



# Purchase of equipment and technical systems



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**Art. 1 Scope, Purpose**

- 1.1 These General Terms and Conditions shall apply to BKW Energie AG and its subsidiaries which use them.
- 1.2 These General Terms and Conditions shall apply to purchase of equipment and technical systems. They supplement the contracts of sale and for work and services concluded by BKW Energie AG or its subsidiaries and form an integral part thereof.
- 1.3 In these General Terms and Conditions the contractor (in the case of a contract for work and services) and the seller (in the case of a contract of sale) shall be referred to as the "Supplier" and the customer (in the case of a contract for labour and material) and the purchaser (in the case of a contract of sale) shall be referred to as the "Customer". The work to be performed or the purchase object shall be referred to as the "Deliverable". The contract for work and services and the contract of sale together with all their parts and these General Terms and Conditions shall be referred to as the "Contract".
- 1.4 The Deliverables shall be integrated into equipment for the production, transmission and distribution of electrical energy or a supporting function serving this purpose and shall ensure that the supply of energy is as undisrupted as possible. The safety, availability and expected service life of the Deliverables shall be designed in accordance with this purpose.
- 1.5 The safety requirements for a nuclear power plant shall also be taken into consideration for Deliverables for the Mühleberg Nuclear Power Plant. The Customer will notify the Supplier of said requirements in writing.
- 1.6 The provisions in Appendix "Special provisions for Deliverables in the Mühleberg Nuclear Power Plant" of these General Terms and Conditions shall also apply to the Mühleberg Nuclear Power Plant. In the event of any discrepancy between the General Terms and Conditions and Appendix, the provisions in Appendix shall take precedence over the provisions of the General Terms and Conditions.
- 2.3 Upon submission of the quotation, the bidder also acknowledges that it is aware of all the facts and circumstances of relevance for the calculation, construction and execution of the Deliverable and accessories in accordance with the request for quotations or the invitation to tender and undertakes to take them into account if the order is placed with it.
- 2.4 The quotations shall be prepared at the bidder's expense. No claims may be asserted if quotations are not taken into consideration.
- 2.5 Unless otherwise agreed, the quotation shall apply to the Deliverable, ready for operation, specified in accordance with the request to submit a quotation or the invitation to tender.

**Art. 2 Quotations**

- 2.1 The Supplier is invited by the request for quotations or the invitation to tender to submit a quotation to the Customer. The Supplier's quotation shall be based on the descriptions and the intended purpose. The main quotation based on the specifications must be offered. Deviations from the quotation request shall be clearly mentioned and justified. The bidder may also offer variants (contractor variants) if, in its opinion, they are advantageous for the Customer. Variants shall be consistent with the main quotation in terms of use, suitability for use and safety. Project variants or deviations are to be listed separately. The Supplier acknowledges its duty to disclose such changes.
- 2.2 Upon submission of the quotation, the bidder acknowledges these General Terms and Conditions and undertakes to acknowledge all provisions if the order is placed with it.

**Art. 3 Ordering, conclusion of contract**

- 3.1 The contract shall be concluded in writing. Subject to derogation, it shall come into force when it is signed by both parties with binding effect. The components of the contract and their order of precedence shall be determined in accordance with the written contractual document, signed by all parties.
- 3.2 Without prejudice to any explicit derogation in the contract the General Terms and Conditions of the Supplier **shall not** be a component of the contract. The statutory provisions of the Swiss Code of Obligations (OR) shall also apply.

**Art. 4 Construction management**

If a project manager is named in the contract (a project management and/or construction management company), this company shall legally represent the Customer in all matters, unless the Supplier has been notified of restrictions in writing.

**Art. 5 The Deliverable in general, execution, subcontracting**

- 5.1 The entire Deliverable must be executed properly and professionally in accordance with established principles and using the most appropriate resources, products and materials in such a way that the result fulfils the agreed commercial and legal conditions and the intended purpose properly and efficiently. The Deliverable shall be designed and constructed in such a way that revisions can be made within the shortest possible time and with the lowest possible outlay (use of modular technology, standard parts, etc.). The facility and its components shall be manufactured brand new and in accordance with the specifications for the Customer.
- 5.2 The Deliverable must comply with the relevant official regulations as well as the relevant technical regulations and standards at the place of destination. In particular, the Deliverable shall comply with the relevant safety regulations and it must be possible to install and operate the Deliverable in accordance with the same regulations.
- 5.3 In the event of discrepancies regarding the scope of the Deliverable, the provisions of the contract shall be binding in preference to those of the tender specifications, unless they represent purely technical or execu-

