

General Terms & Conditions (GT&C)

1. Scope of application, form

- 1.1. These general terms and conditions of business, delivery and payment (GT&C) shall apply to all business relations of Hikma Pharma GmbH (hereinafter referred to as Hikma) with other entrepreneurs pursuant to § 14 of the German Civil Code (hereinafter referred to as Buyer), legal entities under public law (hereinafter referred to as Buyer) or special funds under public law (hereinafter referred to as Buyer).
- 1.2. Hikma's GT&C shall apply exclusively. Any conflicting or deviating terms and conditions or any supplementary agreements to these GT&C shall only apply, if Hikma expressly consents to their application in writing. The requirement of consent shall apply in all cases, for example even where Hikma, being aware of the Buyer's GT&C, makes delivery to the Buyer without reservation.
- 1.3. Unless otherwise agreed, the GT&C in the version valid at the time of the Buyer's order or, in any event, in the version most recently communicated to the Buyer in text form shall also apply as a framework agreement for similar future contracts without Hikma having to refer to them again in each individual case.
- 1.4. Individual agreements concluded with the Buyer in individual cases (including ancillary agreements, supplements and amendments) shall in all cases take precedence over these GT&C. Subject to proof to the contrary, the content of such agreements shall be governed by a written contract or written confirmation by Hikma.
- 1.5. References to the applicability of statutory provisions shall be for clarification purposes only. Even without such clarification, the statutory provisions shall therefore apply insofar as they are not directly amended or expressly excluded in these GT&C.

2. Conclusion of contract

Orders to Hikma may be placed by telephone, fax, electronically or in writing with Hikma's customer service. The order for the goods by the Buyer shall be deemed to be a binding offer of contract. An order shall be bindingly accepted by a written confirmation (e.g. order confirmation) by Hikma or by delivery of the goods to the Buyer. Orders for medicinal products and narcotics placed to Hikma shall also be deemed to be a confirmation that the Buyer has the necessary authorization for further use, resale or transfer. Hikma shall be entitled to require proof thereof from the Buyer prior to delivery.

3. Prices and terms of payment

- 3.1. The net price applicable on the day of delivery in accordance with the Hikma price list plus statutory value added tax shall be charged. The price shall include the costs of packaging and freight, unless the order is of low value (pursuant to point 3.3.). The prices do not include the costs for the disposal of the packaging, these are to be borne by the Buyer.
- 3.2. If a purchase price is agreed for a delivery of prescription-only ready-to-use medicinal products which is below the delivery price of the pharmaceutical entrepreneur listed in the price list on the day of delivery, the Buyer shall be obliged to use these medicinal products exclusively for the production of parenteral preparations. The supply of these preparations to third parties outside of parenteral preparations shall not be permitted. Hikma shall be entitled to request written confirmation to this effect from the Buyer.
- 3.3. Hikma may charge reasonable additional costs for special services; this shall apply in particular to the costs of dispatch in the case of low-value orders. For orders below an order value of EUR 300.00, a transport surcharge of EUR 15.00 shall be added to the invoice. The transport surcharge applies to standard shipping. Special deliveries by express require an individual agreement, as in this case significantly higher freight costs are incurred, which are to be borne by the Buyer.
- 3.4. The purchase price shall be due and payable within 10 days of the date of invoice and delivery or acceptance of the goods, unless any other payment date has been expressly agreed. However, Hikma shall be entitled at any time, even within the framework of an ongoing business relationship, to effect delivery in whole or in part only against advance payment. Hikma shall declare a corresponding reservation at the latest when confirming the order.
- 3.5. On expiry of the above payment period, the Buyer shall be in default. During the period of default, interest shall be payable on the purchase price at the prevailing rate of interest on arrears. Hikma reserves the right to claim further damages for default. Hikma's entitlement to commercial interest on arrears (§353 of the German Commercial Code) shall remain unaffected vis-à-vis merchants.
- 3.6. The Buyer shall only be entitled to rights of set-off and retention to the extent that its claim has been finally adjudicated or is undisputed. In the event of defects in the delivery, the Buyer's counter rights shall remain unaffected, in particular in accordance with section 7 of these GT&C.
- 3.7. If, after conclusion of the contract, it becomes apparent (e.g. as a result of an application for the opening of insolvency proceedings) that Hikma's claim to the purchase price is jeopardized by the Buyer's inability to pay, Hikma shall be entitled in accordance with the statutory provisions to refuse performance and, if necessary, to withdraw from the contract after setting a deadline (§321 of the German Civil Code). In the case of contracts for the manufacture of unjustifiable items (custom-made products), Hikma may declare its withdrawal immediately; the statutory provisions on the dispensability of setting a time limit shall remain unaffected.

