

## TRANSLATION FROM THE GERMAN LANGUAGE

### General Terms and Conditions of Sale and Delivery of Seal Concept GmbH

#### **1. General**

**1.1** These General Terms and Conditions apply to all our business relations with our contractual partners (hereinafter referred to as "Customer"), provided that the Customer is a company, a legal entity under public law or a special fund under public law within the meaning of Section 310 (1) of the German Civil Code (BGB).

**1.2** All deliveries, services and offers of us, Seal Concept GmbH, are made exclusively on the basis of our GTC. They become an integral part of all contracts that we conclude with our Customers and apply to all future contractual relationships with these Customers, even if their validity is not specifically reiterated.

**1.3** Any deviating, conflicting or supplementary GTC of the Customer only become part of the contract if and to the extent that we expressly agree to their validity in writing. This also applies if we provide services or deliveries to the Customer without reservation in the knowledge of such Customer's GTC.

#### **2. Offers/Quotations**

Unless they have been expressly designated as binding or contain a binding period, our offers and quotations are always subject to change and non-binding, i.e. revocable at any time, until we receive acceptance from the Customer. Acceptance of our offers/quotations by the Customer must be in text form and can only be made within 28 days of receipt of our offer/quotation, unless otherwise stated in the offer/quotation and no revocation has been made in the aforementioned sense. If acceptance has been made at a later time, the declaration of the Customer will be deemed to be a new offer, which in turn requires our acceptance.

#### **3. Orders**

We can accept orders from the Customer within 28 days of receipt. The legally binding acceptance of the offer by us is effected by order confirmation in text form or - with the corresponding consent of the Customer - by means of performance of the service.

#### **4. Prices**

**4.1** Our prices are subject to change and apply ex delivery point Bobingen, excluding packaging, postage, freight, other shipping charges, insurance, customs duties and assembly.

**4.2** Any increase that occurs between the conclusion of the contract and delivery in the wages, raw material prices, freight, taxes, customs duties, levies or other charges on which the price calculation is based, or the entry into force of new such charges, entitles us to an appropriate price increase, insofar as this is legally permissible.

**4.3** If more than 6 months have passed between the placing of the order and delivery, we may increase prices and costs by 3% without providing evidence. The number of units determined by us is decisive for the calculation.

## **5. Delivery**

**5.1** We reserve the right to agree the delivery time for each individual order separately. Delivery periods and dates proposed by us are always only approximate, unless a fixed period or a fixed date has been expressly promised or agreed. Unless expressly agreed otherwise, in the case of sale by delivery to a place other than the place of performance, delivery periods and dates are deemed to have been complied with upon handover of the delivery item to the forwarding agent, the carrier or any other third party entrusted with the transport.

**5.2** Partial deliveries are reasonable for the Customer if it has expressly or impliedly agreed to them.

**5.3** The performance periods and dates are to be extended appropriately if this is due to an event of force majeure (i.e. an unforeseen event beyond our control or responsibility, such as natural disasters, strikes or governmental acts/orders, whether effective or not); this also applies if such an event occurs during a delay in delivery or at one of our upstream suppliers. If, however, in the event of force majeure, it is not possible for us to provide the service even within a reasonable period of time, both the Customer and we have the right to withdraw from the contract in whole or in part. The same applies in the event of subsequent impossibility of performance of the contract beyond our responsibility. Neither Party is entitled to claim damages due to such withdrawal. The Party intending to withdraw from the contract for the aforementioned reasons will notify the other Party in writing without delay.

**5.4** The risk passes to the Customer when the goods leave the distribution warehouse in Bobingen or upon notification of readiness for dispatch. In the absence of special instructions, the choice of the transport route and the means of transport will be made at our best judgement without any liability for the cheapest and fastest shipment. Shipment is always at the risk of the Customer - even in the case of carriage-paid deliveries and/or retention of title. Unless otherwise agreed, the type of packaging is at our discretion. We reserve the right to make product changes due to technological progress.

## **6. Duty to examine and notify defects**

**6.1** Claims for defects on the part of the Customer presuppose that the Customer has properly fulfilled its obligations to inspect and notify defects in accordance with s. 377 of the German Commercial Code (HGB). The time limit for giving notice of defects is 7 working days from the date of delivery for defects which are obvious or recognisable upon proper inspection. For other defects, the notification period shall be 7 working days from the time at which the defect was discovered or could have been discovered.

