

Siebenwurst US Inc.

GENERAL TERMS and CONDITIONS OF SALE and SERVICE

Applicable to all Quotations, Purchase Orders, Invoices, Order Acknowledgments and Purchase Agreements,

(December 2015)

- I. **General.** These Terms and Conditions are applicable to the person, firm, company or other purchasing entity (hereinafter referred to as “Buyer”) and **Siebenwurst US, Inc.** (hereinafter referred to as “Siebenwurst” or “Seller”) for items ordered by Buyer from Seller in whatever form or quantity (hereinafter referred to as “Goods”) and/or for services performed by Seller for Buyer (hereinafter referred to as “Services”). Any other document(s) containing terms and/or conditions that are in addition to or inconsistent with the following Terms and Conditions listed herein, including but not limited to penalties or liquidated damages for Seller's failure to meet shipment dates or any other reason, shall not be binding upon Seller without the express written acceptance of liability by an authorized representative of Seller. Seller's failure to object to any additional, inconsistent, or other provisions contained in any other order or form of communication from Buyer shall not be construed as either a waiver or acceptance of such provisions. Seller reserves the right to correct any clerical or typographical errors at any time.
- II. **Acceptance.** These terms and any other written stipulations to which these terms are stated to apply (collectively, the “Agreement”), constitute the entire agreement between Siebenwurst US Inc. and the Buyer. Seller's proposals will only be deemed to be accepted after they have been (1) signed by Buyer, (2) returned to Seller's designated address, and (3) acknowledged by the signature of Seller's duly authorized representative. No modification(s), waiver(s), alteration(s), or additional term(s) shall be valid as against Seller unless said modification(s), waiver(s), alteration(s), or additional term(s) have been acknowledged in writing by Seller's duly authorized representative.
- III. **Prices.** All prices are in US Dollars, unless otherwise provided for in the Quotation or Order Confirmation.
 - A. Tools and Molds. Prices for tools and molds are exclusive of spare and wear parts and delivery unless otherwise provided for in the Quotation. Buyer recognizes and acknowledges that establishing series production readiness at the Buyer's place of use is always the responsibility of the Buyer or a Third Party commissioned by Buyer. Establishing series production readiness is never the task of Seller and therefore is not included in the price. Buyer recognizes that all information provided by the Buyer is used by Siebenwurst to provide a customized, specialty Good and any missing or incorrect information or design, CAD data, or materials provided by Buyer may result in a recalculation of the price. Any change requests or information not explicitly included in the scope of supply shall be invoiced accordingly.
 - B. Service, Maintenance, Repair and Change Requests for Tools and Molds. (i) *Non-executable repair work.* The agreed-upon hourly rate or package price for the repair work shall be paid even if the repair work cannot be carried out due to unforeseeable reasons or factors for which Siebenwurst is not responsible. (ii)

Consulting Services. The Buyer shall receive a Siebenwurst pricing list with applicable hourly rates on the Quotation. The pricing list shall be provided to Buyer prior to any consulting or temporary work being performed.

- IV. **Taxes and Other Charges.** In addition to Seller's invoice price or quote price, Buyer is also responsible for payment of any use-tax, sales tax, excise tax, duty, custom, inspection or testing fee, and/or any other fee, tax, or charge imposed by governmental or non-governmental authority arising from the goods or services provided by Seller. In the event Seller is required to pay any of the fees or charges listed in this paragraph, Buyer herewith agrees to immediately reimburse Seller for this cost, or in lieu of such payment by Seller, Buyer agrees to timely provide an exemption certificate or other comparable document to the entity or authority imposing said fee, tax and/or charge. Buyer further agrees to waive any and all claims regarding the reasonableness of such payment and will be liable to Seller for reasonable attorneys' fees and/or court costs incurred by Seller as a result of Buyer's failure to pay the charges listed in this paragraph.
- V. **Limited Warranty.** Seller guarantees Goods meet applicable standards only when used as directed under normal operation or service. This guarantee is effective for thirty (30) days from the date of shipment for the original Buyer and is not transferable. If, and upon the determination of Seller's inspection, any Goods are deemed to be defective in material or workmanship within thirty (30) days from the date of shipment, Seller may, at its option, either replace any defective part(s) of the Goods to Buyer, or refund the purchase price of the defective part(s). Such replacement, however, shall not extend the warranty period provided in this paragraph. Seller does not warrant replacement items or any parts thereof that are of later- or improved-design or construction. Seller is not required to provide a factory replacement if an operational refurbished part is otherwise available. In the event that Buyer has a Third Party make any changes or repairs to the Goods, this warranty is voided and Seller is in no way liable for actions that occur subsequent to such Third Party action. Seller is not obligated to replace expendable parts, Goods, or any other parts that have been damaged due to misuse or Buyer's failure to observe proper maintenance, lubrication and/or operating procedures.

