

General Terms and Conditions of Business

Clause 1 General – Scope of Application

1. Our Gen. Terms and Conditions of Business constitute part of the contract and apply exclusively. We do not recognise terms and conditions set by the Customer which contradict or deviate from our terms and conditions, unless we have consented to their validity in writing. We, therefore, also do not recognise deviating conditions if we, having knowledge of the terms and conditions set by the Customer which contradict or deviate from our terms and conditions, execute the order without reservation.
2. Our Gen. Terms and Conditions of Business also apply to all future transactions with the Customer, provided it concerns a mutual commercial transaction. The version valid at the time of concluding of the contract is decisive.
3. Agreements which we have made with the Customer which deviate or supplement the Gen. Terms and Conditions of Business take precedence over these Gen. Terms and Conditions of Business, provided these were agreed on between the parties in writing. Verbal agreements are only binding if they have been confirmed in writing.
4. Regarding our information obligations according to the EU GDPR we refer to our Data privacy statement which can be found at www.bertrandt.com/en/privacy-note.html.

Clause 2 Quotations – Commencement on Performance of the Order

1. Our quotations are subject to change without notice, unless otherwise expressly stated.
2. Orders given to us verbally by the Customer are also binding. Verbal orders must be confirmed in writing by the Customer.
3. An order is considered placed if we commence performance of an order with the knowledge of the Customer before agreement is reached on all points of an order and without the Customer objecting.

Clause 3 Prices – Price Adjustments – Advance

1. Our prices are net prices, unless otherwise expressly stated. Value-added tax at the statutory rate is detailed separately in the invoice.
2. In the event that the statutory rate of the value-added tax is amended, we will adjust our payment to the same extent and on the date of the amendment without this giving the Customer a right to terminate the contract.
3. Additional services are invoiced separately.
4. We have the right to request an appropriate advance before performing an order.

Clause 4 Payment Conditions; Late Payment

1. Unless otherwise agreed in writing, we are entitled to issue monthly invoices. The agreed remuneration without any deduction shall be due within fourteen (14) days from receipt of the invoice. Our invoices are considered acknowledged, if the Customer does not object in writing within two (2) weeks from receipt of the invoice.
2. Our invoices are considered acknowledged, if the Customer does not object in writing within two weeks from receipt of the invoice.
3. We are not obliged to accept bills of exchange, cheques or promissory notes; in all cases, acceptance is on account of performance only. The Customer shall defray all bill and discount charges; they shall be paid in cash immediately. If the Customer is late in making a payment, we are entitled to return any accepted bills of exchange before they expire and demand immediate cash payment.
4. The Customer has a right of retention only in the case of counter-claims originating from the same legal transaction.
5. The Customer may only offset our claims with undisputed or legally established claims.

Clause 5 Execution of Orders

1. The Customer is obliged to inform us of any laws, standards and other regulations based on which he wishes the service item to be rendered before placing the order. Before placing an order, the Customer shall also provide us on request with all data, documents and other information in written form which must be taken into account in rendering of the service.
2. Modifications and supplements to the service item may solely be consensually agreed upon before completion of the service item. The agreed delivery dates shall be pushed back by at least the time needed to perform the amendments.
3. The Customer is obliged to issue a written order for the amendments. We have the right to stop work on the entire service item until agreement is reached on the amount of the additional remuneration and the written order; all agreed deadlines shall be pushed back accordingly.
4. Deliveries are made “ex works”. Furthermore, the risk of loss of the service transfers to the Customer as soon as we have handed over the service to a carrier or other person for the purpose of transportation or with the sending of the data when the data is transmitted.
5. We are entitled to make part-deliveries and part-services as well as provide a service before it is due, provided this is reasonable.

Clause 6 Warranty

1. The assertion of warranty rights presupposes that the Customer has fulfilled its inspection obligations and its requirement to give notice of defects in acc. with Section 377 of the German Commercial Code without delay, properly and in writing. Defective performances to which Section 377 of the German Commercial Code does not apply must be reported within a cut-off period of one calendar week from detection of the defective performance, however no later than one (1) year from the start of the limitation of actions.
2. The Customer does not have any rights in the case of an insignificant defect. If the subsequent improvement or replacement delivery twice fails to rectify the situation within a reasonable time limit, the Customer may at its discretion choose to reduce the payment, rescind the contract or demand damages instead of the service.
3. Faults in a product which are caused by failing to follow operating and/or maintenance instructions, concern adverse modifications to the product or caused by the use of parts or consumables which do not comply with the original specifications do not constitute a defect. The same applies to defects which concern information or specifications supplied by the Customer.
4. All warranty claims made by the Customer in accordance with Section 634 of the German Civil Code are subject to a limitation period of one year from the statutory start of the limitation of actions. This does not apply to defects which were caused by intentional or grossly negligent action. In this case, the statutory limitation period applies.
5. Statutory recourse claims by the Customer against us exist only insofar as the Customer has not made any agreements beyond the statutory warranty regulations with its buyers.
6. If we have indicated that parts of the service item are products of pre-suppliers, the guarantee against us shall be excluded, provided it was not caused by our intentional or grossly negligent action. In this case, we assign our warranty claims made against the pre-supplier regarding the indicated products to the Customer, who assumes the assignment. If the pre-supplier refuses to rectify the defect or if the claim made against it results in an unreasonable delay or difficulty to pursue the claim for the Customer, the Customer is entitled to make a claim against us also.

