

The Association of Companies Involved in the Drugs and Chemicals Wholesale and Foreign Trade (Drogen- und Chemikalienverein e.V.) recommends use of the following General Terms and Conditions on a voluntary basis. Member companies and their contractual partners are therefore free to use different terms and conditions of business.

**The German original shall be authentic**

**General Terms and Conditions  
of the Association of Companies Involved in Drugs and Chemicals Wholesale and Foreign Trade (VDC, Drogen- und Chemikalienverein e.V.) for their trading business (VDC Terms, June 1997)**

**Contents**

- Art. 1 Scope
- Art. 2 Application of German Law
- Art. 3 Invalidity
- Art. 4 Definition of business day
- Art. 5 Settlement notes of brokers, sales acknowledgements of representatives of shippers, brokerage
- Art. 6 Markings
- Art. 7 Dispatch, delivery and collection
- Art. 8 Quantities, natural shrinkage during transit
- Art. 9 Description of goods/services and warranty of qualities
- Art. 10 Place of performance for documents
- Art. 11 Advice of shipment
- Art. 12 Documents in trust
- Art. 13 Rights of the Parties
- Art. 14 Non-conforming product
- Art. 15 Place of inspection, sampling, complaint, duties
- Art. 16 Extent of damages; foreseeability
- Art. 17 Letter of Credit
- Art. 18 Purchase "on approval of sample", and sensory inspection
- Art. 19 Purchase "on approval following analysis"
- Art. 20 Purchase "tel quel"
- Art. 21 Retention of title
- Art. 22 Sale subject to delivery from previous supplier
- Art. 23 Prescription
- Art. 24 Application of INCOTERMS
- Art. 25 Court of arbitration, Experts

**Art. 1  
Scope**

The provisions set out in the following General Terms and Conditions of Business shall be an integral part of the Agreement concluded between the Parties. If the Parties have agreed other General Terms and Conditions of Business, these shall have merely supplementary status with respect to the provisions of the present General Terms and Conditions.

**Art. 2  
Application of German Law**

The substantive law of the Federal Republic of Germany shall further be applicable as valid at the time of conclusion of contract. The law on the "UN Convention of 11 April 1980 on Contracts for the International Sale of Goods (CISG)" of 5 July 1989 and/or any law superseding it shall not be applicable.

**Art. 3  
Invalidity**

In the event that any provision of the Agreement is invalid, the remainder of the Agreement shall remain unaffected thereby. The invalid provision shall then be replaced by such provision as comes as close as possible to the eco-

nomie purpose of such invalid provision, taking reasonable account of the interests of both Parties.

**Art. 4  
Definition of business day**

Business days shall be working days with the exception of Saturdays and of 24 and 31 December. Recognised public holidays which differ between the countries involved shall be taken into account only in favour of the Party which has to make or receive a declaration on such a day, or which has to undertake an action on such a day.

**Art. 5  
Settlement notes of brokers, sales acknowledgements of representatives of shippers, brokerage**

(1) Settlement notes of brokers and sales acknowledgements of representatives of shippers shall be sent to the Parties on the day of transaction of the relevant business, and shall be deemed to be approved if no objections have been raised and served within two business days after receipt of such settlement note or sales acknowledgement by the other Party or by the issuer of such settlement note.

(2) Unless otherwise agreed, the commission/brokerage shall be paid by the Seller.

**Art. 6  
Markings**

The Seller shall at his own cost provide for marking in accordance with the usual practice in the trade, in order to permit unequivocal identification of the package, unless different marking is specified by the Purchaser.

**Art. 7  
Dispatch, delivery and collection**

(1) If "prompt" delivery has been specified for a spot transaction or domestic transaction, this shall mean delivery or collection within five business days from conclusion of contract; the period of grace shall be three business days.

(2) If "prompt" dispatch, delivery or collection has been agreed for transportation within the States of the European Economic Area (EEA) or to/from Switzerland, such shipment, delivery or collection shall be effected within fourteen calendar days after conclusion of contract; the period of grace shall be five business days.

(3) If "prompt" delivery or collection has been agreed for cross-border transportation with the exception of the countries mentioned under para. 2, shipment, delivery or collection shall be effected within thirty calendar days after conclusion of contract; the period of grace shall be fourteen calendar days.