This guarantee excludes (i) the labor and costs of labor for the disassembly or removal of any Seller's Goods and (ii) any incidental or consequential damages or loss, whether based on breach of express or implied warranty, negligence, strict liability or any other legal theory.

SELLER MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, WITH REGARD TO THE DESIGN, SALE, MERCHANTABILITY OR FITNESS OF THE GOODS FOR A PARTICULAR PURPOSE OR USE EXCEPT AS EXPRESSLY SET FORTH HEREIN. SELLER IS NOT SUBJECT TO ANY OTHER OBLIGATIONS OR LIABILITIES ARISING OUT OF BREACH OF CONTRACT OR WARRANTY, TORT CLAIMS INCLUDING NEGLIGENCE AND STRICT LIABILITY, OR ANY OTHER THEORIES OF LAW. SELLER IS UNDER NO EVENT LIABLE FOR ANY SPECIFIC, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL LOSS, DAMAGES, EXPENSE, INJURY, DISMEMBERMENT, OR DEATH OF ANY KIND WHATSOEVER.

This warranty shall be voided in the event of: any improper use of the Goods, whether intentional or unintentional; operation beyond capacity; failure to report defects to Seller within warranty period; substitution of parts not approved by Seller; failure or damage due to misapplication; lack of proper and/or regular maintenance according to the most recent version of Siebenwurst's Maintenance directions; abuse; improper installation or repair; abnormal operating conditions as a result of temperature, moisture or corrosive matter; unauthorized

alteration or repair by third parties which, according to Seller's judgment, materially and/or adversely affects the Goods.

- VI. **Design Improvements.** Goods sold by Seller are changed from time to time with changes that are intended to improve the design and construction of the Goods. As such, any illustrations, specifications or other descriptive material submitted to the Buyer may not depict an exact replica of the Goods at the time of delivery, and are merely intended as a general description of the Goods, and are not deemed to constitute a part of this proposal or a warranty as to the particular specifications of the Goods.
- VII. **Utilities and Resources.** Unless otherwise agreed to in writing by the Parties, all drawings, developments, CAD designs, natural, scale and CAD models, milling programs, auxiliary tools and devices including operating supplies shall remain the property of Siebenwurst and not the Buyer. All Intellectual Property and Copyrights shall remain with Siebenwurst and may not be transferred.
- VIII. **Service, Maintenance, repair and change requests for tools and molds.** Siebenwurst may provide consulting services or temporary work, repair and/or maintenance work to the Buyer. Siebenwurst assists in the Project only as a Consultant and accepts no responsibility for time, quality or costs incurred by the Buyer as a result of the consultation. Siebenwurst expressly disclaims any follow-up costs incurred by the Buyer. Buyer hereby acknowledges and agrees that Buyer is wholly responsible for method, tooling design, tools and part quality. It is understood by both parties that Siebenwurst is an independent contractor and not an employee of Buyer. Siebenwurst acknowledges and agrees that the Buyer will not provide the consultant with any employee benefits, including without any limitation any employee stock purchase plan, social security, unemployment, medical, or pension payments, and that income tax withholding is Siebenwurst's responsibility. Any services provided by Siebenwurst are exclusively advisory in nature and are in no way a guarantee of a definite final outcome. Seller makes no other warranties or guarantees with regard to the design or recommendations made by Seller during consulting services.

SELLER IS NOT SUBJECT TO ANY OTHER OBLIGATIONS OR LIABILITIES ARISING OUT OF BREACH OF CONTRACT OR WARRANTY, TORT CLAIMS INCLUDING NEGLIGENCE AND STRICT LIABILITY, OR ANY OTHER THEORIES OF LAW. SELLER IS UNDER NO EVENT LIABLE FOR ANY SPECIFIC, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL LOSS, DAMAGES, EXPENSE, INJURY, DISMEMBERMENT, OR DEATH OF ANY KIND WHATSOEVER.

A. Consulting Services: Delivery times are calculated from the day of the final technical and commercial release (approval) and written order confirmation. The scheduled time in the offer is considered the delivery time. This is determined in consultation with the Contractor for orders billed on an hourly basis. Siebenwurst is entitled to cancel the contract or to delay delivery if the Buyer fails to provide the necessary purchase orders, information, confirmations or materials on time.

