

General Terms and Conditions of Purchase of Komtur Pharmaceuticals Pharmagroßhandel - Import- Export - Inh. Apotheker Josef Künle (e.K.)

May 2020

1. Scope

1.1 The following Terms and Conditions of Purchase of Komtur Pharmaceuticals Pharmagroßhandel, Inh. Apotheker Josef Künle (e.K.) (hereinafter: "**we**") shall apply to all business relationships with companies (Section 14 German Civil Code (BGB)), legal entities under public law, or special funds under public law (hereinafter: "**Supplier**") and to all present and future orders placed by us and contracts entered into between us and Supplier.

1.2 Deviating or supplementary Terms and Conditions of the Supplier shall only be part of a contract if we have expressly agreed to their applicability.

1.3 Any legally binding declarations and notices that have to be given from us to Supplier after entering into the contract (e.g. setting of deadlines, notices of defects, a declaration of rescission or reduction in the price) do not require any form in order to be effective. However, mandatory legal formal requirements remain unaffected.

2. Conclusion of the Contract

2.1 Orders placed by us are revocable until receipt of the acknowledgement of the order or – in the absence of any acknowledgement of the order – until delivery.

2.2 The Supplier shall confirm our order without undue delay, at least within 3 working days by means of an order confirmation stating binding price and delivery times in text form or by delivery. A belated acceptance shall be deemed to be a new offer and shall be subject to our confirmation.

2.3 Unless expressly otherwise agreed, the delivery times stated by us are binding.

2.4 We are entitled to amend product specifications, provided that said amendments can be implemented in the course of the Supplier's normal production process without any significant additional costs. We will in each case reimburse the Supplier the proven, reasonable extra costs incurred due to the amendment. If such amendments result in delays in delivery, which cannot be avoided in the Supplier's normal production and business activity using reasonable efforts,

the originally agreed delivery date shall be postponed accordingly. The Supplier shall notify us in writing (incl. fax and email) of the additional costs or delays of delivery expected by Supplier in due time before the delivery date, but at least within 5 working days after receipt of our notification pursuant to sentence 1.

2.5 In the case of orders and confirmations without any price indication, we reserve the right to withdraw from the contract, even after delivery has taken place, if we do not agree to the price invoiced by Supplier.

3. Prices and Payment Terms, Set-off

3.1 The agreed prices are fixed prices and binding for the present order. Unless otherwise agreed by the parties in writing, all prices are stated exclusive of value added tax, but inclusive of packaging, insurance, carriage (DDP Freiburg i. Br., Incoterms 2020) and other incidental costs. Any price increases are subject to our prior written approval.

3.2 For each delivery a separate invoice stating our complete order details (order number, article number, delivery quantity, exact delivery address and delivery note) shall be submitted to the invoice address stated in our order immediately after dispatch of the goods.

3.3 Value added tax shall be stated separately in the invoice. Invoices which do not contain our order details (order number, article number, delivery quantity, exact delivery address and delivery note) or which have not been properly issued shall be deemed not to have been submitted.

3.4 Unless otherwise agreed payments shall be made at our discretion after receipt of the proper invoice, delivery and performance of further agreed services:

(a) within 14 calendar days following receipt of the proper invoice and delivery with deduction of a 3% cash discount, or

(b) within 30 calendar days net following receipt of the proper invoice and delivery without any deductions whatsoever.

3.5 For the timely payment of our owed payments, the receipt of our transfer order by our bank shall be sufficient.

3.6 Payment shall be made subject to verification of the invoice. Delays in payment due to circumstances, for which we are not responsible (e.g. stoppages due to internal or third-party industrial disputes, force majeure etc.), are excluded.

3.7 Payment shall not be deemed to be any acknowledgement of proper performance.

3.8 Payments on account can only be demanded on the basis of a separate agreement. Payments on account also qualify for the deduction of a cash discount.

3.9 The Supplier shall have no right of set-off or retention, except to the extent that the counterclaim has not been disputed by us or been determined by a final and binding decision.

4. Delivery and Delivery Dates, Contractual Penalty

4.1 Unless expressly otherwise agreed, the agreed delivery deadlines and dates are binding. The goods ordered must arrive at the place of delivery stated by us on the agreed date. The delivery note must show following information: delivery note number, our order and position, article number of Supplier and of us, article description, order and delivery quantity, exact delivery address. In the event of non-compliance, we shall be entitled to refuse acceptance of the delivery and to invoice the Supplier for any additional costs that may have been incurred. This shall also apply to deliveries to a third party designated by us as recipient.

