



## General Terms and Conditions

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Our General Terms and Conditions apply as amended from time to time. senator® reserves the right to review and if necessary unilaterally amend the General Terms and Conditions. All rights reserved.

SENATOR GmbH · Bahnhofstrasse 57 · 64401 Gross-Bieberau · Germany  
[www.senator.com](http://www.senator.com)

## I. General Terms and Conditions

1. senator® publishes the current version of the General Terms and Conditions on its website at [www.senator.com](http://www.senator.com).

2. The General Terms and Conditions hereinafter apply to all contracts for the sale and supply of goods and services entered into with senator®. senator® will be bound by differing terms and conditions of the customer and oral agreements only if senator® has acknowledged such differing terms and conditions or oral agreements in writing.

3. All agreements entered into by and between senator® and the customer in connection with contracts of sale are recorded in the confirmation of order given by senator® and in these General Terms and Conditions and in writing.

4. senator® expressly reserves the right to make technical improvements or minor modification to materials, shapes, designs and colours, including after an order has been confirmed.

## II. Offer and conclusion of contract

1. Offers made by senator® are non-binding and subject to change without notice unless expressly identified as binding in writing by senator®. Declarations of acceptance and orders will have no legal force unless confirmed by senator® in writing or by fax or email. The same applies to supplements, amendments and subsidiary agreements.

2. The costs of artwork used by senator®, e.g. screens, printing and etching stencils and films, will be charged to the customer as incurred. senator® is under no obligation to retain these items, re-use them at a later date or provide them to the customer. senator® is entitled to destroy them after use.

3. The customer is solely responsible for the correctness and quality of artwork supplied by it. In case of doubt regarding correctness or quality, senator® is entitled but not obliged to prepare proof samples at the customer's expense. The customer will be invoiced separately for any amendments to artwork required.

4. If the customer does not give precise information regarding the placement of promotional artwork, or senator® is unable to provide the desired placement for technical reasons, artwork will be placed in a location deemed technically suitable by senator®.

5. Measurements, weights, illustrations, drawings and other documents provided as part of non-binding offers issued by senator® remain the property of senator® and are approximate only unless expressly identified as binding by senator®.

## III. Payment terms

1. senator® publishes its current price list for goods and services on its website at [www.senator.com](http://www.senator.com). The prices in this list are recommended selling prices (RSP) in euro (€) per item for commercial end users and exclusive of VAT (gross price list). An updated price list, once in force, supersedes all previous price lists.

2. senator® will inform the customer in writing of the purchase and payment terms granted. Unless otherwise agreed with the customer in writing, the purchase price will fall due for payment to senator® on receipt of the invoice by the customer; no credit period is granted and no favourable payment terms (e.g. cash discount) apply.

3. If senator® grants the customer a credit period, the timing of this period will be determined by reference to the date of the invoice issued by senator® only.

4. If senator® grants the customer favourable payment terms comprising a cash discount combined with a credit period, the timing of such credit period will be determined by reference to the date of the invoice issued by senator® only.

5. Unless otherwise agreed in writing between senator® and the customer, the first order submitted by a new customer will be fulfilled only against payment in advance of the full purchase price.

6. senator® may perform a credit check on a customer when an order is placed. If there has been a sufficient deterioration in a customer's credit standing, senator® reserves the right to vary its payment terms. senator® will give the customer reasonable notice of such variation. senator® is also entitled to cancel orders if unfavourable information regarding the customer comes to its attention after confirmation of the order or if the customer is late with payment for a previous delivery.

7. senator® reserves the right to amend its prices accordingly if costs increase after conclusion of the contract of sale, in particular as a result of increases in the price of materials of greater than 5%. senator® will give the customer reasonable notice of such amendment.

8. The customer will be overdue with payment if it does not pay the purchase price within the agreed period;

no reminder by senator® is required. If the customer payment is overdue, senator® will be entitled to demand interest at a rate of 5% above the base rate of the European Central Bank (ECB) as amended from time to time. senator® reserves the right to bring proof of any greater loss or consequential loss incurred.

9. Each payment will be applied to the customer's oldest outstanding invoice. All outstanding invoices, including those not yet due or for which a later payment date has been set, will fall due for payment immediately if the customer is more than five days late with payment of an older invoice.

10. The customer is entitled to offset its own claims, including claims for defects and counterclaims, only if such counterclaims have been established in court or acknowledged by senator® or are uncontested. The customer can exercise this right to withhold payment only if its counterclaim is based on the same contract of sale.

11. senator® accepts bills of exchange and cheques on account of payment only. Discounts, taxes and charges on bills of exchange and cheques will be borne by the customer. Where payment is made by cheque, including within the EU, senator® reserves the right to pass on bank charges to the customer.

12. Such charges will be invoiced separately, electronically or by post.

#### **IV. Delivery**

1. Delivery dates and delivery periods not expressly agreed as binding constitute non-binding delivery dates and delivery periods only.

