



## Conditions of Sale

### Clause 1 Scope, divergent terms

1. The following General Terms of Delivery apply to all deliveries, services and offers by Gersteltec Sarl (referred to hereinbelow as "Gersteltec"). By concluding of the contract, the purchaser recognizes the exclusive application thereof. The following terms apply to all business dealings between Gersteltec and the purchaser even if their application has not been expressly agreed again. Other contrary terms of the purchaser or terms of the purchaser which diverge from the following terms of delivery are not part of this contract even if Gersteltec does not expressly reject them and makes delivery to the purchaser without reservation in the knowledge of contrary divergent terms of the purchaser.

2. Amendments and additions to the following terms of delivery, including to this clause, must be agreed in writing between the contract parties in order to be effective.

### Clause 2 Prices

1. Payment owed by the purchaser for the product ordered is charged according to the price of the product ordered in US dollars applicable on the delivery date plus turnover tax applicable in Switzerland at the rate on the date of invoicing.

2. The prices given in Gersteltec's catalogues are net prices excluding turnover tax and any excise tax.

### Clause 3 Placing of orders

1. Gersteltec offers are subject to change.

2. Oral orders by the purchaser or orders by the purchaser placed by remote data transfer only become legally binding when Gersteltec confirms the orders in writing and the purchaser does not object to Gersteltec's letter of confirmation immediately. Gersteltec's letter of confirmation lays down with legally binding effect the content of the contractual relationship and the scope of delivery.

### Clause 4 Minimum order value

For products ordered where the value of the order is less than a minimum of US dollars 70,00 net (plus turnover tax according to legal provisions), Gersteltec charges a flat-rate handling fee of US dollars 15,00.

### Clause 5 Delivery

1. Gersteltec's obligation to deliver the product ordered is subject to Gersteltec's receiving delivery itself. Gersteltec shall notify the purchaser immediately if it has not received delivery itself. If delivery is not made to Gersteltec, Gersteltec is entitled to withdraw from the contract. Consideration executed by the purchaser shall be refunded in the case of a withdrawal from the purchase contract.

2. Partial deliveries are permissible and may be invoiced by Gersteltec immediately.

3. Delivery times given by Gersteltec in offers and orders are non-binding.

4. However, if binding delivery deadlines are agreed between Gersteltec and the purchaser, the following shall apply: In the event of force majeure, industrial dispute, fire, mechanical breakdown or other circumstances for which Gersteltec is not responsible, the agreed delivery deadline is extended for the duration of these events. If an obstacle to performance as a result of any of the above events lasts for more than 2 months, both the purchaser and Gersteltec are entitled to withdraw from the contract in respect of the work which has not been performed. Before the expiry of this period, withdrawal is excluded for both contractual parties on the grounds of the above delaying circumstances. A condition for compliance with the agreed delivery period is the prompt fulfilment of contractual duties by the purchaser, in particular the payment of agreed sums and, if applicable, the provision of agreed security. The defence of non-fulfilment of the contract remains reserved.

5. Information from Gersteltec with regard to the size of packs or the type of packaging is non-binding. Gersteltec itself chooses the packaging and the dispatch route according to requirements in question. Transportation packaging and all other packaging according to the Switzerland Packaging Regulations shall not be taken back.

6. If a product ordered has to be dispatched, this is carried out from Gersteltec's respective warehouse on the account and at the risk of the purchaser. Gersteltec is free to choose the forwarding company and the means of transport. The risk of accidental loss of the product to be delivered passes from Gersteltec to the purchaser on dispatch from the warehouse even if delivery is made carriage paid.

7. If the dispatch of the product ordered is delayed owing to circumstances for which the purchaser is responsible, the risk of accidental loss of the product to be delivered passes to the purchaser from the time it is placed in storage by Gersteltec. If the product to be delivered is accidentally lost during the period in which the purchaser is delaying acceptance, Gersteltec is released from its performance obligation. The purchaser remains obliged to make payment in full. The costs incurred by Gersteltec by the delay in delivery (in particular warehouse costs and charges) must be borne exclusively by the purchaser if there is a delay in acceptance.

8. Gersteltec is not obliged to insure the product ordered, or to have it insured, against damage in transit.

### Clause 6 Information on purity and suitability

The purchaser must itself check whether the product ordered is suitable for the purposes intended. The products delivered by Gersteltec correspond to the specifications as stated in the catalogue or on the label. If there are divergences, the information on the label is decisive. The specification relates only to the substances and values specified, and to pharmacopoeia data and information on E numbers. Statements with regard to suitability relate exclusively to the contractual condition of the products. The values given are based on Gersteltec's testing rules. The general product substance data listed in the catalogue is only for information and is not a binding statement as to the quality of the products delivered. Gersteltec is not liable for the accuracy of the data provided. When producing pharmaceutical, cosmetic preparations or food preparations, compliance with usual medical requirements, GMP guidelines and applicable laws, orders and other provisions is the exclusive responsibility of the purchaser. Gersteltec is not liable for use of the products delivered in pharmaceutical, cosmetic preparations and in food preparations unless the specific applicability has been expressly described by Gersteltec in a delivery catalogue or approved by it after testing.

