

## Terms and Conditions of Installation and Service

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applicable for Bertsch Energy GmbH &amp; Co KG as well as Bertsch Service GmbH

2020-01-01

### § 1 Scope:

- (1) The following Terms and Conditions apply to all our deliveries and services. These Terms and Conditions also apply to future transactions even if they have not expressly been referred to as an integral part of the contract in the individual case.
- (2) Any terms and conditions, in particular terms and conditions of purchase of the customer are ineffective in their entirety without the need for us objecting to these. Any amendments to our Terms and Conditions of Installation and Service must be effected in writing.
- (3) Any agreements made with the customer in writing in the individual case have precedence over these Terms and Conditions.

### § 2 Offer, acceptance, order confirmation:

- (1) Our offers are without commitment.
- (2) We accept orders by written order confirmation.

### § 3 Price and invoicing:

- (1) Unless anything to the contrary has been agreed, our prices as valid on the day of delivery/service apply.
- (2) If prices were agreed and the costs on which these prices were based have changed, we have the right to adapt the prices in accordance with the change in costs.
- (3) All prices for deliveries are quoted net in Euros ex works (EXW manufacturer's factory according to INCOTERMS 2010).
- (4) Unless an all-inclusive price has been agreed in writing, we invoice our deliveries/services based on the actual expenditure. Our charge rates as valid on the day of delivery/service apply. Regardless of whether invoicing based on the actual expenditure or an all-inclusive price has been agreed, the customer must provide or additionally pay for the consumables required for rendering the deliveries/services, such as in particular cleaning and care agents as well as replacement, exchange and wear parts.
- (5) Where invoicing is based on the actual expenditure, travel costs and expenditure (e. g. meals and accommodation in accordance with Austrian standard and in direct vicinity of the installation site) must additionally be paid. Where an all-inclusive price has been agreed, this includes travel costs and expenditure. The customer must always additionally pay for any waiting periods that have not been caused by us. Furthermore, the customer must generally pay for the actual travel expenditure, such as travel costs, transport costs for luggage and tools, supplementary travel insurance, cost for passport and visa, costs for any vaccinations or other medical examinations that might be required. We may choose the means of transport at our discretion. If the installation period exceeds one (1) week, two (2) additional days are invoiced for preparation and wrap-up of the deployment.
- (6) Overtime is invoiced based on the charge rates valid on the day the delivery/service is provided. A surcharge for night work and work on Sundays and public holidays is invoiced at the rates applicable on the day of delivery. Overtime and night work and work on Sundays and public holidays are not included in any agreed all-inclusive price. All deliveries that are not expressly included in the all-inclusive price are invoiced in addition to the all-inclusive price at the rates respectively applicable on the day of delivery.
- (8) If the delivery/service is rendered at a later date owing to circumstances for that the customer is responsible,

we have the right to compensate for any higher costs incurred due to this by charging accordingly higher prices. Our right to compensation for any other damages we might suffer remains untouched.

- (9) The customer pays for all taxes, customs and other duties that it has to pay upon acceptance of the delivery/service unless where we have expressly agreed to pay these in writing.

### § 4 Payment and default:

- (1) Place of fulfilment for the payment is Bludenz, Austria.
- (2) Drafts and cheques are only accepted in lieu of payment and if agreed in writing.
- (3) Invoices must be paid within 14 days from date of invoice without deduction and free of any charges.
- (4) If the price is not settled when due, we are entitled to:
  - Delay fulfilment of our obligations until the overdue payment has been effected,
  - Accordingly extend the term of delivery or service,
  - Demand immediate payment of the entire outstanding amount,
  - Charge any and all reminder and collection costs and the legal default interests, or
  - If a reasonable period of grace was granted and has expired unsuccessfully, to rescind the contract in which case we are entitled to rescind the entire contract even if the delivery/service can be divided. If we rescind the contract, the customer has to pay us a cancellation fee of 10% of the price, which becomes payable immediately, and the damage beyond this including lost profits.
- (5) If enforcement proceedings have been instituted on the assets of the customer or if its solvency is doubtful, we are entitled to:
  - Demand immediate payment of all accounts receivable regardless of when they are due,
  - Withhold all deliveries and services from not yet fulfilled contracts and only fulfil these against payment in advance. Should the customer refuse to pay in advance, we can rescind the contract and also claim damages for lost profit.
- (6) If the customer is in default with the acceptance, the price becomes payable immediately.
- (7) Even where a different purpose of payment is specified, any payment will first be used to settle the oldest debt and the resulting interests.

