

Standard Terms and Conditions of Sales and Delivery of BCG Baden-Baden Cosmetics Group GmbH

Status: October 2015

1 General, Scope of Application

- 1.1 The following General Terms and Conditions of Sale and Delivery ("**Terms**") shall be applicable for our deliveries and performances, unless otherwise agreed upon. Deviating terms of the customer are herewith contradicted. Our Terms shall also apply if we provide delivery and performances to the customer without reservation in awareness of deviating or contrary terms.
- 1.2 Contracts can only be performed by us, if an agreement is existing with the customer (authorized dealer).
- 1.3 These terms shall apply only in relation to entrepreneurs (§ 14 (1) BGB – German Civil Code), legal persons under public law or a special fund under public law in accordance with § 310 (1) BGB.
- 1.4 These Terms shall be applicable for all future agreements with the customer, even if they are not submitted separately; we will notify the customer about any amendments thereof immediately.
- 1.5 Any legally significant declarations and notifications which are to be made to us by the customer after conclusion of the contract (e.g. deadlines, reminders, rescission notices) require written form for their effectiveness.
- 1.6 References to the validity of statutory provisions shall solely serve the purpose of clarification. Even without such clarification the legal provisions shall therefore apply unless directly amended or expressly excluded in these Terms.

2 Offer

- 2.1 Our offers are not binding unless otherwise agreed upon or if delivery has been completed.
- 2.2 We reserve all property rights and copyrights in figures, specifications, drawings, samples and other documents in the context with our offers.
- 2.3 If an order is qualified as offer in accordance with § 145 BGB, we can accept it within 2 weeks.

3. Delivery, Transfer of Risk, Delay

- 3.1 Delivery takes place ex works (INCOTERMS 2010; EXW).
- 3.2 At the request and costs of the customer, the goods shall be sent to another place than the place of performance (sales shipment). We are entitled to determine the type of shipment (especially the shipping company, shipping route, type of packaging) at our due discretion whereby we consider reasonable instructions of the customer.
- 3.3 Partial deliveries shall be allowed unless their acceptance by the customer is unreasonable for him.
- 3.4 The delivery time is agreed upon individually and respectively stated by us at acceptance of the order.
- 3.5 The observance of our delivery obligation is subject to the timely and proper fulfilment of the customer's duties. Equitable defence is reserved.
- 3.6 The occurrence of a delay of delivery shall be determined in accordance with legal provisions. A default notice of the customer is required subject to the statutory exceptions.
- 3.7 If we are unable to meet delivery dates that have been agreed because we are ourselves not supplied or supplied on time by our suppliers, despite timely order, we will notify the customer without delay. If the non-delivery or delay is neither foreseeable nor caused by us and if such good cannot be procured despite making reasonable efforts, we are entitled to withdraw from the contract. In this event, the customer is also entitled to withdraw from the contract. If one party exercises its right of withdrawal, we shall refund, without undue delay, any payments already made by the customer. The same applies if any required import and export licences or any other official authorisations that are required for the fulfilment of the contract have not been granted or expire, unless this case was not foreseeable for us or caused by us/our fault and such good cannot be procured despite making reasonable efforts.
- 3.8 The statutory rights of the contract parties particularly in case of exclusion of the performance obligation (e.g. impossibility and unreasonableness of performance) remain unaffected.
- 3.9 The risk of accidental destruction and accidental deterioration of the goods passes to the customer upon handover of the good at the latest. In case of sales shipment the risk of accidental destruction and accidental deterioration of the goods as well as the risk of delay pass to the customer at the time of their delivery to the forwarder, the carrier or other person or organisation instructed to perform shipment.
- 3.10 It is within the responsibility of the customer to take out insurance, in particular transport insurance. At the request and costs of the customer we will insure the goods against transport damages.

