

General Terms and Conditions of Sale (GTCS) of Bericap GmbH & Co. KG
(last amended on: 08.03.2021)

§ 1

Exclusive application of these GTCS; exclusion clause

- (1) These GTCS apply to all business relationships with our customers. They apply in particular to contracts for the sale and/or supply of moveable goods irrespective of whether we have manufactured them ourselves or purchased them from distributors/suppliers. However, they only apply where the customer is an entrepreneur within the meaning of § 14 German Civil Code (*Bürgerliches Gesetzbuch - BGB*), a merchant within the meaning of the German Commercial Code (*Handelsgesetzbuch -HGB*), a legal entity under public law or a special public fund (*öffentlich-rechtliches Sondervermögen*).
- (2) Our GTCS apply exclusively. Any terms and conditions of the customer 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. For example, consent will not be deemed to be given even if with the knowledge of the customer's terms and conditions, we, – without any reservation – accept orders, provide supplies, perform services or directly or indirectly refer to letters, etc., which contain the customer's or third-party terms and conditions.
- (3) Unless otherwise agreed, the version of our GTCS which applies is the version which is valid at the time of the customer's order as a framework agreement (section 305 (3) German Civil Code) also for any later contracts within the meaning of (1) with the same customer without the necessity for us to refer to them again.

§ 2

Conclusion and content of contract and proof; non-binding demand forecast, written form; representation; no guarantees

- (1) Our offers are non-binding unless they are expressly marked as binding or they contain a binding deadline by which an offer must be accepted. The customer must notify us of any obvious errors (such as typographical or arithmetical errors) and omissions in our orders, 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.
- (2) The customer's order is deemed to be a legally binding offer to conclude a contract (unless this is a case of retention within the meaning of (1); in this case the customer's order is the binding acceptance of our offer). Unless otherwise stated in the customer's order, we may accept the offer within 10 working days (Monday to Friday with the exception of national public holidays) of receipt.
- (3) We will confirm offers by way of a written statement (e.g. by order confirmation or not until our dispatch advice/advice that goods are ready for collection). The content of the contract is determined by the content of this statement. Any statements and information which the customer sends after the contract has been concluded and which are of legal relevance (e.g. deadlines, reminders, notices of defects, statements of withdrawal or reduction) are valid only if they comply with written-form requirements.
- (4) Unless otherwise agreed, the Customer shall send us a written forecast of the expected number of units required per contract product for the three (3) calendar months following the respective month (rolling demand forecast, "Forecast") on a monthly basis by the 15th of each month (or by the following working day if the 15th is a Saturday, Sunday or holiday). The forecast is non-binding and serves solely to inform us about the customer's anticipated requirements.
- (5) For the purpose of these GTCS 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.
- (6) Other than our directors, *Prokuristen* and any other employees expressly named to the customer as a contact – each acting according to the company rules on representation – our employees are not authorised to make offers, conclude contracts, enter into any individual written or oral agreements or make commitments. Any such statements (or receipts of statements) are insignificant and not binding on us.
- (7) Other than guarantees and/or procurement risks expressly agreed upon in the contract, there are no guarantees or assumptions of risk whatsoever.

§ 3

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

- (1) We reserve all title, copyright and property rights in all documents, materials and other items (such as offers, catalogues, price lists, estimates, plans, drawings, illustrations, calculations, product descriptions and specifications, manuals, samples, models and other physical and/or electronic documents, information and items) which we provide to the customer.
- (2) The customer may not use commercially, reproduce or alter the above-mentioned items or their contents or disclose 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 what reasons.

