

## General Terms and Conditions of Sale and Delivery

### I. Application

1. Every delivery, service, offer, or quotation of Hans Berg GmbH & Co. KG (hereinafter referred to as "BERG") will be made exclusively on the basis of these General Terms and Conditions of Sale and Delivery. These General Terms and Conditions of Sale and Delivery will be deemed part of every contract or agreement BERG concludes with any of its contracting parties (hereinafter referred to as "Purchaser") on any delivery or service offered by BERG. These General Terms and Conditions of Sale and Delivery shall also be applicable to any future delivery, service, offer, quotation, or proposal even if not agreed specifically again.

2. No Purchaser general terms and conditions shall be applicable to the supply relationship unless the applicability thereof is expressly agreed to in writing by BERG. BERG's General Terms and Conditions of Sale and Delivery shall also be applicable if BERG performs any delivery to the Purchaser without any reservation while being aware of any Purchaser terms and conditions conflicting with or diverging from BERG's General Terms and Conditions of Sale and Delivery.

### II. Conclusion of contract and subject matter of delivery

1. Every offer, quotation, or proposal made by BERG shall be subject to change without notice and non-binding unless expressly identified as binding or unless including a determined period of time for the acceptance thereof. No contract shall be deemed brought about unless by BERG's written or electronic order acknowledgment. Order acknowledgment, whether written or electronic, shall also be binding for the scope of delivery. No subsidiary agreement, amendment or modification shall be effective unless confirmed in writing or electronically by BERG.

2. Any change or modification to the design or form of any delivery item shall remain reserved unless (i) any material change is made to the delivery item, and the Purchaser cannot be reasonably expected to accept such change, or (ii) BERG's information on the subject matter of delivery or service (e.g., performance data, weight, dimension, consumption values, load capability, tolerances, technical data) as well as any representation of same (e.g., any drawing, illustration) have expressly been agreed as binding.

BERG's aforementioned information on the subject matter of delivery or service as well as any representation referring thereto shall neither be warranted, nor represent any description of a specified quality unless an express written or electronic commitment is made by BERG thereto. Unless a written or electronic commitment is made by BERG otherwise, any such information shall rather be deemed to constitute a non-binding description or identification of any delivery or service, while any deviation therefrom shall be admissible in accordance with the first sentence in Subsection 2 of this Section II. In case a binding agreement is made with the Purchaser as to the specified quality of any delivery or service, any change or modification by BERG shall remain admissible if and where made due to any mandatory statutory provision and reasonably expected to be acceptable for the Purchaser. If any such change or modification is unreasonable, the Purchaser shall have the right to rescind the contract. Any further claim shall be excluded.

3. BERG shall reserve all rights including but not limited to title, ownership and copyright to every document, image, drawing, specification, sample, etc., if any, made available to the Purchaser. The Purchaser may not use any of the foregoing unless within the scope of the purpose as provided for in the contract. Any such document, image, drawing, specification, sample, etc. shall be treated in strict confidence, and must not be made available to any third party unless under a previous written declaration of consent given by BERG.

4. BERG shall have no obligation to examine any demand made by the Purchaser for any specification or design of any delivery item for

accuracy and completeness as well as for the suitability of the same for the purpose pursued by the Purchaser.

5. BERG shall have no obligation to examine for defectiveness any material provided by the Purchaser for manufacturing any delivery item.

### III. Prices and payment

1. The prices shall be applicable to the scope of services and supply as indicated in BERG's order acknowledgements. Any additional or extra service will be invoiced on a separate basis. Unless as expressly agreed otherwise by the parties, prices shall be deemed in euros and ex works plus any packaging and statutory value-added tax. Any customs duty, tax, fee, or similar public charge will be invoiced on a separate pieces if and where to be paid for by BERG.

2. If any important cost factor, including but not limited to any cost of material, energy, wages and salaries, transport, or insurance changes to any material degree (i.e., by not less than 5 %) after the submission of any offer or quotation by BERG, after order acknowledgment, or after the conclusion of any master agreement including any firm price agreement by BERG, BERG shall be entitled to a reasonable increase in prices to the extent such prices are affected by any such increase in costs. For any such increase, BERG will consider the Purchaser's legitimate interests, including with regard but not limited to any commitment the Purchaser may already have made for the supply of any delivery item for a specific price to any third party. Sources accessible to the public shall be used for calculating any increase in prices incurred for any relevant raw material or other essential cost factor.

