General Purchasing Terms and Conditions of SERVOLIFT GmbH


1.1 All contracts, deliveries and services shall be controlled exclusively by the following General Purchasing Terms and Conditions of SERVOLIFT GmbH. The General Purchasing Terms and Conditions shall only apply if the seller is an entrepreneur (§ 14 BGB), a legal entity under public law or special fund under public law.

1.2 General Terms and Conditions of the Contractor that differ from these General Purchasing Terms and Conditions are not accepted. Upon performing initial delivery according to these Purchasing Terms and Conditions, Contractor acknowledges that they shall be binding on all further contractual relationships. Our Terms and Conditions shall even apply if Contractor’s order is confirmed on terms and conditions deviating from our General Purchasing Terms and Conditions, even if we do not refuse those terms and conditions.

1.3 We advise our Contractors that we process and transmit their personal data exclusively for business purposes by means of electronic data processing.

2. Conclusion of Contract

2.1 Orders are only legally binding if placed in writing.

2.2 Acceptance of an order shall be confirmed promptly. Until receipt of the confirmation, we are entitled to cancel at no charge, and similarly, the order can be partially or completely canceled provided that the order confirmation does not conform with our order.

2.4 Contractor must personally execute the order that has been placed with it. Should Contractor wish to pass the order on to a third party, in whole or in part, Contractor must obtain our written consent.

2.5 Contractor must keep the conclusion of the contract confidential. Contractor may designate the SERVOLIFT company as a reference to third parties only with written consent.

2.6 Cost estimates, initial samples and samples in general are binding and not to be reimbursed unless otherwise expressly agreed to in writing.

3. Prices

3.1 Unless the extent not otherwise expressly agreed, the prices shall be deemed to be fixed prices - including the applicable value added tax in each case. Contractor shall give written notice of any general changes in its prices at least 3 months in advance, indicating the reasons. Should this time period not be observed, we reserve the right to postpone introduction of the price change accordingly.

4. Delivery Date and Breaches of Contract

4.1 The agreed delivery dates and delivery periods are binding. The receipt of the delivery at the place of receipt or place of use specified by us, independent of the agreed delivery condition, shall be controlling in determining whether these have been adhered to.

4.2 If Contractor recognizes that an agreed deadline or period cannot be adhered to, Contractor must notify us immediately, indicating the reasons therefore and the anticipated length of the delay.

4.3 Should agreed to delivery dates and periods not be adhered to for reasons reasons that Contractor bears responsibility for, then upon expiration of a reasonable yet unfruitful extension period set by us, we are entitled to any of the following: demand subsequent delivery and compensation for damages due to the late delivery, or instead of performance, demand damages based on non-performance, or rescind the contract.

4.4 In the event that Contractor shall be in default, we shall - in addition to proceeding on statutory claims - be able to demand lump sum compensation of our default damage in the amount of 1% of the net price per complete calendar week, not to exceed 5% of the net price of the product delivered behind schedule. We retain the right to prove that a higher amount of damage has accrued.

4.5 Contractor retains the right to prove that absolutely no damages have accrued or only a substantially smaller amount of damages has accrued.

5. Delivery and Scope of Delivery

5.1 The ordered quantities shall be adhered to. Quantities that deviate must have our advance written consent.

5.2 Delivery items must be free from all rights of third parties. Contractor guarantees that Contractor is the owner of the delivered product and that no patent or industrial property rights of third parties will be infringed through the use or further disposal of the delivered items. All delivery items must conform to statutory provisions and legal guidelines.

5.3 We shall receive, at the latest with the invoice, the required documents such as certificates, declarations of conformity as well as documentation and / or material safety data sheets.

5.4 Transportation risk and any insurance coverage shall be borne by Contractor.

6. Delivery Terms and Conditions

6.1 To the extent that otherwise agreed, delivery shall be take place duty-paid free at the place of use, including packaging and freight costs, in accordance with DDP (Incoterms 2010). Variable additional charges will not be accepted on grounds of process disturbance.

7. Terms and Conditions of Payment

7.1 Unless otherwise agreed, payment shall be carried out within 14 days less a 3% discount or within 30 days net, calculated in each case following receipt of invoice and quality approved and quantitatively complete goods receipt. Missing documents as provided by §771 BGB shall lead to an automatic postponement of the discount period until these arrive.

8. Advance Payment Against Bank Guarantee

Advance payments can only be agreed to against an open-ended bank guarantee with a waiver of the defenses of voidability, failure to pursue remedies and set-off due to disputed claims or claims determined not to be legally binding (§§770, 771 BGB), payable up to the maximum amount.

