

# General Terms and Conditions of Sale (GTCS) for Bertrandt SAS and Bertrandt France SAS

## 1 – SCOPE

**1.1** The purpose of these General Terms and Conditions of Sale (GTCS) is to define the terms and conditions in which Bertrandt SAS or Bertrandt France SAS. (hereinafter referred to as "Bertrandt") undertakes to provide the Services to a co-contractor (the "Client"). They apply to all services and/or goods delivered by Bertrandt (hereinafter the "Service (s)").

**1.2** The present GTCS are available for download at <https://www.bertrandt.com/en/gtc/> and can also be sent to the Client upon request. In accordance with Article L.441-1 paragraph 3 of the French Commercial Code, they constitute the sole basis of the negotiations. The present GTCS can only be completed or modified by the particular conditions appearing in the contract negotiated between Bertrandt and the Client. They prevail over all conditions of purchase of the Client except formal and express waiver from Bertrandt.

**1.3** The fact that Bertrandt does not apply at any given time any provision of these terms and conditions can not be interpreted as a waiver from his right to avail himself later of said provisions.

**1.4** Bertrandt and the Client are hereinafter individually designated by the "Party" and together by the "Parties".

## 2 – APPLICABLE DOCUMENTS

**2.1** The documents constituting the Contract are Bertrandt's Offer (hereinafter the "Offer"), the present GTCS, and any special written conditions signed between the Parties.

**2.2** It is expressly understood that the Offer has a contractual value and is therefore opposable to the Client even if it is not mentioned in the Client's order. If the terms of the Offer do not suit him, before placing an order, the Client may approach Bertrandt to ask him if he agrees to modify his Offer. If he places an order, the Client is deemed to have read and accepted the Offer. Only the express exclusion of the Offer in a document signed by Bertrandt makes it possible to exclude all or part of its application. Unless otherwise stated, the Offer issued is valid for two (2) months.

**2.3** Regarding our information obligations according to the EU GDPR we refer to our Data privacy statement which can be found at <https://www.bertrandt.com/en/data-privacy-statement/>.

## 3 – CONTENT OF SERVICES

**3.1** The extent, the nature and the means of the Services (hereinafter the "Perimeter") provided to the Client are fixed in the Offer.

**3.2** Are considered outside Perimeter:

- All services not expressly described in the Offer;
- Any changes in Services or any additional Services under a not attributable to Bertrandt event, such as in particular but not only: delay of the Client, change of the contents of services, inaccurate or incomplete data entry, suspension of services, evolution of the regulations.

If services outside perimeter would nevertheless be executed by Bertrandt, they will be considered as additional services and will require a separate order from the Client for a price defined by the Parties based on the actualised price of the Agreement and to cover the time actually spent.

**3.3** Any Service requested by the Client which is not included in the Offer will be subject to an amendment to the Contract signed by both Parties, laying its nature, scope and price.

**3.4** The issuance of an order by the Client is a prerequisite to the commencement of performance of the Services. Exceptionally, if Bertrandt starts the Service in sight of the Client, the order is deemed to have passed under the conditions of the Offer.

**3.5** Bertrandt reserves the right to refuse an order that does not comply with its Offer. The terms of the Client's order that derogate from the Contract are not applicable unless written acceptance of Bertrandt after receipt of said order.

## 4 – PRICE, INVOICING AND PAYMENT

**4.1** Unless otherwise stipulated, the prices fixed in the Offer are firm and non-revisable for the Services included in the Perimeter. They are in euros and duty free. VAT is due by the Client at the rate in effect on the date of invoicing. Prices are set according to predefined criteria that are listed in the Offer. In case of modification of these criteria by the Client or a third party, the prices are automatically adjusted to take account of these modifications.

**4.2** Any withholding tax, tax, duty or charge, current or future, which is due by Bertrandt, its directors, agents or employees for services performed outside France, are borne by the Client or refunded to Bertrandt.

