

# GENERAL TERMS AND CONDITIONS OF BUSINESS OF PANINKRET CHEM.-PHARM. WERK GMBH

## I. General

The following general terms and conditions of business apply to commercial business transactions, including with legal entities under (German) public law or special funds under (German) public law. They also apply to private customers, unless this is specifically opposed by legal regulations.

The authoritative basis of this agreement for all sales to be carried out by us (Paninkret Chem.-Pharm. Werk GmbH) will be the following general terms and conditions of business and any individual agreements; these take precedence over any alternative conditions of the contracting party. Any statements to the contrary by the contracting party with reference to his own conditions of business and conditions of purchase are hereby rejected.

## II. Offers and Documentation

1. All offers - including written offers - are non-binding and subject to change without notice, unless the offer already contains a commitment period. All contractual agreements must be made in writing, in electronic form (§ 126a of the German Commercial Code (BGB)) or in text form (§ 126b of the German Commercial Code (BGB)).
2. Collateral agreements, supplements, modifications and/or other deviations from these terms and conditions of business are only valid with our consent.
3. We shall not be bound by any information in offers or order confirmations by us based on a manifest error (for example typographical or arithmetical errors). Rather, the obvious intention will apply.
4. With respect to any guarantee concerning the quality or durability of goods and for information relating thereto, only express agreements concerning a certain quality or a certain durability of the item purchased may be considered to be a guarantee.

## III. Prices, Conditions of Payment, Default and Offsetting

1. All prices apply ex-sales branch and exclude the applicable Value Added Tax ex-warehouse (in accordance with International Commercial Terms – Incoterms: EXW) free on truck/rail, unless other agreements have been made.
2. Any increase in Value Added Tax will be charged and passed on to the contracting party immediately.
3. Unless otherwise agreed, invoices will be due and payable to us immediately following delivery or provision of the goods by us. All payments must be made to us by the contracting party without any deduction (discount, rebate) within 10 days at the latest following receipt of invoice. After expiration of the 10-day deadline, the contracting party shall be in default, provided he is not entitled to refuse payment under the terms of § 320 of the German Commercial Code (BGB). Following expiration of this deadline the consumer shall also be in default insofar as he is responsible for the non-payment. If the contracting party has defaulted on payment, we shall be entitled to charge statutory interest on arrears. We reserve the right to claim further damages caused by such default. For his part, the contracting party may provide proof of lower damages, which will then be authoritative.

4. Cheques and bills of exchange will only be accepted as conditional payment; the resulting costs and expenses will be charged to the party liable for payment.
5. If we become aware of circumstances that call the creditworthiness of the contracting party into question (for example failure to honour cheques or agreed payments), we shall be entitled to require full payment of the entire residual debt, even if we have already accepted cheques. In such cases we shall also be entitled to require advance payments or security deposits. Should the contracting party cease payments once and for all and/or if insolvency proceedings are applied for in respect of his assets, we shall also be entitled to withdraw from the unfulfilled part of the contract.
6. The contracting party - also the consumer - may only offset payments against undisputed or legally valid counter-claims.

## IV. Delivery Periods, Place of Delivery and Transfer of Risk

1. Adherence to delivery times presumes compliance with any obligations on the part of the contracting party, in particular any agreed obligations concerning instalments.
2. We accept no liability for delivery delays due to force majeure or other unavoidable circumstances for which we are not responsible, e.g. industrial action. The delivery deadlines will be extended by the length of the period of delay. The delivery deadlines will apply subject to correct and punctual supply to us, unless a binding delivery deadline has been expressly assured. If delivery or other performance is delayed due to circumstances for which we are responsible, our liability will be that prescribed by law. In cases of minor negligence, liability will be limited to foreseeable damages typical for this type of contract.
3. Partial deliveries are permissible if they are reasonable for the contracting party.
4. Deliveries will be made according to the regulations governing International Commercial Terms - Incoterms – in other words according to the regulations currently in force.
5. If delivery free to place of delivery has been agreed, the unloading will be carried out by us or by a freight forwarder commissioned by us. In the case of delivery to the place of delivery, it will be assumed that there is sufficient access for trucks and trailers/tractor-trailer units. The time of delivery must be agreed. Waiting times or outage times caused by the contracting party shall be charged for.
6. In the case of all deliveries, the risk concerning the goods passes directly to the purchaser upon transfer to the third party, in particular the carrier.
7. If the contracting party defaults upon acceptance of the object purchased, the risk transfers to him at the moment of delay in acceptance.

