

## **GENERAL CONDITIONS OF SALE**

### **§ 1**

#### **General Provisions – Scope**

- (1) This contract is subject to our General Conditions of Sale, we shall not acknowledge any deviating or contrary conditions, unless those were explicitly agreed upon in writing by both parties.  
Our conditions of sale shall also apply if we execute a customer order without reservation, being aware that the buyer's conditions differ from ours.
- (2) Any present or future alterations and/or amendments of this contract or its attachments and all legal acts effected during the time of its execution shall not be valid unless expressed in writing; the electronic form according to §126a BGB shall not replace the written form.
- (3) Our conditions of sale shall apply to entrepreneurs in terms of §14 BGB as well as legal entities of public law and public special assets only.
- (4) Our agents and sales representatives shall not be entitled to collect any payments unless we have authorized them in writing to do so. Any orders placed with them and any conditions agreed upon with an agent or sales representative are subject to our written confirmation.

### **§ 2**

#### **Offer – Documentation**

- (1) If an order is to be regarded as an offer in accordance with § 145 BGB, we can accept the same within the course of 2 weeks.
- (2) We reserve all rights of ownership as well as all copy-rights concerning templates, pictures, charts, drafts, calculations and any other documents. This also applies to all documents marked as “confidential” . They may not be passed on to any third party without our prior written consent.

### **§ 3**

#### **Pricing – Terms of Payment**

- (1) Unless stated otherwise in our order confirmation (i. e. by the use of INCOTERMS as definition of our terms of delivery), our prices are calculated “ex works”, including packaging.
- (2) VAT is not included in our prices. If applicable, it will be shown separately in our invoice and will be calculated as per the respective legal requirements on the day of invoicing.
- (3) Cash discount may not be deducted unless agreed upon in writing by both parties.
- (4) Unless stated otherwise in our order confirmation, the purchase price is payable net (without deduction), and due upon receipt of our invoice. Delays in payment shall be dealt with in accordance with the corresponding legal regulations. For any delayed

payment, interest amounting to European Central Bank interest rate + 5 % p. a. will be charged.

- (5) If payment is to be made in a currency different from Euro (foreign currency), we reserve the right to adjust our prices at the time of invoicing, so that the foreign currency amount stated in the invoice equals the Euro value applicable at the date of conclusion of the contract.
- (6) The purchaser may not withhold any payments due, unless his claims are legally determined, beyond controversy or recognized by us in writing. Furthermore, payment may only be withheld if the amount in question relates to the same contract as the claim.

#### **§ 4**

#### **Delivery Time**

- (1) The delivery time stated by us is subject to prior clarification and confirmation of all technical details.
- (2) In order to be able to fulfil our commitments with regard to delivery, we require the buyer to duly and timely meet his own obligations. We reserve the right to demur to any statement of non-compliance with the contract.
- (3) If the purchaser defaults to take delivery of the goods or otherwise fails to fulfil his duties, we shall be entitled to a compensation for any loss incurred. We reserve the right to file further claims.
- (4) Should a situation as described in point (3) of this paragraph occur, the risk of an accidental loss or deterioration of the goods devolves on the buyer as soon as he enters into default.
- (5) If the present contract is to be regarded as a short sale according to § 286 clause 2 No. 4 BGB or § 376 HGB, we shall be liable in accordance with legal regulations. We shall also be liable according to legal regulations should the purchaser rightly claim avoidance of contract as a consequence of a delay in delivery caused by us.
- (6) We shall furthermore be liable according to legal regulations if the cause of the delay in delivery was either intention or negligence of our part resp. of our agent or our contractor.
- (7) We shall also be liable according to legal regulations if the delay in delivery is due to a fundamental breach of contract of our part. In this case, however, our liability is limited to the compensation of such damage as can be expected to occur or will typically occur in consequence of such a delay.

#### **§ 5**

#### **Passing of Risk – Cost of Packaging – Legal Regulations**

- (1) Unless stated otherwise in our order confirmation, our delivery conditions are “ex works”.
- (2) We shall not take back any transport packaging nor any other packaging material used in accordance with the requirements of the current packaging regulations, except pallets, if expressly agreed upon. The buyer shall take care of the disposal of any packaging materials at his own cost.
- (3) We will cover transport insurance upon request – all relative costs shall be borne by the purchaser.

- (4) Should the transport, storage, sale, use or processing of certain goods be subject to special legal regulations, our obligations in this respect shall be regarded as fulfilled once we effected the delivery in accordance with such regulations. We shall not be obliged to notify the purchaser of any regulations he needs to observe for his own business. If poisonous substances or materials otherwise restricted for use or distribution are to be supplied, the customer's order shall, at the same time, be regarded as his declaration to the effect that the corresponding goods shall be used and/or resold in accordance with such regulations only.

## **§ 6**

### **Liability for Defective Goods**

- (1) Any claims with regard to the goods supplied are subject to the purchaser having duly examined the goods and made his complaint in accordance with § 377 HGB.
- (2) If the goods purchased are defective, the buyer, at his choice, may require us to remedy the lack of conformance or to replace the goods. If remedy is requested, we shall bear all costs incurred in this regard, particularly all costs for transport, man power and material, provided that the goods remained at the place of performance stipulated in the contract and no extra freight charges occur.
- (3) Should the action taken as outlined in point (2) of this paragraph not be successful, the purchaser shall have the right to request either a diminution of the price or avoidance of the contract.
- (4) Quantity deviations of up to +/- 10 % shall not be regarded as a non-conformity provided they are due to security or technical reasons or to the nature of the filling station of the goods. Such deviations shall be considered in full when the goods are invoiced. The goods' weight shall be determined by us unless the buyer requires an official determination of weight to be made by the railway company at the station of departure of the goods.
- (5) We shall accept liability according to legal regulations if any damages claimed by the buyer are said to be caused by us, our agent or our subcontractor either intentionally or negligently. Unless we are charged with intentional breach of contract, our liability for compensation is limited to such damages as can be reasonably expected to occur or would typically occur in the relative context.
- (6) We shall be liable according to legal regulations if we fail to perform major contract obligations. Our liability, however, shall be limited to such damages as can be expected to and would typically occur as a consequence of the violation.
- (7) Our liability with regard to injury of life, body or health is not affected, the same applies to obligatory product liability in accordance with legal product liability regulations.
- (8) Our liability is limited to the cases outlined in points (1) to (7) of this paragraph.
- (9) The statutory period of limitation for any claims is 12 months, starting from the relative delivery ex works our premises.
- (10) The statutory period of limitation in case of a delivery recourse according to §§ 478, 479 BGB is not affected, the same amounts to five years, calculated from the day of delivery of the goods.

