

## **Pharmaceuticals GENERAL TERMS OF PURCHASE**

**Version: January 2021**

### **1. Scope**

#### 1.1

These General Terms of Purchase apply to all current and future business relationships between Pharmaceuticals Handels GmbH ("Pharmaceuticals") and the suppliers of the goods ("Supplier") they order and purchase. However, these apply only if Supplier is an entrepreneur (Sec. 14 of the German Civil Code, or BGB), a legal entity formed under public law, or a special fund under public law.

#### 1.2

When a contract or order is accepted and/or executed, Supplier acknowledges these General Terms of Purchase in the version applicable at the time of the order. The General Terms of Purchase can be viewed at any time on Pharmaceuticals website, <https://www.Pharmaceuticals.com/de/agb/>. Contradictory or deviating Supplier GTP will not be acknowledged or form part of a contract unless Pharmaceuticals expressly consented to their application in writing when the contract was concluded. In that case, and if there is a separate agreement to govern special conditions for certain orders, the General Terms of Purchase will apply secondarily and in addition. The General Terms of Purchase will also apply if Supplier executes the contract unreservedly while knowing that its conditions oppose or contradict these. Pharmaceuticals acceptance of a delivery or service rendered by Supplier does not constitute consent to Supplier's general conditions. The same applies if Pharmaceuticals does not respond to an order confirmation from Supplier that contains contradictory statements by Supplier.

#### 1.3

The General Terms of Purchase apply to all future transactions and contracts with Supplier even if Pharmaceuticals no longer expressly points them out to Supplier.

### **2. Conclusion of contract**

#### 2.1

Orders placed by Pharmaceuticals will be binding when the order is placed at the earliest. Orders may be placed in writing or through an electronic transmission channel (such as SAP orders by fax or email). Supplier must accept an order by issuing a declaration or order confirmation, which can be made in writing or through an electronic transmission channel. The declaration of the order confirmation to Pharmaceuticals must occur within three days; otherwise, Pharmaceuticals may revoke the order or refuse to be bound by it. The deadline will be deemed met if Pharmaceuticals receives Supplier's order confirmation on time. Pharmaceuticals will not accept deliveries for which no order was made.

#### 2.2

Supplier's offers will be deemed accepted at the earliest when Pharmaceuticals issues a declaration of acceptance. The declaration of acceptance may be issued in writing or through an electronic transmission channel (such as SAP orders by fax or email).

#### 2.3

Any documents or orders submitted by Pharmaceuticals that contain obvious mistakes, typing errors, and calculation errors will be nonbinding. Supplier shall inform Pharmaceuticals of such errors so that the order can be corrected and placed again. This also applies to missing documents. Deviations in quantity and quality compared with the text and content of the order, and subsequent contract amendments, will not be deemed agreed unless Pharmaceuticals has expressly confirmed them in writing.

### 3. Terms of delivery

#### 3.1

The terms of delivery indicated in the order, which Supplier shall check carefully in advance, are binding. The delivery date will be deemed the day on which the goods are received by Pharmachemicals or by the receiving location specified by Pharmachemicals. If the delivery is made before the agreed delivery date, Pharmachemicals may refuse to accept the delivery and send it back at Supplier's cost and risk.

#### 3.2

If Supplier exceeds the delivery date, Supplier will be in default, with no separate written warning being required. If Supplier defaults, Supplier shall pay compensation for all damages arising from the delay, including without limitation additional costs for a replacement delivery made by third parties.

#### 3.3

Supplier shall inform Pharmachemicals, without undue delay and at least in text form, if circumstances occur or become known to Supplier that mean the agreed delivery date cannot be met. Otherwise, Supplier may not refer to such circumstances later. If Supplier breaches that obligation, Pharmachemicals may assert claims for damages and withdraw from the contract.

#### 3.4

If Supplier culpably defaults in delivery, Pharmachemicals is entitled to demand a contractual penalty of 0.2% of the delivery value according to the final invoice, per day of delay or part thereof, but no more than 10% of the delivery value according to the final invoice in total. Further statutory claims may be asserted. The acceptance of a late delivery or service is not deemed a waiver of claims for compensation.

#### 3.5

There is no obligation to pay the aforementioned contractual penalty, however, if the delay is caused solely by force majeure, or by other operational disruptions that are no one's fault, or that last or will probably last longer than 48 hours. In those cases, the delivery period will be extended by the duration of the impediment, but no more than four weeks plus a period for subsequent delivery. However, that extension will occur only if Supplier has fully complied with its notification obligation under item 3.3.

