

General terms and conditions of delivery and payment for business customers (ALZ)

of PharmaSGP Holding SE,
PharmaSGP GmbH, Remitan GmbH und Restaxil GmbH

Valid from - Last update: May 25th, 2020

§ 1 General - Scope of application

- (1) Our terms and conditions of delivery and payment shall apply exclusively to the delivery of our products; any terms and conditions of the customer which conflict with or deviate from our terms and conditions of delivery and payment shall not become part of the contract unless we have expressly agreed to their validity in writing. Our Terms and Conditions of Delivery and Payment shall also apply even if we carry out the delivery to the customer without reserve in the knowledge that the customer's terms and conditions contradict or deviate from our Terms and Conditions of Delivery and Payment.
- (2) All agreements made between us and the purchaser for the purpose of executing the contract are set out in writing in the contract. Deviations, subsidiary agreements and verbal agreements must be confirmed by us in writing to be effective.
- (3) These terms and conditions of delivery and payment shall only apply to companies or legal entities under public law within the meaning of § 310 para. 1 BGB (German Civil Code).
- (4) Insofar as they are not directly amended or expressly excluded in these Terms and Conditions of Delivery and Payment, the statutory provisions shall apply.

§ 2 Conclusion of contract

- (1) Our offers are subject to change and non-binding.
- (2) The contract shall only come into effect upon our order confirmation, at the latest, however, upon execution of our contractually owed performance. Our delivery note shall simultaneously be deemed to be the order confirmation. Individual products can be delivered and invoiced by distribution partners (e.g. SK Pharma Logistics GmbH). The customer agrees to this.
- (3) We reserve the right of ownership and copyright to illustrations, drawings, calculations and other documents. They must be kept secret from third parties and may not be made accessible to third parties without our express written consent.

§ 3 Prices - Terms of payment - Shipping costs

- (1) The prices reported to IFA GmbH (Information Agency for Pharmaceutical Specialities) shall apply, taking into account individual written agreements where applicable.
- (2) All prices are exclusive of statutory value added tax.
- (3) In the absence of express, deviating regulations, the following applies:
- (4) Our goods are dispatched to pharmacies "free domicile" to the place of delivery within Germany specified by the purchaser. In all other respects delivery shall be "ex works".
- (5) Our invoices are payable without any deductions within 8 days of the invoice date. If a cash discount deduction has been agreed upon, this is not permitted if older due invoices are still unpaid.

- (6) If the customer is in default of payment, we shall be entitled to demand reminder fees of EUR 2.50 or EUR 5.00 plus default interest of 8 percentage points above the base interest rate. We reserve the right to transfer open claims to a debt collection company for further prosecution. If we are in a position to prove higher damages caused by default, we are entitled to assert these damages. However, the customer is entitled to prove to us that we have not incurred any damage or that the damage incurred by us as a result of the delay in payment is significantly lower.
- (7) The customer shall only be entitled to offsetting rights if his counterclaims have been legally established, are undisputed or have been recognised by us. In addition, he is only entitled to exercise a right of retention if his counterclaim is based on the same contractual relationship.

§ 4 Delivery time

- (1) Unless otherwise agreed, delivery dates are not binding.
- (2) The delivery period shall be deemed to have been met if the goods have left the factory or readiness for dispatch has been notified before its expiry.
- (3) In the event of force majeure and other unforeseeable circumstances for which we are not responsible - e.g. industrial action, operational disruptions, disruptions to the energy supply and the supply of raw materials and supplies, transport disruptions, official measures - delivery periods shall be extended by a reasonable period if we are prevented from fulfilling our obligations in good time. If delivery becomes impossible or unreasonable as a result of the aforementioned circumstances, we shall be released from our delivery obligation. If the delay in delivery lasts longer than four weeks, the customer is entitled to withdraw from the contract with regard to the part not yet fulfilled. If the delivery time is extended or if we are released from the delivery obligation due to the above-mentioned circumstances, the customer cannot derive any claims for damages from this. We can only invoke the above-mentioned circumstances if we have informed the customer immediately. We reserve the right to correct and timely delivery to ourselves.

