

## **GENERAL TERMS AND CONDITIONS OF SALE AND SUPPLY**

of B.M.P. Bulk Medicines & Pharmaceuticals GmbH,  
B.M.P. Pharma Trading AG,  
BMP Biotec GmbH

for contracts with companies and public corporations,  
valid as from January 1<sup>st</sup>, 2004.

### **1. General**

#### **1.1.**

The following General Terms and Conditions of Sale and Supply shall form the basis of all, and all future, sales contracts signed by the company B.M.P. Bulk Medicines and Pharmaceuticals, B.M.P. Pharma Trading AG or by BMP Biotec GmbH – hereinafter referred to as the “seller”. All terms and conditions of business, clauses or amendments of the buyer or an agent are expressly declined. They shall only form part of the contract if recognized by the seller in writing. This shall also apply if the seller does not expressly contradict again after receipt of a confirmation, or completes the delivery without reservation. In addition, the currently valid version of INCOTERMS shall apply.

#### **1.2.**

Objections, cancellations, terminations and deadlines of both contract parties must be made in writing and signed and exchanged in original form, or by fax, in order to be effective.

### **2. Quotations, finalizing contracts, prices**

#### **2.1**

Verbal quotations, promises, alterations to contracts and agreements on the part of the seller's employees, with the exception of managers and authorized representatives, are subject to change and non-binding. They require written confirmation in order to be effective. This can only be waived in writing. . Only promises or finalization of contracts confirmed in writing or by fax shall be binding.

#### **2.2.**

Descriptions of goods and statements regarding quality and information supplied by the seller in respect of the suitability and use of the goods are not to be regarded as a promise or guarantee of quality.

#### **2.3.**

The weight at the time of dispatch shall apply to the calculation of the purchase price.

### **3. Delivery and performance /deadlines**

#### **3.1.**

In the event of a delay in delivery, the buyer shall not be entitled to claim damages for delayed delivery if the delay is not caused or justified by wilful or grossly negligent action. In the event of slight negligence, the damage claim shall be limited in any case to the damage that can be typically expected as a result of the delay.

#### **3.2**

If a delivery is delayed as a result of unforeseen circumstances of any kind, for example by transport problems, machine damage, illness, industrial disputes, breakdowns, or Acts of God, the deadlines shall be extended by an appropriate amount. This shall also apply if these circumstances arise even after the seller was behind schedule. The seller shall not have to reimburse the costs incurred by unforeseen delays of this kind.

### **3.3**

All sales are subject to the correct and punctual supply by the seller's primary supplier, as well as the safe arrival of the goods to be delivered. The seller's stock reserve contract may likewise contain the clause relating to supplies to themselves.

### **3.4**

The seller is entitled to part shipments in part amounts reasonably acceptable for the buyer in commercial transactions, and the buyer is obliged to pay for the corresponding part shipments. All part shipments of a contract count as special business operations.

## **4. Payment, arrears, offsetting/right of retention**

### **4.1**

In the event of arrears the seller is entitled to charge interest on arrears amounting to 10 percentage points above the current base lending rate of the Central European Bank. Proof of a higher amount of damage is permissible.

### **4.2**

The buyer is not entitled to offset claims against claims of the seller, or to assert a right of retention, unless his counterclaim is found to be undisputed or legally binding.

### **4.3**

Should, after the signing of the contract, circumstances become known to the seller that place doubts on the creditworthiness of the buyer, or the fulfilment of his obligation to perform, or should the buyer fall into arrears with fundamental obligations to co-operate or pay by more than 14 days, despite a deadline being set, the seller is entitled to postpone the completion of his obligations until all outstanding claims have been paid in full, and to demand advance payment of all claims from all contracts entered into with the buyer, including bills of exchange presented by the buyer.

### **4.4**

Should the buyer not conform with a demand for advance payment, justified in accordance with Clause 4.3, within 3 working days, then the seller shall be entitled to decline completion of all signed contracts and, after setting a period of grace of a further 5 days, to decline completion of all contracts not yet completed and, in addition, to demand damages for, or to withdraw from, the same.

### **4.5**

The acceptance and call-off order of the agreed delivery is a fundamental primary obligation of the buyer.

