

General Delivery and Payment Conditions Body Care & Spa GmbH

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I. General Statements

The delivery conditions stated below shall apply to all agreements concerning deliveries of Body Care & Spa (hereinafter called: contractor) to an entrepreneur (hereinafter called: orderer), unless amended or excluded with the express consent in writing by the seller. Deviating terms and conditions of the orderer shall be valid only insofar as the contractor has expressly consented to them in writing.

II. Offer and Extent of Deliveries

1. Offers of the contractor shall always be subject to change. The documents forming part of the offer such as sketches, drafts, test batches, samples, weight specifications and dimensions shall be only approximately authoritative, unless expressly designated as binding. Performances and operating costs are indicated as average values.
2. The contractor reserves the right of ownership and copyright of the documents forming part of the offer such as sketches, drafts, test batches, samples, estimation of costs, drawings and other documents; these may not be made accessible to third parties.
3. The contractor shall be bound to his offer for six weeks.
4. The orderer shall be bound to the order up to two weeks at the most. The purchase agreement shall be concluded if the contractor has confirmed in writing acceptance of the order of the object of purchase specified more in detail within this term in writing or if the delivery has been executed. The contractor shall be obligated, however, to immediately inform the orderer in writing of a possible rejection of the order.
5. All agreements concluded between the contractor and the orderer shall be recorded in writing in the respective delivery agreement. This shall also apply to subsidiary agreements, warranties and subsequent amendments to the agreement.
6. Changes in production within the scope of the technical development of the delivery item shall be reserved, if the delivery item has not been substantially changed and if the changes are reasonable for the orderer.

7. If preliminary work is performed at the request of the orderer prior to the execution of the order such as for example samples, test batches, product development, they shall be charged expressly, if this was agreed. If the order is given, such performances shall not be charged again.
8. Costs for development and test fees which become necessary for executing the order may be charged separately.
9. If the orderer requests the use of substances specified by him, their admissibility shall be checked by the contractor only upon separate agreement.
10. Statutory analyses of the materials and substances used as well as evidence of effects and evaluations shall be ordered separately.
11. If an order is not carried out for reasons, for which the contractor cannot be held responsible, the expenses nevertheless caused shall be borne by the orderer. This shall apply particularly if the order was terminated during its execution according to section 649 BGB (German Civil Code) without this having been caused by circumstances for which the contractor was responsible. On principle a lump cancellation charge of 5 % of the order volume shall always be due, unless the orderer proves that the contractor suffered no damage or only minor damage.
12. The contractor may invoice the orderer separately any costs for storage and insurance policies taken out for the protection of the goods if goods are delivered successively at the request of the purchaser.
13. The orderer shall immediately check the order confirmations and submit complaints, if any, within 8 days.

III. Price and Payment

1. In the absence of a special agreement the prices shall be valid ex stock of the contractor or if shipped from the factory ex factory excluding package. The prices shall be understood plus value added tax. If the delivery is to be made more than four months after conclusion of the agreement, the contractor shall be entitled to adjust the price accordingly in case of price increases of his sub-contractors, unexpected increases in wages and transportation costs. If the increase is more than 5 % of the agreed price, the orderer shall be entitled to withdraw from the agreement. The contractor shall be bound to the agreed price only for the agreed term of delivery and for at least four months in any case. The contractor may request reimbursement of the additional expenses incurred by the contractor by the delay in acceptance of the orderer.
2. In the absence of a special agreement payment shall be made to the designated account of the seller after delivery or after placement at the disposal of the orderer and receipt of the invoice by deducting 2 % discount within 8 days after invoice, strictly net within 30 days after invoice, free of transaction charges. This shall not affect the right of retention to which the orderer is entitled according to section 320 BGB (German Civil Code). Promises of discount shall be valid only if the orderer is not in default with payment for earlier deliveries.
3. The contractor shall accept as payment discountable bills of exchange with taxes properly paid by charging note charges and discount charges only if a respective agreement has been made. Credit

notes for bills of exchange and cheques shall be made out only subject to receipt minus expenses with a value date of the day on which the contractor can dispose of the counter-value.

1. Set-off by the orderer with possible counter-claims contested by the contractor or not yet legally validly determined shall not be permissible. The orderer may assert a right of retention only if it is based on claims of the purchase agreement. If a letter of complaint is submitted, payments of the orderer may be retained only to the extent that it is reasonably proportionate to the defects caused.
2. Payments to employees may only be made if they present a valid power of attorney to effect collection.
3. The contractor shall be entitled to request an advance payment of up to 50 % of the purchase price.

