General Terms and Conditions of Business

Clause 1 General

1. Our General Terms and Conditions of Business (GTC) constitute part of the contract and apply exclusively. We do not recognise terms and conditions set by the Customer which contradict or deviate from our terms and conditions, unless we have consented to their validity in writing. We, therefore, also do not recognise deviating conditions if we, having knowledge of the terms and conditions set by the Customer which contradict or deviate from our terms and conditions, execute the order without reservation. Our GTC also apply to all future transactions with the Customer, provided it concerns a mutual commercial transaction. The version valid at the time of concluding of the contract is decisive.
2. Agreements which we have made with the Customer which deviate or supplement the GTC take precedence over these GTC, provided these were agreed on between the parties in writing. Verbal agreements are only binding if they have been confirmed in writing.
3. Regarding our information obligations according to the EU GDPR we refer to our Data privacy statement which can be found at www.bertrandt.com/en/privacy-note.html.

Clause 2 Offers, prices, price adjustments, advance payment

1. Our offers are subject to change and are directed exclusively to the specified recipients. Our offers must always be treated confidentially and may not be disclosed to third parties in whole or in part. Any disclosure of our offer or parts thereof requires our prior written consent.
2. Our prices are net prices, unless otherwise expressly stated. Value-added tax at the statutory rate is detailed separately in the invoice. In the event that the statutory rate of the value-added tax is amended, we will adjust our payment to the same extent and on the date of the amendment without this giving the Customer a right to terminate the contract.
3. Our prices are “ex works” prices excluding transportation, insurance and packing, unless expressly agreed otherwise.
4. Additional services are invoiced separately. We have the right to request an appropriate advance before performing an order.

Clause 3 Terms of payment, late payment

1. Unless otherwise agreed in writing, we are entitled to issue monthly invoices. The agreed remuneration without any deduction shall be due within fourteen (14) days from receipt of the invoice.
2. Our invoices are considered acknowledged, if the Customer does not object in writing within two weeks from receipt of the invoice.
3. We are not obliged to accept bills of exchange, cheques or promissory notes; in all cases, acceptance is on account of performance only. The Customer shall defray all bill and discount charges; they shall be paid in cash immediately. If the Customer is late in making a payment, we are entitled to return any accepted bills of exchange before they expire and demand immediate cash payment.
4. The customer shall only be entitled to such rights of retention that are based on counterclaims from the same legal transaction.
5. The Customer may only offset our claims with undisputed or legally established claims. This shall not apply to claims of the customer which are in a close synallagmatic relationship to our claims. The customer shall be entitled to offset such claims without restriction.
6. If, after conclusion of the contract, we become aware of facts that call into question the Customer´s ability to pay, we are entitled to demand payment of the agreed remuneration or provision of suitable security. Facts that call into question the Customer´s ability to pay in the aforementioned sense are, in particular, seizures or other compulsory enforcement measures against the customer's assets, the filing of an application to open insolvency proceedings or if the customer is in default of payment of a (partial) invoice in whole or in part. We shall also be entitled to suspend our further performance until payment has been made or security has been provided and to terminate the contract with the customer after the unsuccessful expiry of a reasonable period. Further claims remain unaffected by this.