(a) The Supplier shall immediately inform us of any threatening or existing delay in delivery, the reasons for such delay and the anticipated duration of such delay. The foregoing shall not affect the occurrence of a default in delivery. In the event of any delay in delivery due to force majeure, the Supplier shall be granted a reasonable grace period.

4.2 In the event of any delay in delivery caused by Supplier's negligence or intent, we are entitled – after prior written notification and in addition to further statutory claims – to demand a contractual penalty as compensation for the damage caused by the delay in performance. The contractual penalty shall be 0.2 % of the contract value of the belated part of the affected order per working day of late delivery, however a maximum of 5%. This shall be without prejudice to our right to claim any further proven damage due to delay in performance. Further, we reserve the right to withdraw from the contract. The Supplier retains the right to prove that we did not suffer any damage whatsoever or only less damage.

4.3 The Supplier shall reimburse all additional costs incurred due to delayed delivery. The receipt and the acceptance of delayed

deliveries and services shall not constitute any waiver of claims for compensation. Early delivery is only permitted with our prior written consent and does not affect the agreed payment date. We are not obliged to accept the delivery and the goods before the agreed delivery date. We are entitled to claim price reductions which occur prior to the scheduled delivery date.

5. Acceptance, Transfer of Risk, Place of Performance

5.1 Delivery and passing of risk are subject to Sec. 3.1. If, pursuant to a separate agreement, the freight charges are to be borne by us, the Supplier must choose the mode of delivery that is most favourable for us. We are under no obligation to accept any partial deliveries or excess deliveries, which have not been agreed to.

5.2 The place of delivery shall be the receiving point stated by us. The risk of accidental loss and of accidental deterioration shall pass to us upon delivery of the subject matter of the contract to the place of delivery. If acceptance is required, said acceptance shall be relevant for the passing of risk. The acceptance must be effected in writing.

5.3 If we are unable to accept delivery as a consequence of circumstances for which we are not responsible (e.g. stoppages due to internal or third-party industrial disputes, force majeure etc.), the risk shall not pass until the grounds for hindrance have been removed and the subject matter of the contract is available to us at the place of delivery. We shall notify the Supplier without undue delay if any grounds for hindrance of this nature have occurred or it is expected that they will occur.

5.4 Unless otherwise agreed the place of performance for all obligations arising out of the contractual relationship shall be the place of our registered office (seat).

6. Assignment of Claims

Assignment of claims against us requires our prior written approval. The provision of Sec. 354a German Commercial Code (HGB) remains unaffected.

7. Warranty, Claims for Defects, Notification of Defects

7.1 The Supplier warrants that the delivered item is free from defects, meets the specifications as stipulated in the order, uses the latest available technology and complies in particular with the relevant regulations,