Clause 7 Rights to Deliverables

1. The deliverables arising from the provision of the service become the property of the Customer on payment.
2. If, in performance of our service, rights arise which are protectable, the Customer shall irrevocably receive, with payment of the agreed remuneration, the exclusive, solely transferrable, chronologically, materially and geographically unlimited right to use and exploit the deliverables – personally or through third parties – in unchanged or changed form to all known forms of use. This right to use and exploit deliverables includes, in particular, the right to duplicate, disseminate using any medium in physical or non-physical form, make available, reproduce publicly, publish, process and/or restructure, market, also through leasing and hiring, and grant third parties any rights of use for all types of use, solely and with free discretion, itself or through a third party. This also includes the right to online use on all communication networks (Internet etc.) as well as use on fixed and mobile data networks and on end devices. In the event that deliverables of software programs are involved, we shall transfer the aforementioned rights of use as well as the software concerning the object code and concerning the source code to the Customer.
3. We expressly waive the right to be named author of the work result.
4. In the event that costs or other financial obligations arise as a result of transferring rights (in particular in accordance with the German Employee Inventions Act), these shall be defrayed by the Customer and shall to this extent indemnify us against any claims asserted against us.

Clause 8 Rights of Third Parties

The Customer is responsible for ensuring that when we execute the order in accordance with its specifications that we do not infringe on any rights of third parties. In the event that a claim in this respect is brought against us by a third party, the Customer is obliged to indemnify us against such claims. The duty to indemnify also includes all expenses (especially costs of legal proceedings) which we incur necessarily in connection with a claim by a third party.

Clause 9 Withdrawal, Termination

1. The Customer does not have any legal right of withdrawal in the event that a service is not performed or not performed pursuant to the contract, if we are not responsible for the breach of obligation.
2. Para. 1 does not apply if the Customer has a no-fault right of withdrawal derived from special agreements (e.g. a sale at a fixed point in time) as well as in the case of a defect in the product. In this case, the statutory regulations apply, unless otherwise regulated.
3. If the Customer terminates the contract, we by rule have a claim to the agreed remuneration minus our costs saved due to the termination of the order.

Clause 10 Liability

1. Our liability is excluded irrespective of legal basis. This limitation of liability does not apply to intentional or grossly negligent action on our part, damage resulting from harm to life, body and health as well as in the event of a breach of material contractual obligations. Material contractual obligations are obligations, which protect legal positions of the customer that are material to the contract, which the contract, already in accordance with its contents and purpose, shall guarantee to him, as well as obligations without whose fulfilment proper performance of the contract would not be possible at all and whose adherence the Customer may in general count on. In the event of a slightly negligent breach of material contractual obligations, our liability is however limited to compensation of damage that is foreseeable and typical at the time of conclusion of the contract.
2. Limited liability also applies to our employees as well as their vicarious agents and subcontractors.
3. Reversal of the burden of proof is not evoked by the above rules.

Clause 11 Right to Reserve Ownership

1. We reserve the right of ownership to all delivered goods up until receipt of all payments from the business relationship with the Customer. In the case of any current account balance, we reserve the right of ownership until the balance is settled; in the case that bills of exchange or cheques have been accepted, until they have cleared.
2. In the event that the Customer acts in breach of contract, in particular in the case of late payment, we are entitled to withdraw from the contract and retrieve the goods.
3. The Customer has the right to resell the goods delivered by us as part of ordinary business activity and without an assignment exclusion having been agreed. The Customer assigns to us already as of this date its claim derived from resale with all ancillary rights up to the amount of the claim of the final invoice amount (including sales tax); in the event of current account agreements by the Customer with the third party, this applies accordingly to the claim for settlement of the current account. So that the assigned claim can be withdrawn, the Customer shall also remain authorised after the assignment. Our authority to withdraw the claim ourselves remains unaffected by such. We undertake, however, not to withdraw the claim, provided that the Customer meets its payment obligations arising from the collected proceeds, is not late in making payment and, in particular, provided no application is made to start insolvency proceedings and no cessation of payments is in place. If such is the case, the Customer is obliged to notify us of the assigned claims and their debtors and to provide all details required for the withdrawal, hand over the associated documentation and notify the debtors (third parties) of the assignment.
4. Any processing or reconstruction by the customer of the delivered goods is always undertaken for us. If the goods are processed with other objects which do not belong to us, we acquire co-ownership of the new object as a ratio of the value of the purchased object to the other processed objects at the time of the processing. Furthermore, the same applies to the processed object as to the goods delivered under reservation of rights.
5. The Customer may neither pledge nor assign by way of security goods subject to a right of ownership and must notify us immediately of attachments which have been made at the instigation of a third party.
6. We undertake at the request of the Customer to release securities to which we are entitled if the realisable value of our securities exceeds the claims to be secured by more than 10%. The choice of which securities are released lies with us.

