

# **GENERAL TERMS AND CONDITIONS OF DELIVERY AND PAYMENT**

valid from 01.11.2017

## **1. General - Scope of Application**

1. Our conditions of sale shall apply exclusively; customer conditions to the contrary or deviating from our conditions of sale shall not be recognized unless we have expressly approved of their validity in writing. Our conditions of sale shall also apply if we execute delivery to the customer without reservation, in knowledge of customer conditions to the contrary or deviating from our conditions of sale.
2. All agreements made between ourselves and the customer for the purpose of performing this contract are set down in writing in this contract.
3. Our conditions of sale shall only apply towards companies within the meaning of § 14 BGB (German Civil Code).

## **2. Submission - Acceptance - Performance - Preliminary Work**

1. If the order qualifies as a submission in accordance with § 145 BGB, we can accept this within 2 weeks.
2. Only confirmations of order issued in the form of a text shall be binding for us. Verbal or telephone agreements must be in the form of a text to be valid.
3. Subsequent changes to the data occasioned by the customer shall entitle us to make corresponding changes to the contractual provisions affected hereby. All changes to the order data must be confirmed by us in the form of a text.
4. Unless anything else has been agreed upon explicitly in writing, we manufacture and supply a quality standard according to Gerisch, Jarsen, volume 15/16 publishing house Editio-Cantor, Aulendorf "Qualitätssicherung von kosmetischen und pharmazeutischen Packmitteln"
5. We shall be entitled to make deliveries of increased or reduced quantities. These may be +/- 2.5 % with deliveries above 500,000 units, 5 % with deliveries from 100,000 to 500,000 units, +/- 10 % with deliveries from 50,000 to 100,000 units, +/- 15 % with deliveries from 25,000 to 50,000 units, and +/- 20 % with deliveries below 25,000 units.
6. All special tools, sketches, drawings, drafts, printing blocks, dies and other preliminary work ordered by the customer shall be billed even if an order is not subsequently placed. Specially manufactured samples shall be billed at cost.

## **3. Dimensions, Weights and Markings**

Dimensions and weights stated in our tenders and confirmations of order shall be deemed to be approximate. Quantities stated on the delivery note shall be relevant for invoicing. Complaints about the quantity delivered must be made in writing no later than 14 days after receipt of the goods at their destination.

We reserve the right to attach our company text, company name or plant identification number to deliveries of all kinds subject to appropriate practice and provision and to the available space.

#### **4. EAN Barcode**

The EAN barcode shall be printed in accordance with the state of the art and with regard to the relevant implementation rules of the CCG. Additional undertakings – in particular, statements as to the readings at the commercial tills – cannot be provided because of possible effects on the barcode after leaving our plant for want of standard measuring and reading technology.

#### **5. Documents**

1. Any printed and/or implementation documents we have surrendered to the customer must also be inspected by the customer with regard to all the characteristics that are essential and required for the use of the manufactured product. The customer must return the documents signed as a token of approval. The customer should make clear any corrections he desires. We shall not be liable for any obvious defects which the customer has either overlooked during the inspection or failed to report.
2. We reserve the right of ownership and copyright to illustrations, drawings, sketches, drafts, calculations and other documents. This also applies to such written documentation that is described as "confidential". Before passing this on to third parties, the customer shall require our express written approval.
3. A duty to return third-party printed documentation, manuscripts and other objects provided shall only be in force for 2 months after the delivery of the last order produced using the objects. The customer shall be responsible for checking the right of reproduction and copyright for all printed documents, drafts and finished samples unless he has expressly commissioned us to do so. We shall inform the customer of any conflicting rights.

#### **6. Prices - Terms of Payment**

1. Unless the confirmation of order states otherwise, our prices shall be "ex works", excluding packaging, which we invoice separately.
2. The statutory value added tax is not included in our prices; it will be indicated separately on the invoice at the statutory rate on the day of the invoicing.
3. Checks and bills of exchange will only be accepted as conditional payment, and bills of exchange only after special arrangement and subject to their discount ability. The customer shall pay the interest and costs of the discounting or collection of bills.
4. Should we learn upon concluding this contract of circumstances compromising our claim, we may make further processing of the order as well as delivery dependent on advance payment or we may demand suitable security. This applies particularly if the customer is in default in meeting his obligations to us.
5. Unless the confirmation of order states otherwise, the purchase price is payable net (without deduction) within 30 days from the date of invoice. The statutory regulations with respect to the consequences of default in payment shall apply.
6. The customer shall only be entitled to setoff if his counterclaims have been recognized by declaratory judgement, are not in dispute, or have been recognized by us. Moreover he shall only be entitled to exercise a right of retention insofar as his counterclaim is based on the same contractual relationship.

