

# Terms

## General Conditions of Purchase of Berolan® GmbH

### 1. Contract Conclusion

1.1 Only orders in written form and agreements with signature of two executives are legally binding for us. Verbal and agreements made by telephone need written conformation. (Herunto also counts fax machine confirmation.)

1.2 In case of delivery of chemicals or other dangerous goods the according DIN-Safety Data Sheets 91/155/EWG or equal have to be enclosed to the orderconfirmation or to the delivery at the latest.

### 2. Performance

In case of force majeure as well as all other happenings, that bring a cutback of justification of our company, such as war, revolt, confiscation and other licensed action, stoppage, lock out, fire damage, natural phenomenon, remarkable changes of market etc. we are entitled to delay our contractual obligation or to withdraw from the contract. Rights to compensation cannot be derived from that.

### 3. Packaging

The deliveryman is obligated to take back the packaging for free by our request.

### 4. Transportation

The delivery is done free our company at deliveryman's risk. The address for shipment as well as order number and section, that have been vacated by us, have to be declared in all letters, advice of deliveries, bill of ladings, goods accompanying tickets, packet addresses, invoices etc.

### 5. Receipt of Goods

In case of delivery of the goods in our goods receiving department the packing list has to be attached the delivery.

### 6. Invoices

For the settlement of the invoice, the established amounts and quantities, asserted by us, are standard.

### 7. Recission of the Contract

Does the delivery not conform to the made arrangements or, because of failing of particular definition, to the standard conditions, so we are allowed to withdraw from the contract straight away. Any additional costs that are resulting in the covering purchase, have to be beard by the deliveryman. Advanced demands from delays etc. stay reserved expressly.

### 8. Defects

If a delivery is faulty or if it does not correspond to the made agreements, we will inform the deliveryman as soon as possible, but we do not commit to a certain time limit. This is especially applying to claims, which are not noticeable until the later use of the material.

After the deliveryman had been informed, we reserve the right to do certain refinishing at its expense or to give back the material and to call for a new delivery or an amendment.

If the mistake can not be notice until the adaptation, the using or the starting up, we are entitled to call for compensation for the unsuccessful work.

The reshipment of the faulty or the ordering of non-standard materials will happen on deliveryman's expense and risk.

### 9. Warranty

The deliveryman is safeguarding his deliveries or activities according to period of warranty after starting up or usage, if necessary also after certain defects had been removed, that the delivered material is not showing any affecting defects in case of usage or handling and that the material is having the qualities, which have been declared by the deliveryman. Hereafter necessary overhauling or replacement has to be done immediately and for free.

Further the deliveryman safeguards,

&bull; that his deliveries are according to the health and safety regulations,

&bull; that safety devices are included, even though particular parts, which are necessary for an acceptable handling, have not been mentioned in these appointments separately.

Incidentally the deliveryman is committing to fulfil the delivery according to the conditions of the responsible government safety organisation.

## 10. Payment

In case we have made sure, that the delivered material was okay, we will settle the account during 14 days with 2 % discount or after 30 days without deduction.

Payment date is receipt day of the invoice or the material.

If there are establishing any circumstances after contract conclusion or before lapse of war-ranty period, which are suitable for reducing creditworthiness of the deliveryman, we are allowed to reserve 10 % of the total order value, in order to safeguard our warranty claims.

These 10 % have to be paid, when the material is in a contractual condition after lapse of warranty.

## 11. Patents

The deliveryman is ensuring expressly, that when executing the order, no patents and trademark rights are infringed.

## 12. Pictures

If desired by us, pictures and statistical calculations have to be given in a required quantity for free. Pictures being provided by us, stay our property and without our explicit written authorisation, they must not be further used, copied or made available to third parties by the deliveryman. Even syllabuses and creation of certain parts for different invoices are forbid-den.

## 13. Assignment

An assignation of the emerging demands against us to a third party is only acceptable with our explicit acceptance.

## 14. Dissemination

A complete or a partial pass on of the order needs our previous acceptance.

