

# General Terms and Conditions of Sale and Delivery

General Terms and Conditions of Martin Bauer GmbH & Co. KG, Vestenbergsgreuth, hereinafter: Martin Bauer

## § 1 Scope of application

These General Terms and Conditions apply exclusively to the business relationship between Martin Bauer and the Customer placing the order for deliveries and services (hereinafter referred to collectively as "Services"), provided that the Customer is an entrepreneur, a legal entity under public law or a special fund under public law (§ 310 (1) German Civil Code (Bürgerliches Gesetzbuch)). They also apply if Martin Bauer performs its Services without reservation in the knowledge of conflicting or different terms; such conflicting or different terms are only binding on Martin Bauer if Martin Bauer has expressly consented to their validity in writing or in text form.

## § 2 Offer, conclusion of contract, subcontractor, audits

1. Offers made by Martin Bauer are non-binding. General descriptions of goods and services or the characteristics of a sample are not deemed to be a guarantee of quality, but only agreed quality characteristics.
2. The Customer's order shall only become binding on the basis of these General Terms and Conditions if it is confirmed by Martin Bauer in text or written form or if it is executed by Martin Bauer without reservation ("Conclusion of Contract"). If Martin Bauer confirms the order in text or written form ("Order Confirmation"), the contract shall be deemed to have been concluded on the terms and conditions of the Order Confirmation if the Customer does not object to these terms and conditions in text or written form immediately after receipt of the Order Confirmation.
3. If the Customer requests that supplies or other parts of the Services ("External Provisions of Materials") are to be carried out by the Customer or by a third party designated by it, the Customer is responsible, irrespective of whether the Customer or Martin Bauer concludes the relevant contract with the third party, for (1) ensuring that the External Provisions of Materials are carried out properly and on time and (2) that all of the other contractual obligations of the third party are fulfilled.
4. If the Customer or a domestic or foreign authority or organisation conducts an audit or inspection at Martin Bauer's site in connection with the Services which Martin Bauer provides

or has provided for the Customer, the Customer shall bear the costs incurred by Martin Bauer in this respect.

## § 3 Call-off contracts

1. If it has been agreed that the Services are to be provided on call-off by the client ("Call-off contract"), the Services must be called off within 120 calendar days after conclusion of the Call-off contract.
2. If the call-off period is exceeded, Martin Bauer is entitled, after the unsuccessful expiry of a reasonable grace period, to claim damages for non-performance and/or to withdraw from the Call-off contract or from that part of the Call-off contract which has not yet been performed.

## § 4 Time of performance

1. The time of performance begins after the complete clarification of all technical and commercial details and, if necessary for the performance of the Services, after receipt of the provisions and materials to be provided by the Customer, such as test samples together with any information and documents that are required for the Services to be performed. Fulfilment of the contract is subject to (1) self-supply and (2) that there are no obstacles due to German, US-American or other applicable EU or international regulations and that no conflicting embargoes or other sanctions exist.
2. The information provided by Martin Bauer regarding the time of performance of the Services is non-binding, unless a binding date has exceptionally been promised in text or written form.
3. As far as reasonable Martin Bauer is entitled to make partial deliveries to the Customer.

## § 5 Place of performance, delivery, test samples, default of acceptance

1. The place of performance for the Services is Martin Bauer's factory.
2. Deliveries shall be made *ex works* Martin Bauer's factory (EXW Incoterms® 2020) at Customer's expense. Any damage or loss of weight occurring during transport shall be borne by the Customer, as well as additional costs due to surcharges for e.g. winter freight, transport on small waterways, for freight tariff, tax and customs increases.
3. In the case of bulk goods, Martin Bauer is entitled for technical reasons

to deliver up to 3% less or more than the quantity ordered, provided this is reasonably acceptable for the Customer. The actual weights at the time of dispatch are in any case decisive for the invoice amount.

4. Insofar as not used for analyses, Martin Bauer will store test samples for six months after performance of the Service and then dispose of them without further notice to the Customer; longer storage of test samples requires a special agreement.
5. If the Customer is in default of acceptance or culpably violates other obligations to cooperate, the risk of accidental loss or accidental deterioration of the Services shall pass to the Customer at that moment. Martin Bauer reserves the right to claim damages for default of acceptance.

## § 6 Prices, payment, set-off, right of retention

1. All prices are in EURO and plus VAT at the rate applicable at the time of performance.
2. The price agreed in a Call-off contract shall apply for the duration of the agreed call-off period.
3. Otherwise, the agreed price shall apply if the Services are to be provided within 4 months of Conclusion of Contract. If a longer time of performance has been agreed and the price is no longer reasonable in the meantime due to significant changes in the market situation compared with the time of Conclusion of Contract, Martin Bauer may request an adjustment of the price.  
In the event of a price increase by more than 5%, the Customer may free of charge withdraw from the contract or from the unfulfilled part of the contract.
4. If, between Conclusion of Contract and the performance of the Services unforeseeable changes in price-determining ancillary costs such as customs duties, taxes, levies, fees, etc. occur, Martin Bauer may request a corresponding price adjustment.
5. Invoices from Martin Bauer are due for payment without deduction within 14 days upon receipt.
6. A set-off by the Customer is only permissible with undisputed or legally established claims, the exercise of a right of retention is permissible only because of undisputed or legally established counterclaims based on the same contractual relationship.

## **§ 7 Defects liability**

Martin Bauer shall be liable for defects of the Services ("Defects") as follows:

1. Defective Services shall be, at Martin Bauer's discretion, repaired or replaced free of charge, provided that the reason for the Defect already existed at the time when the Services were dispatched to the Customer.

