

GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY

Berner International GmbH – May 2022

1. General Provisions

- 1.1. These General Terms and Conditions of Sale and Delivery (hereinafter referred to as GTCS) apply to all deliveries and other services provided by us. They are an integral part of all contract offers and contract acceptances and also apply to orders placed in our online shop. For the performance of construction work, the provisions of the German Construction Contract Procedures (VOB), Part B, as amended from time to time, shall also apply.
- 1.2. These GTCS apply exclusively. We do not recognise any terms and conditions of the customer that conflict with or deviate from these GTCS unless we have expressly agreed to their validity in writing. They shall also not become part of the contract even if we carry out the delivery or service without special reservation in the knowledge of these terms and conditions. The customer accepts these GTCS without reservation at the latest upon receipt of the goods, even if he has previously objected to them.
- 1.3. These GTCS shall also apply to all future transactions with the customer, even if we do not refer to the validity of the GTCS again.
- 1.4. Our GTCS apply only to entrepreneurs within the meaning of section 14 BGB (German Civil Code).
- 1.5. Individual agreements made with the customer in individual cases (including collateral agreements, supplements and amendments) shall take precedence over our GTCS. Such agreements must be made or confirmed in writing for evidentiary purposes. Subject to proof to the contrary, the contract or our written confirmation shall be authoritative for the conclusion and content of such agreements.
- 1.6. Legally relevant declarations and notifications of the customer (e.g. setting of deadlines, notification of defects, revocation or reduction) are only effective if they are made in text or written form (e.g. letter, e-mail, fax). Insofar as these GTCS require compliance with the written form for unilateral declarations, compliance with the text form shall also be sufficient.

2. Offers, Conclusion of Contract, Special Provisions and Information for Orders in the Online Shop

- 2.1. Cost estimates, price and delivery information, for example in our online shop and in catalogues, do not constitute legally binding offers, but are to be understood as an invitation to the customer to submit an offer. Orders placed by the customer are binding offers to us, to which the customer

is bound for 14 days in case of doubt. The contract is concluded when we confirm the customer's order, start to execute the contract or deliver the goods. The customer waives receipt of our declaration of acceptance. If, by way of exception, our declaration is to be understood as a legally binding offer, we shall be entitled to withdraw from our offer at any time until acceptance by the customer, unless the offer expressly states otherwise.

- 2.2. No verbal agreements or collateral agreements exist.
- 2.3. Cost estimates, sketches, drawings, specifications, performance descriptions and other documents which are not part of the scope of delivery shall remain the property of BERNER. They must not be made accessible to third parties and must be returned to BERNER without undue delay upon request.

3. Special provisions and information for orders in our online shop:

- 3.1. Our online shop is also aimed at entrepreneurs only. We do not conclude any contracts with consumers.
- 3.2. Orders are only possible after registration in the online shop. With the registration request, the customer confirms his entrepreneurial status. Before activating the customer for orders in the online shop, we carry out a corresponding check. We reserve the right to reject registration requests from customers. The customer is obligated to provide complete and truthful information when registering, to provide corresponding proof at our request and to correct the data in the event of changes.
- 3.3. We are entitled to accept orders placed by the customer in the online shop within three working days.
- 3.4. If the customer makes an online enquiry via our online shop, this does not constitute a contractual offer by the customer, but a non-binding request by the customer for a contractual offer or further information.
- 3.5. The ordering process in the online shop comprises the following steps: After logging in with his registration data, the customer can place the goods in a virtual shopping cart without obligation by clicking on the button "add to shopping cart", which is additionally provided with the shopping cart symbol. The customer can view the contents of the shopping cart at any time by clicking on the shopping cart symbol and can delete products from the shopping cart or change the quantity using the fields provided. Before placing an order, the customer has the opportunity to check all details in an order overview and to correct input errors using the editing fields provided. We store the text of the contract. The customer can view, print and save these GTCS as part of the order process. The customer can save and/or print out the content of the order or reservation immediately after placing the order. Furthermore, we will send the customer the content of the order and the GTCS in force at the time of the order after the order has been placed. A later inspection of the order history is possible under the heading "My Account". It is not possible to view the version of the GCTS valid at the time of the order there. The contract language is German