4. Delivery period and default in delivery

- 4.1. The delivery period shall be agreed individually or stated by Hikma upon acceptance of the order. If this is not the case, the delivery period shall be approx. 72 hours from conclusion of the contract.
- 4.2. Where Hikma is unable to meet binding delivery deadlines for reasons for which Hikma is not responsible (non-availability of the service), Hikma shall inform the Buyer thereof without delay and at the same time notify it of the expected new delivery deadline. If the service is still not available within the new delivery period, Hikma shall be entitled to withdraw from the contract in whole or in part. Any consideration already paid by the Buyer shall be refunded by Hikma without delay. A case of non-availability of performance in this sense shall be deemed to include, in particular, failure by Hikma's supplier to deliver on time where Hikma has entered into a congruent covering transaction, neither Hikma nor Hikma's supplier is at fault or Hikma is not obliged to procure in the individual case.
- 4.3. Hikma's default in delivery shall be determined in accordance with the statutory provisions. In any event, however, a reminder by the Buyer shall be required. If Hikma is in default of delivery, the Buyer may claim liquidated damages for its default. The lump-sum compensation shall amount to 0.5% of the net price (delivery value) for each completed calendar week, but not more than a total of 5% of the delivery value of the goods delivered late. Hikma shall have the right to prove that the Buyer has not suffered any loss or that the loss suffered is significantly less than the above lump sum.
- 4.4. The rights of the Buyer under clause 8 and the statutory rights of Hikma, in particular in the event of an exclusion of the obligation to perform (e.g. due to impossibility or unreasonableness of performance and/or subsequent performance), shall remain unaffected.

5. Delivery, transfer of risk, acceptance, default of acceptance

- 5.1. Delivery to the Buyer shall normally be made free domicile (Buyer's named place) within Germany and Austria.
- 5.2. Hikma shall be entitled to determine the method of dispatch (in particular the carrier, the dispatch route and the packaging) itself. Hikma shall be entitled to make partial deliveries insofar as these are reasonable for the Buyer.
- 5.3. If the Buyer requests delivery by express delivery (or otherwise) or by a specific date, or if the order is of low value (pursuant to point 3.3), Hikma shall charge the Buyer for the additional costs incurred.
- 5.4. The risk of accidental loss and accidental deterioration of the goods shall pass to the Buyer at the latest upon handover. However, in the case of sale by delivery to a place other than the place of performance, the risk of accidental loss and accidental deterioration of the goods as well as the risk of delay shall pass to the Buyer upon delivery of the goods to the forwarding agent, the carrier or any other person or institution designated to carry out the shipment. If acceptance has been agreed, this shall be decisive for the transfer of risk. In all other respects, the statutory provisions of the law on contracts for work and services shall also apply mutatis mutandis to an agreed acceptance. The handover or acceptance shall be deemed to have taken place if the Buyer is in default of acceptance.
- 5.5. If the Buyer is in default of acceptance, fails to cooperate or delays delivery by Hikma for other reasons for which the Buyer is responsible, Hikma shall be entitled to claim compensation for the resulting damage, including additional expenses (e.g. storage costs). For this purpose, Hikma shall charge a flat-rate compensation per calendar day of EUR 50.00 for items dispatched at room temperature and EUR 100.00 for refrigerated items, commencing on the delivery date or, in the absence of a delivery date, on notification that the goods are ready for dispatch.
- 5.6. Proof of higher damages and Hikma's statutory claims (in particular reimbursement of additional expenses, reasonable compensation, termination) shall remain unaffected; however, the lump sum shall be set off against any further monetary claims. The Buyer shall be entitled to prove that Hikma has suffered no loss at all or that the loss is significantly less than the above lump sum.

6. Retention of title

- 6.1. All deliveries shall be made subject to retention of title. The goods delivered shall remain the property of Hikma until full payment of the purchase price and all other claims of Hikma against the Buyer arising from the current business relationship (in the case of payment by cheque or bill of exchange until they are honored).
- 6.2. The Buyer shall not be entitled to pledge the goods subject to retention of title to third parties or to assign them by way of security before payment has been made in full. The Buyer shall notify Hikma in writing without delay if an application is made to open insolvency proceedings or if third parties (e.g. attachments) seize goods belonging to Hikma. In the event of a legal enforcement, the Buyer shall be obliged to inform the creditor of Hikma's rights.
- 6.3. In the event of breach of contract by the Buyer, in particular non-payment of the purchase price due, Hikma shall be entitled to withdraw from the contract in accordance with the statutory provisions and/or to demand the return of the goods on the basis of retention of title. The demand for return shall not at the same time constitute a declaration of withdrawal; rather, Hikma shall be entitled merely to demand the return of the goods and to reserve the right to withdraw from the contract. If the Buyer fails to pay the purchase price due, Hikma may only assert these rights if the Buyer has previously been set a reasonable deadline for payment without success or if such a deadline is dispensable under the statutory provisions.