In the case where prices are not in euros, changes in the exchange rate are exclusively borne by the Client.

The Client shall refund to Bertrandt, on supporting documents, the costs actually incurred in the performance of the Services, plus the penalties and care defined in the Offer. These costs include, but are not limited to, travel, meals and overnight stays incurred in the performance of the Contract.

**4.3** Unless otherwise provided in the Offer, invoices are issued monthly for technical support services.

For services consisting in the delivery or sale of a good or product, an invoice is issued upon receipt pronounced or deemed to have been pronounced in accordance with the provisions of Article 6. In case of a billing schedule fixed according to the passage of milestones if the receipt of a milestone is not pronounced for a cause beyond Perimeter or liability Bertrandt, the latter may issue its invoice corresponding to the milestone concerned.

Invoices are considered accepted if the Client does not make a written claim within two (2) weeks of their issue.

**4.4** Unless otherwise specified in the Contract, payment by the Client must be made by bank transfer within thirty (30) days of invoice date, without discount.

**4.5** If there are deliverables associated with the Services (hereinafter the "Deliverables"), they become the property of the Client at full payment of the price of the Services concerned.

**4.6** Any delay in the payment or any incomplete payment gives rise to the application of penalties whose rate is equal to three times the legal interest rate. The rate applicable during the first half of the year concerned is the rate in force on 1 January of the year in question. For the second half of the year concerned, it is the rate in effect on July 1 of the year in question. These penalties are due by law, without the need for a reminder or a formal notice. These penalties run from the day after the settlement date on the invoice until the date of the actual and complete payment by the Client.

In addition, pursuant to the provisions of Article L441-6 of the French Commercial Code, the Client is liable for a lump sum compensation of forty (40) euros for recovery costs, per invoice. If the recovery costs incurred are greater than the amount of this lump sum compensation, Bertrandt may request additional compensation, upon justification. In addition, if three (3) days after the first presentation by the postal services of a formal notice to pay by registered letter with acknowledgment of receipt, Bertrandt has not received the full settlement, it reserves the right to suspend the performance of the Services until full payment of the price. The suspension takes effect immediately upon receipt by the Client of a written notification sent by Bertrandt.

**4.7** The Client is not entitled to withhold or defer payment of any amount due to Bertrandt, even in the event of a dispute.

**4.8** Any compensation between the invoices of Bertrandt and any amount that Bertrandt owes to the Client is excluded, except that the conditions of the legal compensation are met (fungible obligations, certain, liquid and due).

**4.9** If after the conclusion of the Contract, Bertrandt has knowledge of facts that could call into question the solvency of the Client or the payment of its invoices, subject to the public order provisions applicable in the matter of collective procedure, Bertrandt is entitled, before proceeding the performance of the Services:

- Either to require advance payment of the Services in the form of an advance payment;
- Or to ask the Client for a guarantee covering the balance of the price of the Contract.

In the meantime, the execution of the Contract may be suspended by Bertrandt.

## **5 – OBLIGATIONS OF THE PARTIES**

**5.1** The Client provides to Bertrandt all documents, data and other written information that must be taken into account for the performance of the Services or necessary for the proper conduct of the Services (hereinafter the "Input Data").

**5.2** Bertrandt is not required to control the Input Data for which the Client remains solely responsible for the relevance, accuracy and completeness. Thus, Bertrandt will not be held liable for any non-compliance or any defect in the performance of the Services that would be attributable to a failure to transmit the Input Data or to an error or inaccuracy contained in them.