4. Prices, Minimum Quantity Surcharge, Price Adjustments, Shipping Costs

- 4.1. All prices quoted by us are in euros plus the respective statutory value added tax. Unless otherwise agreed, our prices are "net ex works" (EXW Incoterms 2020), i.e. excluding packaging, loading, insurance, customs duties and other charges, transport costs and VAT payable on the goods. If the customer wishes the goods to be shipped by us when ordering in our online shop, we will point out any shipping costs incurred in the course of the order.
- 4.2. Unless otherwise agreed, a minimum quantity surcharge of EUR 12.50 shall be charged for orders with a value of less than EUR 250.00.
- 4.3. If we have undertaken the installation or assembly of the goods, the customer shall, insofar as not otherwise agreed, bear all necessary ancillary costs, such as travel expenses, costs for the transport of tools and costs for on-site installations (electricity, water, etc.), in addition to the agreed remuneration.
- 4.4. The prices stated for our delivery are based on the circumstances prevailing at the time of conclusion of the contract. In the event of unforeseeable significant cost increases beyond our control, e.g. due to increases in freight rates, transport costs, taxes, customs duties or other public charges, currency fluctuations, price increases for raw materials or supplies, we shall be entitled to adjust the prices at our reasonable discretion.
- 4.5. If we undertake connection and/or installation work, the necessary expenditure can only be calculated approximately in advance. If the expenditure is higher than expected due to circumstances unforeseeable by us, in particular due to the circumstances at the customer's premises, the customer shall bear the costs for the additional expenditure to be incurred by BERNER as well as any additional material costs.
- 4.6. In the event of price increases of more than 15% of the net price, the customer shall be entitled to revoke the contract. The revocation must be declared by registered letter without undue delay after notification of the price increase. Otherwise, the revocation shall be without effect. In the event of revocation, the customer shall pay reasonable remuneration for the services rendered by us up to this point in time, insofar as these cannot be returned.

5. Delivery Period, Delivery

- 5.1. Details of delivery dates are non-binding unless they have been agreed in writing as binding dates. For orders placed via our online shop, goods that are available in stock will be dispatched within three working days of the submission of your order. We point out deviating delivery periods in the respective product offers.
- 5.2. An agreed delivery period begins at the earliest with the conclusion of the contract, but not before complete clarification of the technical and commercial details of the execution of the order. The commencement of all deadlines applicable to us also presupposes the timely fulfilment of all necessary acts of cooperation, in particular the timely receipt of all necessary information and documents and approvals and releases to be provided by the customer, as well

as compliance with the agreed terms of payment by the customer. If these preconditions are not met for reasons for which BERNER is not responsible, delivery periods shall not commence or shall be extended accordingly.

- 5.3. If, after conclusion of the contract, circumstances become known which give rise to doubts about the customer's ability to pay, we reserve the right to make delivery dependent on collateral or advance payment.
- 5.4. We shall not be liable for non-deliveries or delays in delivery if these are due to force majeure or any other impediment beyond our control and if we could not reasonably be expected to consider the impediment or to avoid or overcome the impediment or its consequences. This applies, for example, to acts of war, acts of terror, acts of nature, operational, transport and traffic disruptions, non-delivery of supplies and raw materials, strikes, lawful lockouts, official orders, mass illnesses, epidemics and pandemics, manufacturing disruptions including machine breakdowns, labour shortages. In such cases, we will inform the customer of the reason for the impediment and its effects. If such an event makes it considerably more difficult or impossible for us to deliver or perform and the hindrance is not only of temporary duration, both parties are entitled to revoke the contract. In the event of hindrances of temporary duration, our delivery or service deadlines shall be extended or our delivery or service deadlines shall be postponed by the period of the hindrance plus a reasonable start-up period. Either party shall be entitled to revoke the contract if the resulting delay exceeds a period of three months or if, as a result of the delay before the expiry of this period, it can no longer be reasonably expected to continue to adhere to the contract, with the consequence that any advance payments made shall be refunded. No other claims shall exist.
- 5.5. Delivery shall be subject to timely and proper self-delivery by our suppliers. We do not assume any procurement risk. In the event of non-availability of the service, we will inform the customer.
- 5.6. If we have informed the customer in an appropriate and reasonable manner of delivery bottlenecks prior to conclusion of the contract, in particular if we are unable to secure delivery at the time of conclusion of the contract through timely covering purchases, the following shall apply:
 - The agreement is made subject to availability. The delivery period shall be extended until the goods are available. Delivery to the customer will be made as soon as possible after receipt of the goods by us, whereby we will fulfil the customers' orders in the chronological order in which the contracts were concluded. We will inform the customer when the goods are available.
 - The customer is entitled to revoke the contract if delivery is not made within six weeks of the advised delivery date.
 - In the event of revocation, we will reimburse the customer without undue delay for all payments made in return. Further claims of the customer are excluded.
- 5.7. Partial deliveries are permissible insofar as reasonable.
- 5.8. In the event of a culpable delay in delivery, the customer shall be entitled to set BERNER a reasonable deadline for performance, which must generally be at least two weeks.
- 5.9. In the event of a delay in delivery or impossibility, we shall only be liable for damages in accordance with clause 10.