### § 5 Place of fulfilment, delivery:

- (1) The place of fulfilment is specified in our order confirmation. In case of doubt, Bludenz, Austria, is the place of fulfilment.
- (2) Shipment and transport are effected at the cost and risk of the customer. The entire risk is transferred to the customer as soon as the delivery is offered to it at the place of fulfilment. If the customer fails to accept the delivery, it is in default of acceptance. In addition, our delivery is deemed fulfilled in such case and we are entitled to store the goods at the customer's cost. We must be reimbursed for any storage costs resulting from this immediately.
- (3) We have the right to make partial deliveries; all contractual terms are applicable to these.
- (4) We render our services/deliveries during the applicable legal Austrian daily and weekly normal working hours as valid at the time of fulfilment. The current normal weekly working hours amount to 38.5 hours. The normal daily working hours from Monday to Thursday are eight hours and on Friday 6.5 hours. Any hour beyond this, regardless of whether it is spent as working or waiting time, is deemed overtime and must be paid as such. Both Austrian public holidays and the

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local public holidays at the place of installation are observed.

- (5) If, due to unforeseen circumstances outside our control (in particular Force Majeure, delayed deliveries from supplier firms, strike, government action, investigations by the public prosecutor, etc.), we are prevented from delivering or rendering the service we have the right to deliver or render the service on the next possible date provided that acceptance of the delivery/service is still reasonable for the customer on such date. Otherwise, we are entitled to rescind the contract. We are only liable for any other delayed delivery in cases of gross negligence and malicious intent on our part.

### **§ 6 Cooperation obligations of the customer**

- (1) The customer must, at its cost, take all measures and create the conditions required for the fulfilment of our deliveries/services according to the agreement. In particular, it must grant us and our contracted officers access to the construction site or to the plant or/at which we are to provide our deliveries/services (hereinafter referred to as the site or the plant).
- (2) At the beginning of the provision of our deliveries/services, the site/the plant must be in a condition that ensures that we can immediately start with the delivery. The customer must ensure all required measures and preparations required for this at its cost. In particular, all earth, masonry, carpentry and scaffolding work and all other necessary preparations must have progressed so far that we can start with our work immediately and can execute it without any interruption and without any risk to our staff. Any delays are invoiced separately as waiting period based on the actual expenditure.
- (3) The customer must provide the working equipment that must be available at the plant in accordance with the relevant accident prevention regulations, at its cost.
- (4) Moreover, the customer must provide suitable support staff for any necessary operation of devices and for assisting us, as well as any other tools that might be required, at its cost.
- (5) Prior to the beginning of the deliveries/services, the customer must indicate and, if necessary, explain in detail any safety and works rules that might exist and that might have to be observed during the execution of the deliveries/services. Should instructions or training be required in this context, we reserve the right to charge for these additionally based on the time spent and the actual expenditure.
- (6) The customer must disclose the information on the plant we request and must provide us with the relevant documentation. In particular, it must promptly inform us of any particularities and problems that occurred in connection with the plant.
- (7) The customer must take all measures and precautions necessary to ensure the safety of our staff.
- (8) The customer must provide us with the current data and documentation pertaining to the plant. It is the customer's responsibility to ensure appropriate measures to protect its IT systems from viruses, worms, Trojans and other electronic manipulation attempts and to maintain and update such protection.
- (9) Any costs resulting from the customer's violation of above cooperation obligations will be invoiced separately. Any work interruptions not caused by us or the costs of a renewed deployment of staff on the site will be invoiced separately.
- (10) The customer must certify the weekly working hours of our staff by signing our work reports. If and to the extent to that the customer provides staff and if we include the working hours of these in our work reports,

their working hours must also be certified by the customer. We base our invoices on these weekly certificates.

- (11) The customer has the duty to certify to our staff the completion and transfer of our deliveries/services on the last work report. Minor faults do not give the customer the right to refuse acceptance.
- (12) Upon the beginning of our deliveries/services, at the latest, the customer must appoint a person to us that is authorised to act on behalf and for the account of the customer, in particular to sign the weekly certificates or to request material or equipment.