§ 4

"FCA Incoterms (2020) and other modes of delivery; passage of risk; default with acceptance, cooperation, etc.; acceptance

- (1) Unless otherwise agreed, all shipments are made FCA Incoterms (2020)" plant Bericap GmbH & Co. KG, Mainz.
- (2) We will only insure the goods if this is expressly agreed with the customer, and then solely at customer's cost against theft, breakage, transport, fire or water damage or other insurable risks.
- (3) Notwithstanding (1) and only if explicitly agreed, we will ship the goods to the place of destination stipulated by the customer. In which case the packaging costs will be borne by the customer. We are entitled to specify the type of shipment (in particular, the transport company and the shipping route) and the packaging at our dutiful discretion. In the cases set out in sentence 1 of this paragraph, risk passes to the customer when the customer receives our notice that the order is ready for shipment, or – if such notice is not provided for by contract – no later than handover of the goods to the carrier, freighter or other transport person.
- (4) If the customer is in default with acceptance, if it fails to cooperate as required or if our performance is delayed for other reasons for which the customer is responsible, we may charge for any ensuing damage including additional expenditure (e.g. in particular, storage costs) which we incur.
- (5) Where acceptance is expressly agreed, the statutory provisions of the law on contracts to produce a work apply accordingly.

§ 5

Prices, payment, retention of goods; set-off and reservation rights; inability of customer to perform

- (1) Unless otherwise agreed, prices are the current net prices which apply at the time the respective contract is concluded plus value added tax at the applicable statutory rate and any other public law fees or charges. Prices are quoted "FCA Incoterms (2020)" plant Bericap GmbH & Co. KG, Mainz, (see § 4(1)).
- (2) If our delivery is agreed for a point in time in the quarter following the conclusion of the contract with the customer and if the cost of materials (in particular in connection with the production of plastic) increases after the conclusion of the contract over the change of quarter, we shall be entitled to adjust the prices in accordance with the cost increases.
- (3) Our invoices are to be paid within 30 calendar days after both the goods and the invoice have been delivered. "Supply of the goods" means receipt by the customer of our advice that goods are ready for collection (we may send the invoice along with such advice) or – if dispatch of the goods has been agreed – handover of the goods to the party responsible for transport. If acceptance is agreed and to the extent this is explicitly agreed (above § 4(5)) the payment deadline in accordance with sentence 1 will only begin to run after acceptance and after the invoice has been received. Payment will be made without deductions and in euros (€) by wire transfer into the bank account specified in our invoice. We are entitled, also within the framework of an ongoing business relationship, at any time to make a delivery in whole or in part only against advance payment. We declare a corresponding reservation at the latest with the order confirmation.
- (4) The customer is automatically in default with payment as soon as the respective deadline for payment pursuant to (2) expires. During default, interest accrues at the applicable statutory default interest rate. The statutory default amount pursuant to § 288 (5) German Civil Code will be added. We reserve the right to assert claims for any further default losses. In business with merchants this has no effect on our statutory entitlement to interest (§§ 352, 353 German Commercial Code (*Handelsgesetzbuch*)).
- (5) The customer 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.
- (6) We are entitled to refuse to perform any outstanding obligations under the contractual relationship if, after the contract has been concluded, it becomes apparent (e.g. by an application for insolvency being made) that our claim for payment under the respective contractual relationship is at risk owing to the customer's inability to pay. Our right to refuse performance lapses if payment is rendered or security has been provided for it.

§ 6

Delivery deadlines; inspection of part services; our statutory rights; our liability in the event of default and impossibility

- (1) A delivery date for the supply of goods confirmed by us is deemed to have been met if the goods issue date confirmed by us has been met.
- (2) If we can see that a delivery date cannot be met we will inform the customer accordingly without undue delay, providing indication of the probable new delivery time.
- (3) Delivery dates/times will be extended automatically by an appropriate period if the customer does not fulfil its contractual obligations or other duties to cooperate or other obligations. In particular, the customer is responsible for providing us promptly and in the correct format with all documents, information, samples, specimens and other information and items which it is required to provide and, if applicable, for ensuring the technical resources, premises, HR and organisational circumstances needed for product assembly or similar services (such as installation, commissioning, set up/adjustment) are available.
- (4) We are entitled to render part-performance, if (a) part-performance is suitable for the customer's contractually intended use, (b) rendering of the remaining performance is secured and (c) the customer does not face significant additional costs or we declare ourselves willing to bear the costs.