C. Temporary Work: Delivery times are calculated from the day of the final technical and commercial release (approval) and written order confirmation. The scheduled time in the offer is considered the delivery time. This is determined in consultation with the Contractor for orders billed on an hourly basis. Siebenwurst is entitled to cancel the contract or to delay delivery if the Buyer fails to provide the necessary purchase orders, information, confirmations or materials (regardless of type) on time.

- IX. **Delay.** Seller is not responsible for delay(s) in delivery for reasons beyond Seller's reasonable control, including but not limited to, Force Majeure. In the

event of delay under this paragraph, the delivery schedule shall be extended by amount of time originally lost due to the delay.

- X. **Force Majeure.** "Force Majeure" means any cause not within the reasonable control of the party affected. Events of Force Majeure include, without limitation, acts of God, lockouts or other labor disturbances, wars, blockades, quarantine embargoes, riots, fires, explosions, failures of production facilities, shortages of fuel transportation, utilities, or raw materials, and governmental laws and regulations.
- XI. **Payments.** All quotations are valid for seven (7) Days only.
- A. Payment Terms for Tools / Molds : (1) Fourty Percent (40%) is due upon receipt of order confirmation; (2) Fifty Percent (50%) is due at initial sampling – off-tool parts; (3) Ten Percent (10%) is due upon delivery, but no later than Thirty (30) Days after initial sampling or ready-for-shipping notification. Any Changes occurring during production will be invoiced with the due date "Net cash Thirty (30) Days from date of invoice." The due date for deliveries of spare parts, repairs, and any contract work is "Net cash Thirty (30) Days from date of invoice." Notwithstanding any terms to the contrary, in the event of a delinquency, all sums due and owing to Seller (retroactively applied to the invoice date) will be subject to interest charges at the rate of Six Percent (6 %) per month.
- B. Payment Terms for Service, Maintenance, Repair, and Change Requests for Tools and Molds: (1) One Hundred Percent (100%) based on the applicable hourly rate/expense. If the project runs for longer than One (1) Month, then expenses are billed on a monthly basis; (2) Notwithstanding any terms to the contrary, in the event of a delinquency, all sums due and owing to Seller (retroactively applied to the invoice date) will be subject to interest charges at the rate of Six Percent (6 %) per month.
- C. Payment Terms for Consulting and Temporary Work: (1) One Hundred Percent (100%) based on the applicable hourly rate/expense. If the project runs for longer than One (1) Month, then expenses are billed on a monthly basis; (2) Notwithstanding any terms to the contrary, in the event of a delinquency, all sums due and owing to Seller (retroactively applied to the invoice date) will be subject to interest charges at the rate of Six Percent (6 %) per month.
- D. Any delays in payment by Buyer shall subsequently result in delivery delays.
- XII. **Cancellation.** Buyer recognizes that Goods are specially manufactured products designed specifically for the needs of the Buyer and to Buyer's specifications. Therefore, once the Buyer has reviewed the engineering drawings / design data and released the Goods for production with a valid release note signed by the Buyer, the Buyer is responsible for the full amount due under the Agreement, regardless of the production or shipment status of the Goods.
- XIII. **Delivery; Assumption of Risk.** Unless otherwise expressly agreed in writing by the Parties, delivery of Seller's Goods is deemed to be complete once the products have left the Seller's warehouse via Buyer's carrier or via a common carrier. Buyer has the option to select method of transportation and routing of shipment. Seller is not responsible for any damage(s) occurring during transit or loss of shipment, and Buyer must make all claims directly to carrier. Buyer must submit claims for shortages and/or incorrect Goods to Seller in writing within ten (10) business days after receipt of shipment.
- Except as agreed upon in writing and signed by both Buyer and Seller, the passage of risk for shipment of all Goods is "EXW Seller's Warehouse."
- XIV. **Safety.** Buyer shall employ and maintain any safety guards, controls, warning

signs, and/or other safety devices and feature, and to provide all warnings and instructions reasonably required for the safety of persons within reasonable proximity and/or in use of the Goods. Buyer shall ensure all employees are fully aware of Seller's operating instructions for the Goods, and to comply with all laws and regulations of applicable governmental or other agencies with jurisdiction thereto, including but not limited to, the Occupational Safety and Health Act of 1970 ("OSHA"), as amended, and regulations promulgated pursuant thereto and any amendments with regard to the installation and use of the Goods thereto. Buyer shall refrain from any alterations or misuse of the Goods in any manner that may constitute a threat of danger to persons.

To the best of its knowledge, Seller shall comply with any applicable standards and/or requirements of legislation, regulations, or guidelines for the regulation or protection of occupational, environment, health or safety, which may have been enacted or promulgated in any jurisdiction.

