

## **Gustav Berning GmbH & Co. KG - General Terms and Conditions**

Gustav Berning GmbH & Co. KG joins the Supply Chain Initiative. The purpose of the Initiative is to promote fair business practices in the food supply chain as a basis for commercial dealings. To do so, Gustav Berning GmbH & Co. KG, is required to respect the principles of good practice in trading relations and to respond to a number of requirements.

### **Article 1: Definitions**

1. In these General Purchase Conditions ("Conditions") the following terms will have the following meaning:
  - a) **Berning:** Gustav Berning GmbH & Co. KG a company incorporated in Germany whose registered number is HRA 110151 and whose registered office is at Alte Heerstrasse 1, 49124 Georgsmarienhütte, Germany.
  - b) **Contracted Party:** Any legal person with whom Berning Orders Products and/or Services and/or with whom it enters into discussions or negotiations about the formation of an Agreement.
  - c) **Order:** Any Order placed by Berning with the Contracted Party for the delivery of Products and/or the performance of Services, in whatever form.
  - d) **Products:** All items delivered or to be delivered to Berning for the execution of an Order, irrespective of whether the Order exclusively comprises the delivery of those items or (also) the performance of Services.
  - e) **Agreement:** Any agreement concluded between Berning and the Contracted Party, any change or addition thereto, as well as all legal and other acts in preparation for and/or performance of said agreement.
  - f) **Services:** All activities (in whatever form and by whatever name, for example, service, contracting of work, supplying workers, etc.) carried out by the Contracted Party for or on behalf of Berning, either or not in connection with the delivery of Products.
  - g) **Term:** Any term agreed between Berning and the Contracted Party are binding, unless it is agreed in writing and in an unequivocal manner that it is not a binding term.
  - h) **Specification:** The description drafted and/or expressly approved by Berning of Products or Services Ordered by Berning, which is included or referred to in the Order or the Agreement. In the absence of such description, the established

practice between the parties applies or, in the absence thereof, a description that is customary in the branch.

- i) Defect: Any deviation of the Products or Services from the Specification and/or agreed quality or any other improper functioning of the Products or any Service, with regards to the suitability for the use intended under the Order.
  
- j) Work: The work to be carried out by the Contracted Party.

## **Article 2: Applicability and voidability**

2.1 Except in the event that, also given the nature of the agreed performances or performances to be agreed, other General Terms and Conditions of Berning apply (such as the General Terms and Conditions of Sale and Delivery), these Conditions are part of all Agreements and apply to all (other) acts and legal acts between Berning and the Contracted Party, also if said legal and other acts do not result in or are not related to an Agreement.

2.2 The General Terms and Conditions of a Contracted Party shall only become part of an Agreement if and insofar as Berning has expressly agreed to their validity in writing.

2.3 Changes and additions to any provision of an Agreement and/or the Conditions can only be agreed in writing.

2.4 If a change and/or addition within the meaning of the previous paragraph is agreed, this change or addition only holds for the specific Agreement.

2.5 If any provision of these Conditions is null and void or is voided, the other provisions of these Conditions will remain in full force and Berning and the Contracted Party will enter into consultations to agree new provisions to replace the null and void or voided provisions, whereby the purpose and the meaning of the void or voided provision will be taken into account as much as possible.

2.6 In the event that these Conditions are translated, the text of the English version will prevail.

## **Article 3: Order and acceptance**

3.1 The submission of an offer to Berning will never entail any financial obligation for Berning vis-à-vis the party submitting an offer or a third party. All documents enclosed with an offer and the activities carried out by the offeror in that context are entirely free of charge for Berning, unless a fee has been explicitly agreed in advance in writing.

