

**General Terms and Conditions of Purchase (GTCP) of Bericap GmbH & Co. KG**  
**(last amended on: 08.03.2021)**

**§ 1**

**Exclusive application of these GTCP; exclusion clause**

- (1) These General Terms and Conditions of Purchase (GTCP) apply to all business relationships with our distributors and suppliers ("Suppliers"). They apply only where the Supplier is an entrepreneur within the meaning of § 14 German Civil Code (*BGB*), a merchant within the meaning of the German Commercial Code (*Handelsgesetzbuch -HGB*), a legal entity under public law or a special fund under public law.
- (2) Our GTCP apply exclusively. Any terms and conditions of the Supplier which conflict with, differ from or supplement these terms and conditions will be hereby rejected and not become an integral part of the contract, unless we have expressly consented to their application.
- (3) Unless otherwise agreed, the version of our GTCP which applies is the version which is valid at the time of our order as a framework agreement (§ 305 (3) German Civil Code) also for any later contracts within the meaning of paragraph (1) without the necessity for us to refer to them again. In this case we will inform the supplier without delay of any changes to our GTCP.

**§ 2**

**Conclusion of contract; content of contract; written form; disclosure of information**

- (1) Only our written orders or orders confirmed in writing by us are binding. The Supplier must notify us of any obvious errors (such as typographical or arithmetical errors) and omissions in our order, including all documents associated therewith, so that they can be corrected and/or completed before acceptance; otherwise the contract will be deemed to have not been concluded. Sentence 1 shall not apply to short-term orders or enquiries such as, for example, the need for trucks for transport as well as the purchase of items for everyday use and the purchase of electricity.
- (2) Any legally relevant statements or information provided by the Supplier after the contract has been concluded (e.g. deadlines, reminders, declarations of rescission) must be in written form within the meaning of paragraph (4) to be valid.
- (3) The Supplier may only accept our orders within the period of commitment possibly stated in the order or within a period of 10 working days (Monday to Friday with the exception of national public holidays) following the stated date of the order by way of written confirmation. What is decisive in the event of written confirmation is that the declaration of acceptance is received by us in due time.
- (4) For the purpose of these GTCP and compliance with written-form requirements it is sufficient for communications to be sent by either signed fax or informal email only, the latter without a scanned document having to be attached. Mandatory legal formal requirements remain unaffected.
- (5) The supplier is obliged to state our order number on the order confirmation, the shipping documents, delivery notes and invoices as well as the other order details (date, quantity, shipping terms etc.). In addition, the supplier is obliged to observe the invoice and shipping addresses contained in the orders. If he fails to comply with any of the above obligations, we are not responsible for any delays in processing resulting therefrom.

**§ 3**

**Reservation of rights, e.g. copyright and property rights; confidentiality**

- (1) We reserve all title, copyright and property rights regarding all documents, materials and other items (such as order documents, plans, drawings, illustrations, calculations, product descriptions and specifications, manuals, samples, models and other physical and/or electronic documents, information and items) which we provided to the Supplier.
- (2) The Supplier may not use commercially, reproduce or alter the above-mentioned items or their contents or disclose them, or make them accessible to third parties or his own employees who are not involved. It must treat them confidentially, may use them solely for the purposes defined in the contract and will return them to us in full at our request and destroy (or erase) any copies whether physical or electronic in as far as it no needs them in order to comply with statutory archiving requirements or for the execution of the contract. At our request it will confirm that the above documents, materials or items have been returned and destroyed/erased in full and, in the absence of such confirmation or to prove in writing as to which of them it claims to still need and for which of the above reasons.

**§ 4**

**"DDP Incoterms (2020)" and other delivery modalities; transfer of risk, lump-sum compensation for loss caused by delay**

- (1) "DDP Incoterms (2020)" plant Bericap GmbH & Co. KG, Budenheim will apply to all deliveries, unless agreed otherwise.
- (2) The deliveries must be made on working days (Monday to Friday) during normal business hours.
- (3) The delivery date/deadline (together "Delivery Date") given in our order or which arises otherwise from these GTCP or the remaining contract is binding. If no Delivery Date is stated in our order and not otherwise agreed the Delivery Date will be two (2) weeks from conclusion of the contract. The Supplier will inform us without undue delay in writing as soon as it can foresee that it will not be able to comply with a Delivery Date, how long the presumed delay will last and on what specific reason it is based.
- (4) If the Supplier is in default, we are entitled – in addition to further-reaching statutory claims and performance – to liquidated damages for our losses caused by the delay in the amount of 0.5 percent of the net value of the delayed part-delivery for each full calendar week, but in total not more than 5 percent of the net value of the delayed part-delivery. We reserve the right to prove that the actual loss suffered was higher, and the Supplier reserves the right to prove that we suffered no loss or only a minor loss.