#### 3.6

If force majeure or other unforeseeable events prevents Pharmachemicals from accepting the ordered goods, the date of acceptance will be delayed by the duration of that impediment. Such events particularly include war, civil unrest, breakdowns caused by fire, water or storms, as well as labour disputes, pandemics, epidemics or plagues. If Pharmachemicals is thus impeded for a period of more than six months, Pharmachemicals may withdraw from the contract without entitling Supplier to assert claims for damages. This also applies to orders that Supplier has not yet processed by the date of withdrawal. Orders that Supplier has already started to fill, or has filled, will be settled as agreed.

#### 3.7

Pharmachemicals shall accept excess deliveries of up to 3%. If Supplier makes an excess delivery of more than 3%, Supplier shall grant a price reduction of 35%. Pharmachemicals will not accept short deliveries even if the goods have been inspected and approved.

#### 3.8

Pharmachemicals may cancel the order if:

- Supplier transfers the production of the goods to a subcontractor or subsupplier without Pharmachemicals consent, which must be given in at least text form, or

production occurs at a production facility other than the one agreed with Pharmaceuticals.

- The quality and workmanship of the sample do not meet Pharmaceuticals quality standard and technical requirements.
- Samples that were ordered separately are shipped late.

#### **4. Documentation**

##### 4.1

After the order has been placed, pursuant to item 2, Supplier shall confirm the delivery dates and order quantities in advance in writing.

##### 4.2

An original invoice of the respective shipment shall be submitted in writing (Email or mail) unless collective invoicing has been expressly agreed.

Two copies each of delivery notes, packing slips, and analysis certificates are to be attached to each shipment. Those documents must contain:

- The order number and article number
- The quantity and quantity unit
- The remaining quantity for partial deliveries

##### 4.3

For freight shipments, Pharmaceuticals shall send a separate notice of shipment on the day of dispatch.

#### **5. Prices**

##### 5.1

The prices shown in the order are fixed prices. The price specifically includes costs for carriage paid freight, insurance, customs, packaging, and material testing procedures. Claims due to additional deliveries and/or services can be asserted only after the Parties have entered written agreements to commission those deliveries or services between the Parties. Otherwise, additional claims regarding the total price are excluded.

##### 5.2

Invoices are issued in euros and dollars, and payments must be made in euros and dollars accordingly.

##### 5.3

Supplier shall not grant Pharmaceuticals prices and conditions that are less favorable than those granted to other buyers, if and insofar as those other buyers are offering the same or equivalent conditions in the specific case.

##### 5.4

The price includes packaging. If anything, else is agreed by way of exception, packaging will be charged at cost. Supplier must select the packaging Pharmaceuticals specifies and ensure that the packaging protects the goods from damage. If a return is made, at least two-thirds of the invoiced value must be credited. Supplier shall take back the transport packaging at no charge at Pharmaceuticals request.

#### **6. Payment terms**

##### 6.1

Payment and delivery must occur in the manner and at the time agreed by the Parties for the

case at hand. Unless otherwise agreed on a case-by-case basis, payment must be made with a 2% discount within 14 days after delivery and receipt of invoice, or strictly net within 30 days.

#### 6.2

In principle, payment against an invoice is agreed.

#### 6.3

A separate invoice must be issued for each order. Payment will not be made until defect-free goods or services have been completely received or rendered, and after receipt of the invoice, which must meet statutory requirements, especially those under the German Turnover Tax Act (UStG).

This applies mutatis mutandis to partial deliveries. Separate partial invoices must be attached to partial deliveries.

Regarding discount periods, Pharmaceuticals will not bear the cost of any delays caused by incorrect or incomplete invoicing.

#### 6.4

The invoice accompanying the goods must have the same value as the original invoice. Other invoices cannot be paid. The invoice must be sent to Pharmaceuticals, Accounts Payable, Hauptstr.36 – D-85399 Hallbergmoos, to ensure prompt payment.

#### 6.5

Invoicing occurs every 14 days for collective invoices. Other charges, and cash expenditures, will be settled separately.

#### 6.6

Supplier's receivables from Pharmaceuticals may be assigned to third parties only with Pharmaceuticals consent. Payment must be made only to Supplier.

#### 6.7

If Pharmaceuticals does not respond to a Supplier invoice, this will not be deemed acknowledgment of that invoice even if Supplier has expressly requested that Pharmaceuticals make such a statement.

#### 6.8

Pharmaceuticals is entitled to rights of setoff and retention to the full statutory extent. Pharmaceuticals is entitled to assign claims from this contract without Supplier's written consent.

#### 6.9

The payment deadline will be deemed to have been met if the bank receives the transfer order before the deadline expires.

### **7. Quality assurance and control**

#### 7.1

Supplier shall use all measures and equipment to guarantee the delivery of the consistent quality that Pharmaceuticals has accepted.

#### 7.2

Pharmaceuticals shall accept and pay for the goods, if so agreed, only after on-site approval through the inspection report. This must be signed by one of their inspection personnel. That report does not exempt Supplier from complaints that might arise during the sampling inspection after the receipt of goods.

