

**BEW Berliner Energie und Wärme AG**  
**General Purchasing Terms and Conditions**  
**(Version L, as May 2024)**

**1. Scope, Validity of the Client's Terms and Conditions**

This General Purchasing Terms and Conditions shall become part of a contract if and to the extent it has been expressly agreed as such in the purchase order / contract (hereinafter "Agreement") between the Client and a company (hereinafter "Contractor"), which is an affiliate of the BEW Berliner Energie und Wärme AG within the meaning of the German Stock Corporation Act ("Aktiengesetz"). The provisions of these General Purchasing Terms and Conditions shall apply subordinate to the underlying Agreement. The General Terms and Conditions used by the other party shall not form part of the Agreement, even if the Client does not specifically contradict them. If the Client accepts the delivery/service without explicit objection and settles the invoice, it shall not be inferred from this, under any circumstances, that the Client has accepted the General Terms and Conditions used by the Contractor. On the contrary, they shall only apply if the Client has declared his agreement with them or parts of them explicitly and in writing.

Should individual provisions in these General Purchasing Terms and Conditions have no legal force or be invalid for any reason, the remaining provisions shall not be affected by this. Insofar as necessary, a written agreement between the client and the contractor shall be reached immediately.

**2. Local Conditions**

The Contractor shall be obliged to sufficiently familiarise himself with the local conditions as well as matters of public law in as far as this is necessary to perform his services. The Contractor and the Client's representative shall agree to the beginning of delivery and erection work, or the commencement of construction work. Any costs resulting from failure to comply with this obligation shall be borne by the Contractor.

**3. Prices**

The prices stated in the order shall be subject to the applicable statutory value added tax. Unless specifically agreed otherwise, the prices stated in the order are fixed prices. The prices shall include - unless agreed otherwise - free delivery, including packaging, customs and insurance as far as the given shipping address/place of use. Unconditional payment of the Client shall not be deemed to constitute acknowledgement or approval.

**4. Accounting**

The Client shall effect the agreed payments after occurrence of the respective agreed event and subsequent receipt of invoice within 30 days. The order number and/or the call-off and master order number shall always be indicated on the delivery document and invoice. Invoices that fail to show this information shall be deemed not to have been issued; they shall not lead to the invoice sum becoming due and payable and shall be returned.

**5. Place of performance / Transfer of risk / Dispatch**

Place of performance shall be the delivery address/place of performance stipulated by the Client in the order. The Contractor shall be entitled to effect partial deliveries/services only with the Client's written consent. Delivery shall be made free of charge to the destination stipulated by the Client – provided no other agreement has been made in writing.

For deliveries ex-works, the Contractor shall be obliged to choose the cheapest delivery method, provided the delivery method is not stipulated. The goods to be supplied shall be packaged appropriately.

If the Client has stated an order number, inventory number or article number in his order, the Contractor shall be obliged to record these numbers in all correspondence and on all shipping documents and delivery notes. The Contractor shall bear the processing costs incurred by the Client as a result of erroneous or missing numbers and shall bear the consequences of delays attributable to this.

The statutory provisions on transfer of risk remain unaffected.

**6. Inventions**

The Contractor shall be obliged to immediately notify and assign to the Client any inventions made during the performance of the Contract and in conjunction with the subject matter thereof, and/or without limitation to claim and assign to the Client, free of charge, any inventions made by his employees if and in as far as the Client requests this.

Furthermore, the Contractor shall be obliged to give any work results, including intermediate results, if any, to the Client. The Client shall be entitled to file appropriate applications for intellectual property rights in his own name provided that the relevant legal requirements are fulfilled. Further details, in particular concerning maintenance of such intellectual property rights, shall be subject to separate agreement.

**7. Subcontractors**

Should the Contractor wish to commission third parties to provide partial services, this shall be approved in advance and in writing by the Client. This shall apply likewise to changing subcontractors or bringing in additional subcontractors.

**8. Confidentiality / Non-disclosure Obligation / Return of Documents**

The Contractor shall be obliged – unless otherwise agreed – to treat as confidential without any restriction all information from or in relation to this Agreement, particularly business and trade secrets, he may receive during performance of the Agreement. This shall not apply to information a) which, at the time of receipt, was already publicly known or accessible or that becomes public or accessible through no fault of the recipient after receiving, b) which was verifiable already known to the recipient upon receipt, or c) which was disclosed to him by a third party, not subject to confidentiality obligations. The non-disclosure obligation shall survive termination of the work / Agreement for a period of 3 years. The Contractor shall be responsible for imposing this confidentiality obligation on all employees, consultants, subcontractors, agents and other persons whom the Contractor may have involved. The Contractor is not entitled to make public details of the Agreement without the Client's prior written consent. All documents made available by the Client shall remain the Client's property.

