

Services



Art. 1 Scope and validity

- 1.1 These General Terms & Conditions (hereinafter referred to as «GTC») govern the conclusion, content and execution of contracts for the provision of services (hereinafter referred to as the 'Contract') in particular in the areas of management services, consulting, support and training by BKW Group companies in Switzerland.
- 1.2 The parties are referred to as 'Agent' and the 'Client' in the following.
- 1.3 These GTC apply unless a deviating provision applies for a specific service or specific groups of clients.
- 1.4 Provided there is no express provision to the contrary in these GTC, declarations and notices sent by the parties by email also meet the written requirement.

Art. 2 Offer

- 2.1 Any offer submitted by the Agent to Client shall remain binding during the time period stated by the Agent. If an offer has no expiry date it shall remain binding for BKW for 30 days.
- 2.2 Additional requirements of the Client which are not included in an individual offer, or which are inserted after the conclusion of the Contract, must be agreed separately.

Art. 3 Conclusion of the Contract

- 3.1 The Contract may be concluded either verbally or in writing.
- 3.2 Verbal contracts shall be confirmed in writing in all cases.
- 3.3 Unless otherwise stated, written contracts shall take effect with the legally binding signature of the Contract by all Parties.
- 3.4 The components of the Contract and their order of precedence shall be determined in accordance with the contractual provisions.

Art. 4 Services provided by the Agent

- 4.1 The purpose and content of the services shall be specified in the Contract or in the product specifications or the offer and in these General Terms and Conditions.
- 4.2 The Agent undertakes to execute the Contract professionally, carefully and in good faith.

Art. 5 Changes in services

- 5.1 The Parties may agree changes in the services at any time.
- 5.2 Changes in services must be documented in writing either by adapting the written Contract or by written confirmation of the verbally agreed change.
- 5.3 If the Parties cannot agree on a change in services, the Contract shall continue unchanged.

Art. 6 Online Customer Centre

- 6.1 In the Contract, the Agent can provide for its Online Customer Centre being used for the administration of Contract designation and, to some extent, the provision of services. The Client must have a suitable internet connection and a current web browser for this. Access to the customer portal and use of it is governed in the 'Online Customer Centre' Terms of Use of the Agent. If the Client does not have access to the Online Customer Centre, the Agent will set this up.
- 6.2 The Client is responsible for managing access rights in the Online Customer Centre. He shall notify the Agent the persons responsible for managing access rights (administrators). The administrators are recorded in the annex of the respective service contract. The administrators can grant and revoke access rights for any other person (user) in the administrator portal. The number of users is unlimited.
- 6.3 The Client is responsible for checking users, issuing their own terms of use for users and ensuring compliance with the terms of use. The Agent does not check access rights granted/revoked by administrators. The Client shall ensure that unauthorised persons do not have access to the Online Customer Centre, and the Client is responsible for protecting against access by unauthorised persons, as well as protecting against unauthorised use, misuse and data disclosure.

Art. 7 Procurement of third-party services

- 7.1 The Agent can mediate contracts between the Client and third parties for their own products and services.
- 7.2 Each contract mediated by the Agent must be concluded between the Client and the third party separately. The resulting contracts each have their own independent legal character and legal status. The Agent, the Client and the respective third party do not form a common legal structure in the context of an unregistered partnership or other legal community. The Agent is not a party to the contract concluded between the Client and the third party.

Art. 8 Client's responsibilities

- 8.1 The Client shall provide the Agent with all information and other input needed for the due performance of BKW's contractual obligations in a timely manner. The Client shall also notify the Agent immediately of any issues that may make the work of the Agent more difficult.
- 8.2 The Client shall carry out all services and deliveries owed under the Contract punctually and to the necessary standard of quality. Should the Client fail to do so for reasons for which the Agent is not responsible, the Client must reimburse the Agent with the resulting additional costs; the Agent must provide the Client with evidence of such costs.
- 8.3 If necessary, the Client shall grant the Agent the necessary access to its premises and supply it with the requisite facilities and resources as needed.
- 8.4 The Client shall ensure that any tools and materials not supplied by the Agent comply with statutory provisions.

Art. 9 Deadlines

- 9.1 Deadlines are only binding if expressly agreed as such by the contracting parties to the agreement in the Contract.
- 9.2 Should the Agent fail to meet binding deadlines, it will be in default automatically. Otherwise, the Client must provide BKW with notice that it is in default by sending it a written reminder specifying a reasonable subsequent deadline.
- 9.3 A deadline is considered met if proper operation is possible and not impeded, even if follow-up work or other services are still necessary.
- 9.4 If a service cannot be rendered within the agreed deadline due to delays for which the Agent is not responsible, the Agent is entitled to revise the schedule and postpone the contractually agreed deadlines.
- 9.5 In particular, the Agent cannot be held responsible for delays caused by force majeure, official measures, unforeseen ground conditions, environmental incidents or delays resulting from a dependence on third parties.
- 9.6 The Agent shall notify the Client in writing as soon as it becomes aware of any delay.

