

# GENERAL TERMS AND CONDITIONS OF SALE

of

## Deutsche Benkert GmbH

Industriestraße 12, 44628 Herne, Germany

### 1. General remarks and scope

- 1.1. The present terms apply to all business transactions entered into by Deutsche Benkert GmbH ("**Benkert**" in the following) and their customers ("**customer**" in the following).
- 1.2. These terms shall apply exclusively to all business transactions. Any conflicting or diverging terms and conditions of the customer will not be recognized by Benkert, unless their application was expressly agreed to by Benkert. The present terms shall apply even if Benkert effects delivery to the customer without reservation while being aware of such conflicting, diverging or supplementary terms of the customer.
- 1.3. Notwithstanding anything to the contrary contained herein, separate, individual agreements concluded with the customer shall take precedence over the provisions in these terms. Such individual agreements require written form and/or Benkert's written confirmation to be effective.
- 1.4. Any legally relevant representations and notices to be made to Benkert by the customer after conclusion of the contract (including deadlines or grace periods, notices of defects, revocation of the contract or price reductions) need to be made in writing to be effective.
- 1.5. References to statutory provisions are for clarification purposes only. Even without such references, legal regulations and statutory provisions generally apply without limitation unless they are expressly changed or excluded in these terms.

### 2. Conclusion of a contract

- 2.1. Benkert's offers are without engagement. The placing of an order by the customer constitutes a binding offer to conclude a contract. Unless otherwise specified in the order, Benkert may accept the customer's contract offer within four weeks upon receipt of the order.
- 2.2. Delivery contracts only enter into force upon written acceptance or shipment of the goods at the latest. Transmitting acceptance via telecommunications shall be deemed written acceptance.
- 2.3. In the event Benkert uses a telecommunications or other electronic media service to conclude a contract, the customer hereby waives his right to appropriate, effective and accessible technical means for the detection and correction of type errors, disclosure of the information specified in Art. 246, Sec. 3 EGBGB (German Introductory Act to the Civil Code) and to a confirmation of receipt of the order. Any electronically transmitted order shall not be deemed received until downloaded and opened by Benkert.

### 3. Prices - terms of payment

- 3.1. Any and all prices shall be in Euro as agreed and exclusive of VAT unless a different currency has been agreed with the Buyer or is required under applicable law.
- 3.2. Unless agreed otherwise in writing the prices are Ex Works Incoterms© 2020 without packing charges, transport costs and expenses and exclusive of VAT, if applicable. The customer bears the applicable VAT as well as all packing charges, transport costs and fees, in connection with the deliveries. Regardless of the applicable Incoterms and unless the parties expressly agree otherwise, customer bears any and all taxes, duties, customs, charges or other levies imposed in connection with the export or import of the goods to such country or jurisdiction where the agreed place of delivery is located. In case it is within Benkert's responsibility under agreed Incoterms to clear the products for export and import to such country or jurisdiction where the agreed place of delivery is located, customer shall reimburse Benkert for any and all such taxes, duties, customs, charges or other levies in connection with the export and import.
- 3.3. Should there, after the conclusion of contract, occur a substantial increase of the relevant price determinants, due to any external factor beyond the control of Benkert, as e.g. of the price for raw material and auxiliary commodities, wages and other social costs, cost for energy, taxes and likewise expenses at Benkert or its supplier, Benkert shall be entitled

to adjust the prices accordingly, at his reasonably exercised discretion, for all deliveries to be made, provided that the Buyer is notified of such an adjustment at least 10 days in advance.

