

## **General Conditions of Purchase**

This translation is provided for your convenience. In the event of any discrepancy between the German original and English translation, the provisions of the German original will prevail.

### **§ 1 General; Scope of Application**

- (1) All contracts we enter into are governed exclusively by the following general conditions of purchase. Additions or amendments are valid only if in writing. This applies also with regard to this requirement for the written form.
- (2) Any conflicting provisions notified by our contractual partner are hereby expressly rejected. Contracts are entered into solely on our conditions. Any third-party general conditions of business or delivery are not recognised and do not bind us in any way.
- (3) Our general conditions of purchase apply also to all future transactions with the contractual partner.
- (4) Our general conditions of purchase apply only to entrepreneurs within the meaning of § 14 of the German Civil Code [*BGB*], legal persons under public law and special funds governed by public law.

### **§ 2 Contract Establishment**

- (1) Our order enquiries are non-binding and constitute solely a request for the seller to issue an offer. This applies in all circumstances, except where we have signed a framework agreement with the seller or the order is expressly stated by us to be binding.
- (2.1) Orders or calls for delivery under a framework agreement are binding. To that extent we waive explicit notification of acceptance of an offer (§ 151 of the German Civil Code). A contract for a specific order or specific call for delivery will be established unless the supplier explicitly notifies us to the contrary within three (3) working days.
- (2.2) We will regard ourselves as bound by an order, explicitly designated by us as binding, for a period of one week after the date of the order, unless a different period is explicitly specified in the order.
- (3) If a supplier presents an offer to us in response to our request, a contract will be established only if accepted by us in writing.
- (4) We are entitled at any time to amend the time and place of delivery and the type of packaging by giving written notice of at least ten (10) calendar days before the agreed delivery date. This also applies to changes in product specifications, insofar as these can be incorporated into the supplier's normal production processes without any significant additional costs, whereby the applicable period of notice as referred to in the previous sentence will be at least fourteen (14) calendar days. We will reimburse the supplier for any proven and appropriate additional costs incurred as a result of the change. If such change results in delivery delays that cannot be avoided despite reasonable efforts being undertaken by the supplier within the normal course of the supplier's production and business operations, the originally agreed delivery date will be adjusted accordingly. The supplier will notify us in writing of the carefully estimated additional costs or delivery delays expected to be incurred in good time before the delivery date and in any event within one week after receiving our notification pursuant to the first and second sentences above.

- (5) A change in or cancellation of a contract entered into in accordance with our confirmation of purchase will be regarded as accepted unless the other party immediately objects.
- (6) Performance undertaken to be provided to us may not be performed by a third party, except with our explicit written consent.

### **§ 3 Prices; Payment Terms; Invoices**

- (1) The price stated in our order is binding and includes value-added tax.
- (2) Subsequent changes in price are permitted only with our explicit written consent.
- (3) Unless agreed otherwise, we will pay the purchase price less a 3% discount within 14 days after receipt of the goods and invoice, or within 30 days net (without discount).
- (4) The number of our order request, the order number (if available), the item number, delivery quantity and delivery address must be stated in all order confirmations, shipping documents and invoices. If one or more of these details is/are missing and this results in a handling delay within the course of our ordinary business, the payment periods specified in para. 3 above will be extended by the duration of the delay.
- (5) In the event of any delay in payment, we will be liable for default interest at a rate of five (5) percentage points above the basic rate of interest defined in § 247 of the German Civil Code.

### **§ 4 Deliveries**

- (1) Agreed delivery dates must be complied with unconditionally. Failure to comply with agreed delivery dates will result in the seller being in default after two further calendar days have elapsed, without any further notification being required. The seller will immediately be in default in the event of failure to comply with a fixed delivery deadline. Early or partial deliveries are permitted only with our express consent in writing.
- (2) If the seller defaults in delivery, we will be entitled to exercise our statutory rights, including the right to claim compensation for non-performance. We are entitled to withdraw from the contract without stipulating a period of grace and to demand compensation in a lump-sum amount of 10% of the net purchase price, unless the seller can prove that we have suffered no or less loss or damage, or we can prove that we suffered greater loss or damage.

### **§ 5 Shipment**

- (1) Unless agreed otherwise in writing, goods will be 'Delivered Duty Paid' (DDP) at the place specified by us. The Incoterms (published by the International Chamber of Commerce, ICC) applying at the time of the contract being entered into will be decisive for the purposes of interpreting these delivery conditions. If the seller has arranged transport insurance, the seller hereby assigns to us all rights to claim compensation under the policy as collateral. We hereby accept the assignment.
- (2) The seller warrants that he will supply all deliveries and partial deliveries in the stipulated and agreed quality and composition. This also applies to any samples provided by the seller. The seller warrants that all deliveries and partial deliveries will have the same characteristics as the sample.

- (3) The seller must notify us in writing and without delay if circumstances arise or become apparent that show that delivery dates or deadlines cannot be met.