- tion-related provisions. In the event of discrepancies, the relevant provisions of the contract shall be binding in preference to those of the specifications.
- 5.4 Outsourcing the Deliverable and/or essential parts thereof which are covered by this contract to third parties shall be prohibited without the prior written consent of the Customer. Even if consent is given, the Supplier shall be liable under Clause 1.3 without limitation towards the Customer for the entire scope of delivery and performance under the contract.
- Art. 6 Communication with other suppliers**
- The Supplier shall inform other suppliers in good time of all technical, functional and assembly-related inter- faces, coordinate procedures with them and introduce the necessary measures at the appropriate time. The Customer shall be notified of the result. To this end, the Customer shall give the relevant contact details to all suppliers concerned in a timely manner. The Customer shall be informed immediately if such communication cannot be achieved.
- Art. 7 Sustainability Standards**
- The Supplier undertakes to comply with the provisions in Appendix "Sustainability Standards of BKW Energie AG for Suppliers". In the event of any discrepancy between the General Terms and Conditions and Appendix, the provisions in Appendix shall take precedence over the provisions of the General Terms and Conditions.
- Art. 8 Deadline for delivery, consequences of lateness**
- 8.1 The agreed deadline for delivery shall apply to the Deliverable. If the agreed deadline is not adhered to, the Supplier shall be deemed in default. Without prejudice to any explicit derogation in the contract or in Clause 9 below, the relevant provisions of the Swiss Code of Obligations shall apply. Partial deliveries and deliveries ahead of schedule shall be accepted only upon agreement.
- 8.2 If the Supplier becomes aware that the Deliverable may not be delivered on the due date, it shall immediately notify the Customer thereof, stating the reasons.
- Art. 9 Contractual penalties**
- 9.1 If contractual penalties are arranged in writing the event of late delivery or for other reasons, unless agreed otherwise they shall be calculated on the basis of the entire contract amount.
- 9.2 Unless otherwise stated in the contract, the contractual penalty shall amount to 5‰ each day of delay, but at most 10% of the total remuneration resp. the entire contract amount.
- 9.3 Contractual penalties shall become payable when deadlines with penalties attached have expired or an event with penalties attached has occurred.
- 9.4 The Supplier may rely upon failure by the Customer to provide services only if it has called for these services in good time.
- 9.5 Should the contractual penalties have reached the maximum value and should a reasonable period of grace granted by the Customer have lapsed without being acted upon, the Customer is entitled to cancel the contract in whole or in part. In such case, the Supplier shall refund the price paid by the Customer for the parts of the Deliverable affected by the cancellation.
- 9.6 Contractual penalties shall be deducted from the last payment instalment pursuant to Clause 26.4. The payment or offsetting of contractual penalties shall not release the Supplier from meeting the remaining obligations.
- 9.7 Contractual penalties shall be owed irrespective of whether the Customer has or has not incurred loss as a result of the delay. In any event, the right to claim damages shall remain reserved.
- 9.8 In cases of force majeure such as strikes, war, natural events, official actions or omissions, mobilisation, revolution, labour disputes, lock-outs, accidents and other substantial operational disturbances, epidemics, terrorist activities, etc. no contractual penalties or damages for delay shall be owed.
- 9.9 The provisions of this Clause 9 shall apply notwithstanding the Customer's other rights under this contract.
- Art. 10 Packaging, transport and shipping**
- 10.1 The Supplier shall be responsible for proper packaging and shall draw the Supplier's attention to specific aspects its disposal and/or to special care for the storage of the supplied material.
- 10.2 The Deliverable may only be shipped when all required work tests have been passed without qualifications and the Deliverable has been cleared for transport (protocol) with binding effect by the Customer. Once all required work tests have been passed, the Customer shall grant clearance for transport without delay.
- 10.3 The Customer shall be notified that the Deliverable is ready for delivery in good time so that the exact shipping arrangements can be made.
- 10.4 The Supplier shall be liable from receipt until delivery outwards for loss of or damage to material supplied by the Customer, but not for material already damaged when supplied. On discovery of defects in the material supplied, the Supplier must notify the Customer in writing immediately.
- 10.5 The organisation of transport ex works and the insurance of the Deliverable as far as the place of destination in accordance with the contract shall be included in the scope of delivery (DDP Incoterms 2010). If the Deliverable is transported by lorry the Supplier shall provide auxiliary unloading equipment (crane jib, hydraulic ramp).
- 10.6 The Swiss Ordinance on the Transport of Hazardous Goods shall apply to deliveries to the Mühleberg Nuclear Power Plant and to the transport of hazardous goods in general. Compliance with this provision shall be imposed upon the Supplier or the commissioned carrier and shall, where appropriate, be

checked by the hazardous goods officer of the Mühleberg Nuclear Power Plant.

#### **Art. 11 Assembly work and work close to power installations**

- 11.1 The Supplier shall be responsible for the final assembly of the Deliverable. The Deliverable shall be assembled under the direction and responsibility of a senior assembly technician of the Supplier.
- 11.2 The Customer shall ensure that there is purpose-built infrastructure on its assembly sites.
- 11.3 Failing an agreement to the contrary all the costs of final assembly work as well as inspections by assembly supervisors shall be included in the price. Following negotiation, the Customer shall make available qualified assembly specialists. The quotation shall indicate the need for assembly specialists in the form of man days, qualifications and timeframes. The Supplier shall be entitled to issue instructions to the auxiliary personnel used for the assembly work made available by the Customer.
- 11.4 The Supplier shall take note and shall inform all employees concerned that the assembly work indicated in the contract shall be carried out in a nuclear power plant. It is a danger to life and limb to place objects or parts of the body close to live plant components.
- 11.5 For work carried out on the Customer's assembly sites the instructions relating to safety, accident prevention and orderliness applicable there shall be complied with. The Supplier shall be made aware of such instructions in an appropriate way.
- 11.6 The safety instructions of the senior assembly technician and of the Customer's supervisors shall be followed exactly.
- 11.7 The Customer shall not be held liable for accidents and damage through failure to comply with the aforementioned regulations and instructions.

