

General Terms of Trade and Contract



I. Validity and Scope

1. The following standard terms of sale and delivery stated hereinafter as General Terms and Conditions shall exclusively apply to contracts where the client is an entrepreneur, a legal entity under public law, or special property under public law as defined in Sections 14 and 310 Para. 1 of the German Civil Code (§§ 14, 310 BGB), according to which an entrepreneur is a natural person, a legal entity, or an incorporated partnership independently engaged in a trade or business at the point in time that the contract is concluded.

2. These Terms and Conditions shall also apply to all future business relations, even if they are not expressly agreed upon again.

3. A client's own deviating or conflicting terms and conditions that have not been expressly agreed upon in writing shall be without obligation. The present General Terms and Conditions shall even apply if the Company has completed an order without reservation, although being aware of conflicting or deviating terms and conditions of the client.

4. All contracts, including these General Terms and Conditions, include a written record of all agreements concluded between the Company and its client.

II. Offer and Conclusion of Contract, Documents

1. An order, which is placed by a client and is qualifiable as an offer to conclude a contract, may be accepted by the Company within two weeks by sending a confirmation of order.

2. Offers submitted by the Company are subject to change and without obligation unless the Company has expressly specified them as binding.

3. The Company will reserve all property rights, intellectual property rights or any other rights for figures, drawings, calculations, samples or other documents. This shall also apply to written documents designated as "confidential". They must not be copied or passed on to third parties unless the Company has expressly agreed to this in writing.

III. Duty of Care and Co-operation, Storage and Custody

1. Before execution of an order, the client is obliged to provide the Company with samples of the original materials to be manufactured or packaged, free of charge and without any right of return. At the same time, the client has to inform the Company in detail about all characteristics of the product, in particular about colour intensity, odour or any potential hazards to the health of the Company staff.

2. The client shall be responsible for the review of proposals submitted by the Company with respect to manufacturing and packaging of the product, in particular concerning shape, dimensions, packaging materials, and labelling. The client shall undertake to observe all legal regulations and ordinances, in particular the provisions of the German Medicines Act, the Food Law requirements as well as the relevant EU Guidelines and other regulations.

Furthermore it will be the sole responsibility of the client to verify the effect of the product to be manufactured or packaged, in particular in conjunction with the proposed packaging. Moreover, the client is obliged to inform the Company about any particular requirements to be considered during storage of the product.

3. The information provided by the client as per above numbers 1 and 2 shall be the sole basis for execution of the order by the Company. The client will assume full liability for the completeness and accuracy of the information provided.

IV. Prices, Terms of Payment, Set-off and Retention

1. Unless otherwise stated in the confirmation of order, all prices are calculated ex works, packing excluded (will be invoiced separately).

2. The legal VAT is not included in the price; it will be stated in the invoice to the legal amount effective at the date of invoice.

3. The allowance of a cash discount is subject to written agreement.

4. Unless otherwise stated in the confirmation of order, the purchase price is payable net cash (without deduction) within 30 days after the date of invoice. The legal provisions relating to the consequences of delayed payment are applicable.

5. The client only has a right to set-off if his counterclaims are legally established, undisputed, ready for decision or acknowledged by the Company.

6. In case of deficiencies, the client has no right to withhold payment unless the performance resulting from the fulfilment of the contract is obviously insufficient, or rather the client obviously has a right to refuse acceptance. In such case the client has a right of retention, as far as this right is in due proportion to the deficiencies and to the expected cost of supplementary performance, and as far as it is based upon the same contractual relationship. The client has an unrestricted right of retention if it is due to a monetary claim which is legally established, undisputed, ready for decision or acknowledged by the Company.

V. Delivery Time

1. The delivery time stated by the Company will apply on condition that all technical details have been clarified in time.

2. The Company will only be able to comply with the delivery terms if the client has fulfilled his obligations and his duty to exercise proper care. In particular, the client has to provide the Company free of charge, in time and sufficiently in advance with active substances, excipients and packaging materials (especially artworks) required to execute the order. The client will assume any liability or risk with respect to delivery and transport of these active substances, excipients and packaging materials. The right to enter a plea of non-performance will be reserved.

3. If the client is in default of acceptance, or culpably breaches any other duty to co-operate, the Company shall be entitled to claim for damages (incl. any additional expenses). The right to lodge further claims will be reserved.

