



BERTSCHenergy

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

BERTSCHservice

BERTSCHlaska

BERTSCHfoodtec

BERTSCHenergy

BERTSCHgroup

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UID No.: ATU35984805 | Tax No.: 98 023/4819 Tax office Feldkirch | FN 15350 z - LG Feldkirch | DVR: 0054631

Nüziders plant:

T +43 5552 6135-0T

F +43 5552 6135-76F

Federal road 1Baumgasse

6714 Nüziders | Austria1030

bertschenergy@bertsch.at

Vienna office:

+43 1 79574

+43 1 79856-22Hypothenbank
68

Vienna | Austria

bertschenergy@bertsch.at

Bank details:

Vorarlberger Landes- und

AG

IBAN: AT61 5800 0003 8124 6116

BIC/Swift code: HYPVAT2B



EN ISO 9001
EN ISO 14001
OHSAS 18001
SCC**

§ 1 Scope of application

- (1) These terms and conditions apply to all enquiries, orders and contracts in which Bertsch Energy GmbH & Co. KG or its subsidiaries ("Bertsch") is the client, buyer, customer, purchaser or orderer of works. They also apply to future business transactions with Bertsch. All references in these terms and conditions to "client", "buyer", "customer", "purchaser" or "orderer" refer to Bertsch.
- (2) The contractor's terms and conditions of business, however titled, shall not be or deemed to be an integral part of any contract with Bertsch.

§ 2 Order / Formalities

- (1) The customer's order, together with all information and documents in such order, is a trade secret of the customer.
- (2) Until the contractor's written and duly signed acceptance of the customer's order, the customer is entitled to withdraw its order at any time.
- (3) Any supporting resources enclosed in 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 its purposes. They are to be returned to the customer without the contractor being requested to do so, at the latest with the contractor's final invoice, or at any time at the customer's request and at the contractor's expense. Until the customer has received the supporting resources being returned, the contractor shall bear the risk of accidental loss or accidental damage thereto.
- (4) The customer shall not pay any remuneration for the contractor's 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.
- (5) Where this is necessary for the order concerned, the contractor is obliged to promptly provide to the customer all certificates, permits etc. that are required for the order concerned. Such certificates and permits are, for example, but not limited to, exemption certificates, residency permits, police clearance certificates. Any payment delays or reductions resulting therefrom are to be borne by the contractor without exception.

§ 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 reschedule the date of delivery/performance to an earlier or later date, provided that this does not constitute a disproportionate burden to the contractor.
- (2) Risk shall not pass to the customer 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 cases including assembly and/or commissioning, the risk shall be borne by the contractor until acceptance of his services by the customer (evidenced by an acceptance, commissioning or final assembly protocol signed by the customer).
- (3) The customer is entitled to refuse early or late delivery/performance.

- (4) The contractor must immediately notify the customer in writing of any kind of emerging hindrances. This shall apply even if, in his opinion, they are obvious. The notification of hindrances must include the reason therefor and the possible effects thereof on the further performance of the contract. If the contractor does not provide a notice of impediment or provides an incomplete notice of impediment, he must compensate and/or indemnify the customer for any resulting disadvantage, damage and/or loss. A notice of impediment must be prepared by the contractor for the specific impediment and must be in writing. Even if the contractor has notified the customer 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 can be completed; the contractor is so obliged in order to keep potential damage or delay as minimal as possible.
- (5) The contractor must immediately prepare a written supplementary offer for additionally commissioned or modified services and send it to the customer in duplicate. At the same time, it shall inform the customer how the additional or modified services affect the agreed time schedule and deadlines, in particular the completion of the services. Furthermore, where the contract price may be affected, written and verifiable proof must be provided that the performance covered by the lump sum contract price will be exceeded. The customer is entitled to reject partial, inadequate or excess deliveries/services.
- (6) The contractor is nonetheless obliged to carry out the change in service or additional service requested by the customer, even if the parties have yet to or do not agree on the offer or the additional price demanded by the contractor.
- (7) Even in cases of divisible performance, the customer is entitled to rescind parts of or the entire order. The customer is also entitled to change the contractual scope of services in writing, in particular to order additional services.
- (8) Upon delivery, the customer shall be provided with a delivery note with its order number, the order item and the so-called 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 deliveries and services ordered, the contractor is obliged to report the planned units prior to delivery using a corresponding service provided by the customer.
- (10) A delivery/service shall only be or 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 customer with the corresponding invoice at the latest. If the contractor is in default with the handover of an agreed document, he shall pay the customer 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 customer 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.
- (12) 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 customer, at the earliest of:
- delivery to the construction site; or
 - payment to the contractor for the equipment, goods or materials concerned; or
 - acceptance;
- The risk for the equipment and the work shall pass to the customer on the day of acceptance by the end customer of the 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 date of acceptance.
- 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 rescind the contract in whole or in part after setting a reasonable grace period for the contractor to remedy the default. 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 works that are the subject matter of the contract. For this purpose, the contractor is obliged to grant the customer access to all premises and warehouses where manufactured or semi-finished goods as well as raw material intended for use in the manufacture of the works that are the subject matter of the contract are located.
- (14) In the event of delay of performance, the customer shall also be entitled to demand an immediately payable contractual penalty of 1% of the order amount for each week of delay or part thereof, but not more than 10% of the order amount. 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 itself. The commissioning of subcontractors is only permitted with the prior written consent of the customer. Despite the commissioning of a subcontractor, the contractor shall continue to be personally and directly liable, within the meaning of §1313a ABGB (Austrian Civil Code) for the contractual fulfilment of the obligations assumed by it. The provisions of §1315 ABGB are excluded and the contractor must indemnify the customer from all claims that the contractor's subcontractor, the customer's customer, or any other third parties (e.g. authorities, social insurance companies) make against the customer.
- (16) The contractor shall mark the delivery item with references to the customer in accordance with the customer's instructions hereto for and 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 engaged. 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 customer in advance.