#### **Art. 12 Work tests and acceptance during the realisation of the Deliverable**

- 12.1 Subject to notice in advance, the Customer shall have unrestricted access to the workshops of the Supplier and their subcontractors during normal working hours. The Customer shall be given all requested information and shall have the right to inspect documents regarding the status of the work, the quality of the materials used, quality inspections, acceptance tests and final tests, quality assurance, etc., whereby the confidentiality of the Supplier's trade secrets shall be maintained.
- 12.2 Programmes, methods, places of performance and cost centres for work tests, samples and acceptance tests at the manufacturer's premises and/or at the place of destination shall be specified in the contract or in the specifications. A report shall be drawn up on the result of all work tests and shall be signed by the Customer and the Supplier.
- 12.3 The Customer reserves the right to be present at some or all of the work tests and acceptance tests and/or have them carried out at its expense by an

official inspection authority using its own instruments or by an independent third party.

- 12.4 If the Customer contests the results of the tests, the costs of repeating the tests, should the contestation be unfounded, shall be borne by the Customer. If the contestation is well-founded, in the event that tests are carried out at the request of the Supplier or because the Supplier is required to improve performance that deviates from the contract, all costs incurred by the Customer and by all third parties concerned for the repetition of the tests shall be borne by the Supplier.
- 12.5 The Customer shall have the right to reject the use of workpieces if tests on the workpieces result in values comprising deviations from the contract or from the project calculations and the Customer cannot be reasonably expected to use the workpieces.
- 12.6 For electrical equipment: The equipment (parts, devices, assemblies, components) shall meet all mechanical, electrical and statutory requirements governing its use in electrical energy supply networks with strong short-circuit power in full. The equipment shall be designed to withstand electrical stresses and shall comply with the EMC Directive. On the basis of information conveyed by the Customer, the Supplier knows the Customer's power system conditions as well as its operating and assembly conditions and shall design the equipment and all devices, assemblies, components included in the scope of the order in such a way that it is optimally suited to these conditions.
- 12.7 The aforementioned work tests and the carrying out of acceptance tests shall not release the Supplier from bearing full liability for complying with the contractual guarantees and obligations.

#### **Art. 13 Assembly, commissioning and trial operation**

- 13.1 As soon as the Customer has informed the Supplier that assembly work can begin, the Supplier shall delegate the required number of assembly specialists and auxiliary personnel. To the extent agreed, the specialists delegated by the Customer shall be made available to the Supplier at the same time.
- 13.2 Assembly must be carried out rationally and, as far as possible, without interrupting operations and be effectively controlled by the Supplier. The assembly specialists must be familiar with the material and its assembly.
- 13.3 On completion of the assembly work, the on-site test and then commissioning shall be carried out. A report shall be drawn up on the result of the on-site test, which shall be signed by the Customer and the Supplier. The modalities of any trial operation procedure are governed by the contract.
- 13.4 The Supplier shall obtain, if necessary, all permits required by law in advance for the personnel designated to perform the contract and shall bear all the resulting costs. All foreigners must produce, on the day they start work, such permit as is valid for them showing that they are entitled to work in the canton

concerned. Foreigners who are in possession of neither a Swiss permanent residence permit (Swiss type C permanent residence permit) nor a Swiss type B residence permit for the entire year for the canton concerned shall need, before they start work, a permit from the Aliens' Police of the canton concerned. This shall also apply to cross-border commuters. Should an individual foreigner's total work stays in Switzerland exceed a duration of four months each year, this shall require an additional authorisation procedure.

- 13.5 The Supplier shall insure all employed and paid personnel against accident during assembly, commissioning and trial operation at its own cost.
- 13.6 The Supplier shall also ensure and demonstrate to the Customer on request that the statutory provisions on employee protection and insurance, etc. applicable at the place of destination have been complied with and that all the prescribed taxes, levies and charges have been paid.

#### **Art. 14 Technical documents, training**

- 14.1 All necessary operational specifications, drawings and other documents for assembly, maintenance and operation shall be made available to the Customer in duplicate in paper form and electronically. The scope of the documentation shall be such as to enable the Customer's personnel to carry out all maintenance work independently. All documents shall be issued exclusively in German.
- 14.2 The technical documents of both parties shall be treated as confidential by both parties. They shall not be used for other purposes or made accessible to third parties without authorisation. They shall remain the intellectual property of the author.
- 14.3 The nature and scope of the documentation shall comply with the technical specifications and shall also be in accordance with the provisions of this contract. The documents are a part of the Deliverable and shall be handed over on the agreed date. The Supplier shall keep the documents for 25 years.
- 14.4 The Supplier shall instruct the Customer's personnel regarding safe operation and maintenance. The scope of the instruction and training shall be specified in the contract.
- 14.5 Being a specialist, the Supplier shall notify the Customer of specific known risks in the handling, use and storage of the Deliverable or parts thereof before the contract is concluded. The Supplier shall be responsible for ensuring that the relevant warnings are clearly and recognisably presented in the subject matter of the contract, in the documentation and in training material.

#### **Art. 15 Bearing of risk**

The Supplier shall bear the full risk for the entire Deliverable until acceptance. If a second acceptance has been agreed in the contract, the Supplier shall likewise bear the full risk up until the first acceptance.

