



**BERTSCH**energy

Power Plants  
Process Equipment

**Bertsch Energy GmbH & Co KG**

T +43 5552 6135-0

F +43 5552 66359

Herrengasse 23 | Postfach 61

6700 Bludenz | Austria

bertschenergy@bertsch.at

www.bertsch.at

# General Commercial Conditions for the procurement of Plants, Plant Components and Services

BERTSCHenergy | BERTSCHfoodtec | BERTSCHlaska | BERTSCHservice

BERTSCHgroup



EN ISO 9001  
EN ISO 14001  
OHSAS 18001  
SCC\*\*

UID No.: ATU35984805 | Tax No.: 98 023/4819 Tax office Feldkirch | FN 15350 z - LG Feldkirch

**Nüziders production site:**

T +43 5552 6135-0T

F +43 5552 6135-76F

Bundesstraße 1

6714 Nüziders | Austria

bertschenergy@bertsch.at

**Vienna office:**

+43 1 79574

+43 1 79856-22

Baumgasse 68

1030 Vienna | Austria

bertschenergy@bertsch.at

**Bank details:**

Vorarlberger Landes- und

Hypotheekenbank AG

IBAN: AT61 5800 0003 8124 6116

BIC/Swift code: HYPVAT2B

**§ 1 Application area**

- (1) These terms and conditions apply to all enquiries, orders and contracts in which Bertsch is the client, buyer or orderer of works. They also apply to future business.
- (2) The contractor's terms and conditions of business shall not be deemed an integral part of the contract.

**§ 2 Order**

- (1) The customer's order with all information and documents is a trade secret of the customer.
- (2) Until the acceptance of the customer's order, the customer is entitled to withdraw it at any time.
- (3) Any aids enclosed with the enquiries or orders of the customer, such as plans, drafts, data, samples, moulds, models, clichés, artwork, lithographs or samples, remain the property of the customer and may only be used for his purposes. They are to be returned to the client without being requested to do so, at the latest with the invoice or at any time at the contractor's request and at the contractor's expense. Until they are returned, the contractor shall bear the risk of accidental loss or accidental damage to the aids.
- (4) The Client shall not pay any remuneration for the preparation of offers and offer documents (plans, efforts, technical specifications etc.). By accepting the customer's order or submitting a binding offer, the contractor declares that he has all the information, data, descriptions, plans, technical specifications and sufficient knowledge of local conditions required for the execution of the delivery and service.

**§ 3 Delivery / Performance**

- (1) The date of delivery/performance is the date specified by the Customer at which the delivery/performance is to be made at the place of delivery/performance. The Customer is entitled to postpone the date of delivery/performance to an earlier or later date, provided that this does not constitute a disproportionate complaint for the Supplier.
- (2) The risk shall not pass until the goods have been unloaded and accepted at the place of delivery and any other service has been handed over at the place of performance. In the case of deliveries including assembly or commissioning, the risk shall be borne by the contractor until acceptance of his services by the client (presentation of an acceptance, commissioning or final assembly protocol signed by the client).
- (3) The Client is entitled to refuse early or late delivery/service.
- (4) The contractor must immediately notify us in writing of any kind of emerging hindrances. This shall also apply if, in his opinion, they are obvious. The notification of hindrances must include the reason and the possible effects on the further performance of the service. If the contractor does not provide a notice of impediment or provides an incomplete notice of impediment, he must compensate the client for any resulting disadvantage. A notice of impediment must be specifically prepared by the contractor and must be in writing. If the contractor has notified the client of a hindrance, he is not entitled to stop or interrupt his work in whole or in part if other outstanding work in his scope of delivery and service has to be completed in order to keep potential damage or delay as low as possible.
- (5) The contractor must immediately prepare a written supplementary offer for additionally commissioned or modified services and send it to the client in duplicate. At the same time, he shall inform the Customer how the

additional or modified services affect the agreed deadlines, in particular the completion of the services. Furthermore, a written and verifiable proof must be provided that the performance covered by the lump sum price is exceeded. The client is entitled to reject partial, short or excess deliveries/services.

