



# interseroh

zero waste solutions

## GENERAL TERMS AND CONDITIONS OF BUSINESS of the contract about participating in Interseroh's recycling system for packaging materials

### 1 Preamble

The Austrian Waste Management Act (AWG) and the Packaging Ordinance (VerpackVO) contain obligations for companies that put packaging or packaged goods or disposable plates and cutlery into circulation in Austria.

These obligations may be transferred to authorised collection and recovery systems (SVS). With regard to household packaging, participation in an SVS has been mandatory since 01.01.2015. According to the Packaging Ordinance, the relevant contract is to be concluded within two months of the packaging or similar being put into circulation.

INTERSEROH Austria GmbH (Interseroh) operates an

approved SVS for household and commercial packaging (including disposable plates and cutlery) and organises, within the territory of the Republic of Austria, the collection and recycling of household and commercial packaging (including disposable crockery and cutlery) in accordance with the Packaging Ordinance.

These T&Cs apply to both commercial and household packaging.

Any reference in these T&Cs to the Austrian Waste Management Act and the Packaging Ordinance applies correspondingly to the arrangements regarding successors.

### 2 Application of the General Terms and Conditions of Business

Interseroh concludes contracts about participating in Interseroh's recycling system for packaging materials, so that the obligations which can be imposed on the participants in the system (partners) and which arise from the Packaging Materials Ordinance are assigned to Interseroh and Interseroh fulfils them on behalf of the contracting party (release of responsibility).

The version of Interseroh's General Terms and Conditions of Business, which applies at the point in time when the contract is concluded, is an integral part of this contract that is based upon it. The respectively applicable version of the General Terms and Conditions of Business can be called up from Interseroh's home page at [www.interseroh.at](http://www.interseroh.at).

### 3 Participation in the system

#### 3.1 Extent of participation in the system

The partner basically participates in Interseroh's recycling system with all of his packaging materials including the disposable crockery and disposable cutlery that are issued in Austria, according to the valid Packaging Materials Ordinance.

The participatory obligation for domestic packaging materials is only inapplicable to the extent that an upstream selling stage (i.e., seller) provably participated in a recycling system, as well as that the partner provably takes back the returns and reutilizes them, or the partner provably exports the packaging material.

If the partner not only participates in Interseroh's recycling system with the packaging materials within one category of tariffs but also participates in another recycling system, then he has to announce the understandable criteria for the distribution to Interseroh in advance. It is only permissible to make alterations at the end of a calendar quarter.

The participatory obligation for commercial packaging materials is inapplicable to the extent that another commercial stage (i.e., seller) provably participates in a recycling system, or the partner himself provably takes back and reutilizes the packaging materials which he organizes for issue without making use of a recycling system, or the partner of a downstream commercial stage provably exports the packaging materials.

#### 3.2 Calculation and notification of the participating amounts

The partner must calculate the participating amounts according to an understandable method. If the partner's packaging material accumulates not only in the domestic area but also in the commercial area, then the partner has to proceed with the allocation according to the provisions of the Waste Management Law and the Packaging Materials Ordinance. Interseroh does not accept any liability for the ascertained participating amounts.

The Waste Management Ordinance obligates the partner to issue a complete notification of the issued or imported participating amounts with which he participates in the recycling system.

#### 3.3 Notification of the annual forecast

The partner will forward a notification of the annual forecast (planned quantity per category of tariffs) to Interseroh when the contract is concluded at the latest, except in the case that he is the notifier of the all-inclusive quantity. The notification of the forecast forms the basis for roughly assessing the partner's remuneration as release from the responsibility and for classifying him as the monthly, quarterly or annual notifier.

If the notification of the annual forecast is not forwarded, then Interseroh will classify the partner with a notifying period according to Clause 3.4.