#### **Art. 16 Acceptance**

- 16.1 Compliance with official regulations shall be demonstrated prior to acceptance at the latest.
- 16.2 A report or other documents shall be drawn up on the acceptance process and, as necessary, on other important processes, tests, decisions, etc., which shall be accepted jointly and signed, and relevant conclusions shall be drawn. The Deliverable shall be accepted and risk shall be transferred when the report has been signed by the Customer and the Supplier.
- 16.3 If defects are discovered, the Customer shall give the Supplier a reasonable period of time in which to remedy them. At the end of this period, a further test shall be carried out jointly. If no defects are detected, acceptance shall be completed and a report shall be drawn up, which shall be signed by the Customer and the Supplier. Any handover costs and expenses incurred by the Customer as a result of the repetition of the test shall be borne by the Supplier.
- 16.4 In the event of disagreement between the Customer and the Purchaser on the quality of the Deliverable, defects or the responsibility for such defects, the result of sample testing or inspections by an independent expert who is to be determined jointly shall be decisive. The costs of dealing with such problems shall be borne by the party shown to be in the wrong.
- 16.5 The report on the acceptance of the Deliverable shall also contain the valid date of the start of the defects notification period if this is not the same as the date of acceptance.
- 16.6 If, for reasons beyond the Supplier's control, the trial operation cannot be carried out after the end of commissioning within the deadline provided for in the contract, acceptance shall as a rule take place within one month of the end of the possible and necessary final tests prior to the actual start of operation (trial operation) on the basis of the reports drawn up hitherto.
- 16.7 Acceptance shall not limit the Customer's rights, especially regarding contractual penalties, notices of defects and/or rejection of the Deliverable.

#### **Art. 17 Place of performance**

The place of performance for the Deliverable is the place of destination specified in the contract.

#### **Art. 18 General representations**

The Supplier shall be liable, as a specialist, for the Deliverable showing no defects, having the warranted properties and complying with the agreed performances and specifications of the order as well as the state of the art at the time the contract is concluded.

#### **Art. 19 Replacement material**

- 19.1 The Supplier undertakes to declare in its offer plant parts subject to normal wear and tear and those parts which are expected to have to be replaced in the event of an accident in the offer and to supply them for at least 15 years within the delivery deadlines customary in the market.

19.2 In case of cessation of a component or a product supplied under the contract, the Supplier shall (i) notify the Customer in an unsolicited manner of by means of an announcement and "last call" at least 12 months before the last regular opportunity to order or (ii) else be able to supply suitable replacement parts over the entire life-time of the offered component or product.

#### **Art. 20 Warranty and defects notification period**

- 20.1 The Supplier's warranty shall start when risk is transferred pursuant to Clause 15.
- 20.2 Unless otherwise agreed, the defects notification period shall be 24 months from the transfer of risk. The defect notification period shall be extended by the period of time during which the Deliverable is unavailable for operation due to the repair of defects. For substitute deliveries and repairs, the warranty period shall begin anew for the substitute delivery or the repaired part.
- 20.3 The Supplier shall be liable for all defects reported within the defects notification period. Only defects with respect to which the work (or part of the work) is deemed accepted shall be excluded.

#### **Art. 21 Second acceptance**

- 21.1 In the case of installations for which a second, final acceptance takes place in accordance with the specifications, the joint inspections for final acceptance shall take place three months before the end of the defects notification period. The conditions for final acceptance shall be listed in writing in the contract or in the technical specifications. If they are fulfilled, final acceptance shall take place immediately prior to the end of the defects notification period.
- 21.2 Should defects be detected during final acceptance or if the services have not been provided in full, the final acceptance of the work shall be postponed until complaints have been resolved. The defects notification period shall be extended until final acceptance has been achieved.

#### **Art. 22 Warranty claims for defects**

- 22.1 Any defects shall be notified in writing. Complaints of defects lodged within the defects notification period shall be deemed lodged in good time.
- 22.2 The Supplier undertakes to remedy all defects detected during the defects notification period within reasonable time at its own expense. Outward and return transport costs shall be borne by the Supplier unless the defects can be demonstrably attributed to negligence in use or normal wear and tear.
- 22.3 Should there be a warranty event in the case of contracts for labour and material, the Supplier undertakes to remedy the defect at its own expense within a reasonable grace period set by the Customer. Should the Supplier default, the Customer shall be entitled:
- either to continue insisting on remediation or to have remediation carried out by a third party instead of the Supplier at the latter's expense and

risk, or to undertake remediation personally at the Supplier's expense and risk;

- to reduce the price accordingly;
- or, in the event of a significant defect, to refuse acceptance of the Deliverable. In such case, the Customer shall be released from the duty to pay any remuneration and payments already made shall be reimbursed. The Customer shall be entitled to exercise the rights mentioned in (a) and (b) in the case of Deliverables erected on the Customer's land the nature of which makes their removal possible only with disproportionate inconvenience.

In all cases the right to compensation shall remain reserved.

