

# General Terms and Conditions of Sale ("GTC")

## 1. General Provisions

These General Terms and Conditions Of Sale ("GTC") of **PharmaZell GmbH** (PharmaZell) supersede all our previous GTC. Our GTC in their respectively valid version apply to the execution of future orders, even without reference to them. Departures from our GTC shall be valid only with our confirmation, subject to proof to the contrary; such departures will have to be proofed by a written contract or our written confirmation. Standardized preprinted purchasing terms and conditions, specifically any provisions deviating from our terms and conditions, are deemed invalid and unenforceable by us, even if we do not expressly object to them.

## 2. Offers and Prices

- (1) Our offers (incl. technical/ pharmaceutical documentation) are subject to change. The purchase agreement shall only be deemed concluded upon Buyer's receipt of our order confirmation or the execution of the order. Unless otherwise stated in the order, we shall be entitled to accept the contractual offer within 15 (fifteen) calendar days of its receipt by us.
- (2) After receipt of our order confirmation by the Buyer, the Purchase Order shall be non-revocable.
- (3) Each partial delivery shall be regarded as an independent performance. Any complaints relating to a partial delivery shall have no impact on the execution of the remaining portion of the order.
- (4) Unless otherwise defined, all prices offered by PharmaZell are denoted in EUR and exclude (i) any taxes, fees or duties and (ii) any transportation or insurance costs unless otherwise agreed upon or ruled by applicable Incoterms 2020 (or subsequent) provisions.
- (5) PharmaZell may adjust prices for good reasons for Product and Services which are to be delivered more than three (3) months after the confirmation order by giving written notification to the Buyer not later than forty-five (45) days calendar days prior to the agreed delivery date. In case of an increase in price, Buyer shall have the right to cancel any outstanding Purchase Order at no cost to Buyer by written notice to PharmaZell within ten (10) calendar days of receipt of such price increase notice by Buyer.
- (7) Buyer acknowledges that statements or forecasts made by PharmaZell in Orders or otherwise as to the availability of certain Products, Services, or production capacities are non-binding estimates and may be altered subsequently as a result of capacity limitations.

## 3. Delivery

- (1) The delivery period shall be agreed individually or stated in our order confirmation.
- (2) If we are unable to meet binding delivery deadlines for reasons for which we are not responsible, we shall inform the Buyer without delay and notify him of the expected new delivery deadline. If the delivery is also not possible within the new delivery period, we shall be entitled to withdraw from the contract in whole or in part; we shall immediately refund any consideration already paid by the Buyer. Such a case shall be deemed to be in particular the failure of our supplier to deliver on time, if we have concluded a congruent hedging transaction, neither we nor our supplier are at fault or we are not obliged to procure in the individual case.
- (3) The occurrence of our default in delivery shall be determined in accordance with the statutory provisions. In any case, however, a reminder by the Buyer shall be required.
- (4) The minimum invoice value is set at EUR 2'500 per order. Additionally, a repacking surcharge for all non-standard pack sizes of at least EUR 1'000 will be applied.
- (5) The goods will be delivered EXW (Incoterms 2020 or any subsequent version) unless otherwise stated in our offer. EXW is also the place of performance for the delivery and any subsequent performance.  
At the Buyer's request and expense, the goods shall be shipped to another destination than the place of performance (sale by delivery to a place other than the place of performance). In this case, unless otherwise agreed, shipping route and shipping type shall be determined by us.
- (6) The risk of accidental loss, damage or destruction of the delivery item shall be ruled by Incoterms 2020 (or any subsequent version) provisions.
- (7) Any Order is subject to a volume tolerance of plus/minus ten (10) percent of the volume listed in the Order Confirmation. This is due to the batch volume variations inherent to production of drug substances.
- (8) If the Buyer is in default, fails to cooperate or delays our delivery for other reasons for which the Buyer is responsible, we shall be entitled to claim compensation for the resulting damage including additional expenses (e.g. storage costs). This applies specifically also to Orders where the Buyer assigns the forwarder/shipping company. For this purpose, we shall charge a lump sum fee of (1) percent of the invoice value up to a maximum of five (5) percent of the invoice value per started calendar week, starting five (5) calendar days after the delivery deadline or - in the absence of a delivery deadline - five (5) calendar days after the notification that the goods are ready for shipment. The proof of a higher damage and our statutory claims (in particular compensation for additional expenses, reasonable compensation, and termination) shall remain unaffected; however, the lump sum shall be offset against further monetary claims. The Buyer shall be entitled to prove that we have incurred no damage at all or only significantly less damage than the aforementioned lump sum.

