

General Terms & Conditions

Sect. 1 General

All deliveries shall exclusively be governed by the following terms and conditions. Any reference regulations deviating from these terms and conditions shall be binding upon the buyer only if the buyer explicitly acknowledges compliance with them.

All quotes prices shall be in euros and exclusive of VAT. Packaging take-back costs shall not be included in the selling prices.

According to §15, para. 1, clause 1 of the German Packaging Act, manufacturers and distributors of transport packaging (no. 1), sales and outer packaging which typically do not accrue as waste to private end-users after use (no. 2), sales and outer packaging for which system participation is not possible due to system incompatibility according to §7, para. 5 of the German Packaging Act (no. 3), sales packaging of pollutant-containing fillers (no. 4) or reusable packaging (no. 5) are obliged to take back, free of charge, packaging of the same type, shape and size emptied of any residue as those put into circulation by them at the place of actual delivery or in its immediate vicinity to reuse them or to recover them.

Unless otherwise agreed, the Buyer will assume the obligations of Abtswinder Naturheilmittel GmbH & Co. KG in accordance with §15 of the German Packaging Act to take back such packaging and will ensure that it is taken back and is recycled professionally and properly. The Buyer will bear the costs incurred for taking back and recycling the packaging.

All legal relationships established by the delivery shall exclusively be governed by German law.

UN Sales Law shall not be applicable.

The INCOTERMS issued by the International Chamber of Commerce in Paris, as amended from time to time, shall apply to the interpretation of international commercial terms.

Sect. 2 Quotation and Delivery

In case of serious changes in market conditions, the seller shall be entitled to charge new prices for the current transaction, with the buyer being entitled to withdraw from the contract.

Unless otherwise agreed, delivery shall be performed ex delivery works of the seller.

The seller's indication "delivery period: immediately" shall comprise four workdays; "promptly" shall comprise 14 workdays from the day the order is placed/confirmed (contract conclusion). Selling deals "on call" must have been finished within the agreed term.

If the call-off term is exceeded, the seller shall be entitled, after expiry of a reasonable grace period to no avail, to withdraw from the contract or from the still pending part of the transaction and to assert damages on account of non-performance. Each call-off shall be deemed to be a special contract.

In the event of circumstances occurring through no fault of the seller's own and resulting in the manufacture or delivery of sold goods being impossible or made excessively difficult as well as all cases of force majeure, regulatory actions, operational disruptions or the like, including at the seller's supplier, the seller shall be dispensed from the duty to deliver for the duration of the impediment or its after-effect.

After the impediment has ceased, the seller shall be entitled, but not obliged, to make good for the delivery. In these cases, the seller shall also be entitled to withdraw from the contract without any duty to compensate for damage.

The seller shall be entitled to withdraw from the contract to the extent that the seller does not receive the goods despite having concluded an appropriate purchasing contract beforehand; the seller's responsibility for wilful intent or negligence in accordance with sect. 8 of these terms and conditions shall remain unaffected. The seller shall inform the buyer about the non-timely availability of the delivery object without delay and, if the seller wants to withdraw, shall exercise the right of withdrawal without delay; in case of withdrawal, the seller shall reimburse the buyer for the relevant consideration without delay.

Sect. 3 Contract Manufacturing

When labelling and/or packing the products manufactured for the buyer as principal, the seller as agent shall not verify whether used product names or other representations appearing on the label are subject to property rights of third parties. It shall be solely incumbent upon the principal to ensure that the designations or representations used for labelling are not subject to any protection of trademarks of third parties and, in particular, are not identically equal or confusingly similar to registered trademarks of third parties. This shall apply, mutatis mutandis, to both the product names stipulated by the principal and the product names suggested by the agent or other representations appearing on the label.

In terms of trademark law, the principal shall be deemed to be the distributor of the product manufactured and labelled by the agent. If the principal is held liable under trademark law, the principal shall have no claims towards the agent. The principal shall indemnify the agent from all claims asserted against the agent by a third party based on trademark law or any other comparable regulations for industrial property rights. The principal shall be liable towards the agent for all damage incurred by the agent in consequence of the agent being held liable by third parties under trademark law or due to other comparable regulations.

If the goods are labelled by the seller (agent) on behalf of the buyer (principal) upon instruction by the buyer, the buyer shall bear responsibility for compliance with any statutory regulations existing to this extent. The terms of the preceding paragraph on the assertion of legal claims and liability shall apply mutatis mutandis as well as analogously to formulations stipulated by the principal or suggested by the agent.

