

# PFANNENSCHMIDT–HAMBURG

## Terms and Conditions of Purchase (GSTC) K.-W. Pfannenschmidt GmbH, Hamburg

### 1. General

Our orders are exclusively governed by the following Terms and Conditions of Purchase. Any additions thereto and any terms and conditions of sale specified by the supplier and differing from the following Terms and Conditions of Purchase shall only be valid if we have expressly acknowledged them in writing. The unconditional acceptance of deliveries, their payment or silence in relation to different terms and conditions of sale that the contractor may have do not mean that we acknowledge such terms and conditions. We shall be under no obligation to reject expressly any differing terms and conditions of the contractor.

In a continual course of business dealings these terms and conditions shall also apply to all future transactions, in as far as nothing to the contrary is expressly agreed.

### 2. Formation of the contract

We shall remain bound by our purchase order for 14 days. Orders, modifications of orders and acceptances of offers of the suppliers (hereafter referred to as "order") require the written form in order to be legally valid and binding. Verbal or telephone agreements require the subsequent written confirmation to become legally valid and binding. The same applies to verbal supplements to agreements and amendments to the contract. Furthermore, orders are only effective if they are provided with an order number from us. All orders from us must be confirmed in writing by the supplier.

### 3. Transport and passage of risk

The consignment must be delivered to the destination that we specify in our purchase order. If nothing else has been agreed in writing, the costs of shipping and packaging shall be borne by the supplier.

The goods must be delivered packed in as far as this is necessary for transport. The selected means of transport must comply with the applicable terms and conditions of transport and the special requirements for raw materials used in pharmaceuticals or foodstuffs.

The supplier shall bear the risk of transport until the goods have reached the relevant place of performance.

Dispatch notes must be submitted in two copies for each individual consignment immediately after the goods have been dispatched. A delivery note indicating the name of the product, as mentioned in our purchase order, as well as the purchase order and product numbers must accompany each consignment.

### 4. Delivery deadlines and delivery periods

The delivery deadlines and delivery periods mentioned in our purchase orders or otherwise agreed are binding. The receipt of goods by us is decisive for meeting delivery date or the delivery time.. The contractor must notify us immediately of any risk of a delay in delivery, stating reasons for and the likely period of

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delay. Is the supplier omitting this notification, he cannot rely on this obstacle, even in case of force majeure or other circumstances beyond his control. In no case notification of the delay shall change the agreed delivery date. This shall not affect our statutory rights in the case of default.

Part deliveries may only be made if we have expressly agreed to them. In the event that the contractor defaults on part of a delivery, we shall be entitled to enforce our rights to rescind the contract and to claim damages, even for the part of the delivery that the contractor is able to effect, if the part delivery is of no interest to us.

Events of force majeure, which are not foreseeable and not easily influenced, and hindrances that are not our fault and which make it impossible or considerably more difficult to accept and use the consignment at our plant shall have the effect of delaying our obligation to accept the consignment or, at our choice, shall give us the right to rescind the contract without the contractor being entitled to claim payment or damages if we can no longer be reasonably expected to accept the later delivery or if it is of no interest to us. The contractor must comply with any new arrangements that may become necessary for volumes not yet delivered. This particularly applies if we are forced to take such alternative measures due to the circumstances in the market, in the economy or any other unforeseen circumstances.

If we are not able to supply our own customers due to later and not foreseeable import bans, an embargo or any boycott, quota setting or any other circumstances in the country of destination which inhibit exports or imports, we have the right to refuse to accept the goods and to refuse to pay for them until the governmental measures have been lifted or to rescind the contract.

## **5. Prices and terms of payment**

The agreed prices must be quoted with free delivery to the place of destination, including packaging and excluding all retrospective claims of any kind. If nothing else is agreed, payment shall be made within 14 days less a 3% cash discount or within 30 days without deductions after the receipt of the goods and the invoice. The period of time allowed for payment shall on no account commence before the agreed delivery date. Set-off shall be deemed equivalent to payment.

Claims under contracts with us may only be assigned if we have given our written consent, unless section 354 a of the German Commercial Code (Handelsgesetzbuch) applies.

## **6. Liability for defects**

The contractor guarantees that the merchandise to be delivered will be in conformity with the statutory provisions, the contractual terms regarding quality and the warranties regarding the condition of the goods and their durability, and that they will not have any defects as regards quality. The merchandise to be delivered must in particular comply with the applicable statutory guidelines for the pharmaceutical trade and regulations regarding foodstuffs.