**6.2** Notifications of defects by the Customer must be made in writing (by post, fax or e-mail).

## **7. Warranty for defects**

**7.1** Unless provided otherwise below, the statutory provisions apply to the rights of the Customer in the event of material defects (defects in quality including incorrect and short delivery as well as improper assembly or defective assembly instructions).

**7.2** At our request, the products to which the complaint relates are to be returned to us carriage paid. No warranty will be assumed for damage caused due to the following reasons: unsuitable or improper use, faulty assembly, fair wear and tear, faulty or negligent handling, unsuitable equipment, substitute material, defective construction work, chemical, electrochemical or electrical influences, insofar as they are not to be attributed to the fault of the supplier. If the notice of defect is justified, we will bear the costs of the most favourable shipment mode; this does not apply if costs are increased by the fact that the products have been taken to a place other than the contractual destination.

**7.3** In the event of material defects in the products, we are initially obliged and entitled to repair them or, at our discretion, to deliver a replacement within a reasonable period of time. If repair or replacement delivery is impossible or unreasonable or refused or unreasonably delayed, the Customer may withdraw from the contract or reduce the purchase price appropriately.

**7.4** The Customer will cooperate in a reasonable manner in the performance of such supplementary performance and, in particular, give us the necessary time and opportunity to perform the rectification. If the Customer fails to comply with this duty to cooperate, we expressly reserve the right to charge the Customer for any additional costs that could have been avoided if the Customer had properly complied with its cooperation duty. If defects occur in the goods, the Customer is obliged, at our request, to have their condition recorded by a neutral and certified expert appointed by us. The costs for commissioning the expert will be borne by us. If the Customer does not give us the opportunity to check the identity of the goods complained about and the defects asserted, we are entitled to refuse subsequent performance.

**7.5** Items exchanged within the scope of supplementary performance will become our property unless we waive this right.

**7.6** We are exclusively liable in accordance with the statutory provisions if the Customer asserts claims for damages based on intent or gross negligence, including intent or gross negligence on the part of representatives or vicarious agents. In the absence of any intent, liability is limited to the foreseeable, typically occurring damage.

**7.7** We are also liable in accordance with the statutory provisions for culpable breach of an essential contractual obligation, i.e. an obligation the fulfilment of which has made the proper performance of the contract possible in the first place and on the observance of which the contractual partner regularly relies and may rely upon. In these cases, liability is limited to the foreseeable, typically occurring damage.

**7.8** Insofar as the Customer is otherwise entitled to compensation for damage instead of performance due to a negligent breach of duty, liability shall be limited to the foreseeable, typically occurring damage.

**7.9** Liability for culpable injury to life, limb or health remains unaffected; this also applies to mandatory liability under the German Product Liability Act.

**7.10** The limitation period for claims for defects is 12 months from the passing of risk. In the event of a delivery recourse according to s. 445a, b of the German Civil Code (BGB), the limitation period regulated therein remains unaffected.

**7.11** Any further liability other than provided for in this clause 7 is excluded - regardless of the legal nature of the asserted claim. This applies in particular to claims for damages arising from culpa in contrahendo, other breaches of duty or claims in tort for compensation for property damage pursuant to s. 823 BGB. Insofar as liability for damages against us is excluded, this also applies to the personal liability of our employees, representatives and vicarious agents. Under no circumstances are we liable to the Customer for loss of profit, loss of turnover, loss of use, loss of production, capital expenditure, costs of purchase or replacement, or for any indirect consequential damage resulting from a negligent breach of duty on our part. Moreover, the Customer undertakes to indemnify us against all claims by the end customer and the Customer's customers for such damage.

## **8. Technical application advice**

The application, use and processing of the goods purchased are the sole responsibility of the Customer. Seal Concept GmbH's application advice, both verbal and written, is only to be regarded as non-binding advice, also with regard to any third-party property rights, and does not release the Customer from its own examination of the products for their suitability for the intended processes and purposes. Should liability on the part of Seal Concept GmbH nevertheless come into question, such liability is limited to the value of the goods delivered by us. For the storage of elastomer articles DIN 7716 (2.75) applies.

## **9. Retention of title**

**9.1** Ownership does not pass to the Customer until it has settled all its liabilities arising from the existing business relationship with us.

