

GENERAL TERMS OF SALE & DELIVERY (UPDATE DECEMBER 2, 2014)

1. Scope

Any transactions concluded by BERNING with the customer shall be exclusively subject to these General Terms of Sale & Delivery. Business conditions stating the contrary shall only apply when explicitly accepted in writing by BERNING.

2. QUOTATIONS, ORDERS AND OTHER STATEMENTS

Quotations of BERNING shall be subject to confirmation. Contracts, ancillary agreements, changes and amendments shall be provided in writing. Verbal agreements shall be subject to written confirmation. Orders shall only become final after receipt of a written confirmation of order from BERNING.

3. PRICES AND TERMS OF PAYMENT

3.1. BERNING's prices shall be quoted in EURO ex works excluding VAT, packaging and freight, postage and insurance. VAT shall be based on the rate for VAT applicable on the date of invoicing.

3.2. Packaging shall be invoiced at cost price. Should BERNING be legally obliged to accept the return of packaging, the customer shall pay the cost for the return transport of any packaging used.

3.3. Prices confirmed by BERNING only shall be applicable. Should delivery be effected more than three months after the date of signature of a contract, price changes shall be deemed to apply should BERNING's cost factors, in particular prices for raw and ancillary materials, wages and transport costs, change. In case of price adjustments exceeding 10 %, new prices shall be agreed. The contracting parties agree to enter into serious negotiations for this purpose. Contracts for which no fixed prices have been explicitly agreed and any call-off-orders shall be invoiced at prices applicable on the date of delivery.

3.4. All invoices shall be payable within 30 days from the date of invoice without any reduction. For payments effected within 10 days, 2 % cash discount shall be granted, subject to the customer not being in arrears with payment. Amounts invoiced of less than EURO 100.- shall be payable immediately and not subject to any deduction of cash discount.

3.5. Should terms of payment (30 days from the date of invoice) be exceeded, BERNING may demand interest for delay as charged by banks for unsecured current account overdrafts, but at least amounting to 8 percent points above the applicable base lending rate of the European Central Bank. BERNING shall be allowed to provide proof for higher losses due to delay and the customer shall be subject to the onus of proof that no loss at all or a minor loss only has been incurred by BERNING.

3.6. Should BERNING have supplied without a doubt some faulty products, the customer shall, however, pay for the good share unless that part delivery is of no interest to him. In all other respects, only uncontested or legally endorsed claims shall entitle the customer to offsetting or retaining any amounts due.

3.7. Acceptance of bills of exchange and cheques shall be for performance only. The customer shall pay the cost of discounting. There shall be no guarantee for presenting bills of exchange or cheques in time and for not being charged bill protest fees.

3.8. Should BERNING's claims for payment be in serious jeopardy after signature of a contract due to deterioration of the customer's financial situation, BERNING shall be entitled to demand an advance or a security within an adequate period of time and deny services until that demand has been met. Should the customer refuse this or should any deadline set expire unsuccessfully, BERNING shall be entitled to rescind from the contract and claim damages. The same shall apply should no cover be provided by a credit insurer of BERNING for any transaction pending or should a credit insurer revoke a promise for cover granted after signature of a contract.

3.9. Any damages claimed shall be 50 % of the contract total. A higher or lower total shall be set for damages subject to BERNING providing proof for higher and the customer proof for lower losses/damages sustained.

#### 4. Services to be rendered

4.1. The contents, type and scope of services rendered shall be based on statements issued by BERNING (quotation, confirmation of order). The minimum order value amounts to 500 €.

4.2. Any details included in leaflets, catalogues and quotations, such as drawings, dimensions, weights and colours shall be approximations customary in the industry, unless explicitly referred to as being final by BERNING. Minor changes customary to the industry or trade and technical improvements shall be deemed to have been agreed.

4.3. Commercially customary or minor variations in the quantity and quality of any products supplied shall be accepted by the customer. Normal variations shall be in particular differences in colour and surface structure due to the natural properties of any materials used. Should any merchandise ordered be supplied in more than one lot, variations in colour and surface structure between individual shipments shall also be regarded as standard variations.