- 3.4. Goods will be invoiced when ready for collection or dispatch. Unless otherwise agreed in writing, payment shall be due thirty (30) days net of the invoice date, with no discount for early payment.
- 3.5. The customer is considered to be in default once the payment term specified in paragraph 3.4 expires. In the event of default, the customer will be charged late-payment interest at the current applicable rate. Benkert reserves the right to make additional claims for losses caused by default. Any claim to commercial maturity interest within the meaning of Section 353 of the German Commercial Code (HGB) remains unaffected by the above provisions.
- 3.6. The customer may only claim a set-off or exercise its right of retention to the extent that its claim is uncontested or has become *res judicata*. Nothing in these terms shall exclude any opposing rights the customer may have in the event of defective deliveries.
- 3.7. Should it become apparent after conclusion of the contract that Benkert's claim to the purchase price is jeopardized by the customer's inability to perform (e.g. the customer files for bankruptcy); Benkert may refuse performance and - after setting a reasonable grace period - revoke the contract in accordance with statutory requirements (Section 321 BGB). Subject to the statutory provisions on the immediate revocation of a contract, Benkert may revoke a contract governing the production of unmarketable items (products made to specification) with immediate effect.
- 3.8. Provided there are already outstanding claims for payment under the ongoing business relationship with the customer, Benkert may refuse further deliveries until the customer has settled all claims in full.

### 4. Retention of title

- 4.1. Benkert will retain legal ownership of the goods sold until full payment is received for all present and future claims arising out of the corresponding sales contracts and the current business transaction ("**secured claims**" in the following).
- 4.2. Any goods subject to retention of title may not be pledged or offered as security to third parties by the customer until all secured claims have been paid in full. The customer shall notify Benkert immediately of any attempt by third parties to seize such goods.
- 4.3. Any breach of contract on the part of the customer including, without limitation, non-payment of the payable purchase price, shall authorize Benkert to revoke the contract in compliance with statutory provisions and demand the return of the goods sold on the basis of the retention of title and Benkert's revocation of the contract. If the customer fails to pay the payable purchase price, Benkert may only exercise the aforementioned rights after having set a reasonable grace period unless such a grace period can be dispensed with in accordance with statutory requirements.
- 4.4. The customer may resell and/or process the goods subject to retention of title in the ordinary course of business. In this case, the following supplementary provisions apply.
  - (a) Benkert retains title to the goods supplied even though they have been processed and combined in such a way that they now form part of or are converted into a new product, whereby Benkert shall be considered as manufacturer. In case proprietary rights of third parties continue after such processing, blending or combination, Benkert acquires joint title to the new product in proportion to the invoice values of the processed or combined goods. In all other respects, the same provisions that apply to the goods delivered subject to retention of title shall also apply to the new product.
  - (b) Any claims against third parties arising out of the resale of Benkert's goods or the newly created product shall be considered assigned to Benkert by the customer by way of

security either in full or in proportion to the value of the joint title as specified in the provisions above. Benkert accepts the assignment.

(c) The customer remains entitled to collect claims from resale. Benkert shall not collect such claims as long as the customer meets its financial obligations, does not default on its payments, does not file for bankruptcy and as long as there is no other indication of the customer's inability to fulfill its contractual obligations. Should the customer fail to meet the above requirements, Benkert may require the customer to disclose the assigned claims and the corresponding debtors as well as all information necessary to collect such claims, submit the necessary documents and notify the debtors (third parties) concerned of the assignment.

(d) In the event the realizable value of these securities exceeds Benkert's claims by more than 10 %, Benkert shall, upon request of the customer, release securities. Benkert may choose the securities to be released at its own discretion.