IV. Terms of Delivery and Delay

1. Terms and dates of delivery shall be agreed only if they have been expressly designated as such by the contractor. The term of delivery shall start with the conclusion of the agreement, but not prior to submission of formulations, documents, approvals, releases to be provided by the orderer as well as prior to receipt of an agreed advance payment.
2. Correct and punctual deliveries by the own suppliers shall be reserved.
3. The term for delivery shall be extended adequately in the event of conflicts within the scope of lawful labour disputes, in particular strikes and lock-outs as well as in case of unforeseen obstacles which are not intended by the contractor or his assistants, if such obstacles verifiably have an impact on the delivery of the sold objects. The same applies if the contractor himself is not supplied in due time.
4. The contractor shall be entitled to withdraw if his supplier does not supply him. This, however, shall not be applicable if the contractor is responsible for the failure to supply (for example delay in payment).
5. Precondition for the observation of the term for delivery shall be the fulfilment of the contractual obligations of the orderer.
6. If damage is caused to the orderer due to a delay, the contractor shall be liable on the basis of the legal provisions.
7. The contractor on principle shall not be responsible for delayed deliveries or deliveries having become impossible due to the fault of the sub-contractor, unless the delivery is delayed or omitted due to the contractor's own fault or due to the fault of his proxy or his assistant. In such a case the obligation of damage compensation of the contractor shall be limited to the damage typical for the agreement and foreseeable. In case the contractor assigns his claims for the fulfilment of his liability obligation, to which he is entitled against his sub-contractors, to the orderer, and if the orderer cannot fully enforce these claims, the contractor shall be obligated to indemnify the orderer.
8. The limitation of liability of No. 7 shall not be applicable if a commercial firm bargain or time was agreed to be of the essence; the same shall apply if the orderer can claim that his interest in the fulfilment of the agreement ceased to exist due to the delay, for which the contractor is responsible.
9. The legal provisions of section 288 BGB (German Civil Code) shall be applicable in case of interest on arrears.

V. Transfer of Risk and Transportation

1. Ways and means of transportation are left to the choice of the contractor due to lack of a special agreement. The goods shall be insured upon request and at the expense of the orderer.
2. In case of a desitination purchase the risk shall be transferred to the orderer when handing over the goods to the carrier or forwarding agent, at the latest, however, ex store or in case of direct mail ex factory. This shall also be applicable if partial deliveries are made or if the contractor has taken on additional services.
3. If the delivery is delayed due to circumstances for which the orderer can be held responsible, the risk shall pass to the orderer from the day of readiness for delivery. The contractor shall be obligated, however, to contract those insurances demanded by the orderer at the request and at the expense of the orderer.
4. Delivered objects shall be accepted by the orderer notwithstanding the rights of paragraph VII (letter of complaint and liability for defects), even if they show insignificant defects.
5. Partial deliveries shall be admissible if and to the extent to which this is reasonable for the orderer.

VI. Reservation of Title

1. The contractor shall reserve title until all claims arising from the purchase agreement with the orderer are paid in full.
2. Processing or alteration of the object of the purchase by the orderer shall always be made for the contractor. If the object of the purchase is processed with other objects not belonging to the contractor, he shall acquire the co-ownership in the new object in a ratio of the value of the object of the purchase to the other processed objects at the time of the processing. If the object of the purchase is mixed with other objects not belonging to the contractor, he shall acquire the co-ownership in the new object in a ratio of the value of the subject matter of the purchase to the other mixed objects at the time of mixing. If the object of the orderer is to be considered as main object, the orderer shall transfer to the contractor co-ownership on a pro rata basis.
3. The orderer shall be obligated to handle with care the object of the purchase, to secure it against interferences by third parties and to immediately insure it against fire – if this is agreed in writing – “for the account of a third party” and to provide evidence thereof upon request; otherwise the contractor shall be entitled to insure the objects of the purchase himself at the expense of the orderer. The orderer shall undertake to assign possible damage compensation claims in case of fire to the contractor.
4. The orderer may not pledge the object of the purchase nor transfer it by way of security without the consent of the contractor. The orderer shall be obligated to immediately inform the contractor in writing in case of attachment or other interferences in order to enable the contractor to file a legal action according to section 771 ZPO (Code of Civil Procedure). If the third party is not able to

reimburse the contractor the judicial and extrajudicial costs of a legal action according to section 771 ZPO, the orderer shall be obligated to reimburse the costs.

5. The orderer shall be entitled to resell the goods in the proper course of business. He shall assign to the contractor already now all claims in the amount of the sum total of the invoice (incl. value added tax) of the contractor, which he will incur for reselling against his purchasers or third parties, and in fact regardless of whether the object of the purchase was resold with or after processing. The orderer shall be entitled to collect these claims even after assignment. The authorisation of the contractor to collect these claims himself shall remain unaffected thereof, the contractor, however, undertakes not to collect the claims as long as the orderer duly fulfils his payment obligations. Otherwise the contractor may request that the orderer informs him of the assigned claims and their debtors, to make all necessary statements required for the collection, to forward the pertaining documents and to inform the debtor of the assignment.
6. If the orderer's conduct is contrary to the contract, in particular in case of payment delay, the contractor shall be entitled to take back the goods after a reminder letter, and the orderer shall be obligated to hand over the goods. Withdrawal from the agreement by taking back the objects or if they have been pledged by the contractor shall only be given if the contractor declares this expressly and in writing. If the orderer is the consumer, taking back or pledging of the goods at the same time results in withdrawal from the agreement.
7. All costs for taking back and for utilizing the object of the purchase shall be borne by the orderer. The costs for utilization shall amount to 10 % of the proceeds from utilization including turnover tax without providing evidence. They will be increased or decreased, if the contractor provides evidence of higher costs or if the orderer provides evidence of lower costs. The proceeds will be credited to the orderer after deduction of the costs and other claims of the contractor in connection with the purchase agreement.