**5.3** The success of the Services is based on active and good faith cooperation between the Parties. In particular, in order to ensure the proper execution of the Services, the Client must, within the required time:

- make available free of charge to Bertrandt the resources and Input Data necessary for the proper performance of the Services;
- In the event that Bertrandt performs Services on the Client's site, provide information on the applicable rules on said site, particularly with regard to health and safety of persons, and take any action to prevent and eliminate risks for the personnel Bertrandt;
- Proceed within five (5) days of Bertrandt's request to all reviews and approvals required by Bertrandt relating to documentation, reports, plans, drawings, specifications relating to the Services and / or Deliverables;
- Appoint a representative authorized to represent the Client that Bertrandt can consult at any time on any matter relating to the Contract and whose instructions, requests and decisions are binding on the Client;
- Immediately notify Bertrandt orally and in writing within two (2) days, as soon as he becomes aware of any noted or potential difficulties in the performance of the Services.

**5.4** During the term of the Contract and during the twelve (12) months following its expiry or cessation for any reason whatsoever, the Client shall refrain from soliciting or directing, directly or indirectly, any Bertrandt employee, unless he has received the express prior written agreement of the latter. This provision also applies in the case where the initial solicitation is formulated by the collaborator Bertrandt.

In case of non-compliance with this article, the Client agrees to pay Bertrandt a lump sum compensation equal to twelve (12) months gross remuneration of the employee concerned.

**5.5** Bertrandt undertakes to perform the Services in accordance with the conditions described in the Offer and the professional rules in force in France on the effective date of the Contract. Unless expressly agreed otherwise by Bertrandt, it is subject to an obligation of means. In case of obligation of result expressly accepted by Bertrandt, this one relates only to the conformity of the Deliverables identified in the Offer.

Any additional obligation or new condition to the Client is no longer enforceable against Bertrandt unless expressly ratified in writing by Bertrandt.

**5.6** As part of its duty to inform and advise, Bertrandt provides the Client with an Offer presenting the Services. It is up to the Client, in particular on the basis of this information, to ensure the adequacy of the Services to its own

needs. For this purpose, the Client may, prior to the acceptance of the Offer, request from Bertrandt any additional information; otherwise, the Client acknowledges having been sufficiently informed.

**5.7** The Services are performed on Bertrandt's premises. In case Bertrandt's employees are called to work on another premises, it remains under the sole subordination of Bertrandt without any transfer of the relationship of subordination intervenes, Bertrandt being only authorized to supervise, give instructions, control, organize the work and, where appropriate, sanction its staff. The Client may not require that the Services be performed by a named and / or unique employee, Bertrandt being free from its organization provided that the Services are performed.

**5.8** In the event that a delay is clearly and solely attributable to Bertrandt, Bertrandt undertakes to define and manage, at its expense, the action plans aimed at correcting any non-compliance of the deliverables with the contract and notably the Specifications. In the event that a delay (appointment of the suppliers by the Client, offset of the input data ... etc.) is attributable to the Client, an amendment will be established between Bertrandt and the Client in order to set a new Schedule.

## **6 – DELIVERY - RECEPTION**

**6.1** On delivery of the Services and / or Deliverables, Bertrandt issues a delivery note. The Client shall promptly verify and report any apparent defect or non-compliance by reasoned and documented reservations. A reservation can be validly formulated only if it concerns a discrepancy between the specifications and obligations defined in the Contract and the Deliverables and / or Deliverables.

**6.2** In any case, in the absence of justified and documented objections made within fifteen (15) days of their delivery, the Services and / or Deliverables are deemed to be accepted by the Client, who will no longer be able to avail himself of any defect or apparent non-compliance.

Also, any use of the Services and / or Deliverables by the Client, his staff, his representatives or his contractual partners is considered as a final acceptance of the said Services.

**6.3** In the event of objections made in the required forms and deadlines, Bertrandt proceeds at its expense and as soon as possible, to the correction of the non-conformity, to the exclusion of any compensation, compensation or sum to be paid to the Client.

**6.4** It is specified that, in accordance with Article L.441-6 of the French Commercial Code, the duration of the acceptance or verification procedure may not exceed the fifteen (15) day period mentioned above and may not have the effect to increase the duration, or to shift the starting point of the payment period provided on the invoice.