## **5. Delivery time, acts of God and delays in delivery**

- 5.1. Delivery dates and lead times are agreed individually and/or specified by Benkert upon acceptance of the order.
- 5.2. The beginning of the individually agreed or specified lead time is subject to the successful clarification of all technical questions.
- 5.3. Benkert's observation of the lead times and delivery dates is further subject to the customer's due and timely compliance with all contractual obligations. Benkert reserves the right to refuse performance in accordance with Section 320 BGB if the customer fails to render the agreed consideration.
- 5.4. Benkert shall give the customer prompt written notice in the event of failure to or delay in performance of deliveries due to circumstances beyond Benkert's reasonable control or acts of God, i.e. obstacles to performance occurring without Benkert's fault or negligence and lasting more than 14 calendar days. In this case Benkert may delay performance of the delivery or other obligation by a period of time equal to the duration of the obstacle to performance or revoke the contract in whole or in part on the basis of the unfulfilled part of the contract as long as the above information requirement has been met. Within the meaning of the above provisions, the following circumstances shall be deemed equivalent to acts of God to the extent these circumstances are beyond Benkert's reasonable control and occur without Benkert's fault or negligence: strike, lockout, government intervention, energy and raw material shortages, shortage of personnel, delivery bottlenecks, business interruptions (e.g. through fire, water, machine breakdown and cyber-attacks) and all other interruptions occurring without Benkert's fault or negligence.
- 5.5. In the event a binding delivery date has been agreed and is exceeded by more than four weeks due to the circumstances described in paragraph 4 or the continuation of the contract would pose an unreasonable hardship on the customer in the event of a non-binding performance date, the customer may revoke the contract on the basis of the unfulfilled part of the contract.
- 5.6. Commencement of default in delivery on the part of Benkert is subject to statutory provisions. Notwithstanding the above provision, a reminder by the customer is required for the commencement of default. In the event Benkert defaults on a delivery, the customer shall be entitled to claim lump-sum compensation for damages caused by default. Such lump-sum compensation amounts to 0.1 % of the net purchase price for every full calendar week Benkert is in default, but no more than 1 % of the net purchase price of the delayed goods. Benkert reserves the right to establish that the customer did not incur any or significantly less damage than the amount covered by the compensation specified above.
- 5.7. The rights of the customer set forth in Section 9 below and Benkert's legal rights including, without limitation, the exclusion of contractual obligations (e.g. due to impossibility of performance, unreasonable hardship and/or provision of a remedy) remain unaffected by these provisions.

## **6. Packaging, Delivery, Passing of risk, delays in acceptance**

- 6.1. The packing shall be determined upon confirmation of the order. Unless a specific packaging is agreed in writing, the goods shall be packaged so as to withstand the normal rigors

of shipping, storage and distribution. Unless otherwise agreed in writing the following terms shall apply to handling of all packaging material:

- (a) If and to the extent that delivery of the goods occurs on EXW or FCA Incoterms customer shall be responsible for disposal of packing material, unless mandatory laws as applicable in such jurisdiction where customer's site is located to which goods have been transported provide otherwise;
- (b) If and to the extent that Benkert has an obligation to take back the packaging material under such laws as applicable in such jurisdiction where customer's site is located to which the goods have been transported, customer agrees to transport at its own expense, all packaging material to a central collection point to be notified by Benkert. At least one week before shipment to this central collection point, customer shall be obliged to notify Benkert by e-mail of the type and quantity of the packaging material with reference to the respective delivery and the exact date of delivery to the central collection point.

- 6.2. All deliveries of the goods by Benkert to customers are based on Incoterms© 2020.
- 6.3. Unless otherwise agreed in writing the term of delivery shall be FCA Herne (Germany).
- 6.4. Irrespective of the applicable Incoterm, all risks and hazards shall pass to the customer, if (i) the customer or the carrier designated by the customer wrongfully fail to collect the goods at the time at which Benkert has made available the goods for collection in accordance with the applicable terms of delivery, or (ii) the customer or the forwarding agent designated by the customer wrongfully fail to accept delivery of the goods in accordance with the applicable terms of delivery. If the collection and/or delivery is delayed due to circumstances attributable to the customer or customer's agents, the transfer of risk in relation to the goods shall be deemed to have occurred upon notification to the customer that the goods are ready for collection and/ or delivery in accordance with the applicable terms of delivery. Without prejudice to its other rights, Benkert shall be entitled to charge storage costs from the fifth working day after notification of readiness for collection/delivery and to dispose of the goods at its own discretion provided that an appropriate grace period notified in writing to the customer announcing the intention to dispose of the goods has expired without results. In addition to storage costs, Benkert shall also be entitled to claim from customer compensation for other costs, expenses and damages which Benkert has incurred as a result of customer's failure to collect, respectively accept delivery of the goods in accordance with applicable terms of delivery (e.g. costs for disposal of the goods).