## V. Reservation of Title

1. We shall retain ownership to and right of disposal of the items sold for any legal reason whatsoever until we have received all contractually agreed payments. If the contracting party resells the item purchased, he will be required to inform the buyer that we still retain ownership of it. Further, the contracting party may not agree to any prohibition of assignment with his buyer. If our rights are

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infringed (e.g. by means of distraints), the contracting party must inform us of this in writing immediately.

2. If delivery is made to business premises operated by the contracting party, the items purchased may be resold within the bounds of proper business conduct. In this case the claims of the contracting party against the buyer from such a sale will be transferred to us. If the items are resold on credit, the contracting party must retain ownership of the goods sold to the buyer. The contracting party hereby transfers to us all rights and claims from this retention of ownership in respect of such buyers.
3. If items for sale are firmly attached to another object or are mixed, blended or processed with another object, the contracting party shall transfer to us his claims or rights of co-ownership to the new object to us up to the amount of our claim, should any claims or co-ownership result from the combination or processing. The contracting party will perform any processing or machining work on the items at no cost to us.
4. In the case of any acts or other behaviour on the part of the contracting party which are in breach of the contract, in particular in the case of default of payment, we shall be entitled to take back the goods as delivered after sending the contracting party a reminder and declaring our withdrawal from the contract, and the contracting party will be required to return the goods. If the contracting party fulfils the contract, we will be obliged to return the items.

### **VI. Material Defects**

1. The contracting party must notify us immediately and in writing within 7 (seven) days following delivery of any visible defects to, shortages of or incorrect shipments of the items purchased before they are processed.
2. We shall not be liable to the contracting party for any material defects which do not affect or do not significantly affect the value or the serviceability of the item sold.
3. If the contracting party is obliged to make good a claim on behalf of his buyer due to a defect in the item sold in case of supplier's recourse within the meaning of § 478 of the German Commercial Code (BGB), he must inform us of this immediately and, as far as possible, select the least expensive method of correcting the defect.
4. If products by other manufactures must (also) be used, any statements made in their product documentation concerning special performance, properties or durability shall not become an agreed property of the products sold by us.
5. The exemption from liability mentioned in Section VI. No. 2 above with the shortened deadline for submitting claims due to defects shall not apply where liability is prescribed by law, e.g. where the quality of the goods has been guaranteed, where a defect has been fraudulently concealed, in the case of liability for damage resulting from injury to life, body or health due to wilful or negligent breach of duty on our part or on the part of our agents or in cases of liability for any other damage due to wilful or negligent breach of duty on our part or on the part of our agents.

### **VII. Liability**

1. We will be liable for damage which has not occurred to the item purchased for any reason whatsoever in the case of:
  - wilful or grossly negligent breach of duty, not however for any negligent breach of duty by us or our agents; in the case of injury to life, body or health, even if this is due to negligent breach of duty;
  - defects which we have fraudulently concealed;
  - the assumption of a guarantee for the quality of the item purchased (including in the sense of a guaranteed absence of a defect);
  - the breach of fundamental contractual obligations; in the case of simple negligence (but not gross negligence or criminal intent), the compensation to which the contracting party is entitled will be limited to foreseeable damage customary in contracts, provided there is no liability for injury to life, body or health;
  - liability within the meaning of the German Product Liability Act (Produkthaftungsgesetz).
2. If the contracting party is entitled to compensation for damages as defined in this Section ("VII Liability"), this will lapse on expiration of the statutory period of limitation. Claims for damages within the meaning of the German Product Liability Act (Produkthaftungsgesetz) will be subject to and governed by the period of limitation referred to in this Act.

### **VIII. Applicable Law and Legal Venue**

1. These Terms and Conditions are governed by the laws of the Federal Republic of Germany. The language used for negotiation will be German.
2. Our legal relations with contracting parties abroad will be governed by the laws of the Federal Republic of Germany.
3. The legal venue for all claims arising from the commercial relationship including claims related to bills of exchange, cheques or tortious claims, will be the registered office of our place of business, provided either both contracting parties are merchants ("Kaufleute") within the meaning of the German Commercial Code (HGB), or the contracting party is a legal entity under (German) public law or special funds under (German) public law.

### **IX. Validity Clause**

Should any one of the above provisions in these terms and conditions of business be or become invalid, this will not affect the validity of the other provisions and agreements. In this case, a replacement provision that comes as close as possible to the intention of the contracting parties will then apply; alternatively, the relevant legal provisions will apply.