

# GENERAL TERMS AND CONDITIONS OF SALE AND SUPPLY OF SERO PumpSystems GmbH

(effective from: Jan. 25<sup>th</sup> 2019)

## I. General

1. These General Terms and Conditions of Sale and Supply apply only in respect of entrepreneurs performing commercial or self-employed activities and in respect of public law entities (hereinafter "Customers"). They apply to all business dealings between SERO PumpSystems GmbH (hereinafter: "Supplier") and the Customer, even if reference is not made hereto in subsequent contracts. They apply in the same way to contracts for work and services. In the case of work, the acceptance of the work and in the case of services the receipt of the service takes the place of the acceptance of the items.
2. Terms and conditions of the Customer that contradict, supplement or deviate from these General Terms and Conditions of Sale and Supply do not become part of the contract, even when orders are accepted, unless the Supplier would have consented to their application, in writing. These General Terms and Conditions of Sale and Supply also apply if the Supplier unconditionally makes a delivery to the Customer in knowledge of its contradictory, supplementary or differing terms.
3. Agreements that contradict, supplement or deviate from these General Terms and Conditions of Sale and Supply that are concluded between the Supplier and the Customer in execution of a contract must be specified in that contract, in writing. This also applies to the waiver of this written form requirement.
4. Rights going above and beyond those set forth in these General Terms and Conditions of Sale and Supply to which the Supplier is entitled under the statutory provisions or other agreements remain unaffected.

## II. Conclusion of Contract

1. Offers issued by the Supplier are subject to alteration and non-binding, unless the Supplier advises otherwise, in writing.
2. Diagrams, drawings, information on weight, measurement, performance and use, as well as other descriptions of the supplied items in the documentation that forms part of the offer are approximate only, unless these are explicitly stated to be binding. They do not constitute agreements on or guarantees of corresponding condition or durability of the supplied items, unless this was explicitly agreed, in writing. Expectations of the Customer concerning the supplied items or the use thereof do not constitute any form of agreement or guarantee.
3. The Supplier reserves all ownership, copyright and other proprietary rights in all offer documentation. The Customer undertakes to make available to third parties information and documentation described by the Supplier as confidential only with the Supplier's consent. The Customer will on request immediately surrender to the Supplier all offer documentation no longer required in the ordinary course of business. This applies in the same way for all other documents, drafts, samples, models and designs.
4. In the absence of any special agreement, the contract is concluded upon written order confirmation by the Supplier or if the Supplier fulfils the order. If the order confirmation contains obvious errors, typos or errors in calculation, it shall not be binding for the Supplier.
5. The Supplier's silence in response to offers, orders, requests or other declarations by the Customer shall be deemed to constitute agreement only where this has been agreed in advance, in writing.
6. If the Customer's financial circumstances deteriorate to a material degree or if a legitimate application for the initiation of insolvency proceedings or comparable procedures concerning the Customer's assets is rejected due to lack of assets, the Supplier is entitled to withdraw from the contract, in whole or in part.

## III. Scope of Supply, Partial Delivery, Acceptance

1. The written order confirmation of the Supplier is authoritative as regards the scope of supply. Amendments to the scope of supply by the Customer must be confirmed by the Supplier, in writing, in order to be valid. The Supplier reserves the right to make amendments to the construction and form of the delivery items, provided the amendments concerned are customary in the industry, the differences are within the DIN-tolerance thresholds or insofar as the changes are not significant and are reasonable for the Customer. This applies in the same way to the selection of materials, the specifications and the construction method.
2. Partial delivery is permissible unless this is unreasonable for the Customer, giving due consideration to the interests of the Supplier.
3. The Customer is required to formally accept work performed by the Supplier. The Customer is not permitted to refuse formal acceptance based on non-material defects. Formal acceptance is provided by signature of the acceptance protocol by the Customer. It is deemed equivalent to formal acceptance in particular if the Customer does not accept work performed within a deadline stipulated by the Supplier, despite the fact that it is under an obligation to do so,

or if the Customer operates the delivery items or otherwise uses them. The Supplier is also entitled to demand partial acceptance.

## IV. Cross-Border Deliveries

1. In the case of cross-border deliveries, the Customer must in good time submit to the competent authorities all declarations necessary and take all measures for export from Germany and import into the destination country, in particular to procure the documentation required for customs clearance and to comply with all requirements under any export controls or other restrictions on marketability.
2. The deliveries are subject to the reservation that performance is not precluded by any national or international rules, in particular export control provisions, as well as embargos or other sanctions.
3. Delays due to export controls extend delivery times accordingly; delivery dates will be postponed as appropriate.

