

### **I. Scope of validity, deviating conditions, severability**

1. Only the following terms and conditions of sale and delivery („GTC“) shall apply to all deliveries or services of ACU PHARMA und CHEMIE GmbH (hereinafter referred to as "ACU" or "we") to its customers. However, they shall only apply if the customer is an entrepreneur within the meaning of Section 14 of the German Civil Code (BGB), a legal entity under public law or a special fund under public law.
2. Our GTC shall apply exclusively. Deviating, conflicting or supplementary general terms and conditions of business of the customer shall only become an integral part of the contract if and to the extent that we have expressly consented to their application. This requirement of consent shall apply in any case, for example even if we carry out the delivery or service to the customer without reservation in the knowledge of the customer's general terms and conditions.
3. The following GTC shall be deemed agreed at the latest upon acceptance of the goods or services by the customer, insofar as we have previously referred to them.

### **II. Offers, information on the condition of the goods, written form**

1. Our offers are non-binding. Orders are only binding on us if and insofar as we confirm them in writing or have commenced execution of the order. Neither our cost estimates nor our information on freight contain any fixed prices. Our offers may not be made available to third parties.
2. Any information, recommendations, assurances, warranties and agreements provided or made by our employees as well as contractual subsidiary agreements, reservations, amendments or supplements shall not be valid unless we confirm them in writing.
3. Information which we provide on the condition of the goods, such as models, patterns, samples, analyses, drawings, information on weight, quality and dimensions as well as standards are only approximately authoritative (general guides) unless we have expressly declared the information in writing to be specifically binding in the form stated.

### **III. Permits, environmental protection**

We do not guarantee that permits will be granted by public authorities. The customer warrants that it will comply with the safety and environmental protection regulations.

### **IV. Prices**

1. Unless a "fixed price" has been expressly agreed, an increase in the agreed prices for a delivery or provision of goods at a later time than one month after the conclusion of the contract or after the promise of a certain price is permissible, insofar as the increase corresponds at most to an increase in the costs that has occurred in the meantime (e.g. increase in procurement costs, material costs and wages, increase in the costs of production, turnover and transport of the goods, increase or new establishment of public charges such as import duties, taxes, tolls).
2. If an increase in our costs (e.g. increase in procurement costs, material costs and wages, increase in the costs of production, turnover and transport of the goods, increase or new establishment of public charges such as import duties, taxes, tolls) of more than 50% occurs prior to the point in time referred to in clause IV. 1. due to a change in the market not foreseen by the parties at the time of conclusion of the contract, we may, unless a "fixed price" has been expressly agreed, demand an adjustment of the agreed price in such a way that the increase in costs is borne by the parties on a pro rata basis of half each. Any further rights to which we are entitled pursuant to clause IV.1. shall remain unaffected.
3. The right to adjust prices according to clauses IV.1. and IV.2. cannot be exercised in such a way that an increase of the agreed price above the local market price at the time of the increase takes place. The burden of proof for this shall be borne by the customer.
4. Any further legal or contractual rights to which we are entitled shall remain unaffected.
5. For repeat orders, the prices of the previous transaction shall only apply if we expressly confirm them.
6. Unless otherwise stated in the order confirmation, the prices shall be FCA (Incoterms 2020) ex our regional distribution warehouse or, in the case of direct shipments, FCA (Incoterms 2020) ex supplier's factory, in each case excluding packaging.
7. The price is agreed net (plus VAT). If VAT is legally owed by us to the competent tax authority, this VAT must also be paid by the customer to us under the same conditions as provided for the price. Subject to applicable tax law, we shall, at the customer's request, apply an exemption from VAT or apply the so-called "reverse charge" procedure and the customer shall provide us with all necessary information for this purpose. In the event that the customer fails to provide the information or documentation required for the application of the VAT exemption/ reverse charge procedure, the customer hereby agrees to indemnify and hold us harmless from and against all claims, liabilities, damages, losses, penalties, interest, fees, fines, reasonable costs and reasonable expenses (including reasonable attorneys' fees) incurred by us.

If the party providing the goods or services does not charge VAT and it is later determined that the transaction is taxable, the recipient of the goods/ services agrees to pay such VAT upon receipt of a valid invoice and a copy of the notice from the appropriate taxing authority or an appropriate legal opinion stating the amount and reasons for the VAT charge.

