

# Terms & Conditions of Delivery serofiPRODUCTS GmbH

## I. Scope

1. All of serofiPRODUCTS GmbH's deliveries, services and offers shall be made exclusively on the basis of these General Terms & Conditions of Delivery. These General Terms & Conditions of Delivery shall form part of all agreements entered into between serofiPRODUCTS GmbH and its contractual partners (hereinafter also referred to as "our customers") with regard to the delivery of services or offers by serofiPRODUCTS GmbH. They shall also apply to future deliveries, services or offers to the Purchaser, even if not being referred to explicitly.
2. Purchaser's general terms & conditions shall not apply unless serofiPRODUCTS GmbH has explicitly agreed to their applicability in writing. serofiPRODUCTS GmbH's General Terms & Conditions of Delivery shall also apply if serofiPRODUCTS GmbH unconditionally effects deliveries to the Purchaser even aware that the Purchaser's terms and conditions conflict with or deviate from its own.

## II. Conclusion of contract and delivery of products

1. All offers made by serofiPRODUCTS GmbH are subject to change without notice and nonbinding unless explicitly designated as binding or specifying a fixed timeframe for acceptance. No contract shall enter into force until serofiPRODUCTS GmbH has provided a written or electronic order confirmation. The written or electronic order confirmation shall determine the scope of delivery. All ancillary agreements and amendments have to be confirmed in writing or electronically by serofiPRODUCTS GmbH to be valid.
2. serofiPRODUCTS GmbH reserves the right to modify the design, form or shape of the delivery items to be delivered unless such modifications substantially alter the delivery items to be delivered and are unacceptable to the Purchaser or serofiPRODUCTS GmbH and the Purchaser has explicitly agreed on the binding character of data provided by serofiPRODUCTS GmbH as regards the delivery items (e.g. weight, dimensions, utility values, load capacity, tolerances, technical data) or of depictions of the same (e.g. drawings, illustrations). The aforementioned information from serofiPRODUCTS GmbH relating to the delivery items to be delivered or services to be provided – as well as respective depictions are neither guaranteed nor do they constitute an agreement on assured properties unless explicitly confirmed otherwise by serofiPRODUCTS GmbH in writing or electronically. If no such written or electronic confirmation is provided by serofiPRODUCTS GmbH, the aforesaid information merely constitutes a nonbinding description or qualification of the delivery items or services from which deviations pursuant to the first sentence of this section II. 2 are admissible. If serofiPRODUCTS GmbH and the Purchaser have explicitly agreed on the binding character of specific data, serofiPRODUCTS GmbH may only make modifications to delivery items to be delivered or services to be rendered if such modifications are required under mandatory statutory provisions and are acceptable to the Purchaser. If the modifications are unacceptable, the Purchaser is entitled to withdraw from the contract. Any further claims shall be excluded.
3. serofiPRODUCTS GmbH retains title and copyright to all documents, drawings, specifications, samples and other similar items which are provided to the Purchaser. They may not be made available to third parties without serofiPRODUCTS GmbH's prior express written consent.

