

§ 1 General remarks and scope

- (1) The present General Terms and Conditions (GTC) apply to all our business relationships with our customers (hereinafter referred to as "business partners"). The GTC apply only if the business partner is an entrepreneur (§ 14 BGB (German Civil Code)), a legal entity under public law or a public special fund.
- (2) The GTC apply in particular to contracts concerning the sale and/or delivery of movables (hereinafter also referred to as "goods"), regardless of whether we manufacture the goods ourselves or purchase from suppliers (§§ 433, 651 BGB). The GTC are regarded in their current version as a general agreement with the same business partner for future contracts concerning the sale and/or delivery of goods without the need to refer to them again in each individual case.
- (3) Our GTC apply exclusively. Differing, conflicting or supplementary General Terms and Conditions of the business partner shall only then become part of the contract when we have expressly agreed to their validity. This requirement of approval also applies in any case, for example, if we export the delivery to him without reservation with the knowledge of the GTC of the business partner.
- (4) Individual agreements concluded in singular cases with the business partner (including collateral agreements, supplements and amendments) shall always take precedence over these GTC.

A written contract or our written confirmation is decisive for the content of such agreements.

- (5) Legally relevant declarations and notifications which are to be handed over to us by the business partner after signing the contract (e.g. setting deadlines, report of defects, notice of withdrawal or mitigation) are required to be in writing in order to be effective.
- (6) References to the application of statutory provisions are only meant for clarification. Even without such clarification, the statutory provisions shall apply, unless they are directly amended in these GTC or expressly excluded.

§ 2 Signing of agreement

- (1) Our offers are non-binding and without commitment. This applies even if we have sent to the business partner catalogues, technical documentation (e.g. drawings, plans, estimations, calculations, references to DIN standards), other product descriptions or documents, even in electronic format, to which we reserve ownership and copyright.
- (2) Order of goods by the business partner is considered a binding offer of contract. If nothing else emerges from the order, we are entitled to accept this offer of contract within 2 weeks of its receipt.
- (3) The acceptance can be declared either in writing (e.g. by confirmation of order) or by delivery of goods to the business partner.

§ 3 Time of delivery and delayed delivery

- (1) The time of delivery is agreed individually or indicated by us on acceptance of the order. If this is not the case, the delivery time is approximately 6 - 8 weeks from the date of signing the contract.
- (2) If we are unable to meet the binding delivery schedules for reasons beyond our responsibility (unavailability of performance), we shall inform the business partner immediately and at the same time notify the expected new date of delivery. If the performance is not available even within the new date of delivery, we are entitled to withdraw entirely or partially from the contract; we shall refund immediately any consideration already paid by the business partner. A case of unavailability of performance in this sense is especially the late delivery by our suppliers if we have concluded a congruent hedging transaction. Our legal right of withdrawal and termination, including the statutory regulations governing the execution of the contract in case of an exclusion of obligation of performance (e.g. impossibility or unreasonableness of performance and/or supplementary performance) remains unaffected. Also unaffected is the right of withdrawal and termination of the business partner according to § 8 of these GTC.
- (3) The occurrence of our delayed delivery is governed by the statutory provisions. In any case, however, a reminder by the business partner is required. If we are forced into a delayed delivery, the business partner can demand a flat rate compensation for his damages due to the delay. The lump-sum compensation totals for each completed calendar week of delay to 0.5% of the net price (delivery value); however, to a maximum of 5% of the delivery value of goods delivered late. We reserve the right to prove that the business partner has suffered no damage or only less damage than the above lump sum.

