

# General Terms and Conditions of Sale

## SERWO Packaging - Subsidiary of SERWO GmbH

### §1 - Scope of Application, Applicable Law

- (1) These General Terms and Conditions and all relations between us and our purchasers/customers shall be governed exclusively by German law, the provisions of the UN Convention on Contracts for the International Sale of Goods (GISG) and of the International Private Law being excluded.
  - (2) Our goods, services and offers are provided exclusively in accordance with these General Terms and Conditions. They shall also apply to all future business relationships, even if they have not been agreed expressly again.
- These General Terms and Conditions are deemed to be accepted at the latest upon acceptance of the goods or services. The purchaser's/customer's terms and conditions shall apply only to the extent that we have consented to them explicitly.
- (3) Any deviations from these Terms and Conditions are only effective, if they have been confirmed by us in writing; the written form requirement cannot be waived orally.

### § 2 - Offer and Conclusion of Contract

- (1) Our offers are always subject to confirmation and not binding. Purchase orders and declarations of acceptance must be confirmed by us in writing or by fax to become legally effective. The same applies to any additions, alterations or additional agreements.
- (2) Drawings, illustrations, dimensions, weights or other performance data are only binding when agreed upon explicitly in writing.
- (3) Our sales agents are not entitled to make any oral ancillary agreements or oral representations, which exceed the content of the written contract.

### § 3 - Prices

- (1) The prices indicated in our order confirmation plus applicable value added tax shall be decisive. Any additional goods or services are invoiced separately.
- (2) All prices are euro prices ex works Egeln, excluding packaging. If invoices are issued in foreign currencies, the exchange rate valid at the invoice date for the payment place Leverkusen shall be decisive for the payment.
- (3) If our actual costs increase by more than 5% after the date of our order confirmation but before our delivery or a partial delivery, we are entitled to increase the prices stated in our order confirmation in line with the additional costs incurred due to the fulfilment of the order, when delivery is effected later than 30 days from order confirmation. If the prices stated in our order confirmation have increased by more than 10%, the purchaser is entitled to cancel the contract.

### § 4 - Delivery Periods

- (1) Delivery dates or delivery periods which are to be binding on us require our written confirmation. Delivery periods for customized products shall not commence before approved samples/proof sheets have been provided. If a calendar date has been specified as the binding delivery date, we shall not be in default if the purchaser fails to send a written reminder including a specified deadline.
- (2) Even if binding delivery periods and dates have been agreed upon, we shall not be liable for any delays in delivery and performance due to force majeure or events that make the delivery difficult or impossible on our part - which include strike, lock-out, official instructions, etc., including if these occur with our suppliers or their sub-suppliers, as well as machine and tool breakage and impairment in material supplies. We shall also not be responsible for non-compliance with deadlines or non-delivery if this results from a delayed, missing or defective delivery from our sub-suppliers. Such events give us the right to postpone delivery or performance for the duration of the impairment plus an adequate lead time or to cancel the contract as a whole or in part with respect to the portion of the contract not yet fulfilled. The purchaser cannot make any damage claims against us due to an extended delivery period or cancellation on our part.
- (3) If such impairment takes more than three months, the purchaser is entitled to cancel the contract with respect to the portion not yet fulfilled, after having granted an adequate grace period. In this case as well, the purchaser has no damage claims against us, unless we have caused the reason of cancellation, as a minimum, due to gross negligence.
- (4) If the purchaser is in default with fulfilment of its obligations under any contract concluded with us, we shall be entitled, after we have set a grace period and threatened refusal of performance, to cancel the contract or to claim damages due to non-performance. Damages amount to 10% of the order amount, but we have the right to give proof of higher damage. If we are in default with fulfilment of our obligations towards the purchaser under any contract, the purchaser shall be entitled, after having set an adequate grace period, to cancel the contract, if we have caused the default due to intent or gross negligence.
- (5) We are entitled at any time to make partial deliveries and to provide partial services. If we have concluded an instalment, successive or partial delivery contract, we are obliged to perform deliveries deviating from the agreed scope only if we have confirmed a relevant request in writing.
- (6) When we have given notice of readiness for delivery within a binding delivery period, the delivery period is deemed to have been adhered to.

### § 5 - Transfer of Risk

The risk is transferred to the purchaser as soon as the shipment has been handed over to the person responsible for transportation or it has left our warehouse for dispatch. If we have given notice of readiness for delivery and agreed upon collection by the purchaser, the risk shall pass to the purchaser with the notice of readiness for delivery. Shipment is effected at the cost and risk of the purchaser. The seller may determine the means and route of transportation when no other instructions have been issued. When goods are collected by the purchaser, the purchaser is not entitled to charge for possible waiting time, unless we are in default due to, as a minimum, gross negligence at that time.

