

## **General Terms and Conditions of Sale (GTCS)**

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

**Valid from 17.01.2023**

### **§ 1 General - Scope**

- (1) The following General Terms and Conditions of Sale (hereinafter referred to as GTCS) shall apply exclusively to the delivery of products of PharmaSGP GmbH, Remitan GmbH, Restaxil GmbH and PharmaSGP Holding SE (hereinafter referred to as "Seller") in business transactions with entrepreneurs and/or legal entities under public law within the meaning of Section 310 (1) of the German Civil Code (hereinafter referred to as "Buyer"). Any terms and conditions of the Buyer that conflict with or deviate from the following GTC shall not become part of the contract unless the Seller has expressly agreed to their validity in writing. These GCS shall also apply if the Seller carries out the delivery to the Buyer without reservation in the knowledge of terms and conditions of the Buyer that conflict with or deviate from these GCS. Unless otherwise agreed, these GCS in the version current at the time of the Buyer's order shall also apply as a framework agreement to subsequent contracts with the same Buyer without the Seller having to refer to its GCS again.
- (2) All additional agreements made between the Seller and the Buyer for the purpose of executing the delivery of the Products must be confirmed in writing by the Seller in order to be effective.
- (3) Insofar as they are not directly amended or expressly excluded in these GTCS, the statutory provisions shall apply.

### **§ 2 Conclusion of contract**

- (1) The offers of the seller are subject to change and non-binding. A contract is only concluded after acceptance.
- (2) By placing an order, the buyer bindingly declares that he wishes to purchase the products specified in the order.
- (3) The offer contained in the order may be accepted by the Seller within 5 working days of receipt of the order. Acceptance shall be in writing or implied by delivery of the Products. In the case of implied acceptance, the Seller's delivery note shall also be deemed to be an order confirmation. All Products may be delivered and invoiced by the Seller's distributors. The buyer agrees to this.
- (4) A contract shall only be concluded when the Buyer has provided evidence that he is entitled to purchase the ordered products. A separate request by the seller is not required for this.
- (5) The seller reserves the property rights and copyrights 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 the express written consent of the seller.

### **§ 3 Prices - Terms of payment - Shipping costs**

- (1) The Seller's prices valid at the time of delivery shall apply in principle, taking into account individual written agreements where applicable.
- (2) All prices are in euros plus the statutory value added tax. The validity refers to deliveries within Germany. Payment of the invoice amount shall be made exclusively to the Seller's account stated on the invoice and shall be made in EURO.

Unless otherwise regulated, the following applies:

- (3) The Seller's products are shipped to all customer groups "free domicile" to the delivery location within Germany specified by the Buyer (AdSp 2017).
- (4) The invoices of the seller are payable without any deduction within 8 days from the invoice date. The date on which the amount is credited to the Seller's account shall be decisive. If a discount has been agreed, this shall not be permissible insofar as older invoices due are still unpaid.

- (5) If the Buyer is in default of payment, the Seller shall be entitled to demand reminder fees in the amount of EUR 2.50 or EUR 5.00 plus interest on arrears in the amount of 9 percentage points above the respective base interest rate per annum. The Seller reserves the right to hand over outstanding claims to a collection agency for further prosecution. If the Seller is able to prove higher damages caused by default, the Seller shall be entitled to claim such damages. However, the buyer shall be entitled to prove to the seller that the seller has incurred no damage or significantly less damage as a result of the delay in payment. If the Buyer defaults on a payment, all other outstanding invoices shall become due for immediate payment. In such cases, the Seller shall be entitled to make any outstanding deliveries only against advance payment or the provision of security. Further legal claims of the seller remain unaffected.
- (6) The buyer shall only be entitled to set-off rights if his counterclaims have been legally established, are undisputed or have been recognised by the seller. Furthermore, he is authorised to exercise a right of retention insofar as his counterclaim is based on the same contractual relationship.

