

# General terms and conditions of sale at Serumwerk Bernburg AG

## § 1 General – Scope of application

- I. Our terms and conditions of sale apply exclusively.
- II. We do not recognise any terms and conditions of the customer that conflict with or deviate from our Terms and Conditions of Sale (T&CS); we hereby expressly object to such terms and conditions. Anything to the contrary shall only apply if we have expressly agreed to their validity in writing. Even if we carry out the delivery to the customer without reservation in the knowledge that the customer's terms and conditions are contrary to or deviate from our T&CS, this shall in no case constitute an acceptance of the terms and conditions.
- III. These T&CS only apply to entrepreneurs/legal persons within the meaning of § 310 I BGB [German civil code].
- IV. The latest version of our T&CS shall also apply to all subsequent transactions, without this having to be explicitly mentioned or agreed upon at the time of their conclusion.

## § 2 Offer and conclusion of contract

- I. Our offers are subject to change and are non-binding.
- II. We reserve the right to accept or reject customer orders (offer within the meaning of § 145 BGB) within 2 weeks. The purchase contract is only concluded when we confirm offers in writing or carry out the delivery. This also applies to arrangements with our field staff.
- III. Declarations on our part (e.g. performance descriptions, reference to DIN standards, etc.) do not contain any assumption of a guarantee within the meaning of BGB. The assumption of a guarantee requires our express written declaration.

## § 3 Prices

- I. The prices valid at the time of delivery shall apply, unless otherwise agreed in writing, ex works plus statutory value added tax at the applicable rate.
- II. Additional costs caused by the customer's change requests shall be borne by the customer.

## § 4 Deliveries, transfer of risk

- I. Deliveries are always made "ex works Bernburg" Incoterms 2010.
- II. We deliver as quickly as possible. For the purchase of catalogue goods up to € 120.00 net, the customer bears the costs, we charge a flat rate for shipping in the amount of € 12.00. If the net value of the goods exceeds € 120.01, delivery shall be carriage paid, i.e. we shall bear the costs of regular shipping; if "free domicile" has been agreed, we shall bear the costs of transport and insurance.
- III. The risk of accidental loss or deterioration of the delivery item shall pass to the customer in the event of dispatch upon handover to the transport person, otherwise upon provision for collection and notification of readiness for dispatch, insofar as an exact delivery date has been agreed, on the date upon provision in the Bernburg warehouse.

- IV. Insofar as the goods are shipped at the customer's request, this shall be at the customer's risk and expense, unless expressly agreed otherwise in writing. This shall also apply if freight-free delivery has been agreed as an exception. At the customer's request, we will insure the consignment against breakage, transport, fire and water damage at the customer's expense.
- V. We reserve the right to choose the shipping route and the shipping method. We are not responsible for the choice of the most suitable and cheapest type of dispatch and packaging or the dispatch route.
- VI. The unobjected acceptance of the consignment by the post office, forwarding agent, carrier or third party authorised to receive the consignment shall be deemed to be confirmation of proper packaging.
- VII. We reserve the right to make partial deliveries, deliveries of other sizes and packaging, or substitute deliveries that are reasonable for the customer.
- VIII. The start of the delivery period stated by us presupposes the clarification of all technical questions and, if applicable, the timely and proper fulfilment of the customer's obligations. We reserve the right to plead non-performance of the contract.
- IX. In the case of returns for which we are not responsible, we shall invoice the customer for any additional transport costs incurred by us.

## § 5 Payment conditions, default

- I. Unless otherwise agreed, the agreed price shall be paid within 30 days after dispatch/provision and sending of the notification of readiness for dispatch. The receipt of payment on our account is decisive. The invoice will be enclosed with the delivery or sent directly to the billing address. The due date shall be determined in accordance with the date of the invoice or, if the notification of readiness for dispatch was made after the date of the invoice, in accordance with the date of the notification of readiness for dispatch.
- II. Payment of the purchase price must be made exclusively to the account named on the invoice, or we must be provided with the necessary data for collection by direct debit in good time. Bills of exchange do not count as payment. The customer must ensure that there are sufficient funds in their account. Other payment modalities require separate agreement.
- III. Indefinite payments shall be set off against the oldest debt and any interest and costs.
- IV. The customer shall be in default at the end of the day on which payment is due. Default interest shall be charged in accordance with §§ 247, 288 BGB (9 percentage points above the respective base interest rate). We reserve the right to claim higher damages for default.
- V. In the event of late payment, we will charge a reminder fee for internal processing of € 15.00 per unpaid invoice.
- VI. In the event of default of payment or non-executability of the direct debit, we are entitled to make further deliveries only

against advance payment. In addition, we are entitled to demand immediate payment of all outstanding claims, including those not yet due or deferred. The same applies in the event of customer insolvency.