## **5. Right of retention and assignment of claims**

### **5.1**

The supplied goods will remain, as goods subject to the rights of retention, the property of the seller up to full settlement of the purchase price demands, as well as future demands, demands not yet due, or contingent demands resulting from mutual trading relations, including any possible claims from bills of exchange.

### **5.2**

The processing or treatment of goods subject to the right of retention is conducted at all times on the orders of the seller, without liabilities for the seller resulting from this. The seller is entitled to ownership of the newly-created item. If goods subject to the right of retention are processed, treated, blended, mixed or combined with other goods not belonging to the buyer, the seller is entitled to co-ownership of the new item in the ratio of the invoice value of the goods subject to retention rights to the invoice value of the other goods at the time of processing, treatment, etc. The buyer shall transfer to the buyer, here and now, his co-ownership rights arising from the cases stated in the previous sentence, up to the amount of the invoice value of the goods subject to the right of retention. The new goods shall be stored by the seller by the buyer without charge.

### **5.3**

The buyer is authorized, subject to Clause 5.7, to sell the goods subject to retention rights within the scope of a correct business operation retaining the right of retention; he is not allowed, however, to offer them as a security or bond. The buyer hereby transfers to the seller all claims entitled to him from the resale of the goods subject to retention rights, or the goods produced by processing, treatment, mixing, blending or combination in accordance with No. 5.2. This shall also apply in cases where goods are sold for a total price together with other goods not belonging to the seller. If, on account of legal regulations, a Third Party has obtained ownership or co-ownership rights to the goods as a result of processing, treatment, mixing or blending, the buyer also transfers to the seller here and now, in advance, the claims becoming due to him from the Third Party. Any assignment in the sense of this paragraph shall always be limited to the amount of the invoice value of the goods subject to retention rights. The buyer is authorized, until revoked by the seller, to call in the assigned claims which, in the event of arrears, is permissible with a single claim resulting from the business relationship.

### **5.4**

The value of the goods subject to retention rights in the sense of the above paragraphs shall always be regarded as the price the seller has charged the buyer for the goods (invoice price).

### **5.5**

If so demanded by the buyer, the seller is obliged to release its securities as it chooses and in as far as their value exceeds the secured demands by more than 10%.

### **5.6**

If the co-operation of the buyer is necessary for the right of retention to be effective, as in the case of registrations required by the law of the buyer's country, the buyer is to take action accordingly. This is a fundamental, principle obligation.

### **5.7**

If the buyer is in arrears with payment, the seller can prohibit him from selling the goods subject to retention rights, as well as their processing, treatment, combination, bonding or mixing with other goods, as well as removing them, and demand the surrender of the goods subject to retention rights, or the goods subject to retention rights that have been processed and treated. The buyer is obliged to notify without delay of any seizure by Third Parties of goods to which the seller has rights in accordance with the above regulations. The same applies with regard to claims which have been assigned in accordance with the above paragraphs. The buyer is to bear and reimburse any intervention costs arising.

### **5.8**

In the event of behaviour on the part of the buyer in contravention of this contract, especially payment arrears, the seller, after setting an appropriate deadline, shall be entitled to demand the return of the goods sold.

### **5.9**

The enforcement of a right of retention, especially a demand for the return of the goods, shall be regarded as a withdrawal from the contract. The seller shall be entitled, regardless of withdrawal from the contract, to demand claims for damages in accordance with general regulations.

## **6. Guarantee/Complaints/Risk assumption**

### **6.1**

The goods are to be inspected immediately after delivery at the agreed point of delivery, provided this is possible and reasonable.

The findings of the respective transport companies shall supply refutable proof of the quality assessment, even for the relationship of the parties among one another.

### **6.2**

If deficiencies cannot be established by a commercial and sensory inspection, the buyer is to take representative samples for the purpose of examination, and/or commission an expert to conduct an urgent examination.

### **6.3.1**

The buyer is to inform the seller of a complaint without delay if deficiencies or deviations can be established without an expert, within 3 working days at the latest in the case of German domestic business, and within 8 working days after delivery or clearance at the agreed place at the latest in the case of international business. If it is necessary to enlist the services of an expert, the samples are to be supplied to the expert within three days of delivery in the case of German domestic trade, and within 8 days after delivery in the case of international trade. A complaint is to be made to the seller within 3 working days after receipt of the examination results at the latest, and within 3 weeks after arrival of the goods at the agreed destination at the latest, in cases where the inspection by an expert took a longer period of time.

