

# General terms and conditions of business and delivery

## of Zermec Pharma AG, Laufenburg

### 1. Scope of validity

- 1.1 These general terms and conditions of business and delivery (hereafter referred to as "GTC") apply to all our deliveries and services to entrepreneurs and dealers in commercial transactions (hereafter referred to as "customers"), unless they are explicitly amended or excluded with our written consent.
- 1.2 In all cases, individual agreements made with the customer on a case-by-case basis (including ancillary agreements, additions and amendments) take precedence over these terms and conditions of sale. Subject to proof to the contrary, a written contract or our written confirmation is authoritative for the content of such agreements.

### 2. Offer and conclusion of contract

- 2.1 Unless explicitly agreed otherwise in writing, all offers and cost estimates of Zermec Pharma AG are deemed to be an invitation to the customer to in turn submit a purchase application with regard to the goods/services. The customer's order is deemed to be a purchase request.
- 2.2 A legally binding contract is only concluded with the express written consent of Zermec Pharma AG (order confirmation).

### 3. Validity of the offer

- 3.1 All offers are valid for 90 calendar days from the date of issue unless otherwise stated in the offer. After this period, we reserve the right to adjust our offers to the new conditions.
- 3.2 These GTC are a binding part of our offer.

### 4. Prices

- 4.1 Unless explicitly stated otherwise in the offer, prices are ex works (EXW Incoterms 2020) excluding VAT, freight inspection, packaging, customs duties and delivery fees, taxes, levies, insurance, installation, commissioning and other services.
- 4.2 Unless explicitly stated otherwise in the offer, the assembly or installation of the products, commissioning, validation support or personnel training are not included in the price.

### 5. Scope of delivery

- 5.1 The scope and execution of the deliveries and services are specified by Zermec Pharma AG in the order confirmation, including all order-related documents. Goods or services not listed in the order confirmation are invoiced separately.
- 5.2 It is the customer's responsibility to check the documents and make sure that the drawings, calculations and specifications are correct. If the customer has released all documents, Zermec Pharma AG is not liable for any errors or omissions. In any case, Zermec Pharma AG's liability is limited to its own manufactured components and does not extend to other products or components or to general structural or architectural considerations.

## **6. Terms of payment**

- 6.1 Unless otherwise agreed, the payment term is 30 calendar days from the date of invoice. In special cases (new customers or order volumes exceeding the usual degree), individual payment terms can be agreed upon.
- 6.2 Payment are to be made to Zermec Pharma AG at its free disposal without deduction of discounts, taxes or fees of any kind.
- 6.3 The customer waives the right to offset claims arising from the purchase contract or from other transactions with Zermec Pharma AG against its payment debt (Art. 126 CO).
- 6.4 In the event of a default in payment, Zermec Pharma AG reserves the right to immediately suspend pending services. It is also entitled to charge interest on arrears at the usual interest rates as well as collection expenses.
- 6.5 If the customer is in default of payment, all pending claims will become due immediately.

## **7. Retention of proprietary rights**

- 7.1 Zermec Pharma AG retains ownership of all products delivered until they have been paid for in full.
- 7.2 The customer has to take all necessary measures to protect the property rights of Zermec Pharma AG.
- 7.3 Zermec Pharma AG is entitled to have the retention of proprietary rights entered in the appropriate public register and the customer is obliged to cooperate with such an entry. In the event of a change of domicile of the customer or of the product, as well as in the event of seizure or other intervention by a third party, the customer is obliged to inform Zermec Pharma AG immediately.
- 7.4 If the product delivered by Zermec Pharma AG is combined or mixed with other objects, we will be co-owners of the new object.

## **8. Delivery deadlines**

- 8.1 The delivery is made within the agreed delivery period. Compliance with our delivery obligation requires the timely and proper fulfillment of the customer's obligations. The delivery period begins as soon as the contract has been concluded. It will be deemed to have been complied with if, on its expiry, the delivery has arrived at the customer.
- 8.2 The delivery period will be deemed to have been extended if Zermec Pharma AG does not receive additional tasks or approvals from the customer in good time or if obstacles occur which are beyond the control of Zermec Pharma AG (force majeure). These can be, for example, natural disasters, epidemics, pandemics, shortages of raw materials and energy, export and import bans, machine breakdowns, mobilisation and war or the like.
- 8.3 If there is a delay in delivery, the customer (in deviation from Art. 190 CO) is first required to send an admonition to Zermec Pharma AG, setting a reasonable grace period, if a specific delivery date has been agreed. Only after this grace period has also elapsed unused does the customer have the right to declare in writing that the delivery has been waived.

## **9. Shipment, transport and insurance**

- 9.1 Shipment and transport are for the account and at the risk of the customer.
- 9.2 Complaints relating to shipment or transport must be addressed by the customer to the last carrier and the supplier immediately upon receipt of the delivery or the shipping documents. Complaints received later cannot be considered. A signed damage report must be compiled by the transport company, the carrier or the bearer.
- 9.3 Insurance against damage of any kind is the customer's responsibility.

