

General Purchasing Conditions (GPC)

of herpa print GmbH

Status: December 2018

§ 1 Scope of application

1. Only these General Purchasing Conditions (GPC) are in effect for all business transactions of herpa print GmbH, referred to hereinafter as: herpa, and the seller, agent, service provider, or contractor, referred to hereinafter as: supplier. herpa does not recognize other conditions unless herpa expressly agrees to their validity in writing. These General Purchasing Conditions are also in effect if herpa accepts the delivery or service with knowledge of the deviating conditions.

2. These General Purchasing Conditions are only in effect for companies in the meaning of § 14 BGB (German Civil Code). They are also in effect for all future contracts with the supplier without being repeatedly incorporated until new General Purchasing Conditions are provided by herpa.

§ 2 Offers, orders, call orders, master agreements

1. If the supplier creates a binding offer as the result of a request by herpa, this is done free of charge for herpa. The same is true for samplings. Deviations from the request must be clearly indicated in the offer of the supplier. The supplier is bound by its offer for at least one month.

2. Binding orders of herpa must be confirmed by the supplier in writing within 14 days after the order date, listing the order number supplied by herpa. The receipt of the declaration of acceptance by herpa is relevant for timely acceptance.

3. Transfer of the order to a third party is prohibited.

4. Call orders become binding if the supplier does not object within one week after receipt. Production for call orders is only permissible after the receipt of the call.

5. Master agreements only entitle the supplier to procure raw materials in the necessary amount.

§ 3 Changes

1. Subsequent unanimous contractual 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 of herpa.

2. herpa is entitled to change the time and location of delivery, as well as the type of packaging before order fulfillment by means of a written notification. The same is in effect for changes of product specifications if these can be implemented by means of the normal production process of the supplier without significant additional effort or expense. herpa shall reimburse the supplier for the demonstrated and appropriate additional costs caused by the change. If such changes result in delivery delays, which cannot be avoided in normal production and business operations of the supplier with reasonable effort, the originally agreed upon delivery deadline or the originally agreed upon delivery shall be changed accordingly. The supplier shall inform herpa in good time and in writing of the expected additional costs or delivery delays on the basis of careful assessment.

3. herpa is entitled to terminate the contract at any time by means of a written declaration, listing the reason, or to withdraw from the contract if herpa can no longer use the ordered products due to conditions occurring after the conclusion of the contract that are not the fault of herpa. In this case, herpa shall reimburse the supplier for the partial services performed by it. The same applies if the solvency of the supplier worsens after the conclusion of the contract to the extent that this endangers the fulfillment of the contract or insolvency proceedings are initiated against the assets of the supplier.

4. The supplier is not entitled to make unilateral contractual changes.

§ 4 Prices, invoice details, payment conditions

1. Delivery shall take place pursuant to the DDP (Delivered Duty Paid) clause of the INCOTERMS 2010. Packaging and insurance costs are included in the price.

2. A price listed in the order is deemed to be the maximum price. The actual price can be lower but not higher. Confirmed prices are deemed to be fixed prices. Unilateral price increases are impermissible.

3. Invoices must be provided separately for each order upon delivery in duplicate with the original and the copy marked. They must contain the order number, the order reference, and the article numbers. The value-added tax shall be listed separately. If known, the ordering person or department should be listed by name and the intended application listed. If the information in line 1 is wholly or partially missing and this causes a delay in processing within the scope of the normal business transactions of herpa, any payment deadlines are extended by the time of the delay.

4. In case of a cash discount agreement, payment is made pursuant to the agreement made. In the absence of a concrete structure of the cash discount agreement, a 3 % cash discount for payment within 14 days after receipt of the invoice shall be deemed to be agreed upon. In case of faulty and/or incomplete invoice, the cash discount deadline shall be extended as listed under Clause 3.

5. If nothing else is agreed upon, payments by herpa will be made in Euro to the domestic bank account of the supplier without deduction.

6. If advance payment is agreed upon, the supplier must provide an unlimited performance guarantee of a German bank or insurance company in exchange for the payment of and in the amount of the advance payment. In case of delay in delivery, interest for delay in the amount of 9 percentage points above the basic interest rate shall be charged on the advance payment amount. The supplier reserves the right to prove lesser damages.

7. The supplier is not entitled to assign claims against herpa to third parties without the consent of herpa or to have these collected by third parties. If an extended reservation of ownership is agreed upon, consent is considered to have been granted.

8. herpa has rights to setoff and rights of retention to the extent permitted by law.

9. The supplier only has rights of retention and rights of setoff against the claims of herpa if the claim of the supplier is undisputed or has been legally established.

§ 5 Delivery time, delay, delivery, transfer of risk

1. The delivery time listed in the order by herpa (delivery deadline or delivery period) is binding. herpa is not obligated to accept delivery before the end of the delivery time.

The delivery time refers to the factory listed by herpa or the receiving office or place of use otherwise listed by herpa.

