

# **General Terms and Conditions of BERNS Engineers GmbH (hereafter referred to as ‚BERNS Engineers‘)**

## **1. Applicability**

- 1.1 The General Terms and Conditions below shall apply to the provision of services and supply of goods of BERNS Engineers. If there are any differences between the original of the General Terms and Conditions of BERNS Engineers in German and these General Terms and Conditions, the content of the original shall prevail.
- 1.2 Customer terms and conditions contrary to or Customer terms and conditions differing from the General Terms and Conditions of BERNS Engineers are not recognized by BERNS Engineers, unless BERNS Engineers has expressly agreed to their applicability in writing. General terms and conditions of the Customer shall also not become part of the contract, if BERNS Engineers has provided the services and/or supply of goods to the Customer without any reservation and being aware of contrary Customer terms and conditions or Customer terms and conditions differing from the General Terms and Conditions of BERNS Engineers.

## **2. Offer and Formation of Contract**

- 2.1 Contracts regarding the provision of services or the supply of goods by BERNS Engineers (offer and acceptance) shall be in writing. Changes or additions to the aforementioned contracts shall require a statement signed by BERNS Engineers and the Customer. All other explanations or notices, which are legally material and which the Customer delivers to BERNS Engineers, shall also be in writing. -Agreements made orally by an agent or other auxiliary person of BERNS Engineers require the written agreement of BERNS Engineers to become effective.
- 2.2 If the Customer does not accept a binding offer of BERNS Engineers within a period of two weeks of receiving the offer, BERNS Engineers shall be entitled to revoke the offer.
- 2.3 The acceptance of the offer shall include all essential information, particularly the bid number, the offer date, the commissioned number of hours and the price separately showing the tax on sales/purchases or VAT.

## **3. Provision of Services/Delivery of Goods**

- 3.1 BERNS Engineers provides its service/s and supplies its goods exercising due care and conforming with all applicable statutory requirements of the Federal Republic of Germany, in particular with the safety-related regulations.
- 3.2 Any statements of BERNS Engineers referring to technical properties and specifications or characteristics of the service/s, works or goods shall not constitute warranted properties or an independent guarantee as legally defined/as defined by law.
- 3.3 The transfer of risk to the Customer shall occur when BERNS Engineers places the results of the services and works at the disposal of the Customer EX Works premises of BERNS Engineers (Incoterms in its current version), unless agreed otherwise.
- 3.4 In case of the supply of goods not involving installation or assembly, the transfer of risk to the Customer shall occur when BERNS Engineers places the goods Ex Works production plant (Incoterms in its current version), unless agreed otherwise.
- 3.5 In case of the supply of goods including installation and assembly, the transfer of risk to the Customer shall occur with the agreed acceptance of the goods by the Customer on site of supply (i.e. Delivery Duty Paid (DDP) on site of supply according to the Incoterms in its current version), unless agreed otherwise.

## **4. Delivery Due Date, Late Delivery and Place of Performance**

- 4.1 The due dates and required time periods for the provision of services and the supply of goods are agreed in writing through the offer of BERNS Engineers and their acceptance by the Customer.
- 4.2 If the Customer provides required Customer furnished items, assistance and information or payment, including but not limited to, documents or materials, authorisations, clarification of technical requirements or other information or any form of payment with a delay, the due dates

and required time periods for the provision of services and the supply of goods shall be postponed in accordance with the delay.

- 4.3 The Customer shall only be entitled to withdraw from the contract if the provision of services or the delivery of goods by BERNS Engineers is delayed and, additionally, a reasonable period of grace subsequent to a refusal warning by the Customer has elapsed.
- 4.4 The Customer shall only be entitled to further rights and claims, particularly damages, if BERNS Engineers, its legal representatives or auxiliary persons have caused the delay through gross negligence or wilful intent. In such cases the claim of the Customer is limited to typical and foreseeable damages in case of business dealings.
- 4.5 The place of performance for goods or services is the place of performance mentioned in the offer of BERNS Engineers and accepted by the Customer. If no place of performance is specified and if the place of performance cannot be inferred from the nature of the contract, the place of performance is the place of business of BERNS Engineers mentioned in the offer of BERNS Engineers.

