

General terms and conditions of supply and payment



I. Application

1.1 These general terms and conditions of supply and payment ("GTC") apply to all purchase agreements as well as contracts dealing with the supply of movable things to be produced or manufactured ("Purchase Agreement") between BKP Berolina Polyester GmbH & Co. KG (the "seller/we") and our customers who are not consumers according to Sec. 13 Civil Code (the "customer").

1.2 The GTC apply as a framework including for future purchase agreements with the same customer without our having to refer to them in each case. We will inform the customer of changes to our GTC by sending the new GTC. The new GTC then apply from the next order of the customer as a new framework.

1.3 The GTC apply exclusively. Deviating declarations and business conditions of the customer are not binding on us even if we do not object to them or if they are not expressly in conflict with our GTC but only if they are confirmed by us in writing.

II. Offer and conclusion of contract

2.1 Our offers are, unless otherwise stated, non-binding and open to change. The order of the goods by the customer is deemed to be a binding offer to conclude a contract which, unless otherwise stated, remains valid for at least 2 weeks. That applies also to orders through our online ordering system in which case we initially confirm only the receipt of the order by automatic e-mail.

2.2 With a written order confirmation by us, a binding purchase agreement comes into effect. Objections to our order confirmations are to be made in writing without delay at the latest within one week after receipt; otherwise, the Purchase Agreement is deemed to have come into effect on the conditions confirmed by us in writing. Confirmed prices apply only to the purchase of the confirmed quantity.

2.3 Our agent is not authorized to make oral agreements or give warranties over and above the written agreement. Special agreements with the agent therefore always require our written confirmation.

III. Prices and payment conditions, counterclaims, uncertainty

3.1 We calculate the prices according to our price list applicable on the day of delivery, unless other prices are confirmed in writing. Unless prices have expressly been confirmed as fixed prices, we reserve the right to reasonably change our prices if after the conclusion of the agreement cost reductions or cost increases arise, in particular due to conclusion of collective bargaining agreements or changes in the prices of materials, transport or public charges. Evidence thereof will be provided to the customer on request. If the list prices have increased since the conclusion of the agreement to such an extent that the increase rate significantly exceeds the general cost of living, the customer has a right to rescind the agreement.

3.2 Unless otherwise agreed in any particular case, our prices apply ex warehouse, excluding applicable VAT. In the case of shipping, the customer bears the transport costs from the warehouse and the costs of transport insurance possibly desired by the customer. The customer bears any customs duties, charges, tax and other public charges and ancillary costs. The customer can return transport packaging at the place of performance provided it is not contaminated or otherwise in a condition which excludes its reuse or recycling. If the customer itself disposes of transport packaging, it is to ensure legally compliant disposal.

3.3 In case of products specifically made for the customer and repairs and contract work to objects of the customer, we are entitled at the beginning of the manufacture or commencement of the works to demand an advance payment of 1/3rd of the estimated value of the order (gross), unless otherwise agreed.

3.4 Our invoice is due immediately and payable without deduction within 30 days from receipt of the invoice and delivery of the goods. Discounts are granted only after separate written agreement. We are entitled to conduct the delivery in whole or in part only with payment in advance. We will declare such a reservation at the latest with the order confirmation. On the expiry of the period, the customer is in default. During the period of default, the outstanding amount is subject to interest at the rate of eight percentage points over the base rate per annum. Our right to interest as between businesses on payments due according to Sec. 353 Commercial Code remains unaffected.

3.5 The customer is entitled to set-off and withholding rights only if its counterclaim has been adjudicated with legal effect or is undisputed. That does not apply if the counterclaim relates directly to our main performance obligation under the same agreement (cf. in particular clause 6.5 sentence 4).

3.6 If it becomes apparent after the conclusion of the agreement that due to the lack of payment capacity of the customer our payment claim is at risk (e.g. in the case of threatened illiquidity, over indebtedness or even only temporary payment problems), we can refuse performance, unless the customer satisfies our payment claim or provides security therefor. We can set the customer a reasonable period for payment or provision of security if we offer the supply of the goods directly in return. After the expiry of the period without success, we are entitled to rescind the agreement.

