

# General Terms and Conditions of Sale of Berlin R13 GmbH for business customers (B2B)

(Last updated: May 18, 2020)

## § 1 General provisions

1. These General Terms and Conditions of Sale (hereinafter referred to as “**GTC**”) apply to all agreements and business relations of Berlin R13 GmbH (hereinafter referred to as “**Supplier**”) with its customers (hereinafter referred to as “**Customer**”). The GTC shall only apply if the Customer is an entrepreneur (*Unternehmer*) pursuant to Section 14 German Civil Code, “**BGB**”), a legal entity under public law or a special fund under public law.
2. In particular, the GTC apply to contracts for the sale and/or delivery of movable goods (hereinafter also referred to as “**Goods**”), irrespective of whether the Supplier manufactures the Goods itself or purchases them from suppliers (Sections 433, 651 BGB). The GTC in their respective version shall also apply as a framework agreement for future contracts for the sale and/or delivery of movable goods with the same Customer, without the Supplier having to refer to them again in each individual case.
3. These GTC apply exclusively. Deviating, conflicting or supplementary general terms and conditions of the Customer shall only become part of the contract if and to the extent that the Supplier has expressly agreed to their inclusion. This requirement of consent shall apply in any case, even if the Supplier, being aware of the Customer's general terms and conditions, delivers Goods to the Customer without reservation.

## § 2 Conclusion of contract

1. The offers of the Supplier are subject to change and non-binding.
2. The order of the Goods by the Customer is a legally binding offer to conclude a purchase contract. Unless otherwise stated in the order, the Supplier shall be entitled to accept such offer within four (4) weeks of its receipt.
3. Acceptance can either be declared in writing (e.g. by order confirmation), in text form (e-mail is sufficient), or by delivery of the Goods to the Customer.

## § 3 Prices and payment terms

1. The prices are *ex works* excluding packaging and plus the applicable statutory value added tax (if applicable). Insofar as turnover from intra-Community deliveries is exempt from VAT under German value added tax law, the Customer is obliged, upon request and in accordance with the Supplier's specifications, to cooperate in the issuing of any proof of delivery (such as a confirmation of receipt) and other documents required under German value added tax law in this connection. The Customer shall also be obliged to cooperate in this respect if the delivery fulfils the requirements of an intra-Community triangular transaction pursuant to Section 25b German Value Added Tax Act (*Umsatzsteuergesetz*, UStG) and the Supplier for this reason requires the proof of delivery required under German VAT law (e.g. a confirmation of receipt [*Gelangensbestätigung*] or other equivalent proof).
2. Insofar as the production costs have increased considerably after conclusion of the contract, the Supplier is entitled to adjust the sales price appropriately. An increase in

manufacturing costs is deemed to have occurred, in particular, if the price of raw materials and components is increased or if customs duties or other import charges increase. If the price adjustment leads to a price increase of the product of more than 20%, the Customer is entitled to withdraw from the order within two weeks after notification of the price increase.

3. Any customs duties, fees, taxes, and other public charges shall be borne by the Customer. The Supplier will not take back transport packaging and any other packaging; all packaging shall become the property of the Customer.
4. Payments shall be made free of charge to the Supplier's bank account or other payment agency as provided by the Supplier.
5. Invoices are to be paid strictly net within thirty (30) days, unless the invoice documents (e.g. in case of repairs) indicate a shorter payment period. Upon expiry of the above payment period, the Buyer shall be in default. During the period of default, the purchase price shall bear interest at nine (9) percentage points above the base rate, but at least twelve (12) percent p.a. The Supplier reserves the right to assert further damages caused by default. The Supplier's claim to the commercial interest on arrears (Section 353 German Commercial Code [*Handelsgesetzbuch*, HGB]) vis-à-vis merchants (*Kaufleuten*) shall remain unaffected.
6. A discount deduction is only permitted if agreed separately, stated explicitly on the invoice of the Supplier, and if all other invoices due have been paid completely.
7. The Customer is only entitled to offsetting claims insofar as the Customer's claim has been legally established or is undisputed. The same applies to the right of retention, the effective exercise of which is also dependent on the fact that the counterclaim of the Customer is based on the same contractual relationship with the Supplier.

