

GENERAL CONDITIONS OF PURCHASE

§ 1

General Provisions - Scope

- (1) All our purchases are subject to our General Conditions of Purchase, we shall not acknowledge any deviating or contrary conditions, unless those were explicitly agreed upon in writing by both parties.
- (2) Our conditions of purchase shall also apply if we take receipt of a delivery, accept an order confirmation, an invoice or a delivery note or effect payment for a delivery without reservation, being aware that the seller's conditions differ from ours.
- (3) 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.
- (4) Our conditions of purchase shall apply to entrepreneurs in terms of § 14 BGB as well as legal entities of public law and public special assets only.
- (5) Our conditions of purchase shall also apply for all future business concluded with a seller.

§ 2

Orders and Scheduling

- (1) Our orders shall not be valid unless placed in writing and on our order forms.
- (2) The seller shall send us his written confirmation of our order within seven days of the date of order. If we do not receive the order confirmation as by such a date, we shall no longer be bound to our order.
- (3) Both parties herewith agree that any order confirmation deviating from or contradicting our conditions of purchase or any conditions laid out in our order shall be deemed a rejection of our order.
- (4) Telefaxed orders represent written statements in accordance with our conditions of purchase. Any oral agreements, particularly if made by telephone, however, are subject to our written confirmation which shall be effected no later than five days after the relative conversation.

§ 3 Date of Delivery

- (1) All delivery times agreed upon shall be binding for the seller.
- (2) In case the supplier anticipates any delay in delivery or part of the delivery, he shall inform the purchaser without delay, specifying the reason/s for such a delay and indicating when the delivery will finally be made. Should it become necessary to use an express service for transport of the goods as a result of the delay, the seller will bear all additional costs incurred by using this mode of transport.

- (3) Should a delay in the seller's performance of any of his contract obligations occur, we are entitled to claim damages in accordance with the regulations of BGB and HGB (Legal regulations of the Federal Republic of Germany). We are furthermore entitled to claim damages for consequential losses and production stand-still.

§ 4 Pricing

- (1) The prices stipulated in our order shall be firm and binding. All prices shall be inclusive of packaging/postage/documentation, etc.
Unless stated otherwise in our order (i. e. by the use of INCOTERMS as definition of the terms of delivery), all prices shall be quoted free delivered to the buyer's address.
- (2) All packaging material invoiced separately will be returned to the seller at his expense. Any amount invoiced for such packaging will be deducted from the relative invoice amount upon payment.
- (3) All quotations and order confirmations shall be incl. of VAT, if applicable, the amount of VAT to be shown separately.
- (4) The goods travel at seller's risk until their arrival at the final destination. The seller shall cover transport insurance from door to door, incl. marine insurance, if applicable. If the goods are shipped by a transport company, the seller engages to inform the transport company of the fact that we shall not bear any additional expenses with regard to insurance, incl. mandatory freight forwarders' insurance [in German terms: SVS/RVS-Verbotskunde].
- (5) Pick-up and delivery times are Monday to Friday, 8.00 a. m. to 2.00 p. m., unless otherwise agreed. Discharging of goods outside these hours is subject to prior arrangement. All additional costs shall be borne by the supplier.
- (6) The buyer may withhold or reduce payment in accordance with the relative legal regulations.

§ 5

Delivery and Acceptance of Goods

- (1) Acceptance of goods is effected subject to final inspection. We reserve the right to put forward any claims resulting from quantity or quality deviations within the statutory period of limitation (see § 6, (5)).
The goods must be accompanied by a certificate evidencing quality control as stipulated in our order.
- (2) The goods will be inspected upon delivery and upon receipt of all necessary documents. Inspection will be made in accordance with the normal business procedures applicable for the type of goods supplied and their intended use. Furthermore, delivered goods must be free of any dirt and dust. Goods and packaging must in such a condition that they can be stored or consumed immediately.
- (3) If the delivery consists of machinery, the final inspection can only be made once the machinery has been put to its intended use.
- (4) Any claims raised shall be deemed as made in time if they are filed
- within two weeks from receipt of the goods for obvious defects
 - within 2 weeks after their discovery for hidden defects.

