

General Terms and Conditions of Business ISR INTERSEROH Rohstoffe GmbH

§1 General, scope of application

1. The following General Terms and Conditions of Business ("Terms") of ISR INTERSEROH Rohstoffe GmbH ("INTERSEROH") shall apply exclusively; contradictory terms of Contracting Party or such deviating from the present terms shall not be acknowledged by INTERSEROH – unless INTERSEROH expressly approves the validity of deviating terms and conditions in writing. These Terms shall also apply if INTERSEROH performs delivery or service to Contracting Party despite knowledge of contradictory terms of Contracting Party or such deviating from the present terms.
2. All agreements made between INTERSEROH and Contracting Party in connection with a quotation and/or a contract shall be recorded in the quotation or contract, as the case may be, in writing.
3. These Terms shall only apply towards enterprises within the meaning of § 14 German Civil Code and public-law entities.
4. These Terms shall apply for the entire future business relationship with Contracting Party and shall supersede other, earlier Terms of INTERSEROH if applicable

§ 2 Quotation/conclusion of contract

1. Quotations from INTERSEROH shall be non-committal and subject to change without notice.
2. Declarations of acceptance and all orders shall require express confirmation by letter or telefax in order to obtain legal effectivity. The same shall apply to supplements, changes or side-agreements.

§ 3 Delivery and service period/arrears in delivery/arrears in acceptance

1. Delivery and service dates or periods shall only be binding following written confirmation from INTERSEROH.
2. Delays in delivery and service due to force majeure and as a result of incidents making delivery considerably more difficult or impossible for INTERSEROH – which shall in particular include strike, lock-out, official orders etc., even if they occur with suppliers or sub-suppliers of INTERSEROH – shall not be answered for by INTERSEROH, even in the event of bindingly agreed periods and dates. These circumstances shall entitle INTERSEROH to postpone the delivery or service by the duration of the prevention plus a suitable run-up time or to withdraw from the contract partly or totally on account of the part not yet performed at its own free discretion. INTERSEROH can only make reference to the aforementioned circumstances if it has notified Contracting Party of these circumstances without delay.
3. If the prevention within the meaning of sub-section 2 lasts for longer than 3 months, Contracting Party shall be entitled, following setting of a suitable period, to withdraw from the contract with a view to the part not fulfilled. If the delivery or service time is extended or if INTERSEROH is released from its obligation to delivery or service, Contracting Party cannot derive any claims to damages herefrom.
4. INTERSEROH shall be entitled to part deliveries and part services to an extent to be reasonably expected at any time.
5. Notwithstanding its right to withdrawal pursuant to § 437, no. 2, German Civil Code, Contracting Party shall only be entitled to withdraw from the contract on account of non-performance, unpunctual performance or performance breaching the contract in any other way if INTERSEROH is answerable for the disturbance in performance and a suitable subsequent period set by Contracting Party has expired fruitlessly.
6. If Contracting Party falls into arrears in acceptance or breaches other obligations to involvement, INTERSEROH can demand reimbursement of the damage incurred by it plus all and any additional expenditure. The risk of chance destruction and of chance deterioration shall pass to Contracting Party with the commencement of arrears in acceptance.

§ 4 Prices/payment terms

1. The prices of INTERSEROH "ex warehouse" plus statutory turnover tax shall apply.
2. Deduction of discount shall only be admissible on the basis of express, written agreement.
3. Amounts charged by INTERSEROH shall be due for payment without deduction within 30 days of the date of the invoice. If Contracting Party is a merchant and falls into arrears totally or partly with amounts due, INTERSEROH shall be entitled to demand

Our General Terms and Conditions (Allgemeine Geschäftsbedingungen) apply, published at www.interseroh-isr.com

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interest to the statutory amount from the time of maturity or arrears, as the case may be. The right to prove further-reaching damage shall expressly remain reserved for INTERSEROH.

§ 5 Passage of risk

1. Subject to express, written, deviating agreements, the risk of destruction, deterioration and/or reduction shall pass to Contracting Party with delivery of the object of purchase at the warehouse.
2. Upon request by Contracting Party, INTERSEROH shall conclude transport insurance or other suitable insurance at Contracting Party's expense, in order to secure the contractual performance as well as possible.