#### **§ 4 Deadlines for deliveries; delay in delivery and acceptance**

1. The observance of deadlines for deliveries are subject to (i) the timely receipt of all documents to be supplied by the Customer, including but not limited to necessary permits, releases, and plans, and (ii) the observance and fulfillment of the agreed payment terms and other obligations of the Customer. If these conditions are not met in time, the Supplier shall be entitled to extend the time limits appropriately; this shall not apply if the Supplier is responsible for the delay.
2. If non-observance of the deadlines is due to force majeure, e.g. war, riot, natural disaster or similar events, e.g. strike, lockout, or a pandemic, the Supplier shall be entitled to extend the deadlines by a reasonable period.
3. If the Supplier is in default, the Customer may claim – provided that the Customer proves that the Customer has suffered a loss therefrom – compensation for each completed week of the delay of 0.5 % each, but in no case more than a total of 5 % of the price of that part of the supplies which has not been delivered. Customer's claim for damages due to delayed supplies as well as claims for damages in lieu of performance exceeding the limits specified in the preceding sentence shall be excluded in all cases of delayed supplies even upon expiry of a time set to the Supplier to effect the supplies. This shall not apply in the cases of § 11 no. 2 of these GTC.
4. At the request of the Supplier, the Customer shall be obliged to declare within a period of two (2) weeks whether the Customer withdraws from the contract due to the delay in delivery. If the Customer does not provide such declaration within this time period, the

- Customer's right to withdraw from the contract shall expire at the end of such time period.
5. If dispatch or handover is delayed at the Customer's request by more than one (1) month after notification of readiness for dispatch, the Customer may be charged, after expiry of the one-month period, storage costs of 1 % of the price of the items of the supplies for each week commenced, but in no case more than a total of 100 %. Each party may prove higher or lower storage costs; the flat-rate storage fee shall be set off against further claims to the extent available.
  6. If a contractual right to withdraw from the contract has been agreed, the Customer shall bear the packaging and shipping costs. The risk of deterioration and the risk of possible loss shall remain with the Customer until receipt of the return delivery.

## **§ 5 Delivery, transfer of risk**

1. Delivery is *ex works*, which is also the place of performance. At the request and expense of the Customer, the Goods will be shipped to another destination (*Versendungskauf*). Unless otherwise agreed, the Supplier is entitled to determine the type of shipment (in particular the transport company, shipping route, and packaging).
2. The risk of accidental loss and accidental deterioration of the Goods as well as the risk of delay shall pass to the Customer as follows, even in the case of carriage paid delivery.
  - a. In the case of sale by delivery to a place other than the place of performance (*Versendungskauf*), the risk shall pass upon delivery of the Goods to the forwarding agent, the carrier or any other person or institution designated to carry out the shipment. At the request and expense of the Customer, deliveries will be insured by the Supplier against the usual transport risks;
  - b. For deliveries with installation or assembly, on the day of acceptance in the own company or, if agreed, after a faultless test run.
  - c. If acceptance (*Abnahme*) has been agreed, the acceptance is decisive for the transfer of risk. The statutory provisions of the law on contracts for work and services shall also apply accordingly to an agreed acceptance.
3. If dispatch, handover, the start or performance of assembly or installation, the taking over in the own works or the test run is delayed for reasons for which the Customer is responsible or if the Customer is in default of acceptance for other reasons, the risk shall pass to the Customer.
4. The Customer may not refuse to accept deliveries due to minor defects. Partial deliveries are permissible, provided they are reasonable for the Customer.

## **§ 6 Approval**

If the Supplier demands acceptance of the delivery, the Customer shall carry out such acceptance within two (2) weeks after delivery. If this does not take place, acceptance shall be deemed to have taken place unless the Customer notifies the Supplier of precisely described defects or malfunctions in writing within this period; receipt of the notification of defects by the Supplier shall be decisive for compliance with the period. Acceptance shall also be deemed to have taken place when the delivery has been put into use (if agreed upon after completion of an agreed test phase).

## **§ 7 Retention of title**

1. The Supplier reserves the right of ownership of the sold Goods until full payment of all present and future claims of the Supplier based on the contract and an ongoing business relationship (secured claims).
2. The Goods being subject to retention of title may not be pledged to third parties or transferred by way of security before full payment of the secured claims. The Customer must inform the Supplier immediately in writing if and to the extent that third parties have access to the Goods owned by the Supplier.
3. The Customer is entitled to resell the Goods subject to retention of title in the ordinary course of business. In this case the following provisions shall apply in addition:
  - a. The Customer hereby assigns to the Supplier as security all claims against third parties arising from the resale of the Goods in the amount of the Supplier's co-ownership share. The Supplier accepts the assignment. The obligations of the Customer stated in § 7 no. 2 above shall also apply with respect to of the assigned claims.
  - b. In addition to the Supplier, the Customer remains authorized to collect the payment claim. The Supplier undertakes not to collect the claim as long as the Customer meets his payment obligations to the Supplier, is not in default of payment, no application for the opening of insolvency proceedings against the Customer's assets has been made and there is no other deficiency in the Customer's ability to pay. If this is the case, however, the Supplier may demand that the Customer informs the Supplier of the assigned claims and their debtors and provides all other information necessary for collection, hands over the relevant documents and informs the debtors (third parties) of the assignment.
  - c. If the realizable value of the securities exceeds the secured claims of the Supplier by more than 20%, the Supplier shall release securities of the Supplier's choice at the request of the Customer.