- 6.4. Until revoked in accordance with 6.5, the Buyer shall be entitled to sell and/or process the goods in the ordinary course of business. It shall assign its claims in full or in the amount of Hikma's co-ownership share, if any, as security to Hikma in accordance with the preceding paragraph. Hikma shall accept the assignment. The obligations of the Buyer set out in the preceding paragraph shall also apply in respect of the assigned claims.
- 6.5. The Buyer shall remain entitled to collect the claim in addition to Hikma. Hikma undertakes not to collect the claim as long as the Buyer meets its payment obligations vis-à-vis Hikma, there is no deficiency in its ability to pay and Hikma does not assert its retention of title by exercising a right under 6.3. However, if this is the case, Hikma may require the Buyer to disclose the assigned claims to Hikma and their debtors, to provide all information necessary for collection, to hand over the relevant documents and to notify the debtors (third parties) of the assignment. Furthermore, in such a case Hikma shall be entitled to revoke the Buyer's authority to further sell and process the goods subject to retention of title.
- 6.6. If the realisable value of the securities exceeds Hikma's claims by more than 10%, Hikma shall, at the request of the Buyer, release securities at Hikma's discretion.
- 6.7. The Buyer shall keep the goods owned or co-owned by Hikma in safe custody and insure them at its own expense against all storage risks, and shall furnish proof of conclusion of the insurance policy at Hikma's request.

7. Warranty

Where goods have been delivered by Hikma in perfect condition, the Buyer shall have no right of return. In individual cases, the Buyer may, by agreement with Hikma, return goods which have been delivered in perfect condition, subject to the deduction of a handling fee. In all other respects, Hikma's returns policy shall apply. Transport damage shall be reported immediately to the delivering carrier.

- 7.1. The statutory provisions shall apply to the rights of the Buyer in the event of material defects and defects of title (including incorrect and short delivery as well as improper assembly or defective assembly instructions), unless otherwise stipulated below. In all cases, the special statutory provisions shall remain unaffected in the case of final delivery of the unprocessed goods to a consumer, even if the consumer has processed them further (supplier recourse pursuant to §478 BGB). Claims arising from supplier recourse are excluded if the defective goods have been further processed by the Buyer or another entrepreneur, e.g. by incorporation into another product.
- 7.2. Hikma's liability for defects shall be based primarily on the agreement on the quality of the goods. The agreement on the quality of the goods shall be deemed to include all product descriptions and manufacturer's specifications which are the subject matter of the individual contract or which were publicly announced by Hikma (in particular in catalogues or on the Hikma Internet homepage) at the time the contract was concluded.
- 7.3. Insofar as the quality has not been agreed, whether or not there is a defect shall be assessed in accordance with the statutory provisions (§434(1) sentences 2 and 3 of the German Civil Code (BGB)). However, Hikma shall not be liable for public statements made by the manufacturer or other third parties (e.g. advertising statements) to which Hikma has not drawn the Buyer's attention as being decisive for the purchase.
- 7.4. Claims for defects on the part of the Buyer shall be subject to the condition that the Buyer has complied with its statutory obligations to examine the goods and give notice of defects (§§377, 381 HGB). If a defect becomes apparent upon delivery, inspection or at any time thereafter, Hikma shall be notified thereof in writing without delay. In any event, obvious defects shall be notified in writing within 3 working days of delivery and defects which are not apparent on inspection within the same period of time from the date of discovery. If the Buyer fails to carry out a proper inspection and/or to give notice of defects, Hikma shall not be liable for the defects not notified or not notified in time or not notified properly in accordance with the statutory provisions.
- 7.5. If the item delivered is defective, Hikma may initially choose whether to effect subsequent performance by remedying the defect or by delivering an item free of defects (replacement delivery). The right to refuse subsequent performance under the statutory conditions shall remain unaffected.
- 7.6. Hikma shall be entitled to make the subsequent performance owed conditional upon the Buyer paying the purchase price due. However, the Buyer shall be entitled to retain a proportion of the purchase price which is reasonable in relation to the defect.
- 7.7. The Buyer shall give Hikma the time and opportunity necessary for the subsequent performance owed, in particular to hand over the goods complained of for inspection purposes. In the event of a replacement delivery, the Buyer shall return the defective item to Hikma in accordance with the statutory provisions. Subsequent performance shall not include either the removal of the defective item or its re-installation if Hikma was not originally obliged to install it.
- 7.8. The expenses necessary for the purpose of inspection and subsequent performance, in particular transport, travel, labor and material costs and, where applicable, removal and installation costs shall be borne or reimbursed by Hikma in accordance with the statutory provisions if a defect actually exists. Otherwise, Hikma may claim reimbursement from the Buyer of the costs (in particular inspection and transport costs) incurred as a result of the unjustified request to remedy the defect, unless the lack of defectiveness was not apparent to the Buyer.

