

# **General Terms & Conditions of Delivery**

## **of**

## **bb med. product GmbH and Blue Bell Pharma & Cosmetic GmbH**

### **Section 1      General**

- (1) The following General Terms and Conditions of Delivery are an integral part of all our contracts of sale and delivery, orders and order confirmations with persons who are not consumers within the meaning of Section 13 paragraph 1 BGB. By acceptance without objection, the orderer/purchaser (the Customer) accepts the validity of these terms and conditions, including for any future transactions.
- (2) Our offers are subject to confirmation. Orders shall only become binding on us if and to the extent that we have confirmed them in writing.
- (3) Oral or written undertakings that conflict with our contractual terms and conditions and/or the order confirmation or that supplement them shall require the agreement of the proper number of our directors or authorised signatories to be valid.
- (4) Any general terms and conditions of the Customer that conflict with the validity of these terms and conditions are hereby also rejected, whether submitted to us in a letter of confirmation or in any other way.

### **Section 2 Prices**

- (1) All prices are in euros including transport packaging excluding the statutory VAT to be paid by the Customer.
- (2) Deliveries are ex works. If the Customer requests a specific shipping method, the Customer shall bear the additional costs that arise as a result.
- (3) If other contractual prices are not expressly agreed for the specific delivery, the prices on our price list valid at the time of delivery shall apply.

### **Section 3 Payment & offsetting**

- (1) Deliveries of goods must be paid at the latest on the due date indicated on the invoice, without reductions. If payment is made by bank transfer, payment shall only be within the deadline if the sum indicated on the invoice is credited to one of our accounts on the due date. Payments made in advance or immediately and payments within 10 days of the invoice date shall attract a 2.0% discount, which shall not however be applied to freight, postage, insurance and other shipping costs.
- (2) Payment by draft or cheque shall not be recognised as fulfilment of the obligation to pay. Cheque are therefore only credited on the value date on which we can dispose of the equivalent value in our account. Standard bank charges shall be paid by the Customer.
- (3) If the time allowed for payment is exceeded, we shall be entitled to claim statutory default interest (Section 280 BGB). Each party shall be entitled to provide evidence that a different interest disadvantage applies. Other claims in the event of default remain unaffected.
- (4) All our claims – including those under other contracts with the Customer – shall fall due for the payment immediately in the event of default or suspension of payment by the Customer or as a result of other circumstances that have become known to us that give rise to justified and significant doubt as to the Customer's solvency or creditworthiness. This shall also apply if the circumstances with regard to the Customer already existed before conclusion of contract, but were unknown to us or are not such as ought to have been known to us. In all of these cases, we shall also be entitled only to make outstanding deliveries for prepayment or in exchange for securities, whereby the amount provided by way of security shall not exceed the value of our claim by more than 10% and, if the prepayment or security is not made/provided within 2 weeks, to withdraw from the contract without a new deadline. Other claims remain unaffected.

- (5) Payments with the effect of discharging the obligation can only be made directly to us. If multiple claims are outstanding, the Customer's payments shall be applied first to interest, then to costs and then to the claim. If there are multiple claims, the payments shall be applied to the oldest outstanding claim.
- (6) The Customer's right of retention and right to offset is excluded, except in the case of undisputed or legally established claims.

#### **Section 4 Delivery period, non-delivery, delay, partial delivery**

- (1) Confirmed orders and delivery deadlines shall apply in all cases, subject to correct and timely delivery to us by our suppliers. We shall be entitled to withdraw from the contract in the event of non-delivery by a supplier. If subsequent changes to the contract are agreed, the delivery deadlines or delivery periods shall be redefined. Delivery should take place by way of the Customer accepting the goods at our business premises as soon as we inform the Customer that the goods are ready for collection or, if a different place of delivery has been expressly agreed with the Customer, by delivery of the goods at that place.
- (2) Force majeure shall entitle us – including during a period of delay – to postpone the delivery by the duration of the obstacle or, in the case of a permanent obstacle, to withdraw from the contract in whole or in part with regard to the part of the contract not yet performed without claims of any kind arising against us.