#### **§ 4 Delivery time**

- (1) Unless otherwise agreed, delivery dates are non-binding.
- (2) Any agreed delivery period shall be deemed to have been complied with if the goods have left the factory or notification of readiness for dispatch has been given by the time of its expiry.
- (3) The Seller shall not be liable for the impossibility or delay of its performance insofar as these circumstances are due to force majeure or other events unforeseeable at the time of the conclusion of the contract for which the Seller is not responsible (e.g. disruptions of operations of any kind, fire, natural disasters, epidemics, pandemics, weather, floods, war, insurrection, terrorism, transport delays, strikes, lawful lockouts at the Seller's or a supplier's premises, shortage of labour, energy or raw materials, delays in obtaining any necessary official permits, official/sovereign measures). Force majeure shall also include, in particular, restrictions on the Seller's or its suppliers' ability to deliver caused by or in connection with the Corona virus or a comparable epidemic or pandemic, including, for example, border closures, shortages of goods, staff shortages, export restrictions, plant closures, plant interruptions. During this period, the Buyer shall have no rights or claims against the Seller for delay. This shall also apply if such obstacles occur at a sub-supplier.
- (4) In the event of such events, the delivery periods shall be automatically extended by the duration of the event plus a reasonable start-up period. Furthermore, the Seller shall be entitled to withdraw from the contract if such events make it significantly more difficult or impossible for the Seller to provide the service and are not only of temporary duration.
- (5) Timely and correct delivery by the seller is subject to correct and timely delivery by its upstream suppliers, provided that the seller has commissioned them in good time so that timely delivery/service could be expected. If the Seller is not supplied on time for reasons for which the Seller is not responsible, the Seller shall be entitled to withdraw from the contract. The seller undertakes to inform the buyer immediately of the non-availability in the event of non-timely and correct self-delivery and, if applicable, to reimburse the buyer immediately for any services already rendered.
- (6) If a delivery date is not met for reasons for which the seller is responsible, the buyer shall grant the seller a reasonable grace period in writing.
- (7) If the seller is in default, he shall only be liable for damages incurred by the buyer as a result in the event of intent and gross negligence. Further legal claims of the buyer remain unaffected. The buyer is not authorised to assign his contractual rights to third parties without the express written consent of the seller. § Section 354a of the German Commercial Code (HGB) remains unaffected.
- (8) The Seller shall be entitled to render partial performance if and to the extent that such partial performance is reasonable for the Buyer.

#### **§ 5 Transfer of risk**

- (1) In the absence of any agreement to the contrary, the following shall apply: If delivery "free domicile" to the place of delivery within Germany specified in the order has been agreed, the risk shall pass to the buyer at the place of delivery specified in the order. Otherwise, the risk shall pass to the buyer when the goods are handed over to the forwarder or carrier.
- (2) If the buyer is in default with acceptance or by failing to cooperate, the risk of accidental loss or accidental deterioration of the products shall pass to the buyer at the time of the default. The Seller shall be entitled to demand compensation for any resulting damage plus any additional expenses.

#### **§ 6 Liability for defects**

- (1) Claims for defects by the buyer due to a material defect presuppose that the buyer has properly fulfilled its obligations to inspect the goods and give notice of defects pursuant to § 377 of the German Commercial Code (HGB). The buyer must notify the seller in writing of obvious defects within a period of three weekdays (Mon.-Fri.) from receipt of the goods; hidden defects within three weekdays after their discovery; otherwise the assertion of claims for defects is excluded. Timely dispatch shall be sufficient to meet the deadline. The purchaser shall bear 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 notice of defect.
- (2) The goods delivered by the seller must be stored properly. The Seller shall not be responsible for any reduction or loss in the effectiveness of its products if the goods have not been stored properly or have been stored beyond the shelf life limits.
- (3) A return of defective goods requires the prior written consent of the seller. In the case of goods sent in without the consent of the seller, the seller reserves the right to have these returned at the expense of the sender. In the case of returned goods which prove to be "questionable" within the meaning of § 8 AMG, the Seller reserves the right to destroy them and to send a receipt. In the case of shortages, the seller has the choice between subsequent delivery or a corresponding credit note. If it cannot be determined during an

examination of notices of defects that a defect exists, the buyer shall bear the costs of the examination. The warranty does not apply to goods that have been improperly stored or modified by the buyer.

- (4) Insofar as there is a defect in the purchased goods which is notified in good time and which not only insignificantly restricts the value or the usability of the products, the Seller shall be entitled, within the scope of what is legally permissible, to first provide subsequent performance, which shall, at its discretion, consist of rectification of the defect or a replacement delivery.
- (5) If the subsequent performance fails or if the seller informs the buyer that the seller will not provide subsequent performance, the buyer may reduce the purchase price or withdraw from the contract. If the buyer chooses to withdraw from the contract due to a legal or material defect after subsequent performance has failed or has been expressly refused, he shall not be entitled to any additional claim for damages due to the defect.
- (6) Claims based on material defects shall become statute-barred 1 year after delivery of the products, provided that the delivery of defective products does not constitute an intentional breach of duty.
- (7) Products free of defects will only be taken back or exchanged after prior written agreement.