- 7.9. In urgent cases, e.g. where operational safety is at risk or to prevent disproportionate damage, the Buyer shall have the right to remedy the defect itself and to claim reimbursement from Hikma of the expenses objectively necessary for this purpose. Hikma shall be notified immediately of any such self-execution, if possible in advance. The right of self-execution shall not apply if Hikma would be entitled to refuse a corresponding subsequent performance in accordance with the statutory provisions.
- 7.10. If subsequent performance has failed or if a reasonable period to be set by the Buyer for subsequent performance has expired unsuccessfully or is dispensable under the statutory provisions, the Buyer may withdraw from the purchase contract or reduce the purchase price. In the event of an insignificant defect, however, there shall be no right of rescission.
- 7.11. Claims of the Buyer for damages or reimbursement of futile expenses also exist in the case of defects only in accordance with clause 8. and are otherwise excluded.

8. Other liabilities

- 8.1. Unless otherwise provided in these GT&C including the following provisions, Hikma shall be liable for breach of contractual and non-contractual obligations in accordance with the statutory provisions.
- 8.2. Hikma shall be liable for damages - irrespective of the legal grounds - within the framework of fault-based liability in cases of intent and gross negligence. In the case of ordinary negligence, Hikma shall be liable, subject to statutory limitations of liability (e.g. care in own affairs; negligible breach of duty), only for
- a) damage arising from injury to life, limb or health,
 - b) for damage arising from the breach of a material contractual obligation (an obligation the fulfilment of which is essential to the proper performance of the contract and on the observance of which the contracting party regularly relies and may rely); in this case, however, liability shall be limited to compensation for foreseeable, typically occurring damage.
- 8.3. The limitations of liability arising from 8.2 shall also apply in the event of breaches of duty by or on behalf of persons for whose fault Hikma is responsible under the law. They shall not apply where Hikma has fraudulently concealed a defect or has given a guarantee as to the quality of the goods and to claims by the Buyer under the Product Liability Act.
- 8.4. The Buyer may only withdraw from or terminate the contract on account of a breach of duty which does not consist of a defect if Hikma is responsible for the breach of duty. Any free right of termination on the part of the Buyer (in particular pursuant to §650, 648 BGB) shall be excluded. In all other respects, the statutory requirements and legal consequences shall apply.

9. Limitation

- 9.1. In deviation from § 438 para. 1 no. 3 BGB, the general limitation period for claims arising from material defects and defects of title shall be one year from the date of delivery. Insofar as acceptance has been agreed, the limitation period shall commence upon acceptance.
- 9.2. The above limitation period under the law on sales shall also apply to contractual and non-contractual claims for damages of the Buyer based on a defect of the goods, unless the application of the regular statutory limitation period (§195, 199 BGB) would lead to a shorter limitation period in the individual case. However, claims for damages by the Buyer pursuant to section 8.2. and pursuant to the Product Liability Act shall become statute-barred exclusively in accordance with the statutory limitation periods.

10. Choice of law/ Place of jurisdiction

- 10.1. These GT&C and the contractual relationship between Hikma and the Buyer shall be governed by the law of the Federal Republic of Germany to the exclusion of international uniform law, in particular the UN Convention on Contracts for the International Sale of Goods.
- 10.2. If the Buyer is a merchant within the meaning of the German Commercial Code, a legal entity under public law or a special fund under public law, the exclusive place of jurisdiction, including international jurisdiction, for all disputes arising directly or indirectly from the contractual relationship shall be Hikma's place of business in MUNICH. The same shall apply if the Buyer is an entrepreneur as defined in §14