

General Terms and Conditions (GTC) of Sale, Delivery and Payment of Sunlife Produktions- und Vertriebsgesellschaft mbH



§ 1 Scope, Form

(1) These Terms and Conditions of Sale shall only apply with respect to entrepreneurs, legal entities under public law or a special fund under public law within the meaning of sections 310(1) and (14) German Civil Code. Any terms and conditions of the Customer that conflict with or deviate from our Terms and Conditions of Sale shall only become part of the contract if and to the extent that we expressly agree to their validity in writing.

(2) These Terms and Conditions of Sale shall also apply to all future transactions with the Customer, insofar as legal transactions of a related nature are concerned.

(3) Individual agreements and specifications in our order confirmation take precedence over the GTC. In the event of doubt, commercial clauses shall be interpreted in accordance with the Incoterms published by the International Chamber of Commerce in Paris (ICC) in the version valid at the time of conclusion of the contract.

(4) All agreements between us and the purchaser must be in writing for evidentiary reasons. Legally relevant declarations and notifications by the Customer concerning the contract (e.g. setting of deadlines, notification of defects, withdrawal or reduction) must be made in writing. Written form within the meaning of these GTC includes written and text form (e.g. letter, email and fax). Statutory requirements of form and further evidence, in particular in the event of doubts about the capacity of the person making the declaration, shall remain unaffected.

§ 2 Quotation and conclusion of contract

(1) Our quotations are subject to confirmation and non-binding, unless they are expressly characterised as binding or contain a specific acceptance period. Orders shall only be binding on us if we confirm them or comply with them by sending the requested goods.

(2) If an order is to be regarded as an offer in accordance with section 145 German Civil Code, we may accept it within two weeks.

§ 3 Documents made available

We reserve the property rights and copyrights to all documents provided to the Customer in connection with the order, such as product concepts, recipes, calculations, etc. These documents may not be made accessible to third parties unless we give our express written consent to this effect to the Customer. These documents shall be returned to us without delay if we do not accept the Customer's offer within the period indicated in clause 2.

§ 4 Prices and payment terms

(1) Unless otherwise agreed in writing, our prices are ex works, duty unpaid, excluding layout and preliminary printing costs, packaging, freight, insurance and exclusive of the statutory value added tax in euros at the applicable rate. Costs for layout and preliminary printing costs, packaging, freight and insurance will be invoiced separately.

(2) The purchase price must be paid within the payment period shown on the invoice, without deduction, exclusively to one of the indicated accounts. Complaints about the invoice must be made in writing without delay.

(3) Unless otherwise agreed, the purchase price shall be paid following notification of readiness for delivery/shipment, invoicing within 10 days from the invoice date and before delivery.

(4) The Customer shall be in default upon expiry of the above payment period. During the period of default, the purchase price shall bear interest at the statutory default interest rate applicable at the time. We reserve the right to assert further damages due to delay. Our claim to commercial default interest against merchants (section 353 German Commercial Code) remains unaffected.

(5) Unless a fixed price agreement has been made, we reserve the right to make reasonable price changes due to changes in wage, material and distribution costs for deliveries that take place 4 months or later subsequent to the conclusion of the contract.

(6) We shall be entitled, despite any provisions of the Customer to the contrary, to set off payments first against the Customer's older debts. In this event, we shall inform the Customer immediately of the nature and amount of the set-off made.

(7) A payment shall only be deemed to have been made when the funds are available to us. Cheques and bills of exchange are only accepted conditionally subject to clearance.

(8) Where a significant deterioration in the Customer's financial circumstances that calls into question its creditworthiness becomes known, for example, suspension of payments, downgrading or cancellation of trade credit insurance, dishonouring of a cheque, we shall be entitled to call in the entire remaining debt, even if we have accepted cheques. We are also entitled to demand advance payments or security in these cases.

§ 5 Set-off and rights of retention

The Customer shall only have the right to offset if its counter-claims have been legally established or are undisputed. The Customer is only entitled to exercise a right of retention insofar as its counter-claim is based on the same contractual relationship.

§ 6 Delivery time

(1) Unless expressly agreed as binding in writing, our indicated delivery times are non-binding. We shall agree the delivery period individually or specify it when the order is accepted.