## **5. Prices and Terms of Payment**

- 5.1 All prices of BERNS Engineers are in Euro and exclude the currently legally required amount of tax on sales/purchases or VAT. Additionally, this currently legally required amount of tax on sales/purchases or VAT shall be paid by the Customer.
- 5.2 Costs for travel completed by the employees of BERNS Engineers in their provision of services to the Customer shall be reimbursed by the Customer in accordance with the offer of BERNS Engineers.
- 5.3 The Customer shall pay invoices of BERNS Engineers without any discount by bank transfer to the bank account designated by BERNS Engineers at the agreed payment dates. If no payment dates are agreed, the payments are due within 14 days of the corresponding invoice date. The timeliness of the payments shall be governed by the receipt of the money in the bank account of BERNS Engineers.
- 5.4 The Customer has the right to offset payments with counterclaims only if his counterclaims are res judicata, undisputable or are recognized by BERNS Engineers in writing.
- 5.5 A right of the Customer to retain payment shall be excluded unless the counterclaims of the Customer originate from the same contract, are undisputable or res judicata.
- 5.6 In case of late payment by the Customer, the Customer shall pay interest on late payment to BERNS Engineers equal to the currently applicable base lending rate of the German Federal Bank plus 8 percentage points. The right of BERNS Engineers to claim higher damages for late payment shall not be affected.
- 5.7 If there are changes to the agreed provision of services or supply of goods requested by the Customer, BERNS Engineers shall be entitled to adjust the relevant prices and due dates appropriately. BERNS Engineers will notify the Customer of these changes in prices and due dates.

## **6. Confidentiality and Secrecy**

- 6.1 ‚Confidential Information‘ in accordance with these General Terms and Conditions shall consist of all technical, commercial and other information, data, knowledge, drawings, inventions and documents which are not in the public domain or proprietary and which the Customer or BERNS Engineers has received from the other party. Thereby all forms of this Confidential Information, including but not limited to, orally, in writing or electronically shall be encompassed.
- 6.2 The Customer and BERNS Engineers are obliged to keep Confidential Information secret and confidential for the length of and after the completion or termination of the contractual