The following acceptance times are in effect for all receiving offices or places of use:

Monday through Friday: 7:00 AM – 12:00 Noon

Monday through Thursday: 12:45 PM – 4:00 PM

2. In case of delivery before the agreed-upon delivery time, herpa is entitled, at its discretion, to return the goods or put them in intermediate storage with herpa or a third party. Either option will be at the risk and expense of the supplier. In this case, herpa reserves the right not to make payment before the agreed-upon delivery time. The cash discount deadline shall also not be calculated before the date of the agreed-upon delivery time.

3. The supplier is obligated to immediately inform herpa in writing if conditions occur or become apparent, which mean that the delivery time cannot be complied with.

4. In case of a delay in delivery, herpa is entitled to all legal claims, without limitation. An exclusion of liability or a limitation of liability of the supplier is excluded.

5. If the supplier is behind schedule, it is obligated to utilize express shipping when ordered to do so by herpa (express or express freight, courier, express parcel, air freight, etc.) at its expense.

6. If the supplier falls behind schedule, herpa is entitled after prior warning to demand a contractual penalty in the amount of 10% of the net delivery value or the net service per completed week, but a total of no more than 50% of the net delivery value or the net service.

The contractual penalty will be applied to a claim for damages.

The right to demand the payment of a contractual penalty is not excluded by the fact that the contractual penalty is not expressly reserved when accepting late delivery or service.

7. In case of a delay in acceptance, herpa is only liable for damage claims if it is at fault.

8. Partial deliveries and partial services are only permissible with the written consent of herpa.

With agreed-upon partial deliveries, the remaining amount must be listed.

9. herpa should be informed of every delivery in advance. The announcement should contain information regarding the order number, the number of items, the dimensions, the weight, the transport, the unloading and storage, and any special instructions for the handling of the goods.

10. A bill of lading in duplicate must be included with each shipment, in which all data contained in the order are listed, such as the order number, order reference, article number, part number, batch number, position number, etc.

Partial and remaining deliveries must be specially marked.

The bill of lading should be attached to the exterior of the shipment beneath an appropriate sticker or beneath packing paper with the notice: "Bill of Lading Here".

In case of import deliveries, the shipping documents that are necessary depending upon the type of shipping and the delivery country must be attached to the shipment, such as goods movement certificates, express parcel consignment notes, customs shipping notes, and certificates of origin.

11. herpa reserves the right to return packaging materials to the supplier.

12. Even if shipping is agreed upon, the risk is only transferred upon delivery by the supplier or the transport company to the receiving office or place of use stipulated by herpa or upon acceptance. This is also in effect if employees of herpa assist with unloading.

§ 6 Force majeure

In cases of force majeure for which herpa is not responsible, herpa is released from the obligation to accept the delivery or the service for as long as the disruption lasts. This is also the case for other cooperative actions of herpa in the fulfillment of the contract.

If the ordered delivery or service is no longer usable for herpa due to the delay caused by the force majeure, the provision made in § 3 Clause 3. applies.

§ 7 Product safety

1. The supplier shall be informed regarding the purpose of its products, services, and work.

2. The supplier shall mark its delivery and service objects so that they are recognizable as the supplier's products.

3. The supplier shall attach – if prescribed or indicated – a test certificate and the pertinent safety data sheets to its deliveries.

4. The services and work of the supplier shall be in accordance with the accident prevention regulations and the occupational health and safety regulations, as well as the generally recognized safety and industrial medicine rules.

5. The supplier shall ensure that all materials used, which fall under the EU-chemicals regulation REACH, are registered or approved in accordance with this regulation and in consideration of the contractual use of the materials by herpa. This is also true for suppliers outside of the EU. Upon request, the supplier shall provide suitable proof.

§ 8 Duty to raise objections, inspection costs, and costs for the notice of defects

1. A notice of defects shall be considered to have been made in a timely fashion if it is made toward the supplier within ten working days after receipt of the delivery object. Notice of hidden defects shall be regarded to have been given in good time if the notification of the supplier takes place within ten working days after discovery.

2. In case of a justified complaint, herpa reserves the right to bill the supplier for the inspection costs and costs for the notice of defects. The supplier shall bear the costs and risks for the return shipment of defective delivery objects.

§ 9 Warranty claims

1. In case of defects, herpa is entitled to all legal claims, without limitation.

2. The warranty period is three years. This only applies if a longer limitation period is not stipulated by law.

3. With the receipt of the written notice of defects by the supplier, the expiration of warranty claims is suspended.

4. If the supplier does not discernibly act only out of goodwill or for the amicable resolution of the dispute, but rather with the knowledge that he is obligated to remedy defects, the limitation period for the parts repaired or replaced within the limitation periods begins anew.

§ 10 Product liability

1. The supplier shall indemnify herpa from the damage claims of third parties which are the result of defects in the delivery object or the performed service, if the cause is located within its sphere of authority and organizational area. The principles of § 254 BGB are applicable accordingly for the settlement between herpa and the supplier.

2. The supplier is obligated to reimburse herpa for expenditures related to a recall or withdrawal campaign undertaken by herpa in order to avoid personal or property damage, which is the result of the defect in the delivered object or the performed service. Clause 1 applies accordingly for the settlement between herpa and the supplier.