2. If the duration of the non-binding delivery period specified by senator® or binding delivery period agreed with senator® exceeds four months from formation of the contract, or if the delivery date is delayed beyond four months from formation of the contract for reasons for which the customer alone is responsible or which fall within the domain of risks to be borne by the customer, senator® is entitled to demand a different price in accordance with the price list in force on the date on which the goods are dispatched by senator®.

3. In the event that senator® is unable to meet the agreed delivery date or delivery period due to intent or negligence or is late in performing its obligations for any other reason, the customer must grant senator® a reasonable extension of time starting on the day that the written reminder is received by senator® or on expiry of the calendar period specified. If this extension

of time expires without result, the customer will be entitled to rescind the contract

4. Subject to the limitations set forth hereinafter, senator® will be liable as provided in law if the contract is one that by agreement must be performed on or by a fixed date ("*Fixgeschäft*") or if a delay in delivery for which senator® is responsible entitles the customer to invoke cessation of its interest in performance of the contract.

5. In case of delay in delivery, senator® will be liable to the customer as provided by law if the delay in delivery results from a wilful or grossly negligent breach of duty for which it is responsible. A fault on the part of its representatives or agents will be attributed to senator®. If the delay in delivery does not result from a wilful or grossly negligent breach of contract for which senator® is responsible, senator®'s liability will be limited to foreseeable and typical loss only and liability for consequential loss is excluded.

6. If a delay in delivery for which senator® is responsible results from wilful or grossly negligent breach of a condition of the contract, senator® will be liable as laid down in law; liability will be limited to foreseeable and typical loss only and liability for consequential loss is excluded.

7. Further statutory claims and rights of the customer in the event of a delay in delivery by senator® remain unaffected.

8. senator® is entitled to render performance or make deliveries in instalments at any time insofar as the customer can reasonably be expected to accept such instalments. senator® is entitled to make over- or under-deliveries of goods which are printed or otherwise customised or manufactured to the customer's specifications in an amount deviating from the quantity ordered by up to 5%. The customer is obliged to accept such over- or under-deliveries. The purchase price will be increased or decreased in proportion to the over- or under-delivery.

9. Goods can be delivered abroad against an irrevocable letter of credit. Where required, a bank guarantee may be requested as security for the delivery.

10. In the event of force majeure, senator® will be released from its obligation to deliver.

#### **V. Shipping and passage of risk**

1. The goods will be loaded and shipped in accordance with the agreed Incoterm. The risk of

shipment will be borne by the customer or the consignee.

2. If shipment is delayed on request by or through the fault of the customer or consignee, senator® will store the goods at the customer's cost and risk. In this case, the notice of readiness for dispatch is equivalent to dispatch.

3. senator® accepts no liability for defects resulting from transport delays and damage to packaging; this also applies where delivery duty paid (DDP) is agreed.

## VI. Warranty

1. The customer must examine goods received for completeness, transport damage, obvious defects, quality and characteristics. senator® must be notified of all defects within the statutory period (section 377 of the German Commercial Code (*Handelsgesetzbuch* - HGB) following delivery of the subject matter of the contract. senator® will not accept returns without prior written notice of defects. Where there are justified complaints, the tally sheet which accompanied the delivery must be returned with the goods.

2. senator® will be under no warranty obligation if the customer does not give written notice of a defect in good time. If there is a defect for which senator® is responsible and if the customer provides written notice of such defect to senator® in good time, senator® will be obliged to render supplementary performance to remedy the defect - in which case the customer's right to rescind the contract or reduce the purchase price will be excluded - unless senator® is entitled by statutory rule to refuse to render such supplementary performance. The customer must grant senator® a reasonable period to render supplementary performance in respect of each defect.

3. At the option of the customer, supplementary performance may take the form of rectification of the defect or delivery of new goods. senator® is entitled to refuse to provide supplementary performance in the manner chosen by the customer where the associated cost would be disproportionate. The customer may not reduce the purchase price or rescind the contract while supplementary performance is ongoing. Supplementary performance will be deemed to have failed after the second unsuccessful attempt. If supplementary performance has failed or senator® has refused to render supplementary performance at all, the customer can at its option demand a reduction of the purchase price or rescind the contract.

4. The customer cannot bring claims for damages on the basis of the defect under the following conditions until such time as supplementary performance has failed or senator® has refused to render supplementary performance. This will not affect the customer's right to bring further claims for damages under the following conditions.

5. Notwithstanding the provisions of section IV. points 2 to 6 of these General Terms and Conditions and the following limitations of liability, senator® will be liable without limitation for loss of life, physical injury or damage to health resulting from the wilful or negligent breach of a duty on its part or on the part of its statutory representatives or agents and for losses covered by liability under the German Product Liability Act (*Produkthaftungsgesetz*) and for all losses due to breaches of contract caused wilfully or by gross negligence or due to fraud on the part of senator®, its statutory representatives or agents. senator® will also be liable under the terms of this guarantee for any warranty of quality and/or durability given by it in respect of the goods supplied or parts thereof. However, senator® will be liable for losses resulting from the absence of the guaranteed quality or durability but which do not affect the goods directly only if the risk of such loss is obviously covered by the warranty of quality and durability.