## **§ 6 Warranties by the Seller**

- (1) As part of our quality management systems, we procure our goods from specialised companies that can demonstrate they have the specialised competence required for the products they manufacture or supply. The seller is therefore obliged to conduct the required product-specific tests to ensure compliance with all regulations applying to cosmetics and foodstuffs and warrants that such tests will be conducted (see also subsection 7 below).
- (2) Goods to be supplied will be submitted by the seller to a documented check of outgoing goods, the extent of which will accord with the checks of incoming goods that the seller can justifiably expect us to perform.
- (3) We will notify the seller of any defects in deliveries without delay as soon as they are identified in the normal course of business.
- (4) If the goods are redirected or dispatched by us to a third party, we will be considered to have complied with our duty to notify defects if the third party notifies us of the defect in the goods without undue delay and we immediately pass this notification on to the seller.
- (5) Any obvious defects that do not come to light during random sampling will be treated as hidden defects.
- (6) For the same reason, our warranty claims exist irrespective of whether the defects were present at the time of the sold goods being delivered.
- (7) The seller warrants that the goods supplied have the contractually agreed characteristics and specifically the features referred to in our purchase and order confirmation and are suitable in all respects to be used for their contractually intended purpose.  
The seller also warrants that the composition, quality, packaging, labelling and specifications of the goods comply with the applicable statutory regulations and provisions. The seller specifically warrants compliance with the regulations of the German Food, Consumer Goods and Feedstuffs Code [*Lebensmittel-, Bedarfsgegenstände- und Futtermittelgesetzbuch*], including the German Food Labelling Ordinance and Cosmetics Ordinance, all applicable ancillary rules and regulations, the European food and cosmetics regulations and the national and international specialised guidelines and regulations applying to spirits, wine and other beverages.  
The seller also warrants compliance with the rules of the Hazard Analysis and Critical Control Point (HACCP) concept and the guidelines of the German Food Code [*Lebensmittelbuch*].  
The above applies specifically also with regard to compliance with the regulations relating to contaminants and prohibited substances.
- (8) Every container and sales package must include a minimum durability or use-by-date, as well as the lot number and, at our request, an EAN code. The seller warrants that the packaging material used will not adversely affect the quality of the goods supplied. The seller will ensure that the packaging material used is able to be disposed of in accordance with the applicable regulations. The seller will take back packaging material from us at our request and at the seller's own expense.
- (9) The seller must indemnify us against any tortious or strict (without fault) product liability, insofar as the seller is responsible for the defect giving rise to the liability claims.  
The seller will arrange product liability and recall-cost insurance at the seller's own expense.

- (10) If a third party claims on us because of a product defect that the seller caused or for which the seller is responsible, the seller must indemnify us against such claims to the extent that he is directly liable to the third party.
- (11) If we are required, because of a defect, to take back newly manufactured products supplied to us by the seller or if the purchase price has been reduced because of a defect, a limitation period of five years applies to claims by us on the seller, starting from the date on which the item was delivered to us (recourse of the entrepreneur under § 478 of the German Civil Code).
- (12) Unless different arrangements are agreed, claims of defects will become time-barred 36 months after the transfer of risk.

### **§ 7 Proprietary Rights**

- (1) The seller warrants that goods supplied do not violate any third-party proprietary rights, specifically any trademark, design or patent rights or any rights of copyright.
- (2) The seller must indemnify us against any claims that third parties may file against us with regard to any violation of proprietary rights as referred to in para. 1 and reimburse us for any expenditure required to be incurred in respect of any such claims.  
This right exists independently of any fault on the supplier's part.
- (3) The supplier warrants that the goods supplied were introduced into the market by the owner of any applicable proprietary rights, specifically trademarks, or were marketed with the permission of such owner within the countries of the European Economic Area (EEA), which warranty also specifically applies to goods that the seller did not purchase directly from the owner of the proprietary right.
- (4) The seller warrants that goods supplied are suitable and freely available for sale in the EEA market.

### **§ 8 Ownership**

The seller is not entitled to any form of retention of title. The seller warrants that he has unrestricted ownership of the relevant goods and that they are not encumbered by any third-party rights.

### **§ 9 Assignment**

The seller is not permitted to assign his rights against us to a third party except with our explicit consent.

### **§ 10 Rights of Set-Off and Retention**

- (1) Our claims may be set-off only against due counterclaims that are undisputed or have been established in law.
- (2) The right to refuse performance and the right of retention are permitted to be exercised against us only if the seller's counterclaim has been established in law, is recognised and undisputed; the same applies where the right to refuse performance and the right of retention are based on the same contractual relationship.

### **§ 11 Withdrawal from the Contract**

- (1) If the financial position of the seller fundamentally worsens after the contract is signed, and specifically if bills of exchange or cheques given in payment are protested or insolvency proceedings are applied for or initiated with regard to the seller's assets, we are entitled to demand appropriate collateral. If the seller fails to satisfy this demand, we are entitled to withdraw from the contract.
- (2) In the event of withdrawal, we are entitled, at our discretion, to withdraw either from the entire contract or from the part of the contract not yet performed. Exercising our contractual right of withdrawal will not affect any of our statutory or contractual rights to compensation for non-performance.

### **§ 12 Place of Performance**

The place of performance for deliveries is our place of business (our seat) or the place at which it has been agreed that the seller will supply the goods. The place of performance for our payments and for payments by the seller is our place of business. The first and second sentences above apply only to entrepreneurs, legal persons under public law and special funds governed by public law.

### **§ 13 Place of Jurisdiction; Applicable Law**

- (1) The exclusive place of jurisdiction for all disputes arising directly or indirectly from this contractual relationship and any tortious claims will be the place at which we have our seat; we are also entitled, however, to file actions at the seller's general place of business. The first sentence above applies only to entrepreneurs, legal persons under public law and special funds governed by public law.
- (2) These conditions and all legal relationships between us and the seller are governed exclusively by German law; the provisions of the UN Sales Convention are explicitly excluded from application.