### 3.4 Continual notification

The Packaging Materials Ordinance prescribes that the partner is obligated – insofar as he is not entitled to claim an all-inclusive regulation – to notify the recycling system about the sold packaging quantities for domestic packaging materials or commercial packaging materials with an expected annual remunerative sum (net) of:

- a) up to € 1,500 per calendar year (i.e., annual notifier)
- b) from € 1,500 to € 20,000 per calendar year (i.e., quarterly notifier) and
- b) over € 20,000 per calendar year (i.e., monthly notifier)

These notifications must be given by 15<sup>th</sup> day of the month following the notifying period.

If it is evident from the forecast that the same classification does not result for the domestic quantity and the commercial quantity in the notifying period, then the respectively shorter notifying period can be agreed for both notifications.

### 3.5 All-inclusive notification

Interseroh is entitled to stipulate an all-inclusive notification for the annual notifier who does not issue more than 1,500 kg overall of the domestic packaging material and of the commercial packaging material respectively in the calendar year. Therefore, it is not required to notify the actual status

## 4 Remuneration

### 4.1 Calculation of the remuneration

The partner has to pay Interseroh a remuneration (i.e., a remunerative fee) in return for Interseroh accepting the assigned obligations according to the Packaging Material Ordinance. The remuneration is calculated from the quantity of packaging material that the partner issued inland per group of tariffs and which he notified to Interseroh and from Interseroh's valid tariffs.

### 4.2 Tariffs and minimum remuneration

The valid tariffs (€ / t) will be published in the review of tariffs at the site of [www.interseroh.at](http://www.interseroh.at).

Interseroh is entitled to stipulate an all-inclusive remuneration in the review of tariffs for participants in the system who do not issue more than 1,500 kg of domestic packaging material and commercial packaging material respectively. Interseroh is entitled to stipulate a reasonable minimum remuneration that must be paid by the participants in the system. The minimum remuneration will be published in the review of tariffs.

### 4.3 Alterations

Interseroh is entitled to alter the tariffs, the categories of tariffs and the structure of tariffs, the all-inclusive remuneration and the minimum remuneration at the end of the first day of every month. Interseroh will publish such alterations at [www.interseroh.at](http://www.interseroh.at) within one month at the latest before they come into force, if at all possible. If the

partner does not agree to such alterations, then he can make use of the extraordinary right of cancellation according to Clause 6.4.

### 3.6 Notification of the annual accounts

The partner has the right until 15<sup>th</sup> March of the following year to issue a notification of the annual account for the set quantities of packaging materials that were sold in the previous year, irrespective of his classification as a monthly or quarterly notifier. Interseroh will also provide a review of the notification punctually, in which the quantities that were notified for the respective calendar year are entered and which the partner can correct appropriately. The remunerative effects that arise as a consequence of the correction will be counter-charged separately, or they will be charged in the next due invoice at the latest. It is impermissible to correct the quantities arising from the review of the notification with the objective of releasing the quantities – which have been notified already to another recycling system – from the obligation.

### 3.7 The form of notification

The respective participating quantities must be notified to Interseroh on the provided (electronic) forms via Interseroh's internet portal. Access data for using Interseroh's internet portal will be provided to the participant in the system. The partner is responsible for ensuring that the access data is not forwarded to unauthorized third parties.

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### 4.4 Invoicing and terms of payment

The invoices that Interseroh issues must be settled within a time limit of 14 days (i.e., a fortnight) from the date of issue, without deducting expenses and other charges. If the respective remuneration for release from the responsibility is not paid on the due date for payment at the latest, then a default of payment will commence when this day expires. Interest amounting to 4% above the European Central Bank's basic interest rate must be paid on the arrears in the case of default.

The partner is not permitted to set off Interseroh's due remuneration for release from the responsibility, nor to retain it, insofar as the matter does not concern those partner's counter-claims against Interseroh which are recognized by Interseroh or established by a court as legally binding.

If the partner does not announce the monthly, quarterly or annual notification punctually, then Interseroh will be entitled – irrespective of other claims – to invoice the remuneration according to the preceding periods or to the notified annual forecast.