## **§ 7 Liability**

- (1) The Seller's liability for all rights and claims, contractual and non-contractual, arising out of and in connection with these GTC is limited as follows, unless otherwise stated above:
- (2) In the following cases, the Seller shall be liable without limitation in accordance with the statutory provisions:
  - (a) for damages arising from injury to life, body or health which are based on an intentional or negligent breach of duty by the Seller, its legal representatives or its vicarious agents;
  - (b) for other damages based on an intentional or grossly negligent breach of duty by the Seller, its legal representatives or its vicarious agents;
  - (c) if a defect was fraudulently concealed or a guarantee for the condition of the item was assumed;
  - (d) for claims for damages under the Product Liability Act.
- (3) In all other cases, the Seller shall only be liable in the event of slight negligence, including slight negligence on the part of its senior employees and its vicarious agents, insofar as damage is caused by a breach of material contractual obligations (obligations whose fulfilment is a prerequisite for the proper performance of the contract and on whose fulfilment the Buyer regularly relies and may rely), whereby this liability shall be limited to the typical damage that was foreseeable for the Seller at the time the contract was concluded. In all other respects, the Seller's liability is excluded.
- (4) Insofar as the liability of the Seller is excluded or limited, this shall also apply to the personal liability of the employees, workers, staff, representatives and other vicarious agents.
- (5) Claims for damages shall become statute-barred within one year after the buyer has become aware of the occurrence of the damage. This does not apply if the seller can be accused of malice or intent.
- (6) The Seller shall be liable in accordance with the statutory provisions insofar as the Buyer asserts claims for damages based on intent or gross negligence, including intent and gross negligence on the part of its representatives or vicarious agents. Insofar as the Seller is not accused of intentional breach of contract, the liability for damages shall, however, be limited to the foreseeable, usually occurring damage.
- (7) The Seller shall be liable in accordance with the statutory provisions if it culpably breaches a material contractual obligation; in this case, however, the liability for damages shall be limited to the foreseeable, typically occurring damage.
- (8) Liability for culpable injury to life, limb or health remains unaffected; this also applies to mandatory liability under the Product Liability Act and the Medicines Act.
- (9) Unless otherwise stipulated above, liability is excluded.
- (10) Products properly delivered by the Seller may be returned to the Seller, stating the order date, order no., batch no. and expiry date, provided that this is provided for in the applicable version of the Returns Policy. If such goods are not returned in accordance with the respective valid Returns Policy, the Seller shall not assume any liability. The applicable version of the Returns Policy is available at any time upon request from the Seller or our distribution partners.

## **§ 8 Retention of title**

- (1) Pursuant to Section 449 (1) of the German Civil Code (BGB), the seller retains title to the object of sale until payment of all claims to which it is entitled from the business relationship with the buyer (in the case of payment by cheque, until the cheque has been cashed). In the event of conduct by the buyer in breach of the contract, in particular in the event of default in payment, the seller shall be entitled to demand the return of the object of sale. The taking back of the object of sale by the seller does not constitute a withdrawal from the contract unless the seller has expressly declared this in writing. The seizure of the object of sale by the seller shall always constitute a rescission of the contract. After taking back the object of sale, the seller shall be entitled to realise it.
- (2) The buyer is obliged to treat the object of sale with care and to insure it adequately and at replacement value against fire, water and theft damage at his own expense.
- (3) In the event of seizure or other interventions by third parties, the Buyer shall notify the Seller in writing without delay so that the Seller can bring an action pursuant to § 771 ZPO (German Code of Civil Procedure). Insofar as the third party is not in a position to reimburse the Seller for the judicial and extrajudicial costs of an action pursuant to § 771 ZPO, the Buyer shall be liable for the loss incurred by the Seller.
- (4) The buyer shall be entitled to resell the object of sale in the ordinary course of business; however, he hereby assigns to the seller all claims in the amount of the final invoice amount (including VAT) of his claim which accrue to him from the resale against his customers or third parties. The buyer shall remain authorised to collect these claims even after the assignment. This shall not affect the Seller's right to collect the claim itself. However, the seller undertakes not to collect the claims as long as the buyer meets his 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 there is no cessation of payments. In this case, the authorisation to collect shall automatically expire and the seller may demand that the buyer informs him of the assigned claims and their debtors, provides all information required for collection, hands over the associated documents and informs the debtors (third parties) of the assignment.
- (5) The Seller undertakes to release the securities to which it is entitled at the Buyer's request to the extent that the realisable value of its securities exceeds the claims to be secured by more than 10%; the Seller shall be responsible for selecting the securities to be released.