- 3.2 All Orders of Berning are non-binding, unless they include a term for acceptance, and require Berning's confirmation. Insofar as the Contracted Party – in deviation of the provisions in the first sentence of this paragraph – accepts a binding offer of Berning with deviations of minor importance, these deviations are not part of the Agreement and the Agreement is concluded in accordance with Berning's offer.
- 3.3 Berning is entitled to terminate the Agreement by means of a written statement for that purpose to the Contracted Party without being obliged to pay any compensation, provided that it does so within 3 business days after receipt of the Contracted Party's acceptance of Berning's binding Order.
- 3.4 If Berning sends a binding Order form to the Contracted Party, the Contracted Party must return this form signed for approval within 5 business days of its date. In the event that Berning has not received a correctly signed form within 5 business days of its date, it will be entitled to adopt the position that an agreement was not entered into in a legally valid manner.
- 3.5 Offers and quotations by the Contracted Party are fixed and binding and cannot be changed after the Order, unless it concerns an (additional) discount to be granted by the Contracted Party (possibly in the interim).
- 3.6 No rights can be derived from forecasts given by Berning to the Contracted Party. Berning is expressly not liable for any stocks built up by the Contracted Party and/or any obligations entered in respect of third parties on the basis of these forecasts.

#### **Article 4: Distribution and Agency Agreements**

If Berning regularly concludes Agreements with the Contracted Party during a period of more than a year for the purchase of items, the Contracted Party is not permitted to terminate the business relationship unilaterally unless the termination is based on an important reason according to which the Contracted Party cannot reasonably be expected to continue the business relationship.

#### **Article 5 Prices, VAT, payment and setoff**

- 5.1 The prices stated in the Order are fixed and stated in Euros and are exclusive of turnover tax.
- 5.2 The prices of the Products include the standard packing and delivery carriage paid exempt from import rights. The prices of the Services include all travel and subsistence expenses as well as all other costs. Furthermore, the prices of all Products and Services include all preparatory and other work that is required to comply with the requirements, descriptions and the Specification set by Berning.
- 5.3 The Contracted Party indemnifies Berning against all costs and damage that Berning might incur or suffer as a result from the fact:

- (a) That the Contracted Party is not properly registered for turnover tax in a relevant EU member state; and/or
- (b) That the Contracted Party provides incorrect details or provides details late to Berning and/or the authorities in the field of turnover tax in a relevant EU member state.

5.4 Payment by Berning will not be due until after full and correct execution of the Order and acceptance in accordance with the provisions in article 12. In that event, Berning will pay the invoice approved by it within 60 days after its receipt, unless otherwise agreed in writing.

5.5 The Contracted Party cannot transfer its claims against Berning or pledge them (without notice to the debtor) to any third party, except when Berning has given prior written permission.

5.6 Invoices must meet the legal requirements and must be provided with the Order number from Berning. Berning is entitled to make payment by means of setoff, also by means of setting off any claims that Berning may have against the Contracted Party under another Order or on any other basis. § 393 BGB remains unaffected.

5.7 Berning is always entitled to demand sufficient security from the Contracted Party for the correct performance of its obligations vis-à-vis Berning.

5.8 The Contracted Party is obliged to submit to Berning its invoice with regard to any amount it is still entitled to in respect of the Order within 28 days after termination of the Order. Berning is not obliged to pay any invoice which the Contracted Party has submitted after the mentioned term, unless special circumstances that cannot be attributed to Contracted Party and of which Berning has been informed in advance in writing, dictate otherwise.

5.9 Payment of an invoice does not discharge the Contracted Party of any guarantee, warranty, or liability to which it is bound pursuant to the Agreement and/or the law.

5.10 Berning is entitled to set off any claim that the Contracted Party has vis-à-vis Berning.

5.11 In the event of delay of delivery of Ordered Products in accordance with the provisions in article 8, payment within the period stated in paragraph 4 will be due until after the Ordered Products have been stored and the invoice has been approved.

5.12 Without prejudice to its other rights, Berning is entitled to charge the Contracted Party for all actual legal and extrajudicial costs, including the costs of legal assistance, reasonably made or to be made by Berning for the collection of any amount due or to obtain performance of any obligation of the Contracted Party.

**Article 6 Outsourcing**

- 6.1 The Contracted Party is obliged to carry out the Order itself, unless Berning has expressly agreed to outsourcing, subcontracting or purchase from third parties, or has given written instructions for that purpose.
- 6.2 The Contracted Party is fully responsible for any contribution of third parties in the execution of the Order as if it were its own performance.
- 6.3 The Contracted Party indemnifies Berning against any claims of third parties involved in the execution of the Order.

