

General Terms and Conditions of Sale, Delivery and Payment of Bernitz Electronics GmbH (valid as of 01 April 2016)

I. Subject matter of the contract

1. All agreements, offers, orders and deliveries are based on these Terms and Conditions of Sale, Delivery and Payment. These Terms and Conditions of Sale, Delivery and Payment are deemed to have been acknowledged at the time the purchaser places an order.
2. The purchaser's conditions of purchase contradicting these Terms and Conditions of Sale, Delivery and Payment are not an integral part of the contractual agreements, even if they are not expressly objected to by **Bernitz Electronics GmbH**.
3. Individual agreements shall only take precedence over these conditions, if they have been acknowledged in writing or textform by **Bernitz Electronics GmbH**.
4. All changes and amendments of these Terms and Conditions of Sale, Delivery and Payment must be drawn up in writing to be valid.

II. Scope of deliveries or services

1. Tenders of **Bernitz Electronics GmbH** are, until a binding agreement has been executed, subject to change without notice. All contracts concluded are valid only if they have been accepted in writing or textform by **Bernitz Electronics GmbH**.
2. Cost estimates, drawings, technical or other documents shall remain the property of **Bernitz Electronics GmbH**. This applies particularly if they were handed out prior to an order and concern proposals for solving a problem. All copyrights shall remain with **Bernitz Electronics GmbH**. Without **Bernitz Electronics GmbH's** express written approval, the documents or parts thereof may not be copied or otherwise made known to third parties in any way. They may only be used internally within the contractual limits. Drawings and other documents belonging to tenders must, on request, be returned immediately to **Bernitz Electronics GmbH**.
3. The scope of deliveries or services must be based on the mutual declarations. If a contract has been concluded without such mutual declarations being made, **Bernitz Electronics GmbH's** acknowledgement of the order is applicable.

III. Period allowed for deliveries or services

1. Delivery dates are quoted to the best of **Bernitz Electronics GmbH's** knowledge and belief and as precisely as possible. Deliveries received 5 days before until 3 days after the envisaged delivery date shall be deemed as in time deliveries. The delivery deadline is subject to the reservation that **Bernitz Electronics GmbH's** own supplies are delivered on time.
2. In the event of mobilization, war, revolt, strike, lockout and other cases of force majeure, also at **Bernitz Electronics GmbH's** suppliers and their suppliers, **Bernitz Electronics GmbH** shall be released from its contractual obligation to deliver for the duration of such an event. If such events make it impossible for **Bernitz Electronics GmbH** to carry out the deliveries or services to be rendered by it, it shall be entitled to withdraw from the contract without assuming any liability.
3. If **Bernitz Electronics GmbH** enters into default, the purchaser can withdraw from the contract after the expiration of an appropriate period of grace, if the goods or service have not been reported ready for shipment by the end of the period allowed. The period allowed shall not begin until receipt of the purchaser's written notice of the set period of grace. The purchaser is entitled to damages for non-performance, to be asserted as an alternative to the right to withdraw from the contract, only if default was due to at least negligence on the part of **Bernitz Electronics GmbH**. The damage claim is limited to damage typical of the contract. This does not apply to compulsory liability, e.g. for personal injury or damage to privately used property in accordance with the law of product liability, or in cases of wrongful intent or gross negligence.

IV. Prices

1. The prices quoted are applicable in the case of deliveries without installation or assembly, ex works Unterhaching, but including packaging.

2. Cash discounts shall not be granted, if the customer is in arrears with the payment of earlier deliveries.

3. If there is a period of more than 4 weeks between the conclusion of the contract and the contractually agreed delivery date, and if, after this period expires, the cost of wages, material, energy, transportation and the like rises at a rate unforeseeable upon conclusion of the contract, such rises can be passed on to the purchaser. This applies as well in case a cost increase is based on a change in the currency exchange rates. Likewise, if the statutory rate of turnover tax is increased, the gross invoiced amount shall rise by this increase.

4. The price adjustment shall not occur if **Bernitz Electronics GmbH** has legal or actual possibilities of objecting to its suppliers' pricing. Prices shall also not be adjusted if the abovementioned rise in costs occurs whilst **Bernitz Electronics GmbH** is in default.