- (5) This does not affect our statutory rights, particularly rights concerning exclusion of our duty to perform (e.g. because performance and/or subsequent fulfilment is finally or temporarily impossible or cannot reasonably be expected of us) or rights regarding default on the part of the customer in respect of acceptance or performance.
- (6) If we fall into default with a supply or service or if it becomes, for whatever reason, impossible for us to perform such supply/service, any liability for compensation is limited as stated in § 10 below.

§ 7

Extended reservation of title

- (1) Until full payment of all our present and future claims arising from the purchase contract and an ongoing business relationship (secured claims), we reserve title to the goods sold.
- (2) The goods subject to retention of title may not be pledged to third parties or transferred by way of security before the secured claims have been paid in full. The customer shall notify us immediately in writing if an application for the opening of insolvency proceedings is filed or if third parties access the goods belonging to us (e.g. seizures).
- (3) If the customer breaches the contract, in particular if he fails to pay the due purchase price, we shall be entitled to withdraw from the contract in accordance with the statutory provisions and/or to demand the return of the goods on the basis of the reservation of title. The request for surrender does not at the same time include the declaration of withdrawal; we are rather entitled to request only the surrender of the goods and to reserve the right of withdrawal. If the customer does not pay the due purchase price, we may only assert these rights if we have previously set the customer a reasonable deadline for payment without success or if such a deadline is dispensable according to the statutory provisions.
- (4) Until revocation, the customer is permitted according to (c) below to resell and/or process the goods subject to retention of title in the ordinary course of business. In this case, the following provisions shall apply additionally.
 - a) The reservation of title extends to the products resulting from the processing, mixing or combination of our goods at their full value, whereby we are considered the manufacturer. If, in the event of processing, mixing or combining with goods of third parties, their right of ownership remains, we shall acquire co-ownership in proportion to the invoice values of the processed, mixed or combined goods. In all other respects, the same applies to the resulting product as to the goods delivered under reservation of title.
 - b) The customer hereby assigns to us by way of security all claims against third parties arising from the resale of the goods or product, either in total or in the amount of our possible co-ownership share in accordance with the preceding paragraph. We accept the assignment. The obligations of the customer mentioned in (2) shall also apply with regard to the assigned claims.
 - c) In addition to us, the customer remains authorised to collect the claim. We undertake not to collect the claim as long as the customer meets its payment obligations to us, there is no defect in its performance, and we do not assert the retention of title by exercising a right in accordance with (3). If this is the case, however, we can demand that the customer informs us of the assigned claims and their debtors, provides all information required for collection, hands over the relevant documents and informs the debtors (third parties) of the assignment. Furthermore, in this case we are entitled to revoke the customer's authorisation to further sell and process the goods subject to retention of title.
 - d) If the realisable value of the securities exceeds our claims by more than 10%, we will release securities of our choice at the customer's request.

