

Terms and Conditions of Purchase of Fresenius Kabi AG, Bad Homburg (“Purchaser”)

§ 1 Validity of General Terms & Conditions of Purchase

- (1) Purchaser bases all its purchasing transactions (including the purchase of deliverables to be manufactured or processed) upon the following terms & conditions of purchase (“Terms & Conditions”); consequently, all performances, delivery and all statements made by Purchaser and the contractual partner (the “Supplier”) – will be effected exclusively on the basis of the Terms & Conditions.
- (2) The Terms & Conditions shall also govern all future business transactions with Supplier, even if they will not have been explicitly agreed upon again.
- (3) At the latest, these Terms & Conditions shall be deemed accepted when Supplier commences delivery of the deliverables. This applies also if Supplier has explicitly refuted these terms or has referred to other terms in his order confirmation. Counter-confirmations of Supplier, as far as they refer to Supplier’s terms of business or terms of delivery are hereby refuted.
- (4) Deviations from the Terms & Conditions are only valid if they are explicitly confirmed in writing by Purchaser. Acceptance of deliveries or making of payments by Purchaser shall not represent an acknowledgement of Supplier’s terms and conditions.

§ 2 Offers and Conclusion of Contract

- (1) Orders shall only be considered binding if made in writing (Textform). All oral orders or orders made by telephone as well as any collateral agreements or amendments are only binding if and as far as acknowledged by Purchaser in writing (Textform).
- (2) Modifications and additions made by Supplier in the order confirmation are not binding for Purchaser. Section 1, sub. par. (4) is applicable.

§ 3 Prices

- (1) If not otherwise agreed upon all prices shown in the order are in Euro.
- (2) All prices listed in the order are fixed prices. They include all additional charges, for example due to increased wages or raw material prices, technical improvements etc. and prices are DDP (Incoterms 2010), including packaging. If Purchaser elects to bear the shipping and packing charges – if not otherwise agreed – Supplier shall ensure the lowest shipping costs. This does not affect the place of performance; Supplier shall bear all costs arising from the collection of monies.

§ 4 Payment

- (1) If not otherwise specified in the order, payments and means of payment are at the choice of Purchaser. For payments within 14 days after receipt of invoice, Purchaser is entitled to deduct a discount of 3 %.
- (2) If advance payments are agreed upon, Supplier shall provide Purchaser with bank guarantees acceptable to Purchaser for such advance payments. Such bank guarantee shall be valid until all deliveries and obligations of Supplier are completely met.
- (3) Supplier is not entitled to deduct payments made by Purchaser from older debts or from costs or interest in his discretion.

§ 5 Delivery dates/delivery terms/partial shipments

- (1) Delivery dates are obligatory and must be met strictly. Any and all provision providing for an unreasonably long or unclear period for Supplier’s decision to accept or refuse an order by Purchaser or for Supplier’s delivery of performance shall be invalid.

This applies also for provisions on determining the setting of a reasonable time to cure breaches of contract. Where applicable, delivery dates shall be determined by using the date of the order form as commencement date.

- (2) If Supplier fails to keep the date agreed for the delivery or performance, Purchaser shall be entitled to all statutory remedies, including articles 280, 281, 286, 323 BGB (German Civil Code). Purchaser shall be entitled to a penalty of 0,5 % of the total order value for each commencing week of delivery delay, however, not more than 10 % of the net order value, for damages, unless Purchaser proves damages exceeding these amounts.
- (3) Partial shipments are only allowed if explicitly accepted by Purchaser in writing.
- (4) Purchaser's acceptance of partial deliveries shall not affect Purchaser's rights as to the total delivery, and Purchaser shall not be obliged to reserve such rights at the time of acceptance of the partial shipment. If Supplier cannot meet a delivery date, Purchaser must be informed immediately, stating reasons and the predicted duration of delay.

§ 6 Warranty Claims and Liability

- (1) Subject to these terms and conditions, Supplier shall be liable for all deficiencies of the contractual products, either in fact or in title (Sach- und Rechtsmangel), breach of representations and warranties (Fehlen zugesicherter Eigenschaften und Nichteinhaltung garantierter Daten), according to all laws and regulations.
- (2) In particular without limitation, Supplier shall be responsible for damages arising from inappropriate packing.
- (3) At the time of delivery the delivery items must –even if not explicitly specified by Purchaser – feature the latest state-of-the-art properties, components and devices.
- (4) The statute of limitation on Purchaser's claims hereunder shall be three (3) years after transfer of risk, unless the regular statute of limitation provided by law is longer.
- (5) Supplier warrants and guarantees that deliveries shall remain free of defects during the period provided by the statute of limitation, and that the delivery is fit for the purpose indicated in the order form.
- (6) According to section 439 of the BGB (German Civil Code), Purchaser shall be entitled to elect repair of the defective performance delivered or replacement. Supplier shall pay all costs related to repair or replacement, subject to section 439 sub. Par 2 BGB (German Civil Code). Repair or replacement shall be deemed unsuccessful after one failed attempt of repair or replacement.
- (7) If Purchaser is under a commitment that requires immediate repair or replacement, or if it is neither possible nor appropriate or reasonable to ask the Supplier to procure repair or replacement, then Purchaser shall be entitled to effect repair or replacement, directly or by a third party, without giving reasonable time to cure, and demand reimbursement of any cost arising thereof.
- (8) Purchaser is not obliged to reserve any rights for breach of contract (Gewährleistungsrechte) that Purchaser is entitled to at the time of acceptance of delivery or service. Any notices required shall be deemed delivered in due time if they are made within two weeks after delivery or two weeks after discovery of a breach.
- (9) In case of resale of the delivered products by Purchaser to third parties, Supplier shall indemnify Purchaser against all third party claims arising from product liability as far as the Supplier is responsible for the defect causing the liability.
- (10) Purchaser hereby refutes any limitations on Supplier's statutory or contractual liability, in Supplier's terms and conditions.

§ 7 Cession/Reservation of Title

- (1) A cession of claims by Supplier shall only be deemed valid if the new creditor releases Purchaser from unjust enrichment claims in case of erroneous payments to the former creditor.
- (2) Title of a delivery shall pass to Purchaser upon delivery. Any retention of title, or cessation of claims for purchasing price out of the resale of deliverables (verlängerter Eigentumsvorbehalt), as may be reserved in the terms and conditions of Supplier, shall be null and void.
- (3) Without limiting the generality of the foregoing section 7 sub par (2), Purchaser shall be entitled to process and resell any deliverables under an agreed upon reservation of title by Supplier. Supplier's consent or Purchaser's notice shall not be required.

§ 8

- (1) If SUPPLIER is merchant under HGB (German Commercial Code), a legal entity under public law, or separate trust under public law, the exclusive court of jurisdiction shall be Bad Homburg v.d.H. for all disputes arising directly or indirectly from the contractual relationship between Supplier and Purchaser.
- (2) These terms and conditions and the entire legal relationship between Purchaser and Supplier are governed by the laws of Germany. The UN Convention on International Sales of Goods shall not be applicable.
- (3) If a clause in these terms and conditions, or in the contractual relationship between the parties is void or rendered void, the remainder of the contract shall remain unaffected.