



General Purchasing Terms and Conditions of WALA
Heilmittel GmbH
Dorfstr. 1, 73087 Bad Boll/Eckwälden, Germany

§ 1 Scope, General Provisions

(1) These General Purchasing Terms and Conditions shall apply vis-à-vis entrepreneurs (as defined in Section 14 of the German Civil Code - BGB) and to all business relations with suppliers and other contractors (hereinafter "Vendors"), provided the Vendor is an entrepreneur (Section 14 of the German Civil Code) or a legal entity.

(2) The General Purchasing Terms and Conditions apply to, including but not limited to contracts for the sale and/or supply of movable things (hereinafter Goods) regardless of whether the Vendor manufactures the Goods itself or purchases them (Sections 433, 651 of the German Civil Code)

Unless agreed otherwise, these General Purchasing Terms and Conditions as validly amended or, in any case, most recently provided to the purchaser in text form at the time of the purchaser's order respectively shall also apply as a master agreement to similar future contracts without WALA being required to refer to them in each individual case.

(3) The General Purchasing Terms and Conditions shall apply exclusively. WALA will not accept diverging, conflicting or supplemental general terms and conditions of the Vendor, unless it explicitly accepts their application in writing. This requirement of approval shall apply in every case, even if WALA accepts the Vendor's deliveries without reservation while being aware of the Vendor's diverging or conflicting general terms and conditions.

(4) Individual agreements made with the Vendor in the individual case shall always have priority over these General Purchasing Terms and Conditions. A written contract or WALA's written confirmation shall be required in respect of the content of such agreements subject to proof of the contrary.

(5) Legally relevant statements and notices that must be given by the Vendor to WALA after conclusion of the contract (such as setting time limits, sending reminders, declaring withdrawal) must be made in writing or in text form (letter, email, telefax) to be effective.

(6) Any references to the application of statutory provisions shall merely serve clarification; the statutory provisions shall apply insofar as they are not directly modified or explicitly excluded by these General Purchasing Terms and Conditions.

(7) WALA will process and pass on the purchaser's personal data by means of electronic data processing for business purposes only.

§ 2 Conclusion of the Contract

(1) WALA's order shall require a written declaration or confirmation to be binding. The Vendor must point out to WALA any obvious errors (such as spelling mistakes and calculation mistakes) and incompleteness of the order, including the order documents, for the purpose of correction or completion prior to acceptance of the order; otherwise the contract shall be deemed not concluded. The requirement for the written form shall also be deemed fulfilled by remote data transfer or telefax.

(2) Within a time limit of 14 days upon receipt of the order, the Vendor shall be required to confirm the order or call-off order or quantity contract in text form¹, or execute the order by shipping the Goods without reservation (acceptance). Delayed acceptance shall be deemed a new offer and requires the acceptance of WALA.

§ 3 Delivery Time and Default in Delivery

(1) The delivery time stated by WALA in the order shall be binding. If the delivery time is not stated in the order and has not been agreed otherwise, it shall be 4 weeks starting from the conclusion of the contract. The Vendor is obliged to immediately inform WALA in writing if it will probably be unable to adhere to agreed delivery times.

(2) In the event of premature delivery, WALA reserves the right to return or store the goods at the Vendor's cost and risk until delivery time.

(3) If the Vendor is in default, WALA may demand liquidated damages in the amount of 1 % of the net price per completed calendar week, but in total not more than 5 % of the net price of the Goods delivered late. WALA shall have the right to prove that a greater amount of damage incurred; the vendor shall have the right to prove that no loss or a substantially lower loss has incurred.

§ 4 Performance, Delivery, Passing of Risk, Default in Acceptance

(1) Without WALA's approval, the Vendor shall not be entitled to have the performance it owes rendered by third parties (such as subcontractors). The Vendor shall bear the procurement risk for its performance, unless otherwise agreed in the individual case. The delivery provisions of WALA Heilmittel GmbH shall apply.

(2) Delivery shall be effected within Germany "free domicile including packaging" to the place of delivery indicated by WALA in the order. The place of destination shall also be the place of performance (obligation to provide - Bringschuld).

