

GEKA GmbH General Delivery and Payment Conditions

§ 1 Validity

(1) All supplies, services and offers from GEKA GmbH (hereinafter also referred to as the "Vendor") are provided exclusively on the basis of these General Supply and Payment Conditions. These form part of all contracts which we conclude with our contracting partner (hereinafter also referred to as the "Client") on the supplies or services which we offer. They also apply to all future supplies, services or offers to the Client, even if they are not the subject of a further separate agreement.

(2) The terms and conditions of the Client or of third parties do not apply, even if the Vendor does not expressly contract their validity in individual cases. Even if the Vendor refers to correspondence which contains terms and conditions of the Client or of third parties or makes mention of such, this does not suggest any agreement to the validity of such terms and conditions.

§ 2 Offer and contract conclusion

(1) All offers from GEKA GmbH are subject to change and non-binding, in so far as they are not expressly identified as binding or contain a specific term of acceptance. The Vendor may accept orders or commissions within fourteen days of their receipt.

(2) The sole authoritative document for the legal relations between vendor and purchaser is the purchase contract concluded in writing, including these General Supply and Payment Conditions. This fully reflects all agreements between the contracting parties on the object of the contract. Oral promises by the Vendor before the conclusion of this contract are not legally binding and oral agreements by the contracting parties are replaced by the written contract, unless it is expressly stated therein that they will continue to be binding in each case. Supplements and modifications to the agreements reached, including these terms and conditions, require the written form in order to be effective. With the exception of executives or authorised representatives, the Purchaser's employees are not entitled to reach oral agreements which differ from this. To comply with the written form, transmission by fax is sufficient; otherwise transmission by means of telecommunications, in particular e-mail, is not sufficient.

(3) Information from the Vendor on the object of the supply or service (e.g. weight, dimensions, practical value, capacity, tolerances and technical data) as well as our representations of the same (e.g. drawings and illustrations) are only approximately applicable, unless its applicability for the purpose contractually envisaged requires precise conformity. These are not guaranteed characteristics but descriptions or identifications of the supply or service. Differences which are customary in the trade, which are the result of legal provisions or which represent technical improvements, as well as the replacement of components by parts of equivalent value, are permissible in so far as they do not detract from the applicability for the purpose contractually envisaged.

(4) The Vendor retains the ownership or copyright for all offers and cost estimates issued by him as well as drawings, illustrations, calculations, brochures, catalogues, models, tools and other documents and resources made available to the Client. Without the express agreement of the Vendor, the Client may not make these objects, or the content of them, accessible to third parties or make them known to third parties, or have them used or reproduced, either by himself or by third parties. On request by the Vendor he must return these objects to him in their entirety and, where applicable, destroy any copies made of them, if they are no longer needed by him in the proper course of business or if negotiations do not result in the conclusion of a contract.

§ 3 Price and payment

(1) Prices are valid for the scope or services or supplies listed in the order confirmations. Additional or special services will be calculated separately. Prices are given in EUROS ex works plus packaging, legal value added tax, customs for export deliveries plus duties and other official charges.

(2) In so far as the prices agreed are based on the Vendor's list prices and delivery is not to be made until more than four months after the conclusion of the contract, the Vendor's list prices valid at the time of delivery apply (in each case minus an agreed percentage or fixed discount).

(3) Amounts invoiced are basically to be paid within thirty days without any discount. However, if the Vendor's price lists applicable in each case contain any other payment conditions, these apply. But if any other payment conditions are agreed in writing, the payment conditions thus agreed in each case apply.

(4) In each case payments are only considered as discharging the Client's debt when the amount paid in is credited to the account. The acceptance of bills of exchange and cheques is subject to agreement. Bills of exchange and cheques will only be accepted for processing and are only valid as payment once they have been fully cleared. Discount charges and tax on bills of exchange are charged to the Client. When accepting bills of exchange and cheques, no guarantee will be undertaken for prompt submission or the production of claims.

(5) Payments will basically be offset against the oldest demands. If the Client does not pay by the due date, then interest will be charged on the outstanding amounts at a rate of 5% p. a. as from the due date; the application of higher interest rate and additional damages in case of late payment remains unaffected.

(6) Offsetting with counter-claims of the Client or the retention of payments on account of such claims is only permissible in so far as the counter-claims are undisputed or legally established.

(7) The Vendor is entitled only to make deliveries or provide services against prior payment or deposit if, after the conclusion of the contract, circumstances become known to him which are of a nature to considerably reduce the Client's credit worthiness and on account of which the payment of the Vendor's outstanding demands from the relevant contractual relations (including those from other individual orders for which the same framework contract applies) is put at risk.