§ 4 Delivery, transfer of risk, acceptance, default of acceptance

- (1) Client's obligation of cooperation: if the client is committed to provide us with raw materials, he is under the obligation to deliver free of charge to the factory. The client is committed to bring hazardous properties to our notice which are inherent to the materials or arise from them on processing. This applies especially with regard to reactions between packaging and contents, as well as product characteristics, which may cause difficulties during the production and further processing. A storage fee must be paid for materials that we store on behalf of the customer.
- (2) Liability for stored goods (bulk, packaging): if bulk products, packaging or other goods owned by him, are stored for the purchaser even against a fee on our property, it does not constitute an agreement of safekeeping. In case of loss, damage or destruction of the items stored on our property, we are not liable, except for willful misconduct or gross negligence. This also applies to the behaviour of our representatives or agents. The stored articles can be insured on request by the purchaser; the accrued costs are borne by the purchaser.
- (3) Excess or short deliveries in quantity and numbers are allowed up to 10%. The total price will change accordingly depending on the scope.
- (4) The delivery is ex stock, which is also the place of performance. At the request and expense of the business partner, goods are sent to another destination (sales shipment). Unless otherwise agreed, we are entitled to determine the type of shipment (especially the transporting company, transport route and packaging) ourselves.
- (5) The risk of accidental loss and accidental deterioration of goods is transferred to the business partner once the goods are handed over. In the case of a sales shipment, however, the risk of accidental loss and accidental deterioration of the goods as well as the risk of delay is transferred upon delivery of goods to the forwarding agent, the carrier or the person or organization otherwise chartered to execute the dispatch. If acceptance has been agreed, that is decisive for the transfer of risk. In addition, the statutory provisions of the law governing the work contract apply accordingly to an agreed acceptance. The handover or acceptance is one and the same, if the business partner is in default of acceptance.

- (6) If the business partner is in default of acceptance, if he transfers an act of cooperation or if our delivery is delayed for other reasons to be justified by the business partner, we are entitled to demand compensation for the resulting damages including additional expenses (e.g. storage costs). We charge a lump sum compensation of 0.5% of the net price (delivery value) per day maximum 5%, starting from the date of delivery or, if a delivery period is absent, from the date of notification about goods being ready for dispatch. The business partner reserves the right for a proof that we suffered no damage or only less damage than the above lump sum.

A proof of greater damage and our legal claims (especially compensation for additional expenses, reasonable compensation and termination) remain unaffected; but the lump sum must be offset against additional monetary claims. The business partner is granted a proof that we have suffered no or significantly less damage than the above lump sum.

§ 5 Prices and payment conditions

1. Unless otherwise agreed in an individual case:

(1.1) Our prices existing at the time of signing the contract prices apply, namely ex stock, plus the statutory VAT (1.2), in the case of a sales shipment (§ 4, Para. 1), the transport charges are borne by the business partner from the warehouse and the cost of a transport insurance possibly desired by the business partner. Any duties, fees, taxes and other public charges are borne by the business partner. We do not accept return of transport packaging and all other packaging according to the packaging regulations and they become the property of the business partner, except for pallets.

(1.3) We are entitled, however, in the case of contracts with a delivery value of more than 10,000 EUR to demand a deposit of 30% of the purchase price. The deposit is due and payable within 14 days of invoicing.

(2) Upon expiry of the above payment period, the business partner will be in default. The purchase price is payable during the period of delay at an interest rate of 8 percentage points above the base rate of the Deutsche Bundesbank. We reserve the right to claim further damages. In the case of merchants, our claim to commercial maturity interest (§ 353 HGB [German Commercial Code]) remains unaffected.

(3) The business partner is entitled to offsetting or retention only insofar as his claim is legally established or undisputed. In case of defective delivery, the clause § 8, Para 6 remains unaffected.

(4) If it becomes apparent after signing the contract that our claim on the purchase price is jeopardized due to inefficiency of the business partner (for example, following application to open insolvency proceedings), we are entitled in accordance with statutory provisions to withhold performance and, if necessary after a deadline, to withdraw from the contract (§ 321 BGB). In the case of contracts for the production of unacceptable items (individual items), we can declare our withdrawal immediately; the statutory regulations concerning the dispensability of setting a deadline remain unaffected.