## **7. Delivery and Acceptance**

1. The start of the delivery date we have specified presupposes that all technical questions and all the implementation details have been clarified. Provided that nothing else has been agreed to the contrary or arises from the contractual relationship, the delivery date we have specified shall not be binding.
2. Compliance with our delivery obligation further presupposes that the obligations of the customer are discharged punctually and properly, above all that all the conditions for which he is responsible are performed on time. The plea of non-performed contract shall remain reserved.
3. If the customer should default in accepting delivery or culpably neglect other duties to assist, we shall be entitled to demand restitution of the loss we have hereby incurred, including any additional expenditure. Further claims shall remain reserved. Goods ordered on call should be accepted within four months after confirmation of order.
4. Inasmuch as the conditions of Paragraph 3 are present, the risk of accidental perishing or accidental deterioration in the object of purchase shall devolve to the customer at the time in which the latter defaulted in accepting delivery or failed to comply with the notice of delivery.
5. We shall be liable according to the statutory provisions insofar as the underlying contract of sale is a transaction for delivery by a fixed date as defined by § 286 Para. 2 No. 4 BGB or § 376 HGB (German Commercial Code). We shall also be liable according to the statutory provisions insofar as the customer is entitled to assert as a consequence of a default in delivery for which we are responsible that his interest in the further performance of the contract has ceased to apply.
6. We shall also be liable according to the statutory provisions insofar as the default in delivery is based on a willful or grossly negligent breach of contract for which we are responsible; negligence on the part of our agent or vicarious agent shall be attributed to us. Inasmuch as the default in delivery is not based on a willful breach of contract for which we are responsible, our liability for damages shall be limited to the foreseeable damage typically occurring.
7. We shall also be liable according to the statutory provisions insofar as the default in delivery for which we are responsible is based on the culpable dereliction of an essential contractual duty; in this instance the liability for damages shall be limited to the foreseeable damage typically occurring.

## **8. Usage by the customer – No liability from the manufacturer**

1. We don't provide any warranty and exclude any responsibility, that the delivered object is suitable for the intended usage or application by the customer. The responsibility is exclusively on the customer side.

## **9. Transfer of Risk - Packing Costs**

1. Unless the confirmation of order states otherwise, delivery shall be "ex works". Shipping shall be at the risk and for the account of the customer.
2. Transport packing and all other packing subject to the packing regulations shall not be taken back, the exception being reusable packing material. The customer shall be obliged to provide for disposal of the packing at his own expense. Packing material that has been lent out or is replaceable must be returned or replaced. If such packing

material is not returned in perfect condition within 2 months freight-paid, it shall be invoiced for at current prices.

3. Inasmuch as the customer so desires, we shall cover delivery by means of transport insurance; the costs hereby incurred shall be borne by the customer.

## **10. Liability for Defects**

1. Warranty claims of the customer presuppose that the latter has properly fulfilled his obligations to inspect and make a complaint in accordance with § 377 HGB unless otherwise expressly agreed.
2. Inasmuch as a defect in the object of purchase is present, we shall be entitled to subsequent performance in the form of remedying the defect or supplying a new non defective object, as we see fit. In the event of the defect being remedied, we shall bear the cost only to the amount of the purchase price.
3. Should subsequent performance come to nothing, the customer shall be entitled to demand rescission of contract or a price reduction.
4. We shall be liable according to the statutory provisions insofar as the customer asserts claims for damages that are based on intent or gross negligence, including intent or gross negligence on the part of our agents or vicarious agents. Inasmuch as we are not culpable of willful breach of contract, liability for damages shall be limited to the foreseeable damage typically occurring.
5. We shall be liable according to the statutory provisions insofar as we culpably neglect an essential contractual duty; in this instance the liability for damages shall be limited to the foreseeable damage typically occurring.
6. Liability for culpable injury to life, limb or health shall remain unaffected; this also applies to mandatory liability pursuant to the Product Liability Act.
7. Unless a contrary provision exists above, liability is precluded.
8. The limitation period for warranty claims shall be 12 months, calculated from the transfer of risk.
9. The limitation period in the event of a delivery recourse pursuant to §§ 478, 479 BGB shall remain unaffected; this shall be five years, calculated from delivery of the defective object.

