



General Terms and Conditions of Delivery of BERGI-PLAST



BERGI-PLAST GmbH

Kunststofftechnik und Formenbau
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§ 1 Scope of application

1. These General Terms and Conditions of Delivery shall exclusively apply to companies, legal persons under public law or special funds under public law and shall exclusively be used by BERGI-PLAST GmbH (hereinafter referred to as “Seller”).
2. All deliveries, services and offers of the Seller will be made exclusively based on these General Terms and Conditions of Delivery. These constitute an integral part of all agreements concluded between the Seller and his contractual partners (hereinafter referred to as “Customer”) on the offered and delivered goods and services. They shall also apply to all future deliveries, services or offers to the Customer, even if they haven’t been agreed upon separately.
3. General Terms and Conditions of the Customer or third parties shall not apply, even if the Seller has not expressly objected to them in the individual case. Even if the Seller refers to a letter containing the General Terms and Conditions of the Customer or a third party or directly refers to them, this shall not be deemed to be the Seller’s consent to the application of these General Terms and Conditions.

§ 2 Offer and conclusion of the contract

1. All offers of the Seller shall be non-binding unless they have been expressly made binding or contain a particular term of acceptance. The Seller may accept any orders or contracts within fourteen days after receipt.
2. The legal relationship between the Seller and the Customer is solely governed by the contract concluded in writing including these General Terms and Conditions of Delivery. This reproduces in full all agreements between the contracting parties concerning the contractual object. Verbal confirmations of the Seller before conclusion of this contract are legally non-binding and oral agreements of the contracting parties are replaced by the written contract, as long as the terms of the contract do not stipulate that prevailing conditions continue to apply.
3. Supplements and modifications to the agreements reached, including these General Terms and Conditions of Delivery, require the written form in order to be effective. With the exception of executives or authorised representatives, the Seller’s employees are not entitled to reach oral agreements which differ from this. Confirmation by telecommunication, particularly by facsimile or email, is sufficient to meet the requirement of the written form, as long as the copy of the signed statement is transferred.
4. Details given by the Seller on the subject matter of delivery or service (e. g. weight, dimensions, functions, loading capacity, tolerances and technical details) as well as our illustrations thereof (e. g. drawings and figures) are only roughly binding, unless their use for the contractually agreed purpose requires a detailed conformity. These are no guaranteed quality features but descriptions and designations of the delivered goods or service. Deviations customary in the trade and deviations which were made due to legal



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regulations or technical improvements and the replacement of components by equivalent components shall be permitted unless they affect the usability for the contractually agreed purpose.

5. The Seller reserves the right to ownership and copyright as well as industrial property rights, in particular all rights of use and exploitation rights, to all offers and cost estimates he has given as well as all drawings, drafts, figures, calculations, brochures, catalogues, models, forms, tools, devices and other documents and aids provided to the Customer, including all documents which were designated in writing as confidential. Without prior consent of the Seller, the Customer may neither make these items accessible to third parties, both with regard to their materialised form and their content, announce them publicly, use them personally nor have them used by third parties or make copies of them. Upon request of the Seller, the Customer shall return these items completely and destroy any copies thereof if they are not required in the ordinary course of business or if negotiations do not lead to the conclusion of a contract.