## **7 – WARRANTY**

**7.1** Bertrandt guarantees that the Services and / or Deliverables are carried out in accordance with the provisions of the Contract and the rules of the art of the profession in force in France on the date of entry into force of the Contract. In addition to the correction commitment provided for in Article 6, Bertrandt grants a contractual guarantee for a period of twelve (12) months from the delivery of the Services and / or Deliverables covering hidden errors or defects in the Service and / or the Deliverable, recorded within the aforementioned period of twelve (12) months, falling within the Perimeter and exclusively and directly attributable to Bertrandt.

As part of this warranty, Bertrandt undertakes to implement, at its expense, the necessary corrective measures, provided that the Client has made a written and documented complaint, notified to Bertrandt within fifteen (15) days from the discovery of the error or hidden defect.

**7.2** The Service of the guarantee is excluded if the origin of the defect results from:

- any negligence of the Client;
- a use not provided for in the Contract;
- the interaction with other elements of which Bertrandt is not responsible
- non-compliance by the Client with a provision of the Contract;
- a service outside Perimeter;
- a fact not inherent in the Services, in particular an anomaly or a dysfunction of the manufacturing processes of the Client;
- an intervention of the Client in the realization of the Services.

**7.3** The corrective actions implemented do not result in extending the warranty period.

**7.4** This guarantee applies only for the Services included in the Perimeter and exclusively carried out by Bertrandt. Bertrandt is in no way responsible for the quality and conformity of the products manufactured on the basis of the Services performed.

**7.5** This guarantee is in lieu of any other contractual guarantee and any compensation or sum to be paid to the Client. It constitutes the only recourse of the Client in this respect.

## **8 – RESPONSIBILITY, INSURANCE**

**8.1** Bertrandt is liable for foreseeable direct damage, duly proven, caused to the Client due to a breach of its contractual obligations.

**8.2** In no event shall Bertrandt be liable to the Client or third parties for unpredictable, indirect and / or immaterial damages resulting from the total or partial deprivation of use of a property or a right, the interruption of a service, the loss of a profit. In particular, loss of profit, production losses, loss of profit, loss of use, loss of profits, damage to the image or brand must be considered as indirect and / or intangible damage. Any damage suffered by a third party is indirect damage and therefore does not give rise to compensation.

**8.3** Bertrandt cannot be held responsible for the Client's own obligations and the harmful consequences for the Client and third parties of the exploitation of the results of the Services. Bertrandt does not guarantee the ability of the Services to achieve objectives or results that the Client would have set and / or to perform particular tasks that

would have motivated him in his decision to conclude the Contract but that he would not have on the one hand, previously described in writing exhaustively and which, on the other hand, would not have been the subject of an express validation of Bertrandt under the conditions indicated in articles 2 and 3.

**8.4** In any case, the total and cumulative liability of Bertrandt under the Contract shall not exceed the price of the Services causing the blameworthiness. This limitation of liability constitutes a ceiling of compensation for all damages, events and causes included in the Services performed under the Contract. This limitation is waived in case of gross or fraudulent negligence of Bertrandt or in case of personal injury.

**8.5** The price of the Contract reflects the distribution of risks arising from the Contract, as well as the economic balance desired by the Parties; the Contract would not have been concluded on these terms without the limitations of liability set forth herein. The Parties expressly agree that the limitations of liability continue to apply beyond the termination of the Contract for any reason whatsoever.

**8.6** The Client waives all recourse against Bertrandt and guarantees it third parties actions for any liability or for any damages, costs, expenses or losses caused to the Client or third parties in relation to the Services and which exceed the limits stipulated above.

**8.7** Bertrandt is covered by a liability insurance policy whose premiums are at his expense, covering damages and prejudices of any kind that may affect his Clients and third parties, resulting from his activity and caused by his own, by his employees in any capacity whatsoever and by its own property or entrusted. Bertrandt will take all the necessary measures to guarantee the goods against any deterioration or disappearance.

