKW Infra Services Group and the BKW Engineering Group, as well as companies owned by BKW both in Switzerland and abroad. An overview of BKW Group companies can be found on the Group's website at [www.bkw.ch](http://www.bkw.ch).
- 4.4 BKW is entitled to engage third parties and to disclose the necessary data to these third parties. Data may also be transmitted abroad in this context.
- 4.5 BKW and any third parties must always comply with the applicable legislation, especially data protection laws. They shall protect the data of the Customer through appropriate measures and treat it as confidential.

#### **Art. 5 Invoicing and payment**

- 5.1 Invoices shall be issued to the Customer at regular intervals set by BKW.
- 5.2 The amount invoiced shall be payable in full within 30 days of the invoice date. Invoices may only be paid in instalments with the express consent of BKW.
- 5.3 After the final date for payment, the Customer shall be charged any additional costs incurred as result of late payment (postage, dunning fee, default interest, default charges, debt collection expenses, interest on late payments, connection and disconnection, etc).

- 5.4 In the event of persistent non-payment, or if BKW has legitimate reasons to doubt the Customer's ability or willingness to discharge their payment obligations, BKW may require the Customer to provide a reasonable advance payment or security or may invoice the Customer on a weekly basis. Any resulting costs shall be borne by the Customer.
- 5.5 The Customer shall not be entitled to offset any claims against amounts invoiced by BKW.
- 5.6 In case of disputes regarding energy metering, the Customer shall not be entitled to withhold payment of any amounts invoiced or advance payments that may be due to BKW.
- 5.7 Errors and mistakes relating to invoices and payments may be corrected within 5 years.
- 5.8 For any credit owed to the Customer by BKW, BKW shall issue a billing.

## **Part 2 Energy Supply**

#### **Art. 6 Basis of the legal relationship**

- 6.1 The Customer is responsible for establishing the technical and commercial requirements necessary for the supply of energy.
- 6.2 The Customer may only use the energy for the agreed purpose. In particular, the Customer may not transfer energy to third parties, except to subtenants of residential units, unless specifically authorised to do so by BKW. If BKW agrees that energy may be transferred to third parties, no surcharges may be added to the rates charged by BKW.
- 6.3 In particular, the Customer is not permitted to use energy supplied by BKW for speculative purposes or for purposes of economic optimisation.

#### **Art. 7 Scope of energy supply**

- 7.1 BKW is solely responsible for the commercial supply of energy.
- 7.2 BKW shall supply energy to the Customer provided that the Customer has successfully exercised their right to access the grid and has entered into valid grid connection and grid usage contracts with the distribution system operator.
- 7.3 Unless otherwise specified in the Power Supply Contract, BKW shall transfer the amount of energy owed by scheduling it to the balance group to which the Customer belongs and indicating the metering point of the consumption point specified in the Power Supply Contract.
- 7.4 The relevant grid operator is responsible for the physical delivery of energy. If physical delivery is interrupted due to an event of force majeure, including but not limited to network faults, the Customer's obligation to take delivery of the supply shall be suspended, i.e. the Customer shall be entitled to procure the energy required from third parties and shall not owe BKW any payment for energy not supplied. However, BKW shall have the right to supply any unused energy to third parties.

### **Art. 8 Metering of energy supply**

For contracts related to the supply of energy to a metering point, the following applies to metering and data clearing

- 8.1 Energy consumption is measured by the distribution system operator at the metering points. The consumption data reported to BKW by the distribution system operator is decisive for calculating the energy consumption and thus for the invoice amount that the Customer is required to pay.
- 8.2 In certain cases, the energy consumption may be determined on a flat-rate basis.
- 8.3 The metering of energy, including the meters and other equipment required for this purpose (ripple control systems), the recording and supply of consumption data (metering data) and the accuracy of such data (data clearing) are subject to the applicable terms and conditions of the relevant distribution system operator. BKW reserves the right to invoice any retrospective corrections made by the distribution system operator as part of the provision of the measurement data to the Customer.

### **Art. 9 Suspension of energy supply**

- 9.1 BKW shall be entitled to suspend the supply of energy subsequent to issuing a payment reminder and giving the Customer written notice of the time of suspension, in particular if the Customer:
  - a. fails to meet their payment obligations to BKW or expressly refuses to pay future invoices, or where there is no guarantee that the Customer will pay future invoices,
  - b. fails to provide security or make any advance payment that is required within the specified time period,
  - c. breaches any material provisions of these Terms and Conditions.
- 9.2 If the Customer, or the Customer's agent, deliberately circumvents the pricing terms, the Customer shall pay in full any amounts undercharged plus interest and compensation for the resulting inconvenience and costs incurred. In such cases, BKW reserves the right to file a criminal complaint.
- 9.3 Suspension of the energy supply by BKW does not relieve the Customer of their payment obligations or other liabilities.
- 9.4 The Customer shall not be entitled to any form of compensation for the legitimate suspension of the energy supply.

