

General Terms and Conditions of A. Berger USA

Status: May 2017

Please review this document carefully before you make your purchase decisions. It contains very important information about your rights and obligations, as well as limitations and exclusions that may apply to you. Your purchase of a product or service through Berger USA is governed by the terms and conditions (these „Terms and Conditions of Sale“) set forth below and our Terms of Use, which are incorporated herein by this reference. Please read them carefully. Your placement of an order indicates your acceptance of these Terms and Conditions of Sale and our Terms of Use. Berger USA reserves the right to make changes to its policies, this website, these Terms and Conditions of Sale and our Terms of Use at any time, without notice.

1. Order Acceptance Policy

Your order to purchase a product or service through Berger USA constitutes your offer to purchase, which Berger USA may accept or decline in its sole and absolute discretion. Orders are not binding upon Berger USA until accepted by Berger USA. Your receipt of an electronic or other form of order confirmation does not signify our acceptance of your order, nor does it constitute confirmation of our offer to sell. Berger USA reserves the right at any time after receipt of your order to accept or decline your order for any reason. Your order shall be deemed accepted by Berger USA at such time Berger USA receives payment for the product or service ordered and either ships the product or instructs the manufacturer or provider of the product or service purchased, as applicable, to deliver or perform the service, as applicable. Berger USA also reserves the right at any time to supply less than the quantity you ordered of any item, in which case Berger USA will notify you and give you an opportunity to cancel your order. You may not cancel your order after Berger USA has shipped the product you purchased.

2. Pricing and Payment Terms

Pricing Information

The purchase price for the products and services you wish to purchase are provided on the quote, sales order, proforma invoice or email sent to you by an authorized representative of Berger USA from the official email of Berger USA. By placing an order to purchase a product or service, you agree to pay the purchase price set forth on the quote, sales order, proforma invoice or email. In the event a product or service is marked at an incorrect price due to a typographical error, an error in pricing information received from our suppliers or our failure to timely update pricing information, Berger USA shall have the right to cancel any order placed for a product or service marked at an incorrect price, whether or not the order has been confirmed and your credit card charged. If your credit card has already been charged for the purchase and your order is canceled, Berger USA shall issue a credit to you in the amount charged to your credit card.

Payment Terms

Payment terms are within Berger USA's sole and absolute discretion and, unless otherwise agreed to by Berger USA in writing, payment must be received by Berger USA prior to Berger USA's acceptance of your order. Payment for any product or service purchased through Berger USA must be made by check, wire transfer or credit card unless some other form of payment is arranged between you and Berger USA in writing.

All orders placed by you must be approved by our Credit and Fraud Avoidance Department or service provider. In certain circumstances, we may require additional verifications or information before accepting your order. In addition, check and credit card payments are subject to clearance by the bank or other financial institution that issued your check or credit card. Berger USA will not be liable if the bank or financial institution refuses to approve or honor your check or credit card.

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3. Sales Tax, Shipping and Handling Charges and Terms

Purchase prices do not include sales tax. Berger USA may charge sales tax where applicable. If Berger USA does not charge sales tax, you will be responsible for payment of any applicable sales tax in the state, county or municipality in which you reside. Purchase prices do not include shipping and handling charges. Berger USA offers several shipping alternatives for you to choose. By placing an order, you agree to pay the shipping and handling charges as communicated to you. Products may be shipped directly to you by the product manufacturer. Any delivery or shipment date provided by Berger USA is Berger USA's good faith estimate, which is based solely upon the estimates of third-party shipping companies. You acknowledge that a product purchased by you may not be available for delivery at the time requested. You also acknowledge that a service provider may not be able to perform the service purchased by you in the time requested. Berger USA's only obligation is to contact the product or service provider, as applicable, and request that such provider: (i) in the case of a product, ship such product in the manner and time quoted to you; and (ii) in the case of a service, contact you concerning such service within a reasonable period of time. BERGER USA WILL NOT BE LIABLE FOR ANY LOSS, DAMAGE, COST OR EXPENSE INCURRED BY YOU AS A RESULT OF ANY DELAY IN THE SHIPMENT, DELIVERY OR PERFORMANCE OF A PRODUCT OR SERVICE.