- relationship with the other party respectively, to make it inaccessible to third parties and protect it in a suitable way from the access of third parties. Furthermore, Confidential Information shall only be used for the purpose of the contract and only be accessible to employees which require access to and knowledge of this Confidential Information to complete their obligations under the contract and who have been obliged to keep the same confidentiality and secrecy as required in this Article 6.
- 6.3 BERNs Engineers does not accept any liability for the infringement of confidentiality and secrecy of Customer Confidential Information by the sub-contractors of BERNs Engineers.
- 6.4 The party bringing the Confidential Information into the contractual relationship retains absolute title in this Confidential Information at all times. A right to retain Confidential Information of the other party regardless for which reason does not exist. Confidential Information shall only be reproduced in relation to the requirements of providing the services or supplying the goods and in accordance with copyright regulations.
- 6.5 The confidentiality and secrecy obligations mentioned above shall not apply to information which is in the public domain or is coming into the public domain by another source or is already known by the Customer or BERNs Engineers before notification by the other party respectively or which has been created autonomously by the Customer or BERNs Engineers or has been acquired in any other legal way.
- 7. Intellectual Property Rights, Rights of Use**
- 7.1 BERNs Engineers reserves the right of ownership, the intellectual property rights and corresponding exploitation rights in all technical documents and commercial information of BERNs Engineers as well as solution approaches in proposals and in any other documents of BERNs Engineers as well as in all manufactured models, drawings, devices, goods and other documents which are created by BERNs Engineers for the performance of the contract (hereafter referred to as 'Intellectual Property') without restrictions. Providing the Intellectual Property to the Customer shall not be deemed as providing any rights therein to the Customer. The Intellectual Property shall not be made available to third parties without written consent of BERNs Engineers.
- 7.2 The contract party respectively whose employee created the Intellectual Property during the performance of the contract shall be entitled to the corresponding intellectual property rights, in particular the right to file patents or register trademarks. Both parties to the contract shall be jointly entitled to the corresponding intellectual property rights if employees of both contract parties significantly contributed to creating the Intellectual Property during the performance of the contract.
- 7.3 If BERNs Engineers is entitled to rights in Intellectual Property in accordance with the aforementioned paragraphs, after complete payments due to BERNs Engineers have been received, BERNs Engineers grants the Customer non-exclusive, non-transferrable rights of use in the Intellectual Property created which is limited to the scope of the order. If BERNs Engineers reverts to its own knowledge/know-how and experiences to fulfill the contract, BERNs Engineers grants rights of use to the same extent and conditions as mentioned above.
- 7.4 As an exception to the paragraphs mentioned above, BERNs Engineers can, in particular cases, agree with the Customer to grant exclusive rights of use in the Intellectual Property of BERNs Engineers created. This shall only be permissible with the written consent of BERNs Engineers. In this case, the Customer shall reimburse BERNs Engineers the remuneration BERNs Engineers is required to pay its employees according to the Employee Invention Law in relation to the exploitation of this Intellectual Property.
- 7.5 BERNs Engineers does not assume any liability for the infringement of any intellectual property rights or other rights of third parties granted or filed for (hereafter referred to as 'Rights of Third Parties') which occurs due to BERNs Engineers receiving technical specifications, information, instructions, drawings or any other documents or information from the Customer by way of Customer furnished items, assistance or information and using them in the provision of services or supply of goods. In this case, the Customer fully indemnifies BERNs Engineers and pays, on first request, all costs, expenses and damages BERNs Engineers is suffering as a result of the infringement of Rights of Third Parties.
- 8. Force Majeure**
- 8.1 Cases of force majeure or other unforeseeable, unavoidable and serious events out of the control of the Customer or BERNs Engineers which the Customer or BERNs Engineers cannot be deemed to be responsible for, including but not limited to, strikes, governmental/regulatory measures, IT outage, outage of the energy supply, acts of God, natural disasters, war, civil disturbances and acts of terrorism (hereafter referred to as 'Force Majeure') relieve the concerned party from the affected obligations respectively for the duration of the disruption and to the extent of its impact.
- 8.2 The contract party affected by the disruption due to Force Majeure shall notify the other party thereof in writing without any delay.
- 8.3 BERNs Engineers can withdraw from the contract concerned in case the end of such a disruption due to Force Majeure continues for more than two months or its end is not foreseeable.
- 9. Provision of Customer Furnished Items, Information and Documents, Provision of BERNs Engineers Furnished Items, Information and Documents**
- 9.1 All Customer furnished items, information and documents or BERNs Engineers furnished items, information and documents of every description provided to the other party respectively shall remain the property of the party furnishing the items, information and documents respectively.
- 9.2 The Customer and BERNs Engineers are obliged to return all items, information and documents of every description furnished by the other party respectively in their possession in its entirety and in proper condition at the end of the contractual relationship unless they were used for the provision of services or the supply of goods to the Customer.
- 10. Rights of the Customer in Case of Defects**
- 10.1 In case the services, works or goods prove to have a defect, BERNs Engineers will at its discretion correct the defect, provide a replacement delivery of the works or goods or supply new works or goods within a reasonable period of time. If the defect is not eliminated through the chosen measures in at least two attempts at supplementary performance, the Customer is entitled to claim a reduction in price (abatement) or withdraw from the contract or claim damages instead of performance in accordance with Article 12.
- 10.2 If the defect only reduces the value or the suitability for the purpose presupposed by the contract negligibly, the right to withdraw from the contract shall be excluded. In this case the Customer shall only be entitled to claim a reduction in price (abatement).
- 10.3 Claims regarding supplementary performance (correction, regeneration and replacement delivery) lapse after twelve months from the transfer of risk of the services, works or goods. This limit is a limitation period and also applies to claims for damages and for reimbursement of expenses insofar as no claims based on gross negligence or wilful intent are filed.
- 10.4 Evident defects shall be notified to BERNs Engineers in writing within 5 calendar days from the transfer of risk.. The dispatch of the notification to BERNs Engineers shall be decisive observing the time limit. After the time limit has elapsed, the Customer shall lose all rights which he otherwise had been entitled to due to evident defects.
- 11. Title Retention**
- 11.1 BERNs Engineers shall retain the title in all items to be delivered as part of providing the services or supplying the goods (items subject to title retention) until the settlement of all claims due against its Customer in the course of their business relationship.
- 11.2 The Customer shall notify BERNs Engineers without any delay about measures of debt enforcement by third parties regarding the items subject to title retention and provide all necessary documents for an intervention; this also applies to other impairments of all kinds. Independently of the aforementioned, the Customer shall advise the third party in advance of the existing rights in the items. The costs of the intervention shall be borne by the Customer insofar as the third party is not in a position to reimburse them.
- 11.3 As a guarantee for the case that the items subject to title retention are resold, the Customer already conveys BERNs Engineers all claims against its customers until all claims of BERNs Engineers against the Customer have been settled.