9. Non-Disclosure and Retention of Title

9.1 We retain the rights of ownership and copyright for all illustrations, plans, drawings, bills of materials, product descriptions, calculations, instructions for further processing and any documents created by us, and products that are completed using our tools or replicated tools, may not be utilized by Contractor or offered to third parties by Contractor.

9.2 The use and processing of data that we process and transmit to Contractor is limited exclusively for business purposes by means of electronic data processing. Contractor acknowledges that we process and transmit their personal data exclusively for business purposes by means of electronic data processing.

9.3 The documents, data and objects named in 9.1 and 9.2 may not be used by Contractor for other purposes, duplicated by Contractor, or made available to third parties by Contractor. Products that are manufactured according to our specifications or documents created by us, and products that are completed using our tools or replicated tools, may not be utilized by Contractor or offered to third parties by Contractor.

9.4 Any processing, mixing or combining (further processing) by Contractor of provided objects is undertaken on our behalf. The same is true for our further processing of delivered goods, so that we qualify as the owner of the delivered goods and Contractor loses all rights of ownership no later than at the time of further processing, pursuant to the statutory provisions.

The transfer of ownership in the product to us shall take place unconditionally and without regard to payment of the price. If we nevertheless accept the transfer of ownership, it must be in writing.

10. Transfer of Risk

10.1 The transfer of risk of accidental loss of the product or accidental deterioration of the product shall conform to the agreed delivery term. To the extent that no agreement has been reached, the risk shall be transferred to us upon delivery of the product at the agreed place of receipt. If an acceptance has been agreed to, this is controlled at the time of delivery of the product. With respect to technical documents, however, the risk transfers to us only upon confirmation of successful operation via a functionality test.

12. Minimum Wage

12.1 To the extent that Contractor has its place of business in Germany, Contractor guarantees that its wages paid to its employees correspond at a minimum to the statutory minimum wage. Contractor further guarantees that it complies with all of the obligations arising from the minimum wage law (MiLoG).

12.2 Should the Contractor engage subcontractors to fulfill its contractual obligations to SERVOLIFT, Contractor shall similarly require in writing that its subcontractors comply with MiLoG and Contractor shall ensure and ensure such compliance through suitable measures. Contractor is obligated to SERVOLIFT to designate the engaged subcontractors.

12.3 Contractor guarantees that SERVOLIFT itself or third parties authorized by SERVOLIFT (or are) entitled to verify compliance with the statutory requirements arising under MiLoG through suitable measures. This includes the obligation to maintain a bank guarantee to SERVOLIFT in its first request, randomly anonymized payroll records of Contractor’s employees.

Contractor’s order is not to be considered in the event of an unjustified demand to remedy a defect remains unaffected; however, we are only liable to the extent that we recognized or were obligated to recognize that such demand. Contractor is further obligated to insure itself against risks stemming from product liability including the risk of recall in a reasonable amount.
12.4 Should third parties make claims on SERVOLIFT due to violations of MiLOG by Contractor or its subcontractors, Contractor shall fully indemnify SERVOLIFT. This indemnity obligation includes fines and penalties as well as claims from social insurance security bodies and tax authorities.

12.5 If Contractor or a subcontractor engaged by Contractor violates the provisions of MiLOG, we are entitled to terminate the contractual relationships without notice.

12. Quality
12.1 The product shall adhere to the relevant state of the art and the specifically agreed to quality measures.

12.2 Contractor shall constantly align the quality of its products to be delivered to us according to state of the art and advise us regarding possibilities for improvement and technical modifications. Should Contractor have reservations regarding the manner of execution requested by us, Contractor must share this with us.

12.3 Contractor is additionally responsible for the quality of the materials used, the process, and the timely and proper delivery. Contractor must indemnify us for any defects in products delivered by him, and also the specified or agreed service. Contractors with whom we have a continuing business relationship are obligated to inform us at an early stage if they intend to carry out rearrangements to their product or process or changes in the technical conditions relating to our products.

12.4 Contractor promises to use environmentally friendly products and processes and assumes the liability for the environmental sustainability of the delivered products and packaging materials as well as for consequential damages arising from violation of statutory waste disposal requirements.

12.5 Contractor must immediately modify its manufacturing processes as soon as there is a change in the performance, dimension or other qualities of the parts to be manufactured according to our drawings. Should Contractor continue to manufacture parts according to old drawings, Contractor is obligated to immediately repair the parts, deliver new parts or compensate us for the expenses of making the necessary repairs within our company.

