

General Processing and Delivery Conditions (GPD) of herpa print GmbH

Status: December 2018

§ 1 Scope of application

1. Only these General Processing and Delivery Conditions (GPD) are in effect for all business transactions of herpa print GmbH, referred to hereinafter as: herpa, and the seller, ordering party, or orderer, referred to hereinafter as: ordering party.

herpa does not recognize other conditions (even in cases where services were fully rendered or payments accepted without reservation), unless herpa expressly agrees to their validity in writing.

2. These General Terms and Conditions are only in effect for business transactions with companies in the meaning of § 14 BGB (German Civil Code). They are also in effect for all future business relationships without being repeatedly incorporated until new General Processing and Delivery Conditions are provided by herpa.

§ 2 Advising

1. herpa shall only advise the ordering party upon its express desire.

2. Advising by herpa is limited to its own products and services. It fundamentally does not extend to their use or usability by the ordering party or its customers. Any advising regarding application by the ordering party in spite of this is nonbinding.

3. The advising services of herpa are based solely on the company's own empirical values and do not necessarily reflect the latest state of technology and science.

§ 3 Conclusion of the contract

1. All agreements concluded between herpa and the ordering party within the scope of these contract negotiations should be recorded for reasons of proof and confirmed by both sides.

2. Offers by herpa are nonbinding. They are considered to be an invitation to submit an offer.

3. Data, descriptions, and images of the goods and products of herpa, particularly in technical documents, catalogs, brochures, circulars, advertisements, and price lists, are nonbinding unless their incorporation is expressly agreed upon.

4. An order placed by the ordering party fundamentally represents an offer to conclude a contract.

5. All details regarding the implementation of the order must be included in the order. These particularly include information regarding article designation, number of units, dimensions, materials, material composition, pre-treatments, processing specifications, treatment regulations, storage, standards, and all other technical parameters and physical characteristics.

Missing, faulty, or incomplete information shall be considered to be not agreed upon. This does not justify any performance, warranty, and/or damage claims against herpa.

6. If the offer of the ordering party deviates from the invitation of herpa to submit an offer, the ordering party shall highlight the deviations.

7. The order shall be accepted within three weeks after receipt of the order, unless a longer acceptance period is provided.

8. Orders shall be submitted in written or in (electronic) text form.

9. Additional agreements, the assumption of a warranty, assurances of characteristics, the assumption of a procurement risk, and subsequent contract changes must be in written form to be valid. This does not apply if they are made by the managing director or an authorized signatory.

10. herpa reserves the right to process the delivery or service objects in another facility or have them processed without additional costs for the ordering party.

11. herpa is entitled to obtain information necessary for the proper fulfillment of the order.

12. If the ordering party terminates, herpa can charge 10% of the agreed-upon fee for the costs created by the processing

of the order and lost profit, notwithstanding the possibility of asserting higher actual damages. The ordering party reserves the right to prove lesser damages.

§ 4 Master agreements

1. During the term of the master agreement, it is only possible to change the order delivery or service object by means of a special contractual agreement.

2. If a master agreement has been concluded between herpa and the ordering party, in which the complete annual requirement is to be manufactured and stored to be available on demand, the ordering party is obligated upon reaching one year after the order date to accept the complete remaining amount still in stock or yet to be manufactured without the necessity of a separate acceptance request.

3. Also - if nothing else has been agreed upon - all on-demand orders within one year following the placement of the order must be accepted without the necessity of a separate acceptance request.

4. After the expiration of the aforementioned deadlines, herpa is entitled to bill the ordering party for the goods and to ship them to the ordering party at the cost and risk of the ordering party.

§ 5 Contract changes

1. If the ordering party wishes to change the delivery or service object after the conclusion of the contract, a separate contractual agreement is required for this.

2. The ordering party will be billed for any subsequent changes at the behest of the ordering party, including any machine downtime caused by this. Subsequent changes also include repeats of print proofs, which are demanded by the ordering party due to a slight deviation from the template.

3. herpa reserves the right to change the delivery or service object appropriately in case of missing, faulty, or incomplete information and/or documentation of the ordering party. The ordering party is responsible for the consequences resulting from this, especially in the form of additional expenses.