§ 5 Transfer of risk

In the absence of an agreement to the contrary, the following applies: If the delivery is "free domicile" to the place of delivery within Germany which is agreed upon in the order, the risk shall pass to the purchaser at the place of delivery specified in the order. Otherwise, the risk shall pass to the purchaser when the goods are handed over to the forwarding agent or carrier.

§ 6 Liability for defects

- (1) Warranty claims of the purchaser require that he has properly fulfilled his obligations to inspect the goods and make a complaint in accordance with § 377 HGB (German Commercial Code). The customer must notify us in writing of obvious defects within a period of three weekdays (Mon-Fri) from receipt of the goods; hidden defects within three weekdays of their discovery; otherwise the assertion of claims for defects is excluded. Timely dispatch suffices to meet the deadline. The full burden of proof for all claim prerequisites, in particular for the defect itself, for the existence of the defect at the time of the transfer of risk and for the timeliness of the notification of defects shall be borne by the customer.
- (2) The goods delivered by us must be stored properly. We shall not be responsible for any reduction or loss in the effectiveness of our products if the goods have not been stored properly or beyond their shelf life.

- (3) Insofar as there is a defect in the object of purchase, we shall be entitled, within the scope of what is legally permissible, to initially provide subsequent performance, which shall consist of repair or replacement delivery at our discretion.
- (4) If the subsequent performance fails or if we inform the customer that we will not provide subsequent performance, the customer may demand cancellation of the contract (withdrawal). If the customer chooses to withdraw from the contract due to a legal or material defect after subsequent performance has failed or been expressly refused, he shall not be entitled to any additional compensation claims due to the defect.
- (5) We shall be liable in accordance with the statutory provisions if the customer asserts claims for damages based on intent or gross negligence, including intent and gross negligence on the part of our representatives or vicarious agents. Insofar as we are not accused of intentional breach of contract, however, liability for damages shall be limited to the foreseeable, usually occurring damage.
- (6) We shall be liable in accordance with the statutory provisions if we culpably violate an essential contractual obligation; in this case, however, the liability for damages shall be limited to the foreseeable, typically occurring damage.
- (7) Liability for culpable injury to life, body or health shall remain unaffected; this shall also apply to mandatory liability under the Product Liability Act and the German Pharmaceutical Act.
- (8) Unless otherwise regulated above, liability is excluded.
- (9) Products duly delivered by us may be returned to us, stating the order date, order number, batch number and expiry date, provided this is provided for in the currently valid version of the returns regulation. If such goods are not returned in accordance with the currently valid returns regulation, we shall not assume any liability. The currently valid version of the returns policy is available from us at any time on request.

§ 7 Liability

- (1) Our liability for all rights and claims, contractual and non-contractual, arising from and in connection with this contract shall be limited as follows, unless otherwise stated above.
- (2) In the following cases we shall be liable without limitation in accordance with the statutory provisions:
 - (a) for damages resulting from injury to life, body or health, which are based on an intentional or negligent breach of duty by us, our legal representatives or our vicarious agents;
 - (b) for other damages based on an intentional or grossly negligent breach of duty by us, our legal representatives or our vicarious agents;
 - (c) if a defect was fraudulently concealed or a guarantee for the quality of the item was given;
 - (d) for claims for damages under the Product Liability Act.
- (3) In all other cases, we shall only be liable for slight negligence by us, our executive staff and our vicarious agents to the extent that damage is caused by a breach of material contractual obligations (obligations whose fulfilment is essential for the proper execution of the contract and on whose compliance the customer regularly relies and may rely), whereby this liability shall be limited to the typical damage that was foreseeable for us at the time of conclusion of the contract. Otherwise our liability is excluded.
- (4) Insofar as our liability is excluded or limited, this shall also apply to the personal liability of our employees, workers, staff, representatives and other vicarious agents.

- (5) Claims for damages shall become statute-barred within one year after the purchaser has become aware of the occurrence of the damage. This shall not apply if we can be accused of malice or intent.