§ 6 Placing goods in the market

- (1) As a manufacturer, the business partner places goods in the market. He indemnifies the user from potential claims by third parties due to manufacturing defects. He is responsible for the approval to trading. Any differing agreements must be in writing.
- (2) The business partner is responsible for placing the goods in the market; he must obtain required approvals at his own expense and submit the same to us on request. He may transfer this to us if necessary against charges.
- (3) We make the business partner explicitly aware that the provisions of the regulations such as KVO, LMBG, FBEV, Medicines Act, Chemicals Act, and Hazardous Goods Ordinance together with the appendices must be complied with by the business partner.
- (4) The business partner is responsible for the application of the details, necessary according to the rules applicable, concerning the ingredients contained in the goods and of the necessary warnings and the date of minimum durability, unless he has transferred it to us against payment or within scope of the manufacturing agreement.
- (5) The business partner is liable to the user for the compliance with the applicable legal standards for placing the goods in the market.

§ 7 Reservation of title

- (1) Until full payment of all present and future claims arising from the purchase contract and an ongoing business relationship (secured claims), we reserve the title of property to the goods sold.
- (2) Goods subject to reservation of title may neither be pledged to third parties nor transferred by way of security before full payment of the secured claims. The business partner must inform us immediately in writing if and when third parties gain access to the goods belonging to us.
- (3) In the event of actions of the business partner contradictory to the contract, especially for non-payment of the purchase price due, we are entitled to withdraw from the contract in accordance with the statutory provisions and to demand return of the goods on the basis of the reservation of title and the withdrawal. If the business partner fails to pay the due purchase price, we may make these rights applicable only if we have earlier set a reasonable deadline for payment to the business partner without success or such a deadline can be waived according to legal provisions.
- (4) The business partner is authorized to resell the goods falling under the reservation of title in the ordinary course of business and/or process the same. In this case, the following provisions apply additionally.
 - (a) The reservation of title extends to products to their full value resulting from processing, mixing or combining our goods, where we are deemed to be the manufacturer. If reservation of title of third parties exists in processing, mixing or combination with goods, we acquire co-ownership in proportion to the invoice value of the processed, mixed or combined goods. Moreover, the same applies to the resulting product as to the goods delivered under reservation of title.
 - (b) The business partner will assign to us the claims against third parties resulting from the resale of the goods or products even now or to the amount of our co-ownership share in accordance with the preceding paragraph as security. We accept the assignment. The obligations of the business partner referred to in para. 2 also apply in consideration of the assigned claims.
 - (c) The business partner remains entitled to collect the claim in addition to us. We undertake not to collect the claim as long as the business partner honours his obligations of payment to us, does not cause delay payments, no application is made to open insolvency proceedings and no other defect is present with regard to his performance. If this is the case, we can demand that the business partners [disclose](#) to us the assigned claims and their debtors, provides all details required for collection, hands over the relevant documents and informs the debtors (third parties) about the assignment.
 - (d) If the realizable value of the collaterals exceeds our claims by more than 10%, we will release the collaterals on demand by the business partner at our discretion.

§ 8 Deficiency claims of the business partner

(1) Unless otherwise defined in the following, the statutory provisions apply with regard to the rights of the business partner in case of material and legal defects (including wrong and short delivery as well as incorrect installation or improper installation instructions). Remain unaffected ~~in~~ all cases, the statutory special provisions remain unaffected for final delivery of goods to a consumer (suppliers recourse according to §§ 478, 479 BGB).

(2) The basis of our liability for defects is mainly the agreement made on the characteristic of the goods. Such agreement on the quality of goods are the product descriptions, which were left to the business partner before his order or included in the same way as these GTC in the contract.

(3) Unless agreement has been reached about the characteristics, an evaluation must be made according to statutory regulations as to whether a defect is present (§ 434, Para. 1 S 2 and 3 BGB). We assume no liability for public statements of other third parties (e.g. advertising statements).

(4) The deficiency claims of the business partner assume that he has fulfilled his obligations of legal inspection and notification (§§ 377, 381 HGB). If a defect is found during the investigation or later, the same must be reported to us without delay in writing. Reporting immediately implies if it is made within two weeks, where the deadline is met if the report is dispatched in time. Regardless of this investigation and notification the business partner (including wrong and short delivery) must report obvious defects within two weeks after delivery in writing, where here also the deadline is met if the dispatch is made promptly. If the business partner fails to carry out a proper investigation and/or to report defects, our liability for the unreported defects is ruled out.