§ 3 Prices and payment

1. The prices shall apply to the agreed scope of services and deliveries. Additional and special services will be accounted for separately. The prices shall be in EURO ex works plus packaging and freight, customs duties, if applicable, as well as other fees and public charges. The statutory VAT is not included in the prices; it will be shown separately in the invoice at the legally applicable rate on the date of submission of invoice.
2. Invoiced amounts shall be due for payment to the Seller immediately and with no deductions, unless otherwise agreed upon in writing. The receipt by the Seller is relevant for the date of payment. Payment by cheque or notes of exchange is only accepted in case of a prior explicit written agreement and as due payment. All associated costs are chargeable to the Customer.
3. Unless otherwise agreed in writing, the following due date of payment applies deviating from § 3 clause 3 in the case of production of tools by the Seller for the Customer:
 - 30 % of the contract price at the conclusion of the contract,
 - another 40 % at the presentation of the first samples,
 - the remaining 30 % 30 calendar days after presentation of the first samples, in any case after approval of the tool for production by the Customer.
4. The Customer shall only be entitled to offsetting rights or rights of retention if his counterclaims are recognised, undisputed, legally determined or ready for decision. In addition to this, the Customer shall only be authorised to exercise a right of retention insofar as his counterclaim is based on the same contractual relationship.
5. The Seller shall be entitled to perform outstanding deliveries or to render services only against advance payment or provision of a security if he becomes aware of circumstances after the conclusion of the contract which are capable of lowering the creditworthiness of the Customer substantially and by which



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the payment of the outstanding claims of the Seller is jeopardized by the Customer under the respective contractual relationship (including other contracts).

§ 4 Delivery and delivery time

1. Deliveries will be ex works, unless otherwise agreed upon.
2. Any periods and dates for deliveries and services set by the Seller shall apply only approximately, unless a set period or a fixed date have been expressly promised or agreed upon. The start of any delivery period given by the Seller shall require the resolving of any technical issues as well as the Customer's proper and timely performance of his obligations. If shipment has been agreed upon, then the delivery periods and delivery dates will refer to the time of delivery to the forwarder, carrier or third party otherwise commissioned with the transport, unless otherwise agreed upon.
3. Without prejudice to any of his rights due to default of the Customer, the Seller may request from the Customer an extension of the set periods for delivery and services or a postponement of dates for deliveries and services by that period of time that the Customer will require to meet his contractual obligations vis-à-vis the Seller.
4. For call orders without an agreement on terms, lot production size and purchase deadlines, the Seller can demand a decision of the Customer at the latest three months after conclusion of the contract. If the Customer does not comply with this demand within 2 weeks, the Seller is entitled to deliver the quantities not called off yet. Alternatively, the Seller is entitled to set a respite of two weeks and withdraw from the contract after expiration of this term and/or claim compensation.
5. The Seller will not be liable for impossibility of delivery or for default in delivery if these defaults have been caused by force majeure or unforeseeable events (e. g. operational breakdowns of any kind, difficulties in the procurement of materials and energy, delays in transit, strike, lawful lockouts, lack of workforce, energy or raw materials, difficulties in acquiring the correct permits from the authorities, measures imposed by official bodies or institutions or an outstanding, incorrect or untimely delivery by suppliers) which the Seller is not responsible for. If such events make it substantially difficult or even impossible for the Seller to perform the delivery or render the service and if the impediment is not merely of a temporary duration, then the Seller will be entitled to withdraw from the contract. In the event of impediments of a temporary nature, the time periods for deliveries and services will be extended or postponed by the period of time of the impediment plus a reasonable initial period. If it would be unreasonable to require the Customer to accept the delivery or service due to the delay, then he may withdraw from the contract by prompt written statement addressed to the Seller.
6. If the Seller is in default with a delivery or service or if a delivery or service is impossible to the Seller insignificant of the reasons, then the liability of the Seller for compensation for damage shall be limited pursuant to § 8 of these General Terms and Conditions of Delivery.



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§ 5 Place of performance, shipment, packaging, passing of risk, acceptance