13. Liability for Defects
13.1 In the event of defects, we are entitled to the statutory claims, without restrictions. Moreover, claims arising from defects of title shall in no case become time-barred as long as third parties are still able to assert rights, particularly absent limitations, against us.

13.2 The statutory provisions (§§ 377, 381 HGB) shall apply to the commercial duty to inspect and give notice of defects with the following proviso: Our duty to inspect is limited to defects that are evident during our incoming goods inspection from an external inspection that includes the delivery papers (e.g., transport damage, incorrect or short delivery) or that are observable during our quality control sampling procedure. Insofar as an acceptance has been agreed to, there exists no duty to inspect. Otherwise it depends on how feasible an inspection is, considering the circumstances of the individual case in the ordinary course of business. Related duty to give notice of defects for defects discovered at a later time remains unaffected. Regardless of our duty to inspect, our rejection (notice of defect) shall be considered prompt and timely if it is sent within 5 work days from the time of discovery or, in the case of obvious defects, from the time of delivery.

13.3 Contractor’s obligation to cure: Defects of delivery/service for which notice is given during the warranty period must be cured by Contractor immediately and free of charges including all ancillary expenses, either by removing the defect (rectification) or delivery of an article that is defect-free (subsequent delivery), at our option. At the expiration of a reasonable period set by us for rectification or subsequent delivery that is unfruitful, we shall have available to us the statutory claims, without restriction, to terminate the contract and take over the manufacture parts according to state of the art and technical modifications. Should Contractor have reservations regarding the manner of execution requested by us, Contractor must share this with us.

13.4 Contractor is obligated to employ quality control measures that adhere to the state of the art technical and legal requirements and to prove this to us upon request.

14. Manufacturer’s Liability
14.1 Contractor is responsible for all claims asserted by third parties due to personal injury or damage to property that is attributable to a defective product delivered by Contractor. If Contractor is responsible for a product defect, Contractor must indemnify us from claims of third parties to the extent that the cause lies within Contractor’s organization and sphere of control and Contractor is liable vis-à-vis third parties.

14.2 Within the scope of Contractor’s indemnity obligation, Contractor must, pursuant to §§ 683, 670 BGB, reimburse expenses that arise from or in connection with third parties’ utilization of recall campaigns including those carried out by us. We will instruct Contractor and give Contractor the opportunity to comment on the content and scope of recall measures - so far as practicable and reasonable. Further legal claims remain unaffected.

14.3 Contractor must take out and maintain product liability insurance with an overall amount of coverage of at least 10 million EUR per personal injury/property damage.

15. Industrial Property Rights
15.1 Contractor guarantees according to paragraph 2 that the products delivered by Contractor are not infringing any industrial property rights of third parties in EU countries or other countries in which Contractor manufactures the products or permits manufacture of the products.

15.2 Contractor is obligated to indemnify us from all claims asserted by third parties against us because of the infringement of industrial property rights and Contractor could not have been expected to be aware of it at the time of delivery through exercising commercial diligence. Our additional legal claims based on defects of title in the products delivered to us remain unaffected.

16. Spare Parts
16.1 Contractor is obligated to maintain an inventory of spare parts for the products delivered for a period of at least 10 years after the delivery.

16.2 Should Contractor plan to stop production of spare parts for the products delivered to us, Contractor shall notify us of the cessation immediately after the decision. This decision must, subject to paragraph 1, occur at least six months prior to the cessation of production.

17. Assignment
17.1 Contractor is not entitled to assign his claims to third parties without our prior consent. We may not unreasonably refuse consent.

18. Location of Performance, Place of Jurisdiction, Applicable Law
18.1 German law, exclusive of the UN Convention on Contracts for the International Sale of Goods (CISG), shall apply to these General Purchasing Terms and Conditions and the entire legal relationship between Contractor and us. Contractor must assure that Contractor has capacity under German law, is a merchant within the meaning of the German Commercial Code, a legal entity under public law, or a special fund under public law, then the exclusive place of jurisdiction for all disputes arising from the contractual relationship shall be our place of business in Offenburg, even for international cases. Nevertheless, we are also entitled in any case to file suit at the place of performance of delivery obligations under these General Purchasing Terms and Conditions or according to am overriding specific agreement or at the place of local jurisdiction for Contractor. Overriding legal provisions, in particular for exclusive jurisdiction, remain unaffected.

18.2 The place of performance for the services of both contractual parties is Offenburg.

18.4 Should any provision of this agreement and further agreements affected thereby be or become invalid, this shall not affect the validity of the remaining terms and conditions.