

Last updated: 24 May 2019

1 General and scope

1.1 These General Terms and Conditions (GTC) apply for sales and delivery by UGA Biopharma GmbH (below: UGA). The GTC are an integral part of contracts and shall apply exclusively. Conditions of the buyer contrary to or differing from these GTC shall not be recognised, unless UGA has agreed to their validity in writing. UGA does not recognise differing conditions even if UGA carries out the order without reservation despite awareness of the buyer's contrary or differing conditions. The GTC shall apply, in so far as a transaction is a commercial one for both parties, also for all future transactions with the buyer. Definitive is the pertinent version valid when the contract is concluded.

1.2 These GTC shall only apply for companies (Section 14 Civil Code), legal persons or special funds under public law (hereinafter: buyer).

2 Offer, conclusion of contracts

2.1 UGA's offers are non-binding, unless expressly stated otherwise.

2.2 Orders placed orally by buyer with UGA are also binding. UGA shall have a right to the buyer confirming orally placed orders in writing without undue delay.

2.3 The buyer's ordering of the goods shall be deemed a binding offer to contract. Orders are only binding for UGA, in so far as UGA confirms them in writing within two weeks or meets the said order by sending the goods within two weeks.

3 Prices/dispatch

3.1 The prices quoted are net prices, the value-added tax shall also be invoiced at the statutory rate.

3.2 Unless agreed otherwise, UGA's prices are stated in euros and the buyer has to render payments in euros.

3.3 All prices are quoted ex work and net of the pertinent statutory sales tax, packaging, freight, customs duties, insurance premiums etc.

3.4 The risk of destruction, loss or damage of goods shall pass to the buyer upon shipping or in the case of collection by the buyer with their readiness for collection.

3.5 If the buyer determines any damage after receipt of the goods that is due to improper handling during transportation, the buyer shall report that damage to the seller and the competent freight, courier or express delivery firm or the delivering post office in writing without undue delay, 7 days after receipt at the latest.

4 Terms of payment

4.1 The invoice amount is immediately due and payable strictly net without deductions within 30 days of the invoice date.

4.2 UGA reserves the right to supply on cash on delivery or cash in advance terms. If there are justified doubts about the buyer's solvency or creditworthiness and if despite corresponding instruction the buyer is not prepared to pay cash in advance or furnish suitable security for its obligations, UGA shall be entitled to rescind contract in so far as it has not already rendered its own performance.

4.3 Payment shall not be deemed effected until it has been credited to and is available on UGA's bank account.

4.4 UGA reserves the right to use payments to settle the oldest due invoice amounts plus the accrued default interest and

costs, and this in the following order: costs, interest, principal claim. The amount of default interest shall be governed by Section 288 (2) Civil Code and stands at 9% above the base rate.

4.5 Any right of retention on the buyer's part is hereby excluded. The buyer may only exercise offset against undisputed or unappealable claims.

5 Delivery

5.1 UGA always does its utmost to supply goods as quickly as possible. There are no fixed delivery periods.

5.2 The day of delivery shall be that day on which the goods leave the warehouse and, if that day cannot be determined, the day on which the goods are put at the buyer's disposal.

6 Force majeure, contract obstacles

Force majeure of any kind, unforeseeable operating, traffic or shipment disturbances, fire damage, floods, unforeseeable lack of labour, energy, raw materials or auxiliary materials, strikes, lock-outs, orders by the authorities, or other obstacles for which the party who is liable to make performance is not answerable and which reduce, delay, prevent or make unreasonable either manufacture, shipment, acceptance or consumption shall suspend the obligation of delivery or acceptance for the duration and extent of the disturbance. If, due to the disturbance, delivery and/or acceptance is exceeded by more than eight weeks, both parties shall be entitled to rescission. In event of partial or complete discontinuation of deliveries from its sources of supply, UGA shall not be under any obligation whatsoever to purchase products from third parties. In this case, UGA shall be entitled to distribute the available quantities of stock, taking into account internal requirements.

7 Prohibition of reverse engineering

Without UGA's written consent, the buyer is not permitted to examine the goods for their chemical composition or concerning the ingredients thereof for the purpose of reverse engineering or through similar measures. The goods may be passed on to a third party only if the third party has consented to prohibition of reverse engineering in writing towards the customer. The declaration of consent shall be disclosed to UGA upon demand.

8 Reservation of title

8.1 Only upon the buyer's full settlement of all its liabilities under the business relationship with UGA, including ancillary receivables, damage claims and the honouring of cheques and bills of exchange shall title to the goods pass to the buyer.