Clause 4 Execution of orders

1. Orders placed with us orally by the Customer are also binding. In any case, we are entitled to immediate written confirmation. An order shall be deemed to have been placed if we start executing the order with the knowledge of the Customer without the Customer objecting.
2. Before placing the order, the Customer is obliged to inform us of any laws, standards and other regulations on the basis of which the service is to be carried out and to provide us before placing the order with all data, documents and other information in written form of free charge which we are to take into account in the creation of the object of the service. The customer is also obliged to inform us of the planned area of application of the service and to define it precisely before placing the order. Agreements on quality concluded with the customer shall take precedence over objective requirements.
3. Modifications and supplements to our performance can in principle only be agreed by mutual consent.. The Customer undertakes to issue a written order for the amendments. We shall have the right to suspend work on our performance until agreement has been reached on the amount of the supplementary remuneration and the effects with regard to the agreed schedule and until a written order has been submitted.
4. The observance of an agreed delivery time requires that the Customer has fulfilled all of its obligations. If we are dependent on the services of one or more sub-suppliers for our performance, agreed performance and delivery dates shall apply subject to the timely performance of our sub-suppliers. This reservation shall not apply to delays which we are responsible for ourselves. We will report any emerging delays to the Customer without undue delay.
5. Deliveries are made “ex works”. The risk of loss of performance transfers to the Customer as soon as we have handed over the performance to a carrier or other person for the purpose of transportation. In the case of data transmission, the transfer of risk takes place when the data is sent.
6. We are entitled - insofar as this is reasonable - to make partial deliveries and partial services as well as provide a service before the due date.
7. We are entitled to engage third parties for the performance of the service and to subcontract the order in whole or in part, provided that the interests of the Customer which are worthy of protection are not impaired thereby.
8. If we are unable to perform due to force majeure or other events for which we are not responsible, we shall be released from the delivery/service for as long as the prevention to performance persists and we have informed the Customer immediately in writing. Force majeure in the aforementioned sense also include shortages of raw materials, energy and labor, labor disputes, serious transport disruptions, operational disruptions for which we are not responsible or which are unforeseeable, official measures for which we are not responsible and pandemics. If the preventions last longer than four (4) months, we have the right to withdraw from the contract if the fulfillment of the contract is no longer of interest to us as a result of the prevention and we have not assumed the procurement or manufacturing risk. At the request of the Customer, we shall declare after the expiry of the period whether we are withdrawing from the contract or fulfilling our performance obligations within a reasonable period of time.

Clause 5 Warranty

1. The law applies unless otherwise specified below.
2. The assertion of warranty claims presupposes that the performance relationship is not a service and that the Customer has fulfilled its obligations to inspect and give notice of defects in accordance with Section 377 of the German Commercial Code immediately, properly and in writing. Defective performances, to which Section 377 of the German Commercial Code does not apply, must be reported within a preclusion period of one calendar week from the time the defective performance comes apparent. The Customer shall not be entitled to any rights due to an insignificant defect.
3. If the subsequent improvement or replacement delivery fails twice within a reasonable period of time , the Customer may, at its discretion, demand reduction of the remuneration, rescission of the contract or compensation instead of the performance.
4. Defects in a product which are due to failure to comply with operating and/or maintenance instructions, which are based on improper modifications to the product or are caused by the use of parts or consumables which do not comply with the original specifications, do not constitute a defect. The same applies to defects which are based on information or specifications provided by the Customer.
5. All warranty claims of the Customer shall statute-barred within one year from the statutory commencement of the limitation period. For defects caused by intentional or grossly negligent defects, the statutory limitation period shall apply in derogation thereof.
6. Statutory recourse claims of the Customer against us exist only insofar as the Customer has not made any agreements beyond the statutory warranty regulations with its buyers.
7. Insofar as we have identified parts of our service item as products of pre-suppliers, the Customer is initially obliged to make a claim against this pre-supplier. We assign to the Customer the warranty claims to which we are entitled in this respect against the supplier. The Customer accepts this assignment. If the pre-supplier refuses to rectify the defect or results in an unreasonable delay or difficulty to pursue the claim for the Customer, the Customer is entitled to make a claim against us as well.

Clause 6 Rights to the results, rights of third parties

1. The results arising from the performance of the service shall become the property of the Customer upon payment of the agreed remuneration.
2. Insofar as protectable rights arise in connection with our performance, the Customer shall receive at its request expressly declared to us in writing, upon payment of the agreed remuneration, irrevocably the non-exclusive, solely transferable, temporally, factually and locally unlimited right to use and exploit the results – itself or through third parties – in unchanged or changed form in all known ways of use. This right of use and exploitation includes, in particular, the right to reproduce the result – by itself or by third parties – , to distribute it by using any medium in physical or non-physical form, make it available, reproduce publicly, publish, process and/or transform, to distribute it, also through leasing and renting, and to grant to third parties for all types of use - solely and at their own discretion – any rights of use thereto. This also includes, among other things, the right to online use in all communication networks (Internet, etc.) as well as use in fixed and mobile data networks and on end devices. If the result is a software program In the event that deliverables of software programs are involved, we shall transfer to the Customer the aforementioned rights of use with regard to both the object code and the source code of the software.
3. We retain a non-exclusive right to use the work for our own scientific research and development purposes. We may also freely dispose of the technical knowledge outside