**Article 7 Execution in a timely manner**

- 7.1 The Term, or any Term set with due observance of article 8, within which the Order must be executed is of essential importance to Berning. The Contracted Party is in default by the mere exceeding of the dates agreed upon with Berning on which performances must be carried out unless the Contracted Party can prove that it is not responsible for the default. Any penalty agreed upon for this case does not affect the Contracted Party's obligation of full compensation of damage.
- 7.2 The Term commences on the date on which the Contracted Party has accepted the Order or – if this is at a later date – on the date on which the Contracted Party has the information, designs, materials or auxiliary materials at its disposal which, as demonstrated by the Order, are to be provided by Berning and which the Contracted Party absolutely needs – and of which it has informed Berning in writing – to start the execution of the Order.
- 7.3 In the event that a Term is exceeded, other than pursuant to a statement within the meaning of article 8, the Contracted Party is obliged to immediately repay Berning any advance or other payments or guarantee sums it has already received, without the Contracted Party being entitled to set off these amounts against any claims to which it is entitled or any alleged claims it has against Berning. Furthermore, in that event all personal or collateral securities provided by Berning or by third parties on its behalf under the Agreement will lapse by operation of law. Contracted Party is obliged to release any guarantors for Berning from their surety obligations and/or recourse liabilities under the Agreement, or to ensure that they are released from said surety obligations and/or recourse liabilities, subject to penalty payable by the Contracted Party of a sum equal to the sum which the guarantor has undertaken to pay or the value of the collateral security provided. This paragraph shall not apply if the Contracted Party can prove that it is not responsible for the default.

**Article 8: Postponement of delivery**

- 8.1 Berning is entitled to postpone the delivery of Ordered Products and/or the performance of Ordered Services for a period of 60 calendar days at most by means of a written statement to the Contracted Party for that purpose, unless postponement would be manifestly unreasonable in view of all circumstances of the case, which manifest unreasonableness must be unambiguously demonstrated by the Contracted Party.
- 8.2 If Berning exercises the right referred to in paragraph 1, the Contracted Party will for its own account and risk store the Products separately at a suitable location for the

benefit of Berning, take out insurance and take appropriate measures to counter loss of quality. Article 13.2 applies mutatis mutandis.

### **Article 9: Quality warranty**

- 9.1 The Contracted Party warrants the soundness of the Products delivered by it and/or the Services performed by it. At the first request of Berning, the Contracted Party will submit evidence that the Products and the Services comply with the warranty. The warranty at least entails that:
- (a) The Products and/or Services are suitable for the purpose for which the Order has been placed, insofar as the Contracted Party was aware or could have been aware of this purpose;
  - (b) The Products are new, the Products and/or Services are of a good quality and are free from faults as regards design, processing, manufacture, construction and dimensions and are free from Defects in the materials used and offer the safety that may reasonably be expected from them;
  - (c) The Products and/or Services have been manufactured and/or performed in conformity with the latest state of the art; in any event at such an acceptable level that it complies with the most recent requirements set thereto;
  - (d) The Products and/or Services fully conform to the Specification and possible samples, designs and drawings in respect of quantity, description, quality and performances;
  - (e) The best-before date of Products of the same type delivered at a later date will at all times be a date later than that of Products of the same type delivered earlier;
  - (f) All applicable national, supranational and international legislation with regard to the Products and/or Services, the packaging of the Products and/or the Services have strictly been taken into account;
  - (g) The Products and/or the Services in all other respects comply with the requirements that can reasonably be set in that respect.
- 9.2. The warranty period for deliveries and Services in the meaning of work contracts is one year. Ordered Products and/or Services are in any event considered faulty within the meaning of the previous paragraph if Defects arise within six months after delivery, unless this is the consequence of normal wear and tear or if it can be attributed to intent or gross negligence on the part of Berning.
- 9.3 Without any limitation of Berning's rights to compensation of costs, damage and interest, the above-mentioned warranty entails that the Defects that have arisen within a year after delivery will be fully and immediately repaired by the Contracted Party at Berning's first request, free of charge, if necessary by replacing the Products or parts thereof, or by performing the Services in question again. Repair will always be carried out on-site, unless this is impossible.
- 9.4 After repair of Defects, a new warranty period as described in paragraph 2 will commence and the Contracted Party will warrant the soundness of the replaced or repaired Products and/or Services as described in paragraph 1.



