

swisspro Automation AG

General Terms and Conditions

Services

1 Scope

- 1.1 These General Terms and Conditions for Services (hereinafter referred to as the "GTCs") govern the conclusion, content and execution of contracts for the provision of operational and other services for control and management systems, PMC controls, building automation and ZEV/VEWA (self-consumption associations/water and energy consumption billing) systems (hereinafter referred to as the "Contract"), in particular for monitoring, maintenance, replacement and repair work by swisspro Automation AG (hereinafter referred to as the "Service Provider").
- 1.2 Deviating terms only apply if they have been explicitly accepted by the Service Provider.

2 Establishment of the Contract

- 2.1 The presentation of services does not represent an offer to enter into a contract with the Client, and is non-binding.
- 2.2 The indicative offer of the Service Provider or their contractual partners is essentially non-binding unless explicitly agreed otherwise.
- 2.3 The Service Provider or its contractual partner is bound to the binding offer for the specified period. If an offer does not specify such a period, it remains binding for 30 days.
- 2.4 The Contract is established if the Client signs the binding offer within the stated period and the Service Provider or its contractual partner confirms the order in writing. The signed maintenance contract is the only authoritative source for the scope, price and quality criteria of delivery.
- 2.5 Any additional requirements of the Client that are not included in the individual offers or which are introduced after the conclusion of the Contract must be agreed separately.

3 Conclusion of the Contract

- 3.1 Operational and maintenance contracts (recurrent and preventative services) are concluded in writing. Simple services (e.g. troubleshooting) may be agreed verbally or in writing,
- 3.2 whereby verbal contracts must always be confirmed in writing.
- 3.3 Unless provided for otherwise, written contracts come into effect once the contractual document has been duly signed by both contractual parties.
- 3.4 The components of the Contract and their order of precedence are set out in the Contract document. If the Contract does not set out an order of precedence, the following order shall apply in the event of conflict between the components:
 1. the Contract and the appendices listed therein (excluding the quotation and the tender);
 2. the Service Provider's offer;
 3. these GTCs.

4 Services

- 4.1 The object and content of the services and the scope of the work are defined in the Contract or offer.
- 4.2 Unless agreed otherwise, additional services are excluded from the object of the Contract, in particular the delivery of operating equipment and the rectification of faults caused by force majeure or through the fault of the Client or a third party.
- 4.3 The Service Provider undertakes to render its services professionally and carefully.

- 4.4 Unless otherwise contractually agreed, recurring services such as maintenance and operational contracts (e.g. monitoring and collection) renew automatically each year.
- 4.5 Unless otherwise contractually agreed, each party may terminate the service following a minimum term of two years to the end of the current period by giving three months' notice.

5 Changes to services

- 5.1 The contractual parties may agree service changes with a notice period of three months to the end of the year.
- 5.2 Changes to the scope of the service, the remuneration and deadlines must be agreed in writing prior to execution in an addendum to the Contract.
- 5.3 If the contractual parties are unable to agree on a change to the services, the Contract shall continue in its original state.

6 Client's responsibilities

- 6.1 The Client grants the Service Provider unrestricted access and/or unrestricted power of disposition to the service object. In particular, it shall provide the necessary space required to render the service and, unless otherwise agreed, shall carry out any preliminary work required of it as the operations manager for the service object (e.g. safety precautions, etc.).
- 6.2 The Client is obligated to provide a suitable internet connection and all technical equipment required for the transmission of data for the Service Provider's remote and on-site monitoring and export of energy data from the system.
- 6.3 Where required, the Client shall supply energy and water and assume responsibility for waste water.
- 6.4 The Client is responsible for any legal obligations incumbent upon it as the owner of the service object. In particular, it shall ensure safe operations and necessary maintenance of the maintenance object.
- 6.5 The Client shall carry out all duties assigned to it punctually and professionally. Should the Client fail to do so for reasons for which the Service Provider is not responsible, the Client must reimburse the Service Provider for the resulting additional costs; the Service Provider must provide the Client with evidence of such costs.
- 6.6 The Client shall ensure that instruments and materials not supplied by the Service Provider are consistent with the statutory provisions and are state of the art.
- 6.7 The Service Provider is entitled to reject or suspend service work if the safety of personnel is not guaranteed or the Client has not fulfilled its obligations.
- 6.8 The Client undertakes to notify the Service Provider of any change in ownership of the Contract object. All contracts for services provided periodically (Art. 4) must be terminated in accordance with these GTCs and may be concluded anew with the new owner.