The Turnover Tax Law's decisive regulations must be considered when providing the work or service that is the object of the contract for companies or business enterprises that do not have any permanent establishment or a head office or registered office in Austria which is relevant for the Turnover Tax Law.

## 5 Auditing rights

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### 5.1 Audit

Interseroh is entitled to check the issued packaging material in the partner's company – especially regarding correctness and completeness of the sold quantities that the partner has notified – or to choose an independent auditor to check it, who is obligated to maintain strict secrecy, after it has announced in good time that the check will be made. This right also exists for the year following the termination of this contract. The partner also grants the aforementioned checking rights to an approved office for coordinating the packaging materials or to the commissioned checker, insofar as this office or this checker has a valid contractual relationship with Interseroh.

The Waste Management Law prescribes that the partner is obligated to cooperate reasonably regarding the collection of resources. He will also keep all of the documents that are suitable for understanding the correctness and completeness of the notification about the sold quantities according to the intended legal periods and he will grant examination of the documents that are relevant for the accounting.

### 5.2 Result of the audit

The partner has to issue a correction notification immediately whenever it is established during a check that the partner's notifications were incorrect or incomplete. The repayments or back payment that result from this check must be settled immediately. The partner has to pay interest on the amount of back payments, which is 4% above the European Central Bank's basic interest rate.

The partner has to reimburse Interseroh for the incurred checking costs whenever the partner makes a back payment because of giving untrue nor incomplete information deliberately or grossly negligently, or whenever the partner infringes the safekeeping duties or he is responsible for the check not being able to be completed properly. Interseroh, its commissioned auditor or the office for coordinating the packaging materials has the right to estimate the sold quantities as a binding basis for calculating the owed remuneration for release from responsibility whenever the check cannot be completed properly within the partner's area of responsibility. The resulting credit notes and back payments must be treated according to the aforementioned explanations.

## 6 Term of the contract and cancellation

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### 6.1 Beginning of the contract and term

The signed contract comes into force on the date that is given at the end of the contract (i.e., contractual document) and it is being concluded for an indefinite period.

### 6.2 Ordinary cancellation

The contract can be cancelled for the first time by means of giving six months of notice with effect from the end of the first full contractual year. If the contract is not cancelled (at least) six months before the term expires, then it will be prolonged by 24 months respectively.

### 6.3 Extraordinary cancellation without notice

A right of extraordinary cancellation without notice exists for this contract's respectively other party whenever there is an important reason for cancellation. This right exists:

a) whenever insolvency proceedings are opened over the

- other party's assets (the insolvency administrator's confirmation), or whenever opening them is dismissed by a court for the lack of assets;
- b) whenever one party stops or suspends the business activity;
- c) whenever one party does not fulfil the essential contractual obligations repeatedly, or after issuing a reminder and setting a reasonable period of grace.

### 6.4 Extraordinary cancellation with notice

The contract can be cancelled with effect from the end of any calendar quarter, subject to complying with a period of notice of 4 weeks:

- a) by either of the two parties, whenever the legal fundamentals for the parties are changed by means of official measures or because the legal position has changed in such a way that the present contractual relationship is radically affected;
- b) by the partner, if Interseroh announces a relevant increase of the tariffs, an increase of the minimum remuneration or an increase of the all-inclusive amount.

## 7 Use of logos

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The partner receives the revocable right for the contract's term to label the packaging material at his own cost that is issued in Austria with 'Interseroh's recycling logo' (a trademark of Interseroh Aktiengesellschaft with its head office in Cologne, for utilizing secondary raw materials), which can be called up at [www.interseroh.at](http://www.interseroh.at). The right of use includes the right to utilize illustrations of the product

that is labelled with the 'Interseroh's recycling logo' in advertising. The partner is not entitled to assign to third parties the right of using the logo that has been granted to him, without Interseroh's prior written consent. The partner right to use the 'Interseroh's recycling logo' lapses when the contract is terminated.

## **8 Final provisions**

### **8.1 Liability**

Interseroh's liability on account of the contract is limited to the covering sum amounting to € 5,000,000 that is provided by the maintained liability insurance policy in the case of (criminal) intent and gross negligence.