- 9.5 If this is necessary in the opinion of Berning for the safety of persons and/or the progress of the activities, Berning is entitled to carry out (or have carried out) temporary repairs for the account of the Contracted Party. The Contracted Party is entitled not to pay Berning's expenses if it demonstrates that it was not informed of the Defects in question in a timely manner and demonstrates that, had it been informed thereof in good time, it could have repaired the Defects at least as quickly.
- 9.6 Berning is entitled to carry out an annual audit at the Contracted Party with regard to the quality of the Products and/or Services. Berning can have this audit carried out by an external research agency. The Contracted Party will grant its full cooperation to such an audit at no cost. The audit results in an audit report. The Contracted Party is obliged to implement the points for improvement from that audit report within the term stated in the audit report. Berning is entitled to demand evidence from the Contracted Party that the aforementioned points for improvement have been implemented within the stated term.

**Article 10: Pre-delivery inspection**

- 10.1 During the execution of the Order, Berning reserves the right to inspect materials after reasonable notice or to have them inspected by third parties to assess whether the requirements set in the Agreement or the Order are complied with. At the first request, the Contracted Party grants its full cooperation to such an inspection and will not charge costs to Berning in that respect. Inspection or approval does not discharge the Contracted Party from any guarantee obligation, warranty or liability.
- 10.2 Berning will inform the Contracted Party in good time of tests to be carried out by Berning. The Contracted Party has the right to attend these tests or to have an expert appointed by it attend such tests.
- 10.3 Regardless of whether Berning exercised its rights by virtue of the provisions in the two previous paragraphs of this article, regardless of the outcome of the inspections and tests referred to there and regardless of what Berning informs the Contracted Party in this respect, the Contracted Party remains fully responsible for the correct execution of the Order.

**Article 11: Delivery carriage paid**

- 11.1 Ordered Products must be delivered carriage paid at the place of destination designated by Berning. The Contracted Party is obliged to ensure proper packaging in conformity with all applicable legislation, and the same applies for safety and proper transport. Part deliveries of Products Ordered are only allowed if this is explicitly specified in the Order.
- 11.2 Each consignment must include detailed documents that must contain at least the following: Berning's Order and article number(s), the name of the Product and/or Products, the description for each Product, the last best-before date for each Product and the Contracted Party's lot number. These details and any markings stipulated by Berning must also be affixed to the packaging in a sufficiently clear and visible manner. The last best-before date for each Product and the lot number of the Contracted Party must in addition be stated on the consignment note.

- 11.3 The delivery takes place entirely at the risk of the Contracted Party, also if it uses personnel of Berning in the performance of any act of delivery (the latter with the exception of intent or gross negligence on the part of Berning or its managerial staff).

