

# General terms and conditions of delivery

GoCaps GmbH, D-83533 Edling, Germany

## §1 General, scope, assignment

1. Our terms and conditions of delivery apply exclusively; we do not recognise any terms and conditions of the customer that conflict with or deviate from our terms and conditions of delivery unless we have expressly agreed to their validity in writing. Our terms and conditions of delivery shall also apply if we carry out the delivery to the customer without reservation in the knowledge that the customer's terms and conditions conflict with or deviate from our terms and conditions of delivery.
2. Our terms of delivery apply only to entrepreneurs within the meaning of Section 14 of the German Civil Code (BGB), not to consumers within the meaning of Section 13 BGB. They shall also apply to future transactions.
3. We are entitled to assign claims arising from the business relationship.

## §2 Offer, order, subcontracting offer documents

1. Our offers are subject to change. All offers regarding price, quantity, storage periods and delivery possibilities are non-binding. Orders and delivery contracts shall only become binding when we have confirmed acceptance of the order of the object of purchase specified in more detail in writing or have executed the delivery.
2. We are entitled to subcontract for the fulfilment of the order without prior agreement or consent by the customer.
3. We reserve the property rights and copyrights to illustrations, drawings, calculations, formulations, recipes and other documents. This also applies to written documents that are designated as "confidential". The customer requires our written consent before passing them on to third parties.

## §3 Prices, terms of payment, set-off, retention

1. Unless otherwise stated in the order confirmation, our prices shall apply "ex works" ("EXW" Ex Works Hamburg, Incoterms 2020).
2. Our prices are not inclusive of statutory value added tax; this will be shown separately in the invoice at the statutory rate on the day of invoicing.
3. The deduction of a discount requires a special written agreement.
4. We are entitled to demand payment in advance.
5. Unless otherwise stated in the order confirmation, the purchase price (without deduction) is due for payment within 14 days of the invoice date.  
The statutory rules concerning the consequences of default in payment shall apply. The default interest rate is 9 percent above the respective base rate of the European Central Bank per annum.
6. The customer shall only be entitled to set-off rights if their counterclaims have been legally established, are undisputed or have been

recognised by us. Furthermore, they are authorised to exercise a right of retention insofar as their counterclaim is based on the same contractual relationship and is undisputed or has been legally established. Exclusion of the right of retention in the event of advance performance is only possible if there is an objective reason for this.

7. The date of receipt of the credit note on the bank account specified on the invoice shall be decisive for the date of payment.
8. If the customer defaults on payment of a claim in whole or in part, all existing claims shall become due for payment immediately.

## §4 Delivery time, obstacle to delivery due to force majeure, transfer of risk

1. The delivery date stated by us is to be regarded as provisional and non-binding unless a date has been expressly confirmed by us in writing as a binding date. Partial deliveries are permissible and end the delay in delivery.
2. The start of the delivery time stated by us presupposes that all technical questions have been resolved.

Compliance with our delivery obligations further presupposes the timely and proper fulfilment of the customer's obligations. The defence of non-performance of the contract remains reserved.

Furthermore, compliance with the contractually agreed delivery deadline cannot be guaranteed in the event that delivery cannot be made, or cannot be made on time, due to force majeure. Until proven otherwise, force majeure shall be presumed to exist particularly in the event of the following:

- a) war, including civil war, large-scale military mobilisation, acts of terrorism
- b) currency and trade restrictions
- c) orders of state authorities
- d) epidemic, pandemic, extreme natural events
- e) failure of means of transport or energy
- f) industrial unrest such as strikes, occupations

We will therefore be released from the respective affected performance obligations for the duration of the disruption and to the extent of its effect if and to the extent that we are either unable to perform or cannot perform in a timely manner as a result of circumstances attributable to force majeure.

The prerequisite is that we must have notified the customer of the impediment to the provision of the service immediately after becoming aware of it.

Unless and insofar as anything to the contrary is agreed in the above provisions, the statutory provisions, in particular on impossibility (Sections 275, 326 BGB) and on disturbance of the basis of the contract (Section 313 BGB) as well as any other

rights and claims of the parties shall remain unaffected.

3. If the customer is in default of acceptance or culpably violates other duties to cooperate, the following shall apply:
  - a) we shall be entitled to demand compensation for the damages incurred by us in this respect, including any additional expenses.
  - b) the risk of accidental loss or accidental deterioration of the object of sale shall pass to the customer at the time at which the customer is in default of acceptance or debtor's default. Further claims or rights remain reserved.
4. Claims arising from a delay in delivery shall become statute-barred after 12 months.
5. In all other respects, claims arising from a delay in delivery shall be determined exclusively in accordance with Clause 8.
6. An exclusion or limitation of our liability does not apply to the cases regulated in Section 8 Clause 9.

