

Terms and Conditions of Purchase

of the sera group



as of: 12/2013

1. Scope of Application

- (1) Unless otherwise agreed in writing, all supplies and services and the legal relationship between Supplier and the **sera** Group of Companies, **sera GmbH**, **sera ComPress GmbH**, **sera ProDos GmbH** and **sera International GmbH** (hereinafter "**sera**") shall be governed exclusively by these Terms and Conditions of Purchase.
- (2) **Sera** shall not be bound by any other diverging or conflicting terms and conditions of the Supplier unless **sera** expressly acknowledges in writing that such terms and conditions shall apply. The same shall apply for amendments of already existing agreements.
- (3) These Terms and Conditions of Purchase shall apply even if **sera** is aware of any contradicting or deviating terms and conditions used by the Supplier and nonetheless accepts deliveries without reservation.
- (4) Any alterations, side agreements, warranties and representations, changes or amendments, must be made in writing.
- (5) These Terms and Conditions of Purchase shall apply to all future transactions with the Supplier, without the need for a specific request.

2. Offers

- (1) The Supplier's offer shall refer to the quantities and qualities stipulated in **sera**'s request. Any departure therefrom shall be expressly mentioned.
- (2) Any offer is regarded as non-binding and without costs to **sera**.
- (3) The Supplier shall advise **sera** at the time of order submission of any potential defects and any deviation to his request or specifications. This requirement also applies to the observance of and compliance with relevant regulations, laws and environmental regulations, in particular with regard to the observance of the state of scientific knowledge and technology, environmental protection regulations or technical expediency.

3. Purchase Order, Acceptance and Order Confirmation

- (1) Orders and their acceptance as well as any alterations and supplements must be made in writing. Any oral subsidiary agreements are null and void.
- (2) Orders may be transmitted by electronic data transfer or machine-readable storage media. Unless expressly confirmed by **sera**, any oral or subsidiary agreements – whether entered before or after the closing – are subject to written consent by **sera**.
- (3) The Supplier agrees to declare acceptance of a Purchase Order within two (2) weeks. Failure to accept the Purchase Order by the Supplier within this period shall be deemed as cancellation of the order by **sera**.
- (4) **Sera** shall have the right to request reasonable changes in the design or workmanship of the Delivery Items. Any changes caused by cost increases and/or decreases or implications with respect to delivery dates shall be settled by mutual agreement.
- (5) Tender documents, in particular, drawings, calculations, models, templates, samples and illustrations which have been prepared in joint collaboration with **sera** shall be the exclusive property of **sera**. Such documents may not, without **sera**'s express written approval, be disclosed to third parties. The Supplier shall impose the same obligation on any sub-supplier or sub-contractors.
- (6) The Supplier is not allowed to sub-contract any Purchase Orders received from **sera** without the prior written consent of **sera**. Any failure to comply with this provision entitles **sera** to terminate the contract in whole or in part.
- (7) The Supplier shall provide all supporting documents (e.g. certificates of origin) which are required to gain tariff relief or other special concessions.

4. Prices

- (1) The agreed prices shall be regarded as fixed prices, delivery to point of use, including packaging and freight. Unless otherwise agreed in writing, deliveries are shipped "duty paid" to Immenhausen (DDP according to Incoterms as amended).

- (2) The price shall include all operating instructions and other documentations as specified by **sera** in its enquiry and/or Purchase Order as regards language, quantity and format (i.e. hardcopy or electronic copy). Any documentation shall comply with the laws and guidelines in the European Community.
- (3) The Supplier may not claim any additional costs on the basis of missing or unclear specifications in **sera**'s enquiry and/or Supplier's quotation.
- (4) If a price "ex works" has been agreed, **sera** shall assume the most favorable freight charges only. Any costs incurred up to the handover to the carrier – including loading – shall be borne by the Supplier.
- (5) The type of pricing shall not affect the agreement of the place of performance.

5. Invoices and Payments

- (1) Unless specified otherwise in the Purchase Order, invoices shall always be sent to **sera**'s address showing order data and other order references.
- (2) Invoice copies shall be clearly indicated as such. All invoices shall show the value added tax separately. Invoices must conform to current legal regulations and requirements. Improper invoices shall be returned to the Supplier.
- (3) Under the pre-condition of proper delivery and invoicing, the Supplier's invoices shall be paid by **sera** with a 3 % discount being deducted from the gross invoice amount and are due within 21 days of receipt of invoice or within 45 days net, without any discount applicable in this case.
- (4) The term of payment starts from the date of receipt of a duly issued invoice at **sera**, provided that the delivery of goods and provision of services by the supplier has been performed without defects.
- (5) The payment of goods or services does not infer their complete acceptance or that the proper invoices as well as supporting documents and inspection certificates included in the scope of supply and services have been received.
- (6) In the event of any advance payment by **sera**, the Supplier consents to the provision of this advance payment in the form of a bank guarantee specifying the same amount, at a minimum.

