

## **GENERAL TERMS AND CONDITIONS FOR DELIVERIES AND SERVICES**

### **1. Scope**

These general terms and conditions (“Terms and Conditions”) apply for all deliveries and services that Konapharma AG (“Konapharma”) - perform for our customers, unless agreed differently in writing between us and our customers. We may unilaterally alter the Terms and Conditions at any time, with legal validity for both parties. We will publish the respective current version of our Terms and Conditions on our website ([www.konapharma.ch](http://www.konapharma.ch)). Our customers’ terms and conditions apply only if we agree to those explicitly and in writing.

### **2. Offers, ordering, order confirmation and contract**

Our offers are revocable and non-binding. Offers, orders or declarations of acceptance by our customers (“Customer Order(s)”) are binding for the respective customers for 90 days from the time we receive them. With our written or emailed confirmation of a Customer Order (“Order Confirmation”) the Order is binding for both parties (“Contract”).

### **3. Commercial-grade quality**

We perform our deliveries and services with commercial-grade quality using state-of-the-art technology and within the scope of the technically necessary tolerances required by materials and processes, and in compliance with Swiss law. Our verbal or written instructions for use, and likewise any documents enclosed with our offer/our Order Confirmation, such as drawings and samples, are binding only if we have described them as binding explicitly and in writing. The suitability of our deliveries and services for a particular use intended by the customer is the sole responsibility of the customer.

### **4. Prices**

Prices are given exclusive of value-added tax and from our warehouse in Pratteln, Switzerland, ready for pick-up by the customer (Incoterms 2020 Ex Works). Not included in the price, however, are the costs of any agreed upon transport to the customer or to a third party and of insurance for such transport, as well as (any) other costs associated with our delivery and service such as levies, fees, taxes, customs duties or regulatory permits (individually or jointly called “Additional Costs”). These potential Additional Costs are at the customer’s expense. In the event that third parties bill us for such Additional Costs, the customer must reimburse us fully for those costs.

The prices are based on the materials, production, personnel and other operating costs in effect at the time the Contract is concluded. Any increases in these costs during the service/delivery period shall entitle us to raise prices accordingly.

### **5. Conditions of payment and due dates**

Unless agreed otherwise in writing or by email, the customer shall pay our invoices within 30 days of the date of the respective invoice without any deductions.

### **6. Customer default (on payment and on acceptance)**

In the case of failure to pay, the customer is considered in default as of the day payment is due; no warning is necessary. Default on payment has – in addition to further legal consequences stipulated by law – the following consequences in particular:

- Default interest at the statutory rate is owed (Art. 104 Swiss Code of Obligations);
- all costs incurred by us in connection with the default and collection of payment must be reimbursed, e.g. collection fees and attorney fees and
- our delivery may be delayed.

In the case of failure to accept our delivery and service, the customer is considered in default at the time of delivery; no warning is necessary. Default on acceptance has – in addition to further legal consequences stipulated by law – the following consequences in particular:

- We shall store our delivery at the customer’s expense and risk, and
- the customer is liable for any accidental loss of our delivery and service and must reimburse us for the price plus value added tax plus any Additional Costs. In the event of withdrawal due to default on acceptance or payment, we also have the right to withdraw from any additional contracts that have not yet been fulfilled.

## **7. Scope of delivery and deadline for deliveries**

We are entitled to perform the agreed-upon deliveries and services all at once or as partial deliveries. All deadlines and dates for our deliveries represent merely predictions for planning purposes and are not legally binding; the right is reserved to enter into a differing explicit and written agreement between us and the customer. Accordingly, the customer as a rule has no right to rescission of the respective Contract in the case of delayed delivery, nor to the assertion of other claims (such as, in particular, payment of damages, loss of profit). If, in an exceptional case, legally binding delivery deadlines are agreed upon, those deadlines shall only become effective upon or after conclusion of the Contract and completion of all preliminary measures by the customer (e.g. documents, information, Customer Materials and payments). Furthermore, a written warning from the customer is required before we are considered in default on delivery. Our liability for delayed delivery is limited to gross negligence and intent. However, the compensation amount shall in any case be no more than 0.5% of the price of the respective Contract per full week of delay and a total of no more than 5% of the price of the delayed delivery under the respective Contract.

## **8. Ready for pickup and delivery**

Unless agreed otherwise in writing, delivery shall be made ready for pickup at our distribution warehouse in Pratteln at the agreed-upon point in time. The customer bears responsibility and costs as of the time the delivery is ready for pickup (Incoterms 2020, Ex Works). This is subject to any deviating provisions in the present Terms and Conditions that may indicate that the customer already bears responsibility and costs prior to the readiness for pickup of the delivery (e.g. in the case of customer default on acceptance, number 6). The customer shall be liable for loss of or damage to Customer Materials prior to our readiness for pickup of the delivery occurring by accident or due to other reasons for which we are not responsible according to the present Terms and Conditions. If delivery to the customer is delayed due to reasons for which we are not responsible, such as force majeure or customer default on acceptance, then the rights and obligations pursuant to number 6 (default on acceptance) and number 13 (force majeure) shall apply.

## **9. Inspection, notification of defects and acceptance**

The customer shall inspect our deliveries and services immediately after delivery for freedom from defects, completeness and correctness pursuant to the Contract and shall inform us immediately – but no later than ten calendar days after delivery, and for hidden defects immediately after discovery thereof – in writing and in detail of any defects for which we issue a warranty. Otherwise, our delivery and service shall be considered accepted by the customer. If the customer has accepted our delivery and service, and at the latest one year after delivery, all customer warranty rights shall expire. The provisions under this number apply with the same intent for all other customer complaints, such as in the case of incorrect and late deliveries, and all other complaints about the conclusion of the Contract and implementation of the relevant delivery or service performed by us.