4.4. Owing to the fact that the merchandise is used by the customer outside BERNING's sphere of influence, the customer shall examine suitability for the scheduled purpose in each case. The risk of use and application shall therefore be the customer's responsibility unless BERNING has expressly guaranteed a specific use and application.

#### 5. Shipment, deliveries, part shipments, blanket orders

5.1. Unless otherwise agreed, BERNING shall deliver "ex works". Delivery dates and deadlines shall not be final unless explicitly confirmed in writing as being final. Delivery dates quoted shall commence on posting of the confirmation of an order by BERNING. Notification of readiness for shipment and/or collection by BERNING shall be the guideline for maintaining agreed delivery dates. Should a calendar week ("KW") have been agreed for delivery, delivery shall be deemed to have been kept subject to notification of readiness for shipment and/or collection being effected by BERNING on the last working date of the week specified.

5.2. Deliveries quoted shall refer to standard transactions and shall be adequately extended in case of unforeseen events at BERNING's and/or their suppliers. The said events shall be disruptions in operation, official intervention, Act of God, power supply problems, delays in the supply of important substances, materials and items, strikes, lockouts and similar comparable events that are beyond BERNING's control. Should supplies or services be rendered fully or partly impossible by any of the events listed above, BERNING shall be fully or partly released from any duty to deliver without the customer being able to rescind from the contract or claim damages.

5.3. In addition, deliveries shall be adequately extended due to late arrival of documentation, down-payments, securities or any other advances payable by the customer, when technical queries are pending or for later changes in the contract effected by the customer.

5.4. The parties to the contract agree to notify each other without delay of any events of the type listed above.

5.5. Should dates or deadlines for delivery be exceeded for reasons subject to BERNING's control, the customer shall initially set a period of grace to BERNING in writing. This period of grace shall be adequate subject to the contents of the contract, but shall not be less than 4 weeks.

5.6. Part deliveries shall be allowed to an acceptable degree and shall be invoiced separately.

5.7. The delivery of surpluses or reductions in quantity shall be acceptable within a tolerance of 10% of the total order volume. These shall cause changes in the total price invoiced according to the quantity delivered.

5.8. BERNING's liability for damages due to delay or impossibility of performance shall be based on para. 9.

5.9. Quantities ordered in the form of a Block Order shall be accepted within 6 months after confirmation of the order by the customer or a third party on behalf of the customer. Should this period be exceeded, BERNING shall be entitled at BERNING's option to either deliver to the customer any products not called off or to rescind from the contract and claim damages.

In the case that third parties have received goods from a block order the customer remains responsible for completely taking and paying of the ordered goods.

5.10. Goods ordered in the form of a Raw Order will be produced as far as possible in order to gain time, and shall be specified in time by the customer in all necessary features and called off. It is understood that the given delivery time and price are for the "raw production" only. When the customer has transmitted the specifications and called off the goods both will be replaced by those prices and delivery times that are valid for the totally defined product.

As for the rest the same provisions as for Block Orders in 5.9. are in force.

5.11 Goods ordered to be supplied from any consignment stock shall be accepted within 6 months after confirmation of the order by the customer or a third party on behalf of the customer. Should this period be exceeded, BERNING shall be entitled to deliver any products not called off. In the case that third parties have received goods from the

consignment stock the customer remains responsible for completely taking and paying of the ordered goods

#### 6. Shipment, transfer of risk and acceptance

6.1. Merchandise ready for shipment shall be accepted by the customer without delay. Otherwise BERNING shall be entitled to ship these at BERNING's discretion and at the customer's expense or to store these at the customer's risk and expense. BERNING shall be entitled to invoice storage charges to the client of 0.5 % of the invoiced amount for each month or part thereof. Storage charges shall be limited to 5 % of the amount invoiced unless BERNING proves that higher costs have been incurred or the customer proves that lower costs have been incurred.