§ 8 Retention of title

- (1) We reserve the right of ownership of the purchased item until payment of all claims to which we are entitled from the business relationship with the purchaser (in the case of payment by cheque until they have been honoured). If the purchaser acts in breach of contract, in particular in the event of default in payment, we shall be entitled to take back the object of sale. Our taking back of the object of sale does not constitute a withdrawal from the contract, unless we have expressly declared this in writing. Seizure of the object of sale by us always constitutes a withdrawal from the contract. After taking back the object of sale, we shall be entitled to sell it; the proceeds of sale shall be set off against the liability of the customer less reasonable costs of sale.
- (2) The customer is obliged to treat the object of sale with care.
- (3) In the event of seizure or other interventions by third parties, the purchaser must inform us immediately in writing so that we can take legal action in accordance with § 771 ZPO (German Code of Civil Procedure). Insofar as the third party is not in a position to reimburse us for the court and out-of-court costs of an action pursuant to § 771 ZPO, the customer shall be liable for the loss incurred by us.
- (4) The customer shall be entitled to resell the object of sale in the ordinary course of business; however, he hereby assigns to us all claims in the amount of the final invoice amount (including value-added tax) of our claim which accrue to him from the resale against his customers or third parties. The customer remains entitled to collect these claims even after the assignment. Our authority to collect the claim ourselves remains unaffected. We undertake, however, not to collect the claims as long as the customer meets his payment obligations from the proceeds received, does not default on payment and, in particular, no application for the opening of insolvency proceedings has been made or payments have been suspended. In this case, the direct debit authorization shall expire automatically and we may demand that the customer informs us of the assigned claims and their debtors, provides all information necessary for collection, hands over the relevant documents and informs the debtors (third parties) of the assignment.
- (5) We undertake to release the securities to which we are entitled at the request of the customer to the extent that the realisable value of our securities exceeds the claims to be secured by more than 10%; the selection of the securities to be released shall be at our discretion.

§ 9 Designation of preparations

Trademark-protected preparations are marked with ®. They may only be sold in undamaged containers and outer wrappings.

§ 10 Resale

- (1) As a matter of principle, our preparations may only be offered, sold or delivered in unaltered original packaging and not in partial quantities. As a rule, the individual sale of parts of a package is not permitted. The only exceptions to this are those pharmacies which, in fulfilment of their obligation under the Pharmacy Act, supply hospitals with medicines and have to make deliveries on a ward by ward basis.
- (2) This shall not affect the prohibition on selling parts from packages individually.

§ 11 Data storage

- (1) In accordance with normal business transactions, the details relating to the order and delivery are stored in our data processing system. By placing an order, the customer gives his consent to this.
- (2) We shall be entitled to process the data on the customer received with regard to the business relationship or in connection with it, regardless of whether this data originates from the customer himself or from third parties, in accordance with the Federal Data Protection Act.

§ 12 Miscellaneous

- (1) Information about processing and application possibilities of our products, technical advice and other information is given to the best of our knowledge, but without obligation and to the exclusion of any liability.
- (2) We do not assume any liability in the event of changes to the products purchased from us, in particular with regard to their labelling and/or their storage packaging by the purchaser or other third parties.
- (3) The customer is responsible for ensuring that the storage facilities for our products are clean and that the storage temperatures, unless special storage conditions are specified, are not permanently below 10°C or above 30°C and that the relative humidity does not exceed 90%.
- (4) The customer shall ensure the traceability of the products and shall therefore set up and maintain a system which, on the basis of the customer's records with regard to code no., quantity, delivery date and batch no./ LOT, ensures that the recipients of a product are identified without delay in order to be able to carry out product-related corrective measures as instructed by us or the competent authorities.

§ 13 Place of jurisdiction - place of performance

- (1) If the customer is a merchant, a legal entity under public law or a special fund under public law, the place of jurisdiction shall be our registered office; however, we shall also be entitled to sue the customer at the court of his place of residence or business.
- (2) Unless otherwise agreed, our place of business is the place of performance.
- (3) The law of the Federal Republic of Germany applicable between German nationals shall apply exclusively to these Terms and Conditions and the entire legal relationship between us and the customer. The application of the UN Convention on Contracts for the International Sale of Goods (CISG) is excluded.