- (5) Should, due to unforeseen circumstances and in spite of having exercised utmost care, the buyer not be in a position to take delivery of the goods ordered, he will be exempt from his obligation to take delivery for as long a period as the unforeseen disruption lasts. This particularly applies to a disruption caused by strikes and labor struggle in general.

§ 6

Warranties

- (1) All goods and services supplied shall conform to the quality and show the properties stipulated in our order resp. confirmed to us in the relative offer. If no particular quality and properties have been agreed upon, quality and properties of the items supplied shall be in accordance with normal business practice in our industry.
- (2) If machinery, technical appliances of any kind and/or auxiliary materials are supplied, the seller warrants that those are in accordance with all corresponding legal requirements of the Federal Republic of Germany, particularly as to product safety and environmental regulations and other general norms (i. e. VDE and DIN norms and EU regulations).
- (3) Packaging of all goods supplied must be in accordance with all relative transport and storage regulations.
- (4) In case of non-performance of the contract, we are entitled to claim damages incl. all consecutive damages, particularly damages resulting from disruption of business.
- (5) The statutory period of limitation for any claims shall be 36 months, starting from the passing of risk to the buyer.
- (6) The seller engages to cover product liability insurance for a sum of 10 Mill. Euro for each case of personal or property damage that may occur. Our right to claim further damages, extending this amount, shall not be affected.

§ 7

Law and Arbitration

- (1) Should the parties disagree about a quality defect claimed by the buyer, an official expert nominated by the chamber of commerce shall act as an arbitrator. The judgement of such an arbitrator shall be binding for both parties. Kirsch Pharma, as the buyer, will arrange for the arbitrator to be nominated by the local chamber of commerce.
- (2) The seller warrants that the goods/services supplied are free of any third party rights or claims. He guarantees that acceptance, use, processing and resale of such goods/services do not violate any patents or other industrial property rights. The seller shall hold the buyer free from any third party claims to this effect. This shall not apply if the seller supplied a product made according to the buyer's drawings, patterns or other descriptions and is not aware or cannot be aware that these would violate any third party rights.

- (3) All tools and templates, lithos, blueprints, drafts, etc. paid by us shall be our property. The seller shall not be entitled to exercise any right of retention of title on these items. These and all other related documents are strictly confidential and may not be used by the seller in any way but the one stipulated by us. They may not be made available to any third party without our prior written consent. After completion of our relative order, the seller shall return these documents to the buyer without special request. The seller shall be liable for any damages resulting to us from non-compliance with the above.

§ 8

Documentation

Our purchase order number shall be quoted on all documentation related to this order. The goods ordered must be marked with the name of the manufacturer, our order number, the relative manufacturer's batch number as well as the manufacturing and expiry date. We reserve the right to reject any goods and/or documents that do not comply with this request. The seller shall be liable for all consequences arising from incorrect or incomplete delivery documents and for documents arriving late. The seller shall, in particular, reimburse us for any additional costs we might incur due to incorrect or incomplete documentation.

Partial deliveries shall not be made without our prior written consent. Any partial deliveries agreed upon shall be clearly marked as such.

§ 9

Payment terms

- (1) Payment shall be effected at buyer's choice, either in the currency of the supplier's home country or in Euro.
- (2) Unless specified otherwise in our order, payment shall be made either within 14 working days against 3 % discount or within 30 calendar days net from receipt of the relative invoice. Should an invoice be incorrect and need correction, the date of the corrected invoice shall prevail. Cash discount shall be calculated on the invoice total, incl. all costs and VAT.
- (3) If payment is to be made in a currency different from Euro (foreign currency), we reserve the right to adjust the pricing at the time of payment, so that the foreign currency amount paid equals to the Euro value applicable at the date of conclusion of the contract.
- (4) All other forms of payment are subject to our prior written consent.

§ 10
Reservation of Title

- (1) We shall accept the sellers basic right to exercise a reservation of title on the goods supplied. We shall not accept, however, any extended or prolonged reservation of title nor any obligations for the buyer related thereto.
The seller shall not assign any account receivable to any third party unless he has obtained the buyer's prior written consent.

§ 11
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 if international private law is excluded.
(3) Unless specified otherwise in our order, the place of performance is the registered office of our company.

§ 12
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 contents as best reflect the commercial aspects of the business intentions of the contract parties and as are legally approved.

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

KIRSCH PHARMA GMBH
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