## III. Prices and payment

1. The prices apply for the scope of the delivery or services specified in the order confirmation. Any additional or special deliveries or services will be charged separately. Unless explicitly agreed otherwise, the prices shall be in Euro and designated as net prices. The prices shall be inclusive of all taxes, including but not limited to packaging and VAT, Customs duties, taxes, charges and similar levies which serofiPRODUCTS GmbH is required to pay will be charged separately.
2. If relevant cost factors – such as costs of energy, wages, transportation and insurance – should increase substantially (i.e. by at least 10%) after serofiPRODUCTS GmbH's submission of an offer or confirmation of an order or conclusion of a framework agreement providing for fixed prices, serofiPRODUCTS GmbH shall be entitled – applying the provision above – to increase the prices by a reasonable amount mutatis mutandis. Purchaser's interests shall be duly taken into account in this process, particularly with regard to possible commitments of the Purchaser relating to the onward delivery of the delivery items at a fixed price.
3. All invoice amounts shall be payable by direct debit without any deductions unless otherwise agreed upon in writing. In the latter case, the date on which the payment is credited to serofiPRODUCTS GmbH's bank account is decisive for timely payment.
4. If the Purchaser does not effect payment by the due date, the outstanding amounts shall be subject to interest of 5% p.a. as of the due date. In the event of default of payment, the Purchaser shall pay default interest at the rate of 8 percentage points above the prime lending rate (*Basiszinssatz*), serofiPRODUCTS GmbH reserves the right to prove that higher damages have been incurred due to the default of payment.
5. The Purchaser is only entitled to set off own claims if its counterclaims have been judicially determined as non-appealable, are undisputed or have been acknowledged by serofiPRODUCTS GmbH. The Purchaser may only exercise a right of retention if its counterclaim arises from the same contractual relationship.
6. serofiPRODUCTS GmbH is entitled to insist on advance payment or the rendering of sureties by the Purchaser for outstanding deliveries if it becomes aware of circumstances which may substantially impair the Purchaser's creditworthiness and, as a result of which, at serofiPRODUCTS GmbH's due discretion, jeopardise payment of the Purchaser's accounts payable at serofiPRODUCTS GmbH in connection with relevant orders, including accounts payable in respect of individual orders which are governed by the same framework contract.
7. Unless explicitly agreed upon otherwise with the Purchaser, all payments must be made in € (Euro) and exclusively to serofiPRODUCTS GmbH.

## IV. Delivery and delivery period

1. If serofiPRODUCTS GmbH explicitly warrants or has agreed on a fixed delivery period or date the order confirmation shall govern the applicable delivery periods. In any other cases all periods and dates mentioned by serofiPRODUCTS GmbH have to be understood as determining the date of delivery merely approximately. The delivery period commences until the Purchaser has furnished all documents, permits and approvals to be procured and until any agreed advance payments have been received. The delivery deadline is met if the delivery items were handed over prior to its expiry to the Purchaser's carrier at the place of lading as designated in the order confirmation. serofiPRODUCTS GmbH shall be entitled to refuse to hand over the delivery items to the carrier if the load cannot be secured pursuant to the German VDI Guideline 2700 due to the condition of the transport vehicle or if serofiPRODUCTS GmbH does not consider the transport vehicle to be roadworthy pursuant to German Road Traffic Licensing Regulations. If serofiPRODUCTS GmbH refuses to hand over the delivery items to the carrier for the aforementioned reasons, the provisions set forth in sections V.2 and V.3 shall apply accordingly.
2. Partial deliveries shall be admissible to a reasonable extent if such delivery can be used by the Purchaser for the contractually agreed purpose, if the delivery of the remaining delivery items is warranted and if the Purchaser will not incur any additional costs or expenses as a result.
3. If a delivery is postponed at the Purchaser's request, serofiPRODUCTS GmbH reserves the right to charge any additional costs incurred as a result to the Purchaser.
4. The delivery of the delivery items to the Purchaser shall be subject to serofiPRODUCTS GmbH itself being supplied properly and in due time by its own suppliers.
5. If serofiPRODUCTS GmbH is in default of delivery or unable to effect delivery at all, the Purchaser shall be entitled to withdraw from the contract in accordance with statutory provisions. Claims for damages for default of delivery or impossibility of performance shall only be due to the purchaser under the provisions of section VIII of these General Terms & Conditions of Delivery.
6. If deliveries are delayed due to force majeure, serofiPRODUCTS GmbH shall have the right to extend the delivery period for the duration of the event causing the delay plus a reasonable time for run-up or to cancel the contract due to the unperformed part of the contract either in part or in full. The same shall apply in the event of strikes, lock-outs, political unrest and unforeseen circumstances such as interruptions of operations which prevent serofiPRODUCTS GmbH from effecting timely delivery despite making reasonable efforts to do so. This shall furthermore apply if the aforementioned events occur at a time at which serofiPRODUCTS GmbH is already in default of delivery or effect a supplier of serofiPRODUCTS GmbH. serofiPRODUCTS GmbH will inform the Purchaser without undue delay in case such an event of force majeure pursuant to this provision occurs. The Purchaser may request serofiPRODUCTS GmbH to declare within a period of six weeks whether it intends to cancel the contract due to the nonperformed part of the contract in part or full or whether it will effect delivery or effect a supplier of serofiPRODUCTS GmbH. If serofiPRODUCTS GmbH does not respond to the Purchaser's request within the aforementioned timeframe, the Purchaser may withdraw from the part of the contract which has not been fulfilled yet.