- (17) The contractor guarantees the completeness of the supplies and services for the complete creation of the subject matter 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 however necessary for the operation of the deliverable 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 other items. These become the property of the customer.
- (2) The contractor is not entitled to demand a price adjustment if its calculation basis - for whatever reason - changes or if the assumptions he has made prove to be incorrect.
- (3) Invoices are to be appropriately addressed and sent to the customer by post or by e-mail (rechnungseingang@bertsch.at). They must not be enclosed with any delivery.
For deliveries from third countries, an additional invoice copy or a customs invoice must accompany the delivery.
- (4) Invoices must comply with the statutory provisions. In addition, all invoices must state the order number, so-called RM number of the customer and the exact description of the delivered goods/service as formal prerequisites for prompt payment.
Invoices from contractors with their registered office outside of Austria must also show the IBAN and BIC code of the contractor as a formal prerequisite for payment.
Invoices from contractors based in the EU must also contain the weight, origin and customs tariff number per item.
- (5) If the delivery/service is defective, the customer shall be entitled to withhold payment until complete and defect-free fulfilment.
- (6) The contractor shall send the customer an auditable final invoice. In this final invoice, the contractor must include all partial payments requested by him and already made by the customer. The final invoice is auditable if it contains a clear list of the goods delivered and services rendered and is comprehensible to the customer. It shall be deemed auditable if the customer 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 on the condition of 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 as acceptance of the performance of the contractor or any part(s) thereof, or as recognition of a payment obligation, neither on the merits nor in terms of amount.

§ 5 Warranty

- (1) The goods and/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 its delivery/service and that it will indemnify and hold the customer free and harmless from all claims arising from an infringement of such rights.
- (3) The contractor is obliged to check the quality and quantity of its delivery/service himself. An obligation of the customer to examine and give notice of defects is expressly waived.
- (4) The contractor is obliged within a reasonable period of time to supply/replace any missing items, to replace defective goods with non-defective goods, to rectify the defect or to grant the customer a price reduction, whereby the choice between these options is at the sole discretion of the customer. The customer shall be entitled to demand the replacement of the goods in their entirety or the rescission of the contract, even if only individual items or parts of the delivery/performance are defective or missing. The provisions in this clause also apply if defects are reported by the customer 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 attempted to do so once without success, the customer is entitled to remedy the defects itself or have them remedied at the expense and risk of the contractor. The customer is also entitled to do so 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 the time of their installation, but for at least 36 months from acceptance of the entire system by the customer's end customer.
- (8) Any interruption of the satisfactory industrial operation of the entire plant or part(s) thereof for which the contractor is responsible during the warranty period, which is generally considered to be agreed as 36 months from acceptance of the entire system by the customer's end customer, extends the warranty period by the time of the interruption of the respective part(s).
- (9) Should the contractor require an additional order for the removal of a defect reported by the customer, this order will be subject to clarification of fault and cost sharing corresponding thereto.

§ 6 Damages and Contractual Penalties

- (1) The contractor is liable to the customer for all disadvantages, damage and/or loss resulting from a violation of the contract and is therefore liable for consequential costs, damages and loss resulting from defects in the scope of delivery and services by the contractor and its subcontractors. This also applies to claims arising from product liability. The customer shall be entitled to such claims even if the customer uses the delivery/service predominantly in its company.
- (2) Objectively recognizable delays to the time schedule, of any kind whatsoever and irrespective of whether the contractor is at fault or otherwise responsible for the delay, are to be notified by the contractor to the customer immediately in writing. If this notice is not given or not given immediately, the contractor is obliged to pay a contractual penalty of 0.15% of the contract price for each

calendar day that it fails to provide such notice, starting from the date that the delay was objectively recognizable.