3. Additional claims by herpa remain unaffected by this.

§ 11 Property rights

1. The supplier shall ensure that all deliveries and services are free of the property rights of third parties and especially that no patents, licenses, and other property rights of third parties are violated by the delivery and use of the delivery objects.

2. The supplier shall indemnify herpa and its customers from the claims of third parties from any violations of property rights if it is responsible for these.

3. The claims of herpa with regard to this expire three years after the delivery or acceptance. This only applies if a longer limitation period or a limitation period that begins at a later date is not stipulated by law.

§ 12 Insurance protection

1. The supplier is obligated to conclude and maintain company and product liability insurance with a coverage sum of at least 2.5 million € for personal damages, as well as property and pecuniary damages in connection with products, as well as a general recall cost insurance policy with a coverage sum of at least 5 million €.

2. The product liability insurance must include the so-called expanded product liability insurance pursuant to Clause 4 of the sample terms of the GDV (Gesamtverband der Deutschen Versicherungswirtschaft – German Insurance Association) for product liability insurance, status: January 2015; referred to hereinafter as: ProdHV, including the insurance of personal and property damage due to the lack of agreed-upon characteristics in the delivery products pursuant to Clause 4.1 ProdHV, combining, mixing, and processing damages pursuant to Clause 4.2 ProdHV, further machining or processing damages pursuant to Clause 4.3 ProdHV, removal and installation costs pursuant to Clause 4.4 ProdHV, damages due to faulty machines pursuant to Clause 4.5 ProdHV, and testing and sorting costs pursuant to Clause 4.6 ProdHV.

3. The coverage must extend to damages abroad.

4. The supplier must submit the provisions of these General Purchasing Conditions regarding the duty to inspect and raise objections and the extension of the legal limitation periods, and the indemnification provisions to its insurer for coinsurance within the scope of its company and product liability insurance or for the confirmation that the coverage is not prejudiced.

5. The supplier shall provide herpa with the confirmation of the insurer regarding the aforementioned scope of coverage no later than upon initial delivery or performance of service (Certificate of Insurance).

§ 13 Protection of ownership

1. herpa reserves the ownership or copyright or herpa acquires respective rights to illustrations, drawings, calculations, samples, models, templates, dummies, sketches, drafts, technical information, lithos, tools, print media, and other documents and objects which are provided to the supplier by herpa for the fulfillment of the contract or which are manufactured for herpa by the supplier for contractual purposes and for which herpa is billed separately.

They may not be used for deliveries to third parties, sold, transferred by way of security, pledged, or otherwise distributed. Duplication is only permissible within the scope of operational requirements and copyright provisions.

If they are pledged by third parties, the supplier is obligated to immediately inform herpa of this in writing. The supplier must point out the ownership relationships to the executing authority at the time of pledging.

The supplier is obligated to perform or have performed any necessary maintenance, inspection, upkeep, and/or repair work at its own expense.

The documents and objects must be immediately returned to herpa at the expense of the supplier if they are no longer needed for the fulfillment of the contract or if negotiations do not lead to the conclusion of a contract.

2. If herpa supplies material to the supplier, herpa reserves ownership of this. Contractually agreed upon processing or transformation by the supplier is performed on behalf of herpa.

If the material provided by herpa is combined, mixed, or processed with objects or materials owned by the supplier, herpa acquires joint ownership of the new object in proportion of the value of the material provided by herpa to the value of the other objects or materials at the time of combination, mixing, or processing. If the combination, mixing, or processing is done in such a manner that the new object is to be regarded as the primary object, it is agreed that the supplier shall transfer proportional joint ownership to herpa.

The supplier is obligated to inspect the material provided by herpa for obvious defects upon provision and to immediately notify herpa of defects. herpa shall also be immediately informed of defects discovered during processing.

3. Reservations of ownership of the supplier are only in effect to the extent that they refer to the payment obligation for the respective product to which the supplier reserves ownership. Expanded and/or extended reservations of ownership are impermissible.

§ 14 Confidentiality

1. The contractual parties are obligated to treat the business relationship as confidential. They will particularly treat all nonpublic, business and technical details of which they learn through the business relationship as business secrets.

2. All documents given to the supplier by herpa may only be provided to those persons of the supplier who are involved with the fulfillment of the order of herpa. The supplier shall also otherwise ensure that all employees maintain the justified confidentiality interests of herpa.

3. 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 supplier must also obligate the third parties to confidentiality by means of the same kind of agreement.

4. The supplier may only use its business relationship with herpa in its advertising with prior, written consent.

5. The supplier is obligated not to directly or indirectly enter into business relationships related to the object of the order with customers of herpa.

6. Products which correspond to the order of herpa and do not have general specifications, but rather are intended for a concrete application may not be delivered to third parties.

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

§ 15 Place of performance, jurisdictional venue, applicable law

1. The place of performance is the location to which the service object is to be delivered pursuant to the order.

The place of performance for payments is the headquarters of herpa.

2. The jurisdictional venue is the court responsible for the headquarters of herpa or the jurisdictional venue of the supplier, 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.

3. For the business relationships with the supplier, only the laws of the Federal Republic of Germany are applicable.

§ 16 Severability clause

If individual parts of these General Purchasing 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.

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