## 10. Inspection of goods and acceptance of delivery

- 10.1 The products ordered by the customer are subject to constant checks during production, depending on the requirements and accuracy needed. In addition, a final test is required before the product leaves Zermec Pharma AG. If additional tests are required, they must be agreed in writing and the costs must be borne by the customer.
- 10.2 The customer must inspect the delivery within one week of receipt and explain any defects to Zermec Pharma AG in writing and, whenever possible, also visually. If the customer fails to comply with this obligation to inspect, any notice of defect made subsequently shall be rejected as being out of time, unless there are hidden defects which could not be detected immediately even with careful inspection. If the delivery is not in accordance with the contract at the time of acceptance, the customer must give Zermec Pharma AG the opportunity to remedy the defects within the legal and reasonable framework (cf. clause 11.6 below).
- 10.3 Additional claims of the customer due to defective delivery, in particular for damages or withdrawal from the contract, are excluded.

## 11. Liability for defects

- 11.1 Zermec Pharma AG warrants that the products supplied under this contract are free from material or manufacturing defects which would impair their proper use. This warranty becomes effective when the products leave the factory of Zermec Pharma AG.
- 11.2 Only express warranties explicitly mentioned in the order confirmation will be deemed as such.
- 11.3 Any warranty or liability on the part of Zermec Pharma AG is excluded for damage which impairs proper use and with regard to which it cannot be proven that it is attributable to material or manufacturing defects on the part of Zermec Pharma AG. In particular, any warranty or liability on the part of Zermec Pharma AG is excluded for damage caused by wear and tear, inadequate maintenance, violation of the operating instructions, overuse, improper operation, damage to property or loss of production, as well as for damage for which Zermec Pharma AG is not responsible for the causes.
- 11.4 The warranty period is 24 months from the date of delivery.
- 11.5 If the customer discovers defects in accordance with clauses 11.1 to 11.3 in the delivered products within the warranty period and if the customer wishes to assert a warranty claim, they must notify Zermec Pharma AG accordingly within seven days of discovery of this defect at the latest.
- 11.6 In the event of a defect within the warranty period, Zermec Pharma AG may, at its own discretion, remedy the defect by rectification (repair) or deliver a defect-free replacement (exchange). Only if the rectification fails will the customer have the right of rescission (reversal of the contract) or reduction of the purchase price. The replacement or repair of defective products does not extend the warranty period and it does not start anew.
- 11.7 In the following cases the warranty expires prematurely and all certificates (ATEX, CE etc.) become invalid:
  - if the customer or a third party does not handle the products in accordance with the operating instructions provided by Zermec Pharma AG;
  - if the products have been used outside their specifications;
  - if the customer or a third party makes improper changes or repairs;
  - if the customer uses non-original spare parts, components or tools from Zermec Pharma AG
  - if the customer fails to submit a written notice of defects in due time (see clause 11.5); or
  - if in the case of a defect the customer does not immediately take all appropriate measures to limit the damage and give Zermec Pharma AG the opportunity to remedy the defect.

**12. Exclusion of further liability**

- 12.1 Zermec Pharma AG is only liable for damage caused intentionally or by gross negligence.
- 12.2 Under no circumstances is the customer entitled to claim compensation for damage that has not occurred to the delivered item itself, such as loss of production, loss of use, loss of orders, loss of profit or other direct or indirect damage.
- 12.3 Furthermore, this exclusion of liability does not apply insofar as it is contrary to mandatory law.

**13. Property rights and copyrights**

- 13.1 All knowledge, technical information or documents provided by Zermec Pharma AG at any time in connection with these GTC, a contract or previous corresponding product tests are to be treated confidentially by the customer, its employees or representatives. They may not be reproduced or disclosed to third parties or used for any purpose other than the purpose of the contract without the written consent of Zermec Pharma AG, unless they are generally known. All rights (especially intellectual property rights) to specifications of Zermec Pharma AG, supplied data and other documents remain in full with Zermec Pharma AG.

**14. Confidentiality**

- 14.1 Zermec Pharma AG hereby confirms to keep contractual information or technical knowledge and drawings confidential.
- 14.2 The customer is obliged for an unlimited period of time to maintain confidentiality about business and trade secrets as well as information designated as confidential which becomes known to him in connection with the offer, the order or the delivery.

**15. Place of fulfillment, place of jurisdiction and applicable law**

- 15.1 The place of fulfillment for deliveries and services is in each case the agreed place of delivery of the product. The place of fulfillment for all of the customer's obligations is the registered office of Zermec Pharma AG.
- 15.2 The place of jurisdiction for this contractual relationship is the registered office of Zermec Pharma AG.
- 15.3 All contractual relationships between Zermec Pharma AG and the customer shall be governed exclusively by Swiss law, excluding the conflict of laws rules and the Vienna Sales Convention (CISG).

**16. Severability clause**

- 16.1 Should individual provisions of these GTC be ineffective or unenforceable or become so after conclusion of the contract, the validity of the remaining provisions of the GTC will remain unaffected. The ineffective or unenforceable provision are to be replaced by an effective and enforceable provision whose effects come as close as possible to the economic objective which the contracting parties were pursuing with the original provision. The above provisions shall apply accordingly in the event that the contract proves to be incomplete.

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