Art. 10 Involvement of third parties

The Agent shall be entitled to involve third parties for the provision of the services. The Agent shall be liable for the due diligence in the selection and instruction of the third party and shall be responsible for its services as if they were its own.

Art. 11 Use of material provided by the Agent

- 11.1 The Client may only use the material provided by the Agent in connection with the Contract (IT solutions, other tools, sample documents etc.) for its own purposes.
- 11.2 Use of such material by third parties or any transfer to third parties is only permitted with the written consent of the Agent.

Art. 12 Support

The Agent shall provide the necessary support for administrative and technical questions or problems relating to the use of management services and shall provide the Client with appropriate access channels.

Art. 13 Restriction of services

- 13.1 The Agent is entitled to provide services in a modified form, to a limited extent or not at all if:
- a. operational interruptions such as repairs, maintenance and expansion work are required for the Agent's Online Customer Centre; or
 - b. measures ordered by officials must be taken.
- 13.2 If the Agent cannot fully provide services for the reasons mentioned, the Client is still required to pay the contractual price agreed. The Client 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 interrupted services.
- 13.3 Furthermore, the Agent is entitled to stop providing services following a previous reminder and written notification if the Client:
- a. does not meet their payment obligations for the services or there is no guarantee that future invoices will be paid; or
 - b. commits a serious breach of any material provisions of the agreement.
- 13.4 In the event that the Agent suspends its services, the Client is not released from their payment obligations with respect to issued invoices or their obligation to discharge other liabilities to the Agent. The Client is not entitled to any kind of compensation from the lawful restriction or discontinuation of the service by the Agent.
- 13.5 Otherwise, the availability provisions of the Agent's 'Online Customer Centre' Terms of Use apply.

Art. 14 Remuneration

- 14.1 Unless otherwise agreed in the Contract, prices and charges of the Agent apply as set forth in the offer or the product specifications valid at the time of the service provision (available at www.bkw.ch). In the event of contradictions between the offer and the pricing in the product specifications, the offer shall take precedence.
- 14.2 Unless agreed otherwise in the offer, additional costs such as costs for materials, travel, food and accommodation, transportation or third-party services shall be invoiced to the Client separately.
- 14.3 All prices are in CHF and do not include VAT. VAT will be invoiced additionally at the applicable rate.

Art. 15 Payment conditions

- 15.1 Unless otherwise agreed the Agent shall invoice the owed remuneration monthly. The payment period shall be 30 days net from the invoice date.
- 15.2 Partial payments, payment plans, etc. can be agreed for larger orders or orders covering an extended period. The individual payment deadlines and instalments are set out in the Contract.
- 15.3 The Client may neither withhold nor reduce payments. Payments must also be made if a service has been delayed or becomes impossible for reasons not attributable to the Agent.
- 15.4 If the Client does not comply with its payment obligations by the due date it shall immediately fall into default and the statutory default interest rate shall apply on all outstanding payments.

Art. 16 Intellectual property rights

- 16.1 All information elements and content made available to the Client are protected by intellectual property rights (copyright law, patent law, design law, etc.). They belong exclusively to the Agent or BKW Group companies which take all measures to safeguard these rights. Third-party rights remain reserved.
- 16.2 Use of and access to the Agent's online platform 'Business' does not grant any rights to the further use of elements.
- 16.3 Unless otherwise agreed, the information elements and content may only be used within the company for the specified purpose. They may not be shared with third parties for commercial purposes. If elements are reproduced in any way, either in whole or in part, the Agent must be explicitly named. The Agent's explicit consent must be given before any republication.

