

Standard Terms and Conditions

of

PHARMA ACTION GmbH,

domiciled at Kurfuerstendamm 133, D-10711 Berlin

As at: April 2010

§ 1 General Conditions / Scope

1. These Terms and Conditions shall apply to all current and future business relations.
2. Any differing, contradictory or supplementary Standard Terms and Conditions shall not become an integral part of the contract, even if the parties to the contract are aware of them, unless expressly agreed in writing.

§ 2 Conclusion of the Contract

1. Our offers shall be non-binding and shall be subject to prior sale. Delivery dates specified in orders / order confirmations shall be without obligation and relate to the point in time at which consignments are dispatched ex works or warehouse at our own option. Agreed delivery dates shall only be binding if expressly confirmed in writing as a fixed date.
2. By ordering a product, the customer bindingly expresses his wish to purchase the ordered product. We shall be entitled to accept the contractual offer quoted in the order with a period of two weeks following its receipt. We may accept the order either in writing or by starting to process it. Orders received from our sales representatives must be confirmed in writing by us, or shall be deemed to have been tacitly accepted upon delivery of the goods. Pro-forma invoices issued by us shall not constitute a binding offer or the acceptance of such an offer by us.
3. The contract shall be concluded on the provision that we ourselves receive the correct goods on time from our contract manufacturers / suppliers. This shall apply only in the event of non-delivery being beyond our control, especially in such cases where a congruent hedging transaction is concluded with our supplier.
4. The customer shall be informed of the unavailability of the service immediately. Money considerations already rendered in return by the customer shall be reimbursed immediately.

§ 3 Retention of title

1. All delivered goods shall remain our property until all receivables resulting from our business relations with the customer have been paid in full. Processing or remodelling shall always take place for us the manufacturer, however, without any obligation for us whatsoever. In the event of our (joint) ownership expiring as a result of amalgamation or commingling, it is understood here and now that the customer's (joint) ownership of the single object shall pass on to us proportionate to the value (i.e. invoice value). The customer shall keep safe the (joint) property of the seller free of charge. Goods to whose (joint) ownership we are entitled shall in the following be referred to as reserved goods.

2. The customer shall be entitled to sell the reserved goods in the course of properly conducted business, provided that he is not in default. Pledging or protective conveyance shall not be permissible. The customer hereby assigns to us any claims arising in connection with the resale or other legal grounds relating to the reserved goods as a precautionary measure.
3. The customer shall, in so far as he is not in default, only be entitled to re-sell the reserved goods or products created as a result of said reserved goods being processed if he agrees an appropriate retention of title with his own customer that can be seen to safeguard our retention of title. Pledging or protective conveyance shall not be permissible. The customer hereby assigns to us his claims arising in connection with the resale or further processing of the reserved goods.
4. If third-party goods are sold together with the reserved goods for a single price, the assignment of claims shall only apply to the price of the goods delivered by us. The customer shall be authorised to recover the claim. This authority shall lapse as soon as the buyer fails to fulfil his financial obligations as agreed. In this case, we shall be entitled to recover the assigned claim ourselves.
5. Should the value of the means of security exceed the claim to be secured by in excess of 20 per cent, we undertake to release the amount above and beyond this.
6. Should the reserved goods be seized by third parties, the customer undertakes to inform said third parties of our ownership and notify us immediately. To this end, costs and damages shall be reimbursed by the customer.
7. Should the customer act contrary to the terms of the contract – in particular, should he default on payment – we shall be entitled to take back the reserved goods or, should the occasion arise, demand that the right to surrender be assigned. Should we take back or pledge the reserved goods, this shall not constitute our withdrawal from the contract.
8. The customer undertakes to treat the goods carefully. In so far as analyses or inspections of the goods are required, these shall be carried out regularly by the customer for his own account. As long as our ownership lasts, the customer shall insure the goods against loss, depreciation, vandalism, fire, theft and transport-related risks as well as water damage.

§ 4 Contract manufacturing

1. In the case of goods produced at the customer's request according to his own specifications, the customer shall exempt us from any third-party claims resulting from the infringement of industrial property rights that are asserted against us as a consequence of us executing the order. He shall also reimburse such reasonable cost incurred in the course of the legal defence
2. The customer guarantees that prior to awarding the contract, he has made sure that the service is free of all third-party rights.