6.2. Should BERNING claim damages due to non-acceptance, the total shall be 50 % of the agreed purchasing price. Damages shall be rated higher or lower, should BERNING provide proof for higher damages or the customer proof for lower damages.

6.3. Unless otherwise agreed, BERNING shall select at BERNING's discretion the means and route of transport without any guarantee for the cheapest and fastest mode of shipping.

6.4. On handover to the party instructed with shipping and/or commencement of storage but at the latest when products leave the factory or warehouse, the risk shall be transferred to the customer, including any shipments for which BERNING is dealing with delivery and/or postage paid, f.o.b or c.i.f transactions.

6.5. When the products are ready for shipment and shipment and/or acceptance are delayed for reasons beyond BERNING's control, the risk shall be assumed by the customer on receipt of notification of readiness for shipment.

#### 7. Reservation of title

7.1. BERNING shall reserve the title in the merchandise supplied prior to any claims resulting from the business relationship with the customer being settled. Furthermore, BERNING reserves the right to rescind from the contract should insolvency proceedings be instituted over the customer's assets.

7.2. The customer shall be entitled to sell any merchandise subject to reservation of title during normal business subject to honouring his commitments resulting from the business relationship with BERNING in due course. However, merchandise subject to reservation of title shall not be pledged or used as a security. The customer agrees to secure BERNING's rights should any merchandise supplied subject to reservation of title be credited when sold on. The customer agrees at this point in time to assign any claims and rights to the said merchandise resulting from the sale of any merchandise subject to reservation of title, to which BERNING has any legal title, which the customer accepts.

7.3. The customer agrees to store any merchandise subject to reservation of title with due care and to insure it adequately against loss and damage (theft, fire, etc.). In case of any loss, the customer agrees at this point in time to assign any claims for the insurer to BERNING, who accepts this arrangement. In addition, the customer agrees to notify BERNING without delay of any execution by third parties for any merchandise subject to reservation of title, any accounts receivable assigned to BERNING or any other securities by

handing over any documentation required for intervention. This shall include any other interference with such rights.

7.4. The customer agrees that any processing, incorporation or conversion and installation of merchandise subject to reservation of title shall always be effected on BERNING's behalf. Should merchandise subject to reservation of title be processed or inseparably mixed with any other items not being the property of BERNING, BERNING shall acquire co-ownership in the new product based on his share in the invoiced value for merchandise subject to the reservation of title in relation to any other items processed at the time of processing or mixing. Should BERNING's merchandise be connected to other items to make a new item or be mixed inseparably and should the new item be regarded as the principal item, the customer agrees to transfer to BERNING an appropriate share in the ownership of that item subject to the principal item being his property.

7.5. The customer agrees to store (jointly) owned items free of charge on behalf of BERNING. For any item created by processing, connection or mixing, the same rules shall apply as for merchandise supplied subject to reservation of title.

## 8. Warranty

8.1. The customer's warranty rights - except claims for damages – shall be subject to the statute of limitation after a period of one year. The period of warranty shall commence on deliver ex works. Warranty shall become null and void should the customer handle, service, store, process or use merchandise incorrectly. The same shall apply to any defects only reducing the value of suitability for use of the merchandise to a minor degree.

8.2. Obvious defects shall be notified by the customer without delay, but at the latest within 10 days after receipt of the merchandise at destination. Hidden defects shall be notified directly after discovery. Notification shall be effected in writing. Should acceptance of the merchandise or testing of initial samples have been agreed, notification of any defects shall be excluded that could have been detected by the customer on careful acceptance or examination of initial samples.

8.3. BERNING shall not assume any warranty or general guarantee for resistance of the products to cleaning, washing and ironing, etc. In addition, BERNING shall not assume any guarantee for the colourfastness of surface-dyed merchandise nor for rusting of products made of iron as this is an intrinsic property of iron.

BERNING shall not be liable for any changes due to chemical and physical reactions during subsequent use or due to any interaction with substances, leather, etc. and any other products.