7 Remuneration

- 7.1 The remuneration is based either on time and materials or a fixed price, and is defined in the Contract.
- 7.2 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.
- 7.3 For remuneration based on time and materials, any overtime shall be invoiced in line with the surcharges set out in the price lists of the Service Provider, unless agreed otherwise.

- 7.4 All prices are in CHF and do not include VAT. VAT shall be invoiced additionally at the applicable rate.
- 7.5 For fixed remuneration, the Service Provider may also amend prices if
- the work deadlines have to be changed for a reason for which the Service Provider is not responsible; or
 - the nature and scope of the agreed services change; or
 - the materials or configuration change because the information/documents supplied by the Client prove to be inaccurate or incomplete.

8 Terms of payment

- 8.1 Unless agreed otherwise, the Service Provider shall submit monthly invoices for the remuneration owed. Invoices are payable (net) within 30 days of the invoice date.
- 8.2 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.
- 8.3 The Client may not withhold or reduce payments. Payments must be made even if a service is delayed or rendered impossible for reasons for which the Service Provider is not responsible.
- 8.4 If the Client fails to meet its payment obligations punctually, it will be in default automatically and is obliged to pay default interest to the Service Provider at the statutory rate.

9 Deadlines

- 9.1 Agreed deadlines are binding for the contractual parties.
- 9.2 Should the Service Provider fail to meet binding deadlines, it will be in default automatically. Otherwise, the Client must provide the Service Provider 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 Service Provider is not responsible, the Service Provider is entitled to revise the schedule and postpone the contractually agreed deadlines.
- 9.5 In particular, the Service Provider cannot be held responsible for delays caused by force majeure, official measures, environmental incidents or delays resulting from a dependence on third parties.
- 9.6 The Service Provider shall notify the Client in writing as soon as it becomes aware of any delay.

10 Involvement of third parties

The Service Provider is entitled to engage third parties to render services. The Service Provider is responsible for taking the proper care in selection and instruction of the third party.

11 Transfer of risk

The Client shall bear the full risk for any decline in the service object or the impairment of the service object through faults for which the Service Provider is not responsible.

12 Completion

- 12.1 The Service Provider shall complete a service report following completion of the services. The service report shall contain any additional recommendations for rectifying any faults identified (e.g. protective facilities, leaks, corrosion, malfunction of third parties, etc.).
- 12.2 The Client shall inspect the services as soon as possible within the context of the normal course of business. If the Client does not inspect the services, they shall be considered accepted 30 days after notification of their completion.

13 Warranty

- 13.1 The Service Provider is responsible for fulfilling its obligations professionally and shall perform the work assigned to it carefully in line with the provisions of the Contract and the proven, recognised codes of practice.
- 13.2 The Service Provider shall extend a two-year warranty for materials, spare parts and services as of the full completion of each service. The deadline begins on the day after the Client signs the service report.
- 13.3 The Client shall notify the Service Provider of any defects in connection with the Service Provider's service in writing without delay. If this defect notification is not made in due time, the right to claim defect rights lapses.
- 13.4 In the event of a defect, the Service Provider undertakes to remedy it within a reasonable period of time and at its own expense (subsequent improvement). All other defect rights (rescission or reduction) of the Client are expressly excluded where legally permissible.
- 13.5 Any deviating warranties for third-party products must be governed within the Contract.
- 13.6 The warranty does not apply to
- defects that existed as at the performance of the services;
 - defects that could not be identified by the Service Provider despite the careful performance of the services;
 - defects resulting from circumstances for which the Service Provider is not responsible;
 - normal wear and tear.
- 13.7 Should damage occur (consequential damage) as a result of a defect, the Service Provider is also liable for its replacement in line with 14.

