

General Conditions of Business: Conditions of Sale and Delivery

as of September 24, 2003

§ 1 General Conditions

- (1) The following conditions apply exclusively for all deliveries, also those resulting from future business agreements. We do not acknowledge conditions from the customer unless we have specifically agreed to their validity in writing.
- (2) All agreements made between us and the customer at the time of closing the contract must be contained in the contract in writing. For proof of subsequent changes, a record in written form is recommended.
- (3) Insofar as no other agreements are made in individual contracts or in our general conditions of doing business, the currently valid business conditions for trading companies belonging to the Association of Drug and Chemical Whole sellers and Retailers (Drogen- und Chemikalienverein, Hamburg, VCD-AGB) apply. We will provide these conditions upon request. In addition, the currently valid "INCOTERMS" apply for the interpretation of contract clauses, particularly in the case of export deliveries.
- (4) If any part of this agreement becomes legally ineffective, the validity of the remaining content remains intact.
- (5) Our conditions of doing business apply only to companies as defined by § 310, section 1 BGB.

§ 2 Prices and Offers

- (1) For deliveries as a result of longer-term delivery contracts, all conditions apply up to the latest delivery date stated in the contract. For business concluded without such a contract, our stated price applies if the customer agrees to take delivery within 4 months of the sales agreement. If a longer period is agreed upon, and the price becomes unrealistic due to significant changes in market conditions relative to the prevailing conditions at the time of the sales agreement, we reserve the right to alter the conditions of the agreement. In addition, we reserve the right to adjust prices if cost factors beyond our control but which affect our price calculations (such as import duties, taxes, fees, etc.) change unexpectedly. In such a case, the customer has the right to withdraw from the sales agreement.
- (2) If not otherwise specified, prices are stated in Euros (EUR). Unless specifically stated otherwise, the legal VAT is not included in the prices we offer. VAT is stated and charged separately at the currently legal rate on the invoice.

§ 3 "On-Demand" Sales Agreements

- (1) Deliveries from on-demand sales agreements must be taken within 4 months unless agreed otherwise. As proof of such agreement, a record in written form is recommended.

- (2) If delivery is not taken within this time limit, we have the right, if delivery is still not taken after a reasonable grace period, to claim damages due to non fulfillment of contract or to withdraw from the agreement or any unfulfilled portions thereof.

§ 4 Higher Powers and other Influences

- (1) Incidents of higher powers or other influences beyond our control which make delivery impossible, such as strikes, all sorts of disruptions in operation, lack of raw materials, failed harvests, traffic disruptions and the like, also in relation to our suppliers, absolve us of our obligation to deliver for as long as the disruption and its after effects prevail. After such an occurrence we have the right, but not the obligation, to fulfil deliveries which may have fallen short during such disruptions.
- (2) Such incidences give us the right, without liability for any damages, to withdraw from this agreement or any unfulfilled portion thereof.

§ 5 Shipping

- (1) Unless specifically stated otherwise, all sales agreements are fulfilled at the plant of the contracted firm. For proof of other agreements, a record in written form is recommended.
- (2) Risk reverts to the customer as soon as the goods are transferred into the care of the person carrying out the transport or the goods leave the warehouse of the contracted firm for the purpose of transport. Any damage or weight loss due to transport becomes the customer's liability. The same applies for any additional charges for winter transport, transport on waterways, increases in freight tariffs, taxes or import duties or charges for transport connections, for example.
- (3) For technical reasons, we reserve the right to a delivery tolerance of +/- 10% of the ordered amount of bulk goods. This applies insofar as this is reasonably acceptable and no separate agreement has been reached with the customer regarding exact performance specifications. In any case, the exact weight of delivered goods is the basis for the final invoice.

§ 6 Delivery Time and Liability

- (1) Our liability for on-time delivery is dependent upon the orderly and on-time fulfilment of the commitments of the customer. The right to raise objection to non fulfilment of the agreement is reserved.
- (2) Our sales occur under the condition of availability of services, particularly on-time and correct supply. We are obligated to inform the customer immediately in case of non-availability and to provide immediate reimbursement for related services received.

- (3) If the customer is late in taking delivery, or knowingly violates other obligations of cooperation, the risk of coincidental destruction or coincidental degradation of the sales material passes to the customer at the time such tardiness or violation begins. In such cases, we have the right to claim reimbursement of damages suffered including any additional costs incurred. Claims for damages against the customer due to us can required at a flat rate of 20% of the purchase price or the remaining purchase price. The customer has the right to prove that no damages or less damage than claimed was in fact suffered. The right to make subsequent related claims is reserved.
- (4) If our deliveries are late, we are not liable if the responsibility for the delay is not our own. We acknowledge the responsibility of our representatives or subcontractors as our own. Insofar as the delivery delay is not due to purposeful neglect or breach of contract, our liability is limited to damages which are foreseeable and which typically occur.