### **V. Delivery, passing of risk**

1. The quantity delivered shall be determined in a binding manner in accordance with one of the methods normally used in commercial practice, said method being chosen by us. Deliveries which are above or below the amount sold but within a range commonly accepted in commercial practice shall constitute fulfilment of the contract. We are entitled to partial performance if this is reasonable for the customer. The data determined by the dispatching office shall be authoritative with regard to the quality of the goods. Acceptance of the goods without reservation by the customer/ forwarding agent/ shipper shall be considered rebuttable evidence of the amount, flawless packaging and loading.
2. We shall consider ourselves bound only by delivery dates/ periods which we have confirmed in writing. All delivery dates/ periods are subject to the condition that transport routes and means are available to the usual extent. Delivery dates/ periods shall be deemed to have been met when the goods leave the dispatching office early enough to ensure that they reach the recipient in time, assuming the normal transport time. Delivery dates/ periods are subject to timely and sufficient delivery by our upstream supplier.
3. We shall be released from our obligation to deliver if we are ourselves not supplied properly through no fault of our own. Should non-availability or shortage occur, the customer will be informed immediately. Amounts already paid will be refunded to the customer without delay.
4. The customer shall assist in the handover of the goods and shall, when placing the order, always inform us in good time of difficult delivery conditions (e.g. difficult access, long hose distance). If it has been agreed that we will deliver the goods, the customer must ensure that unhindered delivery to the agreed destination is possible. If, due to circumstances for which the customer or a third party commissioned by the customer is responsible, delivery of the goods at the delivery time agreed is not possible in the agreed manner or, in the absence of an agreement, in the normal manner or is not possible at all, the customer shall bear any additional costs thus incurred.
4. The risk of accidental loss of the goods is transferred to the customer when the goods are ready for collection and, at the latest, when they are loaded onto the means of transport. We are not obliged to expressly inform the customer of readiness for collection. The customer is obliged to protect its rights against third parties, including but not limited to companies engaged to transport the goods.
5. Should delivery/ collection be delayed for reasons for which the customer is responsible, it shall bear the cost of storage and the risk of accidental loss.

### **VI. Unloading**

The customer shall always be responsible for unloading and putting the goods into store. The customer shall unload the goods properly and without delay. If our employees also help with unloading and, in so doing, cause damage to the goods or other damage, they shall be deemed to be acting at the sole risk of the customer and not as our agents (*Erfüllungsgehilfen*).

### **VII. Packing**

We are not obliged to check containers provided by the customer for their suitability, including but not limited to their cleanliness. We shall not be liable for damage or defects caused by defective or otherwise inadequate containers of the customer, unless a case of Clause X. 3, 5 applies.

### **VIII. Delivery disruptions**

1. Each order confirmation is made subject to complete and timely delivery by our upstream suppliers. Should non-availability or shortage occur, the customer will be informed immediately. Amounts already paid will be refunded to the customer without delay.
2. Circumstances and events for which we are not responsible but which impede or substantially hinder delivery such as, in particular, war, riots, natural disasters, pandemics or epidemics, lightning, orders from higher authorities, strikes, lockouts, disruptions in the supply of energy and raw materials, shortage of resources, extraordinary traffic and road conditions, machine damage not due to improper maintenance, non-delivery or late delivery by upstream suppliers as well as other operational disruptions through no fault of our own, including cyberattacks, release us from our obligation to deliver for the duration of their effect. This shall also apply if the aforementioned circumstances occur at upstream suppliers. In such cases, we shall be entitled to make our delivery with a corresponding delay, including a reasonable lead time. Furthermore, should the delivery period be exceeded by more than four weeks, we shall have the option of withdrawing from the contract, either in part or in whole, immediately or

at a later date. After four weeks have elapsed, the customer may set a reasonable period of grace indicating that after the expiry of this period of grace it will refuse to accept delivery. After this period has elapsed, the customer shall be entitled to withdraw from the purchase contract by making a written statement to that effect or, in the case of late delivery for which we are responsible, to demand damages on the grounds of non-fulfilment in accordance with section X, paragraphs 2-5.

3. If, in the cases covered by paragraph 1 of this section, the amounts of goods which we have available are not sufficient to satisfy all our customers, we shall be entitled to make equal cutbacks in all our delivery obligations; we shall be released from any delivery obligation above and beyond this.

#### **IX. Complaints**

1. The customer shall report in writing all obvious and recognizable defects, incorrect amounts or incorrect deliveries with regard to the goods and packaging immediately on receipt, but in any case before the resale of the goods, their processing, mixing, use or installation. Complaints concerning concealed defects shall be made in writing immediately after their detection. If the customer does not meet the above-mentioned obligations, the goods shall be deemed to have been approved. Any complaint about a delivery or service shall not entitle the customer to refuse additional deliveries or services under the same contract or a different contract.
2. The customer shall inform us of any in-transit damage without delay and shall make a note of the damage on the shipping papers for the shipping agent.
3. Measures taken to mitigate damage shall not constitute recognition of a defect. By negotiating on any complaints, we do not waive our right to object that the complaint was not made in time, was not properly substantiated, or was in some other way inadequate.

