

## Terms and Conditions of Sale and Delivery

Applicable for Bertsch Energy GmbH & Co KG as well as Bertsch Service GmbH

Page 1 of 2  
2020-01-01

### **§ 1 Scope of Application:**

- (1) The following terms and conditions shall govern all of our supplies and services. These terms and conditions shall also apply to any future transactions, even if these are not expressly incorporated by reference as part of the contract in a particular case.
- (2) Any inconsistent terms and conditions, including, without limitation customer's terms and conditions for the purchase of goods and services, shall be fully invalid without a need to object to these terms. Any amendment of our Terms and Conditions of Sale and Delivery shall be made in writing.
- (3) Agreements made in writing on an individual basis shall have priority over these terms and conditions.

### **§ 2 Offer, Acceptance, Acknowledgement Notice:**

- (1) Our offers are without engagement.
- (2) We accept orders by a written acknowledgment notice.

### **§ 3 Price:**

- (1) Unless otherwise agreed, our prices applicable on the date of supplies/services shall apply.
- (2) If prices have been agreed and there is a change in costs on which such prices were based, we may adjust prices to reflect that cost change.
- (3) All prices are net prices in Euro ex works, including customary packaging. If customer requests special packaging (e.g. individually packed, packed for ocean shipment), customer shall pay for the additional costs for such packaging.
- (4) If supplies/services are provided at a later point in time for reasons within the customer's control, we may set correspondingly higher prices to compensate higher costs resulting from such delay. This shall not affect our right to compensation of damage we may otherwise incur.
- (5) Any taxes, customs duties and other levies the customer may have to pay for the acceptance of supplies/services shall be borne by the customer, unless we have expressly agreed to make payment by written agreement.

### **§ 4 Place of Performance, Delivery:**

- (1) The place of performance is Bludenz, Austria.
- (2) Shipment and transport take place for the account and at the risk of the customer. Any risk shall pass to the customer as soon as the shipment is offered to the customer at the place of performance. Customer's refusal to accept a shipment shall constitute a default in acceptance. In addition, we shall be deemed to have made delivery in this case and are entitled to store the goods at the customer's cost and expense. We shall promptly be reimbursed for any related storage costs.
- (3) We may make partial deliveries; these shall be subject to all terms and conditions of contract.
- (4) If we are unable to provide supplies or services on the agreed date due to unpredictable circumstances beyond our control (force majeure, delays in delivery by sub-suppliers etc), we shall be entitled to provide supplies or services on the next possible date, provided that the customer can be reasonably expected to accept the supplies/services on that date. Otherwise, we may rescind the contract. We shall be liable for any other delay of performance only in case of our own seriously gross negligence and intent.

### **§ 5 Warranty and Liability:**

- (1) We warrant that the subject-matter of the contract (supply or service) is consistent with the agreed specifications.  
In case of any reconstruction or extension of existing facilities, we will only check whether our services can be attached to the existing facilities. However, we will not check whether the existing facilities work on a stand-alone basis or together with other services. We do not accept any warranty and liability in this respect.
- (2) The customer shall carefully examine the subject-matter of contract (supply or service) upon acceptance and give written notice of any defects within five days of delivery of the subject-matter of contract. Otherwise, the customer shall not have any claims, including no claims arising from consequential damage. If a defect is notified in due time, we may rectify the defect, replace the incriminated goods, take these back by crediting the price, or grant a price reduction. The customer shall not be entitled to assert any other claims.
- (3) The warranty period is 12 months and commences once the goods are offered to the customer at the place of performance in case of supplies, and upon acceptance in case of services.
- (4) The customer may not withhold payments in reliance on warranty or other claims.
- (5) As far as permitted under mandatory law, any liability for damages on our part for minor and simple gross negligence is excluded. In principle, we are not liable for consequential damage, in particular lost profits. Our liability shall be confined to value of a) order, or b) amount paid by insurance, whichever is lowest.
- (6) Incriminated goods may be returned only with our prior express consent at the customer's cost and risk. If such goods are returned without our prior consent, we may refuse to accept the returned goods and return these to the customer at his cost and expense.
- (7) Any information provided orally shall be binding only if confirmed in writing. We do not owe any success for consulting services.