Should delivery exceptionally have been agreed "ex domicile exclusive packaging", the Vendor shall choose the type of shipment to be determined by WALA. For deliveries from a non-EU country, the delivery shall be made according to Incoterms 2010 DDP or DAP respectively and shall contain the packaging costs. If no type of shipment has been determined, the Vendor must choose the type of shipment and packaging that is the cheapest, but protects the goods safely against damage.

(3) A delivery note must be attached to the delivery stating the date (issue and dispatch), content or delivery (article number and quantity) as well as our order identifier (date and number). If the delivery note is missing or incomplete, then WALA shall not be responsible for any delays in processing and payment resulting thereof.

(4) The risk of accidental perishing and accidental deterioration of the thing shall pass to WALA at the time of delivery at the place of performance. If acceptance of the Goods has been agreed, such acceptance shall be decisive for the passing of the risk. For the rest, the statutory provisions of the law on contracts to produce a work (Werkvertragsrecht) shall apply accordingly (such as sentence 3 of Section 446, sentence 2 of paragraph 1 of Section 644 of the German Civil Code).

(5) In the event of default in acceptance by WALA, the statutory provisions shall apply. The Vendor must offer its performance to WALA explicitly even if a set or determinable calendar time is agreed for an act or collaboration by WALA (for instance, the provision of material). If WALA is in default in acceptance, the Vendor may demand reimbursement of its extra expenses (section 304 of the German Civil Code). If the contract concerns a thing to be manufactured by the Vendor that is not fungible (i.e. manufacture do the customer's specification), the Vendor shall only have further rights if WALA undertakes to collaborate and is responsible for the failure of collaboration.

§ 5 Prices and Terms of Payment

(1) The price stated in the order shall be binding. All prices include statutory value added tax unless it is itemized separately. Any agreed discounts refer to the agreed fixed price including freight and packaging costs.

(2) Unless otherwise agreed in the individual case, the price includes all performance and ancillary performance of the Vendor (such as assembly, installation) and all ancillary costs (for instance, proper packaging, transport costs including any potential transport and liability insurance). The Vendor must take back packaging upon WALA's request.

(3) The agreed price shall be due for payment within 30 calendar days starting from complete delivery and performance (including any potential agreed acceptance as the case may be) and receipt of a proper invoice. If WALA makes the payment within 14 calendar days, the Vendor shall grant to WALA a 3 % early payment discount on the net amount of the invoice. The invoices must contain the order number and the designation of the article. The Vendor shall be responsible for all consequences of non-adherence to this obligation.

(4) Insofar as performance and invoice have not been checked, payment shall be made subject to conformity of the Goods with the contract and accuracy, and shall have no impact on WALA's entitlements due to defects of the performance.

(5) WALA shall not owe any default interest. In the event of default by WALA, the statutory provisions shall apply.

(6) WALA shall have the right to set-off and right to retention and defence of unperformed contract (Einrede des unerfüllten Vertrags) in the extent as provided by law. WALA is entitled, including but not limited to retain due payments as long as it has claims against the Vendor arising out of incomplete or defective performance.

(7) The Vendor shall have a right to set-off or right of retention solely because of counterclaims that are undisputed or have been declared final.

§ 6 Quality Requirements

For its performance, the Vendor shall adhere to the current state of research, science and current law (including the requirements of the REACH Regulation), the recognized rules of the trade and common safety precautions. Quality requirements, for instance in specifications that are an integral part of the purchase contract /supply contract must be adhered to with priority.

§ 7 Confidentiality and Reservation of Title

(1) WALA shall reserve right of ownership and copyrights of figures, plans, drawings, calculations, implementation instructions, product descriptions and any other documents WALA made available to the Vendor. Such documents shall be used solely for performance under the contract and must be returned to WALA or deleted respectively after fulfilment of the contract. The documents and

¹ Translator's note: as defined in Section 126 b of the German Civil Code
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information of any kind the Vendor received from WALA must be treated confidential vis-à-vis third parties for a minimum of 10 years or until they become public knowledge; this applies even after termination of the contract.

(2) The above provisions shall apply to substances and materials (such as raw materials, finished products and semi-finished products) as well as to tools, models, samples and other items WALA makes available to the Vendor for the purpose of manufacture. Unless such items are processed, they shall be stored separately at the Vendor's expense and be insured against destruction and loss with the usual extent of coverage.