### 7.3

Pharmaceuticals points out that the products Supplier delivers must meet current applicable German legal requirements. By delivering the products, Supplier affirms that it has examined them appropriately and that they meet the applicable statutory requirements.

## **8. Transfer of risk**

Unless otherwise specified in individual supply contracts, the date on which risk is transferred will be established in accordance with the current applicable Incoterms of the International Chamber of Commerce. Unless otherwise individually arranged, the clause on delivery duty paid (Incoterms) will apply.

## **9. Warranty**

### 9.1

Warranty claims by Pharmaceuticals toward Supplier for material defects and defects of title are determined in accordance with the statutory provisions. The warranty period amounts to 24 months from the transfer of risk unless longer statutory or contractual deadlines are specified. The same applies to supplementary performance. Supplier shall bear the expenses necessary for supplementary performance, specifically transport, travel, road, labor, and material costs.

### 9.2

Supplier guarantees that it has the unrestricted right to sell the delivery goods or render the service in the order. Supplier further guarantees that all deliveries and services, including ancillary services, comply with the state of the art, meet the relevant legal requirements and the provisions and guidelines of the authorities, employers' liability insurance associations, and trade associations, especially regarding occupational safety, accident prevention, and technical equipment, and that the required protective devices and user instructions will be provided. In particular, foodstuffs and all raw materials and auxiliary materials must comply with the applicable provisions under food laws, as well as special requirements, in terms of their composition, quality, packaging, and declaration.

### 9.3

Supplier warrants that it fully owns all the items subject to the orders and that no other third party rights (such as rights of lien, other creditor positions arising from assigned claims or other credit securities, sale of receivables, hire-purchasing, conditional sale, etc.) stand in the way.

### 9.4

If the delivery or service is defective, Pharmaceuticals has a claim against Supplier to either having the defect remedied, or a defect-free item delivered, at no charge. If Pharmaceuticals makes no express declaration, Supplier shall provide a replacement delivery within 14 days of receiving notice of the defect. In special circumstances, or if a period for supplementary performance set by Pharmaceuticals expires without result, Pharmaceuticals may withdraw from the contract without setting any further grace period and demand damages in lieu of performance, including compensation for the costs incurred to remedy the defect. Instead of withdrawing and demanding damages in lieu of performance, Pharmaceuticals may also reduce the payment. Supplier shall bear the burden of proving it is not responsible for the defect/damages.

### 9.5

Any obligation for Pharmachemicals to inspect or give notice of defect is excluded under Sec. 377 of the German Commercial Code (HGB). This does not apply to obvious defects.

## **10. Withdrawal from the contract**

### 10.1

Pharmachemicals may withdraw from the contract if Supplier requests that insolvency proceedings be initiated against Supplier's assets, if such proceedings are initiated, or such proceedings are rejected due to lack of assets.

### 10.2

Pharmachemicals may also withdraw if individual enforcement measures are taken against Supplier.

### 10.3

Otherwise, the statutory regulations governing withdrawal remain unaffected.

## **11. Liability, product liability, insurance**

### 11.1

Supplier shall be liable within the scope of statutory provisions.

### 11.2

If Supplier is responsible for a product defect, Supplier shall indemnify Pharmachemicals against third party claims for damages to the extent that the cause lies in Supplier's sphere of power and organization and Supplier is liable in the external relationship. As part of Supplier's obligation to indemnify, it shall assume all costs and expenses (specifically those under Sections 683 and 670 BGB and Sections 830, 840, and 426 BGB) resulting from or in connection with a third-party claim, including the costs of recall campaigns by Pharmachemicals and the costs of representation by an attorney. Pharmachemicals shall inform Supplier about the content and extent of any recall campaign to be carried out, enable Supplier to cooperate adequately, and exchange information with Supplier about how to carry out that campaign effectively; this is unnecessary if it is impossible or unreasonable to inform Supplier, or for Supplier to participate, especially due to a special need for urgency. Supplier shall take out adequate and customary insurance against those risks. Therefore, during the existing contractual relationship Supplier shall at all times hold product liability insurance with an adequate minimum coverage sum of 15 million euros per incident of personal injury or damage to property, which also covers the costs of recall campaigns. Furthermore, Supplier shall ensure that the product liability insurance also covers claims that do not arise or become known until the contract has ended, but whose cause lies in the contractual relationship. Supplier shall inform Pharmachemicals of any circumstances (including other third-party claims of recourse) which could make it impossible to fully exhaust the aforementioned minimum cover sum in the event of a claim arising in favor of Pharmachemicals. Any further claims for damages remain unaffected.