- 5.10. Unless expressly agreed otherwise, we shall provide delivery "ex works" (exw Incoterms 2020). The customer is exclusively responsible for the transport including loading and proper transport securing at his own expense.
- 5.11. Even if we undertake the dispatch of the goods for the customer, the transport shall be at the customer's expense and risk, unless expressly agreed otherwise. In this case, the risk of accidental destruction and accidental deterioration of the goods shall pass to the customer upon delivery of the item to the forwarding agent, the carrier or the person otherwise designated to carry out the shipment. This also applies if partial deliveries are made, if we bear the costs of the transport and/or if we carry out the transport ourselves. Even if we dispatch the goods or carry out the transport ourselves, the customer shall be responsible for unloading at his own expense and risk, unless we have assumed unloading as an additional service in accordance with an express agreement. If we have undertaken the shipment, the choice of the mode of shipment and transport shall be made at our reasonable discretion.
- 5.12. We will only insure the shipment against theft, breakage, transport, fire and water damage or other insurable risks at the express request of the customer and at the customer's expense. The shipping options applicable to orders in our online shop will be displayed to the customer during the order process.
- 5.13. If our employees or other third parties working for us assist the customer in loading and/or securing transport and/or unloading, without us being under any legal obligation in this respect, this shall be done as a matter of courtesy and at the customer's own risk. These persons shall act as vicarious agents of the customer. We do not assume any responsibility in this respect. The customer shall indemnify us against all possible claims of third parties.

6. General Cooperation Obligations of the Customer, Default in Acceptance, Customer's Liability for Damages

- 6.1. The customer shall be obliged to perform all contractually regulated, necessary or in good faith owed acts of cooperation in a timely manner, in particular to obtain all approvals required for the performance and to provide all necessary information and documents and data as well as to ensure the time availability of competent contact persons.
- 6.2. We are entitled to set the customer a reasonable deadline for the performance of an act of cooperation. After unsuccessful expiry of the deadline, we shall be entitled to revoke the contract.
- 6.3. In the case of call-off orders, the customer shall be obliged to make the call-off within the agreed deadlines. If no deadline has been specified, we shall be entitled to set the customer a deadline for the call-off if no call-off is made by the customer within three months.
- 6.4. If the customer does not perform cooperation obligations or does not perform them in accordance with the contract, if the customer does not make an agreed call-off, if the goods are dispatched later than the scheduled delivery date at the customer's instigation or due to circumstances for which the customer is responsible, or if the customer is in default of

acceptance due to other circumstances, we shall be entitled to demand compensation for the resulting damages and additional expenses. During the delay in acceptance, we are entitled to charge a lump sum for damages in the amount of 0.2% of the invoice amount for each commenced week, but not more than 5% of the invoice value. The customer is entitled to prove to us that no or considerably lower damages have been incurred. We reserve the right to prove higher damages. Further rights, in particular the right to revoke the contract or to claim damages in lieu of performance, shall remain unaffected. In such cases, the risk shall pass to the customer upon notification of readiness for dispatch.

- 6.5. If the customer owes damages in lieu of performance, we are entitled to demand lump-sum damages in the amount of 15% of the purchase price, insofar as the customer does not prove a lower damage. We reserve the right to claim higher damages in accordance with the statutory provisions.