#### **§5 Duties of the customer, delimitation of responsibility**

1. The customer is the distributor of the contractual goods. This means that the customer is responsible for placing the goods on the market. The customer guarantees that the contractual products and the components thereof comply with the relevant statutory provisions and the generally accepted scientific specifications. We do not check whether other applicable requirements, such as those relating to use as a medicinal product for human use, are met. We are not obligated to test the quality and suitability of the contractual products for a specific purpose, especially given that we only deliver a component for the new product. Furthermore, we are not obligated to verify the marketability of the contractual products.
2. The declaration in accordance with the law is the sole responsibility of the customer. As the distributor, the latter is solely responsible for ensuring that all legal requirements applicable in the countries in which the goods are placed on the market are complied with. The obligation to observe the product as well as the development of scientific knowledge, in particular the fulfilment of the requirements of the Product Liability Act, are the sole responsibility of the customer.

#### **§6 Place of performance, pallet exchange, transport insurance**

1. Unless otherwise stated in the order confirmation, delivery "ex works" ("EXW" Ex Works Incoterms 2020) is agreed.
2. Separate agreements shall apply for the return of packaging. Pallets are to be exchanged in the same quality.
3. If the customer so desires, we shall cover the

delivery by transport insurance; the customer shall bear the costs incurred in this respect.

#### **§7 Incoming goods inspection, scope of inspection**

1. The customer is obligated to carry out an incoming goods inspection.
2. In particular, the customer shall check the conformity of the product delivered by us with the specifications, including the requirements specified to us in writing by the customer, which shall only become effective upon written reconfirmation by us. Furthermore, the customer shall check the conformity of the product delivered by us with the relevant food, supplementary feed, medical device, and medicinal product regulations.
3. The inspection and, in the case of defects, the submission of a complaint to us must take place without delay (receipt of the complaint by us). If the complaint is not submitted on time, the product delivered by us shall be deemed to have been approved in accordance with the contract, unless it involves a defect that could not be identified during the inspection.

#### **§8 Warranty, liability and compensation**

1. Claims for defects on the part of the customer presuppose that the customer has duly complied with its legally owed obligations to inspect the goods and give notice of defects in accordance with Section 7.
2. We guarantee that the service to be provided by us has the contractually agreed quality. We do not assume any guarantees.

Deviations of analytical values from the values specified in the product specification are to be tolerated by the customer to the extent that they would be judged by the authorities to be in compliance with food, feed supplement, medical device, and medicinal product regulations. Rejection of the product or reduction of the payment of the invoice value by the customer is not permitted in these cases.

3. The obligations of the customer mentioned in Section 5, in particular the declaration in conformity with the law, are the sole responsibility of the customer.
4. Insofar as there is a defect in the subject matter of the contract, we reserve the right to decide whether warranty is provided in the form of rectification of the defect or delivery of a new item free of defects. In the case of rectification of defects or replacement delivery, we are obliged to bear all expenses necessary for the purpose of subsequent performance, in particular transport, care, labour and material costs, insofar as these are not increased by the fact that the purchased item was taken to a place other than the place of performance. We may refuse subsequent performance as long as the customer does not fulfil their payment obligations towards us to an extent corresponding to the defect-free part of the performance.

5. If the supplementary performance fails, the customer is entitled to demand withdrawal or reduction. The customer is obligated, at our request, to declare within a reasonable period of time whether they will exercise their right of withdrawal. However, the right of withdrawal can only be exercised in the event of a substantial defect. The right of withdrawal expires if the customer does not declare the withdrawal at the latest 14 days after receipt of the notification of the rejection or the failure of the subsequent performance and has been informed by us in advance that the right of withdrawal expires.
6. If the customer is not entitled to withdraw from the contract, we will nevertheless attempt to cancel the order if the customer requests a factually justified withdrawal. The customer shall pay the cancellation costs at our reasonable discretion up to a maximum of the amount of the order total confirmed by us. After receipt of the cancellation request, the cancellation costs are due for payment immediately.
7. If the customer asserts claims for damages, we shall only be liable for breaches of duty that are based on intent or gross negligence, including intent or gross negligence on the part of our representatives or vicarious agents. Insofar as we are not accused of intentional breach of contract, the liability for damages shall be limited to the foreseeable, typically occurring damage.

We shall also be liable for simple negligence if we culpably breach an essential contractual obligation. In this case too, however, the liability for damages shall be limited to the foreseeable, typically occurring damage. An essential contractual obligation is always deemed to exist if the exemption from liability relates to an obligation the fulfilment of which is essential for the proper performance of the contract and on the fulfilment of which the customer has regularly relied and was entitled to rely.

8. In the event of delay, we shall be liable for a maximum of up to 5% of the value of the delayed performance.
9. We shall be liable without limitation for damages arising from injury to life, body or health which are based on an intentional or negligent breach of duty by us or an intentional or negligent breach of duty by a legal representative or vicarious agent.  
The mandatory liability under the Product Liability Act remains unaffected.  
We shall also be liable without limitation in the event of the express assumption of a guarantee or a procurement risk as well as in the event of fraudulent concealment of a defect.
10. Any further liability than provided for in Section 8 is excluded, regardless of the legal nature of the asserted claim.
11. The exclusion or limitation of our liability in terms of reason and amount also applies to our legal representatives, employees and vicarious agents.
12. The limitation period for claims for material defects and defects of title is 12 months, calculated from

the transfer of risk.

