



**General Terms and Conditions
of Purchase of BERNSTEIN AG**

Stand: 2023-05-05

I. Scope of Application

1. These General Terms and Conditions of Purchase shall apply if the Seller is an entrepreneur pursuant to Section 14 of the German Civil Code (BGB), a legal entity under public law or a special fund under public law.
2. The General Terms and Conditions of Purchase shall apply in full to contracts for the purchase and/or delivery of movable goods ("Goods"), irrespective of whether the Seller manufactures the Goods itself or purchases them from suppliers (§§ 433, 650 BGB). Unless otherwise agreed in individual cases, the following terms and conditions shall apply exclusively to all our orders, including future orders of the same type.
Deviating and additional terms and conditions of the supplier shall only become part of the contract insofar as we have expressly agreed to their validity in writing. The unconditional acceptance of deliveries does not constitute consent. If special conditions are agreed in individual cases for specific orders, these General Terms and Conditions of Purchase shall apply subordinately and supplementarily.
3. References to the applicability of statutory provisions shall only have a clarifying meaning. Even without such clarification, the statutory provisions shall therefore apply, unless they are directly amended or expressly excluded in these General Terms and Conditions of Purchase.

II. Conclusion of Contracts

1. Offers of the supplier are non-binding and free of charge for us.
2. Our verbal or telephone orders, supplements and amendments to an order require our written confirmation.
3. We shall be bound by our order for one week from the order date. Our right to revoke the order until receipt of a written confirmation of acceptance from the supplier with the same content as our order remains unaffected by this.
4. Significant changes and additions to a contract require our written confirmation.
5. The written form shall also be observed by EDI, WebEDI, e-mail and fax.
6. Correspondence regarding offers, orders and contracts as well as contract amendments, shall be conducted with our purchasing department. Agreements

with other departments with which contracts are to be concluded or amended require the written consent of our purchasing department to be effective.

7. The contracts concluded under these General Terms and Conditions of Purchase and their performance by both parties are subject to the proviso that there are no obstacles due to national or international export control regulations of the USA and the European Union.

III. Delivery Item/Quality Requirements

1. The content, type and scope of the delivery shall be determined by our written order and, if applicable, the specifications and production documents (drawing, samples, etc.) provided by us or the specifications and production documents provided by the supplier and confirmed by us in writing. The supplier's obligation to check all order and other contractual documents for completeness, correctness and suitability for the intended use and to notify us immediately in writing of any discrepancies/errors as well as the supplier's own responsibility for execution, remain unaffected by this.

The supplier is not entitled to have the service owed by him provided by third parties (e.g. subcontractors) without our written consent. The supplier bears the procurement risk for its services.

If specified in advance, complete documentation (e.g. test certificates, material certificates, operating instructions, etc.) shall be enclosed with the delivery items.

If delivery items are manufactured according to our specifications (in particular individual components), the services are to be accepted by us – even if this has not been expressly agreed. Acceptance shall take place as soon as a functional test has shown that the services are free of defects or, at most, still have insignificant defects.

Insofar as the supplier provides services on our premises, he shall comply with our relevant regulations (e.g. house rules, safety regulations). The storage of materials for services may only be undertaken after prior consultation with us; the workplaces must be kept in an accident-proof condition at all times and left tidy and clean daily after the end of work.

The supplier shall name its upstream suppliers to us upon request. We may reject a sub-supplier for good

cause; if this may result in delays or changes in costs, we will coordinate with the supplier.

For a period of at least 10 years after delivery, the supplier shall supply us with replacement and removal parts; unless otherwise agreed, the usual market prices shall apply.