(4) If delivery "on call" is agreed, the latest call/delivery date shall be specified in the contract. Depending on the contents of the contract, the Seller shall dispatch, place in readiness for collection, or deliver the quantity called within thirty calendar days after such call. In the event of spot or domestic transactions as defined in para. 1 and cross-border transportation within the meanings of paras. 2 and 3, the periods of grace specified therein shall be applicable for deliveries "on call".

(5) In the case of shipping transactions (delivery for maritime transport, particularly on FOB or CIF basis), the agreement of a date shall be deemed to be a fixed-date contract; no period of grace shall be required for the intended claiming of damages or for rescission of contract.

**Art. 8  
Quantities, natural shrinkage during transit**

(1) The word "approximately" or "approx." ("circa") before the quantity agreed in the contract shall entitle the Seller to deliver up to 5% more or less, and to invoice in accordance with the contractual price units.

(2) The Purchaser shall bear the risk of any shrinkage up to 2% of the initial weight occurring in transit, with the exception of

transit in domestic business or business within the EEA or with Switzerland. If the sale has been made on the basis of weight delivered, the Seller shall bear the full risk of natural shrinkage up to delivery; if in the case of purchases by weight delivered (= weight on arrival) it is not possible to determine the weight on loading due to loss of goods, or if the goods have increased in weight due to damage, invoicing shall be effected on the basis of the net weight on shipment, minus the loss in weight which is known by experience to occur in transit, whereby such loss in weight shall if necessary be determined by experts.

#### **Art. 9**

##### **Description of goods/services and warranty of qualities**

(1) Unless otherwise specified, descriptions of goods and services shall not at the same time be considered warranty of qualities.

(2) The qualities of a sample are not automatically to be considered as warranty of qualities, but only as agreed quality characteristics. Any warranty of qualities shall remain unaffected thereby.

#### **Art. 10**

##### **Place of performance for documents**

The place of performance for the delivery and submission of documents shall be the registered place of business of the Purchaser.

#### **Art. 11**

##### **Advice of shipment**

The Seller shall be required to notify the Purchaser of shipment, without delay and by the fastest possible means, indicating date of shipment, means of transport, number of shipment paper, type of goods, number of packages, and quantity.

#### **Art. 12**

##### **Documents in trust**

Documents received in trust shall be returned to the Seller by 16.00 hours of the third business day following the day of delivery of such documents, otherwise such documents shall be considered approved by the Purchaser. If the Purchaser makes use of such documents without having been permitted by the Seller to do so, the documents shall be deemed to be approved.

#### **Art. 13**

##### **Rights of the Parties**

(1) If the debtor is in delay with fulfilment of a principal performance, the creditor can after elapse of a specified period of grace either continue to insist on performance or rescind the contract and claim damages for non-fulfilment.

(2) Such period of grace must be at least three business days and need not exceed a maximum of fourteen business days. The specific provisions of Art. 7 remain unaffected thereby.

(3) Principal performances shall be the delivery (shipping, collection) of the goods, delivery of the documents, payment of the purchase price, call-off of the products, and any other performances described as principal performances in other provisions of the present General Terms and Conditions.

#### **Art. 14**

##### **Non-conforming product**

(1) In the event of non-conformity to the contract, the Purchaser may require rescission of the contract rather than reduction of purchase price only if the reduction in value is more than 15%.

(2) In the case of fungible goods, the Seller shall not be required to provide replacement delivery, but shall be enti-

pled to do so. The Purchaser may call upon the Seller to declare within three business days whether he will provide a replacement delivery or not. If the Seller makes no declaration, he shall lose his right to provide replacement delivery.

#### **Art. 15**

##### **Place of inspection, sampling, complaint, duties**

(1) Inspection of the goods shall take place at the destination. The Purchaser shall inform the Seller of the destination. The destination for the purposes of the following clauses shall be the place at which the Purchaser had or could have had his first opportunity to examine the goods following their arrival. By way of exception in the case of container shipment (shipment of the products by the Seller in a container), the destination shall be the place intended by the last recipient of the container for unloading the goods from the container.