- (6) The contractor is also obliged to carry out the change in service or additional service requested by the client if the parties do not agree on the offer or the additional price demanded by the contractor.
- (7) Even in the case of divisible performance, the Client shall be entitled to declare the withdrawal of parts or the entire order. The Client is also entitled to change the contractual scope of services, in particular to order additional services in writing.
- (8) Upon delivery, the Customer shall be provided with a delivery note with his order number, the order item and the RM number, which shows the type and number of goods delivered.
- (9) Units of a delivery (e.g. pallets, cartons) must be clearly marked so that it is easy to identify which goods are packed in which quantity in this unit. If the Customer uses a logistics management system for the ordered deliveries and services, the Contractor is obliged to report the planned units prior to delivery using a service provided by the Customer.
- (10) A delivery/service shall only be deemed to have been fully rendered when the Contractor has handed over to the Customer all agreed or usually required documents (e.g. invoices, freight documents, certificates of origin, letters of guarantee, technical documentation, operating instructions). These documents are to be handed over to the client with the invoice at the latest. If the Contractor is in default with the handover of an agreed document, he shall pay the Client an immediately due contractual penalty of 0.3% of the order amount for each week of the delay or part thereof, but no more than 3% of the order amount. The Contractor shall compensate for any damage in excess of this amount as well as for the costs and expenses incurred by the Client as a result of the delay.
- (11) If dangerous goods are delivered, a corresponding notice shall be affixed to all shipping documents, indicating the class of dangerous goods. In addition, the legally or otherwise required dangerous goods data sheets shall be enclosed.  
The transfer of ownership of equipment and other goods or materials supplied by the contractor for incorporation or use in the works shall pass from the contractor to the contracting authority, whichever is earlier:
  - a. Delivery to the construction sector; or
  - b. payment to the contractor for the equipment, goods or materials concerned; or
  - c. Acceptance;The risk for the equipment and the work shall pass to the Client on the day of acceptance by the Client's end customer.  
The contractor is also responsible for the care and safekeeping as well as for the loss or damage of equipment and works until the acceptance date.  
The risk of loss of or damage to construction equipment or other property of the contractor or his subcontractors used or intended to be used in connection with the works shall remain with the contractor.
- (13) In the event of default, the Customer shall be entitled, irrespective of his right to claim a contractual penalty, to -

withdraw from the contract in whole or in part after setting a reasonable grace period. In addition, the Customer is entitled to demand that the Contractor surrender all goods already produced or semi-finished as well as all raw materials intended for the production of the subject of the contract. For this purpose, the contractor is obliged to grant the client access to all business premises and warehouses where manufactured or semi-finished goods as well as raw material intended for the manufacture of the subject matter of the contract are located.

- (14) In the event of delay, the Customer shall also be entitled to demand an immediately payable contractual penalty of 1% of the order sum for each week of delay or part thereof, but not more than 10%. The Contractor shall be liable for any damages in excess thereof as well as for the costs and expenses incurred by the Customer as a result of the delay.
- (15) The contractor is obliged to perform the agreed services himself. The commissioning of subcontractors is only permitted with the prior written consent of the Customer. The Contractor shall continue to be personally and directly liable, within the meaning of §1313a ABGB (Austrian Civil Code), despite the commissioning of a subcontractor, for the contractual fulfilment of the obligations assumed by him. The provisions of §1315 ABGB are excluded and the contractor must indemnify the client from all claims that the contractor's subcontractor, the client's customer or third parties (e.g. authorities, social insurance companies) make against the client.
- (16) The Contractor shall provide the delivery item with references to the Customer in accordance with the Customer's instructions during transport, assembly and on the completed work. The notices to be affixed by the Contractor shall be handed over to him by the Customer or by any service providers for logistics management that may have been employed. References to the contractor (e.g. signs, inscriptions, banners etc.) may only be attached by the contractor to the delivery item or during its transport and assembly if this has been approved by the client in advance.
- (17) The Contractor guarantees the completeness of the supplies and services for the complete creation of the subject of the order within the defined interfaces, irrespective of any defects in the present specification, i.e:  
Even deliveries and services not specifically listed, which are necessary for the operation of the trades and their proper functioning, are included in the contract for work and services or the scope of delivery of the contractor.