## **7. Intellectual Property rights**

- 7.1. The customer shall inform Benkert without delay of any intellectual property right claims of third parties pertaining to the products delivered by Benkert. Benkert may, but is not obliged to, defend these rights at its own cost and for its own benefit.
- 7.2. The intellectual property rights in any specifications written or determined by Benkert as well as designs, samples, sample rolls, patterns, and other information attributable to Benkert shall remain the exclusive property of Benkert.
- 7.3. The customer shall not assert any claims to intellectual property rights, copyrights or any other rights to specifications written or determined by Benkert or design, samples, sample rolls, patterns, and other information attributable to Benkert, nor manufacture or have manufactured for itself or for third parties any objects in which, or in the manufacture of which, any information or knowledge of Benkert was used directly or indirectly; nor shall the customer use any of the designs, documents, information or knowledge directly or indirectly made available by or made known to it by Benkert for the purposes of securing own intellectual property rights or copyrights or preventing the granting of intellectual property rights or copyrights to Benkert.
- 7.4. If the customer secures any intellectual property rights in violation of paragraphs 7.2 and 7.3, customer hereby agrees that Benkert shall own all right, title and interest in and to such intellectual property. To the extent that the right, title

and interest in and to such intellectual property cannot be assigned to Benkert pursuant to this paragraph 7.4 under applicable laws, customer hereby grants to Benkert an exclusive, irrevocable, royalty-free, world-wide and perpetual license to use, sub-license, assign, modify, develop, enhance and otherwise exploit in any manner the intellectual property.

#### **8. Claims for defects of the customer**

- 8.1. Unless otherwise provided below, the rights of the customer in the event of material and/or legal defects are subject to statutory requirements. In case of papers and printed products used as component for tobacco products, packing of food, bottling and drinking of beverage, packaging applications for organoleptically sensitive products, and packaging of pharmaceutical products, the customer is obliged to check the suitability of the papers and printed products before processing and forthwith notify Benkert in case of unsuitability. The customer shall obtain all necessary permits, licenses, approvals and the like to export, import, use, market and process any papers and printed products sourced from Benkert being used as component for tobacco products, packing of food, bottling and drinking of beverage, packaging applications for organoleptically sensitive products, and packaging of pharmaceutical products.
- 8.2. The legal basis for any liability for defects on the part of Benkert shall be the agreement made concerning the quality of the goods. Agreements on the quality of the goods include product specifications provided by Benkert to the customer. Products process variations like missing dots in gravure printing, minor ink splashes, short blade lines, minor fiber agglomerations and short distance verge lines shall not be considered to be defects and shall not constitute grounds for warranty claims.
- 8.3. Customer's claims for defects are subject to the precondition that customer has fulfilled its statutory obligations to examine and notify defects in accordance with the Paragraphs 377, 381 German Commercial Code (HGB) upon delivery. In particular, the customer must carry out an inspection for obvious defects (including incorrect and incomplete delivery) and transport damage immediately after delivery. If a defect is discovered during such inspections or if a defect that could not be detected during these inspections upon delivery becomes apparent at a later stage within the statutory warranty period, Benkert must be notified of this in writing without delay. Such notification shall be deemed to be made without delay if it is made within seven (7) working days after delivery and, in the case of defects that were not recognizable, within the same period from the time of their discovery or from the time at which they would have been discovered in the course of an appropriate inspection, but only if and to the extent such notice refers to a defect which has been discovered within the statutory warranty period. Timely dispatch of the notification shall be sufficient to meet the deadline. If the customer fails to carry out the proper inspection and/or report defects in accordance with the above provisions, the goods shall be deemed to have been accepted in the condition in which they were delivered within the meaning of Paragraph 377 German Commercial Code (HGB).
- 8.4. Goods which are the subject of a complaint must be separated by the customer and thus withdrawn from further processing. In particular, these may not be processed or assembled. Any violation of these provisions shall be deemed to constitute approval of contractual performance by the Customer.
- 8.5. Insofar as the goods are used in products of the customer which - in the case of the defectiveness of the goods delivered by Benkert - represent a danger to life and limb or a not inconsiderable damage to health, the goods must first be inspected/tested by the customer for their fitness for use (e.g. via laboratory examination or test run). This regulation shall not apply if a quality assurance agreement has been concluded which includes the performance of specific quality inspections/ tests or enhanced quality measures for the individually affected products delivered by Benkert.
- 8.6. Should the goods delivered be defective, Benkert reserves the right to choose an appropriate remedy either by repairing the defect (rectification) or providing goods free of defects (replacement delivery). However, nothing in this agreement shall exclude or in any way limit Benkert's right to refuse the

provision of a remedy in accordance with the statutory provisions.