- VII. Withholding of payments or offsetting with counterclaims by the customer are only permitted if these counterclaims are undisputed, legally established or recognised by us.
- VIII. The customer may request us in writing to deliver within a reasonable period of grace (generally 3 weeks) 14 days after the agreed delivery date has been exceeded. With this reminder we are in default.
- IX. In cases of force majeure, strikes and operational disruptions or non-delivery / delayed delivery by suppliers, our delivery periods shall be extended by the delay time caused thereby. The same applies in the event of modified or additional services requested by the customer. The burden of proof that we are responsible for a breach of duty in connection with the procurement of the goods lies with the customer.
- X. We shall be liable for delays in performance in cases of intent and gross negligence on our part or on the part of a representative or vicarious agent in accordance with statutory provisions. In other cases of delay in performance, our liability for damages in addition to and instead of performance shall be limited to 5% of the value of the delivery. Further claims of the customer are excluded – even after expiry of any deadline set for us to perform. The above limitation shall not apply in the event of liability for injury to life, limb or health.

#### § 6 Warranty and notices of defects

- I. The customer's warranty rights presuppose that the customer has properly fulfilled their obligations to inspect the goods and give notice of defects in accordance with § 377 of HGB [German commercial code]. Should complaints arise, obvious defects must be asserted immediately, at the latest, however, within 8 days after handover of the goods, and concealed defects immediately after their discovery, in accordance with § 377 HGB, otherwise the goods shall be deemed to have been approved.
- II. Notification of defects must be made in writing, stating the invoice and batch number.
- III. In the case of dispatch organised by us, obvious damage which is externally visible on collection shall only be taken into account by us if this is noted in a consignment note/record signed by the carrier/forwarding agent or one of our vicarious agents.
- IV. Rejected goods may only be returned with our express consent. We have the right to inspect and examine rejected goods. We primarily comply with properly raised and justified notices of defects by delivering defect-free goods.
- VI. If the goods delivered by way of replacement are again defective or incorrect or are not delivered within 14 days after receipt of the notice of defect by us, the customer shall have the right to withdraw from the contract in accordance with the statutory provisions. The customer cannot demand compensation for futile expenses.

- VII. Claims for damages due to defects in the newly manufactured goods – irrespective of the legal grounds – shall become statute-barred after 12 months; this shall not apply in the case of intent/malice.
- VIII. Claims for defects do not exist in the case of only insignificant deviation from the agreed quality, insignificant impairment of the usability, natural wear and tear, in the case of damage that occurs after the transfer of risk as a result of faulty or negligent storage or handling, excessive stress, unsuitable operating materials, or due to special external influences that are not assumed under the contract. If improper changes are made by the customer or third parties, there shall also be no claims for defects for these and the resulting consequences.
- IX. In cases of intent, fraudulent concealment of a defect or assumption of a guarantee for the quality of the goods at the time of the transfer of risk, the rights of the customer shall be governed exclusively by the statutory provisions. Further claims of the customer against us due to a defect are – as far as legally permissible – excluded.
- X. The limitations of liability also apply to our representatives, employees and vicarious agents.