## V. Packaging, shipment, passing of the risk and Purchaser's acceptance of the delivery items

1. Unless otherwise explicitly agreed upon, serofiPRODUCTS GmbH shall select the type of packaging to be used at its sole discretion. If the delivery items are packaged in wooden crates, ownership of the wooden crates shall pass to the Purchaser at any time.
2. The risk shall pass on to the Purchaser, at the latest, when the delivery items are handed over to the carrier commissioned by the Purchaser at the place of lading as designated in the order confirmation. The same shall apply in case of partial deliveries. Purchaser shall be in default of acceptance if, having received notification from serofiPRODUCTS GmbH that the delivery items are ready for dispatch, it refuses to take over the delivery items on the specified date or does not pick-up or commission a carrier to pick up the delivery items on the specified date.
3. If the Purchaser is in default of acceptance of the delivery items or fails to comply with other duties to cooperate, serofiPRODUCTS GmbH shall be entitled to demand compensation for any damages incurred, including any additional expenses resulting therefrom. In this case, the risk of accidental loss or deterioration of the purchased item passes on to the Purchaser. After expiry of an appropriate additional period of time for acceptance set by serofiPRODUCTS GmbH, serofiPRODUCTS GmbH shall be entitled to either otherwise dispose of the delivery items or to effect delivery to the Purchaser within a reasonably prolonged period of time.
4. The delivery items will only be insured against theft, breakage, transportation, fire and water damage or other insurable risks at the explicit request and expense of the Purchaser.
5. Without prejudice to its rights under Clause VII of these General Terms & Conditions of Delivery, the Purchaser shall be obliged to accept the delivery items delivered even in case that the items show negligible defects and may only be returned to serofiPRODUCTS GmbH under the condition precedent that the Purchaser is entitled to withdraw from the contract in accordance with section VII para. 3.

## VI. Retention of title

1. serofiPRODUCTS GmbH reserves title to the delivery items until any and all claims against the Purchaser arising from the business relationship have been settled, including future claims arising from agreements concluded concurrently or at a later time. This shall also apply if individual or all of serofiPRODUCTS GmbH's claims are included in a current account and the balance has been stricken and accepted.
2. If serofiPRODUCTS GmbH withdraws from the contract due to the Purchaser's breach of contract, in particular due to the Purchaser's delayed payment, the Purchaser shall bear all costs associated with serofiPRODUCTS GmbH's repossession of the supplied delivery items. In the event of seizures or other interventions of third parties, the Purchaser must immediately notify serofiPRODUCTS GmbH in writing, provide all necessary facts and inform the third party about the existing ownership situation. The Purchaser must not pledge or transfer title of the delivery items as collateral. The Purchaser shall handle the supplied delivery items with due care. In particular, the Purchaser shall insure the delivery items at replacement value against damage by fire, water and theft at its own expense.

3. The Purchaser shall be entitled to resell the supplied delivery items in the ordinary course of business. However, it shall assign to serofiPRODUCTS GmbH any and all future claims and ancillary rights arising from the resale of the delivery items against the purchaser or a third party, irrespective of whether the delivery items to which title has been retained are resold without or after further processing. The Purchaser shall remain authorized to collect these claims, even after the assignment, serofiPRODUCTS GmbH's authority to collect claims itself remains unaffected hereby. However, it shall undertake to refrain from collecting claims for as long as the Purchaser meets its payment obligations, is not in default of payment and, in particular, has not suspended payments and not filed for insolvency proceedings. serofiPRODUCTS GmbH is entitled to demand that the Purchaser informs it about the assigned claims and the respective debtors, provides all information necessary for the collection of the debts, hands over the necessary documents and informs the debtor of the assignment.
4. The processing or conversion of the delivery items by the Purchaser shall always be performed on serofiPRODUCTS GmbH's behalf. The Purchaser's expectant right to the delivery items shall continue to apply to the processed or converted items. If the delivery items to which title has been retained are processed or inseparably combined with other items which are not owned by serofiPRODUCTS GmbH, serofiPRODUCTS GmbH shall acquire co-ownership of the new items in proportion to the value of the delivery items for which title is retained to the processed items at the time of processing. If the delivery items are processed in such a way that the Purchaser's items form the main part of the processed item, it is agreed that the Purchaser transfers proportionate co-ownership to serofiPRODUCTS GmbH. The Purchaser shall store such items of sole or co-ownership for serofiPRODUCTS GmbH. The new combined or processed item shall be subject to the same provisions as are delivery items to which title is retained.
5. The Purchaser shall also assign all claims against third parties arising from the combination of the delivered delivery items with a building or real estate as collateral for serofiPRODUCTS GmbH's claims.
6. When so requested by Purchaser, serofiPRODUCTS GmbH shall release collateral if the realisable value of such, taking into account usual bank reductions of valuation, exceeds the claims for which collateral have to be furnished by more than 20%. In this calculation, the dealer purchase