3. Unless as expressly agreed otherwise in writing, every invoiced amount shall be paid cash and net without any deduction free to BERG's designated account not later than fourteen (14) days after the invoice date. The time relevant for the timeliness of payment shall be the receipt of payment by BERG.

4. If failing to pay when due, the Purchaser will automatically be deemed in default of payment. From the due date, any amount outstanding shall bear interest at a rate of five percent (5 %) per year above the base interest rate (EURIBOR).

5. No right to offset any payment shall be available to the Purchaser unless the Purchaser's counterclaim is recognized by declaratory judgment, is uncontested, or has been recognized by BERG. In addition, the Purchaser shall not be authorized to exercise any right of retention unless if and where the Purchaser's counterclaim is due and based on the same contractual relationship.

6. BERG shall be entitled not to perform any outstanding delivery unless against advance payment or provision of security if becoming aware of any circumstance which is liable to significantly reduce the Purchaser's credit status, and, at BERG's discretion after a due assessment of the circumstances, puts at risk the payment by the Purchaser of any open claim of BERG from the corresponding contractual relationship, including but not limited to any open claim from any other individual order subject to the same master agreement.

7. Unless if and where expressly agreed otherwise with the Purchaser, every payment shall be made in euros (€), and exclusively to BERG.

### IV. Delivery and delivery period

1. Any delivery deadline shall subject to BERG's order acknowledgment if and where any fixed period or fixed deadline has been expressly promised or agreed therein. Any period or deadline tentatively promised by BERG otherwise shall always be deemed approximate and non-binding. No delivery period shall be deemed to commence unless after the provision of any document, authorization,

or approval to be obtained by the Purchaser, and unless after the receipt of any payment on account or other collateral for payment as agreed, if any.

A delivery period shall be deemed observed when, before the expiry thereof, BERG has made available the delivery item at its own works, and has notified readiness for dispatch to the Purchaser. BERG shall be entitled to decline transfer to any carrier if cargo securing cannot be guaranteed in accordance with the VDI (Association of German Engineers) guideline on safety as applicable from time to time due to the condition of the transport vehicle provided by the carrier, or if the transport vehicle, at BERG's discretion after a due assessment of the circumstances, fails to meet the requirements which must be complied with in order to allow vehicle operation in road traffic under the German road traffic type approval law (StVZO), or under the national regulations as applicable from time to time. The provisions as defined in Subsection 2 and 3 of Section V shall apply mutandis if BERG declines any transfer to a carrier for any of the aforementioned reasons.

2. Any adequate partial delivery in a reasonable scope shall be deemed admissible if such delivery is usable for the Purchaser for the purpose as intended under the contract, if the delivery of the remaining goods is assured, and unless any such partial delivery causes any additional cost or any material additional expenditure to the Purchaser.

3. If, after notification of readiness for shipment, shipping or delivery is delayed upon the Purchaser's request or for any other reason under the Purchaser's control, BERG may invoice warehouse charges in an amount of zero point five percent (0.5 %) of the price of the delivery objects but not more than five percent (5 %) in total. The contracting parties shall remain free to provide evidence showing that any such delay has caused a higher or lower damage or loss.

4. Any delivery shall be subject to correct and timely supplies to ourselves.

5. If BERG incurs in any delay with a delivery, the Purchaser shall have no right to rescind the contract unless after a reasonable grace period set by the Purchaser for BERG in writing has elapsed without success. In addition to the foregoing, the Purchaser shall, if BERG incurs in any delay with a partial delivery, have no right to rescind the overall contract unless the Purchaser has no interest in any such partial delivery. In case of delay or impossibility, BERG shall not be liable for any compensation in damages unless in accordance with the provisions as set forth in Section VIII of these General Terms and Conditions of Sale and Delivery.

