

## General Terms and Conditions of Purchasing

### (“General Terms of Purchasing” )

of Dr. Pflieger Arzneimittel GmbH, Dr.- Robert-Pflieger-Str.-12, 96052 Bamberg  
(“Purchaser”)

These General Terms of Purchasing shall apply in relations between the Purchaser and the Seller except where there are individual contractual arrangements between the Parties (i.e. individually negotiated agreements).

#### Sec. 1 Scope

- (1) These General Terms of Purchasing apply exclusively to all business relations between the negotiating party or the contracting party (in each case: the **“Supplier”**) and the Purchaser.
- (2) Any terms and conditions of the Supplier which deviate herefrom shall only be binding if the Purchaser consents to them in writing. These General Terms of Purchasing apply even where the Purchaser accepts the deliverables by the Supplier with knowledge of the Supplier’s deviating terms.
- (3) Any individual agreements between the Supplier and the Purchaser shall take precedence over these General Terms of Purchasing. With respect to proof of the contents of such individual agreements, the written agreement or the Purchaser’s confirmation shall govern.
- (4) All legally relevant declarations and notices, such as the setting of grace periods, dunning notices, declarations of rescission or termination on the part of the Supplier shall only be valid if given in written form.
- (5) These General Terms of Purchasing shall apply exclusively to entrepreneurs within the meaning of Sec. 14 of the German Civil Code [German acronym: BGB], legal entities under public law or public-law special funds.
- (6) These General Terms of Purchasing shall also apply in respect of future transactions with the Supplier even if not expressly again agreed.

- (7) To the extent that, in light of the nature of the Supplier's deliverable or of a corresponding agreement, the deliverable of the Supplier is subject to formal acceptance, such formal acceptance shall take the place of delivery in these General Terms of Purchasing.

## **Sec. 2**

### **Contract formation, offers, cost estimates**

- (1) The Supplier is required to confirm every order by the Purchaser in writing within five (5) working days from receipt of the order, indicating a binding price, time of delivery and quoting our order number. Where such confirmation is not given within the above-referenced period, the Purchaser shall no longer be bound by its order.
- (2) The Supplier is deemed to prepare all offers and cost estimates at its own cost and expense.
- (3) By accepting an order, the Supplier is deemed to confirm that it has acknowledged the Purchaser's General Terms of Purchasing.

## **Sec. 3**

### **Prices, invoices and payments**

- (1) All of the prices referred to in the order are quoted in Euro, unless otherwise expressly agreed.
- (2) The price shown in the Purchaser's order is binding and constitutes a fixed price. It includes all of the goods and services on the part of the Supplier, including, in particular, packaging, shipping, insurance premiums, customs duties and any excise taxes.
- (3) Prices must be stated net of statutory VAT. Statutory VAT shall be shown separately.
- (4) When invoices are issued, the details from the order must be repeated. Any invoice may relate to goods and services from one or more orders. The Purchaser shall bear no responsibility for delays as a result of a failure to comply with these requirements.

- (5) Invoices are handled and payments executed by electronic funds transfer and must be forwarded by email in PDF format to the following email address: [invoice@dr-pflieger.de](mailto:invoice@dr-pflieger.de). The Supplier shall refrain from separately forwarding the original thereof.
- (6) Payment shall be made 30 days from the date of due and proper delivery to the place of performance and the issuance of an invoice. Where payment is made within 14 days, the Purchaser shall be entitled to a cash discount of three percent (3%). The Purchaser shall not be liable for any interest on payments made after the due date.

#### **Sec. 4** **Delivery and passage of risk**

- (1) As a general principle, deliveries are DDP or DAP (Incoterm 2010). The place of performance for goods and services in respect of which there is a formal acceptance procedure shall, as a general principle, be the registered office of the Purchaser. The risk shall pass at such time as formal acceptance is acknowledged.
- (2) The agreed deadline for delivery is a binding date.
- (3) The Supplier shall promptly inform the Purchaser in writing if it becomes discernible to the Supplier that it will not be able to meet the deadline for the deliverable.
- (4) Where the Supplier exceeds the agreed deadline, the Purchaser shall, in addition, have a claim for a penalty equal to 0.3% of the net order value, per day, up to a maximum of 5% of the net order value, except where the Supplier does not bear fault for the failure to meet the deadline. The Purchaser shall retain its claim to a penalty even where it does not reserve the right to claim the penalty when accepting the Supplier's performance.
- (5) The Supplier shall notify the Purchaser of any delivery of the goods at least 48 hours in advance, to the following email address: [avis@dr-pflieger.de](mailto:avis@dr-pflieger.de)

#### **Sec. 5** **Packaging**

- (1) The Supplier shall package goods for delivery such that transport damage is avoided. The packaging material used must be environmentally friendly and only the necessary extent of packaging material may be used. Title to the packaging shall pass to the Purchaser. Upon request of the Purchaser, the Supplier shall recover the packaging or the Purchaser shall dispose of the packaging at the Supplier's cost and expense.
- (2) The type and batch of goods must be fully compliant when delivered, and the goods must be delivered on clean, as-new Euro palettes. In respect of the palette quality which the Supplier shall furnish, we would refer to the following internet address:  
<http://www.dr-pfleger.de/download/dr-pfleger.de-Europalettenqualitaet.pdf>

#### **Sec. 6**

##### **Reservation of title, set-off and rights of retention**

- (1) The Supplier shall have no retention of title. Title to the delivered goods shall pass to the Purchaser at such time as the goods are handed over to it. The Parties hereby exclude any right on the part of the Supplier to make agreements in respect of any simple, extended or prolonged retention of title. In all cases, the Purchaser shall be entitled, without any further notice, and in particular without any need for authorisation or advance notice, to process the delivered goods or dispose of them in any other way.
- (2) Set-off and the assertion of rights of retention shall only be permitted if the Supplier's counterclaim is undisputed or has been adjudicated by *res judicata* judgement. The right to assert the defence of non-performance shall remain unaffected hereby.