## VII. Claims for defects/limitation period

1. The Purchaser's claims based on defects of the delivery items require that it has properly complied with its obligations to inspect and complain under section 377 of the German Commercial Code (*Handelsgesetzbuch, HGB*). Purchaser is required to provide notice of defects in writing to serofiPRODUCTS GmbH, specifying the type and extent of the defect. serofiPRODUCTS GmbH can examine whether the notice of defect is justified. Furthermore, Purchaser shall inspect the supplied delivery items immediately after receipt for damages during transportation. The Purchaser shall note any damage discovered thereby on the bill of lading, such objection being countersigned by the carrier, and notify serofiPRODUCTS GmbH respectively in writing.
2. If the supplied delivery items are defective, serofiPRODUCTS GmbH shall be entitled at its own discretion to either remedy the defect or supply a replacement item. serofiPRODUCTS GmbH shall pay all costs associated with such remedial or replacement performance pursuant to section 439, paragraph 2 of the German Civil Code (*Bürgerliches Gesetzbuch, BGB*). If the Purchaser asserts a justified claim for costs against serofiPRODUCTS GmbH in this connection as the result of the deployment of own employees, delivery items or devices, Purchaser's claim for the reimbursement of such costs shall be limited to its own costs (*Selbstkosten*).
3. If serofiPRODUCTS GmbH is not willing or able to remedy the defect or supply a replacement item, if it refuses to do so or exceeds reasonable time limits for reasons within its own liability, or if it fails at least twice to remedy the defect for other reasons, Purchaser shall be entitled at its discretion to withdraw from the contract or demand an appropriate reduction of the purchase price.
4. Purchaser shall not be entitled to withdraw from the contract due to the delivery of defective delivery items if it is not able to return the performance received and this is not due to the fact that the nature of the performance makes this impossible, the impossibility is within serofiPRODUCTS GmbH's responsibility or the defect did not become apparent until the item had been processed or converted. In case of delivery of defective delivery items or of partial performance, the Purchaser shall only be entitled to withdraw from the entire contract or demand compensation for damages in lieu of performance in accordance with the following provisions if it has no interest in the performance provided, judged by objective criteria.
5. If the Purchaser has resold an item supplied by serofiPRODUCTS GmbH to a consumer within the meaning of section 13 of the German Civil Code, (so-called "consumer goods purchase") and the item was returned to the Purchaser by the consumer as a result of a defect or the consumer reduced the purchase price, the Purchaser may, deviating from section VII.3, either demand remedy of the defect, request the delivery of a replacement item, withdrawal from the contract or reduce the purchase price. In this case, para. 4 and 5 of this section VII shall not apply.
6. The Purchaser shall be entitled to claims for damages only under the prerequisites set by section VIII of these General Terms & Conditions of Delivery.
7. Any claims for defects of the delivery items are excluded in case the Purchaser reworks or engages a third party to rework the delivery items without serofiPRODUCTS GmbH's consent and this unreasonably complicates the process of remedying the defect or renders it impossible. In any case, the Purchaser is required to pay any resulting additional costs in connection with remedying the defect. No liability is accepted for damage resulting from the following:
  - unsuitable or improper use, particularly violations of serofiPRODUCTS GmbH's processing guidelines,
  - incorrect assembly or commissioning by the Purchaser or a third party, unless attributable to erroneous assembly instructions provided by serofiPRODUCTS GmbH,
  - modifications to the delivery items by the Purchaser or a third party,
  - natural wear and tear, unless explicitly guaranteed otherwise by serofiPRODUCTS GmbH,
  - incorrect or negligent handling or storage,
  - unsuitable consumables, replacement materials,
  - chemical, electrochemical or electrical effects, unless these are the fault of serofiPRODUCTS GmbH
8. The statute of limitations for claims for defects of the delivery items delivered is two year starting from the passing of the risk. This also applies to the statute of limitations for claims under section 823 of the German Civil Code based on a defect of the delivery items.