§ 7 Guarantees

- (1) The customer must inform us immediately of obvious defects in accordance with obligatory examination and critical testing processes as defined in § 377 HGB. Hidden defects are to be reported as soon as they are discovered. Otherwise any guarantee claims are lost. For proof of such claims, a record in written form is recommended. If laboratory tests are necessary, samples are to be sent to the laboratory immediately upon receipt of the delivery.
- (2) In case of contention, general descriptions of goods and services can not be construed to be binding to the purchase agreement. This requires concrete negotiation. The same applies to a purchase resulting from a sample.
- (3) In case of defects in purchased materials, we have the right to either fix the defect or to deliver the materials again without defect. If we choose to fix the defect, we are liable for all costs incurred in the process including transport, travel, work and material costs insofar as these are not increased due to the purchased goods having been moved to a place other than their original destination upon leaving our facility.
- (4) The customer can withdraw from this agreement or demand a reduction if our redelivery is also defective and the defect cannot be repaired immediately, the redelivery takes an unacceptably long time or we refuse to redeliver or repair the defect. Customer damage claims due to breach of important contract clauses on our part are strictly limited to damages which are foreseeable and which typically occur. We are liable by law, however, insofar as the

customer has a valid claim for damages due to purposeful or gross neglect on our part or on the part of our representatives or subcontractors.

- (5) Insofar as we deliver natural products which are subject to quality or taste deviations, guarantee claims are invalid as long as the deviations remain within tolerances generally accepted by the food industry. The same applies with purchases made according to samples (compare § 7, section 2).

§ 8 Limits of Liability

- (1) We cannot be held liable for damages above and beyond the regulations stated above regardless of the legal nature of the claims unless we have been guilty of purposeful or gross neglect. This applies particularly to damage claims for liabilities resulting from contract closure, due to other non fulfillment of commitments or legal claims for property damage according to § 823 BGB.
- (2) This does not effect liability for purposeful harm to life, body or health or obligatory liability in accordance with product liability laws.
- (3) Insofar as the limits of liability apply to us, they apply equally to the personal damage liability of our employees, coworkers, representatives and subcontractors.

§ 9 Payment

- (1) Payment is to be made net upon presentation of the documents, otherwise net cash unless otherwise agreed. For proof of other agreements, a record in written form is recommended.
- (2) If the customer should be late in making payment, the consequences defined by law apply. We reserve the right to prove additional subsequent damages.
- (3) Charges by the customer to offset our open invoices are not allowed unless the charges are uncontested or legally imposed.
- (4) Payments by check or bank notes are acknowledged as received only after the amounts have been credited to our accounts. Clearing fees and bank note taxes are due immediately. The customer is responsible for automatic debit and clearing fees. We accept no liability for legal presentation, protest, notification and withholding of bank notes not cashed in.
- (5) We acknowledge receipt of payments by check or bank note only pending the final clearing of the funds.
- (6) Our extended claim of ownership and the securities due us remain valid until the complete removal of possible liabilities. In addition, any interest charges made by the bank for the time between the date payment is due and the date payment clears and is credited to our account are to be paid by the customer.

§ 10 Claim of Ownership

- (1) All goods delivered remain the property of our firm until full payment has been made. The customer is responsible to care for the goods and to insure them at his own cost for their new value against fire, water and theft. He has the right, in the context of orderly business, to sell or process the goods. In case of behaviour in breach of contract, particularly late payment, we have the right to repossess the goods. Repossession of goods constitutes withdrawal from the sales agreement. We have the right, after repossessing the goods, to offset the customer's liability to us by any income generated through the repossessed goods, less appropriate incurred expenses.
- (2) In case of seizure or other third party claims against the customer's assets, the customer is obligated to inform us immediately allowing us to file suit against the third party. Besides the third party, the customer is liable for the legal and extralegal costs of such a suit.
- (3) In case of sale, the customer may receive the total income. He is obligated, however, to pass on to us immediately the full amount of our open invoice for the goods. If the goods are not paid for in cash, the agreement exists between us and the customer that the receivable from the sale is transferred to us at its creation in the amount of our open invoice.
- (4) If the goods are combined with those of the customer or those of other suppliers, we become part owner according to the value of goods in our ownership at the time of combination. Insofar as the delivered goods are processed before they are paid in full, they remain our property in every processing step as well as in the finished product. The customer transfers to us the co-ownership or ownership rights to the combined or processed goods in advance and protects those rights for us in accordance with standard accepted business practice.
- (5) If goods are sold on to third parties before they have been paid in full, this claim of ownership remains intact. At the same time it is agreed that all claims of receivables of the customer against the third party due from such sale, in particular the payment of the sales price, be transferred to us. We have the right in such a case to require of the customer that he inform us of the third party receivable and of the name of the third party, that he give us all information required for the collection of the payment, that he hand over to us all pertinent documentation and that he inform the third party of such transfer. We have the right to inform the third party of said transfer ourselves, but commit ourselves not to collect the receivable as long as the customer fulfils his payment obligations from his sales income, does not become late in his payments and, in particular, does not file for in-

solvency or bankruptcy or institute a payment freeze.

- (6) At the customer's request, we obligate ourselves to release securities in our possession insofar as the convertible value of said securities consistently exceeds the value of receivables being secured by 10%. The choice of which securities to release is ours.

§ 11 Product Observation Obligation

- (1) The customer is obligated to inform our company immediately of any problems the end user may have with the handling or application of our products. In order to make that possible it is necessary to label end user packaging in such a way as to allow the ingredients to be traced back to their source.

§ 12 Legal Jurisdiction

- (1) Unless agreed otherwise, this agreement is under the legal jurisdiction of the court of Vestenbergsgreuth. We reserve the right, however, to file suit against a customer at the court of his legal place of business as well.
- (2) The laws of the Federal Republic of Germany apply to the exclusion of any UN-sales regulations or other international trade agreements.

Martin Bauer GmbH & Co. KG