## 15. Misuse of Orders

The use of given orders for advertising purposes is not allowed. Any use for a demonstration of the deliveryman´s course of business is forbidden.

## 16. Place of Fulfilment and Jurisdiction

Place of fulfilment is our receiving factory. Jurisdiction is Linz.

## 17. Data Security

We refer to the following: Individual-related information or information relating our business connection, no matter if they come from the buyer, the deliveryman or from a third party, are handled for the purpose of data protection act.

## 18. Legal Regulation

As far as these regulations make no rules, the legal regulations of the Republic Austria count.

## General Conditions of Sale of Berolan® GmbH

### 1. Area of Application

1.1 Our terms of sale apply to all actual and future contracts and other benefits. We do not allow any conflicting or any differing conditions of our customers, unless we had con-firmed in written form.

1.2 Our terms of sale do also apply whether we deliver customers with differing rules regard-ing our terms of sale.

### 2. Offers

2.1. Our offers are without engagement. Documents such as pictures, copies, technical datas, references to standards or statements in advertising material, are no declaration of specification, as far as they have not been described in written form.

2.2 All declarations that have been made between us and the customer in order to execute the agreement, need to be in written form, in order to be operative.

### 3. Prices

3.1 As far as there is no arise from the orderconfirmation, our prices are in Euro, Exworks from our factory in Arbing inclusive paper-bag-package, each with lawful VAT.

3.2 We are only obligated to grant discounts or other price reductions, when those have been arranged in written form when placing the order.

3.3 We reserve the right to change our prices accordingly, if there have been reductions of costs or cost increases, in particular because of

- &bull; trade agreements
- &bull; currency fluctuations
- &bull; changes of material prices

At customer's request, we will demonstrate those.

### 4. Payment Conditions

4.1 As far as there is no arise from the orderconfirmation, the purchase price is payable clear (without discount) 30 days from the invoice date.

When the customer is paying the invoice, he has to indicate the following things:

- &bull; invoice number
- &bull; customer number or rather the order number

4.2 A cash discount deduction has to be agreed in written form and the complete settlement of all customer's debts at time of discounting is required.

4.3 Checks and bills of change are only excepted, if it has been agreed in written form. They will only be accepted when charges are compensated.

4.4 In case of default of payment of our customer, we are entitled to charge interest of at least 8 percentage points above base lending rate.

4.5 When it becomes noticeable after conclusion of contract, that the ability of the customer is at risk, all demands not barred by the statue of limitations become due. At default of payment we are entitled to ask the goods being delivered back after an adequate extension of time. Furthermore we are entitled to ban the resale or further processing of the delivered goods. All these legal consequences can be averted by the customer, by payment or by payment bond to the amount of our endangered pecuniary claim. The instructions of insolvency law stay unaffected from these rules.

4.6 Set-off rights are only entitled to our customer, when his counterclaims are declared legally, undoubted or when his counterclaims are acclaimed by us. Moreover he is entitled to exert the right of retention in so far his counterclaim is based on the same contractual relationship.

### 5. Default of Acceptance

5.1 If the customer is in default of acceptance, the danger of a casual demise or a casual worsening of the goods is devolved to the customer at the same time at the customer is in default of acceptance.

5.2 In default of acceptance of the customer, we are entitled to put to not accepted goods in storage at the expense and at the risk of the customer. By placing into stock at own place, and inchoate 30 days after declaration of readiness for dispatch, we are entitled to charge 1 % of the invoice amount for each started month as storage charges. On stranger places we are entitled to charge our cost of sales. Optionally we are also entitled to withdraw from the contract after an additional respite and/or to call for compensation.

5.3 Advanced demands towards the customer stay reserved.

## 6. Delivery time and Default in delivery

6.1 The delivery time is starting from sending our order confirmation to our customer, but not till adduction of the documents, that have to be provide by the customer, sanctions, clear-ances or before receipt of an agreed advance payment. The exception of a not achieved contract stays reserved.

6.2 As far as not been agreed differengly, the deliverydate or the period of delivery are held, if the goods have left our storeroom in Arbing until their expiration or if the readiness for dis-patch has been told the customer.