### Clause 7 Complaints, warranty and liability

1. The purchaser is obliged to examine the product delivered by Gersteltec immediately on arrival and to notify Gersteltec in writing immediately, no later than 30 days after receipt of the product, of any defects or divergences in the product delivered. Defects in the product which are only discernible later despite immediate and proper examination by the purchaser must be notified to Gersteltec in writing by the purchaser as soon as they are discovered, but no later than 60 days after receipt of the product. Complaints notified to forwarding agents or third parties do not constitute notification in due form and are ineffective.

2. Defects claimed contrary to the purchaser's above duty of examination and duty to complain are not covered by the warranty.

3. The existence of a defect established per se and communicated by an effective complaint gives the purchaser the following rights:

- If there is material defect or a defect of title, Gersteltec may choose to provide subsequent performance by remedying the defect or delivering a product without defects. The purchaser has no right to a specific type of subsequent performance. If the purchase price is not paid in full or in part, Gersteltec may make subsequent performance dependent on the purchaser paying a reasonable proportion of the purchase price given the defect claimed.
- Only if subsequent performance is also unsuccessful is the purchaser entitled to withdraw from the contract or reduce the purchase price appropriately.
- The purchaser may choose to reduce the purchase price or withdraw from the contract and demand compensation instead of performance according to the provisions of Clause 8 if Gersteltec seriously and absolutely refuses subsequent performance according to Clause 7(5) or if the type of subsequent performance chosen by Gersteltec was unsuccessful or is unreasonable for the purchaser or the purchaser has set a reasonable deadline for subsequent performance which has not been met. Subsequent performance is regarded as being unsuccessful after the second unsuccessful attempt if the type of problem or defect or other circumstances are no different. If a subsequent improvement or replacement delivery is made as a result of legitimate complaint, the provisions regarding the delivery period under Clause 5 apply accordingly.

### Clause 8 Compensation

1. Gersteltec is not liable for claims which are not based on deliberate or negligent handling or breach of duties by its legal representatives, employees or vicarious agents. The same applies to the existence of defects in a purchase item specified only by type.

2. Compensation claims against Gersteltec are excluded, irrespective of the legal ground, in particular on the basis of the breach of duties resulting from the obligation and tort, subject to the following rules:

- According to the legal provisions of the Civil Code (BGB), Gersteltec is liable for claims resulting from death, personal injury or illness which are based on a deliberate or negligent breach of duty by one or more of its legal representatives, employees or vicarious agents, and for other claims based on a deliberate or grossly negligent breach of duty by one or more of its legal representatives, employees or vicarious agents.
- According to the legal provisions of the BGB, Gersteltec is liable for compensating or refunding costs incurred by the customer if a claim is based on the breach of a guarantee provided by Gersteltec regarding the quality of the purchase item or one or more of Gersteltec's legal representatives, employees or vicarious agents have negligently breached a duty which is of essential importance to achieving the object of the contract.
- Gersteltec is similarly liable if one or more of its legal representatives, employees or vicarious agents have breached a duty to take into account the rights, legal objects and interests of the customer and performance by Gersteltec is no longer reasonable for the purchaser.
- In the cases specified in Clause 8(b) and (c), the amount claimed by the purchaser in compensation is limited to the foreseeable, contractually typical damage. In any case, compensation for consequential damage, such as lost earnings, is excluded.
- In the event of a delay in delivery by Gersteltec, the purchaser is only entitled to claim compensation if a subsequent delivery period of at least 4 weeks set by it after the delay has occurred has also elapsed without delivery and Gersteltec responsible for the delay in delivery. The purchaser's compensation claim in the



event of a delay in delivery for which Gersteltec is responsible is limited to compensation for resulting pecuniary losses up to the contractually typical, foreseeable damage. Further compensation claims by the purchaser for delays in delivery and compensation instead of performance are excluded.

3. The above rules shall not be construed as a changing of the burden of proof to the disadvantage of the purchaser.

4. The exclusion of liability does not apply to claims made by the purchaser according to the Switzerland Product Liability Act.  
 Clause 9 Purchaser's duty of notification

The purchaser is obliged to notify Gersteltec of particular risks of which it becomes aware and which result from the use of the goods delivered.

#### Clause 10 Payment terms

1. If the purchase order totalised a bill under 3000 US dollar, the payment is due "cash on order."

2. The purchase price is due for payment within 30 days from the invoice date without deduction and must be paid by the purchaser.