7. Special Provisions for Assembly and Erection Services as well as Repair Services

- 7.1. If, in addition to delivery, we have also undertaken to carry out installation or erection or if we undertake maintenance or repair work, the following provisions shall apply additionally:
- 7.2. The customer shall create all conditions to enable us to perform the contractually agreed services, in particular the installation and assembly of equipment. In particular, he shall provide suitable premises equipped with the necessary technical facilities, including suitable power sources, at his own expense. Upon request, the customer shall provide all necessary information on the location of concealed power, gas, water lines or similar information as well as any required static information.
- 7.3. The customer shall be responsible for backing up data. In particular, the customer is obliged to back up all data located on the equipment before performing the services, especially installation, maintenance or repair work.
- 7.4. Cost estimates for repair services are non-binding.

8. Payment

- 8.1. Invoice amounts are due for payment immediately upon receipt of the invoice. Deductions, such as cash discounts, are not permitted unless expressly agreed otherwise.
- 8.2. We are entitled, also within the framework of an ongoing business relationship, to conclude a contract in whole or in part only against advance payment at any time.
- 8.3. The customer shall be in default if the respective claim amount is not paid within the agreed payment period or the payment period specified in the invoice. If no payment deadline is specified, the customer shall be in default if the invoice amount is not paid within 14 days of receipt of the invoice. The date of receipt of the payment by us shall be decisive. An earlier

occurrence of default in accordance with the statutory provisions, in particular by means of a warning notice, shall remain unaffected.

- 8.4. During the period of default, the customer shall be obliged to pay default interest and lump-sum damages in accordance with the statutory provisions as minimum damages. We reserve the right to claim damages in excess thereof. With respect to merchants, our claim to the commercial due date interest (section 353 HGB (German Commercial Code)) remains unaffected. We reserve the right to assert further rights, in particular to revoke the contract and/or to claim damages.
- 8.5. If, after the conclusion of the contract, we become aware of circumstances which are likely to significantly reduce the creditworthiness of the customer and which jeopardise our claim to the purchase price, we shall be entitled to provide outstanding services only against advance payment or the provision of security. Section 321 BGB shall apply (*mutatis mutandis*). In such a case, we are entitled to withdraw from all special agreements (including special discounts), deferment agreements and payment terms granted, also with regard to all other outstanding claims from the business relationship, and to make the claims due immediately. A circumstance that is deemed to significantly reduce the creditworthiness of the customer is, for example, default on payment obligations.
- 8.6. The customer shall only be entitled to rights of set-off and retention if his counterclaims have been finally and non-appealably established, are uncontested or have been recognised. This also applies if his counterclaim is based on the same legal relationship. In the event of defects in the goods, however, the customer's counterclaims shall remain unaffected, in particular in accordance with clause 9.5 of these GTCS.

9. Retention of Title

- 9.1. We retain title to the delivered goods until the purchase price and all other existing or (at the time of the conclusion of the contract) future claims (including all balance claims from the current account) against the customer arising from the business relationship have been settled in full. Ownership of the goods shall automatically pass to the customer as soon as the purchase price has been paid and there are no further claims from the business relationship (current account reservation).
- 9.2. The customer is entitled to sell or process the goods subject to retention of title in the ordinary course of business. The authorisation shall automatically expire if the customer is in default of payment, the opening of insolvency proceedings against his assets has been applied for or he is obliged to apply for insolvency proceedings.
- 9.3. In the event of a resale of the goods subject to retention of title on credit, the customer is obliged to sell the goods only against sufficient collateral (e.g. agreement of his own retention of title, etc.). The customer is only permitted to pledge or to transfer of ownership by way of security with our prior written consent.
- 9.4. Any treatment or processing of the goods subject to retention of title by the customer shall always be carried out for us as processor within the meaning of section 950 BGB. If the goods are

processed, transformed, inseparably mixed or combined with other items not belonging to us, we shall acquire co-ownership of the new item in the ratio of the value of the goods subject to retention of title (invoice value incl. VAT) to the value of the other processed items at the time of processing, transformation, mixing or combination. If a combination or mixing is carried out with an item of the customer which is to be regarded as the main item, so that the customer acquires sole ownership, it is already agreed now that the customer transfers co-ownership of the end product to us in proportion to the value of the original materials at the time of the combination or mixing. We accept the transfer of ownership. The customer shall keep the (co-)ownership for us free of charge. The provisions for goods subject to retention of title shall apply accordingly to the products resulting from processing, mixing or combining.