All circumstances for which we are not responsible and as a result of which performance is made impossible or unreasonable or made unreasonably more difficult for us shall be treated as force majeure, e.g. strike, lockout, mobilisation, war, war-like conditions, blockade, import and export bans, traffic blockades, official measures, lack of raw materials and energy and similar, regardless of whether such circumstances have an impact on us or one of our suppliers or subcontractors.

- (3) In the event of delay in delivery or non-delivery for which we are responsible, the Customer shall have the right to withdraw from the contract, to the exclusion of further rights, after first granting a suitable grace period in writing with a declaration that the Customer shall refuse to accept the delivery after the expiry of the grace period. If the Customer does not exercise its above right of withdrawal, the Customer may only demand damages for any damage as a result of delay or non-performance within the limits of section 9 of these General Terms and Conditions.
- (4) Partial deliveries are permitted.
- (5) If bulk goods, raw materials or containers are made available by the Customer for delivery of the goods, the Customer must ensure that the goods or the containers for the goods to be transported or produced are in a proper technical and aseptic condition.
- (6) If packaging materials are made available by the Customer for delivery of the goods, the Customer must ensure that the packaging materials are in a proper condition.

#### **Section 5 Shipping & risk**

- (1) Unless otherwise agreed in writing, delivery shall be ex works (Incoterms 2000) on account, for prepayment or cash on delivery and at the Customer's risk.

If the goods are not delivered to the Customer at our business premises on the basis of a separate written agreement, goods shall be shipped on behalf of Customer's request at our discretion without an obligation to select the cheapest shipping method, if no shipping method has been agreed in the order. The Customer is responsible for taking out any applicable transport or other insurances (Incoterms 2000, C-clause).

If shipping of the delivery is delayed for reasons for which the Customer is responsible, risk shall transfer to the Customer with the notice of readiness to dispatch and the Customer shall bear the costs of storage after transfer of risk.

- (2) Multi-purpose containers (e.g. pallets, cans, barrels, containers, tanks) shall only be surrendered to the Customer on loan. If such loaned packaging is not received at our factory carriage paid in a clean, usable condition within one month of the date of invoice, a service charge shall be calculated as follows: €25 for pallets, €250 for containers and tanks, and €50 for all other types of loaned packaging. Damaged packaging received by us from the Customer shall be repaired at the Customer's expense.