§ 4 Supply and delivery times

(1) Supplies are provided ex works.

(2) Terms and deadlines announced by the Vendor in advance are always only approximate unless a fixed term or a fixed deadline is expressly promised or agreed. In so far as shipment has been agreed, delivery terms and delivery deadlines relate to the point of handover to the forwarding agent, freight carrier or other third party commissioned for the transport.

(3) Notwithstanding his rights with respect to defaulting on the Client's part, the Vendor may ask the Client for an extension to terms for supplies and services or a postponement of delivery and completion deadlines by the period of time for which the Client fails to meet his contractual obligations with respect to the Vendor.

(4) The Vendor is not liable for impossibility of delivery or for delays in delivery in so far as these have been caused by force majeure or other events which were not foreseeable at the time of concluding the contract (e.g. operating disruptions of all kinds, difficulties in procuring materials or power, transport delays, strikes, lawful lockouts, workforce, energy or raw materials shortages, difficulties in procuring necessary official approvals, official measures or non-delivery or incorrect or late delivery by suppliers), for which the Vendor is not responsible. In so far as such events make it considerably more difficult or impossible for the Vendor to provide his supplies or services and the obstacle is not merely of a temporary duration, the Vendor is entitled to withdraw from the contract. In case of obstacles of a temporary duration, the terms for supplies and services will be extended or the delivery and completion deadlines will be postponed by the period of the obstruction plus an appropriate run-in period. In so far as the Client cannot be expected to accept the supply or service as a result of the delay, he may withdraw from the contract by means of an immediate written notification to the Vendor.

(5) The Vendor is only entitled to make part deliveries if

– the part delivery is usable by the Client in the context of the contractual intended use,

– the delivery of the rest of the goods ordered is ensured and

– this does not mean that the Client incurs any considerable extra expense or additional costs (unless the Client declares that he is prepared to accept these costs).

(6) The Vendor only has an obligation to deliver up to the level of a commercial credit limit granted to the Client by the commercial credit insurer or by the Vendor in accordance with commercial credit insurance conditions. The Client remains bound by the order given if this exceeds the limit described above and is obliged to make payment in advance in terms of the amount by which it exceeds this with reference to the purchase price to be provided by him.

(7) If the Vendor falls behind with a supply or service or if a supply or service is impossible for him, for whatever reason this may be, then the Vendor's liability is limited to compensation in accordance with § 8 of these General Supply and Payment Conditions.

§ 5 Place of completion, dispatch, packaging, transfer of risks, acceptance

(1) The place of completion for all obligations arising out of the contractual relations is the registered office of the Vendor in Waizendorf, unless determined otherwise.

(2) The mode of dispatch and packaging are subject to the dutiful discretion of the Vendor.

(3) At the latest, the transfer of risks to the Client occurs with the handover of the object of delivery (whereby the commencement of the loading process is decisive) to the forwarding agent, freight carrier or other third party specified for carrying out the dispatch. This also applies if part deliveries are made or the Vendor has taken on other services (e.g. dispatch). If dispatch or handover is delayed due to circumstances whose cause lies with the Client, the transfer of risks to the Client takes place on the day when the Vendor is ready for dispatch and has notified this to the Client.

(4) Storage costs after the transfer of risk will be borne by the Client. In case of storage by the Vendor, the storage costs amount to 0.25% of the invoice amount of the objects of supply to be stored per week of elapsed time. The right to claim for additional storage costs or request proof of lower storage costs remains reserved.

(5) The consignment will only be insured by the Vendor against theft, breakage and transport, fire and water damage, or other insurable risks, on the express wish of the Client and at his costs.