6. Delivery Dates, Delivery Periods, Shipment

- (1) Agreed deadlines, in particular, delivery dates and delivery periods, are binding. The relevant date for determining compliance with delivery dates or deadlines shall be the date of receipt of the goods against the Purchase Order at **sera**'s location or any other delivery address as stated by **sera**.
- (2) The timely delivery of goods and performance of services – including installation or assembly – shall be based on their acceptance.
- (3) Deliveries are deemed to have been performed only upon receipt of supporting documents and the compliance with any other obligations by the Supplier.
- (4) The Supplier shall notify **sera** in writing as soon as the Supplier can reasonably foresee that the agreed delivery time cannot be met. The Supplier shall, at its own expense, make every reasonable effort to meet the agreed delivery deadlines.
- (5) The Supplier shall be in default without formal notice of default being required by **sera** as soon as the agreed delivery date has been exceeded.
- (6) Without prejudice to any other rights **sera** may have, **sera** is entitled to claim a penalty of 1 % of the order value for each calendar week, up to a maximum of 5 % of the value of the goods or services ordered, if the Supplier is in default.
- (7) Force majeure, industrial action and civil unrest shall release the Parties from their obligations to perform for the duration of the obstruction and to the extent of its effect, even in the case of default.
- (8) The Supplier shall have the right to contest the damages claimed by **sera** and the option to prove that the default did not result in any damages or in considerably less damages. This right does not affect

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any further statutory claims of **sera**. **Sera's** right to withdraw from the contract or to claim damages for failure to perform in cases where a grace period involving the threat of repudiation has elapsed shall remain unaffected.

- (9) Any acceptance without reservation of delayed delivery shall not be interpreted as a waiver of the aforementioned claims of **sera**.
- (10) If the Supplier ceases his payments or if insolvency proceedings regarding the Supplier's assets or settlement proceedings – whether in or out of court – are applied for, **sera** may cancel the unfulfilled part of the contract.

7. Packing, Shipping and Receipt of Goods

- (1) Unless otherwise agreed, the delivered goods must be packed by the Supplier appropriately and conforming with industry practice. In particular, the packing to be selected by the supplier must ensure that the goods arrive at **sera** in a dry condition, free of corrosion, dirt and other harmful environmental influences and damages.
- (2) Material surfaces and cut surfaces, such as threads, sealing areas shall be protected in each case against possible damages and environmental influences impairing function and quality.
- (3) Unless specified by **sera**, all packaging material used by the Supplier shall be made of environmentally compatible materials for easy recycling.
- (4) At **sera's** request, the Supplier shall – at no cost to **sera** – collect packaging material at **sera's** location.
- (5) If delivery is to be made to other delivery locations than **sera's** location, the Supplier shall send **sera** a shipping advice.
- (6) Delivery terms shall be “delivery to point of use, including packaging and freight”, unless otherwise specified.
- (7) Each shipment shall be accompanied by packing slips and delivery notes specifying its content and **sera's** order data (e.g. order number, project reference, etc.).
- (8) Additional costs resulting from the non-compliance with dispatch instructions or packaging prescriptions or due to the failure to expedite shipment in order to meet a delivery date shall be borne by the Supplier.
- (9) The instructions in the written order concerning acceptance and shipment of goods shall be binding and shall be complied with accurately. Any costs and damages resulting from the failure to comply with this provision shall be borne by the Supplier only.
- (10) The Supplier shall bear the risk until the Delivery Items are received at the delivery address specified by **sera** (place of performance), even if **sera** pays for the freight charges of the carrier and/or transport insurance.

8. Quality and Documentation

- (1) The Supplier warrants to **sera** that the goods supplied are in conformity with **sera's** technical specifications, the latest state of the art, the generally accepted engineering standards, and the relevant safety regulations. Any change in the manufacturing of the Delivery Items shall require the prior written consent of **sera**.
- (2) Any technical data or test/inspection requirements specified by **sera** shall not release the Supplier from its liability to ship Delivery Items which are without defects, in conformity with the purchase contract and fit for the intended use.
- (3) Type and scope of quality inspections shall be agreed upon by the parties to the contract. **Sera** shall have the right to demand at any time that the Supplier employs test/inspection methods that are commonly used in the industry and relevant to the product.
- (4) The products delivered shall be in conformity with the relevant standards and directives, including, but not limited to, the Directives of the European Community. The Supplier shall be liable for any delays caused by missing or incorrect certificates of conformity.
- (5) These Terms and Conditions of Purchase shall apply in addition to the **Supplementary Quality Terms and Conditions for Suppliers** issued by **sera** as amended (if agreed separately), and available under

www.sera-web.com (**sera** Homepage). Alternatively, the supplier may request a copy in writing.