(5) If the delivered item is defective, the business partner may first demand a remedy according to his choice a rectification of the defect (improvement) or delivery of a faultless item (replacement). If the business partner does not declare which of the two rights he chooses, we can accord him a reasonable deadline. If the business partner does not make a choice within the deadline, the right of choice is transferred to us on expiry of the deadline.

(6) We are entitled to make the subsequent remedy dependent on payment of the purchase price due by the business partner. However, the business partner is entitled to retain a reasonable part of the purchase price proportional to the defect.

(7) The business partner must concede to us the necessary time and opportunity for subsequent remedy owed and especially hand over the defective goods for verification purposes. In case of a replacement, the business partner must return the defective item in accordance with statutory provisions.

(8) The expenses necessary for the purpose of verification and supplementary remedy, especially in regard to transport, travel, labor and material costs are borne by us when in fact a defect is present. However, if a demand for remedy of a defect by the business partner is found to be unjustified, we may demand compensation from the business partner for expenses caused to us.

(9) In urgent cases, such as in case of risk to operational safety or for prevention of disproportionate damage, the business partner has the right to remedy the defect himself and demand reimbursement of the objectively necessary expenses. We must be informed immediately or, if possible in advance, about such a self-remedy. The right of self-remedy does not exist if we were entitled to reject an appropriate supplementary remedy under the statutory provisions.

(10) If the subsequent remedy has failed or if the reasonable deadline to be set by the business partner for the subsequent remedy has expired or it can be waived according to statutory regulations, the business partner may withdraw from the purchase contract or reduce the purchase price. In case of a minor defect, however, the right of withdrawal does not exist.

(11) Claims by the business partner for damages or compensation of futile expenses can only be entertained in accordance with the clause § 8 and are otherwise ruled out.

§ 9 Documentation

(1) The business partner is responsible for providing and storing the required documents according to the laws applicable; he is required to provide documentation concerning the properties and method of production of the goods unless he has transferred this to us against payment or as part of the manufacturing contract.

(2) The business partner is responsible for the documentation of any incompatibilities. He is particularly committed to report about freshly discovered incompatibilities to the relevant competent authorities at his own expense and to inform us about the same.

§ 10 Analyses

1. Unless otherwise agreed in individual cases:

(1.1) Furthermore, the business partner is responsible for the preparation of the certificates of specification and analyses at his expense.

(1.2) Furthermore, he must carry out, on request, additional quality tests, for example, preservatives stress test, patch test and likewise at his expense and provide the results to the user.

§ 11 EU REACH Regulation (EU Directive 1907/2006)

(1) The EU has established a uniform system for registration, evaluation and approval of chemicals with its ordinance governing chemicals. The ordinance includes not only chemicals, but also all substances, preparations and products. In addition to manufacturers and importers of chemicals all users of these substances are involved in the identification of potential risks.

(2) REACH has come into force on 1st June 2007 and from [this date obligations this date obligation apply](#) with respect to communication in the supply chain. For the purpose of the REACH ordinance, MAG Cosmetics GmbH is a downstream user who manufactures a product and is therefore not responsible for the registration and approval of the chemicals used.

We therefore require our business partners to comply with the REACH regulations, unless otherwise agreed in individual cases:

(2.1) Our business partners are required to determine the current status of the directives and laws relevant for their components with regard to the restrictions on substance and comply with them accordingly.

(2.2) Our business partners are required not to use banned substances. Substances to be avoided and hazardous substances according to the applicable laws and directives should be indicated on the specifications by our business partners.

(2.3) If applicable, the safety data sheets must be submitted even at the time of the respective first delivery along with the delivery slip (at least in German or English). Details about contravention of restrictions on substances and deliveries of prohibited substances must be communicated to us immediately.

(2.4) All delivery articles used by MAG Cosmetics GmbH are advance registered by the respective manufacturers. If the business partner fails to comply with the required advance registration and registration requirements, it may jeopardize the delivery capability of MAG Cosmetics GmbH for such substances or preparations.

(3) Basically, the business partner has the obligation to inform us in advance about any expected delay.