§ 6 Warranty

- (1) The warranty period is one year as from delivery or, in so far as acceptance is necessary, as from acceptance.
- (2) The items supplied are to be carefully inspected immediately after their delivery to the Client or to the third party specified by him. They are considered to have been approved if no notice of defects is received by the Vendor with respect to apparent defects or other defects which were identifiable during an immediate, careful inspection within seven working days after delivery of the item supplied, or otherwise within seven working days of the discovery of the defect or the time when the defect was recognisable for the Client during normal use of the item supplied without closer inspection, using the form determined in § 2 (2) p. 6. On request by the Vendor, the item of supply to which the complaint relates is to be sent back to the Vendor carriage paid. If the notice of defects is justified, the Vendor will reimburse the costs of the cheapest method of dispatch; this does not apply in so far as the costs rise because the item of supply is located somewhere other than the place of use as determined.
- (3) In case of material defects in the items supplied the Vendor is initially obliged and entitled to repair them or supply replacements according to his choice, which is to be made within an appropriate period. In the event of failure, i.e. repair or replacement supply is impossible or unreasonable or in case of refusal or inappropriate delay, the Client may withdraw from the contract or reduce the purchase price appropriately.
- (4) If the Vendor is to blame for a defect, the Client may demand compensation under the conditions stipulated in § 8.
- (5) In case of defects in components from other manufacturers, which the Vendor cannot remedy for reasons of licensing law or for factual reasons, then, at his choice, the Vendor will make his warranty claims against the manufacturer and supplier on the Client's account or transfer the title to this to the Client. Warranty claims against the Vendor only exist for defects of this kind under other conditions and in accordance with these General Supply Conditions if the legal enforcement of the above-mentioned claims against the manufacturer and supplier was unsuccessful or is futile, for example, because of insolvency. During the period of the legal dispute the period of limitation is suspended as regards the Client's warranty claims in this matter against the Vendor.
- (6) The warranty becomes invalid if the Client modifies the item supplied without the approval of the Vendor or allows this to be done by third parties and the remedying of the defect is made impossible or unreasonably harder because of this. In each case the Client must bear the additional costs of remedying defects caused by the modification.
- (7) A supply of used items agreed in individual cases with the Client is done under exclusion of any warranty.

§ 7 Property rights

- (1) In accordance with this § 7 the Vendor vouches for the fact that the item supplied is free of third party industrial property rights or copyrights. Each contracting partner will immediately inform the other contracting partner in writing in the event that claims are made against him due to the infringement of such rights.
- (2) In the event that the item supplied infringes a third party industrial property right or copyright then, according to his choice and at his own costs, the Vendor will either alter or exchange the item supplied in such a way that it no longer infringes any third party rights, but so that the item supplied continues to fulfil its contractually agreed functions, or procure the right of use for the client by concluding a licence contract. If he does not manage to do this within an appropriate period, the Client is entitled to withdraw from the contract or reduce the purchase price appropriately. Any claims for damages by the Client are subject to the limitations in § 8 of these General Supply and Payment Conditions.
- (3) In case of infringements of products from other manufacturers supplied by the Vendor then, according to his choice, the Client will make his claims against the manufacturer and previous supplier on the Vendor's account or transfer this title to the Vendor. Claims against the Vendor only exist in this case in accordance with this § 7 if the legal enforcement of the above-mentioned claims against the manufacturer and previous supplier was unsuccessful or is futile, for example, because of insolvency.

§ 8 Liability for damages in case of default

- (1) The Vendor's liability for damages, regardless of the legal grounds but in particular due to impossibility, delay, defective or incorrect delivery, contractual infringement, infringement of duties during contract negotiation and action in tort is, in so far as there is a question of blame in each case, limited in accordance with this § 8.
- (2) The Vendor is not liable
 - a) in the event of simple negligence by his agents, legal representatives, employees or other servants;
 - b) in the event of gross negligence by his non-executive employees or other servants, in so far as this does not amount to an infringement of essential contractual obligations. Considered essential to the contract are the obligations for prompt supply free of defects and duties of consultation, protection and care, which will make the use of the supply item in accordance with the contract possible for the Client or which serve the purpose of protecting the life and limb of personnel of the Client or third parties or the Client's property against considerable damage.

(3) In so far as the Vendor is liable for damages on the grounds of and in accordance with § 8 (2), this liability is limited to damage which the Vendor has foreseen when concluding the contract as a possible consequence of a contractual infringement or which, under consideration of the circumstances, were or should have been known to him or which, by applying due care and attention, he should have foreseen. Furthermore, indirect damage and consequential damage resulting from defects in the item supplied are only subject to compensation in so far as such damage is typically to be expected when using the item supplied as stipulated.

(4) In the event of liability for simple negligence, the Vendor's obligation to make compensation for property damage and personal injury is limited to an amount of EUR 1.5 million per claim (corresponding to the current cover sum of his product liability insurance or third party insurance), even if this is a case of infringement of obligations essential to the contract.

(5) The above liability exclusions and limitations apply to the same extent in favour of the Vendor's agents, legal representatives, employees and other servants.

(6) In so far as the Vendor provides technical information or acts as an adviser and this information or advice is not part of the contractually agreed scope of services owed by him, this is done free of charge and with the exclusion of any liability.