## **9 – INTELLECTUAL PROPERTY**

**9.1** For the purposes of this article, the term "Own Knowledge" means all knowledge, data, samples, formulas, techniques methods, know-how, as well as all other intellectual property rights, whatever their nature or support, including Bertrandt before the date of entry into force of the Contract or subsequently obtained and independently of the Contract. Bertrandt remains sole owner and owner of its Own Knowledge, which should be considered as Confidential Information within the meaning of Article 11 of these general conditions.

Notwithstanding the foregoing, Bertrandt may, at the request of the Client and if it is necessary for the exploitation of the Services by the Client, agree in the Contract to grant the Client a license on his Own Knowledge. This license, if granted, is for the sole purpose of operating the Services and is non-transferable and non-sublicensable. The license, if expressly stated in the Contract, is included in the price of the Contract.

**9.2** The term "Results" means all knowledge, data, samples, formulas, techniques, methods, know-how, inventions, as well as all intellectual property rights, whatever their nature or medium, created or generated within the framework performance of the Services and the Contract.

Bertrandt owns the Results, unless expressly stated otherwise in the Contract. It may, by mutual agreement between the Parties, assign them to the Client, in return for a financial contribution to be agreed.

## **10 – CONFIDENTIALITY**

**10.1** The term "Confidential Information" means any information or data of any kind transmitted by one of the Parties (the "Disclosing Party"), in any form whatsoever, whether or not it is marked "confidential" or equivalent, to the other Party (the "Receiving Party") or of which it is aware for the purposes of or in connection with the negotiation and execution of the Contract.

**10.2** Without the prior written consent of the Disclosing Party, the Confidential Information may not be disclosed, reproduced, exploited, adapted, modified or assigned by the Receiving Party. The use of Confidential Information is limited to the strict performance of the Contract. The Receiving Party undertakes to disclose the Confidential Information only to employees and agents who need to know it for the performance of the Contract and to ensure that these employees and agents respect the obligations of confidentiality contained in this Agreement. article.

**10.3** These provisions do not apply to information that:

- were already known to the public and / or the Receiving Party at the time of signing the Contract;
- have fallen into the public domain after the signing of the Contract, without fault of the Receiving Party;
- have been transmitted to the Receiving Party by a third party not bound by an obligation of confidentiality;
- have been obtained or developed by the Receiving Party legally and independently of the performance of the Contract;
- Must be disclosed by imperative effect of the law or a final court decision.

It is up to the Party that avails itself of one of these exceptions to provide proof.

**10.4** The Receiving Party undertakes to respect these confidentiality obligations for the duration of the Contract and for a period of five (5) years from the expiry or termination of the Contract for any reason whatsoever.

## **11 – REVERSIBILITY**

In the event of a total or partial stop or suspension of the project or an order or a significant reduction of the charge, for any reason whatsoever, a notice of three (3) months will be respected by the Client. This notice period will be necessarily invoiced, as well as the associated costs.

## **12 – FORCE MAJEURE**

**12.1** Neither Party shall be held liable for any failure to perform its contractual obligations if it has been prevented from performing its obligation by an event of force majeure, as defined by French law and case law.

**12.2** Notwithstanding the foregoing, the following shall be considered at any time as an event of force majeure: disruptions or breakdowns in computer systems, such as Internet access interruptions (provided that they are not caused by the part that invokes to be released from its obligations), social conflicts such as strikes, blockages or disruptions of means of transport, the decision of an administrative and / or judicial authority.

**12.3** The party who is the victim of force majeure shall inform the other Party as soon as possible. She will keep her informed of the evolution of the event. The obligations of the Parties affected by the event of force majeure are suspended for the duration of said event and will resume as of the cessation of the latter. Assuming that the event of force majeure lasts for a period of more than ninety (90) consecutive days, each Party may notify by registered letter with acknowledgment of receipt to the other Party the immediate termination of all or part of the Contract, without compensation to either party in this respect. If the impediment is final, the Contract is automatically settled and the Parties are released from their obligations under the conditions provided for in articles 1351 and 1351-1 of the Civil Code.