#### **X. Supplementary performance, liability**

1. The customer is not entitled to reject or withdraw from the contract in the case of insignificant defects and may also not demand compensation instead of performance. In the event of justified complaints, we shall have the option of correcting the defect or providing the customer with substitute goods in return for the faulty goods. Subsequent performance is excluded if the cost for us would be disproportionately high. In this case as well as in the event of failure or impossibility of supplementary performance, and in the event of the unsuccessful expiry of a reasonable deadline set by the customer for supplementary performance or if such a deadline is dispensable in accordance with the statutory provisions, the customer shall have the option of reducing the amount paid for the goods or rescinding the contract. In so far as there are claims against third parties, we may demand that claims against us should be asserted only after claims against third parties have been unsuccessfully asserted in court.
2. Claims of the buyer pursuant to defects shall lapse one year after delivery of the goods, unless a case of §§ 438 para. 1 no. 2, 634a para. 1 no. 2 BGB (German Civil Code) or Clause X. 3, 5 applies.
3. We shall be liable - for whatever legal reason - without limitation for damages for losses caused by an intentional breach of duty by us or by one of our legal representatives or vicarious agents.
4. In the event of a negligent breach of duty by us or one of our legal representatives or vicarious agents, we shall only be liable (subject to a milder standard of liability in accordance with statutory provisions) for damages arising from the breach of material contractual obligations. Material contractual obligations are obligations the fulfilment of which makes the proper performance of the contract possible in the first place and on the observance of which the customer regularly relies and may rely. In this case, however, our liability is limited to the amount of the damage typical for the contract and foreseeable at the time of conclusion of the contract. The foreseeable damage typically arising shall amount to Euro 100,000 or twice the invoice value of the goods or services concerned if this value exceeds Euro 100,000. ACU shall not be liable for indirect damage, incidental damage, consequential damage and mere financial loss as well as loss of profit.
5. The limitations of liability from para. 4 do not apply insofar as we have fraudulently concealed a defect, have assumed a guarantee for the quality of the goods or a procurement risk as well as in the case of culpable injury to life, limb and health. Furthermore, any mandatory statutory liability, in particular under the Product Liability Act, shall remain unaffected.
6. Insofar as our liability is excluded or limited in accordance with the above provisions, this shall also apply to the personal liability of our executive bodies, legal representatives, employees, staff and vicarious agents.
7. We shall not be liable for the suitability of the goods for the purpose intended by the customer unless the intended purpose has been laid down in writing as part of the contract contents. Insofar as the goods have the agreed quality or are suitable for the use assumed under the contract and confirmed by us in writing, the customer cannot invoke the fact that the goods (a) are not suitable for normal use and/ or (b) do not have a quality that is customary for items of this type and that the customer expected. Unless otherwise agreed in writing, the products delivered by us do not

meet the requirements of special legal qualities of raw materials or the end products, including but not limited to food, feed, pharmaceutical, medical and personal care quality. The use of a product is the sole responsibility of the buyer. If we give application-specific advice, information or recommendations, such advice, information or recommendations are given or made on the basis of information, samples or test series provided by the customer. The correctness as regards contents and completeness of such information is not checked by us for completeness and correctness and is the responsibility of the customer. We shall only be liable in the event of wilful intent or gross negligence in the giving of written advice or in the cases set out in Clause X.5.

#### **XI. Terms of payment, offsetting**

1. Our invoices are payable in cash, without any deductions, immediately upon receipt.
2. A payment shall only be deemed to have been made when the amount is at our disposal. If we accept bills of exchange or cheques, we only do so on account of performance and subject to discounting possibilities against the immediate reimbursement of all expenses. We are not obliged to present bills of exchange or cheques in time.
3. Our employees are not authorised to accept payments or make any dispositions unless they have a written power of attorney.
4. The customer shall only be entitled to offset or withhold payment if the counterclaim has been established as final and absolute, is ready for judgement or is undisputed. The customer shall also be entitled to offset if the counterclaim is reciprocal to the main claim and arises from the same contractual relationship. The customer shall also be entitled to assert a right of retention if his counterclaim is based on the same contractual relationship as our claim against which the customer is asserting the right of retention.

#### **XII. Default of payment, doubts as to credit standing**

1. In the event of default of payment, all discounts and other concessions that may have been granted, cash or otherwise, shall be null and void. In the event of default of payment, we charge interest on arrears at the rate permitted by law and reserve the right to assert further claims for damages.
2. If the customer fails to meet its payment obligations, in particular when it stops making payments or when a cheque is not honoured, or when other circumstances become known to us which call the customer's credit standing into question, we shall be entitled to declare the remaining debt due, even if we have accepted cheques/ bills. Moreover, we shall be entitled to demand advance payment or collateral; in addition, we may withhold or refuse to perform further deliveries, either in whole or in part, not only under the contract in question but also under other contracts, and to demand immediate cash payment of all deliveries.
3. We are entitled to refuse our outstanding services within a contractual relationship if it becomes apparent (e.g. through an application for insolvency) that our payment claim from the respective contractual relationship is at risk due to the customer's lack of ability to pay. Our right to refuse performance shall cease to apply if payment is made or security is provided for it. We shall be entitled to set the customer a reasonable period of time within which the customer must, at its discretion, make payment or provide security for payment in return for our performance. After unsuccessful expiry of the deadline, we may withdraw from the contract.