4. We reserve the right to make technical changes to the delivery or service object, particularly with regard to material and design, which do not endanger the contract goal.

§ 6 Delivery and delivery time

1. If a delivery or service period is agreed upon, this fundamentally begins with the sending of the order confirmation by herpa; the same applies to delivery or service deadlines.

2. Delivery or service periods and deadlines are automatically extended by the period of time during which the ordering party does not fulfill its obligations (particularly its obligations to cooperate) toward herpa or does not properly fulfill these.

3. Similarly, the delivery or service periods and deadlines are delayed for the duration of the inspection of the print proofs, correction proofs, proofs, samples, etc. by the ordering party from the time these are sent until final authorization.

4. In case of unanimous changes to the object of the order, delivery or service periods and delivery or service deadlines must be renegotiated.

If the object of the order is renegotiated after the conclusion of the contract without resulting in a change to the object of the order, the delivery or service periods and deadlines are automatically extended by the negotiation period.

5. The delivery or service period shall be deemed to have been met, if the delivery or service object has left the herpa factory or herpa has informed the ordering party of its readiness for pickup by the deadline.

6. herpa is entitled to perform the delivery or service agreed upon before the agreed-upon time.

7. herpa is entitled to partial deliveries or services if
- the partial delivery or partial service is usable for the ordering party within the scope of the contractual intended use,
 - the remaining delivery is ensured, and
 - this does not result in any major additional effort or additional expenses for the ordering party.

Partial deliveries and services can be billed separately.

8. Sketches, drafts, typesetting samples, test prints, first sample parts, correction proofs, and similar preparatory works will only be sent to the ordering party at its express written request.

9. In case of a culpably caused delay in delivery, herpa is obligated to reimburse the ordering party for any damages caused by this delay pursuant to § 16 of these General Processing and Delivery Conditions.

§ 7 Force majeure

1. herpa is not liable for the impossibility of delivery or service and delivery or service delays if these were caused by force majeure. For these purposes, force majeure shall be considered to be conditions that are not the fault of herpa, such as war, fire damage, strikes, lawful lockouts, traffic disruptions, orders from higher authorities, business interruptions, and major operational disruptions, such as lack of material and power at herpa, commissioned subcontractors, or upstream suppliers, etc.

2. herpa shall immediately inform the contracting party of the beginning and end of such events as soon as this information is available.

3. In cases of force majeure, the delivery or service periods or deadlines of herpa are extended by the duration of the disruption that has occurred.

4. If delivery or service are delayed by more than six weeks, both the ordering party and herpa are entitled to withdraw from the contract with regard to the scope of services affected by the service disruption.

§ 8 Delay in acceptance

1. If the ordering party does not accept the goods on the agreed-upon delivery deadline or at the expiration of the agreed-upon delivery period or if the ordering party otherwise causes a delay in acceptance, herpa can demand reimbursement of additional expenses, such as storage costs, etc., caused by this.

2. herpa can charge 0.5 % for each partial month as storage costs, but no more than a total of 5 % of the agreed-upon delivery or service price. The right to assert and prove additional or lesser storage costs is reserved.

3. herpa is authorized to stipulate a suitable storage location at the cost and risk of the ordering party and to insure the delivery or service objects at the expense of the ordering party.

4. If the ordering party simultaneously defaults on payment due to its non-acceptance and if herpa is entitled to demand reimbursement of damages instead of payment as a result, herpa can – in addition to the possibility of asserting greater actual damages – demand 15 % of the agreed-upon price as damages. The ordering party retains the right to prove that herpa did not incur damages at all or to a much lesser degree.

§ 9 Prices and payment

1. Prices are listed in EURO pursuant to clause EXW (ex-works) of the INCOTERMS 2010 plus turnover tax, customs costs, freight costs, transport insurance costs, and other shipping expenses.

2. Additional or special services will be billed separately.

3. The creation of samples, such as sketches, drafts, dummies, typesetting samples, test prints, sample lithos, first sample parts, and correction proofs will also be billed separately if these are initiated by the ordering party.

4. herpa is entitled to change the agreed-upon price appropriately if cost changes occur after the conclusion of the contract, especially due to collective bargaining agreements, changes in material prices, or changes in energy prices. The cost change will be demonstrated to the ordering party upon request.