### **13 – TERMINATION**

**13.1** Any early termination of the Contract is excluded. Only a termination of the Contract at the initiative of one of the Parties for failure of the other Party to one of its substantive obligations under the Contract is allowed, according to the procedure provided in 13.2 below. In the event of cancellation by the Client of the Contract, apart from any breach as described below, the consequences stipulated in article 13.2 shall apply.

**13.2** In the event that one of the Parties commits a breach in the performance of one of its substantial obligations under the Contract, the other Party is entitled to terminate the Contract by registered letter with acknowledgment of receipt, after formal notice remained unsuccessful, to remedy the said failure within thirty (30) days. It is expressly understood that a default of payment of the Client is analyzed as a breach of one of its substantial obligations. On the day of termination, the Client is obliged to pay to Bertrandt the price of the Services already delivered as well as those carried out according to their progress, without prejudice to the damages that may be claimed by Bertrandt for the damage caused by the breach of Client.

### **14 – DIVERSE**

**14.1** If one or more of the provisions of the Contract are held to be invalid or declared as such pursuant to a law, regulation or following a final court decision, the other provisions will retain their full force and scope. The Parties shall endeavor to negotiate alternative provisions, the effects of which shall be as far as possible equivalent to those of invalid or void clauses.

**14.2** The Agreement is concluded intuitu personae. However, Bertrandt reserves the right to subcontract all or part of the Services, which is accepted by the Client. In addition, Bertrandt reserves the right to assign or transfer all or part of the Contract to any other company that it controls or controls directly or indirectly within the meaning of Article L.233-3 of the French Commercial Code, which is accepted by the Client.

**14.3** Between the parties, unpredictability is defined as a change in unforeseeable circumstances upon the conclusion of the contract, such as a change in economic and / or legal circumstances directly and significantly affecting the services, or those directly with the Bertrandt activity, or bringing such changes in the situation of Bertrandt, that it can not reasonably fulfill its obligations under the conditions initially agreed upon.

In such circumstances, the parties attempt to renegotiate the terms of the agreement that would be affected by such changes. This renegotiation will proceed as follows:

- Sending a notification by Bertrandt to the Client;
- Negotiations within sixty (60) days of notification

In the event of agreement between the Parties within the aforementioned period, an amendment to the Contract will be established and signed between the Parties within two weeks. In the event of rejection or failure of the renegotiation, the Parties may agree to the termination of the Contract on the date and under the conditions they determine. Failing agreement within thirty (30) days of such refusal or failure, the Contract may be terminated by Bertrandt by registered letter with acknowledgment of receipt and subject to a notice of three (3) months, without any compensation being due to the Client.

**14.4** Pursuant to Article 2254 of the Civil Code, it is expressly agreed that any action against Bertrandt which finds its cause, origin or object in the Contract is prescribed by one (1) year.

**14.5** The Parties agree that e-mails are admissible in front of the Courts and demonstrate the data and the elements they contain.

### **15 – APPLICABLE LAW - COMPETENT JURISDICTION**

These general conditions and the Contract are subject to French law, to the exclusion of any other rule of conflict. The Parties agree to exclude the application of the provisions of Article 1223 of the French Civil Code.

ANY DISPUTE RELATING TO THE TRAINING, INTERPRETATION, VALIDITY, EXECUTION AND / OR TERMINATION OF THE CONTRACT, WHICH HAS NOT BEEN POSSIBLY RESOLVED IN ADVANCE BY THE PARTIES, WILL BE BROUGHT BEFORE THE TRIBUNAL DE COMMERCE OF PARIS, ALONE COMPETENT TO KNOW, INCLUDING, IN THE EVENT OF A GUARANTEE, ANY INCIDENTAL CLAIM, MULTIPLE DEFENDANTS OR REFERRAL.