- 8.7. The customer shall give Benkert a reasonable period of time and the opportunity to provide the required remedy including, without limitation, returning the defective goods to Benkert for examination purposes. In the event of replacement, the customer shall return the defective goods to Benkert in accordance with statutory requirements.
- 8.8. In the event the goods are defective, all costs incurred during the examination of the goods and the provision of a remedy including, without limitation, transport, travel, work and material costs shall be borne by Benkert. Should the claim of the customer turn out to be unjustified, Benkert may demand reimbursement of all costs incurred in connection with the customer's claim.
- 8.9. In the event Benkert fails to remedy a defect or a reasonable grace period set by the customer expires without any results or can be dispensed with in accordance with statutory provisions, the customer may revoke the contract or reduce the purchase price. The customer has no right to revoke the contract if the defect is immaterial.
- 8.10. Except as expressly provided in Section 9, any claims of the customer for damages and/or for reimbursement of futile expenses are hereby excluded.

#### **9. Other liability**

- 9.1. Benkert shall be liable for damage not caused to the supplied goods – on whatever legal grounds, including liability for auxiliary personnel and tort – as follows:
- 9.2. Unless otherwise specified in these terms and conditions including the following provisions, Benkert shall be liable for any breach of contractual or non-contractual obligations in accordance with statutory requirements.
- 9.3. Nothing in these terms shall exclude or limit Benkert's liability for claims based on intent or gross negligence howsoever arising. In the event of slight negligence, Benkert shall only be liable for
  - (a) death or personal injury;
  - (b) breaches of cardinal contractual obligations (obligations essential for the proper performance of the contract the compliance with which the contracting partner may generally trust in). In such a case Benkert's liability shall, however, be limited to damage that could reasonably be foreseen and is typical of the contract.
- 9.4. The foreseeable, typically occurring damage within the meaning of the above paragraph 9.2 is limited to EUR 100.000 (one hundred thousand) per case of liability. Any liability exceeding this amount shall exist in cases in which the parties have expressly agreed on a purpose of use and the customer has quantified the resulting risk of damage - at least in an approximate figure. If this information is plausible, Benkert's liability is increased by the amount thereby provided and confirmed.
- 9.5. Notwithstanding the provisions in paragraph 9.2 and 9.3, Benkert does not exclude or limit liability for fraudulent concealment of defects. The same applies to claims of the customer made on the basis of the German Product Liability Act (ProdHaftG).
- 9.6. In the event of a breach of contractual obligations not caused by a defect, the customer may only revoke or terminate the contract if Benkert is responsible for this breach. The right of the customer to terminate the contract at any time (including but not limited to the rights granted in sections 650 and 648 BGB) is hereby excluded. In all other respects, the statutory provisions apply.

#### **10. Limitation of actions**

All claims of the customer – on whatever legal grounds – shall become statute-barred insofar as such claims are not asserted within 12 months from the due date and the customer's knowledge of the infringing party and damage. This shall also apply to the limitation period of rights of recourse along the supply chain under Section 445b (1) of the German Civil Code (BGB). This shall not affect suspension of the statute of limitation under Section 445b (2) of the German Civil Code (BGB). The statutory periods of limitation shall apply to intent or intent to deceive, culpable injury to life, body or health and claims under the German Product Liability Law.