## V. Purchase Price and Payment

1. In the absence of any specific agreement to the contrary, purchase prices are deemed ex works and do not include freight, packaging, insurance, taxes, customs charges or other fees. The costs incurred in this connection, in particular the cost of packaging and transportation of the delivery items, will be invoiced separately. VAT at the statutory rate will be charged at the rate applicable on the invoice date and stated separately on the invoice.
2. In the absence of any specific agreement, the net purchase price is payable within 30 days of receipt of the invoice. The date upon which the Supplier is able to freely dispose of the purchase price is deemed to be the payment date. In the event of default in payment, the Customer must pay default interest of 9 % above the applicable base rate p.a. in each case. This is without prejudice to any further claims of the Supplier.
3. In the case of foreign transactions, in derogation from Section V.2, payment is to be made prior to delivery, unless otherwise agreed in advance and in writing.
4. Bills of exchange and cheques are accepted as conditional payment. The debt-discharging effect occurs only once the sum concerned has been irrevocably credited to the Supplier. The Customer must bear any costs incurred as a result of payment by bills of exchange or cheques, in particular exchange or cheque fees.

## VI. Delivery Period, Delay to Delivery

1. Delivery times (delivery periods and dates) must be agreed in writing. Delivery times and dates are non-binding, unless the Supplier has previously described them, in writing, as binding.
2. The delivery period commences upon conclusion of the contract, but not before complete provision of all documents, permits and approvals to be obtained by the Customer, the clarification of all technical issues as well as the receipt of any agreed deposit or, in the case of foreign transactions, receipt of full payment. In the case of a delivery date, the delivery date will be postponed as appropriate if the Customer fails to furnish the documents and permits to be procured by it on time, if it does not grant approvals on time, if all technical issues have not been clarified in full, or the agreed deposit or, in the case of a foreign transaction, the entire payment have been received by the Supplier.
3. The delivery period is deemed to have been complied with if the delivery items have left the Supplier's works before the end of the period or the Supplier has advised the Customer of readiness for collection or dispatch. Compliance with the delivery period is subject to the proper, in particular timely supply to the Supplier, unless the Supplier is responsible for the improper supply to it. The Supplier is entitled in the event of improper supply to it, to withdraw from the contract. The Supplier will inform the Customer immediately whether it intends to exercise its right to withdraw from the contract and return any advance payments made by the Customer. If acceptance is required – with the exception of legitimate refusal of acceptance – the acceptance date is decisive, alternatively the notice of readiness for acceptance.
4. The Customer can, without the need to set a deadline, withdraw from the contract, if the entire performance is rendered conclusively impossible for the Supplier prior to the passage of risk. The Customer can furthermore withdraw from the contract if the performance of part of the performance owed under an order is rendered impossible and it has legitimate interest in refusing partial delivery. If this is not the case, the Customer must pay the purchase price due for the partial delivery. The same applies in the event of incapacity on the part of the Supplier. The Customer continues to be liable for payment if impossibility or incapacity occur when the Customer is in default of acceptance or if the Customer is solely or predominantly responsible for the circumstances in



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## **VII. Passage of Risk**

1. The risk of accidental destruction and accidental deterioration passes to the Customer as soon as the delivery item is provided to the party carrying out the transport or for the purposes of dispatch has left the warehouse of the Supplier. In the case of collection by the Customer, the risk passes upon notification of readiness for collection. Sentence 1 and sentence 2 also apply if delivery is made in parts or if the Supplier has assumed additional services, such as transport costs or installation of the delivery item at the Customer's premises. In the case of works, acceptance is decisive for the passage of risk.

2. If the Customer is in default of acceptance, the Supplier may demand compensation of the loss incurred, as well as reimbursement of any additional expenses, unless the Customer is not responsible for the non-acceptance of the delivery item. In particular, the Supplier is entitled to put the delivery item into storage for the duration of the default of acceptance at the Customer's expense. The costs for the storage of the delivery items are charged at a lump sum fee of 0.5% of the net invoice value per calendar week commenced. This does not affect any further claims of the Supplier. The Customer has the right to furnish evidence that the Supplier did not incur any costs, or that such costs were lower. The same applies if the Customer breaches other cooperation duties, unless the Customer is not responsible for the breach of other cooperation duties. The risk of accidental loss or accidental deterioration of the delivery item passes to the Customer at the latest at the time the Customer enters into default of acceptance. The Supplier is entitled upon fruitless expiry of a reasonable deadline set by the Supplier to otherwise dispose of the delivery items and to supply to the Customer with a reasonably extended deadline.