1. Place of performance for all obligations under this contractual relationship shall be the supplying plant of the Seller (plant in Berggießhübel or Dohma), unless otherwise stated.
2. The mode of shipment and packaging and the dispatch route will be at the duly discretion of the Seller.
3. Unless acceptance is required or otherwise stated, the risk will pass at the latest with the handover of the delivery item to the forwarder, carrier or third party commissioned with the shipment to the Customer (the commencement of the loading procedure being relevant). This shall also apply if partial deliveries shall be made or if the Seller has assumed other services (e. g. shipment). If shipment or delivery are delayed due to a circumstance whose cause lies on the side of the Customer, then the risk passes to the Customer on the day that the delivery item is ready for dispatch and the Seller has given the Customer notice thereof. The same applies if the Seller stores the delivery item in his warehouse upon request of the Customer. If acceptance is required, the risk passes upon acceptance or if acceptance is deemed completed.
4. Any storage costs arising after the passing of risk shall be borne by the Customer. In case of storage by the Seller, the storage costs amount to 0.25 % of the invoice amount (net amount excluding value-added tax) per week of the goods to be stored. The statutory value-added tax will be added if applicable. Seller and Customer shall reserve the right to assert and provide evidence of additional or lower storage costs.
5. The consignment will be insured by the Seller against theft, the risk of breakage, transport, fire and water damage or other insurable risks only upon express request by the Customer and on their account.
6. Insofar as an acceptance has to take place, the delivery item is deemed accepted, if
 - a) the delivery is performed,
 - b) the Seller notifies the Customer of notional acceptance under § 5 clause 3 of the General Terms and Conditions of Delivery and requests the acceptance of the delivery,
 - c) twelve working days have elapsed since the delivery of goods or the Customer has started using the delivery item (e. g. the equipment supplied has been put into operation) and in such case six working days have elapsed since the delivery, and
 - d) the Customer fails to accept within this time period for a different reason than a defect notified toward the Seller that makes the delivery item impossible to use or impairs its use significantly.

The regulations of § 640 para. 1 sentence 3 BGB as well as the principles of a conclusive acceptance remain unaffected hereof and continue to be applicable.



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§ 6 Warranty for defects

1. The limitation period for claims for defects is one year after delivery or, if acceptance is required, directly from acceptance. This shall not apply if the delivery item is utilised in structures and caused the defect or in cases of § 6 clause 5 or in case of claims for defects which result from a culpable conduct attributable to the Seller or for claims due to loss of life, limb or health; in this respect the statutory regulations apply. The statutory limitation period in cases of delivery recourse according to §§ 478, 479 BGB remains also unaffected.
2. Relevant for the quality and workmanship of the delivery items are the product specifications or, the initial sample if their preparation was agreed, which are presented to the Customer for review by the Seller. The usability of the delivery item, which is intended to come into contact with foodstuffs or other materials, is only checked by the Seller if this is agreed or prescribed by law. The Customer has to make special reference toward the Seller concerning the requirements placed on the delivery item. Any reference to technical norms and standards does not constitute a quality agreement. Quantity deviations of +/- 5 % are typical in the industry and do not constitute a defect. The tolerances typical in this industry are valid, in particular DIN16742 plastics moulded parts tolerances and acceptance conditions.
3. The delivered goods have to be accurately inspected immediately after delivery to the Customer or to a third party appointed by the same. They are deemed approved if the Customer does not report any obvious defects or other damages, which are recognisable upon immediate inspection, within three business days after delivery in form of a written notification of defects. Concerning other damages the delivery items are deemed to have been approved by the Customer, if the Customer does not raise a written notification of defects within three business days after the time period in which the defect is revealed; if the defect became evident to the Customer under normal utilisation, this earlier date is relevant for the start of the complaint period. Notifications of defects can only be submitted in writing. A timely dispatch of the notification of defects shall be sufficient in order to safeguard the deadline. The provisions of this paragraph shall not apply in case of maliciously concealed defects.
4. Should the delivered items be defective, then the Seller will have the right and duty to replace the defective item at his discretion within a reasonable time period set. Should the Seller fail in doing so, i. e. in the event of impossibility, hardship, refusal or unreasonable delay of the rectification of defects or replacement, then the Customer may withdraw from the contract or lower the purchase price to a reasonable extent.
5. Upon request of the Seller, a defective product is to be returned to the Seller carriage paid. If the notification of defects is justified, the Seller will reimburse the costs of the cheapest method of dispatch, however this shall not apply if these charges increase simply because the goods are at an address which differs from the location given for the intended use.
6. If the defect is based on the fault of the Seller, then the Customer may demand compensation for damage pursuant to the requirements under § 8.