- 22.4 If further values to be complied with are agreed in the contract, the consequences of non-compliance shall be determined in accordance with the provisions of the contract.
- 22.5 Deliverables or parts thereof complained about shall be at the disposal of the Customer until the defect has been remedied or the contract has been cancelled. The defective Deliverable may continue to be operated temporarily by mutual agreement.
- 22.6 The second acceptance pursuant to Clause 21 above shall take place provided that the operability of the Deliverable as a whole can be demonstrated and after the defects notification period has expired without defects being detected or if all notified defects have been remedied. Once again, a joint report shall be drawn up on this final acceptance, which shall be signed by the Customer and the Supplier. The approval attendant upon the second acceptance shall not apply to such defects as are notified during the defects notification period and have not been remedied prior to the second acceptance, as well as for parts which are not shown to be defective until the second acceptance.

#### **Art. 23 Rights of withdrawal**

The parties can withdraw from the contract at any time when either of the following event occurs:

- gross breach of contract by the other respective party;
- the other respective party becomes insolvent (a compulsory winding-up or similar insolvency procedure according to the Swiss Insolvency Code [SchKG]).

#### **Art. 24 Prices**

- 24.1 Prices shall be in Swiss francs (CHF) exclusive of value added tax. The specifications of the request for quotations or the invitation to tender may also require a quotation in euros (EUR). Prices shall include a cash discount and all other discounts. If a quotation submitted in response to invitations to tender provides for a price sheet under public procurement law, it shall be completed and submitted together with the quotation.
- 24.2 Unless otherwise agreed, prices shall be fixed prices, carriage paid to the place of destination (DDP

Incoterms 2010), and shall include all tangible and intangible costs, attendant expenses, delivery charges and unloading. This is subject to Clause 24.4.

- 24.3 If individual services are invoiced on the basis of expenditure, they shall be invoiced at the assembly rates specified in the contract. Such scheduled work shall be charged for monthly on the basis of hourly and material rates approved by the Customer.
- 24.4 Only additional costs resulting from project modifications or subsequent requests for changes by the Customer shall be accepted. Such modifications shall be agreed in writing with the Customer in advance. If a prior written agreement is not possible due to time constraints, oral agreements shall be confirmed in writing within five working days.

#### Art. 25 Price guarantee

- 25.1 The Supplier warrants that the prices for subsequently ordered replacement and reserve material shall not be higher than the price rates on which the order is based taking into account the usual sliding scale price formulae.
- 25.2 The sliding scale price formulae with basic index values and indication of source shall accompany the offer.

#### Art. 26 Payment terms and invoicing

- 26.1 The exact payment terms shall be established in the contract. The following principles shall apply.
- 26.2 In the case of a total contract value of less than CHF 100,000.00 no guarantee (advance payment guarantee, performance guarantee, warranty retention) shall be paid.
- 26.3 If, in the case of a total contract value of more than CHF 100,000.00 a guarantee (advance payment guarantee, performance guarantee, warranty retention) is agreed, the Supplier shall pay a guarantee of the agreed amount.
- 26.4 Without prejudice to different arrangements in the contract, if part payments have been agreed, the following payment terms and conditions shall apply:
- |                            |   |
|----------------------------|---|
| 1 <sup>st</sup> instalment | of 30% of the contract price following the signing of the contract.   |
| 2 <sup>nd</sup> instalment | of 30% of the contract price following a successful work test.  |
| 3 <sup>rd</sup> instalment | of 30% of the contract price following a successful on-site test.<br>If the on-site test of the facility is delayed for reasons attributable to the Customer, the 3 <sup>rd</sup> instalment shall be paid no later than 6 months after the due date of the 2 <sup>nd</sup> instalment. |
| 4 <sup>th</sup> instalment | of 10% of the contract price as well as the difference resulting from the total invoice amount (in which possible penalties, extra costs, etc. are taken into account) following provisional acceptance of the Deliverable.   |

- 26.5 Payments shall be made only after receipt of an invoice. A separate invoice shall be issued for each requested payment. Invoices shall not be issued until the service fulfilling the event triggering payment has been provided in full. The recognised document demonstrating performance (receipted delivery note, countersigned report, approved management reports, etc.) shall accompany the relevant invoice.
- 26.6 Invoices shall indicate the reference details of the order and/or of the contract, the type of invoice (advance payment invoice, partial payment invoice, scheduled work invoice, price increase invoice, etc.) and shall be sent to the Customer. Value added tax shall be indicated as a separate item as an amount and a percentage rate.
- 26.7 Payment shall be made net within 30 days. The Customer reserves the right to offset counterclaims.
- 26.8 The relevant time for calculating payment deadlines shall be receipt of the correct invoice by the Customer.

#### Art. 27 Guarantees

- 27.1 The supplier shall provide the following non-interest bearing guarantees in the form of a bank or insurance guarantee of a first-class Swiss bank or insurance company acceptable to the Customer issued in favour of the Customer, payable at first request and without the right to object, and valid for at least three months beyond the contractual return date. The relevant costs shall be borne by the Supplier. Should an extension to the validity period be necessary (e.g. in the event of delays, late acceptance, extension of the defects notification period, etc.), this extension shall be arranged by the Supplier with the guarantor in good time.
- From an editorial perspective, the standard text used by the issuing bank can be used, provided it is objectively consistent with the text defined by the Customer and is accepted by the Customer. Corporate guarantees shall **not** be accepted.
- 27.2 BKW can demand the following types of guarantees:
- Advance payment guarantee  
The advance payment guarantee serves to guarantee the advance payment amount. It shall be issued for the amount of the advance payment and with a validity of three months beyond the time of delivery at the place of destination.
  - Performance guarantee  
The performance guarantee serves to guarantee the performance of the contract by the Supplier as well as any claims of the Customer (e.g. payments/reimbursements or contractual penalties to be made/paid by the Supplier). It shall be issued for the contractually agreed amount (at least 10% of the entire contract value) and with a validity of three months beyond the time of provisional acceptance, and shall be handed over when the contract is signed. It shall be returned in part or in whole following the joint signing of the provisional acceptance report and handover and if all claims of the Customer out of the contract (e.g.

contractual penalties, recovery, redress, etc.) have been settled (deduction).

