

Standard Sales and Delivery Terms Berry Superfos

1.	Quotation and order Confirmation	11.7	When the products sourced from Berry Superfos are filled with the Customer's own product it is the responsibility of the customer to ensure that the filling is done in an suitable manner and that the Customer's own transport wrapping does not damage the products, e.g. tightness and strength of wrapping material, adequate adherence to the pallet, temperature during transport etc..
1.1	If the Standard Sales and Delivery Terms are applied in connection with co-operation agreements, the wording of the co-operation agreement takes precedence over the Standard Sales and Delivery Terms.		
1.2	If the Standard Sales and Delivery Terms are applied in connection with order confirmations, the wording of the order confirmation takes precedence over the Standard Sales and Delivery Terms.	12.	Customer's obligation to examine goods delivered
1.3	The wording of the order confirmation is deemed to be acceptable by the customer, if the customer has not objected in writing within two working days of the receipt of the order confirmation.	12.1	Immediately upon delivery, or at the latest when the goods delivered have arrived at customer's business address, the customer is obliged to perform an examination of the delivery in accordance with good local practice.
1.4	The specifications given by the customer in his tender, invitation to bid, orders, or similar are binding only to the extent that the specifications have been clearly stated by Berry Superfos in a co-operation agreement or order confirmation.	13.	Special conditions re. In-Mould-Labelled Packaging (IML) and decorated products
1.5	If at the request of the customer an order confirmation has not been issued, the customer cannot at a later stage refuse the delivery on the grounds of specifications that would otherwise have been evident from the order confirmation had it been issued.	13.1	Repro material/design (art work)
1.6	Quotations issued by Berry Superfos are valid for 30 calendar days from the date of the quotation.	13.1.1	The customer will supply Berry Superfos the repro material for labels/decoration, inclusive of drawings and other supporting specifications required for the production of IML packaging. Berry Superfos must approve this repro material. Berry Superfos is entitled to invoice the customer all costs originating from the production of artwork and plates.
1.7	Deviations from the Standard Sales and Delivery Terms are valid only if in writing and signed by Berry Superfos. Furthermore the deviations must be clear beyond any reasonable doubt as to which issues the altered wording applies.	13.1.2	Based on the repro material provided, Berry Superfos will prepare the film and plates to be used for the production of products
1.8	The sales and delivery terms of Berry Superfos take precedence over the customers purchasing terms - if any - no matter when the customer's possible purchasing terms are handed over to Berry Superfos. Deviations can only happen in case of distinct written agreement between the customer and Berry Superfos.	13.1.3	Test imprints will be forwarded either physically or electronically for the approval of the design (art work) by the customer. In the event that the customer is not satisfied, the customer must without undue delay forward its objections to Berry Superfos. The absence of any reaction by the customer within one week will be regarded as satisfaction from the customer' side and production of the products will be initiated.
2.	Brochures, data sheets, samples etc.	13.1.3	Berry Superfos shall be entitled to destroy the customer's art work/plates etc. when a minimum of 2 years has passed since the material was last used, and the customer has not reacted within 4 weeks after Berry Superfos' enquiry regarding the future use of the material.
2.1	Specifications on the web-site, in catalogues, brochures, price lists and similar are indicative only.	13.2	Supply of IML products
2.2	The quality and specifications of product samples are only indicative of the appearance of the product. It is therefore accepted that deviations may appear in the final products.	13.2.1	Berry Superfos will confirm a final delivery date, based on the time when Berry Superfos is in receipt of the labels from its subcontractor.
2.3	The data sheets to which reference is made in the co-operation agreement or the order confirmation contain the binding specification of the product. The data sheets may vary from time to time at the sole discretion of Berry Superfos. As part of Berry Superfos product development the data sheet may change. Changes to the data sheets – if any – overrule the specifications agreed to in the co-operation agreement or the order confirmation.	13.3	Prices
3.	The intended use of the product.	13.3.1	Costs for design (art work) will be invoiced separately.
3.1	It is the sole responsibility of the customer that the packaging supplied is suitable for the intended use.	13.3.1	Berry Superfos may invoice purchased labels separately at the time of purchase hereof. If labels are paid on a current basis via the supplied products, waste and any remaining stock of labels will be invoiced no later than 6 months after purchase of the concerned labels.
4.	Prices	13.3.2	Storage of labels
4.1	Prices quoted are DAP (Delivered At Place), exclusive of VAT (Inco terms 2010) and based on full truck loads to the customer. Unloading charges - if any – are for account of the Customer.	13.4	All labels are stored by Berry Superfos in compliance with good trade standards and are used in conjunction with the manufacture of IML products for the customer.
	However, Berry Superfos maintains the right to pass on to the Customers various cost surcharges such as road taxes, oil surcharges and similar additional costs to which Berry Superfos becomes liable when fulfilling the contract.	13.4.1	When deliveries of IML products are made to the customer Berry Superfos may furnish information on the number of labels used in the production as well as the number remaining on stock.