#### **Article 12: Inspection and repair**

- 12.1 Berning will thoroughly inspect the Products or Services Ordered within a reasonable period after delivery. A complaint (notice of defects) shall in any case be deemed immediate and timely if it is sent within five working days of discovery or, in the case of obvious defects, of delivery.
- 12.2 Acceptance only means that in Berning's preliminary opinion, the appearance of the Products and/or the visible performance or the visible result of the Services is in accordance with the Order. More specifically, acceptance does not bar a later reliance by Berning on non-compliance by the Contracted Party in respect of its warranty obligation stated in article 9 or any other obligation vis-à-vis Berning.
- 12.3 In the event that Berning lawfully rejects the Products and/or Services or in the event that it becomes clear at a later date that said Products and/or Services are defective or incorrect, Berning may – without prejudice to Berning's other rights – give the Contracted Party the opportunity to at first request remedy and/or repair the shortcomings and/or Defects that have become manifest, for the Contracted Party's account and risk. Any additional costs to be incurred, for example in respect of disassembly, transport and/or reassembly will also be for the account of the Contracted Party. After mutual consultations, Berning will reasonably decide in which manner and within which Term the Defects and/or shortcomings must be remedied and/or repaired. The repairs will take place either at the place of delivery, or elsewhere, such at the reasonable discretion of Berning.
- 12.4 If replacement or improvement of the Products and/or Services within the meaning of paragraph 3 is impossible in the reasonable opinion of Berning, or if the Contracted Party does not comply with the request referred to in paragraph 3 within a reasonable Term set by Berning, Berning may withdraw from the Agreement and the Contracted Party is consequently obliged to repay each of the amounts received with regard to the above-mentioned Products and/ or Services to Berning, which amounts may not be set off against any claims or alleged claims the Contracted Party has against Berning. In such event, Berning is entitled to take the necessary steps and may charge Contracted Party for the related costs, including the additional expenses to be reasonably incurred by Berning to acquire replacement Products and/or Services and the costs related to the return and/or destruction of the Products received.

#### **Article 13: Transfer of ownership and risk; right of retention**

- 13.1 Berning will acquire the ownership of the Ordered Products upon delivery of said Products.



- 13.2 The Contracted Party bears the risk of damaging or loss of the Ordered Products until the date of the transfer of ownership as referred to in paragraph 1.
- 13.3 If, in deviation from the provision of article 5.4, payment in full or part in respect of Products not yet finished at an earlier date than stated in said article is agreed on, Berning, by virtue of its advance payment and without any further act of transfer being required, will acquire the ownership of all Products, materials, raw materials and semi-finished products used by the Contracted Party or intended for the execution of the Order. The Contracted Party is obliged to acquire the aforementioned Products, materials, raw materials or semi-finished products wholly free from third-party encumbrances and rights, and to reserve these for Berning.
- 13.4 The provisions of paragraph 2 remain in full force after a passing of ownership pursuant to either paragraph 3, or the last sentence of paragraph 4.
- 13.5 The Contracted Party has no right of retention or right of suspension in respect of the Ordered Products.

**Article 14: Items made available by Berning**

- 14.1 Berning will remain the owner of all items ("Items") it makes available to the Contracted Party in the context of the Order (including designs, stamps, drawings, tools or other equipment). The Contracted Party will refrain from such acts or omissions in respect of the Items that cause Berning to lose the ownership thereof on account of specification, accession, confusion, or in any other manner whatsoever, unless it has obtained Berning's written permission. The Contracted Party furthermore warrants that the Items will not be encumbered by any third-party rights.
- 14.2 The Contracted Party has no right of retention or right of suspension in respect of the Items.
- 14.3 The Contracted Party will, for the Contracted Party's account and risk and for the benefit of Berning, insure the Items under normal conditions against all damage resulting from total or partial loss or damaging of the Items, regardless of the cause. This also includes all damage suffered as a consequence of a product recall. Berning has the right to demand inspection of the specific policy document(s), which must state Berning as co-insured.
- 14.4 Berning reserves all intellectual property rights (including similar rights such as know-how) to the Items. The Contracted Party acquires a strictly personal, non-transferable and non-exclusive licence to use the Items for the duration of the Agreement as referred to in this article and subject to the condition subsequent of non-full compliance with all statutory and contractual obligations which Contracted Party must comply with vis-à-vis Berning.
- 14.5 The Contracted Party will return the Items to Berning in a good state, unless Berning Orders differently. The Contracted Party will use the Items entirely at its own risk. Berning is not liable for any consequences of the use of the Items for the

Contracted Party or third parties, except for intent or gross negligence on the part of Berning or its managerial staff. The Contracted Party will not use the Items for or in relation to any other purpose than the proper execution of the Order and will not authorize or allow any third parties to use the Items.

- 14.6 Items in this article also includes the Items which the Contracted Party has purchased with a view to the Orders from Berning and has charged to Berning. The Contracted Party is deemed to keep these Items for Berning as of the date on which the Contracted Party acquired them.

