

### § 1 Area of Validity

1. These General Terms and Conditions apply exclusively to the commercial relationship between A. Berger GmbH and traders or businesses. A business means a person or company engaging in a commercial or self-employed occupational activity. This includes small enterprises not registered in the Register of Companies.
2. These General Terms and Conditions shall be the sole conditions governing any deliveries or services of A. Berger GmbH. A. Berger GmbH shall not recognise any general terms and conditions of the purchaser and/or contractual partner unless A. Berger GmbH has given its express written consent to their applicability. This shall also apply if A. Berger GmbH knowingly and without reservation performs services contrary to or varying from these General Terms and Conditions.

### § 2 Place of Performance, Delivery and Acceptance

1. Place of performance for all services pursuant to the contract shall be the principal place of business of the seller, presently Krefeld.
2. Goods shall be delivered from a plant in Germany. The seller shall determine the carrier. Goods shall be dispatched uninsured. A notice of shipment may be agreed.
3. Should the purchaser wish to stipulate the carrier, he shall declare this in writing no later than the conclusion of contract. In such cases, the purchaser shall arrange for the goods to be collected at the place of performance.
4. Packaging costs for special packaging shall be borne by the purchaser.
5. Partial shipments shall be sorted and in the case of combination with other orders sorted ready for sale. These shall follow each other at short intervals and be announced in advance. Unsorted partial shipments shall only be permissible with the purchaser's consent.
6. All goods received shall be inspected by the purchaser on the day of receipt and in all cases before they are processed. Notifications of defects shall be given in writing to the seller no later than 12 calendar days after the receipt of goods. Goods shall be considered to be accepted and the condition of the goods to be contractually compliant if no notification of defect is received within this period.
7. If acceptance is not completed on time for reasons for which the purchaser is responsible, the seller shall have the right, at his own discretion, to either submit an invoice for the goods after an extension period of 12 calendar days (backorder invoice) or to withdraw from the contract or to demand compensation.

### § 3 Place of Jurisdiction

Place of jurisdiction (including lawsuits arising from non-payment of cheques or bills of exchange) shall be the principal place of business of A. Berger GmbH, presently Krefeld.

### § 4 Object of Contract

1. The goods will be delivered on specific dates (working day or a specific calendar week). All sales shall be concluded only with respect to specific quantities, articles, qualities and at fixed prices. These shall be binding on both parties. Transactions on a commission basis shall not be made unless separately agreed.
2. Block orders shall be permissible. A time limit shall be set at the conclusion of contract. The deadline for acceptance of the goods shall not exceed 12 months.
3. The object of sale and contract may be subject to normal technical variations encountered in production such as colour and dimensional variations and changes in technical data. Such technical variations shall be considered as compliant with the contract and shall not constitute justification for the purchaser to claim compensation for material defects.

4. Similarly, weight tolerances of up to 10% and excess/short deliveries up to 15% are explicitly considered to be contractually compliant.
5. Tolerances of ready-made products of up to 5% also cannot be excluded and shall be accepted by the purchaser as contractually compliant.
6. Information about material properties given or published by the seller are experience values from tests and practical applications. However, the many different influences on the application and during the printing process make self-testing indispensable. A legally binding guarantee of special characteristics of the materials in our product portfolio cannot be derived from any information provided about material characteristics. No warranty undertaking or quality guarantee can thus be derived from any publication of material characteristics.

## § 5 Terms of Payment

1. Prices agreed by the parties shall be understood to be net prices, delivered ex works. Value added tax at the rate valid on the day of delivery and any shipping, freight and packaging costs shall be borne by the purchaser.
2. Unless the seller and the purchaser separately agree a specific purchase price, the selling prices stated in the seller's current price list valid at the time of the conclusion of contract shall apply.
3. Should the purchaser, for example, refer to different prices than those on the price list when placing his order, the contract shall be valid on the basis of the prices stated in the seller's current price list valid at the time of the conclusion of contract.
4. In general, the seller shall not accept any proposal by the purchaser to conclude a contract on the basis of any price list other than the seller's valid price list.