## **10. Warranty**

**Warranty against defects:** We take responsibility only for those defects that already existed at the time of delivery to the customer. At our request, the customer must send the delivery or service that is the subject of the complaint back to us in the original or equivalent packaging so we can inspect the defect about which the complaint was made. In the case of a justified complaint, we will reimburse the expenses incurred by the customer for shipping and transport costs. In the case of a defective delivery or service, the customer has a claim, at our discretion, either to replacement delivery with a defect-free delivery or rectification of the defective delivery. Subject to any other mandatory laws stating otherwise, the customer cannot assert any other claims (such as a reduction in price, cancellation or compensation for damages). The warranty requires that the customer have completely complied with its contractual obligations and that the requirements as per number 9 (notification of defects) have been met. The provisions of this clause apply to all cases of defective delivery or service, regardless of the legal foundation on which the customer bases its claim.

**Warranty with regard to title transferred:** A warranty by us that no third-party rights existed to our materials/substances at the time the Contract was concluded is excluded, subject to any mandatory laws stating otherwise.

## **11. Liability**

Subject to further limitations in these Terms and Conditions, our liability vis-a-vis the customer is limited to cases of intent and gross negligence. Any liability on our part for auxiliary persons or in the case of force majeure is excluded. In any case, the amount of our liability is limited to the price for our delivery or service of the particular Contract to which the customer's claim relates. Liability on our part requires that the customer have properly fulfilled its obligations pursuant to number 9 (notification of defects).

## **12. Withdrawal by the customer**

If we have not completed our deliveries and services, the customer may withdraw from the Contract at any time in exchange for fully indemnifying us. The indemnification shall correspond to the compensation that we would have been able to claim minus the expenses we were able to save due to our customer's withdrawal. The indemnification amount, however, shall in each case be at least 25% of the price we would have been able to claim for completion of the remaining agreed-upon work. The provisions under this section likewise apply in the event that the customer should withdraw from its Customer Order.

## **13. Force majeure**

Unforeseen and unavoidable incidents for which we are not responsible, such as strike, fire, energy shortage, operational disruptions or breakdown of machinery at our facilities or those of our suppliers, regulatory measures or difficulties obtaining permits and licenses shall extend the agreed-upon delivery timelines by the duration of the disruption and its effects. The customer will be informed of this delay in delivery. After providing information about the reason for the delay, we are entitled at any time to withdraw from the Contract without indemnification to the customer. In the event that the delay in delivery is prolonged by at least 4 months beyond the original delivery date and the customer can no longer in good faith be expected to accept the delivery, the customer is entitled to withdraw from the Contract without indemnification.

## **14. Customer materials: Delivery, characteristics and liability**

Customer materials are materials of the customer (e.g. active pharmaceutical ingredients, bulk materials, packaging materials) that the customer, in coordination with us, supplies for our delivery and service ("Customer Materials"). The Customer Materials shall be supplied at our warehouse in Pratteln, ready for unloading, at the agreed-upon point in time. This shall take place on EURO pallets and at no cost to us. The correct (in particular, complete, punctual and defect-free) delivery of the Customer Materials is the sole responsibility of the customer, which bears full and sole responsibility for any incorrect delivery of Customer Materials. The customer must inform us in writing unrequested and in a timely fashion (generally in the form of a Safety Data Sheet) if the Customer Materials require special measures for the sake of the materials or for people and the environment with regard to handling, storage, processing, or packing ("Particularities"). Depending on if or to what extent we can accommodate these Particularities we will carry out our Order Confirmation or the Contract. Unless there is a written agreement between us and the customer stating otherwise, the customer will only supply us with approved Customer Materials that are not subject to quarantine. We will conduct only a visual inspection and potentially an identification test of Customer Materials. Unfavorable consequences due to deviations in the nature of the Customer Materials (e.g. quality, amount) shall be at the customer's expense. This is subject to any written agreement between us and the customer stating otherwise. Our liability vis-a-vis the customer with regard to Customer Materials is also limited to cases of intent and gross negligence. Otherwise, the liability provisions pursuant to number 11 also apply here. Any insurance of Customer Materials is the customer's responsibility.

## **15. Secrecy, ownership of technical calculations and documents**

Technical documents and calculations, especially our offer/our Order Confirmation and the present Terms and Conditions, are our property. If the Contract is not carried out, the customer shall return all documents and calculations to us at our request. The aforementioned technical documents and calculations contain confidential information that the customer must keep secret, and in particular may not make available to third parties.

## **16. Indemnification in the case of claims by third parties**

The customer shall indemnify us entirely in cases in which we are responsible for damages vis-a-vis third parties that occur in the customer's area of responsibility.

## **17. Place of jurisdiction and applicable law**

Swiss law applies. The UN Convention on Contracts for the International Sale of Goods (CISG) is excluded. Exclusive place of jurisdiction is the civil district court Basel Landschaft Ost, Sissach. However, we are entitled, at our discretion, to file claims at the customer's business location.

## **18. Miscellaneous**

Changes or supplements to these Terms and Conditions must be made in writing. If one or more provisions of these Terms and Conditions is invalid, the remaining provisions remain in effect. The invalid provision shall be replaced by a provision that comes closest to the economic intent of the invalid provision. The same applies to gaps in the Terms and Conditions.