In addition, any liability shall be excluded for the detrimental effects on BERNING's products of laundering, dyeing, bleaching, stoning or similar processes and for any interaction between these products and chemical and physical conditions occurring during the process. For instance, the presence of material containing copper may cause colour changes in reactively dyed materials, corrosion or damage to the material by any bleaching agents used. BERNING explicitly rejects any liability for this. In this respect, the customer agrees to perform his own inspections and tests prior to use.

8.4. Application consultancy services (use, material selection, finish, setting, etc.) will be rendered by BERNING to the best of the company's ability, based on research and experience. However, any data and information referring to suitability and application of the merchandise shall be non-committal and shall not release the customer from his own inspections and tests.

8.5. BERNING shall be given a chance to assess any defects notified. Merchandise subject to complaints shall be sent to BERNING without delay on request. BERNING shall be responsible for payment of transport costs when complaints for defects are justified. For the supply of large volumes, BERNING shall be given a chance to sort out defective merchandise. Should the customer not abide by these rules and change merchandise subject to the notification of complaints without BERNING's approval, any existing warranty claims shall be forfeited.

8.6. In the case of justified complaints for defects notified in due course, BERNING agrees to remedy defects initially at BERNING's discretion or supply correct replacements (subsequent performance).

8.7. Should BERNING not fulfil this duty within a suitable period of time, the customer shall grant in writing a period of grace to BERNING. After successful expiry of this period of grace, the customer may claim any additional rights, such as compensation for loss in lieu of performance, rescission or reduction. The customer shall be entitled to claim such additional rights – without any deadlines being set – should BERNING finally and seriously refuse performance, decline both types of subsequent performance due to excessive costs or should action for subsequent performance caused by the customer have failed or be unacceptable to the customer. Remedial action shall be considered to have failed after the third unsuccessful attempt, unless the type of the merchandise and/or defect or any other circumstances result from a different situation. Refunds of costs in the above sense shall be excluded, should the customer's expenses increase due to the merchandise having been relocated by BERNING, unless due to the intended use of the merchandise.

8.8. BERNING's liability for damages for inferior services shall be based on paragraph 9.

8.9. The above provisions shall not apply - excluding the provision of paragraph 8.2 – should BERNING be liable subject to a legal claim, for recourse in compliance with §§ 478 et seq. (German) Civil Code (BGB). However, such claims of the customer for recourse shall only exist should the customer not have made any agreement with his customers exceeding legal claims for defects. The provision of the above paragraph 8.7, last sentence shall apply accordingly.

## 9. Liability

9.1. BERNING's liability shall be based on the law, unless stated otherwise in the following. The following provisions shall not apply to any liability of BERNING for loss of life or physical injury. This case shall be subject to legal regulations only.

9.2. Any other and additional claims of the customer against BERNING shall be ruled out unless provided for in the following. This shall apply in particular to any culpa in contrahendo

claims, infringement of ancillary and protective duties and unlawful acts. The same shall apply to the customer's claims for delay and impossibility. BERNING shall not be liable for any other loss/damage than caused to the merchandise supplied. In particular, BERNING shall not be liable for loss of profit and any other loss/damage caused to the customer's assets.

9.3. The above release from liability shall not apply in the following cases:

Should any loss/damage be caused intentionally or by gross negligence by BERNING's legal representatives or executives;

Should major duties according to the contract be infringed or should the customer be entitled in compliance with the law to demand compensation for loss/damage instead of performance or compensation for wasted efforts/expenses;

Should liability for personal and material losses/damage, caused to privately used objects, be substantiated in compliance with the Product Liability Act;

Should BERNING have assumed liability without fault for any contractual duties based on an explicit written statement. The same shall apply should BERNING have assumed the quality risk for the merchandise or a guarantee for the existence of a specific quality and such assumption having been based on the purpose of protecting the customer against any loss/damage not caused to the merchandise supplied.