3. If dispatch is delayed as a result of circumstances beyond the control of the Supplier, the risk passes to the Customer upon notification of readiness for dispatch.

4. Without prejudice to any claims based on defects, delivery items supplied must be accepted by the Customer even if they display non-material defects.

## **VIII. Retention of Title**

1. The supplied delivery items remain the property of the Supplier until such time as payment has been made in full and all claims against the Customer to which the Supplier is entitled in connection with the business dealings have been settled. For the duration of the retention of title, the Customer is required to handle the delivery items subject to retention of title with due care. It is required, in particular, at its own expense to insure the delivery items against fire, flood and theft at replacement value. On request by the Supplier, the Customer must furnish evidence of the conclusion of such insurance. The Customer with immediate effect assigns to the Supplier all claims to compensation under such insurance policies. The Supplier hereby accepts such assignment. If such assignment is not permissible, the Customer hereby instructs the insurer to make any payments only to the Supplier. This does not affect any further claims of the Supplier.

2. A sale by the Customer of the delivery items that are subject to the retention of title is permissible only within the scope of ordinary business. In addition, the Customer is not entitled to pledge the delivery items that are subject to retention of title, to assign them as security or make other disposals that could jeopardise the ownership of the Supplier. In the case of seizures or other third party interventions, the Customer must immediately notify the Supplier, in writing, and provide all necessary information, notify the third parties of the Supplier's ownership rights and participate in all measures by the Supplier to protect the delivery items subject to retention of title. If the third party is not able to reimburse to the Supplier the judicial and extrajudicial expenses incurred to assert the ownership rights of the Supplier, the Customer is required to compensate the Supplier for the resulting loss, unless the Customer was not responsible for the breach of duty.

3. The Customer with immediate effect assigns the claims relating to the further sale of the delivery items, together with all ancillary rights, to the Supplier, irrespective of whether the delivery items subject to the retention of title are resold unprocessed or following processing. The Supplier hereby assumes the assignment. If such assignment it is not permissible, the Customer hereby instructs the third-party debtor, to make any payments only to the Supplier. The Customer is authorised, such authorisation subject to revocation, in its own name to collect the claims assigned to the Supplier in trust on the Supplier's behalf. The sums collected are to be passed onto the Supplier without delay. The Supplier can revoke the collection authorisation of the Customer as well as the authority of the Customer to resell the delivery items, for good cause, in particular if the Customer fails to duly fulfil its payment obligations vis-à-vis the Supplier, is in default of payment, ceases to make payments, or if the Customer has applied for the initiation of insolvency proceedings or comparable proceedings concerning the assets of the Customer or the legitimate application by a third party for the initiation of insolvency proceedings or comparable debt settlement proceedings concerning the assets of the Customer has been rejected due to lack of assets. In the event of a blanket assignment by the Customer, the claims assigned to the Supplier are to be explicitly excluded.

4. On demand by the Supplier, the Customer is required to notify the third party debtor of the assignment without delay and to provide the Supplier with the information and documentation required for the collection of claims.

5. In the case of breach of contract, in particular in the event of default of

payment on the part of the Customer, the Supplier is entitled irrespective of its other rights, upon expiry of a reasonable additional period to be determined by the Supplier to withdraw from the contract. The Customer must provide the Supplier or its agents immediate access to the delivery items subject to the retention of title and to surrender the same. With appropriate timely advance notice, the Supplier may otherwise utilise the delivery items subject to retention of title to satisfy its due claims against the Customer.

6. The processing or remodelling by the Customer of the delivery items subject to the retention of title is at all times carried out on behalf of the Supplier. The vested right of the Customer in the delivery items subject to retention of title continues in the processed or remodelled item. If the delivery items are processed or remodelled together with other items not owned by the Supplier, the Supplier acquires co-ownership in the new item proportionate to the value of the supplied delivery items to the other processed items at the time of the processing or remodelling. The same applies if the delivery items are joined or combined with other items not owned by the Supplier such that the Supplier loses full ownership. The Customer stores the new items for the Supplier. In addition, the same provisions apply to the items created by connection or combination as for the delivery items subject to retention of title.

7. The Supplier is required on request by the Customer to release any security to which it is entitled in this connection insofar as the realisable value of the security, taking account of customary banking valuation discounts, exceeds the claims of the Supplier relating to the business dealings with the Customer by more than 10 %. The valuation should be based on the invoice value of the delivery items that are subject to retention of title and the nominal value of the claims. The selection of the specific items to be released is incumbent upon the Supplier.