## **Section 6      Retention of title**

- (1) All goods delivered by us shall remain our property (goods subject retention of title) until fulfilment of all claims, including claims that first arise in the future, against the Customer arising from the commercial relationship. In the event that the value of the goods subject to retention of title exceeds 110% of the value of the outstanding claims, the part of the goods that exceeds 110% of the value of the outstanding claims shall become the Customer's property. In the case of a current account, retention of title shall apply up to a maximum limit of 110% of the value of the outstanding claims as security for our applicable balance claim. This shall also apply if payments are made by the Customer for specific claims.
- (2) Goods subject to retention of title are processed on our behalf as manufacturer within the meaning of Section 950 BGB without imposing an obligation on us. The processed goods shall be treated as goods subject to retention of title within the meaning of Section 6 clause (1). If goods subject to retention of title are processed, combined or mixed with other goods by the Customer, we shall acquire co-ownership in the new goods in the proportion of the invoice value of the goods subject to retention of title to the invoice value of the other processed goods. If our ownership is extinguished by combining or mixing, the Customer hereby transfers to us its ownership rights in the new item or goods to the extent equal to the invoice value of the goods subject to retention of title and shall hold them in safe custody on our behalf free of charge. The rights of co-ownership that arise under this provision shall be treated as goods subject to retention of title within the meaning of Section 6 clause (1). The rights of co-ownership that arise in our favour on processing, combining or mixing shall transfer to the Customer as soon as our claims within the scope of Section 6 clause (1) are met.
- (3) The Customer may only sell, process or combine goods subject to retention of title with other items or otherwise incorporate goods subject to retention of title (hereafter referred to as "resale") in the ordinary course of business subject to ordinary business terms, as long as it meets its payment obligations to us on time. Any other disposal of the goods subject to retention of title is not permitted. If the Customer gives its purchaser time to pay the purchase price, the Customer shall be obliged in turn only to resell the goods subject to retention of title subject to a further retention of title and to ensure that the claims arising from such resale transactions can be transferred to us. Otherwise, the Customer is not authorised to resell the goods.
- (4) The Customer's claims arising from a resale of the goods subject to retention of title are hereby assigned to us. Such assigned claims shall serve as security in our favour to the same extent as the goods subject to retention of title.
- (5) If the Customer sells the goods subject to retention of title in conjunction with other goods subject to retention of title not delivered by us, the claim shall only be assigned to the extent of the invoice amount that is generated from the resale of our goods subject to retention of title.
- (6) If the Customer receives claims from resale of goods subject to retention of title into an existing current account relationship with its purchasers, it hereby assigns a resulting recognised or final balance in its favour to us equal to the amount that corresponds to the total amount of the claims registered in the current account relationship arising from the resale of our goods subject to retention of title.
- (7) The Customer is authorised to collect the claims assigned to us until authorisation is revoked. We are entitled to revoke authorisation if the Customer does not properly meet its payment obligations to us under the commercial relationship or circumstances become known to us that tend significantly to reduce the Customer's creditworthiness. If the prerequisites for exercise of the right of revocation are met, the Customer must inform us immediately at our request of the assigned claims and the applicable debtors, provide all information necessary to collect the claims, deliver to us the associated documents and notify the debtor of the assignment. We are also personally entitled to notify the debtor of such assignment. Furthermore, if the power to collect claims is revoked, the Customer shall be obliged to inform its purchasers immediately of the assignment of claim to us and to surrender or transfer any securities it holds for the claims of its customers.

- (8) The Customer is obliged to inform us immediately of any pledge or other legal or actual interference with or endangerment of the goods subject to retention of title or the other securities in our favour.

All costs of intervention shall be paid by the Customer, to the extent that they cannot be recovered by the third party (opponent of the action against execution) and the third-party counterclaim proceedings have been justifiably filed.

- (9) The Customer undertakes to insure the goods subject to retention of title adequately against fire and theft, as a minimum. The Customer hereby assigns to us its claims under the insurance contracts to the extent indicated in Section 6 clause (1).
- (10) In the event of default of payment or rescission of the purchase contract, the Customer hereby declares its consent to us taking away goods subject to retention of title in the Customer's possession or having them taken away. Removal of such goods shall only amount to withdrawal from the applicable delivery/purchase contract if we expressly declare such withdrawal.

## **Section 7 Notice of defects & claims for defects**

- (1) The Customer is obliged to inspect delivered goods immediately after delivery, even if models or samples have been sent in advance.

Inspection must include all essential and specific characteristics for use of the goods.

Notice of obvious defects must be given within 8 days of receipt of the goods; notice of hidden defects must be made immediately on their discovery and at the latest 3 months after delivery. Notice must be made in writing to the place of dispatch with the order contract data, with sample of defect enclosed where possible. If the Customer fails to give notice in the form and within the time required, the goods shall be treated as accepted. The time that we receive such notice shall be the relevant time for deciding whether notice has been given within the relevant period.

The Customer must notify us and the carrier of transport damage.

- (2) At our request, the Customer must send the defective goods to us. We shall pay the shipping costs if the complaint is in time and justified, otherwise the Customer shall pay such costs.
- (3) If the complaint is justified, we provide warranty free of charge for demonstrated defects in material or production exclusively either by remedying the defects in or replacing the damaged goods, at our option.

If remedy or replacement delivery fails, the Customer at its option may choose a reduction in the purchase price or rescission of the contract.