V. Reservation of ownership

The goods shall remain **Bernitz Electronics GmbH's** property until all of its entitlements against the purchaser from the business relationship have been fulfilled. Before that time, pledging and the transfer of ownership by way of security are prohibited, and reselling is allowed only to resellers in the normal course of business on the condition that the reseller receives payment from its customers. The purchaser shall bear the cost of any interventions. If the value of all security rights to which **Bernitz Electronics GmbH** is entitled in accordance with this clause exceeds the sum of all secured claims by more than 20 %, **Bernitz Electronics GmbH** shall, on the purchaser's request, release a corresponding portion of the security rights.

VI. Terms of payment, right to withhold performance, offsetting

1. Payments must be made net, without any deduction, within 30 days as from the invoice date. They must be affected in such a way that the invoiced amount is available to **Bernitz Electronics GmbH** on the due date. **Bernitz Electronics GmbH** grants 2% on the invoice amount if paid within 14 days as from the invoice date.
2. If the purchaser's financial circumstances worsen significantly after the contract is concluded, e.g. bankruptcy or composition proceedings are opened, or if, through no fault of its own, **Bernitz Electronics GmbH** first becomes aware of this after the conclusion of the contract **Bernitz Electronics GmbH** has the right to refuse to carry out the delivery until the purchaser has provided it with appropriate security for the claim of **Bernitz Electronics GmbH** from this contract. If the purchaser fails to provide such security within an appropriate period, **Bernitz Electronics GmbH** has the right to withdraw from the contract.

Bernitz Electronics GmbH also has the right to withdraw from the contract, if composition or bankruptcy proceedings on the purchaser's assets are opened.

3. The purchaser is only entitled to offset, if **Bernitz Electronics GmbH** has expressly agreed thereto in writing or if its counterclaims are undisputed or determined to be legally valid.

4. Payments to employees or travelling agents of **Bernitz Electronics GmbH** may only be made, if they present written power to collect.

5. A right of retention on the part of the purchaser is ruled out, unless its counterclaims to the claim of **Bernitz Electronics GmbH** are undisputed or legally valid. Mercantile lien in accordance with § 369 HGB (German Commercial Code) is also ruled out.

VII. Passage of risk

Risk is passed to the purchaser, even if delivery at no charge to the purchaser has been agreed:

1. In the case of deliveries without installation or assembly, at the time the consignment ready for operation is forwarded or collected. Goods shall be packaged with utmost care. The shipment shall be carried out to the best of **Bernitz Electronics GmbH's** judgment. At the purchaser's request and expense, the consignment shall be insured by **Bernitz Electronics GmbH** against damage by breakage, transportation and fire.

2. In the case of deliveries with installation or assembly, on the day of acceptance at the purchaser's own factory or after a faultless trial operation, if

a trial operation was agreed. A precondition for this is that the trial operation or acceptance at the purchaser's own factory occurs immediately after the consignment is installed or assembled ready for operation. If the purchaser refuses the offer of a trial operation or does not accept the consignment at its own factory, the risk shall, for the duration of the delay, be passed to the purchaser after the expiration of 14 days following this offer.

3. If the shipment, the delivery or the start or execution of installation or assembly work is delayed at the purchaser's request or for reasons attributable to it, the risk for the period of delay shall be passed to the purchaser. At the purchaser's request and expense, **Bernitz Electronics GmbH** is however obligated to take out the insurance policies demanded by the purchaser.

VIII. Liability for defects

Bernitz Electronics GmbH is liable for defects, including the lack of warranted qualities, as follows:

1. All parts or services that, within 12 months - regardless of the operating period - calculated as from the date of passage of risk, become unusable or significantly impaired in use due to a defect must, at **Bernitz Electronics GmbH's** option, either be repaired free of charge, redelivered or newly rendered. A defect shall be a factor existing prior to the passage of risk, notably a faulty design, poor quality of material or poor workmanship. A deviation from specifications, any publications provided by **Bernitz Electronics GmbH**, such as brochures, type lists, data sheets or other advertising shall be deemed a defect only under the conditions provided in subparagraph 11. Any discovery of such defects must be immediately reported to **Bernitz Electronics GmbH** in writing. Replaced parts become the property of **Bernitz Electronics GmbH**. **Bernitz Electronics GmbH** shall not be liable to compensate purchaser's internal cost, e.g. labour cost, in connection with the repair or redelivery of defect parts or the rendering of services.

2. The purchaser must adhere to the contractual obligations incumbent upon it, particularly the agreed terms of payment. If the purchaser lodges a complaint, the purchaser's payments may be withheld to an appropriate extent in relation to the defects that have arisen. If the purchaser concludes the contract in the course of running a commercial enterprise however, the purchaser can only withhold payments if there can be no doubt that the complaint lodged is justified.