§ 6 Warranty/consequences of defective delivery

1. If delivery or service is defective, INTERSEROH shall be entitled at its own discretion to remedy the defect or to make replacement delivery. If remedying the defect or replacement delivery is delayed for reasons for which INTERSEROH is answerable or if the remedying of the defect or replacement delivery finally fails for other reasons, the remaining statutory warranty rights shall accrue to Contracting Party. A claim by Contracting Party to reimbursement of damages or expenditure shall only exist pursuant to the provisions of § 7.
2. Claims of Contracting Party pursuant to sub-section 1 shall only exist if Contracting Party notifies INTERSEROH of a defect in writing without delay. Defects which cannot be discovered immediately after delivery or service even with careful examination shall be notified to INTERSEROH immediately after discovery, albeit no later than one month after delivery. In the event of defects by malice aforethought, the statutory warranty period shall apply. The above regulation shall apply accordingly for claiming of rights of Contracting Party on account of wrong, excess or short delivery or service.

§ 7 Liability

1. Claims to damage of Contracting Party against INTERSEROH, regardless of the legal reason, shall only exist in the event of malice aforethought or gross negligence. The limitation of liability shall not apply in cases of a breach of essential contractual obligations, the breach of which jeopardises the purpose of the agreement, injury to life, limb or health of Contracting Party, deceit and assumption of a property guarantee.
2. Liability for every form of negligence shall be limited to the damage typically foreseeable at the conclusion of the contract, except in cases of injury to life, limb or health of Contracting Party or the assumption of a property guarantee.
3. The aforementioned liability regulations shall also apply to the personal liability of employees, workers, fellow-workers, representatives and vicarious agents of INTERSEROH.
4. Contracting Party shall hold INTERSEROH harmless against claims made by third parties in connection with the properties of the quality of the delivery or service rendered by Contracting Party. General Terms and Conditions of Business of ISR INTERSEROH Rohstoffe GmbH
5. Except for cases of injuries to life and limb, the liability of INTERSEROH shall be limited in any case to the maximum sum of the liability insurance concluded, albeit to no more than the amount of EURO 5,000,000.- per case of damage. Liability for direct damage and consequential damage shall be ruled out to the extent legally admissible.

§ 8 Retention of title

1. INTERSEROH shall remain owner of an object of purchase until unreserved and complete performance of all claims accruing to INTERSEROH against Contracting Party and its holding companies and subsidiaries now or in future for any legal reason. In the event of breach of contract by Contracting Party, in particular arrears in payment, INTERSEROH shall be entitled to take an object of purchase back. To the extent not mandatorily prescribed to the contrary by law, taking back an object of purchase by INTERSEROH shall not represent withdrawal from the contract, unless INTERSEROH declares such expressly in writing or INTERSEROH has seized the object of purchase. Even after taking the object of purchase back, INTERSEROH shall be authorised to utilise it; the profits from the utilisation, less suitable costs of utilisation, being offset against Contracting Party's liabilities towards INTERSEROH.
2. In seizure or other interventions of third parties against an object of purchase, Contracting Party shall notify INTERSEROH in writing without delay. Insofar as the third party is not in a position to reimburse INTERSEROH for the judicial and extra-judicial costs of the proceedings to be reimbursed pursuant to § 771 Code of Civil Proceedings or § 805 Code of Civil Proceedings, Contracting Party shall be liable for the damages incurred by INTERSEROH to this extent.
3. Contracting Party shall be entitled to resell the object of purchase in the ordinary course of business; however, it here and now assigns all claims accruing to it against its customers or third parties from the resale to the amount of the final invoice total in question, incl. VAT, to INTERSEROH regardless of whether the object of purchase has been sold without or after processing. Contracting Party shall remain entitled to collect said claim even after the assignment. INTERSEROH's authorisation to collect the claim itself shall remain unaffected. However, INTERSEROH engages to refrain from collecting the claim as long as Contracting Party properly fulfils its obligations to payment towards INTERSEROH, in particular as long as no application for the opening of insolvency proceedings against

Contracting Party's assets has been made and payments have not been stopped. If one of the cases mentioned in sentence 4 occurs, INTERSEROH can demand that Contracting Party notifies INTERSEROH without delay of the claims assigned and their debtors, gives all the information necessary for collection, hands over the documents in question and notifies Contracting Party's debtors of the assignment.