8.2 If goods subject to reservation of title are processed, the buyer shall be deemed to be acting on behalf of UGA without thereby acquiring any claims against UGA. UGA's reservation of title shall also extend to products emerging through processing. If goods subject to reservation of title are processed together with, mixed with or attached to goods to which title is retained by third parties, UGA shall acquire co-ownership of the resulting products in the ratio of the invoice value of its reserved goods to the invoice value of the goods owned by those third parties. If the products are combined or mixed with principal substances of the buyer, the buyer here and now surrenders title to the new item to UGA

8.3 The buyer undertakes to hold the reserved goods with due care for UGA, to service and repair the same at its expense and to insure the same at its expense against loss and damage up to an extent which may reasonably be expected of a prudent businessman. The buyer here and now assigns any claims under the insurance policies in advance to UGA.

9 Liability

9.1 UGA shall not be liable in cases of minimally negligent breach of minor obligations. Otherwise, UGA's liability in cases of harm caused by minor negligence is limited to that harm typically

to be expected given the contractual relationship in question (contract-typical foreseeable losses). This also applies in the case of slightly negligent breaches of duty by the statutory representatives, senior executives and ordinary vicarious agents of UGA.

9.2 The above restriction of liability shall not apply in the case of fraudulent intent, physical harm and personal injury, for breach of guarantees and also claims under product liability.

9.3 UGA shall have unlimited liability of harm caused by UGA intentionally or through gross negligence.

9.4 The liability exclusions and restrictions under this clause **Fehler! Verweisquelle konnte nicht gefunden werden.** shall apply on the same scale for acts by salaried staff, employees, co-workers, representatives and vicarious agents of UGA. They shall also apply for their personal liability.

9.5 The above provisions do not intend any reversal of the burden of proof.

10 Complaints/warranty

10.1 The customer's warranty rights are subject to the condition that the customer has properly met his or her inspection and notification duties owed under Section 377 Commercial Code.

10.2 Defects claims shall be time barred twelve months after delivery of the goods supplied by UGA to the buyer. This shall be without prejudice to mandatory statutory time bars and liability regulations, such as liability under the provision of a guarantee, liability for intentional and grossly negligent acts, for fatalities, personal injury and impairment of health, breach of cardinal duties, liability under the Product Liability Act and the provisions on consumer goods purchases.

10.3 If the goods already have a defect at the time risk passes, subject to a timely complaint UGA shall at its option rework the goods or provide a replacement. UGA must always be given an opportunity for subsequent performance within a reasonable period.

10.4 In the event of recourse to the guarantee by the buyer following a successful claim against the latter on the basis of the provisions governing the purchase of a consumer good, this shall be without prejudice to the claims under a right of recourse in accordance with the regulations on the purchase of consumer goods. The claim for damages shall be governed by clause **Fehler! Verweisquelle konnte nicht gefunden werden.**

10.5 If the subsequent performance fails, the buyer can – any claims for damages notwithstanding – rescind the contract or reduce the remuneration.

10.6 There shall be no defect claims in the case of only minor deviations from the agreed properties, minor impairment of utility, for natural wear and tear and in the case of damage which occurs after the transfer of risk as a consequence of incorrect or negligent handling, excessive loading or on account of specific external influences, which are not included under the terms of the contract. If the buyer makes changes, they and the resulting consequences shall not be covered by defect claims.

10.7 The buyer's claims for expenses arising for the purpose of subsequent performance, especially transportation, travel, work and material expenses are hereby excluded, in so far as the expenses are higher because the goods shipped by UGA were subsequently moved to a place other than the buyer's premises, except where the transfer corresponds to intended purpose.

10.8 The buyer shall have recourse claims against UGA only in so far as the buyer has not reached any agreements with its customers that go beyond the statutory warranty claim. Clause 10.7 shall govern the scope of the buyer's recourse claims against UGA mutatis mutandis.

11 Confidentiality

11.1 If the one party receives from the other party information or documents, be it in oral, written, electronic or other form, such as in particular plans, samples, drawings, chemical formulas, recipes, ingredients, test results, information about test procedures, information about subsuppliers, information about production processes and other information or documents for the purpose of executing the contract of sale, the receiving party undertakes to keep the same confidential. The contractual parties are also in agreement that the terms and conditions of the contract of sale are confidential and may not be disclosed to third parties without the consent of the other party. The contractual parties shall bind their employees to confidentiality accordingly, and this also beyond the term of the employment relationship.

11.2 The above obligations shall not apply for such information:

- a. becoming or already publicly known without breach of duty by the other party;
- b. which the other party receives or has received lawfully from a third party;
- c. which a party already knew when this confidentiality clause was concluded independently of the other party and without using the information.

12 Concluding provisions

12.1 The place of fulfilment is Hennigsdorf.

12.2 Legal forum for both parties is Hennigsdorf. UGA is also entitled to assert its claims at the general legal forum for the buyer.

12.3 Should individual clause in these General Terms of Sale and Delivery be entirely or partially void, this shall not affect the validity of the other clauses or the other parts of such clauses. The parties shall replace such provision by one which comes as close as possible to the commercial purpose of that provision and is effective.