#### **§ 4 Prices, Invoice and Payment**

- (1) Prices are fixed prices and include all expenses for the complete provision of the delivery/service (DDP place of delivery/service Incoterms 2020) such as in particular transport, insurance, packaging, assembly, trial operation as well as plans, models, matrices and similar. These become the property of the customer.
- (2) The contractor is not entitled to demand a price adjustment if his calculation bases - for whatever reason - change or if the assumptions he has made prove to be incorrect.
- (3) Invoices are to be sent to the Client by post or by e-mail (rechnungseingang@bertsch.at) with appropriate identification. They must not be enclosed with the delivery. For deliveries from third countries, an additional invoice copy or a customs invoice must accompany the delivery.
- (4) The invoices must comply with the statutory provisions. In addition, all invoices must state the order number, RM/item

of the Customer and the exact description of the delivered goods/service as a prerequisite for the due date.

Invoices from contractors with their registered office outside Austria must also show the IBAN and BIC code of the contractor as a prerequisite for maturity.

Invoices from contractors based in the EU must also contain the weight, origin and goods number (customs tariff) per item as a condition of maturity.

- (5) If the delivery/service is defective, the Customer shall be entitled to withhold payment until complete fulfilment.
- (6) The contractor shall send the client an auditable final invoice. In this, the contractor must include all partial payments requested by him and already made by the client. The final invoice is auditable if it contains a clear list of the services rendered and is comprehensible to the Client. It shall be deemed auditable if the client has not raised justified objections to its audibility within 60 days of receipt of the final invoice. The submission of the final invoice shall in any case exclude the assertion of subsequent claims.
- (7) Payment shall be made within 14 days of receipt of the invoice with 3% discount or within 60 days net.
- (8) The place of performance for payment is Bludenz.
- (9) The (partial) payments of the Customer shall not affect the liability and guarantee obligation of the Contractor. Nor shall they be deemed acceptance of the performance of the contractor or parts thereof or recognition of a payment obligation on the merits or in terms of amount.

#### **§ 5 Warranty**

- (1) The goods or services must comply with all relevant standards and regulations applicable in Austria and the project-specific country of destination. Machines and plants must in particular comply with the specifications and product-specific standards for safety and function.
- (2) In particular, the contractor guarantees that no rights of third parties are infringed by his delivery/service and that he will indemnify and hold the customer harmless for all claims arising from an infringement of such rights.
- (3) The contractor is obliged to check the quality and quantity of his delivery/service himself. An obligation of the Customer to examine and give notice of defects is expressly waived.
- (4) The contractor is obliged, at the discretion of the client, to make up for the missing items within a reasonable period of time, to replace defective goods or to rectify the defect or to grant the client a price reduction. The Customer shall be entitled to demand the replacement of the entire goods or the rescission of the contract even if only individual items or parts of the performance are defective or missing. This also applies if defects are reported by the client during production or assembly.
- (5) For the values guaranteed in the technical specification, the contractor shall have an unlimited obligation to remedy defects until the target is achieved (= freedom from defects when the guaranteed values are achieved).
- (6) If the contractor refuses to remedy the defects, if he is in default with the remedy or if he has once tried it in vain, the client is entitled to remedy the defects himself or have them remedied at the expense and risk of the contractor. The principal is also entitled to this right if danger is imminent, for example because the principal must fulfil his obligations to third parties.
- (7) The Contractor shall assume a warranty period of 6 months for spare parts from their installation, but at least 36 months

from acceptance of the entire system by the Client's end customer.

- (8) Any interruption of the satisfactory industrial operation of the entire plant or parts thereof for which the contractor is responsible during the guarantee period, which is generally considered to be agreed at 36 months, extends the guarantee period by the time of the interruption of the respective part.
- (9) Should the contractor require an additional order for the removal of a defect reported by the client, this order shall be deemed to be subject to clarification of the fault and corresponding cost sharing.

#### **§ 6 Compensation**

- (1) The contractor is liable to the client for all disadvantages resulting from a violation of the contract and is therefore liable for consequential costs resulting from defects in the scope of delivery and services by the contractor and his subcontractors. This also applies to claims arising from product liability. The Customer shall also be entitled to such claims if the Customer uses the delivery/service predominantly in his company.