Clause 12 Aids for Performance of Order

1. If we produce (auxiliary) models, moulds, tools etc. (hereinafter referred to as "tools") for the requested service, these do not constitute part of the service and remain our property, unless otherwise expressly agreed in writing.
2. After acceptance of requested service by the customer, we will store these tools for a period of six (6) months without acknowledging a statutory duty to do so. Once this period has expired, we have the right to scrap the tools, unless we have expressly agreed with the Customer to continue to store the tools or transfer the tools in return for payment of appropriate remuneration.

Clause 13 Subcontracting of Service

We are entitled to engage a third party to perform the service and to sub-assign the order in whole or in part, provided that interests of the Customer warranting protection are not affected in doing so.

Clause 14 Deterioration of the Customer's Assets

1. If, after conclusion of the contract, we become aware of facts which put into question the ability of the Customer to pay, we are entitled, before further execution of the order, to demand full payment or provision of relevant security or, after setting an appropriate time limit for full payment or provision of security, to withdraw from the contract.

2. Facts which put into question the ability of the Customer to pay are, in particular, permanent attachments or other enforcement measures and an application to initiate insolvency proceedings.

§ 15 Force Majeure

1. If a delivery/service is not possible due to force majeure, especially due to shortage of raw materials, energy and labour, labour disputes, serious transport disruptions, non-culpable or unforeseeable disruptions to operations, official measures not attributable to us, pandemics or other events for which we are not responsible, we are not obliged to perform the delivery/service for as long as the prevention lasts, provided that we have provided prompt written notice to the Customer of such.
2. If the preventions as set out in paragraph 1 last longer than four (4) months, we have the right to withdraw from the contract, if performance of the contract is no longer of interest to us as a result of the prevention and we have not assumed the procurement or manufacturing risk. At the request of the buyer, we shall, after the term has expired, declare whether we are withdrawing or whether we will fulfil our service duties within an appropriate fixed term.

Clause 16 Confidentiality

Only data, plans and other documents and information which have been expressly declared in writing by the Customer as confidential are subject to any confidentiality obligation agreed between the parties. If information is disclosed verbally by the Customer, a written statement classifying the information as confidential must be given within ten (10) days after it was disclosed. If in doubt, the confidentiality obligation commences with access to the documentation and lasts for a period of three (3) years.

Clause 17 Recruitment

If the Customer directly or indirectly concludes a contract of employment with an employee used in the provision of the service in the first month of the provision of the service or directly after the provision of the service has ended, we are entitled to charge 15% of the yearly income of the employee plus statutory value-added tax as a fee. After 3 months of service provision this fee shall be reduced to 12% of the yearly income of the employee plus statutory value-added tax, after 6 months of service provision this fee shall be reduced to 9% of the yearly income of the employee plus statutory value-added tax and after 9 months of service provision this fee shall be reduced to 5% of the yearly income of the employee plus statutory value-added tax. The fee shall no longer be charged after twelve (12) complete months since provision of the service has expired. The relevant fee shall be due in one sum with conclusion of the employment contract between the employee and the Customer. This does not apply if the work of the employee in providing the service is not the cause of said employee being employed with the Customer. The Customer bears the burden of proof for non-causality. The Customer is responsible for providing information to enable us to establish the yearly income.

Clause 18 Place of Performance, Legal Venue, Applicable Law

1. The place of performance is the site of our company's head office.
2. The legal venue for all present and future claims arising from the business relationship with businesses is exclusively our place of business. The same legal venue applies if the Customer does not have a general legal venue domestically, relocates its domicile or usual place of residence abroad after conclusion of the contract or its domicile or usual place of residence is not known at the time the action is brought. However, we are entitled to bring an action against the Customer at his place of business or any other permitted legal venue as well.
3. German law applies to all legal relationships exclusively. The UN Convention on Contracts for the International Sale of Goods of 1980 and other conflict of law rules do not apply.

§ 19 Final Provision

If a point in the contractual relationship with the supplier is or later becomes invalid in whole or in part for reasons other than Sections 305-310 of the German Civil Code, the validity of the other provisions shall not be affected, provided that, in considering the subsequent regulation, performance of the contract does not cause unreasonable hardship for one party. The parties are aware of the legal precedent of the Federal High Court of Justice whereby a severability clause solely reverses the burden of proof. However, it is the express will of the parties to maintain the validity of the other contractual provisions under all circumstances and therefore contract out Section 139 of the German Civil Code. The same applies to a gap in the contractual relationship. A suitable provision shall replace the invalid or impracticable provision that comes as close as possible to that which said parties wanted or would have wanted had they considered the point at the time of the conclusion of this agreement or at the time of the later inclusion of a provision.