## 4. Force Majeure, Contractual Obstacles

Events of force majeure, including but not limited to (civil) war, armed conflict, labor dispute (strike, lockout), terrorism, piracy, (traffic) blockade, epidemics and pandemics (including the Covid-19 pandemic), raw material and energy shortages, operational and traffic disruptions and measures by public authorities (e.g. export and import bans or official measures and prohibitions), which also may adversely affect our suppliers/ supply-chain and which are unforeseeable and cannot be influenced by us, constitute a release from performing our contractual duty for the duration of the disruption and within the scope of its impact. In such a case, we are entitled to partially or completely rescind the contract without paying damages.

## 5. Payment

- (1) Unless otherwise agreed, our current prices at the time of conclusion of the contract shall apply, EXW, plus statutory VAT, and payments shall be made and is due within thirty (30) days from the date of invoice and the delivery (or - if agreed on - the acceptance) of the goods. In certain cases, we reserve the right to execute deliveries against cash, cash in advance or cash on delivery only; such a reservation will have to be declared with the order confirmation.

- (2) After the payment period ends (payments are deemed to have been made when the invoice amount is credited to ParmaZell's bank account), the Buyer shall be in default of payment without reminder. The default interest rate shall be at nine percentage (9 %) p.a. above the valid basic rate of interest. Pharmazell reserves the right to additional damage claims caused by the delay.
- (3) PharmaZell has the right to cancel or delay delivery under any outstanding Purchase Order, if Buyer fails to pay any invoice when due.
- (4) If the Buyer defaults on their payment, we are entitled to demand immediate payment of all existing claims, regardless of their maturity. The same shall apply if a substantial deterioration in the Buyer's asset situation becomes known and it becomes apparent that our claim to the purchase price is jeopardized by the Buyer's inability to pay. Furthermore, in this case we shall be entitled to refuse our part of the performance in accordance with the statutory provisions and - if necessary after setting a deadline - to withdraw from the contract (section 321 of the German Civil Code). In the case of contracts for the manufacture of custom-made products, we may declare withdrawal immediately; the statutory provisions on the dispensability of setting a deadline shall remain unaffected.
- (5) Setting off and exercising the right to refuse performance and suspend the release of goods or retain goods from the same legal transaction against our claims are only allowed with other undisputed or legally established counterclaims. Deductions of any kind upon settlement of our invoices can only be permitted, if they have been approved by us with a written credit notice or if they are expressly agreed upon in writing. In the event of defects, the Buyer's counter rights shall remain unaffected.

## **6. Materials Supplied by Buyer**

- (1) If and to the extent active pharmaceutical ingredients or raw materials for the manufacturing of the products or for the rendering of the Services are to be supplied by Buyer, Buyer shall at all times ensure that such consigned materials are made available to PharmaZell in sufficient quantities, in due time and the agreed (at least) good quality.
- (2) PharmaZell shall not be liable to Buyer for any yield loss or damage to such consigned materials unless caused by PharmaZell's willful misconduct or gross negligence.
- (3) Buyer shall (i) bear the risk of transportation to and the storage by PharmaZell of any Buyer supplied substances or materials, and (ii) be responsible for all freight, duty, taxes, insurance and any other costs and fees associated with any Buyer supplies substances and materials.