## **§ 9 Preparations Designations**

- (1) Preparations protected by trademark law are marked with ®. They may only be sold in intact containers and outer wrappings.
- (2) Should the Buyer become aware of circumstances that indicate that the Seller's products pose dangers and/or risks (e.g. undesirable side effects or interactions), the Buyer shall immediately pass on the relevant information by e-mail to [customerservice@pharmasgp.com](mailto:customerservice@pharmasgp.com).
- (3) If the Buyer intends to take measures of its own (in particular reporting to the Medicines Commission, medicines monitoring authorities or the Federal Institute for Drugs and Medical Devices or other competent authorities), it shall inform the Seller without delay and await the Seller's instructions, unless the statutory requirements do not permit such awaiting. The Buyer shall further ensure compliance with its statutory notification obligations.

## **§ 10 Resale**

- (1) The Seller's products may only be resold to authorised dispensers and recipients in accordance with the applicable legal provisions (in particular the Medicinal Products Act, the Pharmacy Act, the Pharmacy Operating Regulations, Good Manufacturing & Distribution Practice, etc.). As a matter of principle, the Seller's preparations may only be offered, sold or dispensed in unchanged 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 medicinal products and in so doing have to make deliveries to individual wards.
- (2) The Buyer undertakes not to offer or sell the Seller's products and preparations outside the Federal Republic of Germany. The Buyer further undertakes not to make any sales to customers who have their place of business or residence outside the states of the European Economic Area.
- (3) The prohibition to sell parts from packages individually remains unaffected.

## **§ 11 Data storage**

- (1) In accordance with the usual course of business, the information relating to the order and delivery shall be stored in the Seller's data processing system. With the order, the buyer gives his consent to this.
- (2) The Seller shall be entitled to process data about the Buyer received with regard to or in connection with the business relationship, whether such data originates from the Buyer itself or from third parties, within the meaning of the Federal Data Protection Act.

## **§ 12 Miscellaneous**

- (1) Information on the processing and application possibilities of the seller's products, technical advice and other details are provided to the best of our knowledge, but without obligation and to the exclusion of any liability.
- (2) In the event of a change in the products obtained from the Seller, in particular with regard to their labelling and/or their storage packaging by the Buyer or other third parties, the Seller shall not accept any liability.
- (3) The Buyer is responsible for ensuring that the storage premises for the Seller's products are clean and that the storage temperatures, unless special storage conditions are specified, are not permanently below 15°C or above 25°C and that the relative humidity does not exceed 60%.
- (4) The Buyer shall ensure the traceability of the Products and shall therefore establish and maintain a system which, based on the Buyer's records of code no., quantity, delivery date and batch no./LOT, ensures immediate identification of the recipients of a Product in order to be able to carry out product-related corrective measures as instructed by the Seller or the competent authorities.

## **§ 13 Place of Jurisdiction - Place of Performance**

- (1) If the Buyer is a merchant, a legal entity under public law or a special fund under public law, the place of jurisdiction shall be the Seller's place of business; however, the Seller shall also be entitled to sue the Buyer at the court of the Buyer's place of residence or place of business.
- (2) Unless otherwise agreed, the Seller's place of business shall be the place of performance.
- (3) These GCS and the entire legal relationship between the Seller and the Buyer shall be governed exclusively by the laws of the Federal Republic of Germany applicable between domestic parties. The UN Convention on Contracts for the International Sale of Goods (CISG) shall not apply.

## **§ 14 Severability clause**

Should any provision of these GTCS or other agreements between the Seller and the Buyer be or become invalid or unenforceable in whole or in part, or should a loophole be found therein, the validity of the remaining provisions shall not be affected thereby.