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7. If the defects are in components supplied by a different manufacturer and the Seller is not permitted for licensing reasons or is not able to remedy them, the Seller shall at his discretion either make a claim under warranty against the manufacturer and supplier on behalf of and for the account of the Customer or assign that right to the Customer. Warranty claims against the Seller with regard to defects of this type under the conditions as defined in these General Terms and Conditions of Delivery shall only apply if it has not been possible to enforce the claims against the manufacturer and supplier through court action or where there is no reasonable hope of enforcing the claims, e. g. due to bankruptcy. For the duration of litigation, the statute of limitations for the Customer's warranty claims against the Seller is blocked.
8. The warranty rights will be forfeited if the Customer changes the delivery item or has it changed by third parties without the Seller's consent and if the rectification of defects will be impossible or unreasonably difficult thereby. In any case, the Customer shall bear any additional costs incurred by the rectification of defects.
9. A delivery of used items agreed upon with the Customer shall be made under exclusion of any warranty for material defects, unless otherwise agreed upon, except in case of malicious intent on the part of the Seller.

§ 7 Property rights

If the Seller must deliver according to drawings, models, patterns or other data given by the Customer, the Customer guarantees that the goods manufactured according to that data and patterns do not infringe trademarks of third parties. The Seller shall notify the Customer of all rights known to him; however, he shall not be obliged to undertake any own investigations. The Customer must indemnify the Seller from all claims made by third parties and compensate any resulting damage. If a third party prohibits the Seller to manufacture or deliver the goods with reference to a trademark which belongs to him, the Seller is entitled to stop production or delivery and to demand reimbursement of costs spent, without being obliged to check the legal position. If the continuation of the contract should become untenable to the Seller because of the delay, the Seller is entitled to cancel the agreement or claim compensation.

§ 8 Liability for compensation caused by fault

1. The liability of the Seller for compensation for damage, irrespective of its cause, particularly impossibility, default, defective or incorrect delivery, breach of contract, breach of duties during contractual negotiations and the law of torts shall be limited pursuant to this § 8, insofar as they are subject to fault. The same shall apply in the case of reimbursement of expenses.
2. The Seller is only liable for intent and gross negligence of his organs, legal representatives, employees or other vicarious agents. The liability in the event of an infringement of material contractual obligations remains unaffected hereof. Essential to the contract is the obligation to deliver the delivery item on time, its lack of defects that affect its functionality and usability to a considerable extent, and consultation obligations as well as obligations of protection and due care which shall enable the Customer to use the



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delivered item according to contract or aim the protection of life and limb of the Customer's staff or the protection of the Customer's property against considerable damage. Major contractual duties and obligations are the basic, fundamental duties and obligations resulting from the contractual relationship, which are of particular importance for the proper fulfilment of the contract or which mainly influence the existing mutual trust, especially with regard to the fulfilment of the obligations to supply and to forward important information.

3. If the Seller is liable pursuant to § 8 clause 2 for compensation for damage, then this liability shall be limited to damage that the Seller has already foreseen as a possible result of violation of a contractual obligation upon conclusion of the contract, or which the Seller should have foreseen if he had applied due diligence. In addition to that, indirect damages and consequential damages that are resulting from defects of the delivery item shall be recoverable only if such damages should be typically expected with intended use of the delivery item.
4. If the Seller is liable for ordinary negligence, then his obligation for compensation for material damage shall be limited to an amount of EUR 2,500,000.00 in the automotive area per case of damage and to an amount of EUR 1,000,000.00 in the non-automotive area per case of damage (corresponding to the current coverage of his product liability insurance or liability insurance), even if obligations essential to the contract have been violated.
5. The exclusion and limitation of liability above shall apply to the benefit of the Seller's organs, legal representatives, employees and other vicarious agents to the same extent.
6. If the Seller provides technical information or consultancy services and if this information or advice is not part of the scope of the services agreed upon, then they will be provided for free and under the exclusion of liability.
7. The restrictions of this § 8 shall not apply to the liability of the Seller due to intent and gross negligent conduct, for guaranteed quality features, due to injury to life, limb or health or pursuant to the *Produkthaftungsgesetz* [German Product Liability Act].
8. The provisions of this § 8 do not constitute any change in the burden of proof to the disadvantage of the Customer.