9. Defect Investigation and Notice of Defects

- (1) **Sera** shall promptly notify the Supplier of any defects to the shipment upon their detection in the ordinary course of business.
- (2) With respect to the foregoing, the Supplier hereby waives the right to any claim that the defects have been notified too late.
- (3) **Sera** shall not be obliged to inspect or to notify of defects until the time of the processing or first use of the delivery or performance.

10. Warranty, Notification of Defects and Liability

- (1) Irrespective of the raising of notification of defects the Supplier warrants the compliance of the Delivery Items in terms of agreed specifications and properties, functionality as well as the absence of defects affecting their value or suitability for a specified purpose in accordance with the provisions stipulated in the Purchase Order and other assured properties and qualities such as material, performance and efficiency. Furthermore, the Supplier warrants that the contractual use of the Delivery Items does not infringe any third-party rights.
- (2) If the Delivery Items do not comply with the above, **sera** may request either the defect to be rectified or the delivery of goods which are free from defects. The Supplier shall bear any direct or indirect costs caused by defects and their remedy.
- (3) To the extent the Supplier is obliged to repair defective contract goods or to deliver replacement free of charge, the Supplier has also to pay all expenses necessary, including any associated expenditures, for instance, transport cost, labor, and material. This shall also apply if payment of such costs has been advanced by **sera**. Furthermore, the Supplier shall pay the necessary costs of the investigation of defects and identifying their cause. The Supplier shall compensate **sera** for any damages caused by any such remedy of defects. The same shall apply if other property of **sera** is damaged during any such remedy of defects.
- (4) Expenses for remedy of defects or replacement of goods shall also include cost of packaging, freight charges, dismantling and installation expenses. The Supplier shall pay **sera** a reasonable compensation for **sera's** time for the remedy of defects or replacement delivery.
- (5) In urgent cases or if the rectification of the defect by the Supplier is delayed, **sera** may undertake the remedial work itself or have this work performed by a third party and at the Supplier's expense.
- (6) The Supplier shall indemnify **sera** against any and all third-party claims, including third-party claims based on liability regardless of **sera's** fault, if the damage giving rise to any such claim was caused by a product supplied by the Supplier. In cases of liability based on fault, this only applies, however, if the supplier is at fault directly vis-à-vis a third party.
- (7) In cases of culpable conduct, **sera** and Supplier shall bear liability for the damages in accordance with their respective contribution.
- (8) In the event of a frequent occurrence of the same fault (recurrent fault), the Supplier shall supply **sera** as quickly as possible with faultless parts in replacement of the batch or for general repair and replacement purposes. The Supplier shall be liable for any and all measures required to prevent damages, including parts replacement as a precautionary measure, if such replacement is necessary due to defective goods manufactured or delivered by the Supplier. In this case, the Supplier shall bear the related costs and expenses, including recall costs.
- (9) The Supplier is under obligation to procure and maintain adequate product liability insurance coverage.
- (10) If requested by **sera**, the Supplier shall submit the certificate of such insurance cover without undue delay to **sera**.
- (11) Unless otherwise agreed, the period of limitation for defects shall end 36 months after the delivery is performed.
- (12) The Supplier's warranty shall also extend to parts which have been manufactured by sub-contractors.

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- (13) If a notification of defects has been raised, the period of limitation is extended by the time which has passed between the notice and the remediation of defects. For remedial work, replacement deliveries and substitute performance, the Supplier shall provide the same warranty as for the original deliveries or performance, with the warranty period recommencing.
- (14) Any parts which have been claimed to be defective under the warranty shall remain at **sera's** disposition until their replacement and will become the property of the Supplier upon their replacement.
- (15) **Sera's** approval to drawings, calculations and other technical documentations shall not affect the Supplier's warranty and guarantee obligations regarding the Delivery Items.
- (16) **Sera's** approval of the supplies and services shall not affect the Supplier's warranty obligations.
- (17) The above provisions shall apply accordingly to services such as maintenance, assembly, etc.
- (18) Otherwise, the Supplier shall be liable in accordance with the statutory provisions.