3. If the purchaser is responsible for late payment of the purchase price, default interest of 8% above the applicable base rate of the European Central Bank (ECB) must be paid on the invoice amount.

4. Withholding of payment or set-off against existing counter-claims by the purchaser is excluded except for uncontested or non-appealable claims.

5. All claims made by Gersteltec against the purchaser, under whatever obligation, are due for payment immediately if circumstances exist which would entitle Gersteltec to withdraw from the contract according to the legal provisions of the BGB or the provisions of the contract.

#### Clause 11 Force majeure

1. Neither contractual party is liable for the non-performance of its contractual duties if non-performance is attributable to circumstances beyond its control or in particular to any of the following reasons:

- Fire
- Natural disasters
- War
- Attachment
- General shortage of raw materials
- Restriction of energy consumption
- Industrial disputes
- Or if contractual breaches by suppliers are caused by any of the above.

This rule applies to all contractual duties including compensation duties.

2. Each party may cancel the contract by means of written termination if the performance thereof is prevented for more than six months according to Clause 11(1).

#### Clause 12 Reservation of ownership

1. Each product delivered by Gersteltec remains Gersteltec's property until full payment of the purchase price and until complete satisfaction of all claims resulting from the business transaction (extended reservation of ownership). Any disposal by the purchaser of the product for which ownership is reserved is only permitted in the ordinary course of business of the purchaser. Under no circumstances may the product be transferred to a third party as security during regular business dealings.

2. Where the product is sold in the ordinary course of business, the purchase price paid takes the place of the product. The purchaser hereby assigns to Gersteltec all claims resulting from any sale. The purchaser is entitled to collect this claim provided it complies with its payment obligations to Merck. Given the extended reservation of ownership (assignment of respective future purchase price claims), assignment to a third party, in particular a credit institution, is not permitted. Gersteltec is entitled at any time to demand the return of and check the purchaser's sales documents and inform its buyer of the assignment.

3. If the purchaser's claim from a further sale has been included in a current account, the purchaser hereby assigns its claim from the current account against its buyer to the supplier. The amount assigned is that which the supplier has charged the purchaser for the reserved product sold on.

4. If the purchaser's property is seized, the supplier must be notified immediately by sending a copy of the enforcement order and a certified guarantee that the product seized is that delivered by the supplier and subject to a reservation of ownership.

5. If the value of the security according to the above paragraphs is going to exceed the amount of the outstanding claims secured hereby by more than 20% for the foreseeable future, the purchaser is entitled to demand that the supplier release security insofar as there is an excess.

6. The supplier's assertion of its rights under the reservation of ownership does not release the purchaser from its contractual obligations. The value of the product at the time of the withdrawal is only charged for Gersteltec's existing claim against the purchaser.

#### Clause 13 Right of withdrawal

Gersteltec is entitled to withdraw from the contract on the following grounds:

- a. If, contrary to assumptions made prior to conclusion of the contract, it is revealed that the purchaser is not creditworthy. A lack of creditworthiness may automatically be assumed in the event of a protest regarding a bill of exchange or a cheque, the stopping of payment by the purchaser or an unsuccessful enforcement attempt against the purchaser; this does not necessarily have to be occurred between supplier and purchaser;
- b. If it turns out that the purchaser gave inaccurate information about its creditworthiness and this information was of considerable importance;
- c. If the product subject to the reservation of ownership by the supplier is sold other than in the ordinary course of business of the purchaser, in particular through transfer by way of security or seizure. The only exceptions to this are where the supplier has agreed to the transfer in writing;
- d. If Gersteltec has a legal right of withdrawal according to the provisions of the BGB.

#### Clause 14 Place of performance and court of jurisdiction

1. Where the purchaser is an entrepreneur or a legal person under public law or a separate fund under public law, the exclusive court for all disputes resulting directly or indirectly from the contract is that of the registered office of Gersteltec (Pully-Switzerland).

All obligations under the contract are deemed to be performed at the registered office of Gersteltec.

The place of performance for all claims resulting from the contract concluded between the purchaser and Gersteltec is the registered office of Gersteltec's headquarters in Pully.

2. If individual provisions of the contract are or become fully or partially ineffective, the remainder of the contract is still effective. This also applies if an unintended omission is found in the contract.

A fully or partially ineffective provision is replaced or a unintended omission in the contract is filled by an appropriate provision which, as far as is legally possible, approximates as closely as possible to the intention of the contractual parties or to what they would have intended, according to the meaning and purpose of the contract, if they had thought of it.

3. In any case, in particular also in international deliveries, Switzerland law (BGB) shall apply.

The law of the United Nations Convention on Contracts for the International Sale of Goods (CISG) of 11.04.1980 applies secondarily for foreign transactions.

The above rules take precedence over the rules according to the CISG.

*Pully,*

*01.1.2005*