6. Any force majeure event shall entitle BERG to postpone delivery for the duration of any such hindrance and for a reasonable start-up period, or, for the part not fulfilled yet, to rescind the contract either fully or in part. Any industrial action including but not limited to any strike and lockout, political unrest or unforeseen circumstance or obstacle which are beyond the will and influence of BERG shall be deemed equal to force majeure if and where any such circumstance or obstacle exerts any material influence on the manufacture or delivery of any delivery item. The foregoing shall also apply if any such circumstance or obstacle occurs with any sub-supplier of BERG. BERG will immediately notify the Purchaser of the occurrence or cessation of any such circumstance or obstacle. The Purchaser may request BERG to declare, within a period of six weeks, whether BERG, for the portion of the contract not fulfilled by that time, will rescind the contract fully or in part, or deliver within a reasonable additional period of time. If BERG fails to make such a declaration within the time limit set by the Purchaser, the Purchaser may rescind the unfulfilled part of the contract.

7. Delivery by BERG shall be subject to the reservation that export authorizations are granted as required, if any, and that no other obstacle prevents delivery due to any export regulation or provision for transfer to be observed by BERG for being an exporter/transferor, or by any supplier of BERG.

## **V. Packaging, shipping, passage of risk, and acceptance of a delivery item by the Purchaser**

1. Unless as expressly agreed otherwise, BERG will choose the type of package at its absolute discretion.

2. Risk will pass to the Purchaser as soon as BERG has made available the delivery item for pickup in its own plant, and has notified readiness for dispatch to the Purchaser. The foregoing shall also apply in case of any partial delivery. Furthermore, the Purchaser will be deemed incurred in default of acceptance if BERG has notified the Purchaser of readiness for dispatch but the Purchaser declines receiving the delivery item at the date notified, or fails to pick up or have the delivery item picked up by a carrier at the date notified.

3. If the Purchaser incurs in default of acceptance or fails to observe any other duty of cooperation, BERG shall be entitled to claim compensation from the Purchaser for any loss or damage thus incurred by BERG, including but not limited to any additional expenditure. After setting a reasonable deadline and after the ineffectual expiry thereof, BERG shall also be entitled to otherwise dispose of the delivery item, and make delivery to the Purchaser within a reasonable extended period of time.

4. No insurance against any theft, breakage, transport, fire or water damage, or any other insurable risk shall be taken out for any delivery item unless upon the Purchaser's express request and at the Purchaser's expense.

5. Any object delivered inbound shall be received by the Purchaser even if presenting any immaterial defect but without prejudice to the Purchaser's rights pursuant to Section VII. of these General Terms and Conditions of Sale and Delivery, and may not be returned unless if and when the Purchaser is entitled to rescission as defined in Section VII., Subsection 3 hereof.

## **VI. Reservation of title**

1. BERG shall reserve title to and ownership in any delivery item until all claims against the Purchaser resulting from the business relationship have been settled, including but not limited to any claim arising at a later time, and also from any contract concluded at the same or at a later time. The foregoing shall also apply if any individual or all claim(s) from BERG have been included in a current account, and the balance thereof has been determined and accepted.

2. If BERG rescinds any contract due to any Purchaser act in breach thereof, including but not limited to any late payment, the Purchaser shall bear all costs for recovering possession of any delivery item. In case of any attachment or any other intervention by a third party, the Purchaser shall forthwith notify BERG thereof in writing, and provide any explanation as required as well as inform any such third party about the existing ownership status. The Purchaser may neither pledge nor assign any delivery item by way of security. The Purchaser shall agree to treat every delivery item with care; this shall include but shall not be limited to insuring such delivery item sufficiently at its reinstatement value and at the customer's expense against any damage by fire, water, or theft.

3. The Purchaser shall be entitled to resell the delivery item within the ordinary course of business. Notwithstanding the foregoing, the Purchaser shall already now assign to BERG any claim with all ancillary rights which may accrue to the Purchaser against any customer or third party from resale irrespectively whether any such good subject to retention of title is resold without or after processing. The Purchaser shall remain entitled to collect any such claim even after assignment. BERG's authority to collect any such claim by itself shall be unaffected by the foregoing; BERG shall agree, however, not to collect any such claim as long as the Purchaser properly fulfils its obligations to pay, as long as the Purchaser does not incur in any delay in payment and, in particular, as long as no petition is made for commencing any insolvency proceedings against the Purchaser's assets, or as long as there is no cessation of Purchaser payments. BERG may require the Purchaser to disclose to BERG any such claims assigned and the debtors thereof, in addition to providing any information as required for collection, submitting any document related thereto, and communicating such assignment to the debtors.