The partner's cooperation is required for fulfilling the contractual obligations according to the contract. All of the partner's claims against Interseroh are excluded and the partner is obligated to keep Interseroh completely free from damages and claims – also against third-party claims – whenever the partner cannot carry out the cooperation that is stipulated in the contract.

### **8.2 Commissioning of third parties**

Interseroh is entitled to commission third parties with implementing the participatory contract. Interseroh will only commission those companies or business enterprises which guarantee proper implementation of the services for the purposes of the Packaging Materials Ordinance and compliance with all of the regulations that are relevant according to the Waste Management Law.

### **8.3 Alterations**

Interseroh is entitled to revise the contract, Interseroh's General Terms and Conditions of Business that are integrated into the contract, as well as the forms and information sheets that are used in connection with participation in the system without the partner's consent, by means of Interseroh sending him a unilateral notification and subject to complying with a reasonable lead time, in order to ensure that the systems functions or to improve or adapt it to suit the altered underlying legal conditions. The partner can exercise the extraordinary right of cancellation according to Clause 6.4 in the case that he does not agree with essential alterations of contractual points or essential alterations of the provisions in the General Terms and Conditions of Business.

### **8.4 The written form**

The written form is required for altering and supplementing the contract. This rule also applies to annulling the requirement for the written form. The cancellation must be made according to Clauses 6.2 to 6.4 by means of a registered letter. The contracting parties have not made any verbal collateral agreements.

### **8.5 Invalidation of individual provisions**

If one of the contract's provisions is inoperative or unworkable, then this circumstance will not affect the contract's operativeness otherwise. The parties undertake in such a case to substitute the corresponding provision by an operative or workable provision which approximates as closely as possible to the spirit and purpose of the contract, as well as to its economic objective, insofar as possible. The same rule applies to any loopholes in this contract.

### **8.6 Confidentiality**

Interseroh will confidentially treat the information that the partner provides or which Interseroh becomes aware of during the course of implementing the contract; Interseroh will protect it from unauthorized access and not utilize it for purposes other than implementing the contract. The obligations of confidentiality do not apply at all to confidential information that is publicly available, or becomes publicly available, at the point in time when Interseroh transmits it without infringing the agreement.

Interseroh will only disclose confidential information whenever it is obligated to do so by law, or whenever official or legal instructions require this to be done, as well as in the case of giving requisite information to the office for coordinating the packaging material. It will inform the partner immediately in this case.

Interseroh is entitled to disclose the partner's data to the responsible authorities, insofar as this disclosure is required for fulfilling its legal obligations. Interseroh is entitled to publish or give information about the lists of names of the participants in the system including Interseroh's partner numbers, as well as information about whether there is a valid contractual relationship, at [www.interseroh.at](http://www.interseroh.at).

### **8.7 Data protection**

Interseroh will take all reasonable measures in order to ensure compliance with the Data Protection Law and to prevent third parties from accessing the partner's data unauthorizedly. Interseroh will delete or destroy any worn-out data carriers that contain the partner's data.

### **8.8 Company address**

The address of the other contracting party that is stated in the contract is decisive for each contracting party. Each contracting party has to notify the respectively other contracting party in writing immediately about alterations of the company address. Consignments that one contracting party does not receive at all, or does not receive in good time because of an infringement of the aforementioned duties of notification, apply as having been sent in good time.

### **8.9 Legal recourse**

The contract is subject to Austrian law and it excludes the standards applying to conflicting laws that are stated in Austrian international law and in the 'UN Purchase Law' (i.e., the United Nations Convention on Contracts for the International Sale of Goods).

Interseroh and the partner will strive to reach an agreement in all cases where there are differences of opinion. The court of the 1<sup>st</sup> Instance of Vienna's urban district that has material jurisdiction is agreed for settling all of the disputes arising from the contract or in connection with it, whenever the contracting parties cannot reach agreement about the differences of opinion.