8. In the case of deliveries to other jurisdictions in which this retention of title does not have the same security effect as in the Federal Republic of Germany, the Customer hereby grants the Supplier a corresponding security right. If further measures are necessary to this end, the Customer will take all efforts in order to immediately grant the Supplier such security right. The Customer will cooperate in all measures necessary and expedient to the validity and enforceability of all such security rights.

## **IX. Claims based on Defects**

1. The Customer's claims based on defects are conditional upon it having inspected the delivery items on receipt, to the extent reasonable also by means of test processing or use and notifying the Supplier of obvious defects without delay, but no later than two weeks from receipt of the delivery items, in writing. Latent defects must be notified to the Supplier, in writing, as soon as they are identified.

2. The Customer must in its written notice of defects provide the Supplier with a detailed description. The Customer must furthermore at all times observe the stipulations, guidelines and terms set forth in the technical specifications, installation, operating instructions, manual and other documents for the individual delivery items during planning, construction, assembly, connection, installation, start-up, operation and maintenance of the delivery items; it must in particular correctly perform maintenance work and keep records thereof and use the recommended components. Claims based on defects for defects attributable to any breach of this duty are excluded.

3. In the case of defects in the delivery items, the Supplier is at its discretion entitled either to render subsequent performance by rectifying the defect or providing a defect-free delivery item. In the case of subsequent performance, the Supplier is required to bear all expenses for the purpose of subsequent performance, in particular transport, travel, labour and material costs, unless such expenses are increased due to the fact that the delivery items were shipped to a place other than the delivery address. Replaced parts become the property of the Supplier and are to be returned to the Supplier.

4. If the Supplier is not willing or able to render subsequent performance, the customer can without prejudice to any claims to compensation or reimbursement of expenses, at its discretion withdraw from the contract or reduce the purchase price. The same applies if the subsequent performance is unsuccessful, unreasonable for the Customer or for reasons for which the Supplier is responsible, delayed by more than a reasonable period.

5. The Customer's withdrawal right is excluded if it is unable to return the service received and this is not attributable to the fact that such return is impossible on account of the nature of the service received, is within the Supplier's responsibility or if the defect transpired only during the processing or remodelling of the delivery items. The withdrawal right is furthermore excluded if the Supplier is not responsible for the defect and if the Customer is required to replace the value instead of restitution.

6. Defects attributable to natural wear and tear, in particular of wearing parts, defects due to incorrect handling, assembly, use or storage or incorrectly performed alterations or repairs to the delivery items by the Customer or third parties do not establish any claims based on defects. The same applies to defects caused by the Customer or which are attributable to a technical cause other than the original defect.

7. Claims of the Customer to reimbursement of expenses instead of compensation in place of performance are excluded unless a reasonable third party would also have incurred such expenses.

8. The Supplier does not assume any guarantees, in particular as to the condition or durability, unless otherwise agreed, in writing in individual cases.

9. The limitation period for the Customer's claims based on defects is one year, unless the supply chain ends with a consumer goods purchase. If the defective delivery items are used in line with their customary use in construction and cause the defectiveness of such structure, or where construction defects are concerned, the limitation period is five years. The limitation period of one year also applies to claims in tort based on a defect in the delivery items. The limitation period commences upon handover of the delivery items. The one-year limitation period does not apply to the unlimited liability of the Supplier for damage relating to the breach of a guarantee or damage to life, limb or health, for instances of malicious intent and gross negligence and for product defects or insofar as the Supplier assumed a procurement risk. Any response by the Supplier concerning a claim based on defects asserted by the Customer is not to be deemed to constitute entry into negotiations concerning such claim or the circumstances upon which it is based, provided the Supplier's claim based on defects is rejected in full.

#### **X. Supplier's Liability**

1. The Supplier is liable without limitation for damage relating to the breach of a guarantee or damage to life, limb or health. The same applies to instances of malicious intent and gross negligence or insofar as the Supplier assumed a procurement risk. The Supplier is liable for slight negligence only if material contractual duties inherent to the nature of the contract and of particular importance to the attainment of the contractual purpose have been breached. In the case of the breach of such duties, in the event of default and frustration of contract, the Supplier's liability is limited to typically foreseeable damages. This does not affect the Supplier's mandatory statutory liability for product defects.

2. If the Supplier's liability is excluded or limited, this also applies to the personal liability of its executives, employees, staff, representatives and agents.

#### **XI. Product Liability**

1. The Customer will not alter the delivery items, in particular it will not alter or remove existing warnings concerning the risk of incorrect use of the delivery items. In the event of the breach of this obligation, the Customer shall indemnify the Supplier in their internal relationship against third-party product liability claims, unless the Customer is not responsible for the alteration of the delivery items.