(2) Any complaints due to defects, wrong delivery and/or wrong quantity shall be made by the Purchaser to the Seller without delay, and not later than eight business days after delivery at the destination. Such complaint shall not be valid unless made in writing. Proper inspection shall require the taking of representative samples selected by the random principle in accordance with the generally applicable or sector-specific rules, and analysis by a laboratory, except insofar as defects can be determined by commercial inspection or by sensory examination.

(3) Complaints need be acknowledged by the Seller only if the goods are in their original condition until he has the opportunity for examination of the complaint (to be effected without delay). "Original condition" means that, apart from a quantity required for examination purposes (this quantity to be generously defined), the Seller must not have started to process the goods, to unpack them or repack them, or to use them in any other way. The Purchaser shall give the Seller the opportunity to convince himself of the non-conformity of the goods. In particular, he shall upon request make available without delay the goods which are subject of the complaint, or samples thereof.

(4) If deficiencies are found such as could only be established by calling upon the services of an expert, the Purchaser can make valid complaint if he effects delivery of such complaint within three days after receiving the result of the analysis, or at the latest within three weeks from arrival of the goods at the contractually defined destination.

(5) If a properly raised complaint does not reach the recipient, the complaint shall be deemed to be made in due time if the Purchaser issues a reminder for remediation of the defect within one month after the first making of the complaint, or if he makes a renewed complaint within that period.

(6) If the goods are found not to be in conformity with the contract, the Purchaser shall not be permitted to remove from the contractual destination goods which are subject to complaint due to patent defect(s) and are still in their original condition, until:

- a) their characteristics have been established by an expert report in accordance with the VDC rules of procedure for experts or the regulations of the Hamburg Chamber of Commerce for quality assessment by experts; or
- b) samples have been taken in accordance with the usual regulations, at the cost of the Purchaser, by recognised, neutral samplers, or sealed samples have been taken jointly by the Purchaser and the Seller or their respective authorised representatives (samples taken in this manner shall then be the only definitive references); at least three sealed samples each and one open sample each shall be prepared for the Purchaser and the Seller; or
- c) the characteristics have been determined otherwise by a neutral examiner, i.e. by a court recognised expert or an expert nominated by the Chamber of Commerce.

(7) In the event of

- a) a transaction under a documentary letter of credit
- b) an FCA, CPT, CIP or EXW, etc. transaction, where the Purchaser has resold the goods with the provision that his subsequent purchaser shall collect the goods from the railway or forwarding agent,

it shall suffice for securing of the rights of the Purchaser that he passes on a notice of non-conformity from his subsequent purchaser without delay; however, the Purchaser shall be required to ensure timely transmission of such notice by his subsequent purchaser or if applicable the latter's subsequent purchasers.

(8) If a complaint is not made in due time or not in the proper manner as specified in this Article, or if the Purchaser fails to fulfil or fails to fulfil properly any of his duties as set out in this Article, the goods shall be deemed to be approved.

#### **Art. 16**

##### **Extent of damages; foreseeability**

(1) The damages to be paid for a contractual violation by one Party shall comprise the loss incurred by the other Party as a consequence of the violation of the contract, including loss of profit. However such damages shall not exceed the loss which the infringing Party foresaw as a possible consequence of violation of contract at the time of conclusion of contract, or which it should have foreseen taking account of the circumstances which it knew or should have known.

(2) In the case of a covering transaction, if it is clear that the contract is no longer to be executed, the difference between the contractual price and the price of the covering transaction may be claimed as damages; if a covering transaction is not carried out, the difference between the contractual price and the market price at the time of establishment of non-execution shall be effective; in either case, claims to further damages are not excluded.

(3) The rules on claims for damage shall also be applicable in the case of personal liability of the legal representative or person employed by a Party for fulfilment of an obligation.

(4) Any claims by the damaged Party on the basis of the Product Liability Act shall remain unaffected by the exclusions and restrictions of liability set out in these General Terms and Conditions.

#### **Art. 17**

##### **Letter of Credit**

If the Parties have agreed on the opening of a letter of credit for payment of the purchase price, the Purchaser shall open such letter of credit in due time before the beginning of the shipping or dispatch time. Ensuring timely opening of the letter of credit is a principal performance within the meaning of Art. 13 para. 3.