- c. Payment retention  
Payment retention serves to guarantee the services of the Supplier out of the warranty provisions. It shall be issued for the amount of 10% of the final (invoiced) contract value and with a validity of three months beyond the expiry of the warranty period. It shall be handed over prior to the payment of the last instalment or when the payment retention is required. The payment retention shall be returned upon expiry of the warranty period, if no defects have been discovered with regard to the Delivery or the Supplier has completely fulfilled its warranty obligations.

#### **Art. 28 Liability**

- 28.1 The Supplier shall be liable for personal injury incurred within its area of control within the framework of the statutory provisions and for damage to property incurred within its area of control as well as out of and in connection with the contract or its insufficient fulfilment for an amount of CHF 10,000,000.00 unless a different liability limit is agreed in the contract.
- 28.2 Any further liability of the Supplier – on whatever legal grounds – such as, in particular, liability for pecuniary loss as well as liability for loss of profit, the loss of information and data, for loss of production, for the replacement of electrical energy, for nuclear damage and/or third-party claims as well as for all indirect and consequential damage is excluded, unless required by law due to unlawful intent or gross negligence.

#### **Art. 29 Insurance**

- 29.1 Insurance policies shall be taken out by the Supplier at its own cost. At the request of the Customer the

Supplier shall give the Customer a copy of the relevant insurance certificate.

- 29.2 Transport insurance (including unloading at the point of unloading indicated in the contract or the specifications) shall be taken out by the Supplier.
- 29.3 Assembly cover shall be taken out by the Supplier.
- 29.4 For the duration of the performance of the contract and until the end of the defects notification period pursuant to Clause 20.2, the Supplier shall have valid employer's liability insurance with an amount covered of at least CHF 10,000,000.00 per damaging event for injury to persons and damage to property.

#### **Art. 30 Patent infringements**

- 30.1 The Supplier shall be responsible for ensuring that the patent and property rights of third parties are not infringed. Proprietary constructions commissioned by the Customer shall be excluded.
- 30.2 The Supplier undertakes to grant the Customer the right to use protected articles or to procure equivalent replacement of articles encumbered with third-party rights.

#### **Art. 31 Applicable law and jurisdiction**

- 31.1 The contract shall be governed by Swiss legislation. The application of the Vienna Convention on the international sale of goods (Vienna Sale of Goods Convention) as well as the conflict of law principles shall be expressly and completely excluded.
- 31.2 **Shall be the following place of jurisdiction in disputes out of or in connection with the contract:**
- a. for actions brought by BKW: Berne or the registered office of the Supplier;
  - b. for actions brought by the Supplier: Berne.



## Appendix

### Special provisions for Deliverables in the Mühleberg Nuclear Power Plant

#### 1 Assembly work in the Mühleberg Nuclear Power Plant

- 1.1 The Supplier shall be responsible for the timely and valid submission of all the necessary permits of its employees deployed. Clauses 13.4 to 13.6 of the General Terms and Conditions shall also apply.
- 1.2 If personnel engaged by the Supplier are deployed in the controlled area of the Nuclear Power Plant and such deployment is therefore subject to the Swiss Radiation Protection Regulation, the Supplier shall adhere to the procedure introduced by the "Supplementary Legal and Organisational Conditions to the General Terms and Conditions of KKM".
- 1.3 When work is carried out in the Nuclear Power Plant the instructions on order and safety applicable there shall be complied with.
- 1.4 The application forms for foreign personnel shall be submitted to the responsible employee of the Mühleberg Nuclear Power Plant in good time and fully completed.
- 1.5 The employment application and security procedure shall be conducted in accordance with the instructions of the Nuclear Power Plant.
- 1.6 The Mühleberg Nuclear Power Plant shall require confirmation of confidence or a certificate of good standing for persons deployed for the first time in the Nuclear Power Plant. The Supplier shall disclose any criteria or checks relevant to such evidence.
- 1.7 The Mühleberg Nuclear Power Plant shall have the right at all times, without giving reasons, to remove personnel from the site and/or refuse access to them. The exercise of this right shall not entitle the Supplier to assert claims, especially claims for compensation, increase prices or extend deadlines.