**Article 15: Liability, force majeure and indemnification**

- 15.1 The Contracted Party will execute the Order entirely at its own risk. The Contracted Party will compensate all damage, both directly and indirectly and including any damage on account of loss of profits, which is suffered by Berning or third parties as a consequence of or in relation to the execution of the Order, irrespective of whether such damage is caused by the Contracted Party, its staff or any other persons that were engaged in the execution of the Order by the Contracted Party.
- 15.2 The Contracted Party is fully liable for any damage suffered by Berning or third parties as a result of any Defects in the Products and/or Services delivered, except in the event of a non-attributable shortcoming ("force majeure").
- 15.3 Force majeure in any event does not include: lack of staff, strikes, sickness of staff, late supply of and/or unsuitable materials, raw materials or semi-finished products or services, attributable shortcomings, or unlawful acts of suppliers or third parties engaged by the Contracted Party and/or liquidity and/or solvency problems on the part of the Contracted Party.
- 15.4 The provisions of paragraph 1 and 2 of this article are considered to be a clause also for the benefit of any injured third parties as referred to in said paragraphs. The Contracted Party will indemnify Berning against any third-party claims. The Contracted Party will also indemnify Berning against vicarious tax liability.
- 15.5 The Contracted Party is and will remain adequately insured for statutory and professional liability. The Contracted Party undertakes – immediately after it has been held liable by Berning – to assign all claims in respect of payment(s) of insurance payments to Berning at first request as far as legally possible.
- 15.6 If the Contracted Party becomes aware of a possible Defect in the Products delivered or to be delivered by the Contracted Party, which Defect could lead to a recall of the Products, the Contracted Party is obliged to immediately inform Berning thereof, enter into consultations with Berning in respect of a possible product recall and limitation of loss, and will do its utmost in this context. The costs of the product recall, which will also include all costs of or in relation to Products that are already further processed, will be fully for the account of the Contracted Party, unless explicitly agreed otherwise.

**Article 16: Withdrawal, Termination**

- 16.1 If the Contracted Party does not properly execute any of its obligation arising from an Order, Berning, without prejudice to its other rights, after the Contracted Party has been declared in default in writing, in which context a period of at least 7 calendar days is observed, has the right to terminate the Agreement or to withdraw from it, in part or in full, without judicial intervention, for which termination or withdrawal a notice suffices.
- 16.2 If the Contracted Party exceeds a Term in the execution of the Order, or if it cannot reasonably be assumed that the Contracted Party will execute the Order in good time, Berning, without prejudice to its other rights, has the right to terminate the agreement or to withdraw from it, in full or in part, through a single notice to the Contracted Party, without further notice of default or judicial intervention being required.
- 16.3 In the event of a (provisional) moratorium, bankruptcy, applicable debt management scheme, suspension or liquidation of the Contracted Party's company or (in the event of a natural person) upon his death, or in the event of a legal merger of the Contracted Party, or if a substantial part of the control over the Contracted Party's company is taken over by another party, Berning has the right to terminate the Agreement and any agreements directly related thereto in full or in part or to withdraw from them. In such event, Berning is furthermore entitled to suspend any obligations in respect of the Contracted Party under other Agreements or by any other nature, without notice of default being required.
- 16.4 All claims Berning might have or will acquire in the cases referred to in paragraphs 1, 2 and 3 against the Contracted Party will be immediately and fully due and payable.
- 16.5 By virtue of a termination or withdrawal and/or the condition subsequent becoming effective, Berning has the right to reclaim all payments it made from the Contracted Party. Insofar as, on termination or withdrawal, any performance already delivered by the Contracted Party cannot be returned but otherwise complies with the Order, the Contracted Party is entitled to compensation based on the value of the performance delivered to Berning, to be reasonably determined and set off against the claim that Berning has against the Contracted Party in respect of the shortcoming and/or termination/withdrawal. Insofar as return is possible, Berning may, at its discretion, retain the performance delivered for a compensation, or return it to the Contracted Party for the account and risk of the Contracted Party, without prejudice to any exercise of the rights referred to in 12.3.
- 16.6 Berning's rights, as set out in these Conditions, will not end on account of a termination or withdrawal within the meaning of paragraph 1, 2 or 3.

