

## CONDITIONS OF PURCHASE AND ORDERING

of

### Weckerle Cosmetics and affiliated companies such as

- Weckerle Cosmetics Eislingen GmbH
- Premium Cosmetics GmbH
- Weckerle GmbH: Location Peissenberg
- Weckerle GmbH: Location Weilheim

#### 1. Area of application

1.1 Our conditions set forth below shall apply exclusively to all of our orders. We purchase and order only on these conditions. By rendering the performance, in particular the supply of goods, our suppliers and/or contractors - hereinafter referred to as 'Partners' - shall recognise these conditions of purchase and ordering for the supplies and services ordered and/or commissioned. At the same time, these conditions of purchasing and ordering also apply to all follow-up business without having to be expressly mentioned or agreed upon at the time of the conclusion of the contracts. This applies even if the Partner's terms and conditions of business include different provisions.

1.2 We hereby object to the application of deviating conditions, in particular terms and conditions of business which we were informed by the Partner. Deviating conditions do therefore not apply, unless they have been expressly acknowledged or recognised in writing by us. Silence in response to the Partner's conditions formulated of which we have been informed, or in response to standard conditions, cannot be interpreted as recognition of these conditions.

#### 2. Orders

2.1 Our orders are only binding if they have been placed by us in writing in a legally binding form. Verbal and telephone agreements are only deemed to be binding after confirmation by us in writing.

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12.10.2009	01		Dr. S. Barth

2.2 The Partner must acknowledge our order or rather our purchase order, in writing without undue delay. If within 14 days counting from the mailing of the order or rather of the purchase order, no due acknowledgement has been received, we are be entitled to revoke our order or rather our purchase order without the Partner being able to derive any rights there from.

### **3. Delivery/service**

3.1 To the extent that delivery or performance of work or service dates have been agreed upon as fixed dates, these deliveries or performance of work or services must be carried out on the date agreed.

3.2 Deliveries of goods or performance of work or services must be coordinated with us and be confirmed by our department responsible. Delays in acceptance due to improper advising will be at the Partner's expense. If the goods will be delivered too early we are, at our discretion, entitled to return them at the Partner's expense or to place them in storage at the Partner's expense and risk until the delivery date is reached; the due date for payment of the Partner's remuneration will not be brought forward to an earlier point in time as a result of storage.

3.3 If dates are stated as only 'approximate' or are in some other way roughly stated, the maximum tolerance a period of four working days is applied.

3.4 Part deliveries or part performance of work or services are only admissible if they have been agreed upon with us in writing. The Partner is not entitled to additional deliveries or performance of additional work and services or short deliveries or reduced performance of work or services.

3.5 If an acceptance of the delivery or performance of work or service is not possible because of force majeure, riot, labour dispute, interruptions of operations and operating restrictions for which we are not to blame or in similar cases or if acceptance is made considerably more difficult, we are entitled to change the delivery time in accordance with the duration of the impediment without the Partner being able to derive any claims against us out of it. If in such cases, because of difficulties in meeting deadlines and/or due to the jeopardizing of other contracts, later delivery or performance of work or service by the Partner is unacceptable for us, we are also entitled to withdraw wholly or partially from the contract without the Partner being able to derive claims against us out of it.

3.6 If the Partner does not observe a deadline agreed upon as a fixed deadline we are entitled, even without the Partner being to blame and without an additional delivery time being set, to withdraw from the contract. We are also entitled to claim damages in lieu of performance and in fact in the amount of 10 % of the net order value, unless the Partner provides evidence of a lower loss or the non-occurrence of loss or if we provide evidence of the occurrence of a higher loss. The right to claim damages for delayed delivery remain unaffected. The acceptance of a delayed delivery or performance does not entail any waiver of the above-mentioned rights or of any other rights. Part deliveries or part performance of work or services do not terminate the delay. If we are compelled by a delay in delivery or performance of work or services to have our requirements met elsewhere, the Partner has to bear the difference

between the price agreed with and the higher price which we have to spend on meeting requirements elsewhere. All further claims for damages shall remain unaffected.

- 3.7 Moreover, we are entitled to claim, as a contractual penalty for deliver or perform out of time, 0.2 % of the net order value per calendar day in the event of the deadline agreed upon being exceeded per calendar day, but not more than 5 % of the net order value. The right to claim damages going beyond this is reserved. Possibly a contractual penalty due will be claimed by us upon payment of the Partner's invoice. A reservation at the time of acceptance of delivery or performance is not required; rather we are entitled to make a declaration of reservation opposite the Partner within one month after acceptance of the last part of delivery or performance of work/service.
- 3.8 On each container (Euro pallets) and each paper (certificate of analysis, delivery note) of each shipment the purchase order number, purchase order item, material number, consignee address and supplier number must be stated. The delivery papers have to be handed out to us by the forwarding agent or carrier or have to be attached to the consignment in such manner of being easily visible.
- 3.8 The Partner guarantees by itself that the requirements of the agreement "Delivery conditions of Weckerle Cosmetics" will be accomplished.