2. Claims for Defects are subject to a statute of limitations of 12 months calculated from the statutory start of the statute of limitations; the same shall apply accordingly in the case of rescission and price reduction. This shall not apply in the case of:

- a) intent,
- b) fraudulent concealment of the Defect or
- c) non-compliance with quality guarantee (Beschaffenheitsgarantie).

The legal provisions regarding suspension of the statute of limitations (Ablaufhemmung, Hemmung) and recommencement of limitation periods shall remain unaffected.

3. If the shelf life period specified for the Services is shorter than the limitation period specified in § 7 sec. 2., claims for Defects shall become time-barred upon expiry of the shelf-life.

4. Notifications of Defects by the Customer shall be given in written form without undue delay.

5. In the case of notification of a Defect the Customer may withhold payments to an amount that is in a reasonable proportion to the Defect. The Customer has no right to withhold payments to the extent that its claim of a Defect is time-barred. Unjustified notifications of Defect shall entitle Martin Bauer to request reimbursement of its expenses from the Customer.

6. Martin Bauer shall be given the opportunity to repair or to replace the defective Services within a reasonable period of time.

7. If repair or replacement is unsuccessful the Customer is entitled to rescind the contract or reduce the price; any claims for damages the Customer may have according to § 8 shall be unaffected.

8. There shall be no claims based on Defect in cases of only minor impairment of usability of the Services or in the event of damage arising after dispatch as a result of incorrect storage or treatment or due to external circumstances that were not assumed under the contract. The same shall apply for customary deviations in quality or taste, insofar as the object of the Services are botanical products. The same applies to a purchase according to sample (see § 2 sec. 1).

9. The Customer shall have no claim with respect to expenses incurred in the course of repair or replacement of the defective Services to the extent such expenses are increased due to reasons that were not assumed under the contract.

10. The Customer shall have no claim for damages based on Defects.

This shall not apply to the extent that a Defect has been fraudulently concealed, a quality guarantee has not complied with, in the case of loss of life, bodily injury or damage to health and/or intentional or grossly negligent breach of contract on the part of Martin Bauer. The above provisions do not imply a change in the burden of proof to the detriment of the Customer. Any other or additional claims of the Customer exceeding the claims provided for in this § 7, based on a Defect, are excluded.

## **§ 8 Liability for damages, waiver of recourse by the Customer**

1. Except as otherwise provided for elsewhere in these General Terms and Conditions the Customer has no claim for damages based on whatever legal reason, including (but not limited to) infringement of duties arising in connection with the contract or tort. This does not apply to the extent the liability is based on:

- a) the Product Liability Act (Produkthaftungsgesetz),
- b) intent,
- c) gross negligence,
- d) fraud,
- e) failure to comply with a quality guarantee granted,
- f) negligent injury to life, body and health, or
- g) negligent breach of a fundamental condition of contract (wesentliche Vertragspflicht), i.e. such condition the breach of which would endanger the purpose of the contract and the compliance with which the Customer may legitimately rely on.

However, claims for damages arising from a breach of a fundamental condition of contract shall be limited to the foreseeable damage which is intrinsic to the contract, provided that no other of the above cases applies.

The above provision does not imply a change in the burden of proof to the detriment of the Customer.

2. If the Customer is liable for damages to life, body or health in relation to third parties in accordance with the Medicinal Products Act (Arzneimittelgesetz) or foreign legal regulations which regulate the liability of pharmaceutical companies in the case of death or other damage to body or health, and if the damages can be traced to a breach of duty by Martin Bauer, then the Customer waives the right to seek compensation from Martin Bauer as far as the damages to be paid are covered by the Customer's third-party liability insurance. The Customer is aware that this waiver of compensation claims may require the consent of its third-party liability insurer.

## **§ 9 Confidentiality, Copyrights and Rights of Use, Data Protection**

1. Martin Bauer shall treat confidential all information it obtains from the Customer or it develops for the performance of the Services unless the Customer has given its prior consent

in writing or in text form for a dissemination or publication. This obligation shall not apply to information that was or became publicly available, was already lawfully in Martin Bauer's possession, was developed by Martin Bauer independently from the contract, was received from a third party source that, to the knowledge of Martin Bauer, was not bound by a confidentiality obligation, or is required to be disclosed to comply with a judicial or official order or decree or the law.

2. Martin Bauer retains the copyright to all documents supplied by Martin Bauer (specifications, certificates of analysis, batch certificates, expert reports etc.). These documents may only be used for the purposes defined in the contract. Any use, even in a modified form, for other purposes, including, but not limited to, transfer to third parties, publication or use for promotional purposes etc. requires Martin Bauer's express consent in writing or in text form.

3. Martin Bauer will treat in confidence all personal data that it receives. These data will be processed, used and stored for the sole purpose of performing the contract and responding to inquiries in connection with the contract and will be immediately deleted upon justified request of the person concerned.

## **§ 10 Product monitoring obligation, export regulations**

1. The Customer is obliged to inform Martin Bauer without delay of any problems encountered by the consumer in the handling or use of the products manufactured by Martin Bauer and to mark the consumer packaging accordingly so that the batches used are traceable.

2. When passing on the Services (including documentation) to third parties in Germany and abroad, the Customer must comply with the applicable national and international (re-)export control law. In any case, the Customer must observe the (re-)export control regulations of the Federal Republic of Germany, the European Union and the United States of America.

3. If necessary for the purpose of export control checks, the Customer will provide Martin Bauer immediately upon request with all information concerning the final recipient, the final destination and intended use of the Services as well as any export control restrictions relating thereto.

## **§ 11 Applicable law, legal venue**

1. German law shall apply to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

2. The sole legal venue for all disputes arising out of or in connection with the contract is the competent court for Martin Bauer's registered office. However, Martin Bauer is entitled to bring a lawsuit at the competent court for the place of business of the Customer.