§ 8

Warranty for defects

- (1) The customer's rights in respect of defects of quality and title (including incorrect delivery and insufficient quantities, faulty assembly or instructions) are subject to statutory requirements unless otherwise stated or qualified in these GTCS.
- (2) A delivery shall only be considered defective if the deviation of the delivery quantity from the order quantity is more than 3%.
- (3) Other than in the cases provided for in § 10 (2) to (5) of these GTCS we have no duty to provide warranty for quality defects where we have agreed to supply used products. Nor are we liable under warranty if the customer modifies the goods or has them modified by third parties without our consent and if such modification makes it impossible or unreasonably difficult to remedy the defect. In any event the customer bears any additional costs in remedying the defect caused by such modification.
- (4) The customer is responsible for testing the suitability of the goods for the intended use, in particular the resistance to chemicals. Any approval or licensing requirements with regard to the use of the goods by the customer shall be fulfilled by the customer.
- (5) Unless otherwise expressly stated (a) our products and services are only required to comply with statutory requirements which apply in Germany and (b) responsibility for the suitability of the ordered products and services for his technical building and organisational circumstances and his purposes, lies solely with the customer
- (6) Unless the parties have expressly agreed that acceptance must take place, the customer will inspect the goods delivered without undue delay after delivery to customer or a third-party recipient named by customer and report any defects without undue delay. This is subject to § 377, § 381 German Commercial Code (*Handelsgesetzbuch*) and in addition the provisions in this paragraph. § 442 BGB remains unaffected. In order to save time, written form with regard to the notice of defects means fax or e-mail. The notice is deemed to have been made without undue delay if it is sent within eight (8) working days after delivery (§ 377 (1) German Commercial Code) or – if the defect was not apparent during the inspection (§ 377 (2) and (3) German Commercial Code) – no later than within three (3) working days after the defect has been detected. The inspection of the goods after delivery may not be limited to outward appearance and the delivery documents, but must also comprise a reasonable random inspection of quality and function at least. In the case of goods intended for assembly, installation or other processing, the inspection must take place before these steps; it is the customer's responsibility to refrain from these steps if defects are found. If the customer does not carry out a proper inspection and/or issue proper notice of defects, this will exclude any warranty obligation or other liability which we may have in respect of the defect concerned. None of our statements, acts or omissions is deemed a waiver of the requirements and legal consequences under § 377, § 381 German Commercial Code and this paragraph.
- (7) The customer must initially return any goods reported as defective to us at our request at our cost without undue delay. If the complaint is unjustified, i.e. if there is actually no defect, the customer shall reimburse us for the costs incurred for dispatch. Even if the complaint is justified, we shall not bear the dispatch costs if the costs increase because the goods are in a place other than the place of intended use.
- (8) If there is in fact a defect, we will bear the necessary costs for examination and subsequent performance, particularly the costs for transport, travel, work and materials. However, if a complaint by the customer turns out to be unjustified we can demand that the customer refund our costs incurred by the complaint, unless the lack of justification was not apparent to him.
- (9) If we have supplied defective goods, we have the right and the obligation to either provide subsequent fulfilment by remedying the defect ("Nachbesserung") or supplying a replacement ("Ersatzlieferung") and notifying our customer within a reasonable period which course of action we have chosen. If we supply a replacement, the customer must return the item to us to be replaced, as provided for by statutory law. If the defect is remedied, this also applies to replaced spare parts.
- (10) The customer can only withdraw from or terminate the contract owing to a breach of duty which is not attributable to a defect in the goods if responsibility for the breach of duty lies with us; in all other respects statutory provisions apply. The customer does not have the right to terminate the contract, particularly not pursuant to §§ 650, 648 German Civil Code.
- (11) Claims for compensation are only possible subject to § 10 below.

§ 9

Warranty for freedom from third-party property rights

- (1) We warrant (*gewährleisten*) subject to this § 9 that the goods are free of industrial property rights and copyright of third parties in the countries of the European Union or other countries in which we manufacture the goods or in which the goods are manufactured by third parties. Each party will inform the other without undue delay in writing if claims are asserted against it owing to the infringement of such rights.
- (2) Claims arising from infringement of third-party property rights or copyright are excluded if the infringement is attributable to a directive issued by the customer, a modification initiated by the customer or use of the goods by the customer in a manner which is inconsistent with the contract.
- (3) If the goods infringe an industrial property right or copyright of a third party we will modify or replace the goods at our choice and at our own cost such that the third-party rights are no longer infringed, but the goods continue to satisfy the contractually agreed functions, or procure that the customer is granted the right to use the goods by concluding a licence agreement. If we do not manage to do this within a reasonable period, the customer may withdraw from the contract or make a reasonable reduction to the purchase price.
- (4) Claims for compensation are only possible subject to the following § 10.