Art. 17 Liability

- 17.1 The Agent shall be liable for the true and diligent performance of its services.
- 17.2 To the extent permitted by law, the liability of the Agent shall be:
- a. limited to 100% of the owed remuneration, or in the case of periodically recurring remuneration amounts, to 100% of the remuneration to be paid annually.
 - b. excluded for any indirect or consequential losses such as loss of profit, unrealised savings and claims of third parties, consequential losses from defects or losses as a result of loss of data (with the exception of the costs of data recovery).
- 17.3 The Agent accepts no liability for damage resulting from the improper use of the online platform by the Client or third parties, particularly from a breach of the duty of care.
- 17.4 The Agent accepts no liability for the completeness, lawfulness, quality and topicality of the data and information it provides (e.g. files, documents, evaluations submitted, recommendations, etc.). the Agent does not provide any guarantee that the data or information is made available without interruption and is fully available.
- 17.5 Furthermore, the Agent accepts no liability for any damage that arises as a result of the data or information it has made available.
- 17.6 The Agent's liability is also excluded
- a. for damage suffered 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; or
 - b. for indirect or consequential losses such as lost profit, unrealised savings, claims of third parties, consequential losses from defects or losses as a result of loss of data (with the exception of the costs of data recovery).
- 17.7 Limitation of liability and exclusion of liability shall apply to contractual, non-contractual and quasi-contractual claims.
- 17.8 This exclusion of liability shall not apply to personal injury or property damages due to gross negligence or wilful misconduct.
- 17.9 In the event of an alleged liability of the Agent the Client shall report the claim to the Agent immediately, otherwise a waiver of compensation shall be assumed.

Art. 18 Force Majeure

The Parties shall not be liable for the non-fulfilment of the Contract due to incidents or circumstances of force majeure for which the Parties are not responsible, provided that the affected Party reports the occurrence of an event of force majeure immediately and makes every reasonable effort to fulfil the contract.

Art. 19 Confidentiality

- 19.1 Without the consent of the other party, information and facts relating to the Contract or obtained from one party in the course of providing services may not be used for purposes other than the performance of the Contract and may not be disclosed to any third party. BKW Group companies are not third parties in accordance with Art. 22.3.
- 19.2 The parties are obliged to ensure that their employees and third parties involved (e.g. consultants, service providers, etc.) meet the confidentiality obligations.
- 19.3 The duty to maintain confidentiality continues after the end of the Contract.
- 19.4 Unless agreed otherwise, all documents, data, work equipment and know-how transferred by the Agent to the Client for the purposes of executing the Contract shall remain the sole property of the Agent. The Client may only use them for its own purposes. Any other use (e.g. duplication, utilisation for third parties or disclosure to third parties) requires the written consent of the Agent. Data that concerns the Contract and is stored on the computers of the Client must be deleted completely after the termination of the Contract. At the request of the Agent, the documents, data and work equipment must be returned, deleted or destroyed immediately.

Art. 20 Data protection

- 20.1 The Agent collects data (e.g. client and measurement data) necessary for the performance of the contractual services, including but not limited to the execution and maintenance of the relationship with the Client and the security of its operations and infrastructure.
- 20.2 The Customer hereby agrees that all data related to this contract as well as supplemental data available within the Agent or from third parties may be used within the BKW Group for analysis of the services provided (customer profile), for personalised advertising campaigns, for customer contacts (e.g. recalls) and for the development and structuring of products and services of BKW Group. An overview of BKW Group companies and their activities can be found on the Group's home page at www.bkw.ch. **The Customer shall have the right to withdraw his consent at any time.**

- 20.3 The Agent is entitled to engage third parties and to disclose the necessary data to those third parties. In this context, transmission of collected data abroad may also be possible.
- 20.4 The Agent and any third parties must always comply with relevant legislation, including but not limited to data protection regulations. They shall take suitable steps to protect client data and treat it as confidential.

Art. 21 Assignment prohibition

The Client may not assign claims arising from the Contract or from these General Terms and Conditions to third parties without the consent of the Agent.

Art. 22 Succession in title

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

Art. 23 Amendments

- 23.1 The Agent reserves the right to adjust prices, individual components of services (e.g. scope and characteristics of features, etc.) and the terms and conditions of the offer at any time. The Client will be notified of any changes that have a significant impact on the services provided. If the changes result in a financial disadvantage for the Client, they may reject the change and terminate the agreement as at the date when the change enters into effect. **If they fail to do this, the Client accepts the changes.**
- 23.2 The Agent reserves the right to amend these GTC, in whole or in part, at any time. The Agent shall inform the Client of changes in an appropriate manner. If the changes result in a disadvantage for the Client, they may terminate the Contract with the Agent early without any financial consequences up until the change comes into effect. **If they fail to do this, the Client accepts the changes for all services covered by these GTC that they obtain from the Agent.**

Art. 24 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 which the contracting parties would have agreed with due consideration of their legal and economic interests, and the meaning and purpose of the Contract with respect to such a provision or loophole.

Art. 25 Applicable law and jurisdiction

Swiss substantive law shall apply, excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG). The **sole place of jurisdiction** for any disputes arising from the Contract **shall be the registered office of the Agent.**