### 11.3

Pharmachemicals shall be liable under statutory provisions for damages due to injury to life, limb or health, or due to intent or gross negligence on the part of Pharmachemicals or one of its legal representatives or vicarious agents, and for damages falling under a guarantee or assurance granted by Pharmachemicals. In the event of ordinary negligence, Pharmachemicals shall be liable only for compensating for damages that are foreseeable and typical of this type of contract and for breaches of material obligations (an obligation is "material" if it makes execution of the contract possible in the first place and the contracting parties may rely on its being complied with) by Pharmachemicals or one of its legal representatives or vicarious agents. Otherwise, liability is excluded to the extent permitted by law.

## **12. Protective rights**

Supplier guarantees that its delivery will breach no third-party rights. If third parties assert claims against Pharmaceuticals in this regard, Supplier shall indemnify Pharmaceuticals from all claims resulting therefrom without undue delay at first request, and defend against those claims. That obligation to indemnify also applies to all expenses that Pharmaceuticals necessarily incurs from or in connection with the claims asserted by a third party. This also includes the costs for representation by an attorney. Supplier shall take out adequate and customary insurance against those risks. That liability will not apply insofar as Supplier has manufactured the delivered goods in accordance with drawings or samples provided by Pharmaceuticals, or other similar descriptions or orders, and does not know, or, in the context of the products it has manufactured, cannot know, that protective rights are being breached. Supplier is responsible for ensuring that no patents or other protective rights of third parties will be breached by its delivery and Pharmaceuticals utilization of that delivery. Supplier shall at first request indemnify Pharmaceuticals and its buyers from all claims arising from the use of such protective rights.

## **13. Assurance**

Supplier guarantees that it will meet at all times the statutory prerequisites for filling the orders assigned to it, and specifically that it or the subcontractors it employs:

- a) Do not act in any manner inconsistent with the rights stated in the "Convention of the Rights of the Child." This also includes Article 32 therein, which requires, among other things, that a child (under 14 years old) is protected from performing any work that would probably be dangerous or impair its education, upbringing or health, or damage its physical, mental, intellectual, moral, or social development.
- b) Employ foreign employees from third countries (non-EU or -EEA countries) only if they have the necessary work permits, and ensure that personnel hold the prescribed documents (residence permit, work permit) in the original and, if necessary, with an official certified copy in German.
- c) Must present the documents named in b) on request by Pharmaceuticals or its contractual partners.
- d) Use only employees who hold the necessary qualifications.
- e) Comply with the "ETI Base Code".

## **14. Nondisclosure**

### **14.1**

Supplier shall treat orders from Pharmaceuticals and all associated commercial and technical details as business secrets. In particular, Supplier shall not disclose any documents or information it receives from Pharmaceuticals. Those may be disclosed to third parties only with Pharmaceuticals express written consent. The nondisclosure obligation also extends to personal data. The nondisclosure obligation will also survive the contract's fulfillment or failure; it will expire if and insofar as the information in the documents provided becomes generally known. Any third parties whom Supplier uses to fulfill the contractual obligations must be obligated accordingly. If those obligations are breached, Pharmaceuticals may demand immediate withdrawal and assert claims for damages.

### **14.2**

After the contract ends, Supplier may not use the knowledge obtained from Pharmaceuticals to manufacture competing products. This applies to every direct and indirect activity. A "competing product" means any article that corresponds to or is comparable with the articles in the order.

### **14.3**

For every instance of a breach against the obligations named in items 15.1 and 15.2, Supplier shall pay Pharmaceuticals a contractual penalty to be determined by Pharmaceuticals at its reasonable discretion (Sec. 315 BGB), which must be reviewed by the competent local or regional court if its reasonableness is disputed. Any contravention will be deemed a separate breach under exclusion of the plea of connection with any previous

act of contravention. Pharmaceuticals right to assert damages beyond that remains unaffected.

## **15. Duties upon contract termination**

### 15.1

When the contractual relationship ends, each contracting party shall return the other party's property to it.

### 15.2

Supplier shall notify Pharmaceuticals of any unpaid receivables within 14 days after notice of termination, cancellation or withdrawal is received, or after the contract ends. Notifications after that period entail no legal claim.

## **16. Final provisions**

### 16.1

The laws of the Federal Republic of Germany apply. The provisions of the UN Convention on Contracts for the International Sale of Goods and legal standards referring to other legal systems will not apply.

### 16.2

Side agreements and amendments must be made in writing to be effective; this also applies to any cancellation of the requirement for written form.

### 16.3

The place of fulfillment is Hallbergmoos. The court of jurisdiction for any disputes arising from or in connection with the contractual relationship between Pharmaceuticals and Supplier is Munich District court, provided Supplier or other party to the contract is a merchant, a legal entity under public law, or a special fund under public law.

### 16.4

Should a provision of these General Terms of Purchase be or become ineffective, now or in the future, this will not render ineffective the remaining provisions.