6. Further liability is excluded regardless of the legal nature of claims asserted. Insofar as the liability of senator® is excluded or limited, the exclusion or limitation will also apply in respect of the personal liability of senator®'s employees, representatives and agents.

7. If the customer commissions senator® to manufacture and supply customised goods in accordance with the specifications (such as drawings, specimens, artwork or models) of the customer, the customer's customer or the recipient, the customer warrants that manufacture and supply will not infringe any third-party intellectual property rights. By entering into the contract of sale, the customer warrants that it will indemnify and hold senator® irrevocably harmless from and against all claims brought by third parties for infringement of intellectual property rights.

8. When commissioning senator® to manufacture and supply goods which are customised e.g. with promotional text or images, the customer is obliged to provide senator® with full print data. senator® accepts no liability for defects and incorrect deliveries arising as a result of unclear or incomplete information provided by the customer. When design sketches are submitted, only the sketch approved by the customer will be binding.

9. For technical reasons, colour differences between printing on paper and printing on other materials cannot be avoided.

We recommend producing a sample for approval in order to check the final result beforehand.

## **Pens**

With the existing colour range for conventional printing methods (screen and pad printing), all Pantone C and HKS K tones can be mixed. The inks used in digital printing, however, are composed in CMYK mode and therefore it is only approximately possible to match the exact PMS tone.

Process-related deviations in the printing result can generally not be excluded. Prints on metal pens and soft touch surfaces are not scratch-resistant. Moreover, for optimum printing results, we recommend on some coloured, clear and frosted writing instruments to print a white layer first (meaning an additional print colour) in order to achieve better coverage of the following print colours.

The minimum shelf life of 2 years of the "magic flow" ink is given, provided that the following conditions are met:

- Temperature 10°-30°
- Relative humidity 40-70%
- Preferably horizontal storage

## **Mugs**

Our delivered products could show process-related variations. These variations like pinholes, glaze impurity etc. Are not reasons for claims. Ceramic colours are not manufactured according to the Pantone or HKS scales, they can only be matched approximately.

We do not assume liability for any inappropriate use or treatment. In general our ceramic and glass products are dishwasher-safe. We cannot assume any liability for the longevity of the decoration, as it depends on the detergent used and the water hardness. Senator cannot accept claims regarding decoration twelve months or longer after delivery.

Our products are matched with our decoration machines and processes. Therefore we cannot assume any warranty or guarantee for externally performed finishing processes. Our products are subject to European law. Legal conformity for countries outside the EU cannot be guaranteed and would need to be verified for each order separately. Senator does not take over costs for such investigations.

## **VII. Retention of title**

1. Title to the goods ("goods subject to retention of title") will remain vested in senator® until payment of all monies due under the contract of sale and satisfaction of all claims arising from the business relationship with the customer. The Buyer is permitted to resell the goods supplied in the course of ordinary trade only. The customer hereby assigns as security all claims arising from resale of the goods subject to retention of title to senator®. The customer is entitled to continue to collect the outstanding claims for as long as it meets its payment obligations to senator® in accordance with the contract. On request, the customer must name the party liable for the assigned claims to senator® and provide senator® with all information and documents necessary to collect such claims. The customer is obliged to inform senator® immediately of any seizure by third parties of goods delivered under retention of title or the assigned claims. Title to the goods delivered subject to retention of title may not be transferred as security and the goods may not be sold as collateral or pledged without senator®'s prior written consent. If the customer enters insolvency, senator® is entitled to demand that the insolvency administrator assigns the right to outstanding consideration for goods resold by the insolvency debtor.

2. The customer must inform senator® in writing without delay of any seizures by third parties, in particular compulsory enforcement and other action impairing its title to the goods. The customer must reimburse senator® for all losses and costs resulting from a breach of this obligation and interventions necessary to prevent third-party seizures.

3. If the customer fails to meet its payment obligations in spite of a warning from senator®, senator® may demand the surrender without notice of goods subject to retention of title still owned by it. The transport costs incurred in this connection will be incurred by the customer. Attachment of the reserved goods by senator® will always constitute rescission of the contract. senator® is entitled to realise the goods subject to retention of title after retention thereof. The proceeds of such realisation, minus reasonable realisation costs, will be applied to liabilities of senator®.

## VIII. Final provisions

1. Relations between the contracting parties are governed exclusively by the laws of the Federal Republic of Germany. Application of the Uniform Law on the International Sale of Goods and the Uniform Law on the Formation of Contracts for the International Sale of Goods is excluded.

2. Place of performance for all deliveries and payments is Gross-Bieberau, Germany. The courts of Frankfurt am Main will have exclusive jurisdiction for all disputes between the parties. However, senator® is entitled to bring proceedings against the customer in the courts for its place of business or residence.

3. The customer is not entitled to assign claims arising from the sales contract without the written consent of senator®.

4. Should any provision of these General Terms and Conditions be or become invalid or unworkable, the validity of the remaining provisions of these General Terms and Conditions will not be affected thereby.

5. In case of doubt the German version of the General Terms and Conditions (AGB) is binding.