4. If the above-described conditions (see No. 3) are fulfilled, the risk of accidental loss or deterioration of the object of sale devolves on the client from the point of time when he falls into default of acceptance or default of the obligor.

5. The Company shall be liable as required by law, as far as the underlying sales contract is a firm bargain in terms of Section 286 Para. 2 No. 4 of the German Civil Code (§286 Abs. 2 Nr. 4 BGB) or in terms of Section 376 of the German Commercial Code (§376 HGB). The Company shall also be liable as required by law if – as a consequence of a default in delivery for which the Company is responsible – the client is entitled to claim that his interest in further execution of the contract has ceased.

VI. Transfer of Risks, Packaging Costs

1. Unless otherwise stated in the confirmation of order, delivery will be "ex works".

2. The return of packaging material shall be ruled by separate agreements.

3. If requested by the client, the delivered goods will be insured against transport risks; the insurance cost will be charged to the client.

VII. Warranty, Liability for Defects

1. Warranty claims may only be lodged by the client if he fulfilled his duty to make inquiries and to give notice of defects in accordance with Section 377 of German Commercial Law (§ 377 HGB).

2. If the object of sale has a defect, the client may choose between supplementary performance by way of remedy of defects, or delivery of a new object free of defects. If the client requires remedy of defects, the Company shall be obliged to bear all cost incurred by the remedy of defects, in particular transport, labour and material costs, unless these costs have increased due to the fact that the object of sale was brought to another place than the place of fulfilment.

3. If supplementary performance fails, the client may choose between rescission of the contract or abatement of the purchase price.

VIII. Liability

1. The Company will assume liability as required by law in the event of deliberate or grossly negligent action on the part of the Company, a legal representative, or a vicarious agent. In all other respects, liability on the part of the Company shall remain unaffected in case of fraudulent concealment and in case of guarantees given for the quality of the product; furthermore, liability shall remain unaffected in case of fatal injury, physical injury or injury to a person's health, or in case of culpable infringement of essential contractual obligations; liability as defined in the Product

Liability Act and in the German Medicines Act shall remain unaffected, too. In case of slightly negligent infringement of contractual obligations, the claim for damages shall be limited to an immediate, typical damage that would have been foreseeable under the specific contract. The same shall apply to grossly negligent infringements of contractual obligations, if none of the exceptions stated above in clause 2 of this number is applicable. Liability for slightly negligent infringement of minor contractual obligations is excluded.

2. The Company will assume liability as required by law in the event of default or impossibility of performance caused by deliberate or grossly negligent action on the part of the Company, a legal representative, or a vicarious agent. In the event of grossly negligent action, however, the liability of the Company shall be limited to an immediate, typical damage that would have been foreseeable under the specific contract, except in cases of fatal injury, physical injury or injury to a person's health. Moreover, liability of the Company in the event of default or impossibility of performance will be restricted to max. 10 % of the contract value for damages in addition to performance or instead of performance, and for reimbursement of unavailing expenses. Further claims for damages due to default or impossibility of performance shall be excluded. The right of rescission shall remain unaffected.

3. The liability for damages to objects of legal protection by performance of the Company will definitely be excluded, except in case of deliberate or grossly negligent action or in case of fatal injury, physical injury or injury to a person's health.

4. As far as a claim for damages against the Company is excluded or restricted, the same shall also apply to the personal liability for damages of the employees, wage and salary earners, workers, representatives and vicarious agents.

5. Materials of the client which are stored at the Company's premises will not be covered by any insurance against fire or theft etc. on the Company's part. The Company will be liable for these materials during their storage to the same extent as it takes care of its own property. The Company will not accept liability for the deterioration of goods that were stored too long or under inadequate conditions, if the Company had not been informed accordingly.

IX. Reservation of Proprietary Rights

1. The Company will reserve its proprietary rights for the object of sale until all payments resulting from the delivery contract have been received. In the event of infringement of the contractual obligations on the part of the client, in particular in case of delayed payment, the Company will be entitled to repossess the object of sale and thus to withdraw from the contract. In case of repossession of the object of sale, the Company will be entitled commercialize it otherwise; the proceeds from such sale – less adequate realization costs – have to be deducted from the accounts payable by the client.