#### 2 Services provided by the Mühleberg Nuclear Power Plant

The following services shall be provided by the Customer in accordance with this Appendix:

- 2.1 Where Deliverables and installations are subject to an official approval procedure, dealings with the authorities shall be conducted by the nuclear power plant. If the Supplier incurs extra costs as a result of lack of clearances, the Supplier shall inform the Nuclear Power Plant forthwith.
- 2.2 Authorisation shall be obtained for overtime and additional night and Sunday work.
- 2.3 The activation of units and systems shall be carried out by the Nuclear Power Plant.
- 2.4 The unloading of all new parts as well as transfers between locations within the site shall be the responsibility of the Nuclear Power Plant.
- 2.5 All necessary radiation protection measures including radiation protection briefings for all the personnel employed shall be implemented by the radiation protection service of the Nuclear Power Plant in accordance with the Radiation Protection Regulations applicable to KKM.
- 2.6 The Nuclear Power Plant shall make the following facilities or equipment available without charge:
  - compound for building site installation
  - water and drainage supply and/or disposal facilities
  - power supply for containers
  - first-aid and medical equipment as from existing facilities
  - hoisting gear including operation thereof
  - means of fire protection in the buildings of the facility and on the site
  - radiation protection material such as monitors in the entrance to the controlled area, dosimeter equipment, protective clothing including cleaning, safety shoes, helmets, covering materials, etc.
  - construction site surveillance
  - identification system
  - staff restaurant

## Appendix

### Sustainability Standards of BKW Energie AG for Suppliers

#### Introduction

The following sustainability standards apply to all contractually agreed activities, products and services. In the case of activities in connection with production lines, the provisions apply to all phases of the system concerned, from planning, installation and operation right through to dismantling or retrofitting.

#### 1 Social and Economic Principles

- 1.1 The SUPPLIER undertakes to respect human rights within its own sphere of influence and not to be complicit in human rights violations.
- 1.2 The SUPPLIER undertakes to comply with the laws of the applicable legal system, in particular those relating to competition, corruption, illegal employment and the environment.
- 1.3 The SUPPLIER undertakes to abide by a code of fair competition, refusing to engage in unfair competitive practices, such as arrangements on price fixing, agreements on conditions, market sharing or agreed practices with competitors.
- 1.4 The SUPPLIER undertakes to comply with the applicable health & safety regulations and to adhere to the wage and working conditions under the collective labour agreements, the standard employment contracts and, in the absence thereof, the customary local and professional regulations.
- 1.5 The SUPPLIER undertakes to carry out its business operations in accordance with the tax regulations applicable under the respective national law and to pay the relevant taxes in due time (in Switzerland: e.g. cantonal and communal taxes, national tax, value added tax).
- 1.6 The SUPPLIER undertakes to pay the social security contributions applicable under the respective national law (in Switzerland: e.g. OASI, IV, LEC, FAK, TC, OPA and AIA) in due time, including the employee contributions deducted from wages.
- 1.7 If the SUPPLIER is a legal person, it shall carry out the necessary registrations as an independent company for social insurance for itself and its employees. If it is not a legal person, it must prove that it is affiliated to a compensation fund as a self-employed person.
- 1.8 The CONTRACTOR is not liable for any social contributions (Old Age and Survivors' Insurance, Disability Insurance, Unemployment Insurance, etc.) or other compensation payments, in particular in the event of accident, illness, disability or death, or any occupational pension contributions. In the event that the social insurance authorities do not recognise the SUPPLIER as self-employed, the CONTRACTOR may claim back any employer contributions or offset them against the fee.
- 1.9 The SUPPLIER undertakes to respect the intellectual property rights of third parties.
- 1.10 The SUPPLIER undertakes to disclose information as relevant and appropriate at regular intervals about its business activities, operating results, social welfare

issues, environmental issues and foreseeable risks.

- 1.11 The SUPPLIER agrees to impose a duty on its subcontractors to comply with the provisions set out in section 1.

#### 2 Basic Principles Relating to Employees

- 2.1 The SUPPLIER undertakes to promote equal opportunities and equal treatment of all employees regardless of gender, nationality, sexuality, denomination, origin, skin colour or other personal characteristics.
- 2.2 The SUPPLIER undertakes, in accordance with ILO Conventions 138 & 182, not to employ any workers against their will and not to recruit any workers who are below the relevant minimum age.
- 2.3 The SUPPLIER undertakes to recognise the freedom of assembly of its employees and to comply as a bare minimum with the applicable regulations laid down in the respective national legal systems. The European Convention on Human Rights (ECHR) and the Universal Declaration of Human Rights (UN Covenants I & II) must be observed in all cases.
- 2.4 The SUPPLIER undertakes to ensure the health and safety of its employees by adhering to the statutory limits and safety precautions and by appropriate and regular training input.
- 2.5 The SUPPLIER undertakes to ensure that its employees are adequately remunerated and receive the statutory national minimum wage as well as the social benefits and other support contributions applicable in the region and shall guarantee equal treatment of men and women regarding pay.
- 2.6 The SUPPLIER domiciled or established in Switzerland undertakes to comply with the health and safety regulations applicable in Switzerland (maximum weekly working time, rest periods and breaks). The health and safety regulations are deemed to be collective labour agreements and normal employment contracts; where no such contracts exist, the local or customary working conditions for the industry shall apply. SUPPLIER domiciled outside Switzerland shall comply with the relevant provisions applicable where the services are rendered.
- 2.7 If the SUPPLIER second workers from abroad to Switzerland in order to perform the services, the provisions of the Secondment Act of 8 October 1999 shall be complied with.
- 2.8 The SUPPLIER agrees to impose a duty on its subcontractors to comply with the provisions set out in section 2.