#### § 7 Retention of title

- I. We retain title to the delivered item until full payment of all claims arising from the business relationship. This also applies to all future deliveries, even if we do not always expressly refer to this.
- II. We are entitled to demand the return of the reserved goods without setting a grace period and without withdrawing from the contract if the customer acts in breach of contract.
- III. The taking back of the reserved goods shall only constitute a withdrawal from the contract if we expressly declare this. In this case, we shall be entitled to realise the object of sale after taking it back; the proceeds of the realisation shall be set off against the customer's liabilities – less reasonable realisation costs.
- IV. In the event of further processing of the reserved goods by the customer, we shall be deemed to be the manufacturer and shall acquire ownership of the newly created items. In this case, the customer's expectant right to the reworked item shall continue.
- V. If the goods subject to retention of title are processed with other items not belonging to us, we shall acquire co-ownership of the new items in the ratio of the objective value of the goods subject to retention of title to that of the other processed items at the time of processing. The same applies in the event of mixing. If the mixing is carried out in such a way that the customer's item is to be regarded as the main item, it shall be deemed agreed that the customer transfers co-ownership to us on a pro rata basis and maintains the co-ownership thus created for us.
- VI. The customer is obliged, as long as they are not yet the owner, to treat the reserved goods with care and with the diligence of a prudent businessperson. In particular, they are obliged to insure them adequately against theft, fire and water damage at their own expense. The customer hereby assigns their claims from the insurance contracts to us in advance.

- VII. As long as ownership has not yet been transferred, the customer must inform us immediately in writing if the goods are seized or exposed to other interventions by third parties, so that we can proceed in accordance with § 771 ZPO [German civil procedure code]. Insofar as the third party is not in a position to reimburse us for the court and out-of-court costs of an action in accordance with § 771 ZPO, the customer shall be liable for the loss incurred by us.
- VIII. The customer is entitled to resell the reserved goods in the normal course of business. They now assign all claims including their future claims that they acquire vis-a-vis their customers from the sale of the reserved goods. In the case of current account agreements between the customer and their customers, this shall apply accordingly to the balance claim from the current account. This assignment shall apply regardless of whether the reserved goods have been resold without or after processing.
- IX. The customer is entitled to collect the assigned claims. We may revoke the direct debit authorisation at any time with immediate effect. The revocation must be made in writing and sent to the customer by fax or letter. In the event of revocation, we shall be entitled to inform their customers of the assignment and to request them to make payment to us. For this purpose, the customer shall provide us with a customer list containing the names and addresses of its corresponding customers, the amount of the individual claims and the due dates.
- X. We undertake not to collect the claims ourselves as long as the customer meets their payment obligations without delay, is not in default of payment and no application for the opening of insolvency proceedings has been filed.
- XI. We undertake to release the securities to a reasonable extent at the customer's request if the realisable value of the securities according to the above paragraphs exceeds the value of the claims to be secured by more than 20% for a period of more than 2 consecutive months. We shall select the securities to be released.

## § 8 Liability

- I. We are liable in cases of intent or gross negligence on our part or on the part of one of our representatives or vicarious agents in accordance with the statutory provisions. Otherwise, we shall only be liable for injury to life, limb or health, for culpable breach of material contractual obligations or insofar as we have fraudulently concealed the defect. However, the claim for damages for the breach of essential contractual obligations is limited to the foreseeable damage typical for the contract. However, liability for damage caused by the goods to the customer's legal property, e.g. damage to other property, is excluded altogether. The provisions of sentences 3 and 4 of this paragraph shall not apply in the event of intent or gross negligence or in the event of liability for injury to life, limb or health.
- II. We shall not be liable if the damage was caused by an error on the part of the customer in the development of the delivery item or a documentation error on the part of the customer.
- III. In the event of impossibility of performance in cases of intent or gross negligence on our part or on the part of one of our representatives or vicarious agents, we shall be liable in accordance with the statutory provisions. However, in cases of gross negligence, our liability shall be limited to the foreseeable damage typical for the contract, unless we are liable for injury to life, body or health. Otherwise, our liability for damages due to impossibility and for reimbursement of futile expenses shall be limited to a total of 10% of the value of the respective delivery. Further claims of the customer due to impossibility of delivery are excluded. This limitation shall not apply in cases of liability for intent, gross negligence or injury to life, body or health. The customer's right to withdraw from the contract remains unaffected.
- IV. The customer may otherwise only withdraw from the contract within the framework of the statutory provisions if we are guilty of gross negligence in the breach of duty.
- V. Our liability per AMG [German pharmaceuticals law] and ProdukthaftG [German product liability law] remains unaffected.

## § 9 Applicable law, place of jurisdiction, miscellaneous

- I. The law of the Federal Republic of Germany shall apply. Standards referring to other legal systems are excluded.
- II. If the customer is a merchant, our place of business shall be the place of jurisdiction; however, we shall also be entitled to sue the customer at the court of their place of residence.

Date: 1st January 2020