6.3 The delivery time extends because of

- industrial actions, in particular there are to mention strike and lock out.
- occurrence of unexpected handicaps.

These handicaps count, as far as they have an demonstrable effect on the finishing or deliv-ery of the goods.

These barricades also count, when they occure at our suppliers. (for example: mines)

We will inform our customers about such handicaps immediately.

If the realisation of the contract getting unacceptable for one of the parties, so it has the right to cancel the contract.

6.4 We are liable according to the legal requirements, in case that the default in delivery is relying on a deliberate or grossly negligent default of ours.

A guiltiness from one our agents or vicarious agents has to be assigned to us.

In case that the default in delivery is not relying on a grossly negligent default of ours, our compensation liability is defined on perdictable, typical damages.

6.5 We are also liable according to law, if the default in delivery, is caused by a concealment of contractual obligation of ours.

In this case our compensation of liability is defined on the perdictable and typical damage.

6.6 Other lawful claims and rights of the customer stay reserved.

## 7. Attending of delivery and Call-off purchase agreement

7.1 If not agreed differently, the danger of a casual loss or a casual worsening of the goods devolves to the customer, when the delivery is disposed to the forwarder or carrier, but at the latest, when the goods are leaving the plant in Arbing. By the way, all deliveries are covered by transit insurance.

7.2 We are entitled to part deliveries in a reasonable area.

7.3 In case of Call-off purchase agreements, that are agreements, where the amount of goods, their delivery or their purchase amount inside of a certain period is fixed, we are enti-tled to produce the whole order amount.

After contract award certain change requests cannot be considered, excepting it was agreed. In case of Call-off purchase agreements we are entitled to the rights of default of acceptance when the customer is breaking his purchase commitment concerning particular part deliver-ies.

In case of demands for part deliveries the Examination and Notice of Non-Conformity is enti-tled to the customer according to § 377 UGB as well as for price adjustment according to number 3.3 for each delivery as business for itself.

## 8. Property Right and Copy Right

8.1 We reserve property and copy rights relating to copies, exemplars, calculations, printings and similar documentation. (Also in electronic form.)

8.2 In case that the goods have been delivered with printings, exemplars, copies and other documents, the customer guarantees, that trademark rights of other parties are not violated.

If other parties are banning the production and the delivery of such goods, under reference to trademark rights, we are allowed to stop any other action and in case of a guiltiness of the customer, we are allowed to request compensation. The customer is further obligated to indemnify us immediately from any request of other par-ties in connection with that.

## 9. Reservation of Proprietary Rights

9.1 The delivered goods stay our property until all payments are settled. If the customer's behaviour is contrary to contract, particularly in case of delay of payment, we have the right to take the goods back.

Taking back the goods means rescission from the contract.

We are allowed to dispose the goods after redemption. The proceeds of redemption have to be credited against the customer's liabilities &ndash; less adequate charges of redemption.

9.2 The goods have to be handled carefully by the customer. Further he is obligated to insure them in an adequate way against fire, water and burglary damages to the value of new.

9.3 In case of executions or other interventions of other parties the customer has to inform us immediately, in order that we can take action according to § 37 Eo.

If the other party cannot compensate the judicial and extrajudicial costs of a claim according to § 37 Eo, the customer is liable for the occurred deficit.

9.4 The customer is allowed to further selling the goods in an ordinary course of business. Though he is assigning all requests to the tune of the invoice amount, that are accruing in case of a resale against his buyers or third parties, no matter if the goods have been resold before or after treatment.

After assignation, the customer stays entitled to the collection of the demand.

Our authority to collect the demand by our selves stays unaffected thereof.

But we engage not to collect the demand, as long as

- &bull; the customer is meeting his received obligation to pay

- &bull; is not getting into default of payment

and if there does not exist a proposal for composition or insolvency proceedings or a default in particular.

In case of that we may demand, that the customer announces all assigned demands and their debtors, that he makes all statements necessary for the collection, that he passes on the belonging documents and that he informs the debtors about the assignation.