### **6.3.2**

In order to be effective, complaints must be made in writing or fax, with an exact portrayal of the individual deficiencies forming the complaint.

### **6.4**

Guarantee and damage claims against the seller are excluded in the case of recognizable deficiencies, or those established by experts, if the buyer, prior to completion of the inspection for damage or deficiencies, touches the goods supplied, or parts of them (with the exception of taking samples for examination) or removes them from the place of inspection, opens, processes, treats or alters them in any other way, or sends them on.

### **6.5**

The buyer is obliged to assure claims for damages against the respective haulage operator by registering the complaints in the transport documents in good time, or to submit complaints in writing by some other means, as well as, if possible, having these confirmed by the driver. If these obligations are culpably violated, or the documents relating to the complaint against the haulage operator not presented to the seller within 2 weeks after being demanded to do so, the buyer's claims based on the specific complaint will be forfeited.

### **6.6**

If payment against documents is agreed, complaints shall not entitle the buyer to refuse to accept the documents and to pay or delay the purchase price.

### **6.7**

If there is a deficiency, the seller is entitled to choose whether to fulfil the contract in the form of a replacement delivery, or to rectify the deficiencies. In both cases the seller is obliged to bear the cost of all necessary expense, especially transport and return transport, handling, labour and material costs, providing these are not increased by the purchased item being taken to a place other than the place of delivery.

If a total of 2 or more replacement deliveries or repairs are unsuccessful, or if the seller delays the replacement delivery or repair by an inappropriate amount, the buyer is entitled to his general legal rights, without a further deadline having to be set. In the case of a correct replacement delivery, claims for damages are excluded, in as far as they do not apply to the buyer's costs when returning or repairing the goods.

## **7. Clarification and limitation of liability, limitation period**

### **7.1**

Claims for damages resulting from, and in connection with the sales contract are based on legal regulations regarding the reason and amount, if

a) they are based on a wilful or grossly negligent breach of contract on the part of the management or their senior executives; in the case of a breach of contract that is not wilful, the damage liability is limited to the foreseeable typical damage to be encountered;

b) the seller can be accused of a culpable breach of fundamental contract obligations. In this event the damage liability is limited to the foreseeable typical damage to be encountered.

c) the seller has given a special guarantee, or there is a fraudulent promise of quality or a fraudulent concealment, or

d) the claims are based on compulsory legal regulations especially the Product Liability Law or the principles of the Entrepreneur's Recourse (478, Federal Law Code).

Otherwise the liability for damages of the seller and his agents, especially for his and their employees, is dependent on blame, and excluded in the case of slightly negligent or behaviour unrelated to blame.

## **7.2**

In as far as the seller is liable, the liability, apart from that in accordance with Clause 7.1 (b), in all cases of gross and slight negligence, is limited to the damage, that, considering the circumstances that he recognized or should have recognized, could have been typically foreseen as a result of the breach of contract.

## **7.3**

Guarantee and and/or damage claims against the seller resulting from, or in connection with, the signed contract will be statute-limited one year after the complete delivery/part delivery of the goods to the buyer, at the latest. This does not apply to damage claims based on injury to the life, the body, health or freedom, and under the provisos of Clause Nos. 7.1.(a),(c) and (d), If the goods, after a release or other notice of the possibility to take delivery, are not accepted without delay, the statute limit period will commence on receipt of the notification to the buyer.

## **8. Place of settlement, choice of law, place of jurisdiction**

### **8.1**

The place of settlement is the agreed place of delivery or lading, otherwise the depot named by the seller in lieu of another arrangement: Norderstedt, and, for the payment of the purchase price, Hamburg.

### **8.2**

The currently valid law of the Federal Republic of Germany shall apply. The Law of the Agreement of the United Nations dated 13 April 1969 relating to the international purchase of Goods (CISG) and other laws possibly replacing it, are excluded.

### **8.3**

All disputes resulting from, or in connection with the contract, even in as far as they apply to the validity or termination of the contract, shall be decided by the ordinary courts in Hamburg. The seller can also bring an action against the buyer at the place of his registered office.