Sect. 4 Loading

The goods shall be transported in all cases at the buyer's risk, even if carriage paid, CIF, FOB or the like has been agreed, with the result that any damage or losses of weight occurring on the forwarding route shall be at the buyer's expense. Siding track charges, surcharges for winter freight, for transport on small waterbodies as well as increases in freight tariffs, taxes and customs shall likewise be at the buyer's expense.

Sect. 5 Notices of Defects

Obvious and apparent defects must be notified to the forwarder in text form immediately upon receipt of the goods. Notice of latent defects may be given only within 2 weeks after receipt of the goods. Faulty goods are to be provided to the seller. In case of any regulatory sampling, the counter sample is to be sent to the seller on demand. Where a notice of defect is justified, the seller shall, at the seller's option, perform subsequent improvement or subsequent delivery of a thing free of defects (cure). The buyer shall be entitled to reduce the price and to withdraw only if cure failed. Quality and flavour deviations may arise in natural products, even for purchases by samples. In such cases, the buyer shall be entitled neither to withdraw nor to reduce the price nor to claim damages, unless the deviations can reasonably not be deemed acceptable to the buyer. Product specifications and comparable indications by the seller in quotations, catalogues etc. shall merely be product descriptions and shall not mean any assurance of nature or feature or any acceptance of guarantee at all; the same shall apply where goods are sold under the DAB or any other pharmacopoeia.

No liability shall be accepted for damage caused by further processing beyond the seller's control. The seller shall be entitled to deliver up to 10% less or more than the ordered goods.

Discount charges, taxes on bills of exchange etc. shall be at the buyer's expense and shall be payable immediately. The seller shall not accept any liability for timely presentation, protest, notification and return of a bill of exchange in case of dishonour.

Any set-off against claims of the seller shall not be admissible, unless the claim is uncontested or has been finally and non-appealably established. All claims of the buyer for defects in the goods, including any claims for compensation and claims to reimbursement of expenses, shall be subject to a one-year limitation period, commencing with the delivery of the goods, but no later than with the expiry of the best-before date.

This time limit shall not apply to a) wilful intent, b) fraudulent concealment of the defect and c) non-compliance with a guarantee of quality. The statutory regulations on suspension of expiry, suspension and recommencement of the time limits shall remain unaffected.

Recourse claims of the buyer of the nature specified in sect. 478 BGB shall be excluded if the buyer failed to meet the buyer's duty to give notice without delay (s. sect. 5 sentences 1 and 2 above) at all or in time. The seller shall compensate the necessary and proven costs of cure incurred by the buyer due to the buyer being held liable by own customers.

Sect. 6 Default of Payment and Contract Withdrawal

The buyer shall be in default if the buyer fails to pay following a warning notice from the seller after the purchase price has become due. Notwithstanding the above, the buyer shall be in default if the buyer fails to perform at any calendar date specified or specifiable in the contract. The statutory regulation under which the obligor shall automatically be in default even 30 days after receipt of an invoice shall remain unaffected.

If the buyer defaults on any payment or ceased payments or if facts equalling a cessation of payment exist, the seller shall be entitled to demand advance payments or collaterals subject to the seller's other rights. The seller may also withdraw at any time from all current contracts with the buyer in whole or in part or claim damages on account of non-performance. In this case, the seller shall be entitled to demand a lump sum of 30% of the order total as compensation for all costs incurred and of the lost profit, unless the buyer proves a lower level of damage.

If the buyer's economic conditions deteriorate or the buyer's legal conditions change with the result that the buyer might be unable to pay, the seller may demand a collateral or, if such collateral is refused, withdraw from the contract. The same shall apply if any serious unfavourable (economic) information is obtained about the buyer that give rise to fear any immediate deterioration of the buyer's economic conditions.

Sect. 7 Retention of Title

Title to the delivered goods shall remain with the seller until the purchase price has been paid in full and all other claims due, not due and contingent from the business relationship, including all subsequent claims, have been paid. Up until then, the buyer shall not be entitled to pledge or to assign the goods as security to third parties.

To the extent the buyer processes or transforms the goods, the seller shall be deemed to be the manufacturer in terms of sect. 950 BGB (German Civil Code) and shall acquire title to the intermediate and end products.