The documents and data made available to the Contractor by the Client shall either be destroyed or irretrievably deleted by the Contractor after completion of the Agreement, or they shall be returned to the Client at the latter's request. The obligation to destroy, delete or return does not apply to confidential information that is part of an electronic backup system that is not

immediately retrievable in the course of day-to-day operations. The destruction or deletion of documents/data shall be confirmed to the Client in writing.

#### **9. Warranty**

The statutory periods of limitation apply. Defects for which a notice of defects has been lodged within the warranty period shall become statute-barred at the earliest six months after receipt by the Contractor.

#### **10. Prohibition of Assignment**

The Contractor may only assign or transfer any rights and obligations after having obtained the Client's written consent.

#### **11. Compliance with the Posted Workers Act (Arbeitnehmerentendegesetz) and Minimum Wage Act (Mindestlohngesetz), Control of Unreported Employment Act (Schwarzarbeitsbekämpfungsgesetz), etc.**

- (1) The Contractor shall ensure that the provisions of the Posted Workers Act ("Arbeitnehmerentendegesetz"; AEntG) and Minimum Wage Act ("Mindestlohngesetz"; MiLoG), Control of Unreported Employment Act ("Schwarzarbeitsbekämpfungsgesetz"; SchwarzArbG), Law on Professional Employee Leasing ("Gesetz zur Regelung der gewerbsmäßigen Arbeitnehmerüberlassung"; AÜG) and German Social Security Code ("Sozialgesetzbuch"; SGB) as amended are complied with in handling the order.
- (2) The Contractor shall undertake to inform the Client immediately if administrative infringement proceedings are brought against him or one of his subcontractors due to a violation of the provisions set out in section (1), or if he becomes aware of such proceedings.
- (3) The Contractor shall take appropriate measures to ensure that the aforementioned provisions (section (1)) are complied with. The Contractor shall document in particular which subcontractors are involved in the execution of the Client's Agreement and in what subcontractor capacity, together with the regular number of employees of each subcontractor and the date of the last check of these subcontractors.
- (4) The Client shall be entitled to conduct random or ad hoc checks at any time. In these cases, the Contractor shall be obliged, at the Client's request, to provide extensive information to the Client and to submit his own certificates and documents, as well as certificates and documents for the subcontractors employed by him, including all relevant certificates pertaining to social security legislation. In this regard, the Contractor shall also agree to submit a self-declaration to the Client, at the Client's request and at any time, stating that he is complying with the provisions set out in section (1). The Contractor shall take appropriate measures to ensure that, in the event of any checks, his employees agree to submit self-declarations on receiving the minimum wage and the insurance policies which apply to them.
- (5) The Client shall be entitled to commission a third party to carry out the aforementioned reviews and checks. The Client undertakes to treat the documentation provided as confidential, and will require the same undertaking from any third party he engages.
- (6) The Contractor is responsible for imposing on his subcontractors the same undertaking to comply with the above legal requirements. He shall ensure in particular, but not exclusively, that subcontractors consent to the aforementioned checks, including to the submission of certificates and documents, and that they likewise impose upon their employees the obligation to submit self-declarations in accordance with section (4). This also applies in respect of compliance with these requirements by any subcontractors of the subcontractor. All of the aforementioned obligations therefore apply with the obligation to pass them on.
- (7) The Contractor shall indemnify the Client and his employees with regard to all damage, costs, expenses, etc. which the latter may incur due to a violation of the provisions set out in section (1) by the Contractor or his subcontractors, and the Contractor shall be liable for the corresponding damages. The obligation to indemnify and to pay damages also includes any legal defence costs or fines in the event that proceedings are brought against the Client.
- (8) In the event of a violation of the aforementioned provisions, the Client shall be entitled to terminate this Agreement without notice. Alternatively, the Client shall be entitled to agree and monitor measures together with the Contractor to prevent future violations, and to exercise his right of termination only in the event of further violations.

#### **12. Compliance with BEW Berliner Energie und Wärme AG's Code of Conduct for Suppliers and Partners**

Unless otherwise stated, the Contractor confirms the Client's Code of Conduct for Suppliers and Partners as amended or adjusted at the time of conclusion of the Contract ("Code"). The Code is available at <https://www.bew.berlin/ueber-uns/lieferantenbeziehungen/>.

The Contractor shall not oppose the agreement of updates in the Code in bad faith ("treuwidrig").

The Contractor further agrees that it respects and acts according to the principles of the UN Global Compact on which the BEW Berliner Energie und Wärme AG Code is based and that it has policies, procedures and programs in place to ensure compliance with the principles from the UN Global Compact and national legislation.