## § 6 Interruption of Delivery

1. In the event of force majeure, labour disputes for which neither party can be held responsible and other operational breakdowns which are beyond either party's control and which last or are expected to last for more than one week, the delivery period and/or deadline for acceptance of the goods will automatically be extended to cover the duration of the hindrance. However, the maximum time of extension shall be 5 weeks. The extension shall only become effective if the other party is immediately notified of the reason for the hindrance, as soon as it becomes foreseeable that the deadline for delivery and/or acceptance cannot be adhered to.
2. In the event that delivery or acceptance is not completed within the extended period for delivery and acceptance stipulated in Section 1, the other contractual party shall be entitled to withdraw from the contract after a period of grace of 20 calendar days has been set and expired.
3. Claims for compensation in cases pursuant to Section 1 shall be excluded if the contractual party concerned has fulfilled its obligations pursuant to Section 1.

## § 7 Grace Period for Delivery

1. Upon expiry of the delivery deadline, a grace period for delivery of 20 calendar days shall begin without a declaration to this effect. Once this period has expired, the purchaser shall be entitled to withdraw from the contract by giving a written declaration to this effect. Should the purchaser wish to claim compensation in lieu of delivery, he shall advise the seller in writing with a 4-week grace period after the agreed delivery deadline has expired.
2. The grace period for delivery of goods on stock ready for shipping and for NOS goods ("Never-Out-of-Stock") shall be 12 working days. The purchaser shall be informed promptly in case of non-delivery. Otherwise, the provisions of Section 1 shall apply.

3. Any claims submitted by the purchaser on account of delayed delivery shall be excluded before expiry of the period of grace, unless § 8 Sections 2 and 3 are applicable.

#### **§ 8 Notice of Defects**

1. Notifications of defects for patent defects shall be given in writing to the seller no later than 12 calendar days after the receipt of goods. The purchaser shall notify the seller about concealed defects no later than seven days after they are discovered.
2. No complaint regarding patent defects shall be permissible once the delivered goods have been cut or otherwise processed.
3. No complaints shall be permissible regarding minor, technically unavoidable variations in quality, colour, width, weight, finish or design. This shall also apply in case of variations that are customary in the trade, unless the seller has given a written declaration to deliver goods according to a given sample.
4. In case of justified notice of defect, the purchaser shall have the right to have the defective goods repaired or, at the discretion of the seller, to receive replacement goods delivered free of defects within a period of 20 days of receipt of the returned goods. In such cases, the seller shall bear the shipping charges. If the subsequent performance fails to provide remedy, the purchaser shall only have the right to decrease the purchase price or to withdraw from the contract, unless § 8 Sections 2 and 3 apply.
5. In the event of concealed defects, the purchaser shall only have the right to decrease the purchase price or to withdraw from the contract.
6. If no notice of defects is given within the specified period, the goods shall be considered to be free of defects and thus approved by the purchaser, and the contract shall be considered to be fulfilled.
7. The seller shall not be held liable for any damage caused to the goods resulting from the use or processing of the goods unless the seller is responsible for the damage on the grounds of gross negligence or intent.
8. There shall be no principle entitlement to replacement or cancellation. If cancellation is accepted by the seller, a handling fee or general compensation of 15% of the net value of goods, or minimum 40.00 euro (excluding VAT) will be charged. Materials already being processed (cut, processed to finished products, dyed) are generally excluded from replacement and cancellation.

#### **§ 9 Compensation**

1. Claims by the purchaser for compensation shall be excluded unless other arrangements are defined in the provisions of these conditions.
2. The exclusion defined in Section 1 shall not apply in cases of liability pursuant to the German Product Liability Act, or to cases of intent, gross negligence on the part of the proprietors, legal representatives and managerial staff, fraudulent intent, non-compliance with an accepted guarantee, culpable injury to life, body or health, or the culpable violation of essential contractual obligations. Essential contractual obligations are such whose fulfilment characterises the contract and on which the purchaser can rely. However, claims for compensation on the grounds of violation of essential contractual obligations shall be limited to damage typically foreseeable for this type of contract, unless another case stipulated in Section 2, Sentence 1 exists.
3. The above provisions do not imply any change in the onus of proof to the disadvantage of the purchaser.