#### **Art. 18**

##### **Purchase "on approval of sample", and sensory inspection**

(1) A purchase "on approval of sample" is concluded on condition that the Purchaser accepts the sample. The sample shall be deemed to be accepted if the Purchaser has not declared the contrary within five business days of receipt of the sample.

(2) The Seller shall submit to the Purchaser a sample which belongs to the type of product covered by the contract concluded, which corresponds to the agreed designation of the goods, and which is of at least commercial fair average quality. For sales within the Federal Republic of Germany, the sample submitted shall be admissible for putting into circulation under the legal provisions applicable for the purpose of application of the product. The Seller shall be informed of the purpose of application. The Pur-

chaser must accept the sample if it meets the conditions of the present paragraph. The duties of this paragraph are principal performances within the meaning of Art. 13, para. 3.

(3) The goods delivered may have a value inferior to the level of the sample by not more than 5%.

#### **Art. 19**

##### **Purchase "on approval following analysis"**

(1) In the event of a purchase "on approval following analysis", the approval of the sample shall be at the discretion of the Purchaser; the purchase shall be deemed not to be effected if the Purchaser declares to the Seller that he does not wish to accept the goods.

(2) The Purchaser must make such declaration not later than on the 21<sup>st</sup> business day after receipt of the sample. If he does not make such declaration in due time, the purchase shall be deemed to be agreed unconditionally, and the product shall be deemed to be approved.

(3) The Seller shall be required to provide to the Purchaser a product which belongs to the agreed category of products, and which corresponds to the agreed designation of goods. This shall be a principal performance within the meaning of Art. 13, para. 3; the criterion for calculation of damage shall be goods of commercially fair average quality.

#### **Art. 20**

##### **Purchase "tel quel"**

In the case of product purchased "tel quel" ("as is"), the Purchaser shall be obliged to accept any goods, regardless of their quality, which conform to the agreed type and goods description.

#### **Art. 21**

##### **Retention of title**

(1) Products delivered under retention of title shall remain the property of the Seller until complete fulfilment of the purchase price claim and fulfilment of all due, not-yet-due or conditional receivables resulting from mutual business relations, including any bills receivable.

(2) Processing of goods subject to retention of title shall in all cases be deemed to be by order of the Seller, without any obligations thereby arising for the Seller. The Seller shall have title to any new object created by such processing. If goods subject to retention of title are processed, mixed, blended or compounded with other goods not belonging to the Seller, the Seller shall have co-property in the new object, in a proportion equivalent to the proportion between the value of the goods subject to retention of title and the value of the other goods at the time of processing, etc. The Purchaser transfers as of now any co-property rights arising for him in the cases mentioned in the previous sentence, to the value of the goods subject to retention of title.

(3) The Purchaser shall be entitled, subject to the provisions of para. 7 below, to sell the goods subject to retention of title within the framework of the ordinary course of business, specifying retention of title. The Purchaser assigns to the Seller as of now and in advance all claims arising for him from any re-sale of the goods subject to retention of title or to any such goods arising from their processing, blending, mixing, or compounding. This shall apply even if the goods are sold together with other goods not belonging to the Seller at a single price. If a third party has acquired property or co-property rights to the goods by statutory regulation as a result of processing, blending, mixing or compounding, the Purchaser hereby assigns to the Seller as of now and in advance any claims arising for him against such third party. Assignments under this paragraph shall always be effected only up to the amount of the value of the goods subject to retention of title. The Purchaser shall be entitled to

collect the assigned claims until such time as this is revoked, which shall be permissible at any time.

(4) The value of the goods subject to retention of title as defined in the previous paragraphs shall always be understood as the price which the Seller charged the Purchaser for the product (invoice price).

(5) On request by the Purchaser, the Seller shall release goods subject to retention of title to be selected at his own option, and to the extent that their value exceeds the value of the claims to be secured by more than 20%.

(6) If the validity of retention of title is dependent on the cooperation by the Purchaser, for example for registrations that may be required by the law of the Purchaser's country, the Purchaser shall effect such action. This shall be a principal performance within the meaning of Art. 13 para. 3.