The Client shall be entitled but not obliged to conduct or have conducted an inspection of the Contractor or its affiliates for the sole purpose of determining compliance with the Code and the UN Global Compact principles including processes to ensure monitoring compliance there of as it relates to the performance of this Agreement (the "Purpose"). Any such inspection shall be made during normal business hours and only at the Contractor and its Affiliates (within the meaning of the German Stock Corporation Act) offices or operations that are involved in the performance of this Agreement. For this purpose, the Client is also entitled to visit permitted sites, review management systems and interview employees and managers. The inspections may be conducted by the requesting Party or by a reputable third party auditing firm reasonably acceptable for the Contractor. The Contractor agrees to cooperate to the extent possible and reasonable in order to facilitate the inspection and will use its best endeavours to ensure that its Affiliates do the same.

The Client shall be entitled to terminate the Agreement without notice if the Contractor and/or one of his Affiliates, business sites or operations involved in the performance of this Agreement demonstrably commits a breach of the UN Global Compact Principles. The prerequisite for this is that this breach is so severe that the Client cannot be reasonably expected to continue performing the Agreement until the end of its term. In the event that correction is possible, the Client shall grant the Contractor a reasonable period of time in writing to remedy the breach.

#### **13. Implementation of the German Supply Chain Due Diligence Act (LkSG)**

An expression of the Client's actions in accordance with the Code is the Policy statement of BEW Berliner Energie und Wärme AG on its human rights strategy according to § 6 para. 2 LkSG (hereinafter "Policy Statement"; <https://www.bew.berlin/ueber-uns/lieferkettensorgfaltspflichtenengesetz/>). The Contractor declares that he will comply with the human rights and environmental

values and expectations of the Client as set out in the Policy Statement and the LkSG. He will consider these values and expectations in the selection of its direct suppliers and address them along its supply chain, so that his direct and indirect suppliers have sufficient knowledge of these expectations to enable appropriate consideration and implementation.

The Contractor undertakes to train its employees and - where necessary - its suppliers so that the expectations contained in the Policy statement can be implemented. The Client may provide training materials or advisory staff for this purpose. He is also entitled to carry out training himself. In particular, the Contractor shall inform its employees of the possibility of the complaint procedure - which is also accessible via <https://www.bew.berlin/ueber-uns/lieferkettensorgfaltspflichtengesetz/>, set up by the Client. He shall ensure that an employee who uses the complaint procedure, is not threatened with reprisals because of the complaint.

The Client shall be entitled to carry out random checks at the Contractor and to obtain documents and information in order to verify compliance with the human rights strategy set out in the Policy statement on a risk basis. The Contractor shall - as far as possible - work towards ensuring that the Client may also carry out such checks at the Contractor's suppliers and that the Client is also provided with information directly by those suppliers in response to corresponding inquiries.

In the event that the Client deems it necessary to make adjustments to the Agreement within the scope of the obligations under the LkSG, the Client and the Contractor shall enter into negotiations on this matter. The Contractor shall not oppose such an adjustment request of the Client in breach of trust ("treuwidriges Verhalten"). Both partners shall endeavour to agree on a Agreement adjustment appropriate to the duties of care and the protected interests of the LkSG, in particular in the form of concrete measures for remedying/mitigating violations of or threats to these protected assets.

Cases of § 7 para. 3 LkSG, in which duties or protected legal positions of the LkSG are very seriously violated, entitles the Client to terminate the contract for good cause ("aus wichtigem Grund").

#### 14. EU Russia sanctions

- (1) The Contractor is obliged to ensure that
  - (i) also during the performance of the Agreement, it does not and will not belong to the persons or companies named in article 5(k) (1) of the Regulation (EU) No 833/2014 adjusted from time to time, in its respective current version, concerning restrictive measures in view of Russia's actions destabilizing the situation in Ukraine, that have a connection to Russia within the meaning of the provision,
    - a) by the Russian nationality of the Contractor or the establishment of the Contractor in Russia,
    - b) the participation of a natural person or an undertaking to which one of the criteria referred to in point (a) applies in the Contractor through the holding of shares of more than 50 %;
    - c) by acting by the Contractor on behalf of or on the instructions of persons or undertakings to whom the criteria set out in points a) and/or b) apply; and
  - (ii) the companies involved in the Agreement as subcontractors, suppliers or companies whose capacities/capabilities have been used by the Contractor to fulfil the minimum requirements in the tender process for this Agreement, which account for more than 10 % of the value of the Agreement, also do not and will not belong to the group of persons referred to in the provision with a connection to Russia within the meaning of the provision.
- (2) The Contractor confirms and ensures that he (i) complies with any export and transfer restriction according to regulations as well as sanctions and embargoes, in particular such as imposed by the EU under Article 3g of Council Regulation No 833/2014 as amended from time to time, in particular but not limited to Russian iron and / or steel within the meaning of the aforementioned regulation, and (ii) - upon request - provides the Employer with respective documentation to demonstrate compliance with such export and transfer restrictions.
- (3) In case the Contractor is in breach with its obligations in accordance with para (1) or para (2) above and fails to remedy such breach by setting a deadline upon the Client's request to do so, the Client is entitled to terminate the Agreement for good cause. The Client is entitled to terminate the Agreement immediately if the underlying circumstances allow to assume that the breach can't be remedied or the Contractor has firmly and finally ("ernsthaft und endgültig") rejected to do so.,
- (4) The Contractor shall inform the Client without undue delay of all circumstances which could constitute a breach of the aforementioned obligations. The Client shall have a comprehensive right of inspection and information towards the Contractor.
- (5) The Contractor shall indemnify the Client against all disadvantages incurred by the Client due to a culpable breach of the aforementioned obligations attributable to the Contractor. The Contractor may only assign or transfer any rights and obligations after having obtained the Client's written consent.