§ 5 Prices

1. All prices are quoted ex warehouse (Berlin) in the case of duty-paid goods and ex bonded warehouse (Berlin) in the case of uncleared goods, unless other terms have expressly been agreed to the contrary in writing. All prices are quoted net in Euros, unless another currency has been agreed in writing; prices are exclusive of the applicable statutory VAT.
2. In the event of unusual price fluctuations in the countries of origin such as, for example, raw materials or foreign exchange quotations, we reserve the right to adjust the prices accordingly. In the event of a price variance in excess of 10 per cent to the detriment of the customer, the customer shall be entitled to withdraw from the contract for the affected goods.
3. The customer undertakes to present a confirmed, irrevocable letter of credit issued by a recognised bank together with his order, provided that the parties have not agreed to an alternative method of payment.
4. Should the customer default on payment, he shall be obliged to pay default interest amounting to 8 per cent in excess of the base rate of the German Central Bank (Deutsche Bundesbank). We reserve the right to prove to the customer that greater damage has been caused by delay and to assert said claim against him.
5. The customer shall only be entitled to offset payments, if his counterclaims have either been upheld pursuant to a final and absolute court decision or if they have been accepted by us in writing.
6. The customer shall only be entitled to assert a right to withhold payments, if his counterclaims are based on one and the same contractual relationship.
7. Despite terms and conditions of the customer to the contrary, we shall be entitled to offset payments made by the customer against older debts of his. We shall in any case inform the customer of the nature of the offset account. If costs and interest have already been incurred, we as seller shall be entitled to offset the payment firstly against the costs, then against interest and finally against the primary obligation.
8. Should circumstances come to our attention that more than slightly lessen the customer's creditworthiness, should justified doubts arise as to his ability to pay or if the terms of payment are not complied with, we shall be entitled to demand from the customer immediate payment of all accounts receivable including any bills of exchange due at a later date or to demand that adequate security be provided. In such cases, we shall also be entitled to withdraw from the contract. We undertake at our own option to release all securities furnished to us in so far as they exceed the overall value of the claim by in excess of 25 %.

§ 6 Transfer of risk/ delivery

1. The risk of accidental sinking and the incidental deterioration of the goods shall be transferred to the customer upon the goods being handed over; in the case of a sales shipment, the risk shall transfer to the buyer upon delivery of the goods to the shipping agent, the carrier or any other person or organisation charged with carrying out the dispatch. If dispatch is

delayed at the customer's request, the risk shall be transferred as soon as notice that the consignment is ready for dispatch is given, whereupon the further storage shall be for the customer's account.

2. At our option, the goods shall be dispatched ex warehouse or ex works. We reserve the right to choose the mode and route of dispatch at our own discretion.
3. Part deliveries shall be possible.
4. We shall not be responsible for delays in delivery and performance as a result of force majeure or events that not only temporarily seriously interfere with or prevent us from performing – including, in particular, war, strike, lockouts, official orders etc, even if they occur at our contract manufacturers or suppliers – even if binding deadlines and dates have been agreed. They shall entitle us to postpone the delivery or performance for the duration of the hindrance plus a reasonable start-up period or to withdraw from the contract either in whole or in part as a result of the part of the delivery or performance not yet rendered.
5. If the hindrance lasts longer than three months, the customer shall be entitled to withdraw from the contract regarding the part of the delivery or performance not yet rendered after setting a reasonable time limit. If delivery is delayed or we are released from our contractual obligations according to cipher 4., this shall not entitle the buyer to a claim for damages.
6. The customer avouches that he holds the permits required to import the goods. If this is not the case, all associated additional costs incurred shall be for his account. The prices quoted by us include our providing the customer with the certificates necessary for applying for permits, provided that these were specified in the order and have been confirmed by us in writing.
7. Further support, above and beyond this, must be paid for by the customer separately.

§ 7 Inspection of the goods / Warranty

1. The customer shall inspect the goods for external defects (especially the number of packages, damages, weight) within 5 days after gaining control of the goods. Within 10 days of gaining control of the goods, the buyer shall analyse the goods to verify that these comply with the agreed quality. The customer shall have the quality of the goods tested in an appropriate manner by a competent laboratory on the basis of extracted random samples. When inspecting the quality (in particular: assay and activity), the same method is to be used on the basis of which the goods were sold. We must be notified of any qualitative or quantitative defects in writing within 2 working days following their discovery.
2. A qualitative defect is deemed to exist if the batch sample drawn by the customer and tested by us deviates from the product description. If no product description is available, a qualitative defect is deemed to exist, if the batch sample drawn by the customer and tested by us deviates from the analysis certificate attached to the goods and the deviation oversteps the tolerance limits specified in pharmacopoeia or by us.