- (4) No warranty is given if the defect is the result of failure to observe our instructions for use, changes of any kind to the delivered goods made by persons not authorised by us to make such changes or incorrect handling of the delivered goods.
- (5) Defects in a part of the delivered goods shall not entitle the Customer to object to the entire delivery, unless partial delivery is of no interest to the Customer.
- (6) Further claims by the Customer arising from defects in the goods, in particular for damages for damage other than to the delivered goods themselves (consequential damage), as well as claims arising from positive breach of contract (Section 437 No. 3 BGB), are excluded to the extent of the following clause 8.

## Section 8      **Supplementary special provisions for printed products**

- (1) Unless the contrary is indicated, films (sachets, compresses) are printed in the in-house printing shop using the flexographic printing method. Printing can use up to 4 colours with a maximum of 28 halftones. Register variations can occur in multi-colour printed patterns.
- (2) Prior to production, an approval sample is prepared and delivered for inspection to the Customer, who must give written approval after inspecting the sample. If a sample is provided e.g. via a PDF file, please note that there may be minor differences in colour between the printed material actually used and the printout of the PDF file (e.g. between paper pressing through a colour laser printer and the foil actually used in the subsequent printing process). We shall treat as definitive the Pantone or HKS number agreed in writing or specified by us or a comparable standard that has been communicated. A PDF file for printing release shall be sent free of charge. For printed images, the correction proof as PDF file is definitive for text and sentence layout and placing of images. It is not definitive with regard to colour, quality of material and print result. For initial printing orders, final print approval is possible from a final proof in the printing shop. Warranty claims against us for incorrect text, sentence and image layout, as well as errors still found in the text, regarding which the Customer has made no complaint in the approved correction proofs, are excluded. Other matters shall be agreed individually and charged separately. The Customer must ensure that we are provided, in good time and free of charge, with all information and documents (e.g. texts, photos, graphics) that are required to complete the order. We must be informed in good time and without specific request of all events and circumstances that clearly may be of significance with regard to performance of the service. The date of print approval is always the relevant date for the specified delivery period. If delivery deadlines are provided prior to print approval, they are always subject to timely print approval.
- (3) The standard industry tolerances or reasonable tolerances for the purpose apply to all colours etc. specified by us. For colour reproductions, the Customer may not complain of minor deviations from the original in all production methods. The same applies to comparison between other master copies (e.g. digital proofs, hardcopy proofs) and the final product. Furthermore, liability for defects that do not or only insignificantly reduce the value or usability is excluded. We shall only be liable for up to half of the order value for deviations in the quality of the material used.
- (4) Subsequent changes at the Customer's request, including machine downtime caused as a result, shall be charged to the Customer. Subsequent changes include repeating test printouts that are requested by the Customer because of minor deviation from the master copy.
- (5) Sketches, drafts, test printouts, correction proofs, changes to supplied/transferred data and similar preliminary work requested by the Customer shall be charged to the Customer. The same applies to data transfers (e.g. via ISDN).
- (6) The Customer bears the risk of transferring the material for publication to us, in particular the risk of data loss.
- (7) If, as a result of delayed, incorrect or missing information from or poor cooperation by the Customer, performance by us is delayed or has to be repeated, the Customer shall bear the additional expense that arises as a result.
- (8) If the documents are sent using a data carrier or via the internet, the Customer is responsible for ensuring that the data carriers or files are free of computer viruses, Trojan horses, worms and similar harmful computer programs. We shall be entitled to delete received files that are infected by such computer programs. We shall inform the Customer immediately of deletion. We shall not be liable for delays caused by deleting the data.
- (9) Data carriers, photos and other documents belonging to the Customer shall only be returned at its request and expense. The Customer shall bear the risk of return.
- (10) The Customer may not object to deliveries that are 10% above or below the ordered print run. The charge shall be for the delivered quantity.

