

1. Scope of Validity

The following terms and conditions are only valid in dealings with entrepreneurs as defined by section 14 of the German Civil Code (BGB). For consumers as defined by section 13 BGB, the statutory provisions apply. Without exception, all of our services and deliveries are subject to the following terms of sale unless other conditions have been agreed upon in writing. Any conflicting, varying, or additional conditions of business are not effective, even if we have not expressly rejected them. Our terms of sale also apply if we perform deliveries without reservation despite having knowledge of terms stipulated by the customer that conflict with, or deviate from, our own provisions.

2. Offer

The offers we make are always nonbinding and are subject to alteration on our part. The invoice amount is calculated based on prices on the day of delivery. The quoted price does not include value added tax. At the time of delivery, the valid tax rate will be applied and added separately to the calculation.

If prices increase during production due to changes in labor costs, material prices, or any other expenses, we reserve the right to adjust the agreed price accordingly.

We provide written confirmation of all offers before they become effective. To this end, the electronic form is equivalent to the written form. The dispatch of an invoice or delivery also serves as confirmation.

3. Delivery Times

The delivery schedule provided is approximate and nonbinding. Delivery is calculated from the date of order confirmation. However, this does not apply if there are unresolved technical questions when the order is confirmed. In this case, the indicated delivery period begins once a binding agreement has been made regarding all technical matters. The fulfillment of our delivery conditions is subject to the prompt and orderly fulfillment of the obligations placed on the ordering party. Partial deliveries are permitted.

In the event that circumstances beyond our control make it more difficult or impossible for us to carry out an accepted order, or if such events delay completion of the contract, we reserve the right to postpone the delivery or the remainder of the delivery by the duration of the delay, or to withdraw in full or in part from the contractual agreement. If we are responsible for the delay, the customer is entitled to withdraw from the contract on the condition that delivery is not made within a reasonable grace period defined by the customer of at least 14 working days.

Unless otherwise agreed, goods ordered on call must be received within ten weeks of the ordering date at the latest. If this does not happen, we reserve the right to invoice the goods after a grace period of two weeks without prejudice to other rights.

Claims for compensation on the part of the customer due to delayed delivery are subject to the restrictions set out under item 9 below.

4. Delivery

The customer is to bear the cost and risk of delivery at all times (Incoterms 2000 EXW the respective dispatch location), even in case of freight-paid delivery (CPT destination). We do not provide insurance agreements. We do not accept returns unless we have agreed to do so in advance.

5. Packaging

Packaging costs are forwarded to the customer with no additional charge. We do not accept returns of packaging material unless required to do so

by law.

6. Retention of Title

We retain the right of ownership to all the goods we deliver and, for example, new products obtained from the processing of the supplied goods until all obligations toward us have been fulfilled by the customer.

In this respect, all deliveries are regarded as a single delivery transaction. The retention of ownership rights is deemed security against the settlement of outstanding payments.

If the customer combines the supplied goods with other items to form a single system and the other unit is to be regarded as the main component, the customer is obliged to grant proportionate co-ownership to us, provided that the main component is the property of the customer. If the customer resells the supplied goods in line with the terms of the agreement, all claims against the third party deriving from the sale are herewith assigned to us, including any ancillary rights, until the outstanding payment to us has been settled in full.

If good reason is shown, the customer is obliged at our request to notify third-party purchasers of the assignment and to provide us with any information or documents that we require in order to assert our rights.

We will release securities in our possession if their total value exceeds the value of the secured claims by more than 20%.

7. Payment

Our invoices are subject to payment within 14 days of the invoice date and receipt of goods with a discount of 2% or within 30 days net without deductions. Settlement by check is accepted subject to encashment and only on account of performance.

Payment should not be delayed due to the receipt of checks unless otherwise expressly agreed upon in advance. We reserve the right to charge interest at the standard rate after 30 days. If, for whatever reason, there is justifiable doubt regarding the customer's payment capacity or credit-worthiness, then all amounts owed to us by the customer shall become due immediately, notwithstanding agreements to the contrary and without prejudice to further legal claims. In such cases we are also entitled to hold back any deliveries or services that are subject to a contractual agreement but have not yet been performed until all outstanding payments have been made.

Alternatively, we may carry out any such deliveries or services in part upon immediate cash payment, and we may partially or completely withdraw from the contractual agreement.

Only claims that we do not contest or that are legally binding may be offset against our claims. Furthermore, the customer is not entitled to exercise a right of retention insofar as this is based on claims that are not subject to the same contractual agreement.

Any other payment terms must be mutually agreed in writing.

8. Warranty

a. General

Orders are carried out according to the instructions of the customer and inline with the specification contained on the relevant drawings.

In the event of a defective delivery, we undertake to replace or rectify goods that have been returned at our sole discretion, or to issue a credit note. Any claim to damages by the customer arising from the dispatch of faulty goods is subject to the limitations under item 9 below.

We will deem the supplied goods to be in compliance with the contract in terms of their type and quantity if the customer does not inform us of any deviations from the contractual agreement that have been identified within a week of delivery. For customized products, the quantity delivered may vary by 10% without prejudice to the agreement.

The customer is required to inspect the goods immediately upon delivery and to ensure that there are no defects insofar as this is possible in the regular course of business. Any defects are to be reported to Berrang without delay.