#### **XIII. Reservation of title, securities**

1. The goods remain our property until full payment has been made for the specific goods.
2. Treatment and processing are always carried out for us excluding the acquiring of ownership by those carrying out treatment or processing in accordance with section 950 of the German Civil Code (BGB), but without putting us under any obligation. If the goods are mixed, combined or processed with other goods, the customer assigns to us here and now our right of title or right of joint ownership and right of possession in the new goods and shall keep them safe for us, insofar as we have not become a joint owner of the new item anyway in the ratio of the value of the goods to which title is reserved (cost prices) to that of the other goods at the time of combining, mixing or processing. Pledging or transfer by way of security of our property/ joint property is prohibited.
3. If the customer sells our goods (treated or processed, mixed or combined), it assigns here and now to us all claims against our customers arising therefrom, including those claims which include payment for services, together with all ancillary rights, including but not limited to securities and the right to the granting of a debt-securing mortgage (Section 648 BGB). If the customer sells our goods after processing, combining or mixing with goods which do not belong to us, we shall be a joint creditor (trustee) together with other entitled parties; alternatively, the customer's claim against its customer shall be assigned to us in the ratio of the marketable value of the goods delivered by us to which title has been reserved to the value of the goods sold by the customer. The assignment to us shall always apply to the part of the claim which is still realisable. At our request, the customer shall

disclose the assignment and give us the necessary information and documents. Furthermore, the customer hereby assigns to us any future claims arising from damage to the goods delivered by us.

4. We may store our goods separately, mark them or collect them at the expense of the customer as well as prohibit any disposal of the goods. If we withdraw from the contract due to the customer's conduct in breach of contract, we are entitled to demand the return of the goods subject to retention of title. At the latest, our demand for the return of the goods shall also constitute our declaration of withdrawal; the same shall apply if we seize goods subject to retention of title. The customer is obliged to return the goods at his own expense; he is liable for the reduced value, our costs for taking back the goods and lost profit
5. We shall be entitled to ask, at any time, for securities of our choice (in particular land charges) and their increase in order to ensure that the customer meets its liabilities properly. We shall also be authorised to claim assets of the customer which are under our actual influence as collateral/pledge and to make use of them.
6. If the value of the securities exceeds the claims by more than 20% in total, we are obliged to release securities of our choice at the customer's request.

**XIV. Right to sell, authorisation to collect, ban on disposal**

1. The customer shall be entitled to sell our property in duly conducted business dealings. It shall also be entitled, subject to revocation, to itself collect claims assigned to us; this right ceases when the customer is in default or when it agrees with its customers that the claims are not assignable.
2. The authorisation to collect also includes the authority to assign the claims assigned to us as part of a real factoring contract on conditions customary in the industry provided we are notified of the cooperation with the factor. The customer hereby assigns to us here and now its existing and future claims against the factor as far as the goods we deliver are concerned. The customer pledges to notify the factor of this assignment and to instruct the fact or to make payments exclusively to us if we should so require.

3. In all other respects, the customer shall not be permitted to assign the claims assigned to us to third parties, including but not limited to the assignment of claims as part of an overall assignment.

**XV. Prohibition of assignment**

The customer may only assign, pledge or otherwise dispose of claims against us to which the customer is entitled with our consent. The provision of § 354a German Commercial Code (HGB) remains unaffected.

**XVI. Data protection**

We store personal data of our customers collected in the course of our business relations and, if necessary, report them to Brenntag Holding GmbH & Co. KG, Essen. Further information on data processing can be found in our data protection declaration (available on the company website [www.brenntag.com](http://www.brenntag.com)).

**XVII. Venue, choice of law**

1. The courts at the location of our head office shall have exclusive jurisdiction for present and future claims arising from the business relations with the customer.
2. All legal relations between the customer and ACU shall be governed exclusively by German law, excluding the rules on conflicts of law and the provisions of the United Nations Convention on Contracts for the International Sale of Goods ("CISG").
3. Should individual provisions of these General Terms and Conditions of Sale and Delivery or of the contract concluded on the basis thereof be or become invalid, this shall not affect the validity of the remaining provisions. The parties shall negotiate in good faith to replace the invalid clauses with such provisions that come as close as possible to the economic purpose of the invalid clause. This shall apply accordingly in the event of gaps.

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<sup>1)</sup> The English version of these General Terms and Conditions of Sale and Delivery is a convenience translation. The German version is authoritative.