**9.2** The acceptance of bills of exchange or cheques shall only apply on account of payment (without confirmation of the fulfilment of a debt); therefore, ownership of the respective sales object only passes to the Customer upon final settlement of the debt. Payment by cheque with simultaneous establishment of a financing relationship by bill of exchange is not considered a settlement of the sales claim. If the delivered goods or parts thereof are integrated into another object, the retention of title does not expire; rather, co-ownership is deemed to be agreed in accordance with the value ratios of the new object.

**9.3** The Customer is entitled to further process or resell the goods delivered under retention of title in the ordinary course of business. However, it may not pledge the goods or assign them as security. In the event of resale or further processing, the Customer hereby assigns to us by way of security all claims arising from the resale with all ancillary rights against the third-party debtor up to the amount of the invoice with the authority to collect the claim on a pro-rata basis.

**9.4** Insofar as the Customer collects the assigned claim itself, this shall only be made on a fiduciary basis. The proceeds collected on our behalf shall be paid out to us immediately. At our request, the Customer is obliged to make the assignment known to the secondary customers and to provide the information required to assert our rights against such secondary customers. The Customer must inform us of any seizure or any impairment of our rights by third parties without any delay.

**9.5** The Customer is entitled to demand release of securities if their realisable value exceeds 20% of the claims to be secured. In the event that the secondary customer does not pay cash immediately, the Customer is to reserve extended ownership in our name.

## **10. Terms of payment**

**10.1** Unless otherwise agreed, the purchase price for the products becomes due for payment in the currency specified in the contract within 30 days of the date of the invoice without any discount.

**10.2** If, after conclusion of the contract, there are actual indications of a deterioration in the Customer's financial position or if other facts become apparent at this time which justify the assumption that our claim to counter-performance is jeopardised by the Customer's lack of financial capacity, we are entitled to demand appropriate securities for our performance and/or to revoke any payment terms granted (also for other claims existing against the Customer). Should the Customer fail to provide the requested appropriate securities within a reasonable period of time, we are entitled to withdraw from the contract. This does not affect claims arising from services already rendered by us, those arising from default on the part of the Customer or our rights under s. 321 of the German Civil Code (BGB).

**10.3** If the customer does not pay or does not pay on time, it has to pay interest on the outstanding amount. In the case of s. 288(2) BGB, the interest on arrears is currently 9 percentage points above the base rate (s. 247 BGB). The assertion of any further damage remains unaffected by this.

**10.4** The Customer is only entitled to rights of set-off and retention if its counter-claims have become non-appealable, are uncontested or have been recognised by us. The Customer may only assert rights of retention, if any, on the basis of counter-claims that are based on the same contractual relationship.

## **11. Drawings, designs**

**11.1** The customer is to treat drawings, documents and drafts of our company confidentially. Any breach of this obligation results in full liability for damages.

**11.2** Drawings or documents sent with offers must be returned immediately by the recipient if no order will be placed.

**11.3** The languages used for all documents (in particular assembly and installation instructions), drawings and drafts are German and English. Other languages require an individual translation and must be borne by the Customer. Designs produced by us or on our behalf remain our property, even if they are charged to the Customer on a pro rata basis.

## **12. Compliance with export control regulations**

The Customer is advised that it has to mandatorily comply with the respective export control regulations of the Federal Office of Economics and Export Control (BAFA) on the Customer's own responsibility. These can be consulted at: [www.bafa.de](http://www.bafa.de). Further information can also be requested there.

## **13. Place of performance and jurisdiction**

**13.1** The place of performance for deliveries and payment is Augsburg.

**13.2** The place of jurisdiction for all disputes arising from the contractual relationship is Augsburg. The entire legal relationship between the Purchaser and Seal Concept GmbH are governed by the law of the Federal Republic of Germany to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).

## **14. Severability**

Should any provision in these General Terms and Conditions of Sale and Delivery or the contractual documents associated herewith be or become invalid, then the valid provisions of the General Terms and Conditions of Sale and Delivery or the contractual documents associated herewith remain valid. The invalid provision will be deemed to be replaced by a provision which corresponds to the original economic purpose of the invalid provision, insofar as this is legally possible.

## **15. Translation**

Only the German version of these General Terms and Conditions of Sale and Delivery is legally binding; the English translation serves information purposes only.

**Bobingen, February 2020**