4. If any delivery item is processed or inseparably combined with any other item not owned by BERG, BERG shall acquire co-ownership in the new item at the ratio of the objective value of the delivery item to the other items processed at the time of such processing or combination. If combination is done in such a manner that the Purchaser's item is to be considered the main item, it shall be deemed agreed that the Purchaser assigns proportional co-ownership

to BERG. The Purchaser shall safeguard such sole ownership or co-ownership on BERG's behalf. In other respects, any object created by processing or combination shall be subject to the same provisions as any delivery item supplied subject to retention of title.

## VII. Warranty

1. No claim based on defects shall be deemed to exist unless the Purchaser has complied with the Purchaser's statutory duties to examine and object to defects pursuant to Section 377 of the German Commercial Code (HGB). To enable BERG to check whether a notice of defect is justified, the Purchaser shall submit every notice of defect with detailed information on the type and scope of the defect in writing to BERG. The Purchaser shall, in particular, inspect the delivery item for any shipping damage immediately after its arrival, write down on the bill of lading any damage detected in any delivery item at that time, have such notice of defect countersigned by the carrier, and notify BERG in writing thereof.

When receiving any such written notice of defect from the Purchaser, BERG shall be entitled to have the delivery item alleged to be defective examined by an independent expert at its own expense on site at the Purchaser's premises, and participate in such examination with its own employees. If and where such expert examination shows that the alleged defect does not exist in the delivery item, the Purchaser shall pay the costs of such expert evaluation.

2. Where a defect exists in the delivery item, BERG shall, at its option, have the right to either correct the defect, or make a substitute delivery. BERG shall bear any expenditure required for subsequent performance as defined by law. If, in this regard, the Purchaser claims from BERG any justified costs caused by employing any Purchaser labour or material, any claim for reimbursement shall, to such extent, be limited to the Purchaser's prime costs. If the expenses required for subsequent performance are increased by having, upon the Purchaser's request, transferred any delivery item to any place other than the place of delivery agreed, any additional cost thus caused shall be borne by the Purchaser. Any substitute delivery by BERG shall, finally, be subject to the requirement that the Purchaser returns the defective delivery item to BERG concurrently with such substitute delivery, and pays value compensation for any use made.

3. If BERG is unable or refuses to correct a defect or provide a replacement delivery, or if such correction or replacement is delayed beyond a reasonable period of time for any cause under BERG's control, or if defect correction or replacement delivery fails, the Purchaser shall be entitled to either rescind the contract, or claim a corresponding reduction in the purchase price. In case of rescission, BERG shall not be obligated to repay the purchase price received unless, concurrently with such repayment, the Purchaser returns the defective delivery item, and pays value compensation for any use made. Any subsequent performance shall be deemed failed after the third unsuccessful attempt unless as determined otherwise including from but not limited to the kind of delivery item or defect or any other circumstance.

4. The Purchaser's right of rescission for any defect in a delivery item shall be excluded if the Purchaser is not able to return the service received, and if such inability is not based on any impossibility of return due to the nature of the service received, is under BERG's control, or if any defect has not appeared unless during any processing or transformation of the delivery item. In case of any defective delivery or partial delivery, the Purchaser shall have no right to rescind the overall contract and claim compensation in damages instead of the complete service unless the Purchaser, when applying objective criteria, has no interest therein.

5. For any essential third-party product, BERG's warranty shall be limited to the assignment of any warranty claim BERG has against the supplier of any such third-party product. If the assertion of any such claim against the supplier of a third-party product should fail for any reason not under the Purchaser's control (including but not limited to supplier insolvency), the Purchaser shall be entitled to claims based on defects against BERG as defined in these General Terms and Conditions of Sale and Delivery.

6. No claim for damages shall be available to the Purchaser unless in accordance with Section VIII. of these General Terms and Conditions of Sale and Delivery.