### **§ 7 Warranty and liability:**

- (1) We guarantee that the contract item (delivery or service) complies with the agreed specifications and has been executed correctly and professionally. In addition, we guarantee that the operating equipment, replacement, exchange and wear parts are fit for the intended use. Any warranty beyond this is excluded. In particular, we do not give any warranty for faults that are caused by parts of the plant of the customer, that are outside our scope of delivery and services or that are due to our scope of delivery and services' not harmonising with the remaining part of the customer's plant or parts thereof or its function being impaired thereby. For reconstructions and additions, we also do not give any warranty that the existing structures will function alone or together with our scope of delivery and services.
- (2) We do not give any warranty for verbally provided information, recommendations, etc. Information, recommendations, etc. of this kind given verbally are only binding if confirmed in writing.
- (3) The customer must thoroughly inspect the contract item (delivery or service) upon acceptance and must notify us of any faults within five days from acceptance of the contract item in writing; failing to do so will result in the exclusion of any claims, including those arising from consequential damage of the fault. If a fault is notified within the specified complaint period, we are entitled, at our discretion, to either repair the goods that exhibit the fault, to take these back against credit of the price, or to grant a price reduction. The customer is not entitled to any claims beyond this.
- (4) The warranty period is 12 months and starts, in the case of deliveries, as soon as the goods are offered to the customer at the place of fulfilment, and in the case of services, as soon as these have been accepted by the customer. Repaired or exchanged parts are not subject to a renewed warranty period.
- (5) The customer is not entitled to withhold payments due to warranty or other claims.
- (6) 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.
- (7) The return of goods claimed to be faulty requires our express prior consent and is done at the customer's cost and risk. Where goods are returned without our prior consent, we are entitled to refuse acceptance of the returned goods and to send these back to the customer at the latter's cost.

### **§ 8 Place of jurisdiction and applicable laws:**

- (1) All legal relations between us and the customer are subject to substantive Austrian law. The UN

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Convention on Contracts for the International Sale of Goods is excluded.

- (2) The exclusive place of jurisdiction for all disputes within the scope of application of the Lugano Convention or within the scope of application of the EuGVVO (Brussels-I-Regulation) is Feldkirch, Austria.

For all cases outside this scope of application, the parties agree to the competence of the International Court of Arbitration at the Austrian Federal Economic Chamber in Vienna. The place of arbitration is Bludenz, the language of arbitration is German.

However, we are in all cases entitled to file a lawsuit against the customer in a different court having jurisdiction over it.

### **§ 9 Final provisions**

- (1) The customer is not entitled to set off any claims against us against the amounts we are entitled to receive from it. The customer is not entitled to any rights of retention.
- (2) The customer is not entitled to assign its claim for delivery or service of the contract item to others.
- (3) Rescission of a contract due to error on the part of the customer is excluded.
- (4) Documents or information about us, our products, distribution partners or other customers that are supplied to the customer or of that it obtains knowledge otherwise may not be disclosed to third parties, in particular not to our competitors, or made otherwise accessible to these. The same applies to documents, such as, for example, samples, drawings, designs and quotations that are submitted to the customer or of that it obtains knowledge otherwise. We are the owners of all rights to such documents.
- (5) The customer guarantees that the drawings, sketches, models, etc. provided by it are not subject to any third party's rights. It indemnifies us in respect of any and all claims that a third party might assert against us owing to a violation of rights in respect of the above-mentioned items. Should any such rights be asserted, we are entitled to rescind the contract without granting any period of grace and to discontinue our delivery/service with immediate effect; we can do so without verifying the legal situation and without the customer being entitled to any claims against us on these grounds.
- (6) Should the customer violate any of the obligations specified in these Terms and Conditions of Installation and Service, in particular the imposition obligation, it must indemnify us in respect of any and all third party claims resulting from such violation.
- (7) Should any provisions of the contract be or become ineffective or unenforceable, the remaining clauses of the contract remain valid. Such ineffective or unenforceable provisions are deemed replaced by effective and enforceable provisions that come closest to the intended economic purpose (severability clause).