4. Prices

- 4.1 Our prices are quoted "ex works" (INCOTERMS 2010: EXW).
- 4.2 Our prices are without value added tax. VAT will be charged separately at the rate valid on the date of the delivery.
- 4.3 If there are more than four months between contract conclusion and agreed upon and/or actual delivery date, our prices valid at the time of delivery or procurement of goods shall be applicable. If the last mentioned prices exceed the originally agreed upon prices by more than 10%, the customer is entitled to withdraw from the contract. The same applies if the customer proves that a price increase of less than 10% is unreasonable for him on other grounds. Further claims are not existing.
- 4.4 Unless any transport packaging or any other packaging in accordance with the Packaging Ordinance (*Verpackungsverordnung*) is included expressly in the agreed price, we charge packing cost at cost price. In the case of freight-free return of packing in a faultless condition we will credit the packing costs.

5. Payment Conditions

- 5.1 Our invoices shall be due for payment within 30 days from the date of invoice. Any individual agreements regarding prepayments in a specific case have to be complied with.
- 5.2 Bills of exchange will only be accepted by us for payment upon a particular agreement in writing and at the customer's cost. A liability for a timely presentation and protestation is not existing. The acceptance of a bill does not imply any respite for payment of the invoiced amount. In such cases, we are rather entitled at any time, to request cash payment against return of the bill. If the financial situation of the customer or the acceptor deteriorates or if we receive an unfavourable information with regard to the customer or the acceptor, instead of claiming cash payment against return of the bill we shall be entitled to immediately claim sufficient security from the customer for our mutual rights of recourse.
- 5.3 If the customer is in delay of payment, we shall be entitled to claim interest in the amount of 9 percent above the respective basic interest rate published by the German Federal Reserve Bank (Deutsche Bundesbank) as of the respective date. In addition, we are entitled to a fixed amount of EUR 40.00 pursuant to § 288 (5) BGB. The evidence of a higher damage by us is permissible. Any further statutory claims to which we are entitled in the context of delay of payment, in particular the right to withdraw from the contract according to statutory provisions shall remain unaffected.
- 5.4 The customer shall only be entitled to customer's claim is undisputed, ready for decision, recognized by us or legally determined. Furthermore, the customer shall only be entitled to a right of retention in so far as his counterclaim is based on the same legal relationship.

6. Warranty

- 6.1 The customer is obliged to give written notice of evident defects (including wrong and short delivery) within three working days from delivery whereby compliance with this deadline is met if notification is sent in good time. If the customer fails to carry out the proper inspection and/or report of defects, our liability for the defect which was not reported is excluded.
- 6.2 Any warranty claims of the customer in commercial business shall require that the latter has properly complied with his duties to inspect and to report any complaints (§§ 377, 381 HGB - German Commercial Code).
- 6.3 Properties of the goods which are indicated in our publications, in particular in advertising, in drawings, brochures or other documents or on the packaging and marking of the goods are to be considered as contractual quality only if explicitly characterized as such in the corresponding offer.
- 6.4 If goods are defective we shall have the option to either deliver new goods or remedy the effect within the statute period of limitation, provided that the origin of the defect was existing already at the time of transfer of risk. If and when the subsequent performance fails or if a deadline for subsequent fulfilment to be set by the customer has elapsed without success or is not required according to the statutory provisions, the customer shall have the option to either reduce the purchase price in a reasonable way or withdraw from the contract.
- 6.5 Notwithstanding § 438 (1) no. 3 BGB the limitation period for claims based on defects of quality and title – regardless of any legal basis – is one year from delivery or acceptance; this does not apply for claims
- a) in case of intention or gross negligence,
 - b) in case of injury to life, body and health, and
 - c) resulting from the violation of significant contractual duties according to Section 8.2 of the Terms. In addition, this shall not affect special statutory provisions for the restitution of property of third parties (§ 438 (1), no. 1 BGB), fraudulent intent of the customer (§ 438 (3) BGB) and for claims of recourse against the supplier in case of final delivery to a consumer (§ 479 BGB) as well as the limitation periods of the Product Liability Act.