9.4. In case of culpable infringement of major contractual duties in compliance with 9.3., BERNING shall only be liable for intent or gross negligence of BERNING's legal representatives or executives for any loss/damage typical to the contract or reasonably foreseeable. The same shall apply to the customer's claim for damages for any loss/damage in lieu of performance and compensation for unsuccessful efforts.

9.5. Should BERNING have to pay compensation for warranty claims, claims for damages shall be subject to the statute of limitation after a period of one year from delivery of the merchandise. Claims due to fault resulting from the conclusion of the contract, infringement of ancillary or protective contractual duties and unlawful acts shall be subject to the statute of limitations after one year, commencing on the date of first notification to the customer of the reason for the said loss/damage and the person causing it.

9.6. Should the customer make available samples, drawings, tools or any other documentation, BERNING shall not be liable for any loss or damage to these, except when caused by intent or due to gross negligence. Should BERNING have taken out an insurance policy for cover, BERNING shall only be liable within the scope of such cover for any loss/damage caused. In all cases, BERNING's liability shall be limited to any direct loss/damage suffered.

9.7. Should BERNING's liability be excluded, exclusion shall also refer to BERNING's employees, legal representatives and agents.

#### 10. Intellectual property rights and copyrights

10.1. BERNING reserves the intellectual property rights and copyrights to any documentation, quotations, cost estimates, drawings, photographs, models, samples, tools,

information, etc. provided to BERNING. These shall be confidential and shall only be used for the purpose of the contract. These items shall not be disclosed to third parties without BERNING's approval and shall be returned confidentially, completely and free of charge to BERNING at BERNING's request. The customer shall be liable to BERNING for any loss/damage caused due to non-compliance with this provision.

10.2. BERNING shall be notified without delay of any threatening infringement of the said intellectual property rights and copyrights.

10.3. The customer shall be exclusively liable for the manufacture and distribution of products ordered not infringing the intellectual property rights of third parties. In case of infringement, the customer agrees to release BERNING from any liability and recourse, irrespective of the fact that these ought to have been known to BERNING.

#### 11. Partial Tooling Charges

11.1 Tools, parts of tools and devices especially made for the production of parts for the customer are being invoiced one time only at a generalized fraction value which includes also design and suchlike.

11.2 These tools, parts of tools and devices as well as underlying designs and drawings remain at any time the property of and in possession of BERNING. Their upkeep and possibly replacement is the obligation of BERNING.

11.3 Two years after the last production with these tools for the customer, parts of tools and devices BERNING has the right to dispose of them or use them otherwise without prior announcement.

11.4 These terms apply in the same way to moulds for the production of parts with a logo and/or special design and for the production of die cast or plastic parts.

#### 12. Data protection

BERNING reserves the right to insure the transaction by a credit insurance policy and to provide to the insurer any data of the customer as required. Permission for data storage is available in compliance with § 23 of the (German) Federal Data Protection Act (BDSG). Notification of data storage in compliance with § 26 para. 1 BDSG has been complied with herewith.

#### 13. Place of performance, jurisdiction, applicable law and miscellaneous

13.1. The place of performance for any commitments resulting from this contract shall be the location of BERNING's registered office, i.e. Wuppertal, Germany. For any litigation arising from a contract, the parties to the contract agree to submit themselves to the jurisdiction of the courts of justice at Wuppertal, including any bills of exchange and cheque proceedings, subject to the customer being a business, a public corporation or public institution. BERNING shall be entitled to institute legal proceedings in any other jurisdiction.

13.2. These General Terms of Sale and Delivery shall be subject to the law of the Federal Republic of Germany. Application of the UN Convention dated 11.04.1980 to contracts referring to international trade (CISG/ "UN Purchasing Law") shall be excluded.





13.3. Should one or more provisions of these General Terms of Sale & Delivery or the supply contract be ineffective, the said ineffective provisions shall be replaced by provisions being as close to the commercial purpose of the contract as possible. This shall not affect any other provisions.

UPDATE DECEMBER 2, 2014