the contract, i.e. grant rights of use within the scope of research and development contracts from third parties and also without research and development contracts with third parties, and in these cases without obtaining the consent of the original Customer in whose project the corresponding technical knowledge originated to grant rights of use.
4. Insofar as the use of our employees is necessary for the abovementioned transfer of rights, we undertake to declare this use in due time. In the event that costs or other financial obligations arise as a result of the use or transfer of the rights, these shall be defrayed by the Customer and shall indemnify us against all corresponding claims to this extent.
5. We expressly waive the right to be named author of the work result.
6. If we execute the order according to the Customer's specifications, the Customer shall be responsible for ensuring that we do not infringe any third-party rights. If we are called upon in this case by a third party, the Customer is obliged to indemnify us upon first request. The indemnification obligation also applies to all costs that are necessarily incurred by us.

Clause 7 Withdrawal, termination
1. The Customer is not entitled to a statutory right of withdrawal due to a service not performed or not performed in accordance to the contract, if we are not responsible for the breach of obligation.
This does not apply if the Customer has a no-fault right of withdrawal derived from special agreements (e.g. business to be settled on a fixed date). The same shall apply in the case of a defect in the product. In these cases, the statutory regulations apply.
2. If the Customer terminates the contract, we are entitled to the agreed remuneration less our expenses saved due to the premature termination of the order.
3. In the event that the Customer acts in breach of contract, in particular in the case of default, we are entitled to withdraw from the contract take back our performance.

Clause 8 Liability
We shall be liable to an unlimited extent, irrespective of the legal grounds, for intentional or grossly negligent action, in the event of culpable injury to life, body, in the event of a breach of the Product Liability Act or in the event of a breach in connection with a warranted characteristic. In the event of a slightly negligent breach of material contractual obligations, our liability is however limited to compensation of damage that is foreseeable and typical at the time of conclusion of the contract. Material contractual obligations are obligations, which protect legal positions of the Customer that are material to the contract, i.e. those obligations which the contract, already in accordance with its contents and purpose, shall guarantee to him, as well as obligations whose fulfilment makes the proper performance of the contract possible in the first place and whose fulfilment the Customer may regularly rely.
The limitation of liability also applies to the benefit of our employees as well as their vicarious agents and subcontractors.
A reversal of the burden of proof is not associated with the above provisions.

Clause 9 Reservation of ownership
1. We reserve the right of ownership to all our services until receipt of all payments arising from the business relationship with the Customer. In the case of any current account balance, we reserve the right of ownership until the balance is settled; in the case that bills of exchange or cheques have been accepted, until they have cleared. Insofar as the validity of the reservation of the right of ownership is subject to special conditions or special formalities in the country of destination, the Customer must ensure that these are fulfilled.
2. The Customer has the right to resell our performance as part of ordinary business activity and without an assignment exclusion having been agreed. In this case, the Customer assigns to us his claim derived from the resale with all ancillary rights up to the amount of our claim including our ancillary claims; we hereby accept this assignment. In the event of current account agreements by the Customer with the third party, this applies accordingly to the Customer's balance claim of the current account. The Customer shall also remain authorised to collect the assigned claim even after the assignment. Our authority to collect the claim ourselves remains unaffected by such. We undertake, however, not to collect the claim as long as the Customer is not in default of payment and, in particular, does not file for insolvency proceedings or suspend payments. If such is the case, the Customer undertakes to notify us of the assigned claims and their debtors and to provide all details required for collection, hand over the associated documentation and notify the debtors of the assignment.
3. Any processing or reconstruction by the Customer of the delivered goods is always carried out for us. If the goods are processed with other objects which do not belong to us, we acquire co-ownership of the new object as a ratio of the value of the purchased object to the other processed objects at the time of the processing. Furthermore, the same applies to the object resulting by processing as to the goods delivered under reservation of rights.
4. The Customer may neither pledge nor assign by way of security the goods subject to a right of ownership and must notify us immediately of attachments which have been made at the instigation of a third party.
5. We undertake at the request of the Customer to release securities to which we are entitled if the realisable value exceeds the claims to be secured by more than 10%. The choice of securities to be released is our responsibility.