2. All delivery items must be manufactured from materials and using tools of the best suitability and in perfect condition, which comply with our announced technical specifications as well as the applicable ISO standards, European and German standards, US standards, statutory regulations (in particular Product Safety Act), trade association guidelines and the like. These are also the quality standard of the delivery item without express agreement.
3. Acceptance of packaged goods does not constitute acceptance as fulfilment. In any case, we reserve the right to inspect the goods after delivery. In any case, we reserve the right to inspect the goods and to give notice of any defects found. The period for giving notice of defects according to §§ 377 ff. HGB (German Commercial Code) is 4 weeks for goods delivered unpacked from the date of receipt by us or for goods delivered packed from the date on which the defect could be detected. If the defect only occurs during the processing or use of the delivery item, the 4-week complaint period shall begin with the first occurrence of the defect.
4. We are entitled to demand changes to the construction and design of the delivery item within reasonable bounds. Any associated effects on costs and delivery dates shall be settled by mutual agreement between the parties.
5. The supplier is obliged to continuously test and improve the quality of the delivery item. At the supplier's request, we are prepared to discuss the type and scope of testing, test equipment and methods with the supplier and to agree on these in writing, taking into account knowledge, experience and the state of the art. Prior to series deliveries, initial samples shall be submitted and accepted by us in writing.
6. If tests are planned for the delivery item, the supplier shall bear all testing costs. If repeated or further tests are required as a result of defects found, the supplier shall bear all material and personnel costs for this. The supplier shall bear the material and personnel costs for the material certificates of the input materials. This

also applies to the approval costs for the products to be delivered by the supplier or the delivery item.

7. If the supplier is only an intermediary in the case of goods, he is nevertheless obliged – even beyond his own statutory commercial obligation to inspect – to inspect the goods for defects before handing them over to us and to have these defects rectified.
8. The supplier shall allow BERNSTEIN AG, the responsible quality department and BERNSTEIN AG's customers to carry out appropriate quality audits after prior reasonable notice and during regular business hours.

IV. Delivery Time

1. The delivery date specified by us in the order or the agreed delivery time is binding. The receipt of the delivery item by us or the agreed receiving point shall be decisive for compliance with the delivery time. The supplier shall make the delivery in accordance with the contract on the agreed delivery date, within the delivery period if delivery periods have been agreed, and in the case of call-off orders, within 2 weeks of receipt of the call-off at the latest. Compliance with the delivery period is crucial to the contract for us to the extent that the continuation of our interest in receiving the delivery is tied to said compliance.
2. Partial deliveries by the supplier are only permissible with our consent. We may return deliveries before an agreed delivery date at the supplier's expense and risk or store them at the supplier's expense.
3. If the supplier defaults, we shall have the statutory claims and rights. Delay in delivery shall also entitle us, at our discretion, to demand 0.5% of the price of the entire order for each commenced week of exceeding the delivery time; however, not more than 5% of the price of the entire order, as a contractual penalty. This applies accordingly if there is a delay with regard to partial deliveries with the proviso that 0.5% can be demanded on the price of the partial delivery; however, a maximum of 5% of the price of the partial delivery. Claims for damages remain unaffected. Any contractual penalty paid shall be offset against a claim for damages.
4. If the supplier realises that the delivery item cannot be delivered on time in whole or in part, he shall immediately indicate this, stating the reasons and the presumed duration of the delay, without this having any effect on the occurrence of the delay and its

consequences, unless the delay is neither his fault nor that of his suppliers or falls within our sphere of risk.

5. In the event of force majeure and other unforeseeable circumstances for which we, our legal representatives, executive employees, vicarious agents/agents are not responsible, in particular operational disruptions, strikes, lockouts, official interventions, natural disasters of any kind, in particular, floods, storms, pandemics, and so forth, which prevent us from accepting the delivery item, our acceptance obligation shall be suspended. We shall notify the supplier of these circumstances immediately. In this case, we shall be entitled to demand performance at a later date. The supplier shall not be entitled to any claims arising from this.

V. Dispatch/Acceptance

1. Shipment shall be at the expense and risk of the supplier. This also applies to any returns. The supplier shall be liable for compliance with specified shipping instructions.
2. The supplier shall use packaging that is as environmentally friendly as possible. At our request, he shall take back packaging free of charge for us ex our works. The supplier shall comply with the provisions of the Packaging Act in the respective valid version.
3. The risk shall pass to us upon handover of the delivery item at our premises or the agreed place of receipt. In the case of machines and technical equipment and in the case of an agreed functional test/acceptance, the risk shall only pass to us after our written confirmation of the faultless result of the functional test/acceptance.
4. The supplier must enclose a delivery note with each delivery stating our order number, article number, quantity, the place of delivery and the description of the goods, insofar as these are stated in our order. Otherwise, we shall be entitled to refuse acceptance without this giving rise to any claims on the part of the supplier. Any costs resulting from this shall be borne by the supplier.
5. The statutory provisions shall apply to the occurrence of default in acceptance. However, the supplier must also expressly offer us its services if a specific or determinable delivery period has been agreed for an action or cooperation on our part (e.g. provision of material). If we are in default of acceptance, the Seller may demand reimbursement of his expenses in

accordance with the statutory provisions (§ 304 BGB). If the contract concerns a non-representable item to be manufactured by the supplier (individual production), the supplier shall only be entitled to further rights if we are responsible for the failure to cooperate as agreed.