§ 7 Confidentiality

- (1) The contractor is obliged to maintain secrecy about its business relationship with the customer and to keep secret all information obtained in the course of the performance of any contract with the customer received 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 it by the customer, and to treat as strictly confidential all information - including information brought to its attention orally concerning the customer - , any contract with the customer, any plans in relation thereto, whether obtained directly or indirectly, as well as all results obtained or used in the course of the fulfilment of this contract, which concern the customer or its business partner(s), even after and beyond the fulfilment of the contract with the customer.
- (2) If and insofar as this is necessary for the fulfilment of its contractual obligations, the contractor may pass on information to its subcontractors with the prior written consent of the customer, provided at all times that such subcontractors are subject to the strict observation of and full compliance with these confidentiality obligations. All records and confidential information must be protected from unauthorised access by secure storage. If confidential information nevertheless reaches unauthorised third parties, the customer must be informed immediately in writing.
- (3) All information received may only be used to fulfil the purpose of the contract with the customer. 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 the contract with the customer, 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 customer upon written request by the customer. The contractor undertakes to pay the customer a contractual penalty of 5% of the final invoice amount for each case of violation of the confidentiality obligations, which is independent of fault, immediately due and not subject to judicial moderation. This does not exclude the assertion of a claim by the customer for damages that exceed such contractual penalty. The obligation to maintain secrecy and confidentiality remains in force beyond the termination of the contract with the customer.

§ 8 Tools

- (1) Tools provided by the customer or manufactured in whole or in part at his expense are and remain its 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 its own expense. It hereby assigns to the customer all claims for compensation to which it is entitled under such insurance.
- (2) The contractor shall inspect and maintain the tools at its 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. It must return them to the customer immediately at his request and at the contractor's expense.

§ 9 Material provided

- (1) Material provided by the customer 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 quantities so that it can fulfil its delivery obligations punctually and completely.
- (2) Material provided by the customer may only be used for goods or services that are produced for or supplied to the customer. The contractor is obliged to insure the material provided by the customer at replacement value and assigns all claims for compensation to which it is entitled under this insurance to the customer.
- (3) If the production of the subject matter 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 valid and effective 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, 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 above, the contractor shall provide evidence of having taken out applicable 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 transport 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 and/or contract price). 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 warranty period, the customer is entitled to take out these insurances on behalf and for the contractor at the contractor's expense and to deduct the accruing premiums from the agreed remuneration for work (order value and/or contract price).

§ 11 Quality control + tests by Bertsch

(independent of and in addition to the legally required or contractually agreed acceptance tests)

- (1) The customer reserves the right to carry out quality controls or ongoing production monitoring of the delivery item through the customer's quality department or its appointed

supervisor at the contractor's premises. In the case of ongoing production monitoring, the customer's supervisor has the right to issue instructions. The performance of an inspection or production monitoring or a test by the customer or its authorised representative or its end customer or a waiver of inspection does not release the contractor in any way from his contractual obligations or his overall responsibility to prudently provide the services ordered. In particular, it does not mean that the customer waives any rights to which it 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 customer shall be borne by the customer. If an inspection (final acceptance) does not achieve a positive result 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 customer reserves the right to carry out regular progress monitoring or to demand a corresponding report from the contractor. The progress monitoring mechanism can be provided by the customer as a file to be filled in or via 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 customer expects his contractors and subcontractors 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.
- (2) In the event that the contractor breaches the obligations, values and ethics set out in the BECOC, such breaches shall be deemed a material breach of the contractor's obligations. In addition, the contractor shall indemnify the customer 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 contractor's premises to check compliance with BECOC. The contractor undertakes to cooperate fully with the customer in this respect.

§ 13 Sanction clause

- (1) A Sanctioned Person is a natural or legal person against whom sanctions, including sector sanctions (hereinafter individually or collectively "Sanctions"), have been imposed in accordance with the applicable law of (i) the United Nations, (ii) the United States of America, or (iii) the European Union. The Contractor declares that it is neither a Sanctioned Person nor otherwise a natural or legal person to which Sanctions are applicable. In the event that any of the foregoing declarations is incorrect, the Principal shall be entitled to terminate the Contract with immediate effect for good cause and the Contractor shall indemnify the Principal against all damages arising therefrom. The Client shall also be entitled to terminate the Contract with immediate effect if sanctions are imposed on or apply to the Contractor after the Contract has become effective.

§ 14 Final provisions

- (1) The contractor is not entitled to assign its claims and demands from the contract with the customer and/or the whole or partial transfer thereof (except permitted subcontracting) against the customer to third parties

without the customer's consent. It must make this prohibition of assignment evident in his manuals, books, etc. The contractor shall not be entitled to set off claims against the customer, unless these claims have been acknowledged by the customer 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 explicitly 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 as having jurisdiction over all disputes. Place of arbitration is Bludenz. The arbitration language shall be German. However, if the contract with the customer 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 either the customer or the contractor 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 customer is entitled to take legal action against the contractor before another court having jurisdiction over it.

- (4) The German text shall be authoritative for the interpretation of the contract with the customer and these terms and conditions.

- (5) The contractor may only use the customer's name or its service for the customer for advertising purposes or as a reference with the customer's prior written consent.
- (6) The contractor agrees that the customer 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 and 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 contract concluded with the customer, including the general terms and conditions of procurement, be or become invalid in whole or in part, or should the contract with the customer 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, 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 with the customer. The same applies to any plant regulations for the corresponding projects and construction sites of the customer's end customers, as well as to the Special Terms of Contract from the contract with the customer's end customer.