#### 15. Avoiding conflicts of interest

- (1) The Contractor shall be obliged to disclose, and, if possible, avoid any conflict of interest it may have gained positive knowledge of. It must be ensured in this context that the relevant requirements under data protection law, in particular as stipulated in the GDPR and the Federal German Data Protection Act, are complied with, and safeguarding the interests of the data subject is regarded as overriding in the event of a conflict. Whenever the purpose of data processing ceases to exist, the data collected must be deleted in a way that is in conformity with the data protection provisions.
- (2) Conflicts of interest may arise if
  - (i) between staff of Contractor, including staff of its affiliated enterprises or subcontractors, on the one hand
  - (ii) and staff of Client, including staff of its affiliated enterprises, on the other,
  - (iii) contacts are maintained that go beyond a merely professional relationship, and
  - (iv) the persons according to (i) and (ii) are involved in the initiation of business / performance of the Agreement, or can exert influence on handling of the Agreement in other ways, and
  - (v) have an own direct or indirect financial, economic or personal interest.
- (3) Furthermore, conflicts of interest may arise if the Contractor
  - (i) is either directly or indirectly involved in the Client's performing of procurement procedures, awarding orders, making decisions on deliveries, services, contract conclusions etc.
  - (ii) and between itself or its staff, including its affiliated enterprises or its subcontractors on the one hand
  - (iii) and potential bidders, Contractors, suppliers, contract partners etc. of the Client on the other,
  - (iv) personal contacts, contractual relations or connections under company law or in other respects are in place

- (v) which give cause for suspecting a direct or indirect financial, economic or personal interest.
- (4) In addition, conflicts of interest arise if
  - (i) affiliated enterprises or family members of Contractor's, or its subcontractors' staff
  - (ii) are involved in contract or project management either directly (e.g. as Contractor to the Client) or indirectly (e.g. as subcontractor to a different Contractor of the Client).
- (5) The list of potential conflicts of interest as stated above (para 2-4) shall not be deemed exhaustive. The Client points out that conflicts of interest may as well arise in other constellations.
- (6) The existence of a conflict of interest is presumed if the persons mentioned above (in para's 2-4) are family members, or if there are relations under company law between the companies (e.g. affiliated enterprises within the meaning of German stock corporation law).
- (7) In the event of a conflict of interest having been ascertained, or being presumed, the Client shall be entitled to decide on taking adequate action in response or – in justified cases – to terminate the Agreement and/or demand compensation for damages. In particular - though not exclusively -, failure to disclose a potential conflict of interests, or a lack of cooperation in following up to the measures decided by Client, shall represent valid reasons for termination.
- (8) Contractor shall instruct its staff in how to deal with any identified conflict of interest.
- (9) Similarly, the Contractor undertakes to put its subcontractors under the obligation to comply with the above-stated conditions. Any and all above-mentioned obligations shall apply in connection with the obligation to pass these obligations on.

**16. Written Form/ Text Form**

Side agreements do not exist. Any modifications of and amendments to this Agreement shall be made in writing or at least in text form in order to qualify as evidence.

**17. Language of the Agreement / Applicable Law / Place of Jurisdiction**

The language of the Agreement is German. German law applies.

If the Contractor's registered office is abroad, this Agreement shall be exclusively governed by German law, barring the conflict of laws provisions and with the exception of the United Nations Convention on Contracts for the international Sale of Goods in the version of 11 April 1980. Customary commercial clauses shall be interpreted according to the relevant Incoterms - ICC, Paris.

For all disputes arising from the contractual relationship, directly or indirectly, Berlin shall be the sole place of jurisdiction. In addition, the Client shall be entitled to take action before the court having jurisdiction at the Client's registered office or at the Contractor's registered office.

**18. Adjustments to these General Purchasing Terms and Conditions**

The Client shall be entitled to adjust these Terms and Conditions of Purchase. This requires the consent of the Contractor, which he will not refuse in bad faith ("treuwidrig").