## **§ 8 Material defects**

1. Goods which show a material defect within the limitation period - irrespective of the operating time - shall, provided that the cause of the material defect already existed at the time of the passing of risk, be repaired, replaced or provided again free of charge at the discretion of the Supplier.
2. Claims for material defects shall become time-barred after 12 months. This shall not apply if longer periods are required under applicable law, in particular in accordance with Section 479 (1) BGB (right of recourse) as well as in cases of injury to life, body or health, in the event of a willful or grossly negligent breach of duty by the Supplier and in the event of fraudulent concealment of a defect. The statutory provisions for suspension of the statute of limitations, suspension and recommencement of the periods remain unaffected.
3. The Customer must notify the Supplier immediately in writing of any material defects (including wrong and short deliveries). In any event, the notification shall be deemed to be no longer immediate if it is not made within two (2) weeks; the timely dispatch of the notification shall suffice to meet the deadline.
4. The Supplier is entitled to make any subsequent performance owed dependent on the Customer paying the purchase price due. In this case, however, the Customer shall be

entitled to withhold a reasonable part of the purchase price in proportion to the defect in accordance with § 3 no. 6 sentence 2 of these GTC. If the notice of defect is unjustified, the Supplier shall be entitled to demand reimbursement of the expenses incurred by the Customer.

5. The Supplier shall have the right to subsequent performance within a reasonable period. If the supplementary performance fails, the Customer may withdraw from the contract or reduce the price.
6. Claims for defects are excluded in the event of only insignificant deviation from the agreed quality, only insignificant impairment of usability, natural wear and tear or damage arising after the transfer of risk, as a result of incorrect or negligent handling, excessive strain, unsuitable operating materials, or which arise due to particular external influences which are not provided for under the contract. If improper modifications are made by the Customer or third parties, no claims for defects shall exist for these and the resulting consequences.
7. Claims of the Customer for expenses incurred for the purpose of subsequent performance, in particular transport, travel, labor and material costs, shall be excluded if the expenses increase because the object of the delivery has subsequently been moved to a place other than the Customer's branch office, unless the move corresponds to its intended use.
8. The Customer's right of recourse against the Supplier pursuant to Section 478 BGB shall only exist to the extent that the Customer has not entered into any agreements with its customer exceeding the statutory claims for defects. Furthermore, § 8 no. 7 of these GTC shall apply *mutatis mutandis* to the scope of the Customer's right of recourse against the Supplier pursuant to Section 478 (2) BGB.
9. With regards to further claims for damages, § 11 of these GTC shall apply in addition to § 8. Any further claims of the Customer against the Supplier and its agents or any other claims other than those provided for in this § 8 on account of a material defect shall be excluded.

## **§ 9 Intellectual property rights; defects of title**

1. Unless otherwise agreed, the Supplier is obliged to provide the delivery free of intellectual property rights of third parties (hereinafter referred to as "IPR") only in the country of the place of delivery. If a third party asserts a justified claim against the Customer based on an infringement of an IPR by the supplies made by the Supplier and used in conformity with the contract, including these GTC, the Supplier shall be liable to the Customer within the time period stipulated in § 8 No. 2 as follows:
  - a. The Supplier shall, at his own expense and at his discretion, either obtain a right of use for the deliveries concerned, modify them so that the IPR is not infringed, or replace the Goods delivered. If this is not possible for the Supplier under reasonable conditions, the Customer shall be entitled to the statutory rights of withdrawal or reduction.
  - b. The Supplier's obligation to pay damages is governed by § 11 of these GTC.
  - c. The above obligations of the Supplier shall only apply if the Customer immediately notifies the Supplier of any such claim asserted by the third party in writing, does not concede the existence of an infringement and leaves any protective measures and settlement negotiations to the discretion of the Supplier. If the Customer stops using the supplies in order to reduce the damage

or for other good reason, it shall be obliged to point out to the third party that no acknowledgement of the alleged infringement may be inferred from the fact that the use has been discontinued.