VI. Prices/Invoicing/Payment

1. The prices stated in our order are fixed prices plus statutory value-added tax, including all ancillary costs.
2. Any deviating terms of payment and delivery shall require the written confirmation of BERNSTEIN AG.
3. Price increases justified by the contractual partner, e.g. with subsequently increased costs, shall only become part of the contract if we expressly agree to the price increases.
If significant changes in the market situation occur for us or if a significant drop in the market prices of our purchased parts is discernible, the supplier shall negotiate with us to adjust the prices. If the negotiations fail, we may terminate existing contracts (in particular framework agreements) with a period of notice which shall take reasonable account of the interests of both parties. In this case, the supplier may only charge us for the costs actually incurred by him for material that cannot be used elsewhere. We shall also have a corresponding right of termination if the supplier's prices are above the market level or at least 3 % above the prices of a comparable competitor and he cannot offer us competitive prices within one month after a written request by us.
4. Invoices shall be submitted to us in duplicate after receipt of the delivery item in accordance with the statutory regulations. Our item number and the order number must be stated for each item on the invoice, provided that such a number is included in our order. If the invoice relates to goods of different orders, it must be stated which order was executed with the delivery in each case.
5. The invoice shall be settled within 14 days with a 3% discount or at the end of the month following the delivery or service and receipt of the invoice.
6. In any case, we shall only be in default after a written reminder.
7. We shall be entitled to rights of set-off and retention as well as the defence of non-performance of the contract to the extent provided by law; in particular,

we may withhold due payments as long as we are entitled to claims against the supplier arising from incomplete or defective deliveries. The supplier shall only have a right of set-off or retention on the basis of counterclaims that have become *res judicata* or are undisputed. The supplier may only transfer claims against us to third parties if we have consented; we will only refuse consent for good cause.

VII. Warranty due to Material Defects and Defects of Title

1. The supplier is obliged to procure and deliver the delivery item to us free of material defects and defects of title. In the event of defects, we shall have the statutory claims and rights.

We are entitled to the legally determined recourse claims within a supply chain (supplier recourse pursuant to §§ 445a, 445b) in addition to the defect claims (including reimbursement of expenses pursuant to §§ 445a para. 1, 439 para. 2 and 3 BGB) without limitation.

2. We shall randomly inspect the delivery items within one week, delivery items with more time-intensive inspection procedures within 2 weeks, after receipt and thus fulfil our commercial inspection obligation. If further examinations are necessary due to defects found in the random samples, the supplier shall reimburse us for the expenses incurred for this.
3. If the supplier unjustifiably refuses to remedy the defect or is in default with the remedy of the defect or if our customers or we risk suffering considerable damage due to the defect or the default, we shall be entitled to remedy the defect ourselves or have it remedied by a third party at the supplier's expense – at our discretion, including by way of procurement of a replacement.
4. The supplier shall bear his expenses for the examination of a notice of defects and rectification of defects even if there was no defect, unless we should have recognised that the notice of defects was unjustified. The same applies in the event that an attempt at rectification fails.
5. The limitation period for our claims due to a material defect is 24 months, and 48 months from delivery or acceptance if due to a defect of title. Longer limitation periods due to other claims which are not based on a defect of the delivery item itself remain unaffected.

The statutory limitation period for claims in rem for the return of goods (§ 438 para. 1 no. 1 BGB) and for claims under a right of recourse pursuant to § 445b BGB shall also remain unaffected.

6. Defective parts of the delivery item shall remain at our disposal until they are replaced; they shall become the property of the supplier upon replacement.
7. Irrespective of the above provisions, the supplier shall be liable for claims arising from the infringement of industrial property rights and applications for industrial property rights ("industrial property rights") in the event of contractual use of the performance. The supplier shall indemnify us and our customers against all claims arising from the use of these property rights. Furthermore, he shall indemnify us against third-party claims based on the fact that his performance is defective.