(7) The limitations of this § 8 do not apply to the Vendor's liability on account of deliberate actions, for guaranteed characteristics, on account of injury to life, limb or health or according to the product liability law.

§ 9 Reservation of ownership

(1) The following agreed reservation of ownership serves as security for all and any demands of the Vendor against the Client, existing now and in the future, arising out of the supply relationship existing between the contracting partners (relevant supply relationship(s) is (are) marked off below)

Brushes and tools for applying cosmetic products – Vendor's internal designation: "top with applicator" –

Plastic bottles with a volume of less than 2 l – Vendor's internal designation: "bottles" –

Plastic parts – Vendor's internal designation: "threaded parts and wipers" –

Toothbrushes

(also including payment balance claims from a current account limited to this supply relationship).

(2) The goods delivered by the Vendor to the client remain the Vendor's property until complete payment of all secured demands. The goods, as well as the goods included in the reservation of ownership to take their place in accordance with this clause, are referred to as reserved goods.

(3) The purchaser stores the reserved goods free of charge for the Vendor.

(4) The purchaser is entitled to process and sells the reserved goods in normal business dealings up to the point of instigation of recovery (paragraph 9). Pledging as collateral and transfer by way of security are not permissible.

(5) If the reserved goods are processed by the purchaser then it is agreed that the processing is done in the name and on behalf of the Vendor as manufacturer and the Vendor directly acquires the ownership or – if the processing is carried out with materials from a number of owners or the value of the processed objects is higher than the reserved goods – the co-ownership (fractional ownership) of the newly produced objects in relation of the value of the reserved goods to the value of the newly produced objects. In the event that no such acquisition of ownership should occur with the Vendor, the purchaser hereby transfers his future ownership or – in the above-mentioned relationship – co-ownership of the newly produced objects as security to the Vendor. If the reserved goods are combined or inseparably mixed with other objects to form an integral object and if one of the other objects is to be seen as the main object, then, in so far as the main object belongs to him, the Vendor transfers the proportional co-ownership of the integral object to the purchaser in the ratio stated in the 1st sentence.

(6) In the event that the reserved goods are sold on, the purchaser hereby transfers the resulting claim against the acquirer – or in case of co-ownership of the Vendor of the reserved goods in proportion to the proportion of co-ownership – to the Vendor by way of security. The same applies for other claims which take the place of the reserved goods or which arise with reference to the reserved goods, such as insurance claims or claims arising from actions in tort in case of loss or destruction. The Vendor empowers the purchaser, in a revocable manner, to collect the claims transferred to the Vendor in his own name on behalf of the Vendor. The Vendor may only revoke this power of collection in case of recovery.

(7) If a third party takes possession of the reserved goods, in particular by distraint, the purchaser will immediately point out the Vendor's ownership to him and inform the Vendor of this, in order to allow him to implement his rights of ownership. In so far as the third party is not in a position to compensate the Vendor for legal or out-of-court costs incurred in this connection, the purchaser is liable with respect to the Vendor for this.

(8) On request and if he so chooses, the Vendor will release the reserved goods and/or the objects or claims standing in their stead, in so far as their value exceeds the amount of the secured claims by more than 50% .

(9) If, in the event of behaviour by the purchaser contrary to the contract – in particular late payment – the Vendor withdraws from the contract (case of recovery) he is entitled to demand the reserved goods.

§ 10 Taking back packaging in accordance with the packaging ordinance

The Client releases us from the obligation as per § 6 paragraph 2 of the packaging ordinance to take back and recycle sales packaging of any kind.

§ 11 Concluding provisions

(1) The legal venue for all and any disputes arising out of the business relations between the Vendor and the Client is, according to our choice, D-91522 Ansbach or the head office of the Client. For claims against the Vendor, D-91522 Ansbach is the exclusive legal venue. Compelling legal provisions on exclusive legal venues remain unaffected by this ruling.

(2) The relations between the Vendor and the Client are exclusively subject to the law of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods dated 11 April 1980 (CISG) does not apply.

(3) In so far as the contract or these General Supply Conditions contain any loopholes, those legally effective provisions which the contracting partners would have agreed according to the commercial aims of the contract and the purpose of these General Supply Conditions if they had been aware of the loopholes are considered to be agreed for filling these loopholes.

Note:

The Client takes note of the fact that the Vendor stores data arising out of the contractual relations in accordance with § 28 of the Federal data protection law for the purposes of data processing and reserves the right to transmit the data to third parties (e.g. insurance companies) in so far as this is necessary for the execution of the contract.

Date: 01.04.2010