2. Claims of the Customer are excluded if the Customer is responsible for the violation of IPR.
3. Claims of the Customer shall also be excluded if the infringement of the IPR is caused by specifications made by the Customer, by a type of use not foreseeable by the Supplier or by the supplies being modified by the Customer or being used together with products not provided by the Supplier.
4. The Supplier reserves its unrestricted ownership, intellectual property, and copyright exploitation rights to cost estimates, drawings, manuals and other documents (hereinafter: "**Documents**"). The Documents may only be made available to third parties with the prior consent of the Supplier and shall be returned to the Supplier immediately upon request if the order is not placed with the Supplier. Sentences 1 and 2 shall apply accordingly to Documents of the Customer; these may, however, be made accessible to third parties to whom the Supplier has permissibly transferred supplies.
5. In the event of infringements of industrial property rights, the provisions of § 8 No. 4, 5 and 9 of these GTC shall apply accordingly to the claims of the Customer regulated in § 9 no. 1 lit. a.
6. In case of other defects of title, the provisions of § 8 of these GTC shall apply accordingly.
7. Any further claims of the Customer against the Supplier and his vicarious agents on account of a defect of title other than those regulated in this § 9 are excluded.

#### **§ 10 Impossibility, adjustment of the contract**

1. Insofar as delivery is impossible, the Customer is entitled to claim damages, unless the Supplier is not responsible for the impossibility. However, the Customer's claim for damages shall be limited to 10% of the value of that part of the supplies which, owing to the impossibility, cannot be put to the intended use. This limitation shall not apply in cases of mandatory liability under statutory law based on willful intent, gross negligence or injury to life, body or health; this shall not imply a change in the burden of proof to the detriment of the Customer. The right of the Customer to withdraw from the contract remains unaffected.
2. If unforeseeable events within the meaning of § 4 no. 2 of these GTC substantially change the economic importance or the contents of the supplies or considerably affect the Supplier's business, the contract shall be adapted accordingly in good faith. If the latter is not economically justifiable, the Supplier shall be entitled to withdraw from the contract. If the Supplier wishes to exercise this right of withdrawal, the Supplier shall notify the Customer within three (3) weeks after becoming aware of the event.

#### **§ 11 Other claims for damages**

1. The Supplier is only liable for damages - regardless of the legal grounds - in the event of willful intent and gross negligence. In the case of simple negligence, the Supplier shall only be liable for damages resulting from injury to life, body or health, or for damages resulting from the breach of an essential contractual obligation (obligation whose fulfilment is essential for the proper execution of the contract and on whose compliance the contractual partner regularly relies and may rely); in this case, however, the Supplier's

- liability shall be limited to compensation for the foreseeable, typically occurring damage.
2. The limitations of liability resulting from § 11 no. 1 above shall not apply if the Supplier has fraudulently concealed a defect or has assumed a guarantee for the quality of the Goods. The manufacturer's guarantee does not constitute the assumption of a guarantee by the Supplier. The provision of sentence 1 shall apply accordingly to claims of the Customer under the German Product Liability Act (*Produkthaftungsgesetz*).
  3. Insofar as the Customer is entitled to claims for damages under this § 11, such claims shall become time-barred upon expiry of the limitation period applicable to claims for material defects pursuant to § 8 no. 2 of these GTC. In the case of claims for damages under the German Product Liability Act, the statutory limitation provisions shall apply.

## **§ 12 Export restrictions**

Without prior written governmental authorization or similar license, authorization, certification or permit, Customer shall not export, re-export or transfer, directly or indirectly, any products or technical data received from Supplier to any country where such export, re-export or transfer is restricted by the laws applicable according to these GTC in the Customer's country. If a customer of the Customer resells or otherwise passes on products or technical data acquired under the terms of these GTC, any applicable export restrictions must be observed.

## **§ 13 Data protection**

The Customer acknowledges the general data protection regulations and privacy laws applicable in the member states of the EU (hereinafter referred to as “**EU Data Protection Laws**”) and will comply with them at least with regard to their essential provisions. If the Customer processes personal data on behalf of the Supplier, the Customer will (i) process all personal data in accordance with the applicable EU Data Protection Laws, (ii) not cause Supplier to violate EU Data Protection Laws, and (iii) indemnify Supplier against all claims, damages, fines imposed on Supplier for non-compliance with the obligations under (i) and (ii) above.

## **§ 14 Jurisdiction and applicable law**

1. For all disputes arising directly or indirectly from the contractual relationship between the Supplier and the Customer, the place of jurisdiction shall be the registered office of the Supplier if the Customer is a merchant, a legal entity under public law or a special fund under public law. The Supplier is also entitled to file a legal action with the competent court at the Customer's general place of jurisdiction.
2. These GTC and any legal relationship between the Supplier and the Customer based on these GTC shall be solely governed by German substantive law, excluding its conflict of law provisions and the United Nations Convention on Contracts for the International Sale of Goods (CISG). The terms and conditions as well as the effects of the above agreed retention of title shall be governed by the law of the respective place of storage of the Goods, insofar as the choice of law made in favor of German law should be invalid or unenforceable under the respective local law.