## 11. Export Control and Sanctions Laws

- 11.1. Buyer represents, warrants, and agrees that:
- Buyer is not a "Sanctioned Person," meaning any individual or entity: (1) named on a governmental denied party or restricted list, including but not limited to: the Office of Foreign Assets Control ("OFAC") list of Specially Designated Nationals and Blocked Persons ("SDN List"), the OFAC Sectoral Sanctions Identifications List ("SSI List"), and the sanctions lists under any other Sanctions Laws; (2) organized under the laws of, ordinarily resident in, or physically located in Belarus, Russia, Cuba, Iran, North Korea, Syria, and the Crimea, Donetsk People's Republic and Luhansk People's Republic regions ("Sanctioned Jurisdictions"); and/or (3) owned or controlled, directly or indirectly, 50% or more in the aggregate by one or more of any of the foregoing.
- 11.2. Relating to a Contract and the goods delivered pursuant to a Contract, Buyer is in strict compliance with and will continue to comply with all export control and sanctions laws administered by OFAC, other U.S. regulatory agencies, the European Union and its Member States, the United Kingdom and the United Nations ("Sanctions Laws"). Buyer will not involve any Sanctioned Persons in any capacity, directly or indirectly, in performance of a Contract. Buyer will not take any action that would cause Seller to be in violation of Sanctions Laws.
- 11.3. Buyer will not sell, export, re-export, divert, use, or otherwise transfer any goods delivered pursuant to a Contract: (i) to or for any Sanctioned Persons or to or involving Sanctioned Jurisdictions; or (ii) for purposes prohibited by any Sanctions Laws.
- 11.4. Buyer's failure to comply with the above provisions will be deemed a material breach of a Contract and Buyer will notify Seller mediately if it violates, or reasonably believes that it will violate, any terms of the above provisions. Buyer agrees that Seller may take any and all actions required to ensure full compliance with all Sanctions Laws without Seller incurring any liability towards Buyer.
- 11.5. Buyer shall indemnify and hold harmless the Seller from and against any claim proceedings, action, fine, loss, cost and / or damages arising from its non-compliance with or supply of untrue or incorrect information related to Sanctions Laws, and Buyer shall compensate the Seller for all damages, losses and expenses resulting thereof.

## 12. Applicable law and place of jurisdiction

- 12.1. These business transactions and all legal relationships between Benkert and the customer are subject to the laws of the Federal Republic of Germany under exclusion of all international and supranational (contractual) legal systems including, without limitation, the UN Convention on Contracts for the International Sale of Goods. The legal requirements and effects of the retention of title clause under Section IV are subject to the laws applicable at the location of the goods to the extent the laws of the Federal Republic of Germany are invalid or ineffective.
- 12.2. In case the customer is located in one of the member states of the European Union any and all disputes arising out of or in connection with any Contract or with these General Terms, or any infringement, termination or nullity thereof, shall be subject to the exclusive jurisdiction of the competent court at Benkert's registered office in Herne, Germany. Any such disputes may also be brought before the competent court at the customer's corporate location, at the sole discretion of Benkert. Upon written notification of the customer to Benkert of its intention to take legal actions, Benkert shall inform the customer within 20 business days about his choice of forum. If Benkert fails to inform the customer about his choice of forum, it shall be deemed that Benkert agreed to the exclusive jurisdiction of the competent court at Benkert's corporate location.
- 12.3. In case the customer is located in a country that is not a member state of the European Union any and all disputes arising out of or in connection with any Contract or with these General Terms, or any infringement, termination or nullity thereof, shall be finally settled under the Rules of Arbitration of the International Arbitral Centre of the Austrian Federal Economic Chamber Vienna (Vienna Rules) by one or three arbitrators appointed in accordance with the said Rules. Place of arbitration shall be Vienna, the language to be used

in the arbitral proceedings shall be English. Any dispute, controversy, confrontation of complaint arising from or relating to the Contract may also be brought before the competent court at Benkert's corporate location, at the sole discretion of Benkert. Upon written notification of the customer to Benkert of its intention to take legal actions, Benkert shall inform the customer within 20 business days about his choice of forum. If Benkert fails to inform the customer about his choice of forum, it shall be deemed that Benkert agreed to arbitration in accordance with this point 3.

January 2025