

**General Purchasing Terms and Conditions for Goods and Services (Indirect Procurement)**  
(Version: 12.08.2014)

**1. Conclusion of Contract**

- 1.1 These General Purchasing Terms and Conditions shall apply exclusively for all orders, commissions and agreements (together „orders“) of **PHOENIX Pharmahandel GmbH & Co KG** and **PHOENIX Pharma-Einkauf GmbH** in the sector of Indirect Procurement. Any other terms and conditions proposed by you shall only apply upon our explicit written consent.
- 1.2 We are entitled to modify these General Terms and Conditions. Any modifications hereto shall become effective from the date of their validity unless you raise an objection to the modification within a period of 6 weeks following our written notification of modification. We shall inform you of this consequence upon notice of modification.
- 1.3 Any future verbal ancillary agreements need to be in written form to be legally binding, unless they are made by individual agreement. This also applies to any change or cancellation of this written form requirement.

**2. Prices, Delivery, Packaging**

- 2.1 The specified prices are net prices exclusive of VAT. Delivery shall be made free of charge including packaging to the delivery address that is specified by us. Any necessary export or import licenses, all necessary customs formalities for the export of the goods and any other official permits must be resolved or procured by you at your own cost. In case delivery should not be made free of charge to the delivery address, due to separate agreement, you must select the way of transportation that is most cost-efficient for us.
- 2.2 Only written orders shall be binding, any changes and amendments have to be in writing. Any order number given by us and the order date are to be specified on the delivery note, the invoice and all other relevant documents. Orders have to be confirmed in writing. A delivery notice, containing the data of our order and the shipping company, must be sent to us for each delivery resulting from such orders. In case the order confirmation does not reach us within 14 days of order we are entitled to cancel the order without granting you any claims for damages.
- 2.3 Each delivery shall be accompanied by delivery notes according to section 2.2.
- 2.4 Goods shall be packed in a way as to avoid any transportation damage. Packaging materials shall be used to such extent necessary to fulfill such purpose. Only environmentally-friendly and recyclable packaging materials may be used. In the case of using reusable packaging we shall only be obliged to return this to you if you assume the costs of returning the packaging.

**3. Payment**

Payment will be made within 30 days net or within 14 days with a deduction of 3 % discount – each after the goods have been received in their entirety and in accordance with the contract and after receipt of a correspondingly verifiable invoice. Such payment term shall not start prior to the agreed delivery date and, if applicable, prior to acceptance of the goods.

**4. Delivery Dates, Delayed Delivery**

- 4.1 The delivery period starts from the order date. As soon as you become aware that you will be unable to meet an agreed delivery date in full or in part, you shall be required to inform us thereof without undue delay by stating the reasons for the inability and the expected duration of the delay. Partial deliveries shall only be permissible if we have agreed to these in writing.
- 4.2 In case of delayed delivery we are entitled to claim statutory rights, in particular claims for compensation for damages due to delayed delivery. This applies respectively for services.
- 4.3 The risk relating to the delivery shall be passed to us once the delivery has been handed over to us properly at the address specified by us.

**5. Warranty (“Gewährleistung”) and Liability**

- 5.1 You shall warrant that the delivery item is without defects at the time of delivery, that it corresponds to the agreed specifications in the delivery location and that it corresponds with all laws, protection and accident prevention regulations at the location of delivery as well as all usual technical standards (e.g. DIN, VDE, VDI) at the place of delivery. This warranty shall also extend to such parts manufactured by sub-contractors.

- 5.2 In case of defects we are entitled to claim statutory warranty rights, whereby warranty periods start again for such parts that have been replaced. § 634 No. 2 BGB (German Civil Code) remains unaffected. We shall not be deemed having accepted the goods as free from defects just by acceptance and payment.
- 5.3 The statutory warranty periods apply.
- 5.4 You are liable for ensuring that the use of the delivered goods does not infringe any intellectual property rights, copyrights and related protection rights, corresponding protection law registrations applications for protected privileges as well as business and trade secrets of third parties. This applies to any of the above regulations which apply in your home country as well as in all European countries.
- 5.5 If your agents and/or vicarious agents operate at our location or one of our customers' location, you have to admonish all such agents to observe the accident prevention provisions and VDI provisions as well as our operation manuals. You are liable for any damages that are caused by you or any of your agents with intent or negligence in our location or at one of our customers' location, unless in the case of § 831 BGB (German Civil Code) you can be released in accordance with § 831 para. 1 clause 2 BGB (German Civil Code).
- 5.6 Upon request you shall provide us with a certificate of a sufficient liability insurance covering damage as defined in section 5.5.
- 5.7 In the case of slight negligence by us or our vicarious agents, our liability to provide compensation for damages - for whatever reason that may be -, including claims from fault in conclusion of a contract ("Verschulden bei Vertragsschluss"), positive violation of contractual duty ("positive Vertragsverletzung") and tort, shall be excluded. This exclusion of liability does not apply for injury of life, body or health. Furthermore, it shall not apply in cases of initial inability ("anfängliches Unvermögen"), impossibility of performance caused by fault ("zu vertretende Unmöglichkeit") or in cases of a culpable breach of an essential contractual obligation ("vertragswesentliche Pflicht", i.e. an essential contractual obligation necessary for the due execution of the contract, the fulfilment of which one may reasonably rely on). In these three cases our liability is limited to foreseeable and typically occurring damages.

## 6. Working Drawings, Samples, Confidentiality

- 6.1 We shall not be charged for the creation of drafts, plans and cost estimates. Prior to the start of a production, we must be provided with working drawings for approval. Our approval of these does not release you from your full responsibility for the technical accuracy and feasibility. You shall provide us with the definitive implementation plans, maintenance and operating regulations as well as replacement part lists for the proper maintenance of the delivery item during the assembly period.
- 6.2 Any samples, models, tools, provided materials, drawings, other documents and items that we provide you with or which you produce according to our specifications, must be treated confidential and remain our property. You may only use these for the purposes that serve to the performance of the contract that has been concluded with us. In particular, you may not disclose or otherwise make accessible any such documents and items to unauthorized third parties. The reproduction of such documents and items is only permitted within the scope of operational requirements and copyright provisions.
- 6.3 The samples and the like that are specified in section 6.2 must be insured sufficiently by you against loss and damage.
- 6.4 You shall treat all orders, commissions and agreements as well as your deliveries and works as business secrets.
- 6.5 Both contractual partners shall only be entitled to advertise with the business relationship, in particular the registered company name of the other party, parts of the company name and/or company logo, upon prior written consent being granted by the party.

## 7. Final Provisions

- 7.1 Rights and obligations arising out of any order or contract may only be transferred to a third party upon our prior written consent. Without our written consent you shall not be entitled to assign your claims against us to third parties.
- 7.2 The laws of the Federal Republic of Germany shall govern these General Purchasing Terms and Conditions; the application of the UN Convention of Contracts for the International Sale of Goods shall be precluded. Place of jurisdiction shall be Mannheim, Germany.