## **4. Bearing of risk and acceptance**

- 4.1 The Partner bears every risk including the transportation risk and the risk of accidental loss or of accidental deterioration and in fact up to acceptance by our quality control department, which take place in the case of delivery of goods after delivery free domicile either on our premises or at the destination stated by us.
- 4.2 In the case of picking-up of the goods by ourselves or picking-up by a forwarding agent commissioned by us from the Partner's warehouse only the transportation risk and the risk of accidental loss or of accidental deterioration shall pass to us at the point of time the goods are loaded onto our means of transport or onto the means of transport of the forwarding agent commissioned by us. Otherwise the acceptance and bearing risk of ruling in the preceding Item 4.1 is retained.
- 4.3 Final acceptance is carried out in each case of the delivery of goods only after delivery of the goods to us or to the destination stated by us and only after the carrying out of our quality control.

## **5. Prices and payment**

- 5.1 The prices agreed upon are fixed prices. The prices applied to packaging and free delivery including all costs which include in particular customs duty, levies, examination costs etc. on our premises or at the destination stated by us.

- 5.2 Our payments shall be made - if not otherwise agreed upon in the purchase order as individual order or 'Supplier contract' (Total volume order) - within ten days of receipt of invoice with three percent discount for early payment, within 14 days of receipt of invoice with three percent discount for early payment or within 30 days of receipt of invoice net. If the invoice receives us before the acceptance of the goods or performance of work/service invoiced, the times for payment begin only upon acceptance.
- 5.3 Invoices have to be done by stating the purchase order number, material number, article designation, supplier's number, quantity ordered, price agreed per individual item and shipping address. Moreover, the invoices must include the data required by law for entitlement to input tax deduction.

## 6. Quality

- 6.1 The goods to be supplied or the owed performance of work or services must comply regarding their composition, quality, packaging, declaration and goods specification with the respective ruling statutory provisions of the country in which they are produced and used, the authorities relevant ordinances and guidelines, the requirements of the Foodstuff and Animal Feed Codes, the Cosmetics Ordinance and the 'Principles of good manufacturing practice', as well as, in the case of technical services, with the guidelines, ordinances and regulations of the construction supervisory, trade supervisory and fire safety authorities of the employers liability insurance associations and public utility companies and the respective applicable DIN standards and VDE regulations. The Partner has to assume expressly the independent guarantee for ensuring that the above-mentioned regulations are observed, that the goods to be supplied are safe, transportable and suitable for the intended use. Should the goods to be supplied or the owed performance do not meet these prerequisites, the Partner is also obliged without prejudice to any further claims, to refund all costs necessary for legal defence, including the cost of experts as well as the cost of a possible recall measure.
- 6.2 The Partner undertakes to provide the evidence of the observance of the above mentioned regulations, in particular of the provisions of the Cosmetics Ordinance and of the 'Principles of good manufacturing practice', at our request. The evidence will be provided by the Partner handing out to us on request records of an official body or of an independent laboratory specified by us. All costs relating to this provision of evidence shall be borne by the Partner.
- 6.3 The Partner independently guarantees that the goods to be supplied or the owed performance of work or services meet our special requirements and specifications resulting from the order. This applies, for example, in terms of weight, quantity, market and quality regulations and lot samples. Provided samples, on which our orders are based on, are binding. The Partner shall guarantee independently that the quality and the structure of its supply or performance of work or services correspond to the sample taken as the basis. Changes in the specification are only permitted with our consent in writing.
- 6.4 The Partner independently guarantees to meet the requirements of the agreement 'Quality requirements of Weckerle Cosmetics'.

## **7. Packaging**

- 7.1 The Partner independently guarantees that the packaging corresponds to the statutory provisions of the country of manufacture and use as well as the relevant respective official ordinances and guidelines there.
- 7.2 Goods in packaging developed by us or in other special packaging manufactured for us may only be supplied to us. It must not be traded further in this packaging or putting into circulation in any other way. This particularly applies also to rejected goods. If the Partner breaches the above-mentioned obligation it incurs a contractual penalty reasonably fixed by us, however not exceeding € 25,000.00 and in the event of a dispute to be checked to its reasonableness by the court competent according to Item 12.2. Departing from Art. 341, § 3, of the German Civil Code (BGB), we must claim the contractual penalty only at the time of the payment of the purchase price. The claiming of damages without offsetting against the contractual penalty shall remain unaffected.
- 7.3 The ordering of packaging in no case means the ordering of the corresponding goods.
- 7.4 Packaging material which, for whatever reasons, has not been used for packaging goods intended for us is to be destroyed by the Partner upon our instructions.
- 7.5 The Partner independently guarantees that the packaging material is suitable for Euro pallets and that it corresponds to the special packaging requirements and packaging specifications of the order. Should these prerequisites not exist at the time of delivery; the goods can either - without prejudice to any further rights, in particular according to Art. 437 of the German Civil Code (BGB) - be rejected or acceptance can be refused or the goods can be put into storage at the Partner's expense and risk at the discretion of us.

