

**Terms and Conditions for the Purchase of Goods and Services of  
BERTSCH Foodtec GmbH**Page 1 of 2  
rev. 01 of 2019-10-15**§ 1 Scope of Application**

- (1) These terms and conditions shall govern all orders and contracts in respect of which we are customer, buyer or party ordering a work. These terms and conditions shall also apply to any future business.
- (2) The contracting party's terms and conditions shall not be applicable.

**§ 2 Purchase Order**

- (1) Our purchase order, including all information and documents, constitutes our business secret.
- (2) We may cancel our purchase order pending acceptance at any time.
- (3) We shall retain title to all auxiliary items enclosed to our inquiries or orders, such as plans, drafts, data, specimens, shapes, models, blocks, artwork, lithographs or samples, and these may be used only for our purposes. These items shall be returned to us without solicitation along with the invoice at the latest or at any time upon our request at the contracting party's cost and expense. Pending their return, the contracting party shall bear any risk of accidental loss of or damage to the auxiliary items.
- (4) We will not pay any compensation for the preparation of bids and bidding documents (plans, efforts, technical specifications, etc.). The contracting party declares when accepting our order that it possesses all information, data, descriptions, plans and technical specifications required for the execution of our order as well as sufficient knowledge of the local circumstances.

**§ 3 Supplies/Services**

- (1) The delivery/service date shall be the date indicated by us on which the supplies/services shall be provided at the place of delivery/service. We may determine an earlier or later delivery/service date, provided that this is not unreasonably onerous for the contracting party.
- (2) Any risk shall transfer not until after unloading and acceptance of the goods at the place of delivery and provision of any other service at the place of service.
- (3) We may refuse any early or late supplies/services.
- (4) The contracting party shall immediately inform us of any foreseeable delay by written notice.
- (5) We may refuse to accept partial, short or excessive supplies/services.
- (6) We may cancel the entire order even if services are divisible.
- (7) Upon delivery, a delivery note stating our order number, the ordered item and the MA number which discloses the type and number of delivered goods shall be handed over to us.
- (8) Units of a delivery (e.g. pallets, cardboard boxes) shall be clearly marked to ensure easy and plausible identification of the number of goods that are packed in the relevant unit.
- (9) A supply/service shall be deemed complete only if the contracting party has handed over to us all agreed or customarily expected documents (e.g. invoices, freight documents, certificates of origin, guarantee letters, technical documentation, instructions of use). These documents shall be handed over to us along with the invoice, at the latest. If the contracting party is in default with delivery of an agreed document, it shall pay to us an immediately payable penalty equal to 0,3 % of the order sum for each commenced week of default which shall not exceed 3 % of the order sum. The contracting party shall also reimburse any further damage as well as all costs and expenses we incur in connection with its default.
- (10) If dangerous goods are delivered, a relevant notice shall be included in all freight documents along with a description of the

dangerous goods category. In addition, the dangerous goods bulletins prescribed by law or otherwise shall be enclosed.

- (11) In case of default, we may cancel the contract after having granted a reasonable grace period. In addition, we may ask the contracting party to surrender all finished or semi-finished goods as well as the raw material intended for the production of the relevant item. For this purpose, the contracting party shall grant us, at our request, access to all business premises and warehouses where finished or semi-finished goods and the raw material intended for the production of the relevant item are stored.
- (12) In case of default, we may also demand an immediately payable penalty equal to 1 % of the order sum for each commenced week of default which shall not exceed 10 %. The contracting party shall also reimburse any further damage as well as all costs and expenses we incur in connection with its default.

**§ 4 Prices, Invoice and Payment**

- (1) Prices are fixed prices and include all expenses for the complete provision of supplies/services (DDP place of delivery/service Incoterms 2000), including, without limitation, transport, insurance, packaging, assembly, trial operation as well as plans, models, templates, etc. These shall become our property.
- (2) Invoices shall be issued in two counterparts and sent to us by designating the copies. Invoices may not be enclosed to a delivery.  
In case of deliveries from third countries, the delivery must be accompanied by an additional copy of the invoice and a customs invoice.
- (3) Invoices must meet the legal requirements. All invoices shall become due only if they indicate our order number and RM/Pos. and if they precisely designate the delivered goods/services.  
Invoices issued by contracting parties domiciled outside of Austria shall become due only if they also state the contracting party's IBAN and BIC.  
Invoices issued by contracting parties domiciled in the EU shall become due only if they also state the weight, origin and goods number (customs rate) of each item.
- (4) If supplies/services are defective, we may retain payment until complete performance.
- (5) Payment will be made with 3 % cash discount within 14 days after receipt of the invoice or net within 60 days.
- (6) The place of performance for payment shall be Bludenz.