- standards and guidelines, safety and accident prevention standards and further applicable technical standards. The Supplier will inspect and document the quality of the products prior to shipment. Furthermore, the Supplier undertakes to comply with all applicable regulations for placing the products on the market within the European Union, any other country where the product is covered by a market authorization as in-ferred by Supplier when we order the products and as agreed between the parties on a case-by-case basis and in writing.
- 7.2 By acceptance or approval of submitted samples or specimens we do not waive any warranty claims.
- 7.3 If the subject matter of the contract does not have the agreed quality or is defective for other reasons, our warranty claims shall be in accordance with the statutory provisions unless otherwise agreed below.
- 7.4 If Supplier fails to comply with his obligation to remedy the defect within a reasonable period of time set by us, we shall be entitled to remedy the defect by ourselves and demand reimbursement of the expenses incurred and/or claim a corresponding advance payment from Supplier. If the supplementary performance by Supplier has failed or is unreasonable for us (e. g. due to particular urgency, endangering operational safety or imminent occurrence of disproportionate damage), no deadline shall be required; we shall inform Supplier of such circumstances without delay, if possible in advance.
- 7.5 Unless otherwise agreed, the general limitation period for warranty claims is three (3) years, unless the shelf life of the product is longer than three (3) years. In this case the general limitation period for warranty claims shall correspond to the shelf life of the product. The period begins upon delivery of the goods or acceptance of the goods/services by us if acceptance is required. Any statutory provisions providing for longer limitation periods shall remain unaffected.
- 7.6 In the event of modifications in the composition of the material / ingredients or the intended use of the products compared with earlier delivered items, the Supplier shall obtain our prior written approval. Until our final approval, the Supplier is obliged to ensure deliveries with the previously approved ingredients. We are released from the obligation to inspect the deliveries or services for similarity to previous deliveries.
- 7.7 Our obligation to inspect incoming goods shall be limited to defects which become apparent upon visual external inspection of the goods including the delivery documents as well as during our quality control by taking samples (e.g. transport damage, wrong and shortage of delivery). Notwithstanding our obligation to inspect, any defects shall in any case be deemed to have been notified without undue delay and in good time (notification of defects) if notified by us within five (5) working days of their discovery (and in compliance with the obligation to inspect pursuant to sentence 1). In case of hidden defects, i.e. defects which do not become apparent upon visual external inspection (e.g. deviations of temperature), Supplier shall reasonably support us with the detection of the defect.
- 8. Product Liability, Indemnification**
- 8.1 Irrespective of the contractual warranty claims the Supplier shall, upon first demand, indemnify us from and against all claims made on the basis of any intentional or negligent infringement of third-party intellectual property rights.
- 8.2 The Supplier shall, upon first demand, indemnify us from and against all claims based on product liability ("*Produkthaftungsansprüche*") to the extent that the cause is within his sphere of control and organization and the Supplier is directly liable in relation to third parties.
- 8.3 The Supplier shall maintain appropriate liability insurance with extended product liability coverage and shall provide us with proof of the cover upon request.
- 9. Intellectual Property Rights, Confidentiality**
- 9.1 We reserve title to and the copyrights in all pictures, plans, drawings, calculations, instructions for execution, product descriptions and other documents, which we provide to the Supplier.
- 9.2 Documents of this kind must be stored safely against unauthorized use and access, used solely for the contractual performance, i.e. the supply of the products, and must be returned to us once the contract has been performed or if negotiations fail to lead to the conclusion of a contract. In this case, copies made by the Supplier shall be destroyed except for storage within the scope of statutory storage and data backup obligations.
- 9.3 Without our prior express consent, the Supplier may not provide third parties with access to the documents or the goods manufactured in accordance therewith, use them directly as a basis for deliveries to third parties or use them for its own purposes or for advertising purposes, even after termination of the contract. The confidentiality obligation shall not expire until and to the extent that the knowledge contained in the documents provided has become generally known.
- 10. Retention of Title**
- Unless otherwise agreed by the parties in writing, all forms of extended or prolonged retention of title by Supplier are excluded, so any retention of title that may validly be declared by the Supplier shall apply only to the goods delivered to us and only until said goods have been paid for.
- 11. Product Safety and Quality Management**
- 11.1 The Supplier shall manufacture the subject matter of the contract in compliance with the respective quality, environmental, energy and security provisions applicable to the manufacture of the subject matter of the contract by Supplier.
- 11.2 To ensure the quality of its products, the Supplier undertakes to establish, apply, maintain and continuously optimize and enhance an effective quality management system and to adopt only appropriate procedures. This shall also apply if Supplier is not the manufacturer but the distributor of the products.
- 11.3 Supplier will reasonably cooperate with and assist us and our customers in case of queries related to the quality of the products and their stability, including provision of corresponding data if and to the extent reasonably requested by us.
- 12. Customs and Foreign Trade Law**
- 12.1 Delivery notes, consignment notes and invoices must always state the order numbers and article numbers in full in addition to the information specified in Sec. 3.2 and 4.1. In addition, the customs tariff number with the corresponding country of origin must be stated for each purchase order position. Changes in the country of origin of the goods require a prior written notice without undue delay after becoming known, but not less than twelve months before the change.
- 12.2 The Supplier shall assist us to comply with foreign trade and customs requirements, especially with regard to the import and export of Supplier's products (including changes or as a component of other products). On request, the Supplier shall submit to us long-term supplier declarations, certificates of origin and movement certificates concerning the delivered products.
- 13. Miscellaneous**
- 13.1 This General Terms and Conditions of Purchase are subject to German law excluding the UN Convention on Contracts for the International Sale of Goods.
- 13.2 The courts competent for Freiburg i. Br., Germany, shall have jurisdiction for all legal disputes in connection with this contract. We shall also be entitled to assert our claims in the courts competent for the place of general jurisdiction of the Supplier.