§ 10

Liability for compensation

- (1) Unless otherwise set out in these GTCS (including this § 10), we are liable for a breach of contractual and non-contractual duties as provided for by statutory law.
- (2) We have unlimited liability – for whatever reason – for compensation for losses based on wilful (*vorsätzlich*) or grossly negligent (*grob fahrlässig*) breach of duty on our part or by any of our legal representatives or vicarious agents.
- (3) In the event of a merely slightly or ordinarily negligent (*einfach oder leicht fahrlässig*) breach of duty by us or one of our legal representatives or vicarious agents we are liable (subject to a milder level of liability pursuant to statute) only a) – but without limit – for resultant losses arising from injury to life, limb or health; b) for losses arising from a breach of material contractual duties. Material contractual duties are those duties which are material to proper performance of the contract and on whose fulfilment the customer generally relies or is entitled to rely. In this case, however, the amount of our liability is limited to losses which are typical of this type of contract and which were foreseeable at the time the contract was concluded.
- (4) The liability limitations from (3) do not apply where we have maliciously failed to disclose a defect or where we have assumed a warranty – which may entail liability for compensation in respect of the attributes of the goods or a procurement risk. This will have no effect on any mandatory statutory liability, particularly under the German Product Liability Act (*Produkthaftungsgesetz*).

- (5) Where our liability is excluded or limited under the above provisions, this also applies to the personal liability of our directors and officers, legal representatives, employees, staff and other vicarious agents.
- (6) Subject to all further requirements, the customer may only assert contractual penalties or liquidated damages for which it is liable to third parties in connection with goods which we have delivered as compensation, where this has been expressly agreed with us or where the customer pointed this risk out to us in writing before we entered into the contract with it.
- (7) Our distributors/ suppliers are not vicarious agents within the meaning of § 278 German Civil Code. We shall not be liable for the fault of our distributors/suppliers.

§ 11

Limitation period

- (1) Notwithstanding § 438 (1) no. 3 German Civil Code, the limitation period for all claims – including non-contractual claims – for quality defects and defects in title is one (1) year from delivery. However, this does not apply in the case of wilful or grossly negligent breaches of duty (above § 10(2)), loss arising from injury to life, limb or health (above § 10(3)a), malicious failure to disclose a defect and mandatory statutory liability (above § 10(4) sentence 1 option 1 and sentence 2). In the above cases and also in cases of (2) below the law applies exclusively to the statutory limitation period. If the parties have agreed that the goods have to undergo an acceptance procedure, the limitation period begins on acceptance.
- (2) If the goods consist of a building or of an object which, in being used for its usual purpose, has been incorporated in a building and has caused the building to be defective (building material), the statutory limitation period pursuant to § 438 (1) no. 2 German Civil Code will continue to apply. This does not affect further statutory special provisions regarding limitation either (in particular § 438 (1) no. 1, (3), § 444, § 445b German Civil Code).

§ 12

References to official measures, among others

If official measures are undertaken at or against the customer (in particular with respect to product safety law) which concern the goods supplied by us (in particular official measures regarding market monitoring, such as instructing recall or preliminary actions) or if the customer intends to take its own such measures (in particular report to a market monitoring authority or a recall) it will inform us without undue delay in writing. This also applies in each case if the customer learns of such measures at or against its customer(s).

§ 13

Place of performance

The place of performance for our supplies is the seat of Bericap GmbH & Co. KG in Mainz. This also applies to subsequent fulfilment. However, if the contract requires us to carry out also the assembly or render similar services (such as installation, commissioning, set up/adjustment) the place of performance or the place of supplementary performance is the place stipulated herefor in the contract.

§ 14

Choice of law and jurisdiction

- (1) These GTCS and the contractual relationship between us and the customer are governed exclusively by the laws 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 GTCS or the contractual relationship are governed exclusively by the law of the FRG.
- (2) If the customer 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 these GTCS or the contractual relationship between us and the customer will be our registered office in 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.

§ 15

Severability clause

- (1) Should contractual provisions, including these GTCS, not become an integral component of the contract, or be or become invalid or ineffective in whole or in part this shall not affect the validity of the other provisions.
- (2) If any provisions in these GTCS 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). However, if there is no suitable statutory provision to fill in the contractual loophole and there is no supplementary interpretation of the contract which could take precedence or which could be possible, the parties will conclude a valid provision for these GTCS- in place of the provision which has not become an integral part, which is void or invalid and which reflects as closely as possible the original economic purpose.

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