(2) The commencement of our indicated delivery period presupposes the Customer's timely and proper fulfilment of its obligations. The defence of non-performance of the contract remains reserved.

(3) Where the Customer is in default of acceptance or culpably violates other obligations to cooperate, we shall be entitled to demand compensation for the damage incurred by us in this respect, including any additional expenses. Further claims remain reserved. If the aforementioned conditions are met, the risk of accidental loss or accidental deterioration of the object of sale shall pass to the Customer at the time at which the Customer goes into default of acceptance or debtor's default.

§ 7 Delivery, Transfer of Risk, Acceptance, Default of Acceptance

(1) Delivery is ex-works, which is also the place of performance for the delivery and any subsequent performance. We are entitled to make partial deliveries and provide partial performance at any time, insofar as this is not unreasonable for the Customer.

(2) At the Customer's request and expense, the goods will be shipped to another destination (sale to destination). Unless otherwise agreed, we are entitled to determine the nature of shipment (in particular transport company, shipping route, packaging) ourselves.

(3) The risk of accidental loss and accidental deterioration of the goods shall pass to the Customer upon delivery at the latest. However, regarding sale to destination, the risk of accidental loss and accidental deterioration of the goods as well as the risk of delay shall pass upon delivery of the goods to the forwarding agent, the carrier or any other person or institution designated to carry out the shipment. The handover shall be deemed to have taken place if the Customer is in default of acceptance.

(4) Where the Customer is in default of acceptance, fails to cooperate or if our delivery is delayed for other reasons imputable to the Customer, we have the right to demand compensation for the resulting damage including additional expenses (e.g. storage costs). We shall charge for this purpose a fixed compensation of 1.50 euros per pallet space in the amount per calendar day, beginning with the delivery deadline or – in the absence of a delivery deadline – with the notification that the goods are ready for dispatch. Proof of higher damages and our statutory claims (in particular compensation for additional expenses, reasonable compensation, termination) remain unaffected. However, the fixed sum shall be set off against further monetary claims. The Customer shall be entitled to prove that we have not sustained any losses at all or that such losses essentially amounted to less than the aforementioned fixed sum.

(5) However, the Seller shall be entitled to otherwise dispose of the delivery item following the setting and expiry of a reasonable period of grace with no result and to give the Customer a reasonably extended deadline.

§ 8 Third-party intellectual property rights

(1) The Customer shall be liable for ensuring that no patents, industrial property rights, copyrights or other rights of third parties are infringed by our manufacture of goods according to specifications, samples and recipes supplied by the Customer or in the case of delivery of goods to territories outside the Federal Republic of Germany or by printing a trademark or designation specified by the Customer.

(2) Where a claim is made against us by a third party on the basis of the infringement of a right, the Customer shall be obliged to indemnify us against such claims, whereby this shall refer to all expenses necessarily incurred by us in connection with or arising from the claim made by the third party.

(3) The Customer shall notify us immediately as soon as a third party asserts an infringement of its rights.

§ 9 Retention of title

(1) We will retain title to the delivered item until full payment of all claims arising from the delivery contract. This also applies to all future deliveries, even if we do not always expressly refer to this. We are entitled to take back the object of sale if the Customer conducts itself in breach of contract.

(2) As long as the ownership has not yet passed to it, the Customer is obliged to treat the object of sale with care and to store it properly. As long as ownership has not yet been transferred, the Customer must inform us immediately in writing if the delivered item is seized or exposed to other interventions by third parties. Where the third party is not in a position to reimburse us for the judicial and extra-judicial costs of an action under section 771 German Code of Civil Procedure, the Customer shall be liable for the loss we have incurred.

(3) The Customer is entitled to resell the goods subject to retention of title in the normal course of business. The Customer hereby assigns to us its claims arising from the resale of the goods subject to retention of title in the amount of the final invoice amount agreed with us (including value added tax). This assignment shall apply irrespective of whether the object of sale has been resold without or after processing. The Customer shall remain authorised to collect the claim even after the assignment. Our authority to collect the claim ourselves remains unaffected by this. However, we shall not collect the claim as long as the Customer meets its payment obligations from the proceeds collected, is not in default of payment and, in particular, no application for the opening of insolvency proceedings has been filed or payments have not been suspended.