11. Proprietary Rights and Copyrights, Third-Party Claims

- (1) The Supplier shall be liable for any claims if the contractual use of the supplies and services infringe intellectual property rights which have been granted or applied for. The Supplier shall indemnify **sera** and its customers against all claims arising from the use of such rights.
- (2) The Supplier shall grant to **sera** an exclusive right of use for any delivered proprietary and copyrighted work.
- (3) **Sera** shall have exclusive ownership of any drawings, samples or other documents prepared by the Supplier on behalf of **sera**.
- (4) **Sera** shall have unrestricted and unlimited rights of use for any software included in the Supplies, to the extent that such software is required for the contractual use of the Supplies. **Sera** is entitled to demand access to and safeguarding of the source code, if the Supplier becomes insolvent or is unable to effect performance under the contract.

12. Sera's Ownership Rights and Title

- (1) **Sera** shall always retain title to materials or tools supplied by **sera** in any case, even if such materials or tools were modified by the Supplier. The Supplier is obliged to keep such materials or tools in good repair. Without **sera's** prior written consent, a permit to use may not be granted to third parties.
- (2) The Supplier shall, at any time and at the request of **sera**, provide a current inventory of all material orders, models, and tools of **sera** and shall submit a corresponding inventory report to **sera**.
- (3) **Sera** shall retain ownership and title to drawings, models, component specifications, tender document, or any other documents submitted by **sera** to the Supplier. Without **sera's** express consent, such items shall not be used for any other purposes than the intended purpose.
- (4) The Supplier shall use the tools manufactured for **sera** or the Supplier's own tools for no other purpose than the manufacture of the goods ordered by **sera**.

13. Confidentiality

- (1) The Supplier shall treat and keep as confidential any information relating to the business relationship with **sera**. In particular, the contents of agreements, technical, commercial and internal operational information of **sera** shall not be made accessible and disclosed to third parties.
- (2) The Supplier may neither disclose nor permit the use or grant access to drawings, models, or other documents to non-authorized third parties.
- (3) This secrecy obligation continues to apply even after the **sera**-Supplier relationship has come to an end.

14. Supplier's Collateral Duties

- (1) The supplied goods are generally to be marked by the Supplier in accordance with **sera's** instructions.
- (2) The Supplier is obliged to deliver at reasonable cost any spare parts for the period of time of the usual technical use, at least, however, for 10 years following the last delivery.
- (3) Without **sera's** prior written consent, the Supplier shall refrain from references to its business relationship with **sera** in any advertising material.

15. Security and Operational Safety

- (1) Any employees of the supplier working on **sera's** premises and/or construction sites by order of **sera** shall observe and comply with any operational rules and regulations of **sera** (and if applicable, the client), accident prevention regulations, rules and regulations of the trade association, and the recognized safety and health rules and regulations.
- (2) Securing of loads shall meet the requirements of current laws, regulations, accident prevention rules, regulations and standards, taking into account standard industry practices. In particular, any requirements stipulated in the German Highway Code (*StVO*), Road Traffic Regulations (*StVZO*), trade association (*BGV*) regulation BGV-D 29 "Vehicles", and German Engineer's Association (*VDI*) VDI-2700 "Safety of Loads on Vehicles" shall be complied with at all times.
- (3) The supplier is required, in the event that the supplier delivers substances to be considered hazardous substances within the meaning of the German Hazardous Substances Ordinance (*Gefahrstoffverordnung*), to submit to **sera** and without being asked by **sera**, the EU Material Safety Data Sheet (in accordance with § 6 *Gefahrstoffverordnung*) in due time prior to delivery.
- (4) If and to the extent applicable, the Supplier delivers products within the meaning of Article 3 EC No. 1907/2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals ("REACH"), the Supplier is obliged to duly disclose certain information in accordance with Article 33 of said REACH Ordinance.

16. Place of Performance, Venue and Applicable Law

- (1) Place of Performance for all obligations by the Supplier shall be the place of **sera's** registered office.
- (2) Venue for all disputes arising from the contract is the place of **sera's** registered office. However, **sera** is also entitled to file a lawsuit at the place of the Supplier's registered office.
- (3) The law of the Federal Republic of Germany shall apply exclusively.
- (4) The United Nations Convention on Contracts for the International Sale of Goods (*C/SG*) shall be excluded.

17. Severability

If any provision of these Terms and Conditions of Purchase and other agreements become or are deemed invalid, the validity of the other contractual provisions shall not be affected thereby. The parties hereto undertake to agree on a provision which comes as close as possible to the legal and commercial meaning and purpose of the invalid provision.

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