4.2	Berry Superfos reserves the right – without further notice - to adjust prices up to 10 per cent following changes in the production costs, including, but not limited to, the cost of raw materials, energy and transportation, the effects of fluctuations in exchange rates and/or the introduction of new/increased excises, taxes and other duties levied by public authorities.	13.4.2	When IML products are manufactured the customer accepts label wastage of up to 5 per cent for semi-gloss labels and up to 15 per cent for high-gloss labels.
4.3	The prices quoted are based on the volumes indicated by the customer. Should the actual volume deviate from the quantum upon which the priced was based Berry Superfos maintains the right to adjust the pricing.	13.4.3	Scrap and any remaining stock will be destroyed no later than 4 weeks after invoicing, re. item 13.3.2 above, unless the customer has before then entered into agreement with Berry Superfos regarding the handling of this remaining stock.
5.	Payment	13.4.4	Retention of title to repro material and labels
5.1	Berry Superfos is entitled to invoice for deliveries or part-deliveries at the time of delivery. If the delivery is postponed owing to events within the customer's control, Berry Superfos may select to invoice at the agreed time of delivery for the delivery/partial delivery.	13.5	The customer retains title to the repro material that the customer has placed at the disposal of Berry Superfos with a view to manufacture the IML products.
5.2	The invoiced amount must be made available with good value to Berry Superfos, no later than 30 calendar days after the invoice date at a bank account selected by Berry Superfos.	13.5.1	Title to the film, plates and labels pass to the customer upon payment in full of the costs for the film, plates and labels as invoiced by Berry Superfos.
5.3	If payment is received late, re. 5.2 above, Berry Superfos reserves the right to levy interest at the rate of 1½% per month or part thereof on the balance outstanding as from due date. An additional reminder fee amounting to EUR 50 may be charged for each of the first two reminders rising to EUR 100 for the third and subsequent reminders. The cost of collection, legal fees etc. – if any - are on account of the customer.	13.5.2	Provided that the customer has reserved the right to get the repro material, prepaid labels, films and plates to be used for the manufacture of IML products returned, Berry Superfos shall, at the request of the customer and without undue delay, return these items to the customer.
5.4	If a payment is late Berry Superfos maintains the right to stop further deliveries until the balance due has been settled in full. At the request of the Customer Berry Superfos will continue deliveries against security which in the opinion of Berry Superfos is adequate.	14.	Berry Superfos' liability for delayed deliveries
5.5	If – in the opinion of Berry Superfos – the customer's creditworthiness is deteriorating Berry Superfos is entitled to alter the payment terms, including the right to demand payment in advance of the start of production or delivery and/or cancel the contract with a written notice of one month.	14.1	Berry Superfos is not liable for delays that are outside the control of Berry Superfos or could not have been foreseen ("Acts of God").
6.	Right of title	14.2	In no event is Berry Superfos responsible for operational loss, loss of production time, loss of profit or other indirect loss.
6.1	Berry Superfos retains the title to the goods delivered until payment has been received in full. The retention of title is maintained to the extent allowed by law.	14.3	If Berry Superfos is responsible for the delay the customer may claim compensation for its documented loss, subject however, to the wording of 14.2 above. In no event the compensation shall exceed the contract price for the actual delivery or EUR 10,000 per delivery or series of deliveries, whichever is the higher.
6.2	The products of Berry Superfos are protected trade marks and the Customer is not entitled to register or assign rights in any way whatsoever if the consequence is that the intellectual property rights of Berry Superfos is in any way infringed or violated or the enforcement hereof is obstructed.	14.4	In case of delay the customer has no rights to compensation beyond the conditions stated under 14.3 above.
6.3	Berry Superfos retains the intellectual property rights to each and every product even in cases where the products are developed together with the Customer. If the Customer wishes to claim or maintain the intellectual property rights to any product developed jointly by Berry Superfos and the customer, the customer can only retain/maintain the intellectual property rights provided written conditions are laid down in the contract.	15.	Product liability
7.	Delivery	15.1	Berry Superfos is liable for professional property damage if the damage is proven to have been caused by the error or negligence of Berry Superfos or by a party for which Berry Superfos is liable. However, the liability is limited to EUR 250,000 per incident, delivery or series of deliveries.
7.1	Unless otherwise specified in the co-operation agreement or order confirmation, the place of delivery is the customer's business address.	15.2	Berry Superfos is never liable for operational loss, loss of production time, loss of profit or similar indirect loss.
7.2	Any dates quoted for the delivery of the products are approximate only and Berry Superfos shall not be liable for any delay in delivery however caused. Time for delivery shall not be of the essence of any contract unless previously agreed in writing by the parties.	15.3	The limitation in Berry Superfos liability as stated 15.1 and 15.2 above is waived if Berry Superfos commits gross negligence.
8.	Transport wrapping	15.4	Berry Superfos may be held liable for personal injury and consumer property damage in accordance with Danish law and regulations.