**§ 5**

**Prices, invoices, payment arrangements and default**

- (1) The price stated in our order is a binding fixed price. It is inclusive of all shipping and transport services agreed in § 4(1) (or elsewhere) plus statutory VAT.
- (2) Unless expressly otherwise agreed, the price includes all services and ancillary services of the Supplier (e.g. mounting, assembly, installation, commissioning, set-up/adjustment) and all ancillary costs (e.g. proper packaging, transport, insurance of the goods), taxes (with regard to value-added tax, however, see paragraph (1)), customs and other duties. The Supplier must take back packaging materials at our request and at its expense.
- (3) We will pay without deduction within 30 calendar days after (i) receipt of performance by us and (ii) after receipt of the invoice or any equivalent statement. If we pay within 14 days, we are entitled to a 3 percent discount on the net invoice amount. The Supplier's claim for payment shall become due at the earliest upon expiry of this period.
- (4) Monthly invoices must be issued by the third working day (Monday to Friday) of the month following the month in which the delivery was made.
- (5) We do not owe any late interest (§ 352, 353 German Commercial Code). The statutory regulations apply to our default in payment.

**§ 6**

**Rights of set-off and retention**

- (1) (a) We are entitled to rights of set-off and retention (in particular, § 273 German Civil Code) and the defences of unperformed contract (§ 320 German Civil Code) and of insecurity (§ 321 German Civil Code) to the full statutory extent. In particular, we are entitled to retain our entire payment as long as we are entitled to claim from the respective contractual relationship due to incomplete or faulty performance of the Supplier; however, § 320 (2) German Civil Code remains unaffected thereby.  
(b) We are also entitled – with respect to slight errors which can be remedied – in accordance with § 320 (1) German Civil Code to refuse to pay the entire purchase price and pursuant to § 273 (1) German Civil Code to decline all the goods until the error has been remedied (i.e. defect-free goods have been supplied) unless due to special circumstances we exercise this retention right in a manner which breaches good faith (§ 242 German Civil Code).
- (2) The Supplier is only entitled to offset and to assert a right of retention if its counterclaim is either undisputed by us or has been ruled final and absolute by court of law.

**§ 7**

**Supplier's reservation of title; manufacturer's clause**

- (1) Title to the goods will be transferred to us unconditionally and irrespective of our payment of the purchase price, subject to the following paragraphs.
- (2) If, contrary to paragraph (1) in an individual case the Supplier has a reservation of title because this was expressly agreed or because the Supplier enforces a reservation of title in accordance with mandatory law contrary to paragraph (1), the Supplier's reservation of title is cancelled at the latest when the purchase price for the respective goods delivered is provided.
- (3) In the event of paragraph (2) we are entitled in the due and proper course of business before payment of the purchase price  
(a) to sell on the goods with advance assignment - hereby declared by us - to the Supplier of our purchase price claim herefrom (reservation of title extended to the selling on of the goods). All forms of reservation of title, in particular the extended, forwarded reservation of title, extended to further processing is excluded herefrom.  
(b) to process, transform, combine, mix and alter goods subject to the reservation of title of the Supplier. We will always do so for ourselves as manufacturers in our own name and to own account. At the latest at this point we will acquire title pursuant to the respective statutory provisions.

**§ 8**

**Condition of the products; quality assurance system; environmental management system; occupational safety; ISO 9001 Certification; ISO 14001 Certification; ISO 45001 Certification**

- (1) The Supplier guarantees that its products comply with the statutory regulations (in particular with regard to food law), state of the art technology and the agreed product specifications. This will include but not be restricted to complying with the Product Safety Act (*Produktsicherheitsgesetz*).
- (2) The Supplier will establish and maintain a documented quality assurance system, suitable in scope and nature, which corresponds to the latest state of the art technology. It must prepare records, especially with respect to quality reviews, and provide us with these records without delay at our request.
- (3) The Supplier shall provide his deliveries in constant compliance with the relevant national and international environmental protection regulations and standards. He will set up and maintain a documented environmental management system corresponding to the state of the art.

- (4) The Supplier shall comply with all regulations on occupational safety existing at the time of performance, including the requirements of the competent professional associations and other rule-making institutions. He will establish and maintain a documented management system for occupational safety and health in accordance with the state of the art.
- (5) The Supplier must be and remain holder of an ISO 9001 Certification as well as an ISO 14001 Certification and an ISO 45001 Certification or comparable recognized certifications corresponding to its respective products and production, e.g. for environmental protection and sustainability, to be renewed on a regular basis and provide us with proof of this at our request.