11.4 In case the items subject to title retention are processed, reshaped or combined with another object, BERNS Engineers shall directly become entitled to joint ownership in the object created proportional to the value of the items subject to title retention at the time of them being processed, reshaped or combined with another object. This object created shall be deemed as an item subject to title retention.

11.5 In case the value of all of BERNS Engineers's security interests due exceeds the amount of all undisputable claims by the Customer by more than 20%, BERNS Engineers is obliged to release, on demand, a corresponding part of the security interests chosen by BERNS Engineers.

## **12. Liability**

12.1 Claims for damages and for reimbursement of expenses by the Customer irrespective of legal basis, in particular due to infringement of contractual obligations and due to tort, shall be excluded.

12.2 This rule according to Article 10 Paragraph 1 shall not apply in case of mandatory liability, for example, in accordance with the law on product liability, in cases of wilful intent, gross negligence, due to death, bodily injury or damage to health or due to infringement of material contractual obligations (viz. obligations which result from the nature of the contract and, if infringed, endanger the attainability of the purpose of the contract as well as reimbursement of damages due to late payment (§ 286 BGB)).

12.3 In case BERNS Engineers acts with wilful intent or gross negligence, its liability to pay damages shall be limited to damages which are typical for the nature of contract, unless being liable for death, bodily injury or damage to health and in business dealings only.

12.4 In case BERNS Engineers acts negligently, its liability to pay damages shall be limited to damages which are typical for the nature of contract, unless being liable for death, bodily injury or damage to health.

12.5 The liability for indirect loss and consequential damages to the Customer and third parties shall be excluded except for liability due to death, bodily injury or damage to health.

12.6 Insofar as the liability of BERNS Engineers is excluded or limited, this shall also apply likewise to the personal liability of its employees, representatives, auxiliary persons and vicarious agents.

12.7 In case the Customer is entitled to claim damages, this entitlement lapses with the end of the limitation period described in Article 10 Paragraph 3. The same shall apply to Customer's claims regarding measures to prevent damage (e.g. call backs). In case of claiming damages in accordance with the Law of Product Liability, the statutory limitation period shall apply.

## **13. Prohibition of Enticement of BERNS Engineers Employees**

13.1 The Customer undertakes to not target employees of BERNS Engineers for enticement or try to entice them. This obligation shall apply until one year after the completion or termination of the contractual relationship.

13.2 If the Customer infringes on this obligation and this leads to a termination of the employment relationship of the enticed employee with BERNS Engineers and the beginning of an employment relationship of this employee with the Customer, BERNS Engineers shall be entitled to claim damages from the Customer. The Customer has the right to prove that BERNS Engineers suffered no damages or smaller damages than claimed by BERNS Engineers as a result of the enticement.

## **14. Withdrawal from and Termination of the Contract**

14.1 BERNS Engineers is entitled to withdraw from the contract in case the Customer files an application for the opening of insolvency proceedings, executes a statutory declaration in accordance with § 807 ZPO or if the insolvency proceedings regarding its assets and liabilities have been opened or the opening of the insolvency proceedings was rejected due to lack of the required assets.

14.2 The Customer is only entitled to terminate the contract for cause. In case of such a termination the Customer shall reimburse all costs BERNS Engineers accrues in relation to such a termination. Furthermore, the Customer shall pay 10% of the value of the terminated part of the contract unless BERNS Engineers is responsible for the cause of termination.

## **15. Final Provisions**

15.1 The applicable law shall exclusively be German law (the law of the Federal Republic of Germany). The application of the provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is expressly excluded.

15.2 Is the Customer a registered merchant, a corporate body under public law or a special fund under public law, the court of jurisdiction shall be the one in charge of the registered office of BERNS Engineers in Gilching near Munich. The right of BERNS Engineers to sue the Customer at his registered office remains unaffected.