VII. Letter of Complaint and Liability for Defects

1. If the sold objects are defective, the contractor_for the purpose of subsequent performance may eliminate the defects at his option or may deliver objects free of defects. The expenses required for the subsequent performance shall be borne by the orderer to the extent that they are increased due to the fact that the object of the delivery is transported to another site differing from the establishment of the orderer, unless the transportation corresponds to the use according to the terms of the agreement.
2. The orderer, in case of failure of the subsequent performance, shall be entitled to withdrawal, to reduction and to assertion of damage compensation according to the directive of number VIII of these general terms and conditions. The subsequent performanceas a general rule shall be considered failed after the unsuccessful second effort of subsequent performance.
3. The above-mentioned rights in case of defects shall be given not in case of only insignificant deviations of the object of the purchase from the contractually agreed condition or in case of only insignificant impairment of the usefulness.

4. Section 337 HGB (Commercial Code) shall be applicable for the requirement to submit a notice of defects.
5. The right of recourse of the orderer against the contractor shall exist only to the extent that the orderer has not concluded any agreements exceeding the legal claims in case of defects. Number 1 page 2 shall be applicable accordingly.

VIII. Damage Compensation

1. The contractor shall be liable for damages of injuries to life, body or health due to a negligent or intentional breach of duty by the contractor or to an intentional or negligent breach of duty by his proxy or his assistant.
2. The contractor shall be liable for other damages only if they are caused by a grossly negligent or intentional breach of duty of the contractor or an intentional or grossly negligent breach of duty of a proxy or assistant of the seller.
3. The contractor on principle shall be liable for damages which are not due to an injury of life, body or health, only up to an amount corresponding to three times the order value.
4. The contractor shall be liable exclusively for damages typical for the agreement and foreseeable.
5. The liability of the contractor for damages arising due to changes of the sold objects made improperly by the orderer or by third parties instructed by him shall be excluded. Furthermore, the contractor shall not assume any liability for advertisement statements of the orderer in texts on packages or other advertising media.

IX. Limitation of Claims

1. The limitation period for claims and rights due to defects of the goods –for whatever legal reason – shall be one year. This, however, shall not be applicable in case of the right of recourse of the entrepreneur according to section 479 (1) BGB (German Civil Code).
2. The limitation periods according to sect. 1 shall also apply for all damage compensation claims against the contractor in connection with the defect – independent of the legal basis of the claim. A limitation period of sect. 1 s. 1 shall be applicable, if damage compensation claims of any kind against the contractor exist, which are not connected with a defect.
3. The limitation periods according to sect. 1 and sect. 2 shall be valid with the following directive:
4. The limitation periods as a rule shall not be valid in case of intent.
5. The limitation periods shall also not be valid if the contractor has fraudulently remained silent about a defect. If the contractor has fraudulently remained silent about a defect, the statutory limitation periods shall be applicable, which would be valid without the fact of fraud and shall replace the terms mentioned in paragraph. 1.

6. In addition the limitation periods shall also not be valid in cases of injury to life, body or health or violation of freedom, in case of claims according to the Product Liability Act, in case of a grossly negligent breach of duty or in case of violation of essential contractual obligations.
7. The limitation period for all claims shall commence with the delivery.
8. Section 203 BGB (German Civil Code) with the following directives shall be applicable for suspension of the limitation: Contractual negotiations shall commence upon receipt of a letter, in which one party asserts claims against the other party. Contractual negotiations shall be considered terminated if one party has not answered in writing to a respective letter from the other party within four weeks after receipt of the letter.

X. Provision of Goods by the Client

1. If goods are provided by the client, the contractor shall not assume warranty for the stability and compatibility of the formula or the packaging.
2. Controls of incoming goods for materials provided shall be effected only in case of special order by the orderer and shall be invoiced separately by the contractor.
3. Formulations provided shall not be checked with respect to their marketability and their qualification for use by the general public. No liability shall be assumed for the provided formulations.

XI. Place of Fulfillment, Applicable Law

1. Place of fulfilment and exclusive place of jurisdiction for deliveries and payments as well as for all legal actions among the parties shall be the headquarters of the contractor.
2. Relations between the contractual parties shall be governed exclusively by the law applicable in the Federal Republic of Germany, excluding the UN Convention on Contracts for the international sale of goods.

XII. Final Provisions

1. The rights arising from this agreement may not be assigned by any of the parties hereto without the express written consent of the other party.
2. If individual provisions of this agreement are or become completely or partially ineffective, this will not affect the effectiveness of the rest of the agreement. In such a case the parties to the agreement will undertake to replace the completely or partially ineffective or inexecutable provision by an effective or executable provision most closely approximating the economically intended scope of the completely or partially ineffective or inexecutable provision within the scope of the agreement as a whole.

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