**§ 5 Warranty**

- (1) The goods or services shall comply with all standards and regulations applicable in Austria. Any machinery and facilities shall particularly comply with the functional specifications and the product-specific safety and functional standards.
- (2) The contracting party warrants that its supplies/services will not infringe upon any rights of third parties, and it shall hold harmless and indemnify us for and against all claims that are asserted on the grounds of an infringement of such rights.
- (3) The contracting party shall verify the quality and quantity of its supplies/services. We are expressly not required to inspect supplies and to give notice of defects.
- (4) At our election, the contracting party shall complete any incomplete supplies/services, replace the defective product or rectify the defect within a reasonable period of time or grant us a price reduction. We may demand exchange of the entire product or rescind the contract even if only individual items or parts of the service are defective or missing.

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- (5) If the contracting party refuses to rectify a defect, if it is in default with rectifying a defect or if it once tried to rectify a defect in vain, we may rectify or procure the rectification of the defect at the contracting party's cost and risk. We may also do so in case of imminent danger, e.g. because we have to fulfill our obligation against third parties.

**§ 6 Damages**

The contracting party shall be liable to us for all drawbacks arising from a breach of the contract, including claims from product liability. We shall be entitled to such claims even if we use the supplies/services predominantly within our business.

**§ 7 Non-disclosure**

- (1) The contracting party shall keep confidential its business relationship with us and all information pertaining to us or our business partners. This obligation shall survive after performance of the contract.
- (2) If and when the fulfillment by the contracting party of its contractual obligations so requires, the contracting party may disclose confidential information to its suppliers subject to our prior written consent and agreement, provided that the supplier undertakes toward us to comply with this non-disclosure obligation.

**§ 8 Tools**

- (1) We shall retain title to all tools we have provided or produced in whole or in part at our cost and expense. These may be used only for goods or services which are produced for or delivered to us. The contracting party shall insure the tools at their replacement value at its own cost and expense. The contracting party shall assign to us already now all compensation claims it may have under such insurance.
- (2) The contracting party shall inspect and maintain tools at its own cost and expense. Any loss or damage shall be immediately reported to us.
- (3) The contracting party shall bear any risk in connection with any accidental loss of or damage to the tools until these are returned. At our request, the contracting party shall immediately return to us the tools at the contracting party's cost and expense.

**§ 9 Materials provided**

- (1) We shall retain title to any material provided. It shall be separately stored and managed by the contracting party free of charge according to our requirements and visibly designated as our property. The contracting party shall timely order and keep a sufficient stock of the material provided by us to ensure that it may timely and completely fulfill its delivery obligations.
- (2) Material provided may be used only for goods or services which are produced for or delivered to us. The contracting party shall insure material provided by us at its replacement value. The contracting party shall assign to us already now all compensation claims it may have under such insurance.
- (3) The contracting party shall pay for the material provided by us if the entire or part of the subject-matter of contract cannot be produced.

**§ 10 Quality checks + inspections by Bertsch**

(Regardless of any acceptance required by law or fixed by contract)  
We reserve the right to carry out quality checks of or to continuously monitor the production of the deliverable at the contractor's premises through our quality division, our supervisor or the supervisor instructed by us. Our supervisor may issue instructions if production is continuously monitored. The conduct of controls or the monitoring

of production or an inspection by us or our nominee or our end customer or a waiver of control shall not release the contractor from its contractual obligations or its overall responsibility to provide the services ordered. This shall particularly not operate as a waiver by the ordering party of its rights, such as warranty and damage claims arising from default, penalties, etc. Any cost of quality checks and the monitoring of production by the ordering party shall be borne by the customer. In the absence of a positive inspection (final acceptance) for reasons within the contractor's control, all costs for the technical inspector and the customer's nominee resulting from a re-inspection shall be borne by the contractor.

**§ 11 Final Provisions**

- (1) The contracting party may not assign its claims against us to third parties, except with our consent. The contracting party shall note that in its books.
- (2) All legal relationships between us and the contracting party shall be governed by and construed in accordance with Austrian substantive law, without giving effect to the UN Sales Convention.
- (3) Within the scope of application of the Lugano Convention or the Brussels I Convention, all disputes shall exclusively be referred to the courts in Bludenz, Austria.  
Disputes not falling within that scope of application shall be referred to the International Arbitral Centre of the Austrian Federal Economic Chamber in Vienna. The place of arbitration is Bludenz. The language to be used in the proceedings is German.  
However, we may bring claims against the contracting party before any other court having jurisdiction for the contracting party.
- (4) For purposes of the construction of the contract and these terms and conditions, the German version shall prevail.
- (5) Any reference to us and/or the contracting party's services provided to us in promotional materials or in the form of referrals shall require our prior written consent.
- (6) The contracting party agrees that we electronically collect and process its data.