§ 9 Retention of title

1. The retention of title agreed hereafter serves to safeguard all of the Seller's existing and future claims against the Customer from the business relationship, in case of outstanding invoices also as security for the balance of accounts. As far as the reimbursement by means of cheque is agreed with the Customer, the retention of title extends to the encashment of the accepted bill by the Customer and shall not be extinguished by the crediting of the cheque received.

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2. The goods delivered by the Seller to the Customer shall remain the Seller's property until complete payment has been effected for all secured claims. The goods as well as the goods replacing them which are also subject to the retention of title shall hereinafter be referred to as „goods subject to the retention of title“.
3. The Customer shall keep the goods subject to the retention of title for the Seller, free of charge. He shall be obliged to handle and store the goods subject to the retention of title with due care and only use them for the intended purpose. He agrees in particular to insure them adequately at his own cost at the original value against damage by fire, water and theft. As far as maintenance and inspection works are required, the Customer must carry these works out in due time and at his own expense.
4. The Customer shall be entitled to process and sell the goods subject to the retention of title during the course of normal business operations until the occurrence of an enforcement event (clause 9). Hypothecation, transfer of ownership by way of security or similar forms of disposition relating to the goods subject to the retention of title shall not be permissible.
5. If the goods subject to the retention of title are processed or transformed by the Customer, then it shall be agreed that this processing or transformation shall be made on behalf and account of the Seller as manufacturer and that the Seller acquires indirect ownership or – if materials of several owners are processed or the value of the processed or transformed good is higher than the value of the good subject to the retention of title – co-ownership (ownership in fractional shares) of the newly created good in relation to the value of the goods subject to the retention of title. In the event that such acquisition of title will not occur for the Seller, then the Customer will transfer his future goods or co-ownership of the newly created good – in the ratio above – as a precaution to the Seller. If the goods subject to the retention of title are connected to or inseparably mixed with other goods to a new good and if one of these goods may be considered as the main good, then the Seller will transfer the Customer co-ownership at pro rata to his own share in the new good in the relation pursuant to sentence 1 if he owns the main good.
6. If the goods subject to the retention of title are resold, then the Customer will already at this point assign the claim arising thereof vis-à-vis the buyer – and in the event of co-ownership of the Seller in the goods subject to the retention of title at pro rata to the co-owned share – to the Seller, and this until satisfaction of all of the Seller's claims to be secured. The same shall apply to other goods, rights and claims replacing the goods subject to the retention of title or that arise otherwise in connection with these goods, such as e. g. insurance claims or claims arising from torts in the event of loss or destruction. The Seller revocably authorises the Customer to collect the claims assigned to the Seller on his own behalf. The Seller may only revoke this direct collection authorisation in the enforcement event.
7. If third parties access the goods subject to the retention of title, particularly by pledging, the Customer will immediately notify them of the ownership of the Seller and inform the Seller thereof in order to enable the Seller to enforce his ownership rights. If the third party is not able to refund the Seller all court and out-of-court fees incurred in connection thereof, then the Customer will be liable vis-à-vis the Seller.



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8. The Seller will release the goods subject to the retention of title and the goods, rights and claims in lieu of them, unless their value does not exceed the secured claims by more than 10 %. The selection of the securities to be released hereinafter shall be at the discretion of the Seller.
9. If the Seller withdraws from the contract due to a breach of contract of the Customer (enforcement event) - particularly default of payment – then the Seller will be entitled to demand the return of the goods subject to the retention of title as well as the goods, rights and claims in lieu of them and to utilise them. The proceeds from utilisation shall be offset against the liabilities of the Customer after the deduction of reasonable utilisation costs. In case of an enforcement event the Seller may demand that the Customer provides all information necessary for the enforcement of his rights and for the collection of claims, that he hands over any relevant documents and that he informs the debtors (third parties) of the assignment.