(3) Processing, intermixture or combination by the Vendor of items made available shall be performed for WALA. This shall also apply to further processing of the delivered Goods by WALA; WALA will thus be deemed manufacturer and acquire ownership of the products at the latest upon further processing pursuant to the statutory provisions.

(4) The Goods shall be transferred to WALA unconditionally and without taking into account the payment of the price. If in an individual case, WALA accepts a Vendor's offer for transfer depending on payment of the purchase price, reservation of title of the Vendor shall expire at the latest upon payment of the purchase price for the delivered Goods. In the proper course of business, WALA shall remain authorised to resell the Goods by assigning future receivables resulting therefrom (alternatively application of simple retention of title (einfacher Eigentumsvorbehalt) and prolonged reservation of title subject to resale (verlängerter Eigentumsvorbehalt²). In any case, any other forms of the reservation of title (Eigentumsvorbehalt), including, but not limited to, the extended retention of title (erweiterter Eigentumsvorbehalt³), the transferred retention of title (weitergeleiteter Eigentumsvorbehalt⁴), and the prolonged retention of title (verlängerter Eigentumsvorbehalt⁵) for further processing, shall be excluded.

§ 8 Defective Delivery

(1) WALA's rights in the event of material or legal defects (Sach- und Rechtsmängel) of the Goods (including delivery of wrong goods or undershipment) and improper assembly, defective assembly instructions, defective operating instructions or instructions for use; the Goods infringing national or foreign industrial property rights) and any other infringements by the Vendor shall be governed by the statutory provisions, unless otherwise agreed hereinafter.

(2) According to the statutory provisions, the Vendor shall be liable, including but not limited to, for the Goods to have the agreed quality upon the passing of the risk to WALA. Agreements on quality shall be deemed to be those product descriptions, including but not limited to, those designated or referred to in WALA's order - which are part of the relevant contract or have been incorporated into the contract in the same way as these General Purchasing Terms and Conditions. This shall apply regardless of whether the product description originates with WALA, the Vendor or the manufacturer.

(3) In derogation of sentence 2 of paragraph 1 of Section 442 of the German Civil Code (BGB) WALA shall also be entitled to claims for defects without restriction even if WALA has no knowledge of the defect upon conclusion of the contract due to gross negligence.

(4) Regarding the duty to examine the Goods and duty to complain (Untersuchungs- und Rügepflicht), the statutory provisions (Sections 377, 381 of the German Commercial Code - HGB) shall apply as follows: WALA's duty to examine shall be restricted to defects that at WALA's incoming goods inspection at WALA's are obvious to external examination, including the delivery documents, and during WALA's quality control in spot checks (for instance, transport damage, delivery of wrong goods or undershipment). If acceptance has been agreed, there shall be no duty to examine. For the rest, it depends on the extent to which an inspection is feasible when taking the circumstances of the individual case in the proper course of business into consideration. WALA's duty to complain in respect of defects detected subsequently shall remain unaffected. In all cases, WALA's complaint (Rüge) (notification of defects) shall be deemed immediate and in good time if it is sent within eight working days after detection, or in the event of obvious defects, after delivery.

(5) The Vendor shall also bear the costs it incurs for the purpose of inspection and repair (Nachbesserung) (including any potential extension and installation costs) even if it transpires that there was in fact no defect. WALA's Liability to damages in the event of an unjustified request for the remedy of defects shall remain unaffected; however, WALA shall only be liable if it had recognized or failed to recognize in a grossly negligent manner that there was no defect.

² Translator's note: prolonged retention of title: The Purchaser may use, process, and sell the Goods, while assigning all rights from such resale to the Vendor.

³ Translator's note: extended retention of title: passing of title is not only subject to payment of the specific claim against the obligor, but also to other amounts payable by the Purchaser.

⁴ Translator's note: transferred retention of title: The purchaser is obliged to pass title to the purchased goods to a third party only in such a manner that the purchaser remains the owner of such goods until payment has been settled in full.

⁵ Translator's note: prolonged retention of title: The Purchaser may use, process, and sell the Goods, while assigning all rights from such resale to the Vendor.