4. Return Policy

All Product returns shall be made in accordance with our return policy, as then in effect, and must be made directly through Berger USA. You acknowledge that you understand that Berger USA will only accept returns against a valid RMA issued by us before the return is sent to us. All RMAs will be issued according to our return policy which can be requested from us any time in writing. Berger USA will either issue a replacement or a credit memo against the return. Credit Memos issued for approved returns have no cash value.

5. Manufacturer's Warranty

You acknowledge that the products and services available for purchase from Berger USA are not manufactured, provided or warranted in any way by Berger USA. The products and services sold by Berger USA are subject only to any applicable warranties provided by the manufacturer and service provider, respectively. The manufacturer's and provider's warranties vary on each product and service available for purchase. Prior to purchasing a product or service, you may contact us in writing to know the warranty details about the product you are intending to purchase.

6. Disclaimer and Limitation of Liability as to Products and Services Sold

BERGER USA MAKES NO REPRESENTATIONS OR WARRANTIES, EITHER EXPRESS OR IMPLIED, OF ANY KIND WITH RESPECT TO PRODUCTS AND SERVICES SOLD BY BERGER USA. BERGER USA EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, OF ANY KIND WITH RESPECT TO PRODUCTS AND SERVICES SOLD BY BERGER USA, INCLUDING BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. YOU AGREE THAT BERGER USA, ITS DIRECTORS, OFFICERS, EMPLOYEES OR OTHER REPRESENTATIVES SHALL NOT BE LIABLE FOR ANY LOSSES, CLAIMS, EXPENSES OR DAMAGES ARISING FROM ANY PRODUCT OR SERVICE SOLD BY BERGER USA. YOU AGREE TO LOOK SOLELY TO THE PRODUCT MANUFACTURER OR SERVICE PROVIDER CONCERNING ANY COMPLAINTS, DEFECTS, LOSSES, CLAIMS, EXPENSES OR DAMAGES. IN NO EVENT SHALL BERGER USA, ITS DIRECTORS, OFFICERS, EMPLOYEES AND REPRESENTATIVES BE LIABLE FOR SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES RELATED IN ANY WAY TO ANY PRODUCT OR SERVICE SOLD BY BERGER USA.

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7. General Release

You understand that Berger USA does not manufacture products or provide the services sold by them, but rather, obtains such products and services for distribution and performance through third party suppliers and service providers. Since Berger USA is not the manufacturer of any product sold by them and is not the provider of any service purchased through them, in the event that you have a dispute with a manufacturer or a service provider concerning a product or service, YOU RELEASE BERGER USA (AND OUR DIRECTORS, OFFICERS, AGENTS, EMPLOYEES AND AFFILIATES) FROM ALL CLAIMS, DEMANDS AND DAMAGES (ACTUAL AND CONSEQUENTIAL) OF EVERY KIND AND NATURE, KNOWN AND UNKNOWN, SUSPECTED AND UNSUSPECTED, DISCLOSED AND UNDISCLOSED, ARISING OUT OF OR IN ANY WAY CONNECTED WITH SUCH DISPUTES. IF YOU ARE A RESIDENT OF THE STATE OF CALIFORNIA, YOU WAIVE YOUR RIGHTS UNDER CALIFORNIA CIVIL CODE §1542, WHICH STATES: „A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.“