3. The purchaser must give **Bernitz Electronics GmbH** the time and opportunity necessary at reasonable discretion to eliminate the defects. If it refuses to do so, **Bernitz Electronics GmbH** shall be released from its liability for defects.

4. If **Bernitz Electronics GmbH** allows a set, appropriate period of grace to pass without remedying the defect, the purchaser can demand that the contract be cancelled (cancellation of sale) or the remuneration be reduced (reduction of purchase price).

5. In all events, the purchaser's right to assert claims from defects becomes statute-barred 12 months after the date of the complaint. If no agreement is reached within this period, **Bernitz Electronics GmbH** and the purchaser can agree upon an extension of this statutory period of limitation.

6. Liability for defects does not apply to natural wear and tear or to damage resulting after the passage of risk due to incorrect or negligent handling, improper use, excessive stress, unsuitable operating resources, poor maintenance or chemical, electrochemical or electrical influences not presupposed in accordance with the contract.

7. If the purchaser or a third party has carried out independent repair work, **Bernitz Electronics GmbH's** liability is ruled out, in so far as this repair work has led to further damage.

8. The warranty period is 3 months for repair work and 6 months for substitute deliveries or substitute services. This period shall run at least until the original warranty period for the delivery item expires. In the case of parts that cannot be usefully operated due to a plant interruption, the period of liability for defects shall be extended by the duration of the plant interruption arising due to necessary repair work, substitute deliveries or substitute services.

9. The provisions on warranty periods in subparagraphs 1, 5 and 8 do not apply, if the law stipulates longer obligatory periods.

10. Further claims of the purchaser against **Bernitz Electronics GmbH** and the persons it employs to fulfill an obligation, particularly an entitlement to compensation for damage not incurred on the delivery item itself, are ruled out. This does not apply to compulsory liability, e.g. for personal injury or damage to privately used property in accordance with the law of product liability, or in cases of wrongful intent, gross negligence or the lack of warranted qualities.

11. The information in publications of **Bernitz Electronics GmbH**, as mentioned in subparagraph 1, contain no guarantee of quality, durability, or reliability within the meaning of § 443 of the German Civil Code (BGB). Information on the reliability of the products constitutes statistically computed average values. The information is intended to help the purchaser and is made to the best of knowledge and belief of **Bernitz Electronics GmbH**; it does not, however, refer to specific deliveries or products and thus does not constitute a guarantee. Should **Bernitz Electronics GmbH** provide samples to the purchaser, such samples shall neither be regarded as a specification nor constitute a guarantee in the meaning of § 443 of the German Civil Code (BGB).

11. Subparagraphs 1 - 11 apply accordingly to entitlements of the purchaser to repair work, a substitute delivery or compensation that have arisen as a result of proposals or advice given for the purposes of the contract or due to the infringement of secondary contractual obligations.

IX. Impossibility of performance, adaptation of the contract

1. If it becomes impossible for **Bernitz Electronics GmbH** or the purchaser to make the delivery or render the performance incumbent upon them, the general principles of law are applicable, subject to the following:

If **Bernitz Electronics GmbH** is to blame for the impossibility of performance, the purchaser is entitled to demand compensation. The purchaser's damage claim is, however, limited to 10% of the value of that part of the delivery or performance which cannot be usefully put into operation due to impossibility. Damage claims of the purchaser exceeding the above-mentioned limit of 10% are ruled out. This does not apply to compulsory liability in cases of wrongful intent or gross negligence. The purchaser's right to withdraw from the contracts shall remain unaffected.

2. If unforeseeable events, as defined in subparagraph III. 2, considerably alter the economic significance or content of the delivery or performance or have a considerable effect on **Bernitz Electronics GmbH's** business, the contract shall be adapted appropriately, in so far as this is consistent with good faith. **Bernitz Electronics GmbH** shall, if reasonably acceptable economically, be entitled to withdraw from the contract. If **Bernitz Electronics GmbH** wants to make use of this right to withdraw from the contract, it must inform the purchaser of that immediately after recognizing the significance of the event, that is, even if an extension of the delivery period has first of all been agreed upon with the purchaser.