14 Liability

- 14.1 Wherever permissible by law, the liability of the Service Provider is
- limited to 100% of the payable remuneration or, in cases of periodically recurring remuneration, 100% of the annual remuneration payable. In any case, however, liability is limited to a maximum of CHF 1,000,000.00;
 - excluded 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).
- 14.2 The limitation of liability and the disclaimer apply to contractual, non-contractual and semi-contractual claims.
- 14.3 This disclaimer does not apply to personal injury or damage to property caused by intentional or grossly negligent conduct.
- 14.4 If it holds the Service Provider liable, the Client is obliged to report the incident to the Service Provider in writing immediately, otherwise the Service Provider shall assume that the Client is waiving its claim to damages.

15 Force majeure

The parties cannot be held liable for non-fulfilment of the agreement if it is due to events for which the parties are not responsible or force majeure, and the party concerned reports this immediately and takes all reasonable steps to execute the agreement.

16 Data protection

- 16.1 The Service Provider shall collect data (e.g. Client data and measurements) that is necessary for the provision of the contractual services, especially for the execution and maintenance of its relationship with the Client and for the security of its operations and infrastructure.

- 16.2 The Service Provider shall store and process this data to perform and develop the contractual services and to create new offers and offers relating to these services.
- 16.3 The Client hereby agrees that the data in this Contract as well as supplemental data available at the Service Provider or from third parties may be used within the BKW Group for analysis of the services provided (Client profile), for personalised advertising campaigns, for Client contacts (e.g. recalls) and for the development and structuring of products and services in the BKW Group's area of activity. The latest overview of BKW Group companies and their areas of activity can be found on the Group's home page at www.bkw.ch. **The Client may revoke this permission at any time.**
- 16.4 The Service Provider is entitled to engage third parties and to disclose the necessary data to those third parties. Data can also be transmitted abroad in this context.
- 16.5 The Service Provider and any third parties must always adhere to the relevant legislation, especially the data protection regulations. It shall take suitable steps to protect the data of the Client and treat it as confidential.

17 Confidentiality

- 17.1 The contractual partners shall treat all facts and pieces of information that are neither public knowledge nor generally accessible as confidential. In the event of doubt, they must be treated as confidential. The obligation to confidentiality arises before the conclusion of the agreement and remains in effect following the termination of the agreement. This does not apply to statutory duties of disclosure.
- 17.2 Unless agreed otherwise, all documents, data, work equipment and expertise transferred by the Service Provider to the Client for the purposes of performing the Contract remain the sole property of the Service Provider. 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 Service Provider. 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 Service Provider, the documents, data and work equipment must be returned, deleted or destroyed immediately.

18 Prohibition of assignment

The Client may not assign claims under the Contract or these GTCs to third parties without the consent of the Service Provider.

19 Succession in title

- 19.1 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.
- 19.2 Legal succession is possible only with the consent of the other contracting party. Consent can be refused only if an important reason justifies the rejection of the third party; namely, if the third party does not offer an adequate guarantee of the proper fulfilment of this agreement.
- 19.3 The transfer to BKW Group companies does not require the consent of the other contracting 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.

20 Legal validity

If individual provisions of the GTCs or the Contract 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.

21 Amendments

The Service Provider reserves the right to amend the GTCs at any time. The Service Provider shall inform the Client in advance in an appropriate manner of changes to the GTCs. If the changes result in a financial disadvantage for the Client, it may reject the change, stating the reason, 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 for all services covered by these GTCs that they obtain from the Service Provider.**

22 Applicable law and place of jurisdiction

Swiss substantive law applies, with the exception of the UN Convention on Contracts for the International Sale of Goods (CISG). **The place of exclusive jurisdiction** for disputes in connection with the Contract is **the Service Provider's headquarters.**

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