IV. Delivery period, shipping, passing of risk, unavailability and delay

4.1 If delivery periods and dates are not otherwise bindingly agreed, the usual delivery period is approximately 8 weeks.

4.2 Unless otherwise agreed, the delivery takes place from the warehouse/Velten which is also the place of performance for the delivery and for any subsequent performance. At the request of the customer, the goods will be shipped to another specified place. If collection by the customer or a third party is not agreed and the customer has not issued any particular instructions, we are entitled to ourselves to specify the carrier, our freight provider, method of shipping, the means of transport and protection. Clause 3.2 remains unaffected.

4.3 Delivery periods begin with the date of the final and complete order confirmation but not before the customer has provided documents, permits or releases which have to be provided by the customer according to the contract and not before the receipt of an advance payment on account if agreed.

4.4 Delivery periods are observed if the goods are ready for dispatch at our warehouse within the period or in the case of shipping at the wish of the customer provided for shipping on time. Unless we are expressly responsible for shipping the goods, we are not liable for the punctual and rapid transportation.

4.5 We are entitled to make partial deliveries and to charge them separately if this is reasonable for the customer and adequate account is taken of its legitimate interests.

4.6 With the handing over to the carrier or freight provider, at the latest, however, on leaving the warehouse, the risk passes to the customer. This applies even if in any particular case supply free of freight is agreed. The risk also passes to the customer if it is in delay with acceptance or if the shipping is delayed due to circumstances for which the customer is responsible.

4.7 If we cannot comply with a binding delivery period for reasons for which we are not responsible (non-availability of service), we will inform the customer without delay thereof stating the reason for the delay and possibly the new anticipated delivery period. If the service is no longer available or not available within the new delivery period, we are entitled to rescind the agreement in whole or in part. Any consideration already provided by the customer will be returned in that case without delay. Non-availability of service arises in particular if we are not punctually supplied by our suppliers if neither we nor the supplier is at fault or if we from the outset were not obliged to ensure procurement and in cases of force majeure. The rights of the customer in the event of delay in delivery as well as our statutory rights, in particular with the exclusion of the obligation to perform (e.g. due to impossibility) remain unaffected.

4.8 The conditions of the delay in delivery shall be in accordance with the statutory provisions but in all cases a written warning of the customer is required.

V. Examination, approval

5.1 The customer is obliged to examine the goods in accordance with the statutory provisions (Sec. 377, 381 Commercial Code) and the following provisions without delay for defects (including incorrect or short delivery) and to pursue suspicion of defects with reasonable expense.

5.2 If on examination or later (including in case of complaints by a customer of the customer) a defect is discovered, we are to be informed in writing without delay thereof. Without delay means that notice is given within 8 days.

5.3 Irrespective of the above examination and complaint obligation, the customer is obliged to give notice in writing of obvious defects within 8 days of delivery. Transport damage is, as far as possible, also to be complained of directly to the carrier and to be noted in the acknowledgment of receipt.

5.4 If the customer fails to carry out due examination and/or notice of defects, the goods are deemed to be approved with regard to the defect which has not been notified.

VI. Defects claims of the customer

6.1 For the rights of the customer in the case of material defects and defects of title, the statutory provisions apply unless otherwise provided below.

6.2 The basis for liability for defects is, above all, the agreement about the quality of the goods. All product specifications which are subject matter of the individual purchase agreement or published by us (in particular in catalogues, in our fitting and assembly instructions or on our internet homepage) are deemed to be agreements on the quality of the goods. We accept no liability for public statements (e.g. advertising statements) of a manufacturer other than us or other third parties.

6.3 Please note that our liner products may be stored from the date of production only for a maximum of 6 months. The use of the liner products, after the expiry of this period, is expressly not part of the agreed quality. Fitting the liner after that time is at the customer's own risk!

6.4 The defects claims of the customer require that the customer has performed its examination and complaint obligations according to clause V.

