

# Terms and Conditions of Purchase of Gebro Pharma GmbH

## 1 Scope of Application

- 1.1 These terms and conditions shall govern all orders and contracts in respect of which we are the customer, buyer or ordering party of a work. They shall also apply to future transactions.
- 1.2 The contracting partner's terms and conditions will not be accepted and shall not apply. No objection shall be required on our part in this regard.

## 2 Order

- 2.1 Our order, including all information and documents, constitutes our business secret and shall therefore be treated as confidential.
- 2.2 Until acceptance of our order, we may cancel our order at any time.
- 2.3 All auxiliary items that are enclosed to our inquiries or orders, such as plans, drafts, data, specimens, shapes, models or samples, shall remain our property and may be used only for our purposes. They shall be returned without solicitation along with the invoice at the latest or at any time upon our request at the contracting partner's cost and expense. The contracting partner shall bear any risk in connection with any coincidental loss of or damage to the auxiliary items until return thereof.
- 2.4 We will not pay any compensation for the preparation of quotes and quote documents (plans, efforts, technical specifications, etc.). When accepting our order, the contracting partner states that he has all information, data, descriptions, plans and technical specifications required for the execution of our order as well as sufficient knowledge of the local circumstances.

## 3 Delivery/Service

- 3.1 The delivery/service date shall be the date indicated by us on which the delivery/service shall be made/provided at the place of delivery/service. We may determine an earlier or later delivery/service date, provided that this is not unreasonably onerous for the contracting partner.
- 3.2 Unless otherwise stated in our order, the place of delivery/service shall be our business premises at Rankweil. Any risk shall transfer only after unloading and acceptance of the goods at the place of delivery and provision of any other service at the place of service.
- 3.3 We may refuse early or delayed delivery/service.
- 3.4 The contracting party shall immediately inform us in writing of any foreseeable delay.
- 3.5 We may refuse partial, short or excessive deliveries/services.
- 3.6 We may withdraw from the entire order even if services are divisible.
- 3.7 Upon delivery, a delivery note with our order number and the order date which discloses the type and number of delivered goods shall be handed over to us. In addition, the contracting party shall indicate his ARA number on the delivery note and thus confirm that we are released from returning the used transport and protective packaging. Contracting parties with their registered office outside Austria shall indicate on the delivery note the quantity of package material used for the transport and protective packaging by ARA product groups instead of the ARA number.
- 3.8 Units of a delivery (e.g. pallets, cardboard boxes) shall be clearly marked to ensure easy and plausible identification of the number of goods that are packed in the relevant unit.
- 3.9 A delivery/service shall be deemed complete only if the contracting partner has handed over to us all agreed or customarily expected documents (e.g. invoices, freight documents, certificates of origin, guarantee letters, technical documentation, instructions of use).
- 3.10 If dangerous goods are delivered, all freight documents and the invoice shall include a relevant note and describe the dangerous goods category. Additionally, the dangerous goods safety sheets required by law or otherwise required shall be enclosed.
- 3.11 The supplies/services must be entirely traceable.
- 3.12 We may cancel parts of the agreed scope of supplies by unilateral declaration also after the conclusion of a contract. In this event, the compensation shall be reduced by the share attributable to the cancelled portion of the order.
- 3.13 No retention of title may be asserted against us.
- 3.14 In case of delay, we may cancel the contract also without granting a grace period. We may also demand an immediately payable penalty equal to 1% of the order sum for each commenced week of delay; this penalty shall not exceed 10%.
- 3.15 The contracting partner must provide his services himself. He may only use third parties to do so with our prior consent. This also applies to mere suppliers of essential components of the service owed by the contracting partner.

## 4 Prices, Invoice and Payment

- 4.1 All prices are fixed prices and shall include all expenses necessary for the full provision of the delivery/service (DDP place of delivery/service pursuant to the Incoterms 2020) as in particular transport, insurance and packaging as well as plans, models, templates and the like. These shall transfer to our title.
- 4.2 Invoices must be sent exclusively to our billing email address e-rechnungen@gebro.com.
- 4.3 All invoices shall become due only if they indicate our order number and precisely designate the delivered goods/services. Invoices issued by contracting parties with their registered office outside Austria shall become due only if they also indicate the relevant contracting party's IBAN and BIC. Invoices issued by contracting parties with their registered office in the EU shall become due only if they also indicate our VAT number and the contracting party's VAT number as well as a note that the contracting party's delivery/service is tax-exempt.
- 4.4 If the delivery/service is defective, we may retain payment until complete performance.
- 4.5 Payment will be made within 14 days after receipt of the invoice, including 3% cash discount or within 60 days without deduction.
- 4.6 The place of performance for payment shall be Fieberbrunn.
- 4.7 Default interest is charged at a rate of 4% p.a.

## 5 Warranty

- 5.1 The supplies/services shall be consistent with the agreement and the customarily expected properties and the state of the art and shall comply with all relevant laws and regulations. Any machinery and facilities shall particularly comply with the need maps and the product-specific safety and functional standards.
- 5.2 The contracting partner in particular warrants that his delivery/service will not infringe upon any rights of third parties, and he shall hold us harmless and indemnify us for and against all claims that are asserted for an infringement of such rights.