2. The client will undertake to handle the object of sale with care; in particular, he will be obliged to cover the object of sale by a replacement value insurance against fire, theft,

and water damage at his own expense. As far as inspection or maintenance work is required, the client will execute this work at his own expense in due time.

3. In the event of garnishment or any other interferences to the benefit of a third party, the client will immediately inform the Company in writing, so that the Company will be able to file a suit in accordance with Section 771 of the German Code of Civil Procedure (§ 771 ZPO). As far as the third party is not in a position to reimburse the judicial and extrajudicial expenses incurred to the Company by a legal action filed in accordance with Section 771 of the German Code of Civil Procedure (§ 771 ZPO), the client will be responsible to bear this cost.

4. The client shall be entitled to resell the object of sale in the ordinary course of business; the client, however, shall already now assign all debts receivable to the extent of the total invoiced amount (including VAT) of the Company's debt receivable, which accrue to him from resale to his purchaser or any third party, irrespective of whether the object of sale was reprocessed or not before resale. The client will remain authorized to recover the accounts receivable even after assignment of the debts. The Company's right to recover the accounts receivable by itself will remain unaffected. The Company will engage, however, not to recover the debts receivable, as long as the client meets his financial obligations from the proceeds received, and is not in default of payment, and in particular as long as no application for bankruptcy or insolvency proceedings has been filed or payment has not been suspended. If this is the case, however, the Company will be entitled to claim that the client informs the Company about the debts assigned and about their debtors, that the client provides the Company with all information and documents required to recover the debts receivable, and that the client informs the debtors (third parties) about the assignment of the debts receivable.

5. Reprocessing or alteration of the object of sale by the client shall always be made to the benefit of the Company. If the object of sale is reprocessed with other objects not belonging to the Company, the Company will obtain co-ownership of the new object in proportion of the value of the object of sale (total invoiced amount including VAT) to the other processed objects at the time of reprocessing. Furthermore, for the new object emerged from reprocessing, the same provisions apply as for the object of sale delivered under reserve.

6. If the object of sale is inseparably intermixed with other objects not belonging to the Company, the Company will obtain co-ownership of the new object in proportion of the value of the object of sale (total invoiced amount including VAT) to the other intermixed objects at the time of intermixture. If intermixture is effected with the object of the client being the major object, it is understood that the client transfers proportional co-ownership to the Company. The client will keep the sole or joint ownership in custody for the Company.

7. For security of the debts receivable by the Company, the client will also assign to the Company the debts receivable from a third party accrued from intermixture of the object of sale with real estate.

8. The Company undertakes to release its securities on request of the client to the extent that the realizable value of the securities exceeds the debts to be secured by more than 10 %; the Company shall be free to choose which of the securities shall be released.

X. Period of Limitation

1. The period of limitation for claims and rights arising from defects in performance on the part of the Company, irrespective of the legal basis, shall be one year, unless a longer period of limitation is explicitly required by law.

2. These periods of limitation shall also apply to all damage claims against the Company that are associated with the defect, irrespective of the legal basis of the claim. The period of limitation of one year shall also apply to any kind of damage claims against the Company that are not associated with any defect.

3. The periods of limitation as defined above are valid under the following conditions:

a) These periods of limitation do not generally apply in case of intent.

b) These periods of limitation do not apply either if the Company has fraudulently concealed a defect or if the Company has issued a guarantee for the quality of the goods or services. If the Company has fraudulently concealed a defect, the statutory period of limitation shall apply.

c) Furthermore, the periods of limitation do not apply in case of fatal injury, physical injury, or injury to a person's health or freedom, in the event of grossly negligent breach of duty, in case of infringement of essential contractual obligations, or in case of liability as defined in the Product Liability Act and in the German Medicines Act.

4. In all other respects, statutory limitation rules shall remain unaffected.

XI. Legal Venue, Applicable Law, Place of Fulfilment

1. As far as the client has merchant status, legal venue shall be the registered office of the Company; the Company shall be entitled, however, to sue the client at his domicile.

2. The law of the Federal Republic of Germany shall be applicable; the applicability of the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall be excluded.

3. Unless otherwise stated in the confirmation of order, the registered office of the Company shall be the place of fulfilment.

XII. Amendments and Additions to a Contract

Amendments and additions to a contract shall require an agreement between authorized representatives of the Company (e.g. general manager, proxy holder).