**Article 17: Intellectual property**

- 17.1 The Contracted Party will grant Berning a non-exclusive licence under all its intellectual property rights, if any, to the Products and/or Services, including but not limited to rights relating to patents, utility models, trademarks and know-how. By virtue of this licence, Berning has the right to use the Products, or have them used,

(including change, processing and repair of the Products) and furthermore is authorized to supply, or make the Products available to third parties, either or not as a component of other goods. The remuneration for this licence is included in the price. If a further (legal) act is required under any relevant legal system for the establishment and/or execution of these rights/licensing rights, the Contracted Party will inform Berning thereof and will always provide all required cooperation to Berning at its own account and risk.

- 17.2 All transferable intellectual property rights with regard to the results of the Services are vested in Berning. If a further (legal) act is required under any relevant legal system for the establishment and/or execution thereof, the Contracted Party will inform Berning thereof and will always provide all required cooperation to Berning at its own account and risk.
- 17.3 Contracted Party warrants that the Products and/or Services do not infringe any intellectual property rights of Berning or third parties and indemnifies Berning and its customers against any such infringement, including similar claims with regard to know-how, unlawful competition etc.
- 17.4 If proceedings have been instituted on account of infringement of such rights, or if there is possibility of proceedings being instituted, the Contracted Party will, without prejudice to Berning's rights, including its right to terminate the Agreement, for its own account and risk:
- (a) still acquire the right to continue the use of (the specific part of) the Products and the results of the Services by Berning.
  - (b) or replace and/or adjust (the specific part of) the Products and/or the results of the Services.
  - (c) or take back the (the specific part of) the Product and/or the results of the Services, against payment of the costs, damage and interest. Adjustment and/or replacement will not entail that Berning will be restricted in the possibilities for use of the Products or results of the Services.
- 17.5 The Contracted Party undertakes, for its own account and risk, to take measures that could contribute towards preventing interruption of Berning's business operations, and to reduce the additional costs to be incurred and/or loss to be suffered by Berning.

#### **Article 18: Confidentiality**

- 18.1 The Contracted Party, its staff and any third parties engaged by the Contracted Party must observe strict confidentiality with regard to all information pertaining to Berning's business which it may obtain in the context of the Order and/or the Agreement, or the execution thereof, such including the nature, cause and result of the activities carried out and the prices, costs and procedures used by Berning.
- 18.2 The Contracted Party may not directly and/or indirectly provide Products and/or Services to customers of Berning. The Contracted Party will immediately inform Berning in the event that he is approached by customers of Berning.
- 18.3 In the event that the Contracted Party violates the obligations stated in this article, the Contracted Party will forfeit to Berning – without demand or notice of default being required – an immediately due and payable penalty of € 5,000 (in words: five

thousand Euros), to be paid at once, plus a due and payable penalty of € 2,500 (in words: two thousand five hundred Euros) for each day or part-day that the violation continues, such without prejudice to the Contracted Party's obligation to compensate all damage arising from the violation on the part of Berning.

**Article 19: Exercise of rights of suspension, termination, setoff and avoidance by Berning**

If Berning, based on the circumstances known to it at that time, reasonably believes that it may validly exercise a right of suspension, termination, withdrawal, setoff or avoidance, Berning is not obliged to pay the statutory interest, if it later emerges that it did not exercise the aforesaid right(s) in a legally valid manner.

**Article 20: Applicable law, competent court**

- 20.1 These Conditions, as well as all Orders and agreements and all disputes arising therefrom are governed by the laws of the Federal Republic of Germany.
- 20.2 The United Nations Convention on Contracts for the International Sale of Goods (often referred to as the Vienna Sales Convention) does not apply, nor does any other international regulation regarding the purchase/sale of movable tangible property whose application can be excluded by contract.
- 20.3 Exclusive venue for all disputes arising from or relating to an offer, Order, Agreement, these Conditions or an obligation to Berning is Georgsmarienhütte, Germany.