Liability for defects shall be based on the statutory provisions. All costs in connection with meeting claims due to defects such as freight, packaging, insurance, public

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charges, import and export costs, testing, including fees for experts, must be borne by the supplier.

The place of delivery and examination within the meaning of Section 377 of the German Commercial Code (Handelsgesetzbuch) shall be the destination we specify. The Supplier is aware that the examination of the incoming goods – depending on the raw materials – may take up to 15 days. We will immediately notify the Supplier of any defects after receiving the results of the examination.

In the case of a faulty consignment we shall have the right to choose between subsequent improvement and a substitute delivery..

If the supplier's attempt at subsequent improvement fails, we may rescind the contract and/or claim damages in lieu of performance. The supplier shall have no further right to attempt a subsequent improvement. This shall not apply in case of particular circumstances where it seems to be appropriate under consideration of the interests of both parties to grant the supplier a second attempt. We have the right to rescind the contract or to claim damages in lieu of performance, in as far as only part of the supplier's services are defective, in relation to this part of the contract or the entire contract, as we may choose.

The statutory provisions apply as regards the limitation period for claims due to defects. In the case of consignments that have been subsequently improved or substitute consignments the limitation period shall recommence on the acceptance of these consignments.

The period of limitation for our rights and remedies due to defects in the deliveries is 36 months, unless legal provisions allow for a longer period of time.

## **7. Supplier's Liability**

The supplier shall indemnify us against all justified claims made against us by third parties, regardless of the legal grounds, due to a defect regarding quality or defect of title, failure to honour a warranty or other breaches of duty and shall reimburse us for the necessary costs in defending our rights in this respect. This shall not apply in case the supplier is not responsible (sec. 276 et seq. German Civil Code). Further claims shall herewith not be affected.

Limitation of supplier's liability in his General Terms of Sale of any kind or nature shall not apply.

## **8. Industrial property rights**

The contractor guarantees that the delivered goods or their use will not infringe any industrial property rights or any other rights of third parties. In as far as such rights nevertheless exist, the contractor shall compensate us for the resulting damage unless he is not responsible (sec. 276 et seq. German Civil Code).

If a claim is made against us by a third party because the supplier's delivery infringes an industrial property or any other right of the third party, the supplier undertakes to indemnify us against these claims at our first request, including all necessary expenses incurred by us in connection with the claim made by the third party and the defence

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against it, unless the supplier has not acted culpably. We are not entitled to acknowledge the claims of the third party and/or conclude agreements with the third party regarding these claims without the written consent of the supplier. The statute of limitations for these indemnification claims is 36 months, calculated from the transfer of risk or from knowledge of the breach of duty and the resulting disadvantages - the later point in time is decisive.

## **9. Place of performance, place of jurisdiction / arbitration, choice of law**

The place of performance for the delivery is the place where the risk passes.

The place of performance for payments is Hamburg.

If the supplier is domiciled in the EU or in the European Economic Area, then the following applies: The sole place of jurisdiction is Hamburg if the supplier is a trader, corporate body under public law or legal separate asset or does not have a general place of jurisdiction in Germany.

If the supplier is domiciled outside the EU and European Economic Area, then the arbitral tribunal of the German Institution of Arbitration (Deutsche Institution für Schiedsgerichtsbarkeit (DIS)) shall have exclusive jurisdiction over any and all disputes arising from or in connection with contracts concluded based on these Terms and Conditions. The decisions of such arbitral tribunal shall be final and absolute and shall be without recourse to the ordinary courts. The defendant is entitled to assert a counter-complaint before the arbitral tribunal. The place of arbitration and place of negotiation is Hamburg; the language of the proceedings shall be German. The proceedings, in particular the taking of evidence, shall be conducted pursuant to the Rules of the Court of Arbitration of the DIS and the rules of Book 10 of the German Code of Civil Procedure (Zivilprozessordnung). Procedural principles from common law, including, in particular (so-called document production) do not apply either directly or mutatis mutandis. To the extent that one party may have to reimburse the other party for legal fees in connection with the arbitration proceedings, such fees shall be limited to those billable under the German Lawyers' Fees Act (Rechtsanwaltsvergütungsgesetz - RVG).

The laws of the Federal Republic of Germany apply, to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).

These conditions have been translated from German into English. In the event of any conflict or inconsistency between the English and the German versions, the German original shall prevail. Owing to the nature of translations, only the German version shall be deemed authoritative.

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