8.1	The delivery is packed according to Berry Superfos' general wrapping methods. Should a customer require alternative packing, Berry Superfos must be advised at the time of order. The extra charge of the alternative wrapping arrangement is accountable by the customer.	15.5	The customer must keep Berry Superfos free from any third party claims exceeding what follows from 15.1 to 15.4 above. If a third party raises claims against any of the parties, the other party must be informed without undue delay.
8.2	If the delivery is made in hygienic packaging the delivery is subject to Berry Superfos' "guidelines for deliveries in hygienic packaging" in force at the time of delivery.	15.6	Berry Superfos and the customer are reciprocally obliged to be sued at the court of law or arbitration that may handle claims against them raised on the basis of damage or loss claimed to have been caused by the supplied product. The interrelation between Berry Superfos and the customer must always be settled according to Danish law.
9.	Deficiencies (errors and defects)	15.7	It is the responsibility of the customer to ensure that the artwork of the product contains all such warnings and cautions which under the circumstances are required and considered adequate guidance of the public. The Customer shall hold Berry Superfos harmless for any and all claims that may be raised against the Customer and/or Berry Superfos as a consequence of insufficient guidance on the proper handling and/or use of the product.
9.1	Variation in the colour of the print that lies within the spectrum considered acceptable by the trade to be usual is not to be construed as a defect.	16.	Storage of finished products
9.2	Deviation in volume by +/- 10 per cent for any one delivery is not a deficiency but does warrant a pro rata adjustment of the invoiced amount.	16.1	If by special stock holding agreement finished goods are stored at Berry Superfos the customer accepts to take delivery within three months from the production date of the goods.
9.3	The customer accepts defects in the delivered number of products up to 0.025 per cent (250 pieces per million) based on 12 months rolling numbers.	16.2	Any remaining stock of finished goods remaining on stock at Berry Superfos after the three months period in 16.1 has lapsed the customer will be invoiced for the remaining stock.
10.	Testing	16.3	Any remaining stock will be destroyed no later than 4 weeks after invoicing, re. 16.2 above, unless the customer has before then entered into agreement with Berry Superfos regarding the handling of this remaining stock.
10.1	Berry Superfos warrants that the goods are fit for any purpose confirmed in writing by Berry Superfos as well as in compliance with the EU Directive 10/2011 relating to plastic materials and articles intended to come into contact with foodstuffs and later revisions and regulations	17.	Traceability
10.2	Global and specific migration tests are satisfactory completed where required and are available upon request. In accordance with the above regulations the Customer is required to perform testing to its own satisfaction.	17.1	Berry Superfos has full traceability of its products up to the time of delivery to the Customer.
11.	Berry Superfos' responsibility for Errors and Defects	17.2	In order to ensure compliance with the Framework Regulation 1935/2004 (EC Directive 89/109/EC) and local regulations where applicable it is the responsibility of the Customer to ensure that the EAN number or bar code is recorded and stored (an example of the EAN number may be (00) 0 12 34567 1 74541 099 2). The EAN number or bar code is situated on the label which is attached to the pallet or the cardboard box in which the goods were delivered. If the number or bar code is not retrievable the full traceability may not be secured.
11.1	If events outside of the control of Berry Superfos, events that Berry Superfos could not have foreseen or events that Berry Superfos may not have influenced prevent it from making an agreed delivery, including but not limited to a break down of regularly maintained tools and/or equipment Berry Superfos is without responsibility ("Acts of God"). An act of terrorism will always be considered an act of God.	18.	Confidentiality
11.2	Berry Superfos cannot be held liable for any loss exceeding the purchase price according to the specific order.	18.1	Berry Superfos and the customer are obliged not to divulge to any third party such information that is obtained in connection with the business relationship if the information is of such nature that it is reasonable to assume that the information is confidential.
11.3	If a delivery or part thereof contains defective goods, Berry Superfos may in its sole opinion decide either to reimburse the customer the invoiced amount or redeliver.	19.	Transfer of rights and obligations
11.4	Goods that Berry Superfos has acknowledged as defective may be returned at the instigation of Berry Superfos and for its account.	19.1	Berry Superfos is free to assign or transfer its rights under the contractual agreement to a third party. Berry Superfos may assign or transfer its obligations under the contractual agreement to a parent company, subsidiary, Sister Company or an associated company. The customer may resist such an assignment under the contract only if the customer may beyond reasonable doubt, demonstrate that the assignment of the contract might jeopardise the successful observation of the contract.
11.5	If Berry Superfos deliver defective goods the liability of Berry Superfos is in any event limited in accordance with clause 11.2 above.	19.2	The customer may not assign its rights or obligations in relation to the entered agreement to any third party without prior written consent of Berry Superfos. Berry Superfos cannot withhold such consent unreasonably.
11.6	Any responsibility for defective products lapses at the latest one year after the delivery.	20.	Law and jurisdiction
		20.1	These Standard Sales and Delivery Terms shall be governed by and construed in accordance with Danish law.
		20.2	Disputes, which according to 15.6 above are subject to another jurisdiction, are subject to the Danish Court of Arbitration according to the rules and regulations applicable to this court. The language of procedure is Danish.