**§ 9**

**Rights in the case of material or legal defects and other breaches of duty; procurement risk**

- (1) The statutory regulations and also these GTCP, particularly the following provisions and § 10, apply without restriction to our rights in the event the goods are defective in quality and title and in the event of other breaches of duty by the Supplier.
- (2) The statutory provisions (§§ 377, 381 German Commercial Code) and the provisions in this paragraph apply with respect to our commercial duty to inspect and object. Our duty to inspect is limited to (a) defects that become apparent during the incoming goods inspection including an external examination which includes the delivery documents (e.g. transport damage, delivery of the wrong items and delivery of less quantity than ordered/invoiced) and (b) otherwise to what is feasible in the ordinary course of business, taking into account the individual case (e.g. any quality check by random sampling that is appropriate in terms of type and scope). Where an acceptance procedure has been agreed on, there is no obligation to inspect. Our obligation to complain about defects discovered later remains unaffected. In the case of sentence 2 (apparent defects; random checks) our complaint (defect notice) is deemed to be in good time if we send this complaint within eight (8) working days of receipt of the incoming goods. In cases covered by sentence 4 (later discovery) this deadline is three (3) working days from discovery.
- (3) If the Supplier is obliged to carry out its own outgoing goods inspection for quality assurance purposes, we shall only be obliged to give notice of any defects - but not to inspect the good.
- (4) If the goods are defective, we may, at our discretion, demand either subsequent fulfilment by remedy of the defect (subsequent fulfilment) or by delivery of a defect-free product (replacement delivery). Subsequent fulfilment includes, at our discretion, also (a) removal of the defective goods and installation of defect-free goods or (b) payment of the necessary expenses therefor, if the goods were installed in another item in accordance with their designated purpose. If the Supplier does not satisfy this obligation of subsequent fulfilment within a reasonable deadline set by us, we may remedy the defect ourselves or have it remedied and request reimbursement of the expenditure necessary for this purpose or a corresponding advance payment from the Supplier.
- (5) The costs incurred for the inspecting the defect and subsequent fulfilment by the Supplier – including any costs for removal and installation – will also be borne by the Supplier even if it transpires that there was actually no defect. Our liability to pay compensation remains unaffected in the case of unjustified demands for defects to be remedied. However, we are only liable if we have recognised or failed to recognise as gross negligence that there was indeed no defect.
- (6) The Supplier bears the procurement risk for its services, unless explicitly agreed otherwise (e.g., obligation in kind restricted to available stocks (*Vorratsschuld*)).

**§ 10**

**Infringement of third-party property rights**

- (1) Irrespective of its warranty duty also for legal defects pursuant to § 9 – subject to paragraph (2), the Supplier guarantees that no property rights of third parties in countries of the European Union (EU) and of the European Economic Area (EEA), in Switzerland, in United Kingdom, in the USA, in Canada, Japan or in other countries in which the Supplier manufactures the products or has the products manufactured are infringed by the products delivered by the Supplier.
- (2) The Supplier is obliged to indemnify us from all claims which third parties assert against us owing to the infringement of property rights as described under paragraph (1) and to reimburse all necessary expenditure incurred by us in connection with such an assertion of claims. The Supplier must satisfy this indemnification obligation at our first request. The claims under sentence 1 of this clause do not exist if the Supplier proves that it is neither responsible for the infringement of property rights nor ought to have known about this at the time of the delivery if the due diligence of a prudent merchant had been applied.

**§ 11**

**Supplier regress**

- (1) In addition to claims for defects, we shall be entitled without restriction to our statutory rights of recourse within a supply chain (supplier recourse according to §§ 445a, 445b, 478 German Civil Code). In particular, we are entitled to demand from the Supplier exactly the type of subsequent performance (rectification of defects or replacement delivery) that we owe our customer in the individual case. Our statutory right of choice (§ 439 para. 1 German Civil Code) is not restricted by this.
- (2) Before we acknowledge or fulfil a claim for defects asserted by our customer (including reimbursement of expenses in accordance with §§ 445a Para. 1, 439 Paras. 2 and 3 German Civil Code), we will notify the Supplier and request a written statement of the facts of the case. If a substantiated statement is not made within a reasonable period of time and no amicable solution is brought about, the claim for defects actually granted by us is deemed to be owed to our customer. In this case, the Supplier shall be responsible for proving the contrary.
- (3) Our claims arising from supplier recourse also apply if the defective goods have been further processed by us or another entrepreneur, e.g. by installation in another product.

