

General Terms and Conditions

§ 1 General

All deliveries are exclusively regulated by the following conditions. Potential purchasing conditions of the buyer deviating from these conditions are only binding upon the seller if he explicitly accepts to be bound by them.

The legal invalidity of a part of the following conditions does not affect the validity of the remaining contents. Invalid conditions are replaced by those which come closest to the economic objectives of the parties.

All indicated prices are in Euro and without VAT. The sales prices do not include any costs for the recovery of packaging. Only German law applies to all legal relationships created by the delivery.

UN purchase law is excluded.

The INCOTERMS issued by the International Chamber of Commerce in Paris in their respective valid version apply to the interpretation of international commercial terms.

The place of jurisdiction for both parties is the place of business of the company of the seller.

§ 2 Offer and delivery

Significant changes of market conditions entitle the seller to issue new prices for the ongoing transaction. In that case, the buyer has the right to withdraw from the contract.

Unless otherwise agreed, delivery will be done ex works of the seller.

The indication of the seller "immediate delivery" contains four working days, and "promptly" means 14 working days from the date of the placing of the order. Sales conclusions "on call" must be completed within the agreed delay.

If the call period is exceeded, the seller is entitled, after fruitless expiry of an appropriate grace period, to withdraw from the contract or from the pending part of the transaction and claim damages for non-fulfilment. Each partial delivery is deemed a separate contract.

Non-accountable circumstances making the production or delivery of sold merchandise impossible or unreasonably difficult as well as all events of force majeure, interventions by authorities, operational disruptions and the like, even if incurred by the seller's supplier, release the seller from his obligation of delivery for the duration of the impediment or its consequences. After the end of the impediment, the seller is entitled, but not obliged, to complete the delivery. In such cases, the seller is entitled to withdraw from the contract even without any liability for damages.

Besides, we reserve a correct and timely delivery to us by our suppliers any time.

§ 3 Contract manufacture

During the labelling and/or packaging of the products manufactured for the seller on his behalf, the seller, as a contractor, does not verify if any product names used or other representations appearing on the label are subject to property rights of third parties. The client is solely responsible for ensuring that the designations or representations used in the label are not subject to a trademark protection of third parties and in particular that they are not identical to or can be confused with registered trademarks of third parties. This equally applies to the product names imposed by the client and those proposed by the contractor or any other representations appearing on the label.

With regard to trademark laws, the client is the distributor of the product manufactured and labelled by the contractor. In case of a claim against the client on the basis of trademark laws, he is not entitled to any claims against the contractor. The client holds the contractor harmless from any claims against him from third parties on the basis of trademark laws or other regulations, in particular with regard to liability. The client is liable to the contractor for all damages incurred by him as a result of claims from third parties on the basis of trademark laws. If the labelling of the merchandise is done by the seller (contractor) on behalf of the client (buyer) and according to his instructions, the buyer is responsible for the compliance with the respectively applicable legal regulations. The conditions of the last paragraph about the legal claims and liability apply accordingly. This essentially applies as well to the recipes imposed by the client or proposed by the contractor.

§ 4 Loading

In all cases, the merchandise is transported at the risk of the buyer, even if carriage paid, cif, fob or similar terms have been agreed, so that potential damages or loss of weight occurring during transport must be borne by the buyer. Railroad siding fees, surcharges for winter freight, for transport on small water bodies as well as increases in freight rates, taxes and customs duties must also be borne by the buyer.

§ 5 Notices of defects

Obvious and recognisable defects must immediately be notified to the carrier in writing at the reception of the merchandise. Hidden defects may only be notified within 2 months from the reception of the merchandise. Defective goods must be made available to the seller. In the case of a justified complaint, the seller will, at his own discretion, perform rectification or subsequent delivery of a perfect item (supplementary performance). The buyer is not entitled to a price reduction, and to a withdrawal only if the supplementary performance has failed.

In natural products, even in case of purchases on sample, deviations in quality or taste may occur, which, however, do not entitle the buyer to withdrawal, price reduction or compensation. Product specifications and comparable indications in our offers, catalogues etc. are only product descriptions and cannot be deemed an assurance of a quality or a property or a warranty; the same applies if merchandise is sold according to the DAB (German Pharmacopoeia) or another pharmacopoeia.

No liability is assumed for any damages resulting from further processing outside the control of the seller. Apart from that, any contractual or legal liability for our products is excluded unless the seller has acted with intent or gross negligence.