#### **§ 10 Payment**

1. Invoices shall be issued on the day of delivery or in the event of collection on the day on which the goods are made available. Postponement of the date by which payment is due shall be generally excluded.
2. Invoices shall be payable within 30 days of issue. Default pursuant to § 286 Paragraph 2 No. 1 of the German Civil Code (BGB) shall occur from the 31st day onward.
3. In the event of payment difficulties on the part of the purchaser, in particular in the event of payment arrears

or a protested cheque, the seller shall be entitled to demand advance payment for all subsequent deliveries, to declare all open and deferred invoices to be due with immediate effect and to demand securities. In such cases, the seller shall also be entitled at his own discretion to withdraw from contracts which have not been fulfilled, either in full or in part.

4. The seller shall only deliver goods to contractual partners who are not known to him with advance payment, unless the seller is given adequate references beforehand.
5. All payments by the purchaser shall be made by bank transfer or by cheque. Bills of exchange and bills of acceptance shall not be accepted.
6. Payments shall always be used to settle the oldest liability items due plus any accrued interest on arrears.
7. The final credit on the account of the seller shall be applicable for the punctuality of payment.

### § 11 Payment after Date Due

1. In case of payments after the date due, interest amounting to 9% above the valid base rate of interest will be charged pursuant to § 247 of the German Civil Code (BGB). Otherwise § 288 of the German Civil Code (BGB) shall apply.
2. The seller shall have no obligation to execute further deliveries arising from any delivery contract before complete payment of due invoice amounts including interest has been made. The right is reserved to claim damages for default.
3. In the event of a substantial deterioration of the financial situation of the purchaser such as imminent insolvency or payment arrears, the seller shall be entitled to withhold the services due for any delivery contract based on the same legal relationship or to withdraw from such delivery contracts after setting a grace period of 12 calendar days. Otherwise § 321 of the German Civil Code (BGB) shall apply. § 119 of the German Insolvency Statute (InsO) remains unaffected.

### § 12 Offsetting and Retention

The offsetting and retention of due invoice amounts shall only be permissible in the case of claims which have been upheld by a court of law, assuming these are claims for compensation closely related to the entitlement of the purchaser to the defect-free fulfilment of contract.

### § 13 Reservation of Title

1. The goods shall remain the property of the seller until all claims arising from the delivery of goods within the total business relationship are settled in full. This includes ancillary claims, claims for compensation and encashment of cheques and bills of exchange. Reservation of title will also continue if individual claims of the seller are collated in a current account and the balance is struck and acknowledged.
2. If the reserved goods are combined, mixed or processed by the purchaser in order to become a new movable, this shall be done without any obligation on the part of the seller. Combining, mixing or processing the reserved goods does not imply that the purchaser has acquired ownership of the new movable property pursuant to §§ 947 ff. of the German Civil Code (BGB). If the goods are combined, mixed or processed with other movables that do not belong to the seller, the seller shall acquire co-ownership of the new movable property according to the invoice value of his reserved goods as a proportion of the total value.
3. If a central claims settling agent who assumes del credere has been engaged in the conduct of business between the seller and the purchaser, the seller shall assign ownership to the central claims settling agency upon the shipping of the goods subject to the complete payment of the purchase price by the central claims settling agent. The purchaser shall not be released from his payment obligations until the central claims settling agent has made the payment.
4. The purchaser shall be entitled to resell or process the reserved goods only with due regard to the follo-