VIII. Security Rights/Provisions/Property Rights

1. The supplier undertakes to release security interests granted to it by us to the extent that their value exceeds the claim to be secured by more than 10%.
2. Materials provided by us ("provisions") or delivered directly to the supplier on our behalf ("drop shipments") shall remain our property. They may not be sold, transferred by way of security, pledged, passed on or used for third parties or made accessible to them without our consent. Such materials (provisions and/or drop shipments) shall be insured by the supplier against all customary risks at its own expense and shall be stored as our property and separately from identical or similar items owned by third parties or the supplier. The supplier may use such materials exclusively to manufacture our order and must return them to us immediately upon request. The supplier shall also impose these obligations on its vicarious agents.
3. The supplier shall notify us immediately of any impending seizure of such materials and of any other impairment of our rights, as well as of any loss of or damage to materials provided. He shall be obliged to segregate such materials.
4. If such materials are processed, combined or mixed with other items, the supplier shall transfer co-ownership of the new item to us in the ratio of the value of our materials to the value of the other items; the above obligations shall apply accordingly to the new item.

5. If improvements to such materials are made by the supplier in connection with the execution of the order, we shall have a gratuitous, non-exclusive right of use for our own exploitation of this improvement and any industrial property rights thereto.
6. Reproduction of models, samples or other documents provided by us to the supplier or of those produced by the supplier according to our specifications is only permissible insofar as this is necessary for the processing of the offer/execution of the delivery. If, in this case, the supplier provides such documents to a sub-supplier, the supplier must impose a corresponding written obligation on the sub-supplier before providing them and submit them to us on request.
7. Objects manufactured according to our specifications may not be offered/delivered to third parties without our consent; this obligation shall continue to exist even after the termination of the business relationship. If improvements are made at the supplier's on the basis of our production documents, we shall have a free, non-exclusive right of use for our own exploitation even after this improvement and any industrial property rights thereto.
8. We object to all forms of extended or prolonged retention of title so that any agreed retention of title shall only apply until payment has been made for the goods delivered to us and only for these.

IX. Secrecy

1. The supplier is obliged to treat all commercial and technical details which are not in the public domain and which become known to him through the business relationship with us as business secrets unless they become public knowledge. The supplier's vicarious agents (including employees) shall be obliged accordingly in writing; the obligations shall be submitted to us upon request.
2. The supplier is only entitled to refer to an existing business relationship with us for advertising purposes with our prior written consent.
3. The publication of products manufactured on our behalf and according to our specifications for purposes of the contractor's own advertising requires our prior written consent.

X. Product Liability

1. Insofar as the supplier is responsible for a product defect, it shall be obliged to indemnify us against claims for damages by third parties upon first request to the extent that the cause lies within its sphere of control and organisation and it is itself liable in relation to third parties.
In this context, the supplier shall also be obliged to reimburse us for any expenses arising from or in connection with a recall carried out by our customer or us, insofar as our customer or we were obliged to carry out the recall or such action was reasonable. We shall inform the supplier about the content and scope of the recall measures to be carried out – insofar as this is possible and reasonable – and give him the opportunity to comment.
2. If claims are made against us by third parties in Germany or abroad due to defective goods of the supplier, irrespective of fault, the supplier shall be liable to us accordingly. The same rules on the burden of proof shall apply to the relationship between the supplier and us as to the relationship between the third party and us.
3. The supplier undertakes to maintain a product liability insurance with an insured sum of 10 million EURO per personal injury/property damage – lump sum. The insurance certificates shall be submitted to us upon request. Our claims for compensation remain unaffected.

XI. Limitation of Liability

The supplier's liability is governed by the statutory provisions and the regulations in these general terms and conditions of purchase. We shall be liable without limitation for intent and gross negligence as well as for culpable damage to life, limb and health of third parties caused by us. Our liability for other damages of the supplier due to a slightly negligent breach of non-essential contractual obligations is excluded. In the event of a slightly negligent breach of material contractual obligations, our liability shall be limited to the foreseeable damage typical for the contract. Claims of the supplier shall become statute-barred one year after the claim arises, unless we are liable for damage to body or health or due to intent or gross negligence. In this case, the statutory limitation provision shall apply.