6.5 If the delivered object is defective, we can choose whether to provide subsequent performance by remedying the defect (improvement) or by supplying a defect-free object (replacement). The right to refuse subsequent performance under the statutory conditions remains unaffected. We can make the subsequent performance dependent on the customer paying the purchase price due. The customer is entitled to temporarily withhold a reasonable part of the purchase price in relation to the defect.

6.6 The customer is obliged to give us the necessary time and opportunity for subsequent performance in particular to provide the goods complained of for purposes of an examination. In the event of replacement, the customer is obliged to return the defective goods at our request in accordance with the statutory provisions. The subsequent performance contains neither the removal of defective goods nor the fitting of new or repaired goods, unless we were originally obliged as an exception to fit the goods.

6.7 The expenses necessary for testing and subsequent performance, in particular transport, ways, work and material costs (not removal and fitting costs or costs of transport of the goods to the place of subsequent performance according to clause 4.2) are borne by us if in fact a defect is present. Otherwise, we can demand reimbursement from the customer for the costs (in particular testing and transport costs) incurred by us due to the unjustified demand to repair a defect, unless the absence of a defect was not recognizable for the customer.

6.8 If the subsequent performance fails or if a reasonable period set by the customer for subsequent performance passes without success or is dispensable according to the statutory provisions, the customer can rescind the Purchase Agreement or reduce the purchase price. In the case of an insignificant defect, however, no rescission right arises.

6.9 If products supplied by us are sold on to consumers, and we have agreed in an individual agreement with the customer a general warranty discount instead of the rights according to clauses 6.5 and 6.8, recourse of the customer to us due to

the sale on of defective objects to a consumer according to Sec. 478 ss.4 Civil Code is excluded.

6.10 The limitation period for claims based on material defects or defects of title of the goods is 1 year from delivery of the object purchased. Please note in this connection, however, reference to the limited storage life according to clause 6.3!

VII. Fitting or assembly instructions, records and transmission of hardening data

7.1 References to assembly or use contained in our current fitting and assembly instructions are to be observed by the customer. Observance or non-observance influences the existence and extent of our obligations with regard to defects warranties and other liabilities. If no current fitting or assembly instructions have been provided to the customer by us with the delivery of the goods, the customer is obliged to request up-to-date fitting and assembly instructions from us. In order to prevent that the customer uses fitting or assembly instructions which are no longer up to date or that such instructions reach the market, the customer is obliged to destroy or return to us fitting and assembly instructions which are no longer up to date.

7.2 The customer is obliged to automatically record the hardening data and to transmit the hardening data to us in accordance with the instructions in the current fitting and assembly instructions. If the fitting or assembly equipment used by the customer does not as an exception have such automatic recording possibility, we are to be informed prior to the fitting of the goods accordingly. The recorded hardening data are described in detail in the current fitting and assembly instructions. The hardening data are to be provided to us without delay, at the latest, however, within the period and in the form (at present within one working day after the fitting in electronic form) stated in the fitting and assembly instructions.

7.3 If the customer does not observe the obligations provided in clauses 7.1. and 7.2, we are not obliged by the warranties in accordance with the above Section VI., unless the customer proves that its breach against one of the obligations in clause 7.1 and clause 7.2 did not cause the defect. In the event of late transmission of the hardening data, e.g. only in connection with a defects notice, the customer is obliged to provide evidence that the transmission corresponds to the hardening data recorded.

7.4 Since the nature and manner of fitting or assembly is in case of our products significantly dependent on the situation at the place of fitting or assembly, (e.g. temperature and light), fitting and assembly instructions provided by us do not release the customer from the obligation to perform its own testing of the local situation and its own experiments in connection with an assembly or fitting. Clause 7.3 sentence 1 applies accordingly.

VIII. Liability, rescission

8.1 We are liable for damages according to the statutory provisions unless otherwise stated below. In the case of breach of obligation – on any legal ground whatsoever – we are responsible for intent and gross negligence. In the case of simple negligence, we are liable only for (a) damage due to injury to life, body or health, and (b) damage due to serious breach of a fundamental contractual obligation (obligation the performance of which at all enables the due performance of the agreement and on the compliance on which the contractual partner usually relies and is entitled to rely). In that case, the liability is, however, limited to reimbursement of foreseeable and typical loss.