(6) If the Vendor fails to perform its duty to cure (Nacherfüllung) - by remedying the defect (repair - Nachbesserung) or by substitute delivery of a thing free of defects (replacement delivery) at WALA's discretion - within a reasonable time limit specified by WALA, WALA may remedy the defect itself or have it remedied by third parties and demand reimbursement of the necessary expenses or demand a corresponding advance payment respectively. If cure by the Vendor has failed or cannot be reasonably expected of WALA (for instance, due to special urgency, a threat to operating safety or the imminent occurrence of disproportionate damage), specifying a time limit shall not be required; the Vendor must be informed thereof immediately - if possible, in advance.

(7) In the event of a material or legal defect, WALA is entitled to reduce the purchase price or to withdraw from the contract pursuant to the legal provisions. Moreover, WALA is entitled to compensation for damages and expense pursuant to the legal provisions.

§ 9 Supplier recourse

(1) Besides claims for defects, WALA shall be entitled without restriction to its rights of recourse within a supply chain in accordance with the law (Vendor recourse under Sections 445a, 445b, 478, of the German Civil Code - BGB). WALA shall be entitled, including but not limited to, to demand from the Vendor exactly the type of cure (repair or replacement delivery) as WALA owes to its purchaser in the individual case. The statutory right to choose (paragraph 1 of section 439 of the German Civil Code) shall not be restricted thereby.

(2) WALA'S rights arising out of the Vendor recourse shall apply even if the Goods have been processed into another product prior to their sale by WALA or one of its customers to a consumer.

§ 10 Liability

(1) If the Vendor is responsible for damage to the product, then the Vendor shall hold WALA harmless against claims insofar as the cause is in its domain or organisation and the Vendor is itself liable vis-à-vis third parties.

(2) In the scope of its duty to hold harmless, the Vendor shall reimburse expenses according to sections 683, 670 of the German Civil Code (BGB) that result from or are related to any claims by third parties, including any recall measures executed by WALA. Insofar as this is possible and can be reasonably expected, WALA shall inform the Vendor of the content and extent of recall measures and give the Vendor the opportunity to comment. Further claims admissible by law shall remain unaffected.

(3) The Vendor must take out and maintain product liability insurance with a limit of cover of no less than 10 million euros per occurrence of per personal injury / property damage.

§ 11 Limitation

(1) The mutual claims of the contracting parties shall become statute-barred following the statutory provisions, unless otherwise agreed below. .

(2) Notwithstanding item 3 of paragraph 1 of Section 438 of the German Civil Code (BGB), the limitation period applying to claims for defects shall amount to 3 years starting at the time of passing of the risk. Insofar as acceptance has been agreed, limitation shall begin upon acceptance.

The 3 year limitation period shall apply accordingly to claims for legal defects, while the statutory limitation period laid down by law for third party claims in rem for return (item 1, paragraph 1, Section 438 of the German Civil Code - BGB) shall remain unaffected; claims for legal defects shall in no case become statute-barred as long as the third party can assert the right vis-à-vis WALA - including but not limited to, due to lack of limitation.

(3) The limitation periods of the law on the sale of goods, including the aforementioned extension - shall apply to the extent admissible by law to all contractual claims for default. Insofar as WALA is also entitled to extra-contractual claims for damages due to a defect, the regular statutory limitation (sections 195, 199 of the German Civil Code - BGB) shall apply, unless the application of the limitation periods of the law on the sale of goods provides for a longer limitation period in the individual case.

§ 12 Choice of Law and Venue

(1) These General Purchase Terms and Conditions and all legal relations between WALA and the Vendor shall be governed by the law of the Federal Republic of Germany to the exclusion of international uniform law, including but not limited to, the UN Convention on the International Sale of Goods.

(2) If the Vendor is an entrepreneur (Kaufmann)⁶ as defined in the German Commercial Code or a legal entity, the sole - even international - jurisdiction for all disputes arising out of this contract shall be that of Göppingen. WALA shall, however, also be entitled to bring an action at the place of performance of the obligation to deliver.

⁶ Kaufmann as defined in Section 1 of the German Commercial Code (Handelsgesetzbuch).