9.5 The handling or alteration of the commodity by the customer is always taken for us. If the goods are mixed with other things inseparably, that do not belong to us, so we gain the co-ownership of the new business proportionately to the price of the goods (invoice final amount) and the other mixed items up to the time of the mixture.

For things, which are produced from the manufacturing, the same is counting for delivered goods under reserve.

9.6 If the goods are mixed with other things inseparably, that do not belong to us, so we gain the co-ownership of the new business proportionately to the price of the goods (invoice final amount) and the other mixed items up to the time of the mixture.

Is the mixture is done in a way, that the items of the customer have to be regarded as main thing, it is considered as agreed, that the customer is carrying over a proportional co-ownership to us. So, the customer is keeping the wholly owned or co-ownership safe for us.

Further the customer is assigning the demands to us, in order to assure our demands against him, which accrue from the association of the goods with a property against a third party.

9.7 We commit to approve the securities, which entitle to us, at customer's request, as the realisable price of our securities is exceeding the demands, which have to be secured, is crossing more than 10 %.

The choice of the securities, that have to be cleared, is incumbent on us.

## 10. Warranty

10.1 Claims for faults of the customer assume, that he has attended accordingly to his analysis and reproval obligations according to 377 UGB.

10.2 As far as a failing is existent, the customer is entitled to a choice of supplementary performance in the form of a removal of defects or to a delivery of a new good, free of defect. In case of a removal of defects, we are obligated to bear all necessary costs for a removal of defects, especially transport, labour, and material costs as far as they are not advanced by the fact, that the goods have been brought to another place than the place of delivery. If there is a fail in supplementary performance, the customer is optionally entitled to ask for rescission or lowering.

10.3 We are liable under the provisions of law, as far as the customer lodges a claim for damages which are based on intent or gross carelessness, including the intent or gross carelessness of our agents and servants. As far as we are not accused of intended breach of contract, the liability for compensation is limited to the predictable, typically occurring damage.

10.4 We are liable under the provisions of law, as far as we culpably breach a basic contractual obligation. In this case

the liability for compensation is limited to the predictable, typically occurring damage.

10.5 As far as the customer has the right for entitlement to damages instead of benefits, our liability is also limited to the predictable, typically occurring damage.

10.6 The liability by reason of culpably injury of life, physical injury or health injury is remains untested; this also applies for the compulsory liability according to the Product Liability Act.

10.7 Liability is ruled out, as far as there is not regulated something deviant as aforesaid.

10.8 The limitation period for claim in case of deficiencies adds up to 24 months, calculated from transfer of perils, subject to a shorter using time limit according to the particular product data sheet.

## 11. Joint liability

11.1 A continued liability for compensation as designated in paragraph 10 is ruled out &ndash; irrespective of the kind of law concerning the claim being asserted. This also applies for entitlement to damages resulting from defaults at conclusion of contract, for other breach of duty or for delictical claims in case of material damages.

11.2 The limitation according to paragraph 11.1 is also valid, as far as the customer claims for compensation of useless expenses instead of claiming for compensation of damages.

11.3 As far as the liability for compensation of damages opposite to us is ruled out or limited, this also is valid for the personal liability for compensation of our employees, working men, agents and servants.

## 12. Data processing and data storage

The customer agrees that data of the goods and payment traffic as well as individual-related data of the customer is processed and stored electronic on data mediums.

## 13. Final clauses

13.1. The law of the Austrian Republic is valid. The regulations of the UN-Buying Right can not be applied.

13.2. Place of fulfilment for all duties resulting from the contract is our plant in Arbing. Exclusive jurisdiction for any disagreement concerning the contract is Linz.

13.3. In case of doubt the german version of these General Terms of Sale is decisive.

13.4. Should particular regulations of the contract with the customer including these General Terms of Sale be or become completely or particularly ineffective, the validity of the remaining regulations is not alluded. The completely or particularly ineffective regulation should be substituted by a regulation, whose economic profit approaches preferably to the economic profit of the ineffective regulation. The same is valid in case of loopholes including these General Conditions of Sale.