#### 3 Environmental Principles

- 3.1 The SUPPLIER undertakes to avoid harmful or disagreeable effects on living beings and their habitats insofar as this is technically and operationally possible and economically feasible. Measures are to be planned and put in place in accordance with the precautionary principle to prevent potentially negative effects at source. In cases where negative effects cannot be prevented, it shall essentially be necessary to deploy the best available standards of technology to separate chemically and/or physically

modified elements (water, soil, air) from unmodified elements and to keep them separate (no mixing) with due regard for the environment.

- 3.2 The SUPPLIER undertakes to be sparing in its use of resources (e.g. water and energy) and to minimise emissions and waste generation, duly putting measures in place for monitoring and continuous improvement in this respect as well.
- 3.3 The SUPPLIER undertakes to comply with the relevant local environmental legislation (e.g. place of production, place of installation, place of performance, etc.). Unless specified in more detail in the relevant legislation, limits shall be understood to be absolute values and must be met at all times (not on average). If the latest available technology permits such treatment as goes beyond the minimum requirements of the law, this is to be preferred. Should the SUPPLIER fail to meet its obligations despite a formal warning of illegal circumstances, the CUSTOMER shall be entitled to restore due and proper conditions or to have such conditions restored at the risk and expense of the SUPPLIER.
- 3.4 The SUPPLIER hereby confirms that the employees concerned are aware of and will comply with the applicable environmental legislation. The SUPPLIER undertakes to raise awareness among the employees in this respect by means of instruction, briefing and regular training.
- 3.5 The SUPPLIER agrees to impose a duty on its subcontractors to comply with the provisions set out in section 3.

#### 4 Environmental Criteria

- 4.1 Raw materials, resources and supplies  
The SUPPLIER shall only use raw materials, resources and supplies that:
- always meet the latest standards in terms of protection of human health and conservation of the environment;
  - present no problems in ecological terms and from a health point of view with regard to their subsequent demolition or dismantling and disposal;
  - can be professionally dismantled and preferably reused or recycled.
- If the SUPPLIER is required to use ecologically problematic materials for technical and economic reasons despite best efforts in this regard, however, these must be declared when submitting the bid.
- 4.2 Water cycle management and renewable sources of energy  
The SUPPLIER undertakes to give preference to the reuse of waste water (treated where applicable) or to renewable sources of energy to meet its own water and energy requirements as soon as this is technically possible and economically viable.
- 4.3 Water pollution control and waste water  
The guidelines for water pollution control must be observed during the execution of the project. The SUPPLIER undertakes to discharge waste water

properly at its own expense and, where it can legally be returned to a body of water, to minimise the chemical and physical changes with regard to environmental impact and protection of human health. The SUPPLIER also undertakes to store substances which are hazardous to water in accordance with the relevant regulations.

- 4.4 Air pollution, exhaust air and odour control  
The SUPPLIER undertakes to use only such vehicles, machines and equipment (including combustion, combined heat and power generation and emergency power plants) which conform as far as possible to the latest standards with regard to air pollution control, exhaust air and odour control. The SUPPLIER also agrees to optimise transportation processes and transport routes from an environmental point of view.
- 4.5 Soil pollution and contaminated sites  
The SUPPLIER undertakes to prevent soil pollution by avoiding the use of non-biodegradable or persistent substances whenever possible (e.g. in protective treatments, propellants, fuels, petroleum products, solvents, pesticides, etc.) and by taking all appropriate measures to prevent the introduction of foreign substances, artificial deposits or other contaminants into the soil.
- 4.6 Waste  
The SUPPLIER undertakes to organise the clearance, sorting, storage, return and disposal of all waste, containers, receptacles and packaging, etc. at its own expense and to ensure that the above operations are carried out in conformity with the law and in compliance with the conditions imposed in the permits and by the CUSTOMER.
- 4.7 Non-ionising radiation  
The SUPPLIER undertakes to use suitable equipment to minimise radiation which has an adverse effect on the environment or on human health.
- 4.8 Noise pollution  
The SUPPLIER is obliged to limit any noise generated in the context of the project work to the lowest level which is technically possible. All health & safety and noise control regulations must be strictly observed.
- 4.9 Ecosystems and protected habitats  
The SUPPLIER undertakes to minimise such cases of adverse impact as are within its control and to take appropriate measures in cases where the latest findings in environmental science show that ecosystems and protected habitats may be endangered along with their ecologically valuable resources and protected species. Protected species may have to be relocated. Removal of vegetation, sealing of soil surfaces, exposure of roots, installations and drains within the forest line are to be avoided as far as possible.
- 4.10 Emergency precautions and hazard prevention  
The SUPPLIER undertakes to ensure that the necessary emergency precautions and hazard prevention measures are in place to keep environmental pollution, physical injury and damage to property to a minimum in the relevant events.

#### 4.11 Transport and storage of hazardous materials and dangerous goods

In connection with the storage and transport of hazardous materials and dangerous goods, the SUPPLIER undertakes to comply with the legally stipulated limits and with the regulations on the storage and transport of hazardous goods, to take precautions for the management of accidents, to impose the relevant duties on transport subcontractors, and to permit the dangerous goods safety advisers authorised by the CUSTOMER to verify compliance. The SUPPLIER also undertakes to train all employees in the safe handling of hazardous and harmful substances.