8.2 The above limitations of liability also apply in favor of our employees, staff, representatives and agents. For claims under the Product Liability Act, the statutory provisions apply exclusively.

8.3 Due to the breach of a contractual obligation which does not consist in a defect, the customer can only rescind if we are responsible for the breach. In the case of insignificant breaches of obligation, rescission is excluded.

IX. Retention of title

9.1 Until full payment of our receivables from the business with the customer including in the future, the sold goods remain our property. In the case of current accounts, the retention of title applies as security for the balance of our receivables. The customer is entitled to dispose over the goods in the normal course of business.

9.2 Claims against third parties arising from the selling on of the goods are hereby assigned by the customer to us as security. The customer is entitled to collect for our account until the revocation by us or until discontinuance of its payments to us. If the customer has a current account agreement with its customer according to which the receivable from the sale of the goods supplied by us is set against a current account receivable, the receivable in favor of the customer from the current account is deemed to be assigned to us in the amount of our receivable. We hereby accept this assignment. If the customer alienates our property together with objects not belonging to us or if it processes the goods or disposes over the goods in any manner to the effect that our ownership right is lost, the proportionate amount of the receivable to which it becomes thereby entitled is assigned to us corresponding to the invoiced amount of the objects supplied by us.

9.3 Access of third parties to goods and receivables belonging to us are to be reported to us by the customer without delay in writing.

9.4 The exercise of retention of title contains at the same time rescission of the agreement.

9.5 The goods and the receivables in their place, may not, prior to complete payment of our receivables, be pledged to others or transferred as security or assigned.

9.6 If the value of security exceeds our receivables by more than 10%, we will release it at the request of the purchaser at our election.

9.7 In case of delay in payment, cessation of payment, application or opening of insolvency proceedings or other loss of assets of the customer, we can demand that the customer gives notice of the assigned receivables and their debtor, provides all information necessary for their collection, releases the associated documents and informs its debtor of the assignment. We reserve the right to directly collect these receivables. Disposals over these receivables are valid from that time only with our consent. In addition, the immediate surrender of the goods subject to retention of title can be demanded and the authorization to sell on in the ordinary course of business can be revoked.

X. Provision of material

10.1 If materials are supplied by the customer, they are to be delivered at its costs and risk punctually and in defect-free condition. In the case of non-compliance with the above conditions, our delivery period is reasonably extended. Apart from cases of force majeure, the customer bears the additional costs arising including for the interruption of production.

10.2 Our liability for custody and care of materials provided by the customer is limited to the care in our own affairs. The customer bears costs of any insurance.

XI. Property rights, confidentiality, data processing

11.1 The customer warrants that no protected rights of third parties in Germany or in a country to which delivery is to take place are infringed by the compliance with its instructions and plans for the products to be manufactured. If we are claimed against by third parties due to breach of such rights, the customer will indemnify us without evidence of fault against all claims in full.

11.2 Unless otherwise contractually agreed, all specifications, plans, drawings, procedural information, samples or design documents or data carriers and files which we make accessible to the customer in connection with an offer or with the performance of the agreement, remain our property. All information derived therefrom or in any other manner transmitted to the customer in connection with the agreement is subject to confidentiality and may not be published without our prior written consent or passed on to third parties or used by the customer other than for the purposes of the agreement. If such documents or files have been provided to the customer, they are to be returned without delay if our offer has not been accepted or after the ending of the agreement at our request unless otherwise expressly agreed. The customer has no withholding right thereto. If the documents or files are to be procured as an element of the contractual quality by us for the customer together with the product, we remain entitled to use them unless otherwise expressly agreed.

11.3 Personal data collected in the course of the establishment, performance and ending of the agreement will be collected, processed and used by us exclusively for purposes of the present agreement and in accordance with the applicable data protection law.

XII. Place of court jurisdiction, choice of law

The place of court jurisdiction for all disputes between the parties to the agreement is Berlin (district court Berlin-Wedding) as far as administrative dispute exists).

BKP Berolina Polyester GmbH & Co. KG as of January 2020