(7) If the Purchaser is in delay with payment, the Seller may prohibit the sale of goods subject to retention of title, or the processing, compounding, blending or mixing of such goods with other goods, or their removal, and may require the Purchaser to hand over the goods subject to retention of title or the processed goods resulting therefrom. The Purchaser shall be required to give notification without delay of any attachment by third parties on goods for which rights of the Seller exist under the present provisions. The same shall apply to any claims assigned under the present provisions.

#### Art. 22

##### Sale subject to delivery from previous supplier

(1) In cases where the Seller makes a sale subject to correct and timely delivery to him by a previous supplier, or subject to an equivalent reservation, he shall be released from his obligation to deliver if the delivery from a corresponding previously concluded congruent covering contract is not at the contractual price, is not correct, is not in due time or is not supplied at all, provided that within a reasonable time he invokes such release from obligation to deliver. A purchase contract falls under the terms of this provision if on careful assessment it permitted the assumption of correct, complete and timely delivery to the Seller, and if at the time of the sale to the Purchaser it was verifiably intended by the Seller for procurement of the goods to be delivered by him. A clause stipulating that the transaction is subject to delivery from a previous supplier is not detrimental in a purchase contract as specified in sentence 2 of this paragraph. The Purchaser in the contract of sale shall be notified of the existence of such provision.

(2) If and to the extent that delivery to the Seller is seriously endangered, the Seller shall inform the Purchaser of this without delay after becoming aware of it; otherwise he shall not be entitled to invoke such proviso of previous delivery.

(3) On request by the Purchaser, the Seller shall be required to provide evidence to the Purchaser of a congruent covering contract within the meaning of para. 1, and to assign to him his claims arising thereby against his (previous) seller within fourteen business days after receipt of such request; otherwise the Seller forfeits the right to invoke such proviso of previous delivery.

#### Art. 23

##### Prescription

(1) Contractual or statutory claims arising from non-conformity of deliveries, including claims for direct or indirect consequential harm caused by defect shall be time-barred in six months from the arrival of the goods at their destination.

(2) All other contractual or statutory claims of the Parties shall be time-barred at the latest in two years from the passing of the risk to the Purchaser.

#### Art. 24

##### Application of INCOTERMS

(1) Any commercial terms agreed shall be applicable in the version of the INCOTERMS of the International Chamber of Commerce valid upon conclusion of contract.

(2) If a product is to be supplied "franco", the "freight or carriage paid" conditions of the INCOTERMS shall be applicable, with the proviso that the Purchaser shall also bear the cost of insurance up to arrival of the goods at their destination. The place of shipment is thus also the place of performance.

#### Art. 25

##### Court of arbitration, Experts

(1) Any disputes with respect to a contract concluded under these General Terms and Conditions, to its negotiations or to its validity, shall – to the exclusion of the ordinary courts of law – be settled in accordance with the VDC Rules of Arbitration adopted by the Meeting of Members of the Drugs and Chemicals Association (VDC) and in accordance with the VDC Rules of Procedure for Experts, by the Court of Arbitration of the Drugs and Chemicals Association or by its experts, unless otherwise stipulated in the contract.

(2) Procedure shall be conducted in accordance with the most up-to-date version of the provisions for courts of arbitration and experts. The arbitration clauses shall likewise be applicable with respect to the personally liable partners of the Contract Parties. The Court of Arbitration shall have exclusive powers to rule on the validity or otherwise of the contract and the arbitration clauses. In the event of dispute as to the characteristics of a product or sample, or as to the reduction in value of a product or as to the market price of a product, evidence shall be provided by means of an expert report drawn up in accordance with the VDC Rules of Procedure for Experts; in the event of dispute as to the characteristics of the product, evidence may also be provided by one of the other methods mentioned under Art. 15, para. 6, sub-para. (a), (b) or (c). The expert report drawn up under the VDC Rules of Procedure for Experts shall be binding on the Court of Arbitration, unless it is manifestly incorrect or based on an inadmissible procedure.

(3) Paras. 1 and 2 above shall also be applicable to disputes between intermediaries or between intermediaries and the Contract Parties.



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Drugs and Chemicals Association (VDC), Sonninstrasse 28, 20097 Hamburg · Tel.: +49 40 / 23 60 16 13 · Fax: +49 40 / 23 60 16 10.