#### **§ 7 Confidentiality**

- (1) The Contractor is obliged to maintain secrecy about the business relationship with the Client and to keep all information obtained in the course of the performance of this contract in any form whatsoever (verbally, in writing, on data carriers or by direct access via VPN), as well as all other documents, records, photos, plans and other materials handed over, to keep secret and to treat as strictly confidential all information, including information brought to its attention orally, which concerns the client, this contract or the plans and which has been obtained directly or indirectly and all results obtained or used in the course of the fulfilment of this contract, which concern the client or his business partner, even after the fulfilment of the contract.
- (2) If and insofar as this is necessary for the fulfilment of his contractual obligations, the contractor may pass on information subject to secrecy to his suppliers with the prior written consent of and in agreement with the customer. The prerequisite for this is, however, that the supplier undertakes to the same extent to maintain secrecy vis-à-vis the Customer. All records and confidential information must be protected from unauthorised access by secure storage. If confidential information nevertheless reaches unauthorised third parties, the client must be informed immediately in writing.
- (3) All information received may only be used to fulfil the purpose of the contract. The contractor undertakes to strictly refrain from any other use. The provision or transfer of information does not constitute any rights beyond the fulfilment of this contract, in particular rights of use of the respective information. The contractor shall impose the obligation of secrecy on the employees and company organs or other persons it consults who have access to this information. The contractor undertakes to surrender all documents, plans, drawings, data carriers, etc. received to the client upon written request by the client. The contractor undertakes to pay the client a contractual penalty of 5% of the final invoice amount for each case of violation of the confidentiality obligation, which is independent of fault, immediately due and not subject to judicial moderation. This does not exclude the assertion of a claim for damages

by the client that goes beyond this. The obligation to maintain secrecy remains in force beyond the termination of the contract.

#### **§ 8 Tools**

- (1) Tools provided by the customer or manufactured in whole or in part at his expense are and remain his property. They may only be used for goods or services that are manufactured for or supplied to the customer. The contractor is obliged to insure the tools at their replacement value at his own expense. He hereby assigns to the customer all claims for compensation to which he is entitled under this insurance.
- (2) The contractor shall inspect and maintain the tools at his own expense. Any loss or damage must be reported to the customer immediately.
- (3) Until the tools are returned, the contractor shall bear the risk of accidental loss or accidental damage to the tools. He must return them to the customer immediately at his request and at the contractor's expense.

#### **§ 9 Material provided**

- (1) Provided material remains the property of the customer. It shall be stored and administered separately by the contractor free of charge and clearly marked as the property of the customer. The Contractor shall order or request the material provided by the Customer in good time and keep it available in sufficient quantity so that he can fulfil his delivery obligations punctually and completely.
- (2) Provided material may only be used for goods or services that are produced for or supplied to the Client. The contractor is obliged to ensure the material provided by the customer at replacement value. He hereby assigns all claims for compensation to which he is entitled under this insurance to the customer.
- (3) If the production of the subject of the contract fails in whole or in part, the contractor shall pay for the material provided by the customer.

#### **§ 10 Insurances**

- (1) Prior to the conclusion of the contract with the Customer, the Contractor shall provide proof of an upright business liability insurance policy with an insured sum of at least EUR 5,000,000, - per insured event for property damage, personal injury and environmental damage including financial losses. Extended product liability with a sublimit of at least EUR 1,000,000, - shall also be included in the business liability insurance policy. These conditions apply to the respective project location. The following additional coverages must also be insured with a sublimit of at least EUR 500,000 per claim: Incidental costs for the removal of defects, consequential damage caused by defects, as well as damage to movable and immovable property during storage and processing. The Contractor must provide proof of cover for the entire duration of the project by submitting a current insurance certificate each year. In addition to the business liability insurance described in paragraph 1 in the scope of cover, the contractor shall provide evidence of the conclusion of an (relevant) installation insurance policy for the relevant project, including the installation of provided plant components (third-party property), by means of an insurance certificate for the entire project duration. For any transports carried

out by the contractor, sufficient insurance cover against any transport damage must also be taken out.

- (2) The premiums for the insurances mentioned in paragraph 1 are included in the agreed remuneration for work (order value). If the contractor does not prove that these insurances have been taken out or if he does not maintain these insurances for the duration of the guarantee period, the client is entitled to take out these insurances for the contractor (contractor) at the contractor's expense and to deduct the accruing premiums from the agreed remuneration for work (order value).