7. Retention of Title

- 7.1 Goods delivered (reserved goods) shall remain our property until satisfaction of all our claims against the purchaser under this business relationship. These shall also include receivables arising under agreements concluded at the same or a later date. Retention of title shall also apply if individual or all receivables were included in a current account and the balance is drawn and recognised.
- 7.2 During the existence of a retention of title, the customer may not utilize the reserved goods or transfer them by way of security. He may resell the goods only in the ordinary course of business and subject to the condition that he receives payment from his customer or makes resale contingent upon ownership passing to the customer only after having effected payment in full. In the event of a substantiated legitimate interest, the customer shall provide us with the information and hand out the documents required in order to claim his rights against the customer.
- 7.3 If the purchaser resells the reserved goods, he hereby by way of security assigns to us his future claims under the resale including any ancillary rights against his customer without the need for subsequent special statements. We herewith accept this assignment. If the reserved goods are sold together with other goods without having agreed an individual price for the reserved goods, the customer shall assign, with priority over the remaining receivables, that portion of the total price which equals the price of the reserved goods invoiced by us.

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- 7.4 The customer shall notify us without delay in the event of pledges, seizures or other dispositions or interference by third parties with regard to our ownership of the reserved goods. The customer is not entitled to make agreements with his contractual partners, in particular creditors or purchasers, which may impair our rights under the agreed retention of title set forth above.
- 7.5 Until revocation, the customer is entitled to collect the receivables assigned to him within the framework of the agreed retention of title. In the event of an important reason, in particular delay in payment, suspension of payment, opening of insolvency proceedings or rejection of such due to non-existing assets, protest of a bill, valuation of the customer with a high business risk by a recognized information or rating agency, or in the event of comparable sustainable reasons which suggest the customer's insolvency, we shall be entitled to revoke the customer's right to collect receivables. Moreover, upon prior warning that the assignment by way of security will be disclosed or that the assigned receivables will be utilized, and observing a reasonable period of time, we may disclose the assignment by way of security, utilize the assigned receivables and demand that the customer discloses the assignment by way of security to his customer.
- 7.6 Should the total value of the security granted to us exceed the receivables to be secured by more than 10%, we shall release the additional security upon the customer's request. The customer shall be notified in writing of such a release. The selection of the security to be released shall be our responsibility.

8. Limitation of Liability

- 8.1 Liability is excluded provided that the damage does not result from violation of life, body or health, which are based on an intentional or negligent violation of duties by us or one of our legal representatives or agents, or when a liability for other damages is concerned which is based on an intentional or gross negligent violation of duties by us or one of our legal representatives or agents.
- 8.2 In the event of pecuniary or property damages which are based on a light negligent violation of significant duties from us, we shall be liable to an amount limited to the foreseeable, typically occurring damages. Significant duties meant above are such duties which we must observe with regard to content and purpose of the contract, the observance of which is required for a proper fulfilment of the contract and the observance of which is and may be regularly expected by the customer.
- 8.3 A possible liability according to the product liability law or due to guaranteed quality properties of the goods is not affected.
- 8.4 Subject to the provisions in Sections 8.1 and 8.2 of the Terms, limitation of liability shall apply in particular for the violation of accessory obligations, lacking economic success, lost profit, indirect damages, consequential damages and damages from claims of third parties.

9. Force Majeure

- 9.1 We shall not be liable for loss or damage which result directly or indirectly from events which are outside our sphere of influence, such as war, uproar or similar events, strikes or lockouts, shutdowns, lacking transportation means or difficulties to procure raw materials.

10. Jurisdiction, Applicable Law

- 10.1 If the customer is a merchant, our business domicile is the jurisdiction; we are, however, entitled to sue the customer at the court of his domicile.
- 10.2 The law of the Federal Republic of Germany is applicable; the applicability of the UN purchase act is excluded.

11. Cession

- 11.1 We shall be entitled to transfer our rights and duties under this contract to companies associated with us in the meaning of § 15 AktG (Companies Act).
- 11.2 Debts due to us by customers may be assigned by us to third parties.

12. Final Provisions

- 12.1 All provisions contained in these Terms are severable and to be valued separately from the other provisions if one or several provisions are ineffective or not executable. Should one of the afore mentioned provisions have become ineffective or not have become part of the contract, the efficiency of the remaining provisions shall not be affected thereby. In this case, the contractual partners now already agree to replace the ineffective provision by such a clause which comes closest to the economic purpose intended by the parties by means of the former provision.
- 12.2 Principally, German is the contractual language. Only if explicitly agreed upon in writing, English can be determined as contractual language instead.
- 12.3 Place of performance is Baden-Baden.