7. Warranty will be void if the Purchaser or any third party performs any unauthorized and unworkmanlike rework or repair on any delivery item, thus making defect correction either impossible or unreasonably difficult. In every case, the Purchaser shall pay the additional costs of defect correction caused by any such unworkmanlike treatment or repair. In addition, no warranty shall be assumed for any loss or damage due to any of the causes listed below:

- Unsuitable or improper use, use other than as intended;
- Incorrect installation, start-up, or operation by the Purchaser or by any third party unless any installation or operating instructions of BERG are incorrect;
- Modification to a delivery item made by the Purchaser or by any third party;
- Natural wear and tear unless as expressly guaranteed by BERG otherwise;
- Incorrect or negligent handling or storage;
- Use of any unsuitable operating media or substitute materials;
- Any chemical, electrochemical, mechanical, atmospheric, or electrical influence unless due to any fault on the part of BERG;
- Any incorrect or incomplete document, including but not limited to any sample or drawing provided by the Purchaser to BERG for the manufacture of the delivery item, or to be observed by BERG in manufacture under the Purchaser's specifications. BERG shall be under no obligation in this context to examine any document provided by the Purchaser for accuracy or completeness;
- Any defective material furnished by the Purchaser for the manufacture of the delivery item;
- Any incorrect, incomplete, or unsuitable demand made by the Purchaser for any specification or design of the delivery item.

8. The period of limitation applicable to any claim for subsequent performance, rescission, or reduction for any defect in a delivery item shall be one (1) year after the passage of risk. The period of limitation applicable to any claim for compensation in damages based on any defect in a delivery item shall be subject to the provision set forth in Section VIII, Subsection 8 hereinbelow.

## VIII. Compensation in damages

1. BERG shall be liable for compensation in damages, regardless of the legal basis, including from but not limited to subsequent impossibility of performance, delay, defective delivery, breach of contract, infringement of any duty during contract negotiations or in tort but exclusively in accordance with this Section VIII. Any liability for damages shall be excluded in any other respect. In terms of its amount, liability shall be limited to a maximum of € 7.5 million per damaging event in total (according to the amount of coverage of our product liability insurance).

2. BERG shall be liable to pay damages and reimburse expenses as defined in the statutory provisions applicable to any injury to life, body, or health, and to any damage as defined in the provisions of the German Product Liability Act.

3. Apart from the foregoing, BERG shall, unless as otherwise determined by any warranty assumed by BERG for the quality of the delivery item, not assume liability unless exclusively subject to the following provisions:

a) BERG shall be liable as defined under statutory provisions for any damage caused by any fraudulent act as well as for any damage caused intentionally or through gross negligence by any of BERG's legal representatives or managerial employees.

b) Up to the amount of the foreseeable damage typical of the contract, BERG shall be liable for any loss or damage resulting from the breach of any essential obligation under a contract arising from any ordinary negligence by any of its legal representatives, managerial employees and other performing agents and for any damage caused by any gross negligence or intention without infringing any essential obligation under a contract by any of its simple performing agents. Also limited to the amount of the foreseeable damage typical of the contract, BERG shall be liable for any damage resulting from any grossly negligent breach of any

essential obligation under a contract committed by any of its simple performing agents. An obligation under a contract shall be deemed essential if its fulfilment constitutes a prerequisite for the proper performance of the contract, and if its fulfilment is regularly relied on and can be relied on by the contracting party.

4. Any loss or damage not caused in the delivery item itself, including but not limited to any loss of profit, indirect damage, consequential harm caused by any defect and third-party claim shall not be eligible for compensation within the scope of BERG's liability as defined in Section VIII., Subsection 3, lit. b) hereof.

5. If and where BERG provides any technical information or acts in an advisory capacity and such information or advice is not part of BERG's owed and contractually agreed scope of services, such information and advice shall be provided free of charge, and excluding any liability whatsoever.

6. If intending to use BERG's services in accordance with the foregoing provisions, the Purchaser will forthwith and exhaustively inform and consult BERG. The Purchaser shall provide ample opportunity to BERG for examining any case of damage. Any action to be taken, including in but not limited to any negotiation for a settlement, shall be agreed by the contracting parties.

7. The provision for excluding warranty as defined in Section VII, Subsection 7 of these General Terms and Conditions of Sale and Delivery shall apply mutatis mutandis.