#### **§ 11 Quality control + tests by Bertsch**

(independent of the legally required or contractually agreed acceptance tests)

- (1) The client reserves the right to carry out quality controls or ongoing production monitoring of the delivery item by the client's quality department, his or her appointed supervisor at the contractor's premises. In the case of ongoing production monitoring, the client's supervisor has the right to issue instructions. The performance of an inspection or production monitoring or a test by the principal or by his authorised representative or his end customer or a waiver of inspection does not release the contractor in any way from his contractual obligations or his overall responsibility to provide the services ordered. In particular, it does not mean that the client waives any rights to which he is entitled, such as warranty claims and claims for damages due to delay, contractual penalties, etc. The costs for quality controls or production monitoring by the client shall be borne by the client. If a positive inspection (final acceptance) does not take place for reasons for which the contractor is responsible, all costs for the TÜV inspector and customer representative resulting from a renewed inspection shall be borne by the contractor.
- (2) The client reserves the right to carry out regular progress monitoring or to demand a corresponding report from the contractor. The progress monitoring can be provided by the client as a file to be filled in or as web access.

#### **§ 12 Code of Conduct**

- (1) BERTSCHenergy's business activities are expressed through a set of commitments, values and ethics, which are expressed in the BERTSCHenergy Code of Conduct. The client expects his suppliers and sub-suppliers to share the obligations, values and ethics expressed in the **BERTSCHenergy code of conduct**. This code of conduct ("BECOC") can be found at [www.bertsch.at](http://www.bertsch.at).
- (2) In the event that the Supplier breaches the obligations, values and ethics set out in the BECOC, such breaches shall be deemed a material breach of the Supplier's obligations. In addition, the supplier shall indemnify the client against all claims, damages, etc. that may arise as a result thereof.
- (3) The Customer may at any reasonable time carry out audits at the Supplier's premises to check compliance with BECOC. The supplier undertakes to cooperate fully with the client in this respect.

#### **§ 13 Final provisions**

- (1) The contractor is not entitled to assign his claims and demands from this contract and/or the whole or partial transfer of this contract (except permitted subcontracting) against the client to third parties without the client's consent. He must make this prohibition of assignment evident in his books. The contractor shall not be entitled to set off claims against the client, unless these are claims recognised in writing or legally enforceable
- (2) All legal relations between the Customer and the Contractor shall be governed by substantive Austrian law. The UN Sales Convention is excluded.
- (3) The exclusive place of jurisdiction for disputes with contractors who have their registered office in the EU or EFTA is Bludenz, Austria.

If the contractor has its registered office outside the EU or EFTA, the jurisdiction of the international arbitration court of the Austrian Federal Economic Chamber in Vienna (Vienna Rules) is agreed for all disputes. Place of arbitration is Bludenz. The arbitration language shall be German. However, if the contract is drawn up in a language other than German, English shall be the arbitration language. The provisions on accelerated proceedings shall apply. The jurisdiction of the Arbitral Tribunal shall not preclude any party from applying to a state court for interim or protective measures before or during the arbitral proceedings or from ordering such measures by the court.

However, in all cases the client is entitled to take legal action against the contractor before another court having jurisdiction over him.

- (4) The German text shall be authoritative for the interpretation of the contract and these terms and conditions.
- (5) The contractor may only use the client or his service for the client for advertising purposes or as a reference with the client's prior written consent.
- (6) The Contractor agrees that the Client may record and process his data by computer.
- (7) The Contractor shall comply with all official requirements and regulations in the respective country of deployment that are relevant for his performance and the project, such as in particular those relating to employee protection, fire protection and environmental protection or those relating to working hours and minimum wages.
- (8) Should individual provisions of the concluded contract, including the general terms and conditions of purchase and these regulations, be or become invalid in whole or in part, or should the contract contain an unforeseen loophole, the validity of the remaining provisions or parts of such provisions shall remain unaffected. The invalid or missing provisions shall be replaced by the respective statutory provisions.
- (9) The instructions for safety, health and environmental protection for contractors on the construction sites of Bertsch Energy GmbH & Co KG, in accordance with the enclosures handed over with the order, are to be complied with in a binding manner and are an integral part of the contract. The same applies to any plant regulations for the corresponding projects and construction sites at the Client's end customers, as well as to the Special Terms of Contract from the contract with the final customer.