- 5.3 The contracting partner shall constantly monitor his production according to international approved methods and criteria and verify the quality and quantity of his delivery/service. We are expressly not required to inspect deliveries and to give notice of defects.
- 5.4 At our election, the contracting partner shall exchange the defective product or rectify the defect within a reasonable period of time or grant us a price reduction. We may request an exchange of all goods or a cancellation of the contract also if only individual units or parts of the service are defective.
- 5.5 If the contracting party refuses to remedy a defect, if he is in default with remedying a defect or if he once tried to remedy a defect in vain, we may remedy or procure the remedy of the defect at the contracting party's cost and risk. We shall also have this right in case of imminent danger, e.g. if we have to fulfil our obligations towards third parties.
- 5.6 The warranty period for hidden defects shall commence not until after those defects are identifiable.
- 5.7 The contracting party guarantees and undertakes
  - 5.7.1. to comply with Gebro's anti-money laundering, anti-corruption and other ethical requirements (hereinafter "Guidelines for ethical standards in cooperation with suppliers and business partners") in the currently valid form, as they can be viewed and downloaded on the website [www.gebro.at](http://www.gebro.at) (The contracting party can request a copy of this from us free of charge);
  - 5.7.2. to provide us with information/documents free of charge upon reasoned request so that we can verify compliance with the requirements;
  - 5.7.3 to promptly correct any breach of the requirements (if corrective action is possible) and inform us of the progress of the corrective action;
  - 5.7.4 to ensure that his subcontractors and suppliers, whom he uses to perform his services, also comply with the requirements and the associated obligations under 5.7.2 and 5.7.3; and
  - 5.7.5 to return to us free of charge, within a reasonable time, any questionnaires sent to him on compliance topics, including but not limited to those relating to the requirements, correctly and completely answered.

## **6 Damages**

- 6.1 The contracting party shall be liable to us for all disadvantages arising from a breach of the contract. This applies also to claims arising from product liability. We shall be entitled to such claim also if we mainly use the delivery/service within our company.
- 6.2 For orders with a value of EUR 50.000,00 or more (in individual cases or annually) the contracting party shall purchase, and maintain for at least five years after the provision of supplies/services, liability insurance that provides insurance cover of at least EUR 1,000,000.00. The contracting party shall evidence that insurance to us upon request.

## **7 Confidentiality**

- 7.1 The contracting partner shall not disclose his business relationship with us and shall keep confidential any information pertaining to us, our products or our business partners also after the performance of the contract.
- 7.2 If and when this is required for the fulfilment of his contractual obligations, the contracting partner may disclose confidential information to his suppliers subject to our prior written consent and agreement. However, the supplier shall also commit himself to confidentiality to the same extent.

## **8 Tools**

- 8.1 We shall retain title to all tools provided by us or produced by us in whole or in part at our cost and expense. They may be used only for goods or services that are produced for or delivered to us. The contracting partner shall purchase insurance for the tools at the replacement value at his own cost and expense. He shall assign to us all compensation claims he may have under such insurance already at this point in time.
- 8.2 The contracting partner shall inspect and maintain the tools at his own cost and expense. He shall immediately report any loss or damage to us.
- 8.3 The contracting partner shall bear any risk in connection with any coincidental loss of or damage to the tools until return thereof. He shall immediately return them to us at our request and at his own cost and expense.

## **9 Material Provided**

- 9.1 We shall retain title to any material that is provided. Such material shall be separately stored by the contracting partner according to our guidelines without compensation, and shall be clearly designated as our property and separately administrated. The contracting partner shall timely order and keep a sufficient stock of the material provided by us to ensure that he may timely and completely fulfil his delivery obligations.
- 9.2 Material provided may be used only for goods or services that are produced for or delivered to us. The contracting partner shall purchase insurance for the tools at the replacement value at his own cost and expense. He shall assign to us all compensation claims he may have under such insurance already at this point in time.

## **10 Customized Software, Programming and Standard Software**

- 10.1 Customized software means software which the contracting party programmes for us on our request. Programming means services provided by the contracting party for the implementation of customised or standard software into our IT environment. Standards software means software which the contracting party programmes and sells individually or as a package regardless of us.
- 10.2 The contracting party grants us the exclusive, unlimited, unrestricted and transferrable right to use customized software and programmes. We may in particular use, change, revise, modify, adjust, develop, copy and publish the contracting party's services for its own or third party's purposes in any manner whatsoever. The contracting party grants us the exclusive, unlimited and unrestricted right to use standard software.
- 10.3 That right is covered by the compensation which the contracting party receives for its services.
- 10.4 In case of a premature termination of the contract, the right of use referred to in paragraph 2 above shall cover the services provided by the contracting party until that termination date.
- 10.5 The contracting party shall supply its services in object code format. The contracting party shall deliver to us along with customised software and the programmes the complete source code (along with commentary) of the software/the programmes and the development documentation by download. The source code and the development documentation are covered by the compensation which the contracting party receives for its services.

## **11 Final Provisions**

- 11.1 The contracting party may not assign his claims against us to third parties, except with our consent. He shall make a relevant note in his books.
- 11.2 All legal relationships between us and the contracting partner shall be governed by and construed in accordance with Austrian substantive law, to the exclusion of the UN Sales Convention.
- 11.3 Where the registered office of the contracting party is based within the EU or EFTA, all disputes shall be referred to Innsbruck as the sole legal venue. Where the registered office of the contracting party is based outside the EU or EFTA, all disputes shall be referred to the International

Arbitral Center of the Austrian Federal Economic Chamber in Vienna. The place of arbitration shall be Innsbruck; the language of the arbitral proceedings shall be German. The rules for expedited proceedings shall be applied. We shall however be entitled in all cases to bring claims against the contracting partner before any other court having jurisdiction for the contracting partner.

11.4 For purposes of the construction of the contract and these terms and conditions, the German version shall prevail.

11.5 The contracting partner may use us and/or his service for us for advertising purposes or as a reference only with our prior written consent.

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