2. If the Supplier is required to recall the products or issue a warning due to a product defect, the Customer will to the best of its ability participate in the measures the Supplier deems necessary and expedient and support the Supplier in this context, in particular in identifying the necessary customer data. The Customer is required to bear the costs of the product recall or warning, unless it is not responsible for the product defect pursuant to product liability law principles. This is without prejudice to any further claims of the Supplier.

3. The Customer will immediately notify the Supplier in writing of any risks when using the delivery items of which it becomes aware as well as possible product defects.

#### **XII. Force Majeure**

1. If the Supplier is prevented by force majeure from fulfilling its contractual obligations, in particular from delivering the delivery items, the Supplier will for the duration of such impediment and for a reasonable start-up time thereafter be released from its performance obligation, without being liable to pay the Customer compensation. The same applies if the Supplier is precluded from fulfilling its duties by unforeseeable circumstances beyond the control of the Supplier, in particular by industrial action, official measures, energy shortages, impediments to delivery at an upstream supplier or significant disruptions to operations, is rendered unreasonably more difficult or temporarily impossible. This also applies if these circumstances are experienced by an upstream supplier. This also applies if the Supplier is in default. If the Supplier is released from its delivery obligation, the Supplier must return any advance payments rendered by the Customer.

2. The Supplier is entitled on expiry of a reasonable period to withdraw from the contract if such impediment lasts more than four months and the Supplier no

longer has any interest in the performance of the contract due to the impediment. On request by the Customer, the Supplier will on expiry of the deadline declare whether it intends to exercise its withdrawal right or supply the delivery items within a reasonable period.

#### **XIII. Confidentiality**

1. For a period of five years from delivery, the Parties are required to maintain confidentiality with respect to all information to which they become privy that is described as confidential or which, based on other circumstances, evidently constitutes business or trade secrets and, unless this is required for the business dealings, not to record, disclose or utilise such information.

2. The confidentiality obligation ceases to apply if the information was demonstrably already known to the recipient prior to the commencement of the contractual relationship or was generally known or publicly accessible or becomes generally known or publicly accessible through no fault of the recipient. The recipient bears the burden of proof.

3. The Parties will, by means of appropriate contractual agreements with their employees and agents, in particular their freelance employees and service providers, ensure that they, too, for the duration of five years from delivery refrain from any and all own use, disclosure or unauthorised recording of such business and trade secrets.

#### **XIV. Data Protection**

1. The Parties reciprocally undertake to observe the statutory provisions on data protection, in particular the EU General Data Protection Regulation ("GDPR") when executing the contract and also to require their employees to comply with these provisions.

2. The Parties process the personal data received (names and contact details of the contact persons in each case) exclusively for the purposes of fulfilling the contract in each case and will protect this information using technical security measures adapted to the current state of the art (Art. 32 GDPR). The Parties undertake to delete the personal information as soon as the processing is no longer necessary. This does not affect any statutory storage obligations.

3. If in the course of the execution of the contract the Supplier is contracted to process personal data on commission for the Customer, the Parties will conclude a contract processing agreement in accordance with Art. 28 GDPR.

#### **XV. Final Provisions**

1. The assignment to third parties of rights and duties of the Customer is permissible only with the Supplier's prior written consent.

2. Counterclaims of the Customer entitle it to offset only if these have been conclusively determined by court or are uncontested. The Customer may assert a retention right only if its counterclaim is based on the same contractual relationship.

3. All legal dealings between the Supplier and the Customer are governed exclusively by the laws of the Federal Republic of Germany to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).

4. The exclusive place of jurisdiction for all disputes relating to the business dealings between the Supplier and the Customer is the seat of the Supplier. The Supplier is also entitled to file an action at the Customer's seat and at any other permissible place of jurisdiction. Arbitration clauses are hereby contested.

5. Unless otherwise agreed, the place of performance for all services of the Customer and the Supplier is the seat of the Supplier.

6. Should any provision of these General Terms and Conditions of Sale and Supply be or become invalid or unenforceable, in whole or in part, or if there is an omission in these General Terms and Conditions of Sale and Supply, this shall not affect the validity of the remainder of the provisions. In place of the valid or unenforceable provision, the valid or enforceable provision is deemed agreed that comes as close as possible to attaining the purpose of the invalid or unenforceable provision. In the event of an omission, the provision is deemed agreed that corresponds to what would have been agreed, in view of the purpose of these General Terms and Conditions of Sale and Supply, had the contracting parties considered the matter from the outset.