wing conditions: a) The purchaser may sell or process the reserved goods only in the course of ordinary business operations provided that his financial situation does not subsequently essentially deteriorate. b) The purchaser hereby assigns to the seller the claim along with all ancillary rights arising from the resale of the reserved goods, including any balance of claims. The seller shall accept this assignment. c) If the goods are combined, mixed or processed and if the seller has acquired co-ownership hereto amounting to the value of his invoice, he shall be entitled to the claim for the purchase price pro rata to the value of his rights to the goods. d) If the purchaser sells the claim within the framework of non-recourse factoring, the purchaser shall assign the subsequent claim against the factor to the seller and will pass on to the seller his sales proceeds pro rata to the value of the rights of the seller to the goods. The purchaser shall have the obligation to disclose the assignment to the factor if he is more than 10 days overdue with the settlement of an invoice or if his financial situation deteriorates essentially. The seller shall accept this assignment. e) As long as the purchaser fulfils his payment obligations, he shall be authorized to recover the assigned claims. The authorization to recover shall be void in the event of the purchaser defaulting on payment or if his financial situation deteriorates essentially. In such cases, the seller shall be authorized by the purchaser to inform his customers about the assignment and to collect the claims himself. To enable the assigned claims to be asserted, the purchaser shall provide the necessary information and allow this information to be verified. In particular, he shall on request submit to the seller a precise list specifying the claims due to him along with the names and addresses of the customers, the amounts of the individual claims, the dates of the invoices etc.

5. If the value of the existing security for the seller exceeds the total value of all his claims by more than 10%, the seller shall have the obligation, at the purchaser's request, to release securities of his choice to this extent.
6. Pledging or transferring the reserved goods or the assigned claims by way of security shall not be permissible. The seller shall be notified immediately of any pledges along with the details of the garnisher.
7. In the event that the seller takes back the delivered item in order to exercise his rights with respect to the reservation of title, this shall not automatically imply withdrawal from the contract. The seller shall be entitled to sell the reserved goods taken back on the open market.
8. The purchaser shall hold the reserved goods in safe custody for the seller free of charge. He shall insure them against the usual risks such as fire, theft and water to the extent customary. The purchaser shall assign to the seller his rights to compensation from insurance companies or other persons liable for compensation due to of damage of the types mentioned above up to the invoice value of the goods. The seller shall accept the assignment.
9. All claims and rights arising from the reservation of title to all the special forms specified in these provisions shall remain valid until complete release from all contingent liabilities (cheque/bill of exchange) that the seller has entered into in the interests of the purchaser. In the case of Sentence 1, the purchaser is generally permitted to execute factoring for his outstanding accounts. However, the purchaser shall inform the seller before entering into contingent liabilities.

#### § 14 Supplementary Provisions for Berger Digital Printing Textiles

1. New customers of the Berger "Digital Printing Textiles" division shall be required to make advance payment of the purchase price for the first three contracts concluded.
2. The minimum value of each contract concluded is 200 euro. Should a contract be agreed with a lower order value, a small-volume surcharge of 29 euro will be charged.
3. The minimum charge for roll cuts is 15.00 euro per cold cut for special widths and 30.00 euro per hot-cut for special widths.
4. The safe shipping of XXL rolls is an essential part of materials quality assurance. To this end, the seller shall package single rolls in transportation tubes or on a pallet. The costs for shipping in transportation tubes and/or on pallets shall be borne by the purchaser.

### § 15 Supplementary Provisions for Berger Textiles for Stage, Event and Art Canvas

1. New customers of the Berger "Textiles for Stage, Event and Art Canvas" division shall be required to make advance payment of the purchase price for the first three contracts concluded.
2. The minimum value of each contract concluded is 200 euro. Should a contract be agreed with a lower order value, a small-volume surcharge of 29 euro will be charged.
3. In general there is no coupon surcharge for short pieces which we have in stock. For cutting (coupons) we charge extra 20% coupon surcharge plus a 20.00 euro standard charge per cut..

### § 16 Supplementary Provisions for Accessories

1. New customers of the Berger „Accessories“ division shall be required to make advance payment of the purchase price for the first three contracts concluded
2. The minimum value of each contract concluded is 100 euro. Should a contract be agreed with a lower order value, a small-volume surcharge of 29 euro will be charged. This small-volume surcharge shall not be applied for combined orders for fabrics with a total value of 200 euro or more.
3. Goods of the "Accessories" division are generally not available cut and are delivered in complete packing units.

### § 17 Applicable Law

The laws of the Federal Republic of Germany shall apply. The United Nations Convention on Contracts for the International Sale of Goods dated April 11, 1980 is excluded.