## **11. Overall Liability**

1. Any liability for damages other than that provided for in section 10, irrespective of the legal nature of the asserted claim, shall be excluded. This applies in particular to claims for damages arising from negligence upon conclusion of contract, for other derelictions of duty or tortious claims for compensation for material damage in accordance with § 823 BGB.
2. To the extent that our liability for damages is excluded or limited, this shall also apply with respect to liability for the personal injury of our staff, employees, co-workers, agents and vicarious agents.

## **12. Retention of Title Security**

1. We shall retain the title to the object of purchase until all payments accruing from the business relationship with the customer have been received. Inasmuch as we agree with the customer that the purchase price debt may be paid on the basis of the check bill of exchange procedure, the retention of title shall extend to the customer's

honoring of the bill of exchange we accept and shall not expire when we credit the check received. With conduct on the part of the customer that breaches the contract, in particular if he defaults in making payment, we shall be entitled to take back the object of purchase. Our taking back the object of purchase shall signify a withdrawal from the contract. We shall be entitled after taking back the object of purchase to utilize the object of purchase, with the utilization revenue being calculated from the customer's liabilities, less appropriate utilization costs.

2. With attachments or other interventions by third parties, the customer must inform us immediately in writing so that we may institute legal proceedings in accordance with § 771 ZPO (Code of Civil Procedure). Should the third party not be in the position to reimburse us for the court and out-of-court costs of this action in accordance with § 771 ZPO, the customer shall be liable for the loss we incur.
3. The customer shall be entitled to resell the object of purchase in the proper course of business; he shall, however, assign to us henceforth all claims to the amount of the final invoiced sum of our claim (including VAT) that accrue to him with respect to his customers or third parties from the resale, and shall do so irrespective of whether the object of purchase has been resold without or subsequent to processing. The customer shall still be authorized to recover the debt after assigning it. Our power to recover the debt ourselves shall remain unaffected hereby. We shall undertake not to recover the debt, however, as long as the customer meets his payment obligations arising from the collected revenue, is not in arrears with his payment and, in particular, has made no application to initiate insolvency proceedings, or a suspension of payments is not in force. Should this be the case, however, we may demand that the customer discloses to us the assigned claims and the associated debtors, provides all the necessary details for recovery, hands over the related documents and informs the debtors (third parties) of the assignment.
4. The customer may neither encumber the goods purchased subject to the retention of title nor transfer them for security purposes.
5. The processing or transformation of the object of purchase by the customer shall always be carried out on our behalf. Should the object of purchase be processed using other objects not belonging to us, we shall acquire the co-ownership of the new object in the ratio of the value of the object of purchase (final invoiced sum including VAT) to the other processed objects at the time of the processing. The same shall also apply to the object created by processing as to the object of purchase supplied subject to retention of title.
6. Should the object of purchase be inseparably mixed with other objects not belonging to us, we shall acquire co-ownership of the new object in the ratio of the value of the object of purchase (final invoiced sum including VAT) to the other mixed objects at the time of the mixing. Should the mixing occur in such a way that the object of the customer is to be regarded as the main object, it shall be deemed agreed that the customer assigns to us co-ownership on a pro rata basis. The customer shall act on our behalf as the bailee for the solely owned or co-owned property thus created.
7. We shall undertake to release the securities to which we are entitled at the request of the customer to the extent that the realizable value of our securities exceeds the claims secured by more than 10 %. It shall be incumbent on us to select the securities that are to be released.

### **13. Provision of Material**

If the customer provides materials, these should be delivered in good time and in perfect condition at his expense and risk with an appropriate volume surcharge. The

delivery period shall be extended appropriately if this obligation is not complied with. If the material is defective, incorrect or provided late, the customer shall be liable for the additional costs and damage thereby incurred; this also applies to drawings, samples or printed documents that are incorrect or provided late.

#### **14. Jurisdiction - Place of Performance - Applicable Law**

1. Inasmuch as the customer is a businessman, our principal place of business shall be the place of jurisdiction; we shall be entitled, however, to institute legal proceedings against the customer at the court of his habitual residence.
2. The law of the Federal Republic of Germany shall apply; the UN Convention on Contracts for the International Sale of Goods is excluded.
3. Unless the confirmation of order states otherwise, our principal place of business shall be the place of performance.