## **§ 7**

### **Overall Liability**

- (1) We shall not be liable for any damages not included in § 6 – without regard to the legal nature of any claim raised. This particularly applies to claims resulting from negligence in concluding the contract, from non-performance of obligations under the contract or tortious claims for property damage according to § 823 BGB.
- (2) Whenever the liability of Kirsch Pharma GmbH as a company is excluded or limited, this also applies to the personal liability of our staff, directors, officers, workers, agents and contractors.

## **§ 8**

### **Reservation of Title**

- (1) We shall reserve title to all goods supplied pending receipt of payment of the full amount stipulated in the contract into one of our accounts. Should the buyer violate any conditions agreed upon in the contract, particularly if payment is delayed, we shall have the right to claim back the corresponding item/s supplied. By our claiming back any such items, the contract shall not be regarded as avoided unless we expressly declare it avoided in writing.  
Should we have to effect any attachment proceedings with regard to the goods supplied, however, the attachment represents an avoidance of contract at the same time. When claiming back any item supplied, we are entitled to make use of it as we deem suitable. Any proceedings that may result from commercializing such goods shall be deducted from the purchaser's accounts payable – except a reasonable amount covering the costs we incurred with regard to the commercialization.
- (2) The purchaser is obliged to treat all purchased goods with utmost care and to insure all items purchased against fire, water and theft, fully covering their contract value. Should the goods be subject to regular maintenance and/or inspection, the buyer shall have the same carried out in the necessary intervals and at his own cost.
- (3) Should any attachment or other intervention of a third party occur, the purchaser shall inform us accordingly in writing and without delay in order to enable us to bring an action according to § 771 ZPO against the third party. Should the third party in question be unable to reimburse us for all legal and extrajudicial costs caused by taking action according to § 771 ZPO, the purchaser shall be liable for the incidental losses.
- (4) The purchaser shall be entitled to resell any items purchased within the normal course of business. By concluding this contract, however, he agrees to assign to us, with immediate effect, all amounts due up to the total amount of our relative invoice (incl. VAT, if applicable) he shall be entitled to after resale of the goods to his clients or any third party, no matter whether the goods have been sold as such or reprocessed before resale. Notwithstanding this assignment, the purchaser shall be authorized to collect these debts. Our own right of collection shall not be affected by this agreement. We engage not to collect these debts as long as the purchaser meets all payment obligations towards us, does not delay payment and, in particular, did not file for bankruptcy or insolvency and did not propose a settlement or suspend his payments. Should the latter be the case, we shall be entitled to request the purchaser to hand over all necessary information about the debt assigned and about his creditor/s respectively. We shall also be entitled to receive all necessary documents required to collect the debt. The purchaser shall be obliged to inform his creditor/s/the relative third party about the assignment of debt immediately.
- (5) Any processing or transformation of the goods purchased from us shall be effected on our behalf. Should these goods be processed together with other goods which do not

belong to us, we shall obtain title to the new goods in proportion of the value of the goods purchased from us (total invoice amount, incl. VAT if applicable) to the value of the other goods processed together with them, calculated at the time of processing. Furthermore, the newly produced item is subject to the same regulations as the item purchased from us under conditional sale.

- (6) Should the item supplied be processed in such a way that it becomes inseparable from other items not belonging to us, we shall obtain title to the newly produced goods in proportion of the value of the goods purchased from us (total invoice amount, incl. VAT if applicable) to the value of the other items, calculated at the time of processing. If processing is effected in such a way that the new item mainly consists of goods owned by the purchaser, the purchaser herewith agrees to assign proportional ownership in the new item to us. The purchaser shall hold the new item, totally or partially owned by him, in trust for us.
- (7) Should the purchaser obtain any title against a third party that serves to secure our claims against him and this title was obtained by the connection of the goods purchased to a plot of land, the purchaser shall assign this title to us.
- (8) We engage to release any excess part of the securities we are entitled to upon request of the purchaser, if their total value, converted into money, is more than 10 % higher than the amount of the relative debts. The specific securities to be released will be at our choice.

## **§ 9**

### **Place of Performance and Jurisdiction**

- (1) In the event of litigation, the courts in Hannover shall have exclusive jurisdiction.
- (2) The laws and legal regulations of the Federal Republic of Germany apply, the application of the UN Sales Convention (CISG) and of international private Law is excluded.
- (3) Unless specified otherwise in our order confirmation, the place of performance is the registered office of our company.

## **§ 10**

### **Salvatory Clause**

Should a part of this contract be or become void or legally ineffective, the remainder of the contract shall not be affected. The part that became void or ineffective shall be replaced by such clause as best reflects the commercial aspects of the business intentions of the contract parties and at the same time is legally approved.

In case of litigation, the courts of jurisdiction shall decide in accordance with § 319 BGB. The same applies should the present contract be incomplete.

KIRSCH PHARMA GMBH  
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