XII. Code of Conduct for Suppliers

Suppliers are obliged to comply with our "Code of Conduct for Suppliers" (hereinafter: "Code of Conduct"). The Code of Conduct contains principles on trustful cooperation, fairness, sustainability, environmental protection, responsibility, working conditions, ethics, human rights and compliance, as well as prevention of corruption and terrorism. The Code of Conduct is made available to the supplier by BERNSTEIN AG. The supplier is obliged to comply with it and also to oblige its sub-suppliers to comply with an equivalent "Code of Conduct". The supplier shall also oblige its sub-suppliers to pass on the above obligations to any upstream suppliers in the supply chain. A violation of the provisions of the "Code of Conduct" and the above obligations may lead to a termination of the supply relationship, if necessary, also extraordinarily and without notice. Further claims of BERNSTEIN AG remain unaffected.

XIII. Export Control – Origin of Goods

1. The supplier is obliged to indicate the commercial origin as well as the customs tariff number (HS-/KN-Code) when fulfilling the contract.
2. The supplier shall be liable in particular for ensuring that no embargo provisions of the UN Security Council, the European Commission or national legislators are violated or disregarded through the delivery of the delivery items. The supplier is exclusively responsible for the proper export of all delivery items from the country of dispatch and undertakes, in particular, to obtain all permits required in foreign trade.
3. The supplier is obliged to inform us in writing as early as possible before the delivery date about any licensing requirements for its goods under the applicable German, European (EU) or US export, customs and foreign trade law, as well as under the export, customs and foreign trade law of the country of origin of its goods. For this purpose, the supplier shall provide the following information and data:
 - the export list number according to Annex AL to the German Foreign Trade and Payments Regulation or comparable list items of relevant export lists;
 - the list position according to Annex I to the European Dual-Use Regulation;
 - the "Export Control Classification Number" (ECCN) according to the "U.S. Commerce Control List" (CCL),

provided the goods are subject to the "U.S. Export Administration Regulations" (EAR);

4. The delivered goods must fulfil the conditions of origin of the preferential agreements of the EU, unless expressly stated otherwise in the order confirmation.

XIV. Compliance with Legal Requirements

1. The supplier is obliged to comply with the relevant statutory provisions in the performance of the contract and to confirm their compliance to us in writing upon request.

The following regulations, among others, must be observed:

EU legislation:

- **RoHS Directive** 2011/65/EU of the European Parliament and of the Council of 8 June 2011 on the restriction of the use of certain hazardous substances in electrical and electronic equipment
- **REACH Regulation** (EC) No 1907/2006 of the European Parliament and of the Council concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals, with regard to Annex XVII, in particular compliance with the information obligation pursuant to Art. 33 (EC) No 1907/2006 on substances on the candidate list (Substances of Very High Concern "SVHC substances") <http://echa.europa.eu/de/candidate-list-table>.
- **POP Regulation** (EU) 2019/1021 of the European Parliament and of the Council of 20 June 2019 on persistent organic pollutants
- **Conflict Minerals Regulation** (EU) 2017/821 establishing supply chain due diligence obligations for Union importers of tin, tantalum, tungsten, their ores and gold from conflict-affected and high-risk areas, incl. OECD "Due Diligence Guidance for Supply Chains of Minerals from Conflict-Affected" and "High-Risk Areas".

National Legislation EN:

- **Chemicals Prohibition Ordinance:** Ordinance on Prohibitions and Restrictions on the Placing on the Market of Dangerous Substances, Preparations and Products under the Chemicals Act
- **Electrical and Electronic Equipment Substances Ordinance (ElektroStoffV):** Ordinance on the restriction of the use of hazardous substances in electrical and electronic equipment implementing Directive 2011/65/EU

XV. General Provisions/Closing Provisions

1. The place of performance shall be at the agreed place of receipt.
2. In commercial business transactions, the place of jurisdiction shall be our registered office. We are also entitled to take legal action at the supplier's registered office.
3. German law shall apply to the exclusion of the UN Convention on Contracts for the International Sale of Goods.
4. Should one or more of these general terms and conditions be or become invalid, this shall not affect the validity of the remaining general terms and conditions. In the event of the ineffectiveness of one or more conditions, the parties are obliged to agree on conditions that are as economically and legally equivalent as possible for the ineffective conditions in a legally effective manner.
5. The supplier is hereby informed in accordance with the BDSG that personal data may be stored, transmitted, processed and deleted in the course of business in accordance with the statutory provisions.
6. All agreements between us and the supplier must be in writing. This also applies to the waiver of the written form requirement. The provision under II. no. 5. shall apply to the maintenance of the written form.

BERNSTEIN AG