

GENERAL TERMS OF PURCHASE

(PURCHASE, FACTORY AND FACTORY SUPPLY CONTRACTS) UPDATE 12.10.2010

1. Scope

These General Terms and Conditions shall exclusively apply to business transactions between BERNING and his suppliers. These General Terms and Conditions shall apply accordingly to any other contracts (in particular factory and factory supply contracts), signed by BERNING with suppliers.

Terms and Conditions not in agreement with these Terms and Conditions shall only apply when explicitly agreed with BERNING in writing.

2. Quotation and Contract

The supplier agrees to accept BERNING's orders within a period of one week after receipt of an order by the supplier. After expiry of this period for acceptance, the legal effect of BERNING's orders shall become null and void.

Orders and agreements shall only be final when issued and confirmed in writing.

3. Provision of services

Goods supplied shall comply with applicable statutory, official and other regulations, in particular accident prevention regulations, standards and accepted latest rules of technology and any documentation (e.g. descriptions, samples, specifications, drawings, etc.), on which an order is based.

4. Delivery and shipment

Deliveries and shipment shall always be effected at the supplier's cost and risk to an address specified by BERNING.

Goods to be supplied shall be packed in compliance with general specifications of forwarders or the Federal railways.

5. Delivery date and delay

Delivery dates specified in an order shall be final. The supplier shall notify to BERNING without delay of any delays anticipated in delivery and Act of God.

For delays of delivery, BERNING shall be entitled to statutory claims. BERNING shall be entitled in particular to claim damages after fruitless expiry of an adequate period of grace in lieu of performance, and rescission from the contract. Should BERNING claim damages, the supplier shall be entitled to prove that breach of duty was not due to his fault.

Should BERNING's manufacture be stopped or considerably curtailed due to Act of God, BERNING shall be released from his duty to accept the goods or pay damages for the duration and scope of any effects of the said Act of God, subject to BERNING being unable to avert the said influences by applying acceptable means.

6. Transfer of risk

The risk shall be transferred to BERNING as soon as the goods have been handed over to BERNING's authorised employees on the factory site designated as the destination.

7. Prices

Prices listed in an order and confirmed by the supplier shall be fixed prices and shall apply to delivery free to factory including packaging. The supplier agrees to collect special packaging material from BERNING free of charge and pay appropriate costs for any returns from BERNING.

8. Terms of Payment

Payment shall be effected after full receipt of the goods and the invoice at BERNING's option

within a period of 14 days minus 3% cash discount

within a period of 30 days minus 2% cash discount

within a period of 60 days strictly net.

Payment shall be effected by legal tender at Berning's option.

9. Assignment to third parties

Assignments of accounts receivable shall be subject to prior agreement by BERNING.

10. Faults

BERNING agrees to inspect the goods for quality faults and incorrect quantities within an adequate period of time and to notify any deficiencies found in due course. The said notification shall have been made in due course, when notifications of obvious faults are received by the supplier within a period of 8 calendar days after receipt of the goods (in case of hidden faults from the date of discovery).

Faults shall be obvious only when detected on the surface of the goods on inspection by the naked eye without any technical tools, without requiring any closer scrutiny, testing or sampling.

BERNING shall be entitled to unlimited statutory claims for faults. BERNING shall be entitled in all cases to demand from the supplier at BERNING's discretion remedy of faults or supply of new items. BERNING explicitly reserves any rights to claims damages, in particular claims for damages in lieu of performance. BERNING shall be entitled to remedy faults himself at the supplier's expense, should risks be imminent or in urgent cases.

BERNING's warranty rights shall become barred by the statute of limitation after a period of 36 months, commencing with transfer of the risk.

Should claims for producer's liability be raised against BERNING due to non-compliance with safety regulations etc. in compliance with German or foreign laws, the supplier agrees to refund to BERNING any expenses incurred, should liability have been caused by faults in the supplier's goods.

11. Intellectual property rights and patents, secrecy, supplier's statement

Tools, models, samples and drawings, material specifications and any documentation made available to the supplier by BERNING for completing an order, shall remain BERNING's property and shall be returned to BERNING after termination of a business relationship or at BERNING's explicit wish free of charge and without delay. These items shall not be passed

on to third parties nor duplicated in any other way whatsoever or be used for similar purposes.

The supplier agrees to strict secrecy of his know-how referring to any items of the business relationship, such as goods, services, processes, prices and any circumstances or notifications, which may cause damage to BERNING's financial interests.

The supplier guarantees that no third-party German or foreign commercial intellectual property rights associated with any goods supplied by him be infringed by him – unless manufactured in accordance with BERNING's drawings. Should BERNING receive claims from third parties for this reason, the supplier agrees to release BERNING from any liability for the said claims on first request. This clause shall refer to any expenses necessarily incurred by BERNING due to or in association with claims from third parties.

Furthermore, the supplier guarantees that any details in suppliers' statements (in compliance with (EC) Directive 1207/2001), sent by BERNING for any goods of a contract, are complete and truthful. The supplier shall be liable for any damages and/or expenses (in particular penalties, the cost of legal consequences, etc.) suffered by BERNING due to incomplete and/or incorrect details in the supplier's statements. Should the provision of a supplier's statement have been agreed between BERNING and the supplier, BERNING shall moreover be entitled at any point in time to present to the supplier a claim for presentation of informative leaflet INF 4.

12. COSTS OF DEVELOPMENT, TOOLING, DESIGN OR LOGO (ENGRAVING)

When BERNING pays any costs of development, tooling, design or logo (engraving) BERNING acquires the material and intellectual property of developments, tools, designs or logos (engravings). When BERNING pays only partial costs BERNING acquires the corresponding property partially.

13. PLACE OF PERFORMANCE AND JURISDICTION

The place of performance for supplies and services shall be Wuppertal, Germany, for payments the supplier's registered office.

The parties agree to subject themselves to the jurisdiction of the Wuppertal courts of justice. However, BERNING shall also be entitled to institute legal proceedings against the supplier at his general jurisdiction.

14. Miscellaneous

The law of the Federal Republic of Germany shall apply. Application of the United Nations Convention dated April 11, 1980 to contracts referring to international goods purchases (CISG/"UN Purchasing Law") shall be excluded.

Should one or more of the provisions of these General Terms and Conditions or of the supply contract be ineffective, the said provisions shall be replaced by a provision being as close as possible to the financial purpose of the contract. Any other provisions of these terms and conditions shall remain fully in effect and valid.