## VIII. Claims for damages

1. serofiPRODUCTS GmbH's liability for damages, based on whatever legal grounds, in particular impossible, delayed, defective or incorrect delivery, breach of contract, breach of obligations in contractual negotiations and tort, is limited as specified in this section VIII.
2. serofiPRODUCTS GmbH shall be liable under the statutory regulations for damages caused by wilful acts and gross negligence of its legal representatives and executives, for injury to life, body and health, for explicitly guaranteed features of the delivery items and in accordance with the German Product Liability Act.
3. In any other cases than those pursuant to section VIII para. 2, serofiPRODUCTS GmbH shall not be liable for:
  - a. slight negligence on the part of its legal representatives, executives, employees or other vicarious agents;
  - b. gross negligence on the part of non-managerial employees or other vicarious agents;unless such negligence constitutes a breach of a cardinal obligation (so called "*Kardinalpflichten*"). Cardinal obligations in the above-mentioned sense shall be such obligations which are essential to the proper performance of the contract and which contractual partners may typically expect to be met. Furthermore, serofiPRODUCTS GmbH's liability is excluded as far as the Purchaser has effectively limited its own liability against its customers. The Purchaser shall undertake its best efforts to agree limitations on liability to the extent admissible by law - also in favour of serofiPRODUCTS GmbH - with its customers.
4. If serofiPRODUCTS GmbH is liable pursuant to section VIII para. 3 on the merits for damages caused by the slightly negligent breach of contractual obligations, or for damages caused by gross negligence or wilful acts of its vicarious agents without the breach of cardinal obligations such liability shall be limited to damages that are typical and foreseeable under the contract at hand.
5. Indirect or consequential damages which result from defects of the delivery items delivered shall only be compensated as far as such damage can be typically expected in the course of the customary use of the delivery items.
6. If serofiPRODUCTS GmbH provides technical information or advice, which advice is not part of serofiPRODUCTS GmbH's contractual undertakings, it shall be provided free of charge and under exclusion of any liability.
7. In case the Purchaser intends to assert a claim against serofiPRODUCTS GmbH in accordance with the preceding provisions, it shall promptly notify serofiPRODUCTS GmbH hereof, provide comprehensive information and consult with serofiPRODUCTS GmbH. Purchaser shall give serofiPRODUCTS GmbH the opportunity to examine the case of loss. The parties to the contract endeavour to consult each other on the measures to be implemented, particularly in settlement negotiations.
8. The provisions excluding warranty and governing the limitation period for claims as specified in sections VII.8 and VII.9 of these General Terms and Conditions of Delivery shall apply accordingly.

## IX. Export Regulations – prerequisites to be met for deliveries by serofiPRODUCTS GmbH

1. Delivery by serofiPRODUCTS GmbH shall be subject to the proviso that any necessary export permits have been granted and there are no other obstacles to the delivery items being exported by serofiPRODUCTS GmbH as exporter/carrier or one of serofiPRODUCTS GmbH's suppliers as a result of any export or transportation regulations which have to be complied with.

## X. Final provisions

1. If the Purchaser is a merchant, serofiPRODUCTS GmbH's registered office is the proper legal venue. However, serofiPRODUCTS GmbH shall also be entitled to bring an action against the Purchaser at any other given legal venue.
2. All deliveries shall be governed by the law of the Federal Republic of Germany. The application of the United Nations Convention on Contracts for the International Sale of Delivery Items (CISG) of 11 April 1980 is excluded.
3. If any provision of these General Terms and Conditions of Delivery is found to be invalid, this shall not affect the validity of the remaining provisions. The contractual partners shall reach agreement on the replacement of the invalid provision with a substitute provision which comes closest to the originally intended economic purpose. This provision shall also apply if any gaps or omissions in these General Terms & Conditions of Delivery are discovered.