### § 6 - Materials and Workmanship

- (1) For film and film products, the following technically caused tolerances are usual in the market and cannot be acknowledged as a reason for complaints:  
Mean film thickness < 15 my: +25%, >=15 my: +15%, >=25 my: +13%  
Production quantity <=200 kg: +10%, >200 kg: +7%, >1000 kg: +5%, >5000 kg: +4%  
Other dimensions: +5%
- (2) We reserve the right - in particular for customized goods - to deliver up to 20% above or below the ordered quantities and charge for the actual delivery quantity.
- (3) When products made of paper or plastics are produced, a certain amount of defective goods is technically unavoidable. A defective portion of up to 4% of the total quantity shall not give reason for complaints, irrespective of whether the defects exist in workmanship or printing.
- (4) We do not assume any warranty for migrating plasticizers, paraffinic colorants and binding agents and shall not be liable for resulting consequences. In addition, we shall not be liable for the quality of rubber coatings, paints and impregnation of papers and plastics.

### § 7 - Printing

- (1) Proof sheets are delivered free once. The purchaser has to check them for composition and other errors and return them with its permission to print. We are not liable for any errors not detected by the customer. In the event of changes after the permission to print, all expenses, including machine downtime costs, shall be borne by the purchaser. Composition errors are corrected at no charge. However, changes not caused by us and necessary due to illegible manuscripts or variations from the artwork, in particular author's corrections, are charged based on working time required. Proof sheets in different or multi-colour designs are charged in every case.
- (2) Standard colours are used for prints. Any special requirements regarding colours are a part of the order and have to be agreed upon explicitly when placing the order. We reserve the right of minor colour deviations. They give the purchaser no right to refuse acceptance of the goods or to reduction. In the event of printing with bronze colours, we refuse any liability for oxidation damage. In addition, we assume no warranty for resistance to light, light-fastness, variability, resistance to abrasion and water resistance of printing colours.
- (3) We are entitled to draw attention to our company in an appropriate form on the products manufactured and distributed by us.

### § 8 - Rights of Disposal and Protective Rights

- (1) Printing documents (drafts, drawings, plates, etc.) manufactured by us to fulfil orders shall remain in our possession and ownership until they are destroyed, even if the purchaser has borne proportionate or all costs for these production materials. We are responsible for storage and maintenance at no cost. After a period of 4 weeks from order fulfilment, we do not assume any liability for external printing documents. Gravure cylinders are deleted 6 months from order fulfilment; all other printing documents are destroyed 2 years from delivery of goods, including if no approval has been granted by the purchaser.
- (2) We reserve the right of ownership and all copyrights as well as industrial property rights in cost estimates, drafts, drawings, models and other documents. These documents must not be made accessible to third parties without our express consent. Any drawings and other documents associated with orders are to be returned to us on request, in particular when no order has been placed.

### § 9 - Reservation of title

- (1) Until all claims, including all balance claims from current accounts, we have against the purchaser for whatsoever legal reason, now or in the future, have been fulfilled, we shall be granted the following securities, which we will release on request at the purchaser's discretion, if their value exceeds the claims permanently by more than 10%. A redemption provision of the purchaser in line with sections 366 (1), 367 (2) of the German Civil Code (BGB), to the extent it is not irrelevant due to § 10 (1) of these terms and conditions, shall not impair existence of our security rights mentioned below.

- (2) The goods shall remain our property. Processing or transformation of the goods is always effected for us as the manufacturer, but without any obligations on us. If our title to the goods lapses due to combination or mixing with other objects, it is herewith agreed that the purchaser's (co-)ownership in the new combined object shall be transferred to us in proportion to the relevant invoice value. The purchaser shall safeguard our (co-)ownership at no cost. Goods to which we have a (co-)ownership right are hereafter referred to as conditional goods.
- (3) The purchaser may process and sell the conditional goods in the ordinary course of business, as long as it is not in default. The goods must not be pledged or transferred by way of security. The purchaser herewith now assigns to us by way of security any claims resulting from the resale or from another legal reason in connection with the conditional goods (including balance claims from current accounts) to the extent to which we have claims against the purchaser under clause (1). We grant the purchaser the revocable right to collect the claims assigned to us in its own name and on our account. This power of collection can be revoked in particular, if the purchaser fails to fulfil its payment obligations properly.
- (4) In the event of interventions of third parties to conditional goods, the purchaser shall indicate our ownership in the goods and notify us immediately.
- (5) In the event of breach of contract by the purchaser, in particular default in payment, we shall be entitled to take the conditional goods back or, if applicable, request assignment of the purchaser's claim for surrender against third parties. The taking back or attachment of conditional goods by us shall not be regarded as cancellation of the contract.
- (6) Any rights under our reservation of title shall apply until all contingent liabilities we have incurred in the purchaser's interest have been fulfilled completely.