#### **Sec. 7**

##### **Warranty, liability and defects of performance**

- (1) The Supplier shall furnish its goods and services in a manner free of substantive defects and defects of title and, unless the Parties have made an agreement as to the quality of the goods, in accordance with the provisions of law applicable in each case to the Supplier and to the Purchaser and in line with the current state of the art and technology.
- (2) As a general principle, the legal rules regarding defective goods and services shall apply.

- (3) The place of performance for subsequent performance is the location of the item of property. Supplementary performance shall include any disassembly and any transport from the Purchaser's location as well as installation of the replacement goods.
- (4) The Purchaser shall also be entitled to remedy the defect itself at the cost and expense of the Supplier where the Supplier is in default or where it is unreasonable to expect the Purchaser to request supplementary performance by the Supplier. The Purchaser may demand an advance from the Supplier for its necessary expenses in remedying the defect.
- (5) The limitation period for claims of the Purchaser for defects shall be 36 months from the date of passage of the risk, unless a longer limitation period is provided by law. For periods between the Purchaser's Notice of Defects and the Supplier's remediation of the defect, the limitation period shall be suspended.
- (6) The Purchaser's further claims shall remain unaffected by the foregoing.

**Sec. 8**  
**Incoming goods inspection**

- (1) The Purchaser shall be liable to perform an incoming goods inspection only in respect of obvious defects, completeness and identity of the goods delivered. The Purchaser shall report such defects to the Supplier within 20 days of delivery and shall report any other defects to the Supplier within 20 days of discovery. Any such Notice of Defects within such period shall be deemed timely. A Notice of Defects does not in any case lead to any restriction in respect of the Purchaser's rights.
- (2) In the case of goods and services subject to formal acceptance, no duty to perform an incoming goods inspection shall apply.

**Sec. 9**  
**Documentation, confidentiality**

- (1) The Purchaser reserves all proprietary rights and copyrights to all documents provided in the course of the business relationship, regardless of the form thereof. The Supplier may only use such documents for purposes of the Parties' business relations. They may not be disclosed to third parties without the written consent of the Purchaser. Following termination of the business relationship, or as soon as the documents are no longer needed, they must be returned to the Purchaser unsolicited or destroyed with its consent.
- (2) The Supplier shall preserve confidentiality regarding all business, operational or technical matters coming to its knowledge in connection with the Parties' business relationship, even beyond the end of such business relationship, provided that such information has not become publicly known or the Purchaser has waived the confidentiality in writing. These duties of confidentiality are unlimited in time.
- (3) The Supplier may only indicate the business relationship between the Parties where the Purchaser has given its written consent thereto.

#### **Sec. 10 Licenses**

- (1) The Supplier hereby grants the Purchaser the exclusive right, unlimited in time, to publish, distribute, duplicate, process and otherwise use all ideas, concepts, designs and schemes furnished by the Supplier and commissioned by the Purchaser. The license rights granted above shall cover all types of use. The grant of rights under this provision also expressly includes the right to transfer the license onward to third parties.
- (4) The price paid in each case by the Purchaser shall be deemed full and final settlement for the foregoing grant of rights.

#### **Sec. 11 Product liability**

- (1) The Supplier shall indemnify and hold the Purchaser harmless against third party claims for damages, costs, expenses and other disadvantages arising out of product defects, provided that the origin thereof occurred within its scope of authority and organisation and the Supplier itself bears liability in relation to external parties.

- (2) To the extent of this duty of indemnification, the Supplier shall also reimburse the Purchaser for any expenses it incurs and shall reimburse it for losses arising out of any product defect or any market measure in connection with a product defect. Such market measures include, in particular, recalls and warnings. So far as is possible and reasonable, the Purchaser shall inform the Supplier regarding the substance and scope of such market measures and afford it the opportunity to comment thereon within five working days.
- (3) The Supplier hereby undertakes to maintain a policy of business liability and product liability insurance with a sufficient sum assured. Upon request of the Purchaser, the Supplier shall promptly furnish proof of the existence the aforementioned insurance cover in writing.
- (4) Any further claims the Purchaser may have shall be unaffected by the foregoing.

#### **Sec. 12** **Jurisdiction and venue, choice of law**

- (1) The entirety of the legal relations between the Supplier and the Purchaser shall be governed by the law of the Federal Republic of Germany, excluding application of the United Nations Convention on the International Sale of Goods and any other (international) choice-of-law rules.
- (2) With respect to all actions, jurisdiction and venue shall be vested in the courts of Bamberg. The Purchaser shall also be entitled in its reasonable discretion to sue the Supplier at the Supplier's general place of jurisdiction.

#### **Sec. 13** **Severability clause**

In the event that any term of these General Terms of Purchasing or other agreements should be or become invalid or unenforceable in whole or in part or in the event that any contractual gap should be detected therein, the validity of the remaining terms hereof shall not be affected thereby.