If goods subject to retention of title are processed, mingled, intermixed or combined with other goods not belonging to the seller, co-title to the new thing shall be due to the seller at the ratio between the value of the goods subject to retention of title and the value of the other goods at the time of processing, treatment etc. In these cases, the buyer shall transfer co-title to the seller up to the value of the goods subject to retention of title in advance. The buyer shall only be depositary and shall be entitled to alienate the goods or the make manufactured from the goods in the proper course of selling. The buyer shall herewith assign to the seller for the seller's security all claims arising towards third parties from the realisation or any other legal ground, also to the extent that the goods have been processed; furthermore, the buyer shall already now assign to the seller in advance all claims due to the buyer from any resale of the goods originated by processing, treatment, mingling, intermixture or combination. As long as the buyer properly meets the buyer's payment obligations towards the seller, the buyer shall be authorised to collect these claims for the seller's account.

The seller shall be entitled, however, to notify the purchaser (third party) to be named to the seller on demand of the subrogation and to issue instructions to such purchaser. The buyer has to immediately notify the seller of any accesses by third parties to the goods delivered subject to retention of title or to the arisen claims. Title shall also be valid towards the forwarder to whom the goods will be handed over by the buyer's order or at the seller's instigation.

The goods subject to retention of title are to be treated carefully and insured adequately; accesses by third parties to goods subject to rights of the seller under the regulations above must be advised without delay. Insurance claims arising in events of damage are to be assigned to the seller.

If the security existing due to the retention of title exceeds the claims to be secured by more than 20%, the seller shall release the seller's securities at the seller's option on the buyer's demand.

Sect. 8 Liability for Damages

Unless otherwise stipulated in these General Terms & Conditions, damages claims of the buyer for any legal ground whatsoever, in particular on account of any breach of duties from the obligation and from tort, shall be excluded. This shall not apply to the extent that liability exists a) under the German Product Liability Act, b) for wilful intent, c) for gross negligence, d) for fraudulent intent, e) for non-compliance with any accepted guarantee, f) on account of any culpable injury to life, body or health or g) on account of any culpable breach of essential contractual duties, i.e. duties any breach of which would result in the achievement of the contract purpose being jeopardised and on compliance with which the buyer may hence justifiably rely. The damages claim due to the breach of essential contractual duties shall be limited, however, to the contract-typical, foreseeable damage, unless any other of the cases specified above exists. Any change in the burden of proof to the buyer's detriment shall not be contingent on the regulations above.

Sect. 9 Waiver of Recourse

If the buyer is liable for damages towards third parties in case of any injury to life, body or health under the regulations of the German Medicinal Products Act or under regulations of foreign legislation governing the liability of the pharmaceutical entrepreneur in case of death or other damage to body or health and the damage is attributable to any breach of duty by the seller, the buyer shall waive any recourse to the seller to the extent that the damage to be made good is covered by the buyer's liability insurance. It is known to the buyer that such waiver of recourse may be subject to the buyer's consent in the internal relationship to the buyer's liability insurer.

Sect. 10 Force Majeure

The Seller will not be liable if delivery is impossible or delayed if they are due to force majeure or other events unforeseeable at the time of conclusion of the contract (e.g. batches cancelled due to adverse weather or to pesticide or contaminant findings, natural or transport disasters, bad harvests or drought-related crop failures, fire damage, floods, strikes or lawful lockouts, unexpected pandemics or epidemics, as well as operational disturbances or interruptions not caused by the Seller (in particular due to an interruption or restrictions of the energy supply) or official orders or the missing, incorrect or untimely delivery by suppliers despite a congruent cover transaction entered into by the Seller), which the Seller is not responsible for.

The Seller will immediately notify the Buyer in writing of the beginning and end of the impediment to performance, if such events make the delivery or performance substantially more difficult or impossible for the Seller and the obstruction is not only of temporary duration, the Seller is entitled to withdraw from the contract. In the event of cancellation, the Seller will immediately refund to the Buyer any consideration already rendered. In the event of obstacles of a temporary duration, the delivery or service periods are extended or the terms of delivery or performance are extended by the period of the obstruction plus a reasonable lead time.

If it is not reasonable to expect the Buyer to accept the delivery or performance due to the delay, they can withdraw from the contract by immediate written notice.

Sect. 11 Place of Performance/Jurisdiction

German law shall apply to the exclusion of the UN Sales Law (CISG). Place of performance for the delivery shall be the respective dispatching location of the goods. Place of performance for the payment shall be seller's corporate seat. Place of jurisdiction shall be Würzburg, but the seller shall also be entitled to assert claims at the buyer's seat.