8. Miscellaneous Provisions

This Agreement constitutes the entire agreement and understanding between you and Berger USA relating to the subject matter hereof and supersedes all prior negotiations and understandings, both oral and written, regarding such subject matter. You may not assign your rights and obligations under these Terms and Conditions of Sale. These Terms and Conditions of Sale may not be modified or amended except in a writing signed by you and Berger USA. These Terms and Conditions of Sale are governed by the laws of the State of California, without regard to its conflicts of laws principles. If any provision of these Terms and Conditions of Sale is or deemed to be unenforceable, illegal or otherwise invalid, that provision and the remaining provisions of these Terms and Conditions of Sale will be enforced to the greatest extent permitted by law. Any claim, dispute or controversy (whether in contract, tort, or otherwise, whether preexisting, present or future, and including statutory, common law, intentional tort and equitable claims) against Berger USA, its agents, employees, successors, assigns or affiliates arising from or relating to these Terms and Conditions of Sale, its interpretation, or the breach, termination or validity thereof, the relationships which result from these Terms and Conditions of Sale, Berger USA's advertising, or any related purchase shall be resolved exclusively and finally by binding arbitration administered by the American Arbitration Association, under its code of procedure then in effect. The arbitration shall be held in Orange County California. Any award of the arbitrator shall be final and binding on each of the parties and may be entered as a judgment in any court of competent jurisdiction.

Vendor Terms and Conditions

1. Free On Board

The F.O.B. (Free on Board) point for all shipments to Berger USA will be "ex-works." Berger USA will pay for all the charges per each invoice submitted for all transactions that occur after the material leaves your dock. We will not accept F.O.B. delivered to Berger USA, unless you receive our approval in writing regarding a specific shipment to Berger USA.

2. Purchase Order Deliver Dates

Purchase Order Due Dates are put on Berger USA's Purchase Orders as required. When there is a Due Date on a Purchase Order, it is expected by Berger USA that you meet this date. You should notify Berger USA should you encounter a problem that will affect meeting the due date on Berger USA's Purchase Order.

3. Supplier Acceptance of Berger USA's Purchase Order

The Supplier accepts the Berger USA Purchase Order via e-mail within a 24 hour period from the receipt of the Purchase Order.

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4. Lot Number

Each carton must have a lot number when shipping material to Berger USA.

5. Packing Slip Information with each shipment to Berger USA

Each Packing Slip must have a Purchase Order Number, a Part Number and the Quantity clearly visible.

6. Berger USA Pricing

Berger USA pricing is based on the current, Berger USA accepted Supplier price list and updated by the Berger USA Supplier and formally approved, as required. When Purchase Orders are issued by Berger USA to the Supplier the accepted price will be included.

7. Berger USA Quality Assurance

Upon receipt of material from any Berger USA Supplier, Berger USA will check for: core damage and any damage/gashes in the cartons received. If the material itself has a gash or mark rendering the material unusable, pictures will be taken and the Supplier will be notified at once of a quality problem with the material and/or cartons received. If the material itself is found to be unusable, photos will be taken and the Supplier must credit or replace said unusable material based on your conversation with Berger USA/Purchasing.

8. Berger USA Quantity Checks

Upon Receipt of Material at Berger USA the quantity shipped will be verified upon receipt and the Berger USA Supplier will be notified immediately should there be a variance in quantity.

9. All changes to the Berger USA Contract or Purchase Order

Any changes or amendments to this Contract/Purchase Order are valid and effective only if they are in written form approved by Berger USA/Purchasing.

10. Force Majeure

In the event that either party is incapable of performing its obligation to each other under this Contract/Purchase Order due to Force Majeure (something that happens out of their control), parties are to give notice to each other immediately.

11. Product Liability

We expect each Berger USA Supplier to have adequate Product Liability Insurance to cover all of the materials supplied to Berger USA.

12. Assignment and Set-Off

Berger USA/ Purchasing shall have the right to reduce and set-off against any amount payable hereunder, any indebtedness or other claims which Berger USA/Purchasing may have against the Berger USA Supplier, however and whenever arising.

13. Berger USA's Liability

In no event shall Berger USA be liable to Berger USA's Supplier (or anyone asserting a claim on its behalf) for incidental, consequential or special damages of any nature, including, without limitation, lost profit, revenues and/or termination charges paid by Berger USA's Suppliers.