## **§9 Liability for defects of title**

1. Unless expressly assured by us, we do not conduct patent searches and searches for conflicting property rights.
2. The contracting parties shall inform each other of any third-party property rights of which they become aware. In the event of an infringement of third party property rights, the contracting parties shall decide by mutual agreement how such third party property rights that have become known shall be taken into account in the further performance of the order.

## **§10 Taking back the goods subject to retention of title, securing the retention of title**

1. We retain title to the subject matter of the contract until receipt of all payments under the delivery contract.
2. In the event of conduct by the customer in breach of the contract, in particular in the event of default in payment, we shall be entitled to take back the object of sale. If we take back the object of sale, this shall constitute a withdrawal from the contract. After taking back the object of sale, we shall be entitled to realise it; the proceeds of realisation shall be set off against the customer's liabilities less reasonable realisation costs.
3. The customer is obliged to treat the object of sale with care; in particular, the customer is obligated to insure it adequately at their own expense against damage by fire, water and theft at its replacement value.
4. In the event of seizures or other interventions by third parties, the customer must notify us immediately in writing so that we can take action against such third parties. Insofar as the third party is not in a position to reimburse us for the judicial and extrajudicial costs of such an action, the customer shall be liable for the loss incurred by us.
5. The customer is entitled to resell the object of sale in the ordinary course of business; however, they hereby already assign to us all claims in the amount of the final invoice amount (including VAT) of our claim, which accrue to them from the resale against their customers or third parties, irrespective of whether the object of sale has been resold without or after processing. The customer shall remain authorised to collect this claim even after the assignment. Our authority to collect the claim ourselves remains unaffected by this. However, we undertake not to collect the claim as long as the customer meets their payment obligations from the proceeds collected, is not in default of payment and, in particular, no application for the opening of composition or insolvency proceedings has been filed or payments have not been suspended. If this is the case, however, we may demand that the customer informs us of the assigned claims and their debtors, provides all information necessary for collection, hands over the relevant documents and informs the debtors (third parties) of the assignment.

6. The processing or transformation of the object of sale by the customer shall always be carried out for us. If the object of sale is processed with other objects not belonging to us, we shall acquire co-ownership of the new object in the ratio of the value of the object of sale (final invoice amount, including VAT) to the other processed objects at the time of processing. In all other respects, the same shall apply to the object created by processing as to the object of sale delivered under reservation.
7. If the object of sale is inseparably mixed with other objects not belonging to us, we shall acquire co-ownership of the new object in the ratio of the value of the object of sale (final invoice amount, including VAT) to the other mixed objects at the time of mixing.  
If the mixing takes place in such a way that the customer's item is to be regarded as the main item, it shall be deemed to be agreed that the customer transfers co-ownership to us on a pro rata basis. The customer shall hold the sole ownership or co-ownership thus created in safe custody for us.
8. We undertake to release the securities to which we are entitled at the customer's request insofar as the realisable value of our securities exceeds the claims to be secured by more than 10%; the selection of the securities to be released is incumbent on us.

#### **§11 Data collection, correspondence**

1. We are entitled to collect, store, process and use information and data about the customer for the purpose of executing the orders and to pass them on to third parties for storage, processing and use, in particular for the purpose of debt collection, but also for outsourced accounts receivable management.
2. Unless otherwise agreed, documents may be sent by email, even unencrypted, provided that no personal data of third parties is involved.

#### **§12 Place of jurisdiction, applicable law**

1. If the customer is a merchant, our registered office in 83533 Edling shall be the place of jurisdiction; however, we shall also be entitled to sue the customer at the court of their registered office.
2. The law of the Federal Republic of Germany shall apply; the UN Convention on Contracts for the International Sale of Goods shall not apply.
3. Unless otherwise stated in the order confirmation, Hamburg shall be the place of performance.

#### **§13 Limitation period**

Legally relevant declarations and notifications must be made in text form. Any amendments and supplements are therefore only effective if they are agreed in text form. This shall also apply to amendments to Clause 13.

#### **§14 Miscellaneous**

1. The provisions in delimitation of responsibility agreements concluded with us or, if applicable, to be concluded with us, including their annexes, shall apply in addition to these general terms and conditions and shall take precedence over them in the event of deviations in individual cases.
2. If any provision in these general terms and conditions or any provision under any other agreement is wholly or partly invalid or unenforceable, or subsequently loses its validity or enforceability, this shall not affect the validity of any other provision or agreement.

In place of such a provision, an appropriate provision shall apply which, as far as legally possible, comes as close as possible to that of the invalid provision.