## **8. Material defects of the goods**

- 8.1 Our rights in the case of material defects are based on the statutory regulations.
- 8.2 Upon delivery of goods, we carry out the spot checks usual in the business sector, which will be documented by us. Departing from Art. 377 of the German Commercial Code (HGB), our time limit for claim for defects identifiable upon delivery or examination amounts two weeks counting from the time of delivery. The same shall apply if we are occasioned, as a result of conspicuous unusual features of the supplied goods, to carry out or have carried out special spot checks with the help of appropriate scientific examination methods. If defects in the delivered goods cannot be found by us by means of spot checks in the above-mentioned way these are not identifiable defects in the meaning of Art. 377, § 2, of the German Commercial Code (HGB). We are entitled to give notice of such defects within the time limit stated in Art. 438, § 1, number 3 of the German Civil Code (BGB), and even in

fact if the goods having the defects have meanwhile been machined or processed by us.

- 8.3 In the event of the existence of a defect we are entitled in our discretion to claim the rights mentioned under Art. 437 of the German Civil Code (BGB). In the event of withdrawal we are entitled to claim the contractual costs as useless expense, and in fact irrespective of whether the Partner is responsible for the existence of the defect or not.

## **9. Defects of title of the goods**

- 9.1 The Partner guarantees that all supplies or services are free of the rights of third parties.
- 9.2 The Partner also guarantees that as a result of the execution of the order domestic industrial property rights or industrial property rights in the countries of the European Union as well as in the USA, Australia, Russia und all other Eastern European countries or other industrial property rights for services in Germany or in the above-mentioned countries are neither directly nor indirectly infringed.
- 9.3 In the event of the existence of a defect of title we are entitled in our discretion to claim the rights mentioned in Articles 437 and/or 634 of the German Civil Code (BGB). Moreover, the Partner indemnifies us and our customers from all of the claims by third parties resulting from the existence of a defect of title. In the event of the existence of a defect of title we are entitled to revoke a quotation submitted by us even before the contract comes about.

## **10. Special features in the case of other work**

For construction, assembly and other work the general contractual terms and conditions set forth in the contracting rules for award of public works contracts (VOB/B) shall apply. The statutory rights to which we are entitled in the case of defects, in particular according to Art. 634 of the German Civil Code (BGB), in any case remains unaffected.

## **11. Production means**

- 11.1 The ownership and complete copyright of all documents and samples made available by us retain to us. They must not be made available to third parties without our prior consent in writing and can be demanded back by us at any time as soon as they are no longer required for the carrying-out of deliveries.
- 11.2 The working-out of designs, projects, costing etc. shall be free of charge and without engagement for us and in fact even if such services are usually provided only at a charge. This shall also apply if we do not place the order.
- 11.3 To the extent that we make available aids or working equipments to the Partner, this shall be done at its risk.

## 12. Place of performance and venue

- 12.1 The place of performance for all supplies or services is the destination stated by us in the order. The place of performance for payments to us as well as for our payment obligations is the respective location of order.
- 12.2 If the Partner is a merchant, legal entity under public law or a public law special fund, the venue is the responsible court for the respective location of the company, and in fact also in special procedures deciding claims arising out of bills of exchange or cheques. Optionally we shall also be entitled to apply the responsible courts for the business headquarters of the Partner and/or its responsible branch.

## 13. Final provisions

- 13.1 The Partner engages to maintain secrecy concerning the orders placed by us and in particular not to give third parties any information about the scope and type of goods or performance of work or services ordered and about their use without our consent. The Partner is liable for all damage, loss or injury arising from the infringement of the obligations stated above.
- 13.2 If according to these Conditions of Purchase, adherence to the written form is envisaged it cannot be replaced by adherence to the electronic form of Art. 126a of the German Civil Code (BGB).
- 13.3 In the event of the ineffectiveness of individual contractual provisions the remaining provisions remain fully effective. Ineffective provisions have to be replaced by such provisions which come as close as possible to their economic result according to the economic purpose pursued by the respective ineffective provision.
- 13.4 All legal relations and legal acts in the relationship between us and the Partner as well its legal successors are exclusively subject to the law of the Federal Republic of Germany to the exclusion of the conflict of laws provisions. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded.
- 13.5 If Partners carry out work for us they themselves are responsible for compliance with the accident prevention regulations, in particular those of the particular employers liability insurance association. Moreover, they undertake the obligation of naming their employees and arranging for them to follow, on our work sites, the respective works regulations or other regulations existing in our plants.