## **7. Retention of Title**

- (1) We retain title to all goods delivered by us until (i) complete payment of our entire (current and future) claims from the purchase contract or the ongoing business relationship (primary and secondary claims) has been made and (ii) any balance claim against the buyer from a current account relationship has been settled.
- (2) The buyer shall be entitled to dispose of the merchandise owned by us only within the framework of best business practices. The Buyer is not entitled to garnish, assign and transfer title to serve as collateral.
- (3) With respect to processing our delivered item, the retention of title extends to newly created merchandise. In the event of becoming commingled with any products that are not owned by PharmaZell, PharmaZell shall assert co-ownership (Miteigentum) of the new, resulting product under sections 947/948 of the German Civil Code in proportion to the invoiced values of the processed, mixed or combined goods. Otherwise, this No. 6 shall apply to the resulting product as to the goods delivered under retention of title.
- (4) All claims from the sale of goods subject to retention of title from our deliveries to the Buyer, including bills of exchange and checks, are hereby assigned to us by the Buyer to secure our claims from the retention of title. We accept the assignment. Upon our request, the Buyer shall provide us with the necessary information about the stock of goods owned by us and the number of claims assigned to us and notifies its customers of the assignment. If the value of the assigned claims exceeds our total claims by more than 10%, then - at the request of the Buyer - we shall decide to either release or cause the release of collateral.
- (5) The Buyer is required to buy appropriate insurance coverage for our deliveries subject to retention of title at their own expense against insurable damages (fire, water damage, theft, etc.). The Buyer assigns their insurance policy claims to us in advance.
- (6) If payment is suspended, bankruptcy proceedings have been initiated, a check or bill of exchange bounces, or a garnishment occurs, the right to resell or process the goods and to collect outstanding accounts shall expire. Any assigned account received thereafter shall be immediately collected by the Buyer in an escrow account (direct debit authorization). Furthermore, in such a case, we shall be entitled to withdraw from the contract in accordance with the statutory provisions. If the Buyer does not pay the purchase price due, we may only assert these rights if we have previously set the Buyer a reasonable deadline for payment without success or if setting such a deadline is dispensable under the statutory provisions.
- (7) Any acceptance of returned goods shall take place by way of security without withdrawal from the contract; this shall also apply if partial payments have been permitted.
- (8) The Buyer must notify us immediately of garnishments of retained goods by third parties or of any other impairment.

## **8. Warranty**

- (1) Our warranty is limited entirely to our delivered goods being in compliance with our specifications at the time of the risk allocation from us to the Buyer which are the subject of the individual contract or which were publicly announced by us (in particular in catalogs or on our internet homepage) at the time of the conclusion of the contract. We do not provide any warranty for properties of our goods that are not covered by our specifications. All the information, advice and data provided by us is to the best of our knowledge and based on our research work and experience but is nonbinding and excludes any liability. It does not release the Buyer from performing its own tests and inspections.
- (2) The statutory provisions shall apply to the Buyer's rights in the event of material defects and defects of title (including wrong delivery and short delivery as well as improper assembly or defective assembly instructions), unless otherwise stipulated below. In all cases, the special statutory provisions shall remain unaffected in the case of final delivery of the unprocessed goods to a consumer, even if the consumer has processed them further (supplier recourse pursuant to section 478 of the German Code Civil). Claims from supplier recourse are excluded if the defective goods have been further processed by the purchaser or another entrepreneur, e.g. by incorporation into another product.
- (3) We shall not be liable for defects of which the Buyer is aware at the time of conclusion of the contract or is not aware due to gross negligence (section 442 of the German Civil Code). Furthermore, the Buyer's claims for defects shall require that he has complied with his statutory obligations to inspect the goods and to give notice of defects (sections 377, 381 of the German Commercial Code). In the case of further processing of the material, an inspection must in any case be carried out immediately before processing.  
If a defect becomes apparent upon delivery, inspection or later moment in time, we must be notified thereof in writing without delay. In any case, obvious defects must be reported within 10 days. If the purchaser fails to carry out the proper inspection and/or to give notice of

defects, our liability for the defect which was not notified or not notified in time or not notified properly shall be excluded in accordance with the statutory provisions.