- 9.5. The customer hereby assigns to us by way of security his claim arising from the resale of goods subject to retention of title in the amount of the invoice value of our claims (including value added tax) to which we are entitled against the customer from the business relationship at the time of the resale, plus a security surcharge of 20%. The assignment shall apply irrespective of whether the goods subject to retention of title were resold without or after processing or mixing.
- 9.6. The customer is authorised to collect the claims assigned to us from the resale in the ordinary course of business. The proceeds to which we are entitled shall be forwarded to us immediately upon receipt. At our request, the customer shall inform us of the names of the debtors of the assigned claim and notify them of the assignment. We are authorised to inform the buyers of the assignment also in his name. The authorisation to collect shall automatically expire if the customer is in default of payment, the opening of insolvency proceedings against his assets has been applied for or he is obliged to apply for insolvency proceedings.
- 9.7. Notwithstanding any automatic expiry, we shall be entitled to withdraw from the resale and/or processing authorisation and/or the collection authorisation if the customer breaches his obligations towards us, in particular if he fails to properly fulfil his payment obligations arising from the business relationship, in particular if he is in default of payment, or if he breaches his obligations as a conditional buyer or if it becomes apparent after the conclusion of the contract that our payment claims arising from the business relationship with the customer are jeopardised by the customer's lack of ability to pay. In the event that the collection authorisation expires, the customer shall provide us with the information on the claim required for collection and, if necessary, support us in the collection process.
- 9.8. Furthermore, in the event of conduct by the customer in breach of contract, we shall be entitled to revoke the contract in accordance with the statutory provisions. Optionally, we are also entitled to merely demand the return of the goods, provided that the requirements for revocation are met. Such a mere demand for return does not constitute a declaration of revocation. However, we reserve the right to revoke the contract. The same shall apply if we seize the goods subject to retention of title. The customer shall bear the transport costs incurred for taking back the goods. We shall be entitled to realise any goods subject to retention of title taken back by us. The proceeds of the realisation shall be offset against the amounts owed to us by the customer after we have deducted a reasonable amount for the costs of the realisation.
- 9.9. The customer is obliged to treat the items in our (co-)ownership with care at his own expense, to store them carefully and to insure them adequately against the usual risks (theft, breakage,

fire, water) and to provide evidence of the conclusion of the insurance on request. We may at any time require the customer to take an inventory of the goods delivered by us at their respective storage location and to identify the goods as our property. Insurance claims as well as claims against third parties due to damage, destruction, theft or loss of the goods are already now assigned to us by the customer by way of security. We hereby accept this assignment.

9.10. The customer shall notify us without undue delay after becoming aware of any third party seizure of the goods subject to retention of title and shall provide us with all information and documents necessary for an intervention. The customer shall be liable for the costs incurred for the cancellation of the seizure, in particular by initiating third-party proceedings instituted to prevent the execution of a judgment, insofar as they cannot be obtained from the enforcing creditor.

10. Warranty for Defects

10.1. Our products are free of defects if they have the agreed quality at the time of transfer of risk, are suitable for the use assumed under the contract and are handed over with the agreed accessories and instructions that the customer can usually expect. The customer shall bear the burden of proof for the existence of a defect. We point out that the illustrations, drawings, quality, quantity, weight, dimension and performance data contained in our offers and printed materials only represent approximate values. Public statements, recommendations or advertising by BERNER or by a third party do not constitute a contractual description of the quality of the goods. BERNER does not give any guarantees in the legal sense. A guarantee shall only exist if it is expressly designated as such. The right to make technical changes as well as changes in shape, colour and/or weight within the bounds of what is reasonable is reserved.

10.2. In the event of defects in the goods, we shall, at our discretion, provide a warranty by rectifying the defect free of charge or by making a subsequent delivery (cure). We are entitled to demand that the customer return the goods to us for the purpose of examining the complaint and, if necessary, for rectification/subsequent delivery. The necessary transport costs for the return of the goods shall be borne by us in the event of justified complaints. Insofar as it is reasonable for the customer, we are entitled, at our reasonable discretion, to carry out the rectification in such a way that a replacement part is sent to the customer and the customer carries out the exchange. We shall bear the costs of the replacement part including shipping. We are entitled to refuse cure due to disproportionate costs. The cure shall be disproportionate in any case if the costs of cure amount to more than 120 % of the purchase price.