5. herpa is also entitled to adapt the agreed-upon price appropriately if changes are necessary before or during the implementation of the order, because the information and/or documents provided by the ordering party were or are faulty and/or incomplete.

6. Invoice amounts are, if not otherwise agreed upon, due for payment within 30 days after the invoice date without deductions. Receipt by herpa is pertinent for the date of payment. Cash discounts and rebates will only be granted upon separate agreement.

Partial payments require a separate, written agreement.

7. In case of delay in payment, herpa is entitled to demand default interest in the amount of 9 percentage points above the respective basic interest rate p.a. herpa reserves the right to demonstrate greater damages.

In case of agreed-upon deferment of payment or partial payment, herpa is also entitled to demand interest in the amount of 9 percentage points above the respective basic interest rate p.a.

8. Invoice settlement through bills of exchange requires a separate, prior agreement with herpa. The ordering party will bear any discount charges and exchange costs. Bills of exchange shall only be deemed to be a payment upon unconditional credit. The same is true for an invoice settlement via check.

9. If there are several open claims by herpa against the ordering party and payments by the ordering party are not made on a specific claim, herpa is entitled to determine to which of the open claims that payment shall apply.

10. With the placement of the order, the ordering party confirms its ability to pay or its creditworthiness.

If herpa becomes aware of conditions after the conclusion of the contract that justify reasonable doubts as to the ability to pay or creditworthiness of the ordering party, herpa is entitled to only perform outstanding deliveries or services in return for advance payment or the provision of security.

If the ordering party is not prepared to do this, herpa is entitled (after setting an appropriate deadline) to withdraw from the contract and to demand reimbursement of damages instead of payment.

11. Granted payment terms are void and outstanding claims come due for immediate payment if an application is made for the opening of insolvency proceedings against the assets of the ordering party. This is also in effect for any otherwise reasonable doubts as to the ability to pay or creditworthiness of the ordering party of which herpa becomes aware after the conclusion of the contract.

12. The ordering party only has rights of setoff against the claims of herpa if the counterclaim of the ordering party is undisputed or has been legally established.

13. The ordering party only has a right of retention if the counterclaim of the ordering party is based upon the same contractual relationship and is undisputed or has been legally established or if herpa seriously violates its obligations from the same contractual relationship in spite of a written warning and did not provide appropriate security.

14. The assignment of claims of the ordering party against herpa requires the consent of herpa.

15. If the invoice of herpa does not contain value-added tax, especially because herpa has assumed an "intra-community delivery" within the meaning of § 4 No. 1b in conjunction with § 6a UStG (Umsatzsteuergesetz - Value Added Tax Act) based on the information of the ordering party, and herpa is subsequently required to pay taxes (§ 6a Section 4 UStG), the ordering party is obligated to reimburse herpa for the respective amount. This obligation exists regardless of whether or not herpa must subsequently deduct value-added tax, import turnover tax, or comparable taxes. It is also immaterial whether the subsequent tax obligation exists at home or abroad.

§ 10 Place of fulfillment, acceptance, transfer of risk, packaging

1. The place of fulfillment for all obligations from the contract relationship is the factory of herpa - if not otherwise stipulated in writing. In the absence of a differing, written agreement, the ordering party must pick up the delivery or service object there after being notified of completion.

2. The place of fulfillment for the payments to be made to herpa from the business relationship is the business headquarters of herpa.

3. The ordering party is required to take delivery as soon as it has been notified of the completion of the services stipulated in the order by herpa.

If the ordering party does not accept the service within two weeks after notification, acceptance shall be deemed to have taken place.

4. The risk for the destruction, loss, or damage of the delivery or service object is transferred to the ordering party with the notification of completion.

If shipping was agreed upon, the risk is transferred to the ordering party upon surrendering the package to the commissioned transport company or other third party commissioned with handling the shipment. If shipment is delayed as a result of circumstances for which the ordering party is responsible, the risk is transferred to the ordering party from the day on which the delivery or service object is ready for shipment and herpa has notified the ordering party of this.

herpa will only ensure the goods to be shipped at the express, written request of the ordering party and at its expense.

5. In case of the damage or loss of the goods during transport, the ordering party must immediately make an inventory and inform herpa of this. The ordering party must immediately assert claims from any transport damage with the shipping company or carrier.