4. Processing or re-shaping of an object of purchase by Contracting Party shall permanently be done on behalf of INTERSEROH as the manufacturer. If an object of purchase is processed together with other objects not belonging to INTERSEROH, INTERSEROH shall acquire co-ownership of the new object(s) in the proportion of the value of the object of purchase to the other processed objects at the time of the processing. For the object(s) originating as a result of the processing, the regulations pursuant to sub-sections 1 to 3 shall apply accordingly.

5. If the object of purchase is inseparably blended with other objects not belonging to INTERSEROH, the latter shall acquire co-ownership of the new object(s) in the proportion of the value of the object of purchase to the other processed object(s) at the time of the processing. If the blending is done in such a way that the object of Contracting Party is to be regarded as the main object, it shall be deemed agreed that Contracting Party assigns co-ownership pro rata to INTERSEROH. Contracting Party shall keep the sole or co-ownership acquired in this way on INTERSEROH's behalf.

6. As a security, Contracting Party shall also assign the claims accruing to it against a third party, for example, by the blending of the object with real property to INTERSEROH.

7. INTERSEROH engages to release the securities accruing to it upon request by Contracting Party insofar the realisable value of the securities exceeds the receivables to be secured by more than 20%, the selection of the securities to be released being a matter for INTERSEROH.

§ 9 Right of rejection of service/retention/offset

Contracting Party can only reject its services or delivery on account of all and any counterclaims, retain its services or delivery or declare offset if said counterclaims have been expressly acknowledged in writing by INTERSEROH or are legally effective.

§ 10 Group charging clause

1. Contracting Party agrees to claims which INTERSEROH and other INTERSEROH companies (see below, Section 5) acquire against it accruing to all INTERSEROH companies as joint and several creditors; these claims can therefore be offset against liabilities of each INTERSEROH company against Contracting Party.

2. Over and above Section 1, claims of Contracting Party against INTERSEROH companies can be offset against other companies in the group to which Contracting Party belongs.

3. The above regulations shall also apply if on the one hand cash payments, on the other hand payment by bills of exchange has been agreed and if the mutual claims have different maturities, settlement being done in each case as per the value date.

4. Contracting Party waives contesting our provision of the receivables to be charged in the event of a majority of claims (§ 396 sub-section 1 sentence 2 German Civil Code).

5. INTERSEROH companies shall be INTERSEROH AG Cologne and its domestic and foreign group companies, which we shall notify upon request (cf. also the group business report of INTERSEROH AG); this shall in particular include companies affiliated with INTERSEROH pursuant to § 15 German Shares Act.

§ 11 Place of jurisdiction/place of performance/applicable law/language

1. Place of jurisdiction and place of performance for all rights and duties arising from and/or in connection with the present agreement as well as all and any disputes coming about between Contracting Parties in future shall be Cologne. Notwithstanding the regulation pursuant to sentence 1, INTERSEROH shall be entitled to make claims against Contracting Party before the Courts of the general and specific place of jurisdiction of Contracting Party.

2. The law of the Federal Republic of Germany shall apply exclusively, UN purchase law being ruled out. The General German Forwarding Conditions (ADSp) shall apply. In case of doubt the regulations of these terms shall prevail over the ADSp.

3. The contract and business language shall be German.

§ 12 Separability clause

If one or more provisions of these Terms is/are or become(s) null or ineffective or unenforceable, this shall not affect the effectivity of the remainder of these Terms. Parties engage to replace ineffective or unenforceable provisions of these Terms by effective ones coming closest to the economic objective pursued with these Terms without delay. The regulations pursuant to sentences 1 and 2 shall apply accordingly if these Terms manifest a loophole or a loophole results in these Terms at a later stage.