### **Art. 10 Liability**

- 10.1 Liability shall be governed by applicable mandatory provisions of law.
- 10.2 Any additional liability is excluded, unless expressly agreed otherwise in the contract. In particular, there shall be no entitlement to compensation for indirect damages or consequential damage, such as lost profits, lost data, etc. or for damages arising from interruptions to or restrictions on the supply of energy, provided that there was no grossly negligent or intentional conduct.

### **Art. 11 Force majeure**

- 11.1 If a party is prevented, in whole or in part, from fulfilling its obligations under this contract due to force majeure, the contract shall remain in effect. The affected party is released from liability for non-fulfilment of its contractual obligations to the extent and for the duration that the force majeure event persists, provided that:
  - a. the affected party promptly notifies the other party of the occurrence and detailed circumstances of the force majeure event, and
  - b. the affected party takes all reasonable measures to remedy the non-fulfilment.
- 11.2 For the purposes of this contract, force majeure events includes, but is not limited to, exceptional, unavoidable operational failure or measures imposed by authorities that affect the generation, supply and/ or transmission of electricity, disruption in national or international interconnected operation, official intervention, exceptional weather conditions (extreme drought, exceptional flooding or exceptionally low water levels), earthquakes, landslides, avalanches, general strikes, sabotage, or similar events.
- 11.3 In the aforementioned cases, the contracting parties are released from their duty to fulfil their contractual obligations for the duration of the event. Circumstances of any kind that BKW cannot reasonably be expected to remedy also qualify as force majeure. If BKW uses distribution networks or third-party facilities to fulfil its contractual obligations, an event concerning such distribution networks or facilities that would constitute force majeure under Section 11.2 shall also be deemed to be force majeure for the benefit of BKW under this contract.

### **Art. 12 Statutory levies and taxes**

- 12.1 All agreed prices and fees are exclusive of taxes, levies, or any charges arising from recommendations and guidelines from industry associations and/or the national grid company. The paying party is responsible for any applicable taxes, levies, and other charges (VAT, etc.) for this supply and service. The same applies to costs arising from statutory support measures for renewable energie.
- 12.2 Additional taxes, levies, charges and general fees of any kind that may be imposed on electricity supplies in the future (e.g. CO<sub>2</sub> levy, electricity tax, etc.) are the sole responsibility of the paying party.

### **Art. 13 Cost-effectiveness clause**

- 13.1 In the event of changes to statutory, regulatory or industry-specific framework conditions (e.g. price mechanisms from Swissgrid balance energy and EPEX SPOT, Swissgrid clearing fees, etc.) that affect the price of electrical energy or are related to its delivery, BKW may adjust prices with a notice period of three months in proportion to the impact of the changes. BKW shall inform the Customer of changes in an appropriate manner. Art. 15 applies accordingly.
- 13.2 Should significant changes occur in the economic and/ or technical circumstances that were essential to

the conclusion of the energy supply agreement or if circumstances arise during the term of the energy supply agreement, that could not have been foreseen or taken into account at the time of conclusion but which are significant for the economic and/or technical aspects of the agreement, the parties shall adjust this agreement in accordance with the principles of good faith

## Part 3 Final provisions

### Art. 14 Assignment of the legal relationship

- 14.1 The parties agree to transfer all rights and obligations from this Power Supply Contract to any legal successors. The parties shall be jointly liable for any damages resulting from a breach of this obligation.
- 14.2 Legal succession is only possible with the consent of the other party. Consent may only be refused if there is a valid reason justifying the rejection of the third party, namely if the third party does not provide adequate assurance of the proper fulfilment of this Power Supply Contract.

- 14.3 The transfer to group companies of BKW does not require the consent of the other 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.

### Art. 15 Amendments

BKW reserves the right to amend the Terms and Conditions at any time. BKW shall inform the Customer of any changes to the Terms and Conditions in advance and in a suitable manner. If the changes result in a financial disadvantage to the Customer, they may reject the changes, providing a written statement, and terminate the Power Supply Contract early and extraordinarily as of the date the changes take effect. Art. 2.6 shall apply. If the Customer fails to do so, they accept the changes.

### Art. 16 Applicable law, disputes

- 16.1 The Power Supply Contract is subject to Swiss law.
- 16.2 **The place of exclusive jurisdiction** for disputes in connection with the Agreement is Bern.