3. The deadline is deemed to have been observed if the notice was sent in due time. The full burden of proof for all grounds for claim, especially regarding the defect itself, regarding the point in time the defect was discovered and for the timeliness of the notice of defects shall be upon the customer.
4. If the customer serves notice of defects regarding qualitative defects to the goods and if we refuse to accept this, an arbitral analysis will be conducted by the laboratory of ACC GmbH in Leidersbach, Germany according to customary trade standards or those shown in the specifications or the analysis certificate of the goods concerned. This shall apply in particular to the active ingredients Heparin and Chondroitin Sulfate. The findings of the laboratory shall be final and binding for both parties. The costs of the analysis shall be for the account of the losing party.
5. Initially we shall provide guarantee for defects to the goods at our own option either by means of remedial improvement, by providing a replacement delivery or by means of a credit note.
6. Should the remedial improvement prove unsuccessful, the customer may as a matter of principle either opt to reduce payment or to withdraw from the contract. In the case of slight breach of contract, in particular in the case of only minor defects, the customer shall not, however, be entitled to withdraw from the contract.
7. If in the event of unsuccessful remedial improvement the customer opts for compensation of damages, the goods shall remain with the customer if this is reasonable. The compensation of damages is limited to the difference between the purchase price and the value of the defective goods. This shall not apply if we wilfully caused the breach of contract.
8. The warranty period shall be one year commencing on the date of delivery. This shall not apply if the customer failed to notify us of the defect in due time. Mandatory, legal regulations governing the period of limitations and liability such as, for example, liability in case of a guarantee being accepted, liability for wilful acts or gross negligence, for loss of life, physical injury or damage to health, the breach of substantive contractual obligations, liability according to product liability law and regulations governing the procurement of consumer goods shall remain unaffected.
9. As a matter of principle only the product description shall be regarded as constituting the agreed nature of the goods. Public statements, endorsements or advertising of the manufacturer shall not, by contrast, be deemed to constitute a description of the quality of the goods according to the contract. Submission of sample prior to or on the occasion of the conclusion of the contract shall not be regarded as constituting a »purchase on sample«, i.e. such samples are merely representative, reflecting the approximate nature of the goods. Certain specific characteristics are not agreed by this. Alternatively, the parties may agree upon a purchase on a »sample approval « basis. In this case the delivered goods must correspond to the sample.
10. We shall not furnish the customer with any guarantees within the meaning of the law. This shall not affect manufacturer's guarantees.

§ 8 Limitations of liability

1. Unless nothing has been agreed to the contrary in a separate contract, the following shall hold true for our liability:
2. In the case of slightly negligent breaches of obligation, our liability shall be limited to the foreseeable, contractually typical, immediate average loss predictable for this kind of product. The same shall apply to slightly negligent breaches of obligation by our legal representatives and vicarious agents.
3. We shall not be liable in the event of slightly negligent breaches of insubstantial contractual obligations.
4. The abovementioned limitations of liability shall not apply to claims of the customer resulting from product liability. Furthermore, the limitations of liability shall not apply in case of imputable physical injury, damage to health or loss of life.
5. Claims for damages asserted by the customer due to a defect shall come under the statute of limitations one year after the delivery of the goods. This shall not apply if malicious intent can be claimed.

§ 9 Data security

The customer consents to allow the data needed to fulfil the contract to be stored and processed electronically in compliance with the provisions of the data protection act.

§ 10 Final provisions

1. These Standard Terms and Condition shall be governed exclusively by the law of the Federal Republic of Germany. The regulations of the UN law on sales (CISG) as well as the German international civil law shall not apply.
2. If the customer is a merchant, a legal person or a separate estate under public law, all disputes arising from this contract shall be settled before a competent court in Berlin, Germany. The same shall apply if the customer is not domiciled in Germany or if his usual place of residence is unknown at the point in time at which the action is filed.
3. Any amendments to these Standard Terms and Conditions must be submitted in writing to become effective. The same shall apply to a waiver of the requirement of written form itself.
4. Should individual provisions of the contract entered into with the customer including these Standard Terms and Conditions be or become invalid either in whole or in part, this shall not affect the validity of the remaining provisions. Instead, the wholly or partially invalid provision shall be replaced by a valid provision coming as close as possible to the economic purpose of the invalid provision.