6. If no other agreement has been made, herpa will determine the type and scope of the packaging.

The ordering party will dispose of disposable packaging.

If the goods are shipped in returnable packaging, these must be returned freight paid within 30 days after receipt of the delivery. The ordering party is responsible for loss and damage to the returnable packaging.

Returnable packaging may not be used for other purposes or for shipping other objects. It is only designed for the transport of the delivered goods. Labels may not be removed.

§ 11 Material provision

1. Material provided to herpa by the ordering party for processing must be delivered to herpa free domicile.

2. The goods to be processed will only be inspected by herpa for externally visible defects upon delivery. herpa is not obligated to perform more extensive inspections. The ordering party will be informed of any defects discovered within 10 working days.

3. The material provided to herpa must be easy to process and possess suitable characteristics. If these prerequisites are not fulfilled, herpa will inform the ordering party of the necessary additional work and the price increase resulting from this.

If the ordering party does not agree to the price change, it has the right to withdraw from the contract. Withdrawal must take place immediately after notification by herpa with regard to the price change. If the ordering party declares its intention to withdraw from the contract, it must pay appropriately for work already performed.

4. The ordering party must pay for damages incurred by herpa due to the provision of material and data that cannot be processed.

5. Print films shall be provided by the ordering party in conjunction with corrected proofs.

6. With regard to digital templates/data provided by the ordering party, these must be created and formatted in accordance with the specifications of herpa.

For data transmissions, the ordering party must utilize programs for protection against computer viruses reflecting the latest state of technology before transmission.

7. During provision of the material by the ordering party, the packaging material and the waste due to the unavoidable loss during printed form setup and production run, during processing due to trimming, stamping, etc. remains the property of herpa.

8. herpa shall not compensate the ordering party for waste occurring on a scale that is common for the industry.

9. herpa has a right of retention pursuant to § 369 HGB to the print and stamp templates, manuscripts, raw materials, and other objects supplied by the ordering party pending complete fulfillment of all claims due from the business relationship.

10. The objects, data, and data carriers provided to herpa by the ordering party shall only be stored or archived by herpa beyond the time of the delivery of the goods in accordance with an express agreement and for special remuneration.

11. The liability of herpa is limited pursuant to § 16 of these General Processing and Delivery Conditions.

§ 12 Tools

1. With regard to the tools provided to herpa on loan by the ordering party, the ordering party is responsible for the expenses for maintenance and insurance.

2. If, after the order has been completed and a respective request has been made by herpa, the ordering party does not pick up the tools within 14 days of this request, the ordering party is responsible for the costs of their storage. Additional claims remain unaffected by this.

3. herpa is entitled to a right of retention for the tools as long as the ordering party has not completely fulfilled its contractual obligations.

4. The liability of herpa with regard to the tools is limited pursuant to § 16 of these General Processing and Delivery Conditions.

§ 13 Galley proofs and press proofs

1. Galley proofs and press proofs shall be checked by the ordering party for typesetting and other errors and returned to herpa, declaring that they are ready for printing. Any and all changes made via telephone shall be confirmed in writing.

2. The ordering party cannot assert any subsequent claims for errors that the ordering party overlooks while inspecting the galley proofs and the press proofs, unless the errors were not visible.

3. The ordering party is responsible for errors in the copying templates provided.

§ 14 Duty to inspect and raise objections, warranty

1. The ordering party is obligated to immediately inspect the delivery or service object after delivery or receipt and to immediately inform herpa in writing of any errors discovered - including errors discovered later. This also applies to the preliminary and interim reports sent to the ordering party for correction.

2. The ordering party must refrain from using faulty deliveries and services. If an error is discovered later, further use of the delivery or service object should be discontinued immediately.

3. The ordering party shall provide the rejected delivery or service object to herpa and grant herpa an appropriate period to check the reported errors. In case of unjustified complaints, herpa reserves the right to charge the ordering party for the testing expenses incurred.

4. Errors in a portion of the delivery or service object do not entitle the ordering party to reject the entire delivery, unless a partial delivery is of no interest for the ordering party.

5. Dimensional deviations in the delivery or service to be provided by herpa on a scale that is common in the industry or trade do not entitle the ordering party to raise complaints.