Clause 10 Tools for the execution of orders
1. If we produce (auxiliary) models, molds, tools, etc. (hereinafter referred to as "tools") within the scope of the requested service, these do not constitute part of the service and remain our property, unless otherwise expressly agreed in writing.
2. After acceptance of requested service by the Customer, we will store these tools for a period of six (6) months. Once this period has expired, we are entitled to scrap the tools, unless we have expressly agreed in writing with the Customer to store the tools or transfer the tools for payment of an appropriate remuneration.

Clause 11 Confidentiality
1. Only data, plans and other documents and information which have been expressly declared in writing by the Customer as confidential are subject to any confidentiality obligation and may not be disclosed to third parties. Information disclosed orally by the Customer must be marked in writing as confidential within ten (10) days. The confidentiality obligation does not apply if the information is publicly known or becomes publicly known due to no fault of our own, if we have acquired the information ourselves without using information from the Customer, or if the law or an authority requires us to disclose it due to a mandatory statutory regulation. Our confidentiality obligation lasts for a period of five (5) years from the time of disclosure.
2. Third parties in the abovementioned sense do not include employees of companies which are affiliated with us or our parent company as per sections 15 et seqq. of the German Stock Corporation Act (AktG provided that they require the information fpr the performance of our service and have previously been obliged to maintain confidentiality.

Clause 12 Recruitment
1. If the Customer or an affiliated company as per sections 15 et seqq. of the German Stock Corporation Act (AktG) concludes a contract of employment with an employee deployed by us during the provision of the service in the first month of the provision of the service or if the service relationship ends after the first month and the Customer or an affiliated company as per section 15 et seqq. of the German Stock Corporation Act (AktG) concludes a contract of employment in direct temporal connection after termination of the service provision, we are entitled to charge 15% of the employee's annual gross income plus statutory value added tax as a fee. After 3 months of service provision, this fee shall be reduced to12% of the employee's annual gross income , after 6 months to 9% and after 9 months to 5% of the employee's annual gross income. The fee shall no longer be charged after twelve (12) completed months of provision of the service.. The relevant fee shall be due in one sum upon conclusion of the employment contract. The Customer is responsible for providing information to enable us to establish the yearly income.
2. The foregoing does not apply if the work of the employee in providing the service is not the cause of the employment with the Customer. The Customer bears the burden of proof for non-causality.

Clause 13 Place of performance, place of jurisdiction, applicable law
1. The place of performance is the registered office of our company.
2. The exclusive legal venue for all claims arising from the business relationship with merchants is our place of business. The same legal venue applies if the Customer does not have a general legal venue domestically, relocates its domicile or habitual residence abroad after conclusion of the contract or its domicile or habitual residence is not known at the time the action is brought. However, we are entitled to bring an action against the Customer at his place of business or another competent court.
3. German law applies to all legal relationships exclusively. The UN Convention on Contracts for the International Sale of Goods of 1980 and other conflicting rules do not apply.

Clause 14 Final provision
If a point in the contractual relationship with the supplier is or later becomes invalid in whole or in part for reasons other than Sections 305-310 of the German Civil Code, the validity of the other provisions shall not be affected insofar as the performance of the contract does not cause an unreasonable hardship for one party, taking into account the following provision. The parties are aware of the case law of the Federal Supreme Court of Justice whereby a severability clause merely reverses the burden of proof. However, it is the express will of the parties to maintain the validity of the other contractual provisions under all circumstances and therefore contract out Section 139 of the German Civil Code. The same applies to a gap in the contractual relationship. In place of the invalid or impracticable provision, an appropriate provision shall apply which comes as close as possible to what the parties wanted or would have wanted if they had considered the point at the time of the conclusion of the contract or at the time of the later inclusion of a provision.