- (11) There shall be no duty to provide interim products, such as the data, lithographs or printing plates created to produce the final product under contract, unless an order to the contrary has been made.
- (12) Products that belong to the Customer, in particular data and data carriers, shall only be archived beyond the date of delivery of the final product to the Customer or its agents following express agreement and for separate payment. If the above objects are to be insured, the Customer must obtain applicable insurance itself, in the absence of agreement.
- (13) The Customer shall be solely liable for infringement of third-party rights, in particular copyrights, as the result of execution of its order. The Customer must indemnify the contractor against all claims by third parties arising from such infringement.

## **Section 9      Liability**

- (1) We accept no responsibility for the goods being suitable for a specific purpose, unless we have expressly accepted such liability.
- (2) All claims by the Customer for damages for direct or indirect loss – including collateral and consequential loss – against us, our employees and other agents, on whatever legal basis, are excluded, unless the damage is the result of the intent or gross negligence of directors, officers or agents of our company or a breach of essential obligations that puts the purpose of the contract at risk.

This applies in particular, but not exclusively, to all claims for damage arising from breaches of obligation or unlawful acts for which we are responsible (excluding any liability under product liability law and liability for injury to life, body and health).

- (3) In each case (except intentional damage), any liability on our part to pay damages is limited to loss that was foreseeable as a possible consequence of the action giving rise to an obligation to pay damages.
- (4) We shall also not accept liability under the following provisions:
  - We accept no responsibility for defects in goods that are the result of the Customer's description of the goods and specification.
  - We accept no responsibility for defective goods if the purchase price that is due has not been paid on the due date.
  - Our responsibility does not extend to parts, material or other items of equipment that have been produced by the Customer or on its behalf, unless the manufacturer of such parts accepts liability to us.
  - Applying Section 7 clause (4), any obligation we bear to pay damages is excluded if the damage in whole or primarily is the result of circumstances specified in Section 7 clause (4).

The warranty does not cover product defects that arise as a result of incorrect installation or exploitation, misuse, negligence or for other reasons.

- (5) If there is a defect for which we are liable and we are informed of such defect specifically, we shall be entitled to make replacement delivery free of charge or to remedy the defect. If we are not prepared to remedy the defect or make a replacement delivery or we are not able to do so, the Customer shall be entitled at its option to revocation (rescission of the contract) or a reduction (reduction of the purchase price).
- (6) Expressly related to Art. 74 CISG any liability of our company for damages presumes at least negligence by a director, an agent or an employee of our company if the aforesaid conditions in sec. 9 do not stipulate higher requirements.

## **Section 10 Limitation**

All the Customer's claims against us, on whatever legal basis, shall expire by limitation at the latest one year after transfer of risk to the Customer, in cases where we have acted negligently or are liable without fault. In case of intent, the period of limitation shall be three years. Any shorter statutory periods of limitation shall take precedence.

## **Section 11 Place of performance, place of jurisdiction, applicable law & closing provisions**

- (1) Place of performance for the delivery is the applicable destination; for payment it is Kalkar, Germany.
- (2) Place of jurisdiction is Kalkar, Germany.  
The law of the Federal Republic of Germany applies, including the United Nations Convention on Contracts for the International Sale of Goods (CISG).
- (3) These provisions replace all other agreements we have made in the past with our contractual partners, in writing or orally.

## **Section 12 Non-severability**

If a provision is or becomes invalid or contains an omission, the validity of the remaining provisions shall be unaffected. The invalid provision shall be replaced by a provision that we would have agreed if we had known of the invalidity, taking into account the economic purpose of the invalid provision. An omission shall be rectified by supplementary interpretation of the contract via a provision that comes as close as possible to the economic purpose pursued on conclusion of contract without itself being invalid.

## **NOTE**

By acknowledging these General Terms & Conditions, the Customer is consenting to its data being stored and processed in electronic format to the extent necessary for proper performance of the contract.

Kalkar, January 31<sup>st</sup> 2016

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