- (4) If the delivered product / item is defective, we may choose whether we remedy the defect or deliver an item free of defects. Our right to refuse subsequent delivery / remedy of the defect under the statutory conditions shall remain unaffected.
- (5) The Buyer shall give us the time and opportunity required for the subsequent delivery owed, in particular to hand over the goods complained about for inspection purposes. In the event of a replacement delivery, the Buyer shall return the defective item to us in accordance with the statutory provisions. Subsequent delivery shall neither include the removal of the defective item nor its re-installation if we were not originally obliged to install it.
- (6) We shall bear or reimburse the expenses necessary for the purpose of inspection and subsequent performance, in particular transport, travel, labor and material costs and, if applicable, removal and installation costs, in accordance with the statutory provisions if a defect is actually present. Otherwise, we shall be entitled to demand reimbursement from the Buyer of the costs incurred as a result of the unjustified request to remedy the defect (in particular inspection and transport costs), unless the lack of defectiveness was not apparent to the Buyer.
- (7) Claims of the Buyer for damages or reimbursement of wasted expenses shall also exist in the case of defects only in accordance with No. 8 and shall otherwise be excluded.
- (8) To the extent that PharmaZell is liable to the Buyer for any product defects that may exist, the related claims of the Buyer shall expire after one (1) year. The commencement of the statutory limitation period shall be governed by law.

## **9. Liability**

- (1) All claims for compensatory damages brought by the Buyer, regardless of their legal foundation, shall be excluded, if based on simple negligent breach of our contractual or statutory duties, but we shall be liable subject to statutory limitations of liability (e.g. care in own affairs; insignificant breach of duty) only (a) for damages resulting from injury to life, body or health, or (b) for damages resulting from the breach of an essential contractual obligation (obligation, the fulfillment of which enables the proper execution of the contract in the first place and on the compliance with which the contractual partner regularly relies and may rely); in this case, however, our liability shall be limited to the compensation of the foreseeable, typically occurring damage.
- (2) The limitations of liability resulting from para. 1 shall also apply to third parties as well as in the event of breaches of duty by persons (also in their favor) whose fault we are responsible for according to statutory provisions. They shall not apply insofar as a defect has been fraudulently concealed or a guarantee for the quality of the goods has been assumed and for claims of the Buyer under the Product Liability Act.
- (3) All Buyers' claims for compensatory damages on the grounds of default or frustration are limited to the amount of the relevant purchase price of the delayed or undelivered part of our delivery. If such claim has arisen from gross negligence, our liability shall be restricted to the predictable and typical damage resulting from a breach of duty. We do not assume any liability for returned goods without our prior written consent.
- (4) The Buyer may only withdraw from the contract due to a breach of duty that does not consist of a defect if we are responsible for the breach of duty. A free right of termination on the part of the Buyer (in particular pursuant to §§ 650, 648 BGB) shall be excluded. In all other respects, the statutory requirements and legal consequences shall apply.

## **10. Assignment of Claims**

The rights from a purchase agreement the Buyer entered into with us may not be transferred or assigned to third parties without our prior written approval.

The Seller reserves the right to assign their claims for refinancing purposes without the prior consent of the Buyer. All rights to assigned claims transfer to the assignee.

## **11. Place of Performance and Jurisdiction**

The place of performance for the delivery shall be the location of the delivery factory or warehouse. The place of performance for the Buyer shall be Raubling. German law shall apply. The UN Convention on Contracts for the International Sale of Goods is excluded.

If the buyer is a merchant, the place of jurisdiction shall be Munich - for disputes also arising from or in connection with bills of exchange and checks - or alternatively, we may decide that the court of jurisdiction shall be at the legal business domicile of the Buyer.

## **12. Severability Clause**

If any provision or provisions of this agreement shall be held to be completely or partially invalid, unenforceable or in conflict with the law of any jurisdiction, the validity, legality and enforceability of the remaining provisions or the remaining parts of such provisions shall not in any way be affected or impaired thereby.

Please visit our website [www.pharmazell.com](http://www.pharmazell.com) for other language and the electronic versions of these terms.

**PharmaZell GmbH, Raubling, May 1<sup>st</sup>, 2022**