§12 Employee poaching

(1) No party to the contract may make offers to salaried employees of the other party to appoint them during the term of this agreement or within two calendar years thereafter (non-solicitation agreement). The non-solicitation agreement implies also affiliates of one party to the contract and also protects within the scope of a contract in favour of third companies of the other party with regard to their employees; the parties to the contract are responsible in this respect for the actions of the affiliates. Other offers and agreements are in equal relationship with such a contract on the basis of which is the work of the employee is no longer of advantage to the company employing but wholly or partly to the party to the contract.

(2) In the event of an infringement of the solicitation, the penalty is 1/4 of the last gross annual salary as the employee has received it. If solicitation is successful, the penalty is double the figure mentioned.

(3) The parties to the contract agree that an infringement occurs only by appointing an employee within the aforementioned period and the penalty becomes due.

§13 Information and data privacy

(1) The business partner declares his revocable consent to notified personal data being edited or processed in connection with the order in accordance with legal provisions.

§14 Other liabilities

(1) Unless otherwise emerges from these GTC including the following provisions, we are liable for any breach of contractual and non-contractual obligations under the relevant statutory provisions.

(2) We are not liable

> in case of simple negligence of our bodies, legal representatives, employees or other performing agents; > in case of gross negligence of our non-managerial employees or other performing agents, unless in regard to breach of obligations relevant to the contract. Obligations relevant to the contract are prompt, fault-free delivery and obligations of advice, protection and custody which are intended to enable compliant use of the delivered item.

(3) If our liability for compensation is established reasonably, the liability is limited to damages which we have foreseen at the time of signing the contract as potential consequence of breach of contract or, considering the circumstances, which we were aware of or which we ought to have known, or ought to have foreseen when normal diligence is applied.

(4) Indirect damages and consequential damages that are the result of defects of the delivered item are also only eligible for compensation if such damage can be typically expected when the delivered goods are used in accordance with the intended purpose.

(5) The present exclusions and limitations of liability apply to the same extent in favour of the bodies of our company, legal representatives, employees and other performing agents.

(6) If employees of our company provide information or act in an advisory status and the information or advice does not belong to the scope of delivery due from us and contractually agreed, it takes place free of charge and ruling out any liability.

(7) The afore-mentioned limitations of liability does not apply to our liability on account of premeditated behaviour or based on gross negligence of breach of obligation by the user or on a premeditated or grossly negligent breach of obligation by a legal representative or performing agent of the user; similarly, for guaranteed characteristics, on account of injury to life, to body or to health or in accordance with the law governing the product liability.

§ 15 Statute of limitation

(1) Notwithstanding § 438, Para. 1 No. 3 of BGB, the general period of limitation for claims from material defects and statutory lapses is one year from the date of delivery. If acceptance has been agreed, the limitation period begins with the acceptance.

(2) The above periods of limitation for sales law also apply to contractual and non-contractual claims for damages by the business partner, based on a defect in the goods, unless the application of the ordinary statutory limitation (§§ 195, 199 BGB) would result in a shorter period in individual cases. The periods of limitation pertaining to product liability law remain unaffected in any case. The statutory periods of limitations applies otherwise to claims for damages by the business partner in accordance with § 8.

§16 Governing law and jurisdiction

(1) The law of the Federal Republic of Germany to the exclusion of all international and supranational (contractual) legal systems, especially of the CISG applies to these GTC and all legal relationships between us and the business partner. The conditions and effects of reservation of title according to clause § 7 are subject to the law of the respective location of storage of the items, provided according to it the choice of law in favour of the German law is inadmissible or ineffective.

(2) If the business partner is a merchant within the sense of the Commercial Code, a legal entity under public law or a public special fund, the exclusive place of jurisdiction, even internationally, is our registered office in Bietigheim-Bissingen for all disputes arising from the contractual relationship directly or indirectly. However, we are also entitled to file a legal suit at the general jurisdiction of the business partner.

§17 Severability clause

If any of these provisions of these GTC are or become invalid wholly or partially, that does not affect the effectiveness of the other provisions and the contract and the GTC remain effective for both parties. With the publication and enforcement of a new version of our price list earlier published price lists become null and void.