### § 10 - Payment

- (1) Unless otherwise agreed, our invoices shall be payable within 30 days from the invoice date without any deductions and without postage and expenses. Despite any provisions of the purchaser to the contrary, we are entitled to offset any payments of the purchaser first against its older debts.
- (2) A payment is deemed to be made when we can dispose of the amount. In the event of payment by cheque, payment is regarded as effected not before two weeks from honouring the cheque. The risk of the payment method is borne by the purchaser. Payments to our employees and representatives shall release the purchaser from its liabilities only if our employees and representatives have a power of collection, the presentation of which the purchaser has to request before making payment.
- (3) If the purchaser is late in paying, we are entitled to charge interest of 8% above the relevant base interest rate from the relevant date.
- (4) We reserve the right to accept cheques or bills of exchange from the purchaser or third parties in any case, whereby acceptance is on account of payment only. If we agree to accept a bill of exchange, this consent is only valid under the proviso that the bill of exchange is presented to us at the latest 10 days from the invoice date. After expiry of this period, we are no longer bound by our declaration of consent. When we accept cheques or bills of exchange, the purchaser has to bear all costs and discount expenses in any case.
- (5) If the purchaser fails to fulfil its payment obligations in due time, in particular, if it does not honour a cheque or if we become aware of any circumstances which give rise to doubts in the purchaser's creditworthiness, we are entitled to demand advance payment or security, including regarding other contracts not yet performed, and to suspend the shipment of other goods, including under other contracts, until all our claims have been paid and secured fully.
- (6) The purchaser is only entitled to offset, retention or reduction, including in the event of a notice of defects or counter-claims, if the counter-claims have been adjudicated finally or are undisputed.

### § 11 - Warranty

- (1) The warranty period is 6 months.
  - (2) As a rule, notices of defects are precluded for goods that are treated or processed after delivery or were sold as bargain or special items or as seconds.
  - (3) The purchaser must notify us of any defects in writing without undue delay, but at the latest 8 days from the receipt of the delivered goods; the receipt of the notice by us shall be decisive for compliance with the deadline. The purchaser is subject to this obligation even when the goods are delivered to third parties on its behalf. Defects that cannot be identified during this time limit even after a careful inspection are to be notified immediately after their identification. If the purchaser claims any hidden or non-apparent defects, it is obliged to provide proof that defectiveness of goods was not obvious; when spot checks were carried out that defects were not noticed. If a formal acceptance by the purchaser has been agreed for goods supplied by us, the notice of defects which would have been identifiable during acceptance is excluded subsequent to such an acceptance; the purchaser has the burden of proof in this respect.
  - (4) In the event of a notice of defects we may choose between rework and new delivery for the rectification of defects. If rectification of defects fails after an adequate period, the purchaser may demand, at its option, reduction of the purchase price or cancellation of the contract to the extent that rework or new delivery has failed. The taking back of goods complained of does not give rise to a warranty obligation.
  - (5) Liability for normal wear and tear is excluded.
- No warranty claims (rework or new delivery) will exist, if the deviation from the agreed quality is only insignificant, if usability is only slightly hampered or in the event of insignificant impairment of usability.
- (6) Only our contractual partner is entitled to warranty claims against us, and these cannot be assigned.
  - (7) The sections above shall define the final warranty granted by us for the products and preclude other claims of whatsoever type. This does not apply to damage claims under warranted properties, which are intended to protect the purchaser against the risk of damages consequential to defects. However, we will be liable for such damage only to three times the invoice amount, the purchaser having the right to give proof of higher damage, which has been caused by, as a minimum, our gross negligence.
  - (8) Otherwise, we are only obliged to pay damages for defects or defects consequential to damages in the event of gross negligence or intent to be proven by the purchaser.
- In the event of gross negligence under our control, our liability is limited to the foreseeable damage typical for such contracts.

### § 12 - Design Changes

We reserve the right to perform technical changes in our products, in particular deviations from samples of previous deliveries regarding workmanship and materials without prior notice. The purchaser may only complain due to such changes, when the contractually agreed function of products is impaired as a result, whereby the purchaser has to give proof thereof.

### § 13 - Patents

The purchaser assumes sole liability for the rights to use drawings, sketches, models, etc. sent to us. If necessary, the purchaser shall release us from claims of third parties due to an infringement of industrial protection rights. We are not obliged to review the aforementioned documents for existing commercial protection rights of third parties.

### § 14 - Confidentiality

Unless otherwise expressly agreed upon in writing, any information provided to us in connection with orders is deemed not to be confidential.

### § 15 - Limitation of Liability

Our liability is exclusively based on the regulations contained in the sections above. Any additional claims, in particular warranty and damage claims, claims due to late delivery or impossibility, against us are excluded, unless such claims are due to gross negligence or intent under our control. In the event of gross negligence under our control, our liability is limited to the foreseeable damage typical for such contracts.

### § 16 - Data protection

We are entitled to process data about the purchaser, disclosed to us under this business relationship, irrespective of whether provided by the purchaser or by third parties, within the meaning of the Federal Data Protection Act, i.e. to store, transmit, change and to delete such data.

### § 17 - Place of Jurisdiction, Partial Invalidity

- (1) The exclusive place of jurisdiction for all disputes arising out of the contractual relationship is Leverkusen/Cologne, if the purchaser/customer is a merchant, legal person in public law or special assets of the Federal Government. The place of performance for all obligations of the purchaser/customer and our obligations is Leverkusen.
- (2) If a provision of these General Terms and Conditions or a provision of other agreements is or becomes invalid, the validity of the remaining provisions of any agreements shall not be affected.
- (3) Our previous conditions of sale become herewith ineffective.

Egeln, September 2005