10.3. The customer may only revoke the contract or reduce the purchase price if no attempt at cure is made by us within a reasonable period set or if cure is impossible, refused, failed or unreasonable. The period for cure must be at least four weeks, provided that no justified interests of the customer are opposed. In case of doubt, a failure of the cure shall only be assumed after the third failed attempt of cure. The customer shall not be entitled to revoke the contract due to insignificant defects. For rights of revocation and claims for damages due to defects, the special provisions in clause 10 shall apply in addition to the statutory requirements.

- 10.4. In the case of all services rendered by us, including works services, the customer shall be obliged to inspect the goods without undue delay for defects, including deviations in quality and quantity, insofar as this is feasible in the ordinary course of business, and to notify us without undue delay in writing if a defect becomes apparent. The inspection must in any case be carried out before the installation, processing or resale of the goods. Defects which are recognisable during a proper inspection of the goods must be notified in writing within 10 working days of receipt of the goods at the latest. Defects which were not recognisable during a proper inspection (hidden defects) must be notified in writing within two working days of their discovery. If defects are not notified in accordance with the above provisions, the delivery shall be deemed to have been approved in accordance with the contract. Notes on delivery notes shall not be deemed to be notices of defects. Field staff, transport personnel or other third parties are not entitled to receive notices of defects.
- 10.5. Due to defects, the customer may only withhold payments to an extent that is reasonable in relation to the defects that have occurred.
- 10.6. There shall be no warranty in the event of defects due to unauthorised interventions or incorrect behaviour on the part of the customer, for example if the customer commissions the item incorrectly, operates it incorrectly, does not comply with maintenance or operating instructions, uses third-party parts or non-approved operating materials, unless the customer proves that the defect is not due to the behaviour of the customer.
- 10.7. Clause 11 shall apply to the limitation of claims for defects.
- 10.8. If the customer receives defective assembly instructions, BERNER shall only be obliged to supply assembly instructions that are free of defects, and this only if the defect in the assembly instructions prevents proper assembly. This shall apply accordingly in the case of defective operating instructions.
- 10.9. BERNER shall not be obliged to take back goods which are returned to BERNER without a defect. If BERNER takes back the goods and issues a credit note, this shall be done by deducting the packaging and shipping costs incurred as well as 10% of the purchase price (at least EUR 10.00) for administrative costs. The parties shall be entitled to prove higher or lower damages. If the goods are damaged, BERNER may also deduct a reasonable reduction in value from the credit note.
- 10.10. BERNER shall be obliged to deliver the goods free of industrial property rights and copyrights of third parties (hereinafter: property rights) only in the country of the place of delivery. If a third party asserts justified claims against the customer on the grounds of infringement of property rights by goods supplied by BERNER and used in accordance with the contract, BERNER shall, at its option and expense, first either obtain a right of use for the goods concerned, modify them so that the property right is not infringed or replace them. Claims by the customer shall be excluded insofar as the infringement of the property right is caused by specifications made by the customer, by an application not foreseeable by BERNER or by the goods being modified by the customer or being used together with products not supplied by BERNER.
- 10.11. The customer shall notify BERNER without undue delay in writing of any claims asserted by third parties. He shall not acknowledge any infringements. Defence measures or settlement negotiations shall be reserved exclusively for BERNER. If the customer ceases to use the goods in

order to mitigate damages or for other important reasons, he shall be obliged to point out to the third party that the cessation of use does not constitute an acknowledgement of an infringement of property rights.

10.12. In the event of defects in work performance (assembly, installation or repair measures), the customer shall be entitled to demand cure in accordance with the statutory provisions. The assertion of further rights is only permissible if the cure has failed. This also applies to the right to substitute performance. In all other respects, the above provisions, including the obligation to give notice of recognisable and recognised defects (clause 9.4) and limitation provisions (clause 9.7), shall apply mutatis mutandis.

10.13. Recourse pursuant to sections 445a, 445b BGB is excluded if the end customer is an entrepreneur.

11. Rights of Revocation and Claims for Damages by the Customer

11.1. The right to revoke the contract shall be governed by the statutory provisions with the proviso that the customer may only revoke the contract due to a breach of duty which does not consist of a defect insofar as BERNER is responsible for the breach of duty.