6. Excess or short deliveries of up to 10 % of the ordered print run cannot be rejected. The delivered amount will be invoiced.

7. In case of reproductions, slight deviations from the original cannot be rejected. The same is true for slight deviations of the final product from other templates, such as proofs, etc.

8. No warranty is given for defects, which do not adversely affect the value or usability or only slightly affect it.

9. If there is a defect in the delivery or service object, herpa is entitled and obligated to choose between remedial actions or replacement delivery. The delivery or service object can also be remedied by the ordering party following coordination with herpa. If subsequent improvement fails, the ordering party can reduce payment or withdraw from the contract pursuant to legal requirements.

10. If the defect is the fault of herpa, the ordering party can demand reimbursement of damages under the requirements listed in § 16 of these General Processing and Delivery Conditions.

§ 15 Legal defects and property rights

1. In case of legal defects, herpa is entitled and obligated to make a right of use and enjoyment available to the ordering party by concluding a license agreement or to eliminate the defects in the delivery or service object by providing a delivery or service object which has been modified to an extent that is acceptable to the ordering party, at its own discretion. If herpa is not able to do this, the ordering party can reduce payment or withdraw from the contract pursuant to legal requirements. Any claims for damages are subject to the limitations of § 16 of these General Processing and Delivery Conditions.

2. If a claim is asserted against herpa by a third party due to the infringement of property rights on the basis of drawings, sketches, etc. which were provided to herpa by the ordering party for the fulfillment of the order, the ordering party shall indemnify herpa against the claims of the owner of the rights.

3. herpa reserves the ownership or copyright to all ideas developed by herpa and documents supplied to the ordering party, such as samples, dummies, sketches, drawings, illustrations, drafts, lithos, test prints, technical information, calculations, etc. The ordering party may neither use nor utilize these without the consent of herpa.

4. The operating equipment used by herpa for the fulfillment of the order, such as tools, print media, etc. remains the property of herpa and will not be delivered to the ordering party.

§ 16 Liability

1. The liability of herpa for the reimbursement of damages, regardless of the legal reason, as far as such liability depends upon proof of fault, is limited pursuant to § 16.

2. herpa is not liable in case of simple negligence if this does not apply to the violation of major contractual obligations (cardinal obligations).

Major contractual obligations are those contractual obligations whose fulfillment make the proper implementation of the contract possible in the first place and on which the contractual partner may rely.

3. If herpa is liable in principle for damages, this liability is limited to the foreseeable damages typical for this type of contract.

4. The amount of the liability of herpa is limited to the scope of the product liability insurance of herpa. The scope of the coverage is 5 million Euros per insured event and year.

5. If the liability of herpa is excluded or limited, this is also in effect for the organs, legal representatives, other representatives, workers, employees, and agents of herpa.

6. The limitations of this § 16 are not in effect for the liability of herpa due to gross negligence or intentional behavior, due to culpable injury to life, limb, or health, or in accordance with the Product Liability Act.

§ 17 Limitation period

1. The limitation period for claims due to defects is one year. The beginning of the limitation period is in accordance with the legal provisions.

2. The legal limitation rules are in effect pursuant to § 438 para. 1 No. 2 BGB and § 634a para. 1 No. 2 BGB in cases of damage claims of the ordering party against herpa due to gross negligence or intentional behavior, due to culpable injury to life, limb, or health, or major contractual obligations, and for claims pursuant to the Product Liability Act.

§ 18 Acquisition of ownership, reservation of ownership, right of lien

1. The reservation of ownership agreed upon in the following serves to secure all respective existing current and future claims of herpa against the ordering party from the business relationship existing between these two parties.

2. If property of herpa is processed, combined, or mixed with objects or materials owned by the ordering party, herpa acquires joint ownership of the delivery or service object in proportion of the value of the property of herpa utilized in this, including the (processing) performance of herpa, to the value of the new object at the time of processing, combination, or mixing. This is also in effect if the new object is to be regarded as the primary object.

3. The delivery or service objects (reserved goods) provided by herpa to the ordering party shall remain – if they are owned by herpa – the property of herpa pending complete settlement of all secured claims.

4. The ordering party is obligated to store the reserved goods with care and – if necessary – perform maintenance and upkeep work at its expense. The ordering party must insure the reserved goods against loss and damage at its own expense.