**§ 12**

**Product and producer liability; product warnings and recalls; information duty in the case of potentially dangerous defects; insurance duty**

- (1) If a claim is asserted against us by a third party owing to a physical injury or property damage as a result of product and/or producer's liability and if this damage can be attributed to a defective product delivered by the Supplier, the Supplier must indemnify us – insofar as the Supplier itself is liable in the external relationship – from such claim. This indemnification obligation will apply to the Supplier at our first request.
- (2) If we are obliged to carry out a product warning or a recall regarding a product delivered by the Supplier because it is defective and constitutes a danger for persons and/or items emanating from this product, the Supplier must also bear all product warning or recall costs as part of its indemnification obligation from paragraph (1). This has no effect on any further-reaching statutory claims on our part as well as the supplier's own product warning and recall obligations. We will inform the Supplier of pending product warning or recall measures – if possible and reasonable – without undue delay and give the Supplier an opportunity to state its case.
- (3) If the Supplier has indications that its goods delivered to us or ordered by us are faulty and could give rise to a risk to persons and/or items it must inform us without undue delay stating the type and the degree of the risk. This applies in particular in case of product defects. Statutory duties to inform and provide warnings remain unaffected thereby.
- (4) The Supplier is obliged to maintain at its own expense product liability insurance at the usual conditions, which, however, unless otherwise agreed, does not have to cover the recall risk or punitive or similar damages. On request from us which may be made at any time, the Supplier must prove the existence of such insurance by presenting a confirmation of insurance and/or other insurance documents.

**§ 13**

**Limitation periods**

- (1) The limitation period is in accordance with the statutory provisions, subject to the following paragraphs.
- (2) Notwithstanding § 438 (1) no. 3 German Civil Code, the general limitation period for contractual claims based on quality defects and defects of title is two (2) years after delivery. The transfer of risk is not decisive for delivery but rather that the goods enter our sphere of control or that we can take them over without further ado or at least examine them fully. If the Supplier owes assembly, the instruction of other people and/or the execution of a successful test run the goods will be deemed to have been delivered once this step/these steps have been completed. If the parties have agreed that the goods have to undergo an acceptance procedure, the limitation period begins on acceptance.
- (3) Irrespective of the above paragraph the claims based on legal defects will not be statute-barred as long as the third party which is owner of the claim or right underlying the defect can assert this claim/right against us – in particular because the matter is not statute-barred.
- (4) Any non-contractual claims due to quality defects and defects in title are subject to the regular statutory limitation period in accordance with § 195, 199 German Civil Code. However, if the limitation period for contractual claims is longer (see above paragraph (2) and (3)) this also applies to the non-contractual claims.
- (5) Upon remedy of a defect or subsequent delivery of a defect-free product, the limitation period for our warranty claims regarding the remedied or replaced parts which were previously defective commences to run anew unless we had to assume on the basis of the Supplier's conduct that it did not consider itself obliged to remedy the defect or make the subsequent delivery, but only did so as a gesture of goodwill or for similar reasons. The statutory criteria of suspension of the statute of limitations and -recommencement remain unaffected by this paragraph.

**§ 14**

**No assignment, except for monetary claims**

The Supplier is not entitled to assign its claims against us under the contractual relationship to third parties. This does not apply to monetary claims.

**§ 15**

**No subcontractors or other third parties**

Without our prior written consent, the Supplier is not entitled to have services rendered by third parties (e.g. subcontractors).

**§ 16**

**Place of performance**

The place of performance for all deliveries and services is the destination provided by us (that is, the delivery address stated in our order) or, if such a destination is not explicitly specified, the seat of Bericap GmbH & Co. KG in Budenheim.

**§ 17**

**Choice of law and jurisdiction**

- (1) These GTCP and the contractual relationship between us and the Supplier are governed exclusively by the law of the Federal Republic of Germany ("FRG"). The UN Convention on the International Sale of Goods (CISG) and other

international uniform laws do not apply. Any claims of a non-contractual nature in connection with these GTCP or the contractual relationship are governed exclusively by the law of the FRG.

- (2) If the Supplier is a merchant within the meaning of the German Commercial Code, a legal entity under public law, a special public fund or has no general place of jurisdiction in the FRG, the sole place of jurisdiction for all disputes arising from or in connection with the contractual relationship between us and the Supplier will be Mainz, Germany. The same applies if the customer is an entrepreneur within the meaning of section 14 BGB.
- (3) This provision has no effect on mandatory statutory provisions, in particular on the sole places of jurisdiction.

**§ 18**

**Severability Clause**

Should contractual provisions, including these GTCP, not become an integral component of the contract, be or become invalid or ineffective in whole or in part this shall not affect the validity of the other provisions. If any provisions in these GTCP are invalid or have not become an integral part of the contract, the content of the contract will be based on statutory provisions (§ 306 (2) German Civil Code).

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