§ 10 Special regulations for forms (tools)

1. The price for forms also includes one-time sampling costs, but not the costs for testing and processing equipment as well as modifications initiated by the Customer. Costs for additional samples which are requested by the Customer are at his own expense.
2. Unless otherwise agreed upon, the Seller will retain ownership of the forms manufactured for the Customer by the Seller himself or by a third party commissioned by the Seller. The forms are only used for contracts of the Customer for as long as the Customer discharges his payment and acceptance obligations promptly. The Seller is obliged to replace the forms free of charge only when the production quantity guaranteed to the Customer necessitates its replacement. The Seller's obligation to store the forms is extinguished three months after expiration of the warranty period for the last partial delivery produced with the said form, unless otherwise agreed upon.
3. If the forms, however, are not yet amortised if a contract is terminated for reasons for which the Seller cannot be held responsible, the Seller is authorised to invoice the remaining amortisation amount to the Customer in full.
4. As per contract, forms and tools become the property of the Customer after full payment of their purchase price, deviating from the provisions in § 9. The transfer of forms and tools to the Customer is replaced by the storage of the said forms with the Seller in favour of the Customer. Independent of the Customer's legal right to recover possession and independent of the life of the forms, the Seller is entitled to exclusive possession and use of the same until the end of the contract period. The Seller must mark forms and tools as third-party property and insure said property at the Customer's request and expense.
5. The liability of the Seller in respect of storage and maintenance of forms owned by the Customer as per clause 4 above and/or forms loaned to the Seller by the Customer is restricted to care as he would take in his own affairs. Costs for maintenance and insurance shall be borne by the Customer.



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The obligations of the Seller shall cease when, after completion of the order and a corresponding request by the Seller, the Customer fails to collect the forms within an appropriate time period.

6. The Seller has the right to withhold forms as long as the Customer has not fully complied with his contractual obligations and duties.

§ 11 Provision of materials

1. If the Customer provides production materials, said materials are to be delivered at the Customer's own expense and risk, on time and in perfect condition with an appropriate quantity premium of at least 5 %.
2. If the above-mentioned requirement is not met, the delivery deadline will be extended accordingly. The Customer has to bear any additional costs, including extra costs incurred due to interruption of production, except in the case of force majeure.

§ 12 Final provisions / Place of jurisdiction / Choice of law

1. If the Customer is a merchant, legal person under public law or special fund under public law or if the Customer does not have a general place of jurisdiction in the Federal Republic of Germany, if he changes his domicile or place of habitual residence to outside the Federal Republic of Germany or if his domicile or habitual residence are not known at the time the claim is raised, then the place of jurisdiction for all disputes arising from the business relationship between the Seller and the Customer shall be the registered office of the Seller. The Seller is also entitled to sue the Customer at his local court (§ 13 ZPO, German Code of Civil Procedure) or for legal persons at their general place of jurisdiction (§ 17 ZPO). Imperative legal provisions on exclusive places of jurisdiction shall remain unaffected by this provision.
2. The relationship between the Seller and the Customer shall exclusively be subject to the law of the Federal Republic of Germany. The UN Convention on Contracts for the International Sale of Goods (CISG) dated 11 April 1980 shall not apply.
3. Individual agreements made with the Customer shall always take precedence over these General Terms and Conditions of Delivery.
4. If the contract or these General Terms and Conditions of Delivery contain lacunae, then the legally effective regulations shall be deemed to be agreed upon for filling these lacunae which the contractual partners would have agreed in line with the economic aims of this contract and the purpose of these General Terms and Conditions of Delivery if they had known about the lacuna.

Please note:

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The Customer is aware of the fact that the Seller saves data generated from the contractual relationship pursuant to § 28 *Bundesdatenschutzgesetz* [German Federal Data Protection Act] for the purpose of data processing and that the Seller reserves the right to disclose this data if required for the performance of the contract to third parties (e. g. insurance companies).

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