### **§ 6 Reservation of Title**

- (1) We shall retain title to the items delivered (conditional goods) pending satisfaction by the customer of all his obligations, particularly until complete payment of the purchase price.
- (2) The customer may resell the conditional goods. This right will expire if the customer is in default with payment or must fear that he may not be able to fully pay our claims upon maturity.
- (3) If the customer resells the conditional goods, the customer is assigning to us already now any of his claims from such resale or any other realization up to the amount of the purchase price payable to us. The customer undertakes to note this assignment in his books and records. Until further notice, the customer may collect the assigned claims on his own behalf and for our account. The customer shall be obliged to retain for himself title to the conditional goods in the event conditional goods are resold on loan.
- (4) The customer assigns to us any insurance benefits or damage claims to which he may be entitled by virtue of the destruction of or damage to the conditional goods.

## Terms and Conditions of Sale and Delivery

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Page 2 of 2  
2020-01-01

- (5) The conditional goods may not be subject to a lien or transfer of ownership rights for security purposes.

### **§ 7 Payment and Default:**

- (1) The place of performance for payment shall be Bludenz, Austria.
- (2) Bills of exchange and checks are accepted only on account of payment and only in reliance on a written agreement.
- (3) The purchase price must be paid within 14 days of the invoice date without any deduction and free and clear of any cost and expense.
- (4) If payment is not made when due, we may:
  - postpone the fulfillment of our obligations pending payment of these arrears,
  - claim a reasonable prolongation of the delivery or service period,
  - accelerate the payment of the entire outstanding purchase price,
  - charge all dunning and collection fees and statutory default interest, or
  - in case of non-compliance with a reasonable grace period, rescind the contract; even if the service is divisible, we may rescind the entire contract. If we rescind the contract, the customer shall pay a cancellation fee equal to 10% of the price, which is due and payable immediately, and shall compensate any damage in excess thereof along with lost profit.
- (5) If foreclosure proceedings are conducted with respect to the customer's assets or if his ability to pay is doubtful, we may
  - immediately accelerate all claims notwithstanding their maturity,
  - retain all supplies and services under contracts not yet performed and perform only against advance payment. If the customer refuses to make advance payments, we may rescind the contract and assert damages also for lost profit.
- (6) If case of the customer's delay in acceptance, the purchase price shall immediately be due and payable.
- (7) Payments will also be credited towards the oldest debt and resulting interest, even if earmarked otherwise.

### **§ 8 Place of Jurisdiction and Applicable Law:**

- (1) All legal relationships between us and the customer shall be governed by and construed in accordance with Austrian substantive law, without giving effect to the UN Sales Convention.
- (2) 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. If contract is made in another language than German, language of court is English. Jurisdiction of the International Arbitral Centre of the Austrian Federal Economic Chamber in Vienna does not preclude contracting party's, before or during arbitral proceedings, to order interim or protecting measures, or, that such measures are ordered by court.

However, we may bring claims against the contracting party before any other court having jurisdiction for the

contracting party, as long as claim has not yet been brought to the court designated or the International Arbitral Centre of the Austrian Federal Economic Chamber in Vienna.

### **§ 9 Final Provisions:**

- (1) The customer may not set off claims he may have against us against the purchase price payable to us. The customer shall not have any right of retention.
- (2) The customer may not assign to others his claim to delivery or performance of the subject-matter of contract.
- (3) The customer may not challenge a contract on the grounds of error.
- (4) Any documents or information about us, our products, distributors or other customers that are made available to or otherwise obtained by the customer may not be disclosed or otherwise made available to third parties, including, without limitation, to our competitors. This also includes documents such as templates, drawings, drafts and cost estimates that are delivered to or otherwise obtained by the customer. We are entitled to claim all rights to those documents.
- (5) The customer warrants that no rights of third parties are attached to the drawings, sketches, models, etc. made available by the customer. The customer shall hold us harmless and indemnify us for and against all claims any third party may assert against us due to an infringement of the rights to the aforementioned items. If such rights are asserted, we may rescind the contract without granting a grace period and immediately discontinue our supplies/services. We may do so without examining the legal situation and without the customer having any claims against us.
- (6) If the customer violates an obligation set forth in these Terms and Conditions of Sale and Delivery, including, without limitation, an assignment obligation, the customer shall hold us harmless and indemnify us for and against all claims any third party may have due to this violation.
- (7) If any term hereof is or becomes invalid or unenforceable, this shall not affect the remaining terms hereof. These invalid or unenforceable terms shall be replaced by valid and enforceable terms which closest reflect the intended economic purpose (severability).