5. The ordering party is entitled to sell the reserved goods in the normal course of business until the occurrence of an enforcement event. The goods may not be pledged or transferred by way of security.

6. In case of resale, the ordering party hereby assigns the resulting claim against the purchaser - in case of a coownership share of the reserved goods by herpa, proportionally in accordance with the coownership share - to herpa by way of security.

The same is in effect for claims that take the place of the reserved goods or otherwise arise with regard to the reserved

goods, such as insurance claims or claims from unlawful acts in case of loss or destruction.

The ordering party is revocably entitled to collect these claims, even after their assignment. herpa may revoke this collection authorization only in case of an enforcement event.

7. The ordering party shall immediately inform herpa if a third party seizes or threatens to seize the reserved goods. The ordering party must immediately inform the third party of the reserved property of herpa or the claims assigned to herpa in this respect. The ordering party shall support herpa in all measures that are necessary to make possible the enforcement of the rights from the reservation of ownership. If the third party is not able to reimburse herpa for the court costs and out-of-court costs incurred in conjunction with this, the ordering party is responsible for reimbursing herpa.

8. If herpa withdraws from the contract due to behavior of the ordering party that is in violation of the contract - particularly in cases of default in payment - (enforcement event), herpa is entitled to demand the return of the reserved goods.

9. Due to the claims from the contract, herpa has a right of lien to the objects of the ordering party, which became the property of herpa due to the contract. The right of lien can also be asserted due to claims from earlier deliveries or services if these are connected to the delivery or service object. The right of lien applies to all other claims from the business relationship if these are undisputed or have been legally established. §§ 1204 et seq BGB shall apply mutatis mutandis.

10. If the realizable value of the securities exceeds the claims of herpa by more than 10 %, herpa shall release securities of its choice upon request of the ordering party.

§ 19 Confidentiality

1. The ordering party is obligated to treat the business relationship with herpa as confidential. It will particularly treat all nonpublic information and all business and technical details of which it learns through the business relationship as business secrets.

2. All documents that the ordering party is given by herpa may not be made accessible to third parties, either entirely or partially, without the written consent of herpa.

3. It is only permissible to copy the documents given to the ordering party within the scope of operational requirements and copyright provisions.

4. Procedures that herpa reveals to the ordering party (regardless of in what form), may only be used by the ordering party for the purpose provided for in the contract. Revelation to third parties is impermissible without the written consent of herpa.

5. Any (even partial) revelation of the business relationship with herpa toward third parties may only take place with the prior, written consent of herpa. The ordering party must also obligate the third parties to confidentiality by means of the same kind of agreement.

6. The ordering party may only use its business relationship with herpa in its advertising with prior, written consent.

7. The ordering party is also obligated to maintain confidentiality after the end of the business relationship.

8. The ordering party is also responsible for ensuring that its employees maintain the confidentiality interests of herpa.

9. The ordering party is obligated not to directly or indirectly enter into business relationships related to the delivery or service object with customers of herpa.

§ 20 Jurisdictional venue, applicable law, severability clause

1. The jurisdictional venue is either the court responsible for the headquarters of herpa or the jurisdictional venue of the ordering party, at the discretion of herpa. For lawsuits against herpa, the court responsible for the headquarters of herpa is the sole jurisdictional venue. Mandatory statutory provisions regarding exclusive jurisdictional venues remain unaffected by this provision.

2. For the business relationships with the ordering party, only the laws of the Federal Republic of Germany are applicable. The applicability of the CISG is expressly excluded.

3. If individual parts of these General Processing and Delivery Conditions are ineffective, the effectiveness of the remaining provisions remains unaffected by this. If individual provisions are ineffective, the respective contents of the contract shall be governed by applicable legal provisions.

§ 21 Contact data

herpa print GmbH
Managing Director: Michael Pack
Niedermiebach 71
D - 53804 Much
Germany

Telephone: +49 (0) 2245 9163 0
Fax: +49 (0) 2245 9163 6

Email:
info@herpa-print.de
<http://www.herpa-print.de>

Registry court: Amtsgericht Siegburg
Commercial register no.: HRB 1817

VAT ID: DE 258 515 712