

## **General Terms and Conditions of Purchase**

### **Section 1 - Scope of Application**

1. The following General Terms and Conditions of Purchase (GTC) are the basis for all our purchasing transactions.
2. These General Terms and Conditions of Purchase apply also to any future business relations with the supplier (Supplier), even if they have not been expressly agreed again.
3. These General Terms and Conditions of Purchase are deemed to be accepted at the latest upon performance of the ordered services by the Supplier. This also applies if the Supplier has previously expressly objected to these General Terms and Conditions of Purchase or if the Supplier had referred to any other terms and conditions of purchase in the order confirmation. Any conflicting confirmations of the Supplier that refer to the Supplier's terms and conditions of purchase/sale are hereby expressly objected to. Under no circumstances shall the lack of any response to such confirmation be deemed an acceptance of conflicting general terms and conditions of purchase.
4. Any deviations from these General Terms and Conditions of Purchase shall only be effective if we have expressly acknowledged such deviations in writing and shall only apply to the individual case.

### **Section 2 - Offers and Conclusion of the Contract**

1. Orders require the written form to be legally effective. In particular, any orders placed in advance in person or on the telephone as well as any ancillary agreements or subsequent amendments shall only be binding to the extent confirmed by us in writing.
2. We are not bound by any variations or additions contained in the Supplier's order confirmation. Section 1 para 4 applies accordingly.
3. We are entitled to cancel any order if we do not receive a reply of the Supplier within one week upon placing the order.
4. In the event of a material breach of the agreement by the Supplier we are entitled to rescind the contract without a grace period. We are furthermore entitled to claim damages for non-performance or to maintain the contract and claim damages provided that the Supplier was at fault.

### **Section 3 - Prices**

1. All prices referred to in the order are net prices and in EUR unless agreed otherwise in writing.
2. The prices referred to in the order are fixed prices. Any additional claims, in particular due to increased costs for labour or materials or technical improvements, are excluded. The fixed prices are subject to the incoterms specified in the order. In the event we have agreed in writing to pay the costs for shipping and packaging in the individual case, the Supplier shall ensure the most cost-efficient shipping.

#### **Section 4 - Payment**

1. Unless the order form provides otherwise, payments will be made by the payment method specified by us. Payments are due within 30 days upon receipt of a duly issued and verifiable invoice. We are entitled to a discount in the amount of 3 per cent if payment is instructed within ten banking days following receipt of a duly issued and verifiable invoice.
2. The Supplier is only entitled to set off claims, which have been finally determined by court or are undisputed.

#### **Section 5 - Place of Performance**

The place of performance is our registered office. The order can also provide for a different place of performance.

#### **Section 6 - Delivery dates/Delivery Periods/Partial Delivery**

1. The agreed delivery dates and periods must be complied with. Any provisions allowing the Supplier an excessively long period for the delivery or performance of services or any respective periods which are not specified in sufficient detail are not effective and are not deemed included in the agreement. The delivery periods commence on the date of the order.
2. If the Supplier does not comply with the agreed date or period for the delivery or the performance of services, he is in default. In this case we are entitled, at our discretion,
  - a) to rescind the entire contract or parts thereof at any time without any grace period;
  - b) to claim damages for the delay irrespective of any fault of the Supplier in an amount of 0.5 per cent per week of the entire order value, however, not exceeding 10 per cent of the net order value, without being required to provide evidence for any actual damages. We are entitled to claim damages exceeding the above contractual penalty. In this case any contractual penalty shall be offset against any damages incurred.
  - c) to claim any damages incurred (including additional costs for a replacement order or substitute performance) in accordance with law provided that the Supplier was at fault;
3. Partial deliveries are permitted if expressly agreed in writing.
4. The acceptance of a partial delivery, which has not been requested by us, does not prejudice our rights in connection with the entire delivery, even if this has not been reserved expressly at the time of the acceptance.
5. The Supplier has to notify us promptly if he cannot comply with the delivery date referring to the reasons and the expected delay.

#### **Section 7 - Warranty and Liability**

1. The Supplier is liable for any legal and quality defects. A defect is in particular the failure to comply with the agreed or assured specifications.
2. The warranty period is 36 months upon complete delivery of the agreed goods or performance of the agreed services. In the case of any rectifications of the defect, the warranty period commences again for the entire product affected by the defect. In the case of any defects occurring during the warranty period, the Supplier undertakes, at our option, to:

- a) replace the defect service/delivery on-site at his own expenses (a “Replacement”);
- b) remedy the defect (an “Improvement”);
- c) to reduce the agreed consideration (a “Price Reduction”);

The Improvement, respectively Replacement is deemed to have failed upon the first unsuccessful attempt. In this case we are also entitled to request the rescission of the contract instead of a Price Reduction irrespective of the nature and extent of the defect.

3. The Supplier is also liable for any damages caused by inadequate packaging.
4. The contracted items must comply with the latest state of the art applicable at the delivery date even if this has not been requested expressly.
5. The Supplier also warrants that his deliveries/services remain free from any defect during the limitation period and are suitable for the customary purpose or the purpose assumed in connection with the relevant order form.
6. In the case of urgency, in particular, in the case of imminent danger or in the interest of another contractual obligation that cannot be delayed, we will procure the Improvement or Replacement (by way of replacement order) ourselves or through a third party without setting a grace period. The Supplier is liable for any damages caused in this regard.
7. Any goods and services are exclusively accepted subject to the reservation of any available rights. The parties agree that sections 377 *et seq* Business Code (UGB) shall not apply. A payment shall expressly not be deemed an acceptance of goods.
8. The Supplier is liable for all damages caused by the defective delivery/services, in particular consequential damages and lost profit. There shall be no limit to the amount of damages. Any exclusion of such damages by the Supplier is not effective. The Supplier is also liable for minor negligence.

### **Section 8 - Assignment/Retention of Title**

1. Any assignment of claims by the Supplier to third parties is subject to the express consent of Fresenius Kabi Austria GmbH.
2. We are not required to obtain the Supplier's consent to, or notify the Supplier of, any use or resale of goods, which are subject to the Supplier's retained ownership.

### **Section 9 - Procurement Requirements of Our Integrated Management System**

We implement management systems for quality, environment, occupational safety, and energy. We consider and evaluate not only the price, but also the quality, energy performance (energy use, energy consumption and energy efficiency) as well as the environmental impact of the goods. The Supplier undertakes to consider these objectives in his offers. In the case of orders placed with service providers, it is important to us that they are not only aware of the hazards at our locations, but also have sufficient technical expertise and resources to minimize the risks as far as possible.

### **Section 10 - Jurisdiction/Applicable Law/Severability**

1. The competent court for Graz shall have exclusive jurisdiction.
2. These General Terms and Conditions of Purchase and all legal relations between us and the Supplier are subject to the laws of the Republic of Austria without its conflict of law provisions

of public international law. The application of United Nations Convention on Contracts for the International Sale of Goods is expressly excluded.

3. Should any provision of these General Terms and Conditions of Purchase or a provision of any other agreement be or become ineffective, this shall not affect the effectiveness of any other provision or agreement.