SELLER EXPRESSLY DISCLAIMS ANY RESPONSIBILITY FOR ANY FAILURE TO COMPLY WITH ANY SUCH LEGISLATION, REGULATIONS OR GUIDELINES UNLESS EXPRESSLY AGREED TO BY SELLER IN A SEPARATE WRITING.

XV. **Indemnification.** Buyer and Seller agree to indemnify and hold harmless the other party and its affiliated companies from and against all claims, damages, losses, and expenses, including all reasonable attorneys' fees and expenses arising out of or resulting from the indemnifying party's failure to comply with the applicable laws and regulations set forth in Paragraph XI above, regardless of whether such claim, damage, loss, or expense is caused in part by the negligence or other act of the indemnifying party. Buyer agrees to indemnify Seller and its parent entities, its present and future subsidiaries, any and all subsidiaries of a subsidiary or parents of a parent, all affiliated corporations, and successors and assigns or any company or companies which either directly or indirectly controls or has the power to control a party, or any company or companies which is controlled by a part of which a party has the right to control (hereinafter referred to as the "Affiliated Companies") the aforementioned entities as to any such claim, damage, loss or expense arising out of or resulting from the design, construction, formulation, or composition of any product made or handled by the Goods in the hands of the Buyer.

XVI. **Acceptance of Goods.** All Goods shall be accepted subject to the Buyer's rights of inspection, rejection, and revocation of acceptance pursuant to Article Two of the Uniform Commercial Code ("UCC"). Acceptance of Goods shall take place with the sampling or with the ready-for-shipping notification if there is not sampling.

XVII. **Governing Law and Venue.** This Agreement shall be exclusively governed by the laws of the State of North Carolina giving effect to the conflict of law provisions thereto. The parties further consent to the exclusive personal jurisdiction of any applicable court in the city of Charlotte, in the county of Mecklenburg, North Carolina for any legal action or proceeding brought to enforce, construe or interpret these Terms and Conditions. Venue is proper only in the United States District Court of North Carolina. Each party hereto irrevocably submits to the jurisdiction of each court in each such action or proceeding.

XVIII. **Arbitration.** Any controversy or claim arising out of or relating to this Contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator may be entered in

any court having jurisdiction thereof. The number of arbitrators shall be one. The place of arbitration shall take place in Charlotte, NC USA.

- XIX. **Assignment.** This Agreement may not be assigned by Buyer without prior written consent of Seller.
- XX. **Security Interest.** Seller reserves a purchase money security interest in the Goods, all additions and accessories thereto, and all replacements, products, and proceeds thereof to secure payment of the purchase price. Said security interest shall be retained until the purchase price is paid in full. Buyer agrees Seller has the right to file the Agreement or financing statements pursuant to 7 U.S.C. § 1631; the Uniform Commercial Code; or other applicable law to evidence or perfect Seller's security interest in the Goods. Upon Seller's request, Buyer will join with Seller in the execution of such financing statements. Buyer further agrees Seller has the right to invoice Buyer and Buyer will pay all fees, taxes, and assessments associated with the filing of the Agreement or financing statements.
- XXI. **Return of Goods.** Buyer recognizes that Goods are specially manufactured products designed specifically for the needs of the Buyer and to Buyer's specifications. Goods may not be returned to Seller.
- XXII. **Notices.** All written notices pursuant to the Agreement must be address as follows:

To Seller: Siebenwurst US Inc.
112 South Tryon Street, Suite 1130
Charlotte, NC 28284

To Buyer: ATTN: _____

Without reasonable evidence to prove the contrary, Notices sent by mail will be deemed to be accepted by the Recipient on the fifth (5th) day following the date of mailing.

- XXIII. **Severability.** If a court of competent jurisdiction holds any term or provision of this Agreement to be invalid or unenforceable, such provision or portion thereof shall be considered separate and apart from the remainder of the Agreement and the other provisions shall remain fully valid and enforceable.
- XXIV. **Modification.** The terms of this Agreement may not be amended, modified, waived, superseded, or rescinded except by a writing signed by Seller's duly authorized representative.
- XXV. **Entire Agreement.** The Agreement, together with these Terms and Conditions and any attachments, manuals, guidelines, requirements, exhibits and supplements specifically referenced therein, constitutes the entire agreement between the Parties and supersedes any and all other prior contracts and undertakings, both written and oral, among the parties or any of them, with respect to the subject matter herein and, except as otherwise expressly provided herein, is not intended to confer upon any other person any rights or remedies hereunder.