11.2. BERNER shall only be liable for damages in accordance with the following provisions. In all other respects liability for damages of any kind, irrespective of the basis of the claim, including liability for culpa in contrahendo, shall be excluded.

- We shall only be liable for damages, provided that the other prerequisites for a claim are fulfilled, if we are guilty of intent or gross negligence.
- We shall be liable for simple negligence in the event of a breach of an obligation, the fulfilment of which is a prerequisite for the proper performance of the contract and on the observance of which the contractual partner may regularly rely (so-called cardinal obligation).
- Insofar as we are liable for negligent conduct, our liability is limited to the damage that we could typically expect to occur according to the circumstances known at the time of conclusion of the contract.
- The above exclusions and limitations of liability do not apply insofar as we have assumed a guarantee, for damages that are to be compensated under the Product Liability Act, or for damages to life, body or health.
- The above exclusions and limitations of liability also apply in favour of our employees, vicarious agents and other third parties whom we use to fulfil the contract.

12. Limitation

12.1. The limitation period for claims based on defects is one year, unless the law in sections 438 para. 1 no. 2 BGB (buildings and objects for buildings), section 445a, 445b (recourse claims) BGB and section 634a para. 1 no. 2 BGB (construction defects) stipulates longer periods.

- 12.2. Other contractual claims of the customer for breach of duty shall become statute-barred after one year. This does not apply to the customer's right to rescind from the contract due to a breach of duty for which we are responsible and which is not due to a defect.
- 12.3. By way of derogation, the statutory limitation periods shall apply to the following claims of the customer:
- Claims for damages arising from product liability, for damages arising from injury to life, body, health or a material contractual obligation as well as for other damages based on an intentional or grossly negligent breach of duty by us or our vicarious agents,
 - claims due to fraudulent concealment of a defect.
- 12.4. Our claims against the customer shall become time-barred in accordance with the statutory provisions.

13. Disposal Instructions

- 13.1. The delivered goods will not be taken back by us after the end of their use. After checking the legal regulations, we assume that there is no responsibility for disposal in accordance with the ElektroG (German Electrical and Electronic Equipment Act) and in this respect refer to our leaflet on Directive 2002/95/EC (RoHS) ElektroG, which we will be pleased to make available to you at any time on request. However, we would like to point out that the delivered goods are subject to special disposal regulations due to the contamination arising during intended operation/use ("see regulation for medical products ElektroG"). In particular, the respective valid guideline of the LAGA (Bund-Länderarbeitsgemeinschaft Abfall) on the proper disposal of waste from health care facilities must be observed.
- 13.2. In any case, the customer assumes the obligation to inform himself on his own responsibility about all legal disposal regulations and to carry out the disposal in accordance with the legal requirements at his own expense.
- 13.3. Should individual provisions of the contract, including these GTCS, be or become invalid in whole or in part, this shall not affect the validity of the remaining provisions. In this case, the wholly or partially invalid provision shall be replaced by a provision whose economic effect comes as close as possible to that of the invalid provision.
- 13.4. In the event of a transfer of the delivered goods, in particular a resale, the customer is obliged to inform the buyer of the applicable disposal regulations and to oblige him to comply with them or to ensure disposal himself in accordance with the legal requirements.
- 13.5. The customer shall indemnify us upon first request against any claims asserted against us due to improper disposal.
- 13.6. Our claim for assumption of disposal/release of claims due to improper disposal by the customer shall not become time-barred before the expiry of two years after the final termination of the use of the device. The two-year period of suspension of expiry shall commence at the earliest upon receipt by us of written notification from the customer of the termination of use.

14. Final Provisions

14.1. The law of the Federal Republic of Germany shall apply to the exclusion of the UN Convention on Contracts for the International Sale of Goods.

14.2. The place of performance shall be the registered office of BERNER. The exclusive place of jurisdiction shall be Hamburg. BERNER shall be entitled to bring an action at the customer's general place of jurisdiction.

Should individual provisions of the contract including these GTCS be or become invalid in whole or in part, this shall not affect the validity of the remaining provisions. In this case, the wholly or partially invalid provision shall be replaced by a provision whose economic success comes as close as possible to that of the invalid provision.

15. Data Protection Notice

We process all personal data in accordance with the applicable data protection regulations. You can find more information on this in our [data protection declaration](#).