We are only able to consider later complaints regarding the delivery if they relate to latent defects.

The customer must produce any warranty claim in writing, specifying the identified defect and verifiable evidence. The warranty period is 12 months.

The use and processing of goods is solely the responsibility of the customer. Our technical advice and descriptions of the product, be they spoken or written, are deemed nonbinding and do not release the customer from the obligation of testing the suitability of products for their intended purpose or process.

b. Special Applications

Since Berrang does not have a comprehensive knowledge of the overall working environment or the specific requirements of the application area, the customer is required to consult the applicable technical standards concerning the use of the products ordered and to test parts sufficiently.

Any special requirements relating to quality inspection must be specified before the contract has been signed.

The customer bears the risk for any damages resulting from breakdowns or failures caused by the improper use of goods provided by Berrang.

Berrang does not accept any liability for any such improper use, and the buyer agrees to hold harmless and indemnify the company from any third-party claims in case a breakdown or failure can be attributed to the improper or unsuitable use of the supplied goods.

c. Hydrogen Embrittlement

During production, hydrogen atoms may penetrate the structure of steel parts, possibly leading to hydrogen-induced cracking or hydrogen-induced embrittlement. Such damage may be caused by a critical combination of material-, production-, and coating-related parameters (see DIN50969-1). All high-strength steel parts are susceptible to hydrogen-induced cracking and even failure of the part.

This is a risk which cannot be excluded by current technological standards. The element of risk for such defects is borne exclusively by the customer.

Berrang is thus not liable to provide parts for which hydrogen-induced brittle failure can be excluded. Failure caused by hydrogen embrittlement will therefore not lead to any warranty or liability claims. The customer agrees to indemnify Berrang from any third-party claims related to damages caused by hydrogen embrittlement.

d. Parts with Special Technical Delivery Conditions

Parts with special technical delivery conditions must be explicitly identified as such in the specification and order documentation. It is insufficient to make reference to this only on drawings, within other terms and conditions, or by any other means. If there is no explicit mention of the special conditions in the specification or purchase order, Berrang provides no warranty that goods will be delivered under observance of these conditions.

9. Liability

Unless other liability provisions are specified elsewhere in these terms and conditions, Berrang is only liable as follows for damages to the customer which directly or indirectly result from a defective delivery or any other cause that may be attributed to Berrang.

The obligation to pay compensation is in principle only applicable if Berrang is responsible for the damages caused. If claims are forwarded against the customer as a result of liability toward third parties irrespective of culpability, Berrang shall assume such liability toward the customer to the extent that the company would also be directly liable. When determining the amount of the claim to be compensated by Berrang, the provisions of section 254 BGB shall be effective. The same applies if claims are made directly against Berrang. The obligation to pay compensation is excluded if the customer has effectively limited liability toward the third-part purchaser. In such cases, the customer shall endeavor to agree limitations of liability also to the benefit of Berrang to the extent legally permissible. Claims of the customer are excluded if the damage can be attributed on the part of the customer to a violation of operation, maintenance, or assembly instructions, unsuitable or improper use, or incorrect or negligent treatment of the parts supplied. Normal wear and tear and incorrect repair are also excluded.

When determining the amount of compensation to be paid by Berrang, the following factors are to be taken into consideration in favor of the same company: the financial situation of Berrang, the nature, scope, and duration of the business relationship, any possible contribution to the cause and/or fault on the part of customer as per section 254 BGB, and any unfavorable installation scenarios of the part supplied. In particular, the level of compensation, financial costs, and other expenditures to be borne by Berrang must be in proportion to the value of the supplied part.

Berrang's liability – for whatever legal reason – is limited to the damages caused by Berrang or its vicarious agent with intent, by gross negligence, or by ordinary negligence in violation of obligations essential to the fulfillment of the contractual agreement. If obligations essential to the fulfillment of the contractual agreement are violated by ordinary negligence, Berrang's liability shall be limited to the amount typical in comparable transactions of this kind and which were foreseeable upon conclusion of the contract or, at the latest, at the beginning of the violation of obligations.

Claims for damages pursuant to any applicable product liability legislation arising from the absence of a guarantee of quality or due to loss of life, limb, or health remain unaffected.

The above provision does not imply a reversal of the burden of proof to the disadvantage of Berrang.

General Terms and Conditions



10. Place of Performance, Place of Jurisdiction, and Applicable Law

The place of performance for all payments and deliveries is Mannheim, Germany, without prejudice to any agreement of freight-paid delivery.

Mannheim is the court of jurisdiction for all claims against either party resulting from the business relationship.

In all cases only German law shall apply to the exclusion of standards that refer to foreign law. The uniform laws concerning the international sale of movable goods and the closing of agreements regarding the international sale of movable goods, both dated July 17, 1973, and the UN Convention on Contracts for the International Sale of Goods dated April 11, 1980, do not apply, and neither do any follow-up regulations.

11. Final Clause

If parts of these general terms and conditions are ineffective or lose their validity due to subsequent legislative changes, the remaining clauses are not affected. As far as it is possible, the invalid provision is to be expanded, reformulated, or interpreted so as to fulfill its intended commercial purpose as regards the legal situation.

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