X. Liability, IP, damage claims

1. Unless otherwise agreed, **Bernitz Electronics GmbH** shall provide the products and services free from third parties' industrial property rights and copyrights (hereinafter together "IPR") with respect to the country of the place of delivery only. If a third party asserts a justified claim against the purchaser based on an infringement of IPR by the products and/or services made by **Bernitz Electronics GmbH** and used in conformity with the contract, **Bernitz Electronics GmbH** shall be liable to the purchaser within 12 months as of delivery only and as follows:

i. **Bernitz Electronics GmbH** shall choose whether to acquire, at its own expense, the right to use the IPR with respect to the products and services concerned or whether to modify the products or services such that they no longer infringe the IPR or replace them by non-infringing products or services. If this would be impossible for **Bernitz Electronics GmbH** under reasonable conditions, the purchaser may rescind the contract or reduce the remuneration pursuant to the applicable statutory provisions.

ii. **Bernitz Electronics GmbH's** liability to pay damages is governed by subparagraph 8 below.

iii. The above obligations of **Bernitz Electronics GmbH** shall apply only if purchaser a) immediately notifies **Bernitz Electronics GmbH** of any such claim asserted by the third party in writing, b) does not concede the existence of an infringement and c) leaves any protective measures and settlement negotiations to **Bernitz Electronics GmbH's** discretion. If purchaser stops using the products or services in order to reduce the damage or for other good reason, it shall be obliged to point out to the third party that no

acknowledgement of the alleged infringement may be inferred from the fact the use has been discontinued.

2. Claims of the purchaser shall be excluded if it is responsible for the infringement of the IPR.

3. Claims of the purchaser are also excluded if the infringement of the IPR is caused by specifications made by the purchaser, by a type of use not foreseeable by **Bernitz Electronics GmbH** or by the products or services being modified by the purchaser or being used together with products not provided by **Bernitz Electronics GmbH**.

4. In addition, with respect to claims by the purchaser pursuant to subparagraph 1 herebefore, paragraph VIII 2, 3 and 4 shall apply mutatis mutandis in the event of an infringement of IPR.

5. Where other defects in title occur, paragraph VIII shall apply mutatis mutandis.

6. **Bernitz Electronics GmbH** shall not accept any responsibility in respect of IPR of third parties affected by the use of **Bernitz Electronics GmbH's** products or services in combination with products of the purchaser or third parties. Verification of non-existence of IPR regarding such applications shall not be included in the contractual scope of performance and shall be the duty of the purchaser – unless **Bernitz Electronics GmbH** has positive knowledge of the existence of such IPR in respect of any application created.

7. Any other claims of the purchaser against **Bernitz Electronics GmbH** or its agents or any such claim exceeding the claims provided for in subparagraphs 1 -6 herebefore, based on a defect in title, are excluded.

8. Except where provided for expressly otherwise in these General Terms and Conditions of Sale, Delivery and Payment, damage claims of the purchaser from breach of contract, from the infringement of duties during contractual negotiations and from tortious acts are ruled out. This does not apply to compulsory liability, e.g. for personal injury or damage to privately used property in accordance with the law of product liability, or in cases of wrongful intent or gross negligence. This limitation of liability applies to the purchaser accordingly.

9. Should the purchaser provide consumer information or issue a recall due to an alleged or actual fault of any products sold by **Bernitz Electronics GmbH**, reimbursement of expenses or other claims to reimbursement of cost against **Bernitz Electronics GmbH**, e.g. under the legal theory of mandate or agency without mandate, shall be considered only insofar as **Bernitz Electronics GmbH** had the opportunity to participate in determining the necessity, essence and scope of measures prior to issuance of said information or recall and have accepted such. Consumer information and recall issued without first consulting **Bernitz Electronics GmbH** shall only conform to **Bernitz Electronics GmbH's** intent if the time delay for consulting us would have caused direct and imminent danger to life, body or health. **Bernitz Electronics GmbH** shall be liable only if the product defect is due to a defect as to quality as defined in paragraph VIII herebefore and for which **Bernitz Electronics GmbH** is liable as to subparagraph 8 herebefore.

XI. Place of jurisdiction, applicable law

1. The law of the Federal Republic of Germany is solely applicable. The application of the Standard Law on Sales is ruled out.

2. In the case of all disputes arising directly or indirectly from the contractual relationship, the sole place of jurisdiction is, at **Bernitz Electronics GmbH's** option, either Munich or the purchaser's branch establishment/headquarters.

XII. Binding force of the contract

Even if individual points of the contract are or become legally invalid, the other parts of the contract shall remain binding. This does not apply, if adherence to the contract would constitute unreasonable hardship for one of the parties. The German version of the contract has exclusive priority for the contract relationship.