8. The period of prescription applicable to any claim for damages from warranty shall be one (1) year after the passage of risk. The period of prescription applicable to all other claims for damages, including in but not limited to tort, shall be one (1) year after the end of the year in which any such claim has arisen and the Purchaser became or, unless incurring in any gross negligence, should have become aware of the circumstances constituting any such claim and of the person liable.

If and where BERG is liable under Subsection 2 or 3, lit. a) of this Section VIII., such liability shall be subject to the statutory period of prescription.

## **IX. Industrial property rights**

1. Unless as expressly agreed otherwise, BERG shall only warrant that the delivery item does not infringe any third-party industrial property right (hereinafter referred to as Property Right(s)) at the Purchaser's place of business at the time of passage of risk unless BERG has positive knowledge of any infringement in any such other country for which the Purchaser has notified BERG in writing that such delivery item is intended to be transferred to such other country. If any third party raises any justified claim against the Purchaser due to the infringement of any Property Right in any delivery item supplied by BERG and used as defined in the contract, BERG shall be liable to the Purchaser within the scope of the provision as set forth in sentence 1 as follows:

a) The Purchaser shall inform BERG forthwith in writing about the infringement of any Property Right alleged by such third party. BERG will, at its own discretion, either fulfil, defend against, or settle any such claim by a compromise at its own expense. For such purpose, the Purchaser shall grant BERG the sole authority to decide about legal defence and negotiations for any settlement, and will grant BERG any power of attorney as required therefore in each individual case, including but not limited to the right of granting any corresponding substitute power of attorney.

b) If and where the delivery item constitutes an infringement of any Property Right within the meaning of sentence 1 of this Section IX, Subsection 2, BERG will correct the cause of such Property Right infringement within a reasonable period of time. To ensure this, BERG shall, at its own option and expense, either obtain a right of use for the delivery item concerned, or modify the delivery such that the Property Right is not infringed any longer, or replace the delivery item.

c) If the correction of any Property Right infringement fails, or if such correction is not possible under reasonable conditions, or cannot be reasonably accepted by the Purchaser, the Purchaser shall have the

statutory rights to rescind the contract or reduce the purchase price. BERG's obligation to pay compensation in damages shall be as determined by Section VIII. of these General Terms and Conditions of Sale and Delivery.

d) BERG shall not assume liability for a third-party claim for the infringement of any Property Right if and where such claim has been brought about by any specification made by the Purchaser, by any application not foreseeable by BERG, or by the fact that the delivery item is modified by the Purchaser or by any unauthorized third party, or used under any condition of use not recommended, or under any condition other than as agreed, or used together with any product not delivered by BERG. BERG shall, in general, not assume any liability for any third-party claim for the infringement of any Property Right if and where any such infringement is under the Purchaser's control. If any third party should raise any claim against BERG in this regard, the Purchaser shall indemnify BERG against any such claim.

e) BERG shall not be liable to the Purchaser if the Purchaser recognizes the existence of any infringement vis-à-vis any third party without BERG's consent, or when the Purchaser ceases using the product but fails to point out to such third party that such cessation of use shall not constitute an acknowledgement of any infringement of Property Rights.

2. In the event of any infringement of a Property Right, the provisions set forth in Section VII, Subsections 2 and 5 shall apply mutatis mutandis.

3. The provisions on the period of limitation set forth in Section VII., Subsection 8, and in Section VIII., Subsection 8, shall apply mutatis mutandis.

## **X. Final provisions**

1. If and where the Purchaser is a merchant, the exclusive place of jurisdiction for any claim arising from the business relationship shall be the regional court competent for BERG in Bonn, Germany, But BERG shall also be entitled to bring action against the Purchaser at any other place of jurisdiction.

2. Unless as expressly agreed otherwise in writing, BERG's registered office shall be the place of performance for every liability arising from the business relationship.

3. The laws of the Federal Republic of Germany shall apply with the exception of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (UN Sales Convention, CISG).

4. If any provision of these General Terms and Conditions of Sale and Delivery should be or become ineffective, such ineffectiveness shall not affect the validity of the provisions in other respects. In any such event, the contracting parties shall mutually agree on replacing any such ineffective provision by another provision which comes as close as possible to the economic effect produced by the ineffective provision. The foregoing shall also apply to any gap in the provisions of these General Terms and Conditions of Sale and Delivery.