The seller is entitled to deliver up to 10 % less or more than the ordered merchandise volume. Discount charges, bill taxes etc. must be borne by the buyer and are payable immediately. The seller does not assume any liability for timely presentation, protest, notification and return of a bill in case of non-redemption.

A set-off against our claims is inadmissible, unless the claim is undisputed or legally confirmed. All claims of the buyer in case of defective merchandise, including potential claims for replacement and compensation of expenses, expire one year from the delivery of the merchandise.

Any rights of recourse of the buyer of the type named in § 478 BGB (German Civil Code) are excluded if the buyer has not timely fulfilled his duty to an immediate complaint (see § 5 sentence 1 and 2 above). The seller will compensate the buyer for the necessary and proven costs of supplementary performance incurred by him as a result of claims from his client.

§ 6 Default of payment and withdrawal from the contract

The buyer falls into default if he does not pay after a reminder of the seller occurring after the purchase price has become due. Regardless of that, the buyer falls into default if he does not perform until a calendar day defined in the contract as a payment deadline. The legal regulation according to which the debtor also falls into default automatically 30 days after reception of an invoice remains unaffected.

If the buyer is in default of payment, if he has suspended his payment or if there are facts equivalent to a suspension of payment, the seller is entitled, subject to his other rights, to demand prepayments or security deposits. He can also wholly or partially withdraw any time from all contracts concluded with the buyer or claim damages for non-fulfilment. In that case, the seller is entitled to demand a lump sum of 30 % or the order amount as compensation for all costs incurred and for the lost profit, unless the buyer provides evidence of a damage of a lower amount.

If the economic situation of the buyer deteriorates or if his legal situation changes, the seller can demand a security or, if the security is refused, withdraw from the contract. The same applies in case of reception of serious unfavourable information about the buyer, as far as it suggests a direct degradation of the economic situation of the buyer.

§ 7 Reservation of title

Until the full payment of the purchase price and until the payment of all other due, non-due and conditioned receivables from the business relationship, including all additional claims, the delivered merchandise remains the property of the seller. Until then, the buyer is not entitled to pledge or chattel mortgage the merchandise to third parties.

As far as the buyer processes or transforms the merchandise, the seller is considered as the manufacturer within the meaning of § 950 BGB (German Civil Code) and acquires the ownership of the intermediate and end products. If goods subject to reservation are processed, treated, mingled, mixed or combined with other goods not belonging to the seller, the seller is entitled to the co-ownership of the new item in proportion to the value of the reserved goods in relation to the value of the other goods at the moment of processing, treatment etc. In these cases, the buyer transfers co-ownership rights to the seller in advance up to the amount of the value of the reserved goods. The buyer is only a custodian. He is entitled to dispose of the merchandise or of the product manufactured from it within the ordinary sales process. As a security, he herewith fully assigns the receivables against third parties arising from the resale or any other legal basis to the seller, also as far as the merchandise has been processed; in addition, the buyer herewith assigns to the seller already now all receivables in advance which are owed to him as a result of the resale of the merchandise originated from the processing, treatment, mixture, mingling or combination. As long as the buyer duly fulfils his payment obligations vis-à-vis the seller, he is entitled to collect these receivables on account of the seller. However, the seller is entitled to inform the purchaser (third party) to be named to him upon request about the transfer and to give an instruction. The buyer must immediately inform the seller about potential access of third parties to the merchandise delivered under reservation of title or to the receivables occurred. The ownership right is also valid vis-à-vis the carrier to whom the merchandise is handed over with the order of the buyer or on initiative of the seller.

The merchandise subject to reservation of title must be handled carefully and be sufficiently insured; third parties' access to merchandise to which there are existing rights of the seller from the aforementioned provisions must be reported immediately. Any insurance claims arising in cases of damage must be assigned to the seller.

If the security existing through the reservation of title exceeds the value of the receivables to be secured by more than 20 %, the seller will, upon request of the buyer, release his securities to that extent at his discretion.

If an authority takes samples, the counter-sample must be sent to the seller upon request.

§ 8 Place of performance/place of jurisdiction

Place of performance for the delivery is the respective place of dispatch of the merchandise. Place of performance for the payment is the place of business of the company of the seller. Place of jurisdiction is Würzburg, however, the seller is also entitled to assert claims at the place of business of the seller.

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