

## **General terms and conditions of Dr. Suwelack Skin & Health Care AG (“SHC”)**

Valid from 01 January 2011

### **I. Scope and conclusion of contract**

(1) The following general terms and conditions apply exclusively to such customers which are business enterprises or legal entities under public law.

(2) The following general terms and conditions apply to all – also future – contracts, deliveries and other services, unless a written agreement with the customer determines otherwise. The customer recognises these general terms and conditions upon conclusion of contract by issuing an order or accepting the delivered products; this also applies if SHC does not expressly object to contrary terms and conditions of the customer.

(3) Additional agreements, changes and amendments to these general terms and conditions require in any event written confirmation by SHC.

(4) The offers of SHC are without obligation. A contract is concluded at the latest by acceptance of the delivery. If a consignment warehouse has been set up at the customer for SHC products, the taking of the products from the consignment warehouse is considered as acceptance of the delivery.

### **II. Delivery dates and deadlines, delivery scope**

(1) A bindingly agreed delivery date is met when at the latest by its expiry the risk is transferred to the customer. (cf. V)

(2) With regard to ordered quantities SHC is entitled to part deliveries.

(3) Unforeseeable events, such as for example delivery or transport delays or labour disputes, release SHC for their duration from the obligation of on-time delivery, provided SHC is not responsible for these. Delivery deadlines are extended by the duration of the disruption. If the disruption lasts longer than two months, both parties can withdraw from the contract. The customer is not entitled to claim compensation in this respect.

(4) If the customer is in default of acceptance or if it is otherwise responsible for a delay of despatch, SHC can store the products at the risk and cost of the customer. After fruitless expiration of a period of grace to accept the products, SHC can withdraw from the contract. Other rights remain unaffected.

### **III. Prices**

(1) All prices are in EURO strictly net plus the respective statutory value added tax or sales tax. Shipping costs are to be borne by the customer.

(2) Deliveries and services are performed at the SHC list prices valid on the day the order is received. These prices are only binding if the delivery or service has to be performed by SHC within two months of the order being received; otherwise the SHC list prices valid at the time of the delivery or service apply. Consignment warehouse products are charged at the SHC list prices valid on the day they are taken from the consignment warehouse.

(3) SHC can invoice part deliveries separately.

### **IV. Payment terms**

(1) All payments are to be made immediately on the date of the invoice without deduction. Irrespective of a contrary provision of the customer, payments are always allocated to the oldest invoices. Bills of exchange and cheques are accepted by SHC only on account of performance and only on the basis of special agreements and without cost and expense to SHC.

(2) If the customer is in default, it has to pay default interest in the amount of 8 percentage points above the respective base rate of the European Central Bank. The assertion of further rights is reserved.

## **V. Transfer of risk**

The risk for the products is transferred to the customer with their handover to the post office or to the transporter; this also applies if it has been agreed to send them carriage free. For consignment warehouse products the risk is transferred to the customer at the time they are taken from the warehouse.

## **VI. Retention of title**

(1) SHC retains the title to the products it has delivered until complete payment of all outstanding accounts from the underlying delivery contract by the customer.

(2) The products which are under retention of title are only allowed to be sold in accordance with the customer's proper course of business. Other provisions which put the rights of SHC at risk are excluded. The customer assigns to SHC now for security the claims to which it is entitled from the resale of or due to another legal reason concerning the products under retention of title.

(3) The customer will give to SHC at any time all of the information on the products under retention of title and on claims which in accordance with this are assigned to SHC. Access of third parties to such products or rights has to be notified by the customer to SHC immediately and by handing over the necessary documents. The costs which are required to remove the access and for replacement are borne by the customer.

(4) SHC is obliged to release the retentions of title upon request by the customer, if the value of the products for which titles have been retained exceeds the value of the outstanding accounts by more than 20%.

(5) If SHC delivers its products to areas of jurisdiction where the extended retention of title does not have the same security effect as in the Federal Republic of Germany, the customer will do everything in order to assign to SHC without delay appropriate security rights.

## **VII. Claims for defects**

(1) If the products delivered by SHC and services provided by it are defective, SHC will in accordance with the legal regulations and the provisions of this item VII of its own choice carry out a repair or make a replacement delivery. Customer's right to reduce the purchase price, if the cure should fail or at its option to withdraw from the contract is expressly reserved. Rights to claim compensation exist only within the area governed by item X. All replaced products and parts become the property of SHC, provided they were not already owned by SHC.

(2) Every product delivered is to be inspected immediately upon receipt by the customer. There is no right to claim warranty if a notification with regards to complaints about the delivery quantity and any defect identified by careful inspection is not sent within five (5) banking days in writing to SHC; the same applies to complaints about hidden defects which are not received within five (5) banking days of being discovered.

(3) Claims for defects become time-barred twelve (12) months after the delivery.

(4) If a notice of defects is proven to be unjustified, and if the customer could have recognised this by taking the care expected of it, then it has to compensate SHC for all of the expenses which SHC has incurred due to the unjustified notice of defects.

## **VIII. Liability for damages**

(1) SHC's liability - for whatever legal reason - is limited to damages which SHC or its legal representatives or vicarious agents have caused as a result of wilful intent or gross negligence. This does not apply to the culpable breach of obligations which are material to the fulfilment of the purpose of the contract. Material contractual obligations are those whose fulfilment enable the contract to be performed properly at all and which the customer may regularly trust are adhered to. In the case of a breach of such a material contractual obligation, SHC is liable for wilful intent and any form of negligence.

(2) In cases of slight negligence for breaches of material contractual obligations, the liability of SHC is limited in terms of value to the typical damages for comparable transactions of this nature, which were foreseeable for SHC when the contract was concluded or at the latest when the breach of obligation was committed.

(3) Rights to claim compensation in accordance with the product liability law (Produkthaftungsgesetz) and due to injury of life, body or health remain unaffected by the above regulations.

## **IX. Final provisions**

(1) Should any individual provisions of the above terms and conditions or parts of these be ineffective, the effectiveness of the remaining provisions will not be affected by this. An ineffective provision of these terms and conditions will be replaced by the effective provision which is closest to the ineffective provision in economic meaning.

(2) The customer is not entitled to transfer its contractual claims against SHC.

(3) Order processing at SHC takes place with the help of automated data processing. The customer issues herewith its express approval for SHC to process data which it has become aware of within the scope of the contractual relationships, which is necessary for order processing and which is necessary in accordance with existing legal regulations. Rights to claim compensation based on the handling of such data exist only within the scope of item VIII.

(4) The place of fulfilment is Billerbeck and the exclusive place of jurisdiction is Münster. This also applies if the customer does not have a general place of jurisdiction in the Federal Republic of Germany or moved its normal place of residence abroad after the contract was concluded. SHC is though entitled to bring an action against the customer at any other legal place of jurisdiction.

(5) The law of the Federal Republic of Germany which is applicable between domestic persons shall apply law to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).