(4) The processing or transformation of the object of sale by the Customer shall always be carried out in our name and on our behalf. In this event, the Customer's reversionary interest in the object of sale shall continue in the transformed object. Where the object of sale is processed with other items not belonging to us, we shall acquire co-ownership of the new object in the ratio of the value of our goods (purchase price plus VAT) to the other processed goods at the time of processing. The same shall apply in the event of commingling. Where the commingling takes place in such a way that the Customer's item is to be regarded as the main item, it shall be deemed agreed that the Customer shall transfer proportional co-ownership to us and shall hold the sole ownership or co-ownership thus created for us.

(5) We undertake to release the collateral to which we are entitled at the request Customer's request where their value exceeds the claims to be secured by more than 20%. We shall be entitled to select the collateral to be released.

§ 10 Warranty and notice of defects as well as recourse/manufacturer recourse

(1) The Customer's warranty rights shall be conditional upon its due fulfilment of its obligations to inspect the goods and to give notice of defects under section 377 German Commercial Code.

(2) Warranty claims shall become lapse 12 months after delivery of the goods supplied by us to our Customer. This shall be without prejudice to the statutory limitation of claims for damages pursuant to clause 11 (4). Our consent must be obtained before any goods are returned.

(3) If, despite all due care, the delivered goods contain a defect which was already present at the time of the transfer of risk, we shall, at our discretion, either repair the goods or deliver replacement goods, subject to timely notification of defects. We shall always be given the opportunity to remedy the defect within a reasonable period of time. Claims under a right of recourse shall remain unaffected by the above provision without restriction.

(4) Where the supplementary performance is unsuccessful, the Customer may withdraw from the contract – without prejudice to any claims for damages.

(5) Claims for defects shall not arise in the event of merely insignificant deviations from the agreed quality, merely insignificant impairment of usability, and damage arising after the transfer of risk as a result of incorrect or negligent handling, excessive use or due to special external influences not assumed under the contract. Where improper modifications are made by the Customer or third parties, no claims for defects shall arise for these and the resulting consequences either.

(6) Claims by the Customer for expenses incurred for the purpose of subsequent performance, in particular transport, travel, labour and material costs, are excluded insofar as the expenses increase because the goods delivered by us have subsequently been taken to a location other than the customer's branch office, unless the transfer is in line with their intended use.

(7) The Customer's right of recourse against us shall exist only to the extent that the Customer has not entered into any agreements with its customer that go beyond the statutory warranty claims. Furthermore, paragraph 6 shall apply accordingly to the scope of the Customer's right of recourse against the Supplier.

§ 11 Further liability

(1) Unless otherwise stated in these GTC including the following provisions, in line with statutory provisions, we shall be liable in the event of a breach of contractual and non-contractual obligations.

(2) Irrespective of the legal grounds, we shall be liable for damages within the scope of fault liability for wilful intent and gross negligence. In the event of simple negligence, we shall only be liable, subject to statutory limitations of liability (e.g. due care in our own affairs, minor breaches of duty)

a) for claims resulting from death, physical injury or illness;

b) for claims resulting from the breach of an essential contractual obligation (an obligation whose fulfilment renders possible the contract's proper execution in the first place and upon whose fulfilment the contractual partner routinely relies and may rely). However, in this case, our liability is limited to foreseeable and typically occurring damage.

(3) The limitations of liability resulting from sub-clause 2 shall also apply to third parties as well as in the event of breaches of duty by persons (also in their favour) for whose fault we are responsible in line with statutory provisions. They shall not apply where a defect has been fraudulently concealed or a guarantee for the quality of the goods and for the Customer's claims under the Product Liability Act has been assumed.

(4) The Customer's claims for damages pursuant to clause 2 sentence 1 and sentence 2(a) as well as under the Product Liability Act shall lapse exclusively in accordance with the statutory limitation periods.

§ 12 Applicable Law, Jurisdiction

(1) This contract and the entire legal relationship between the parties shall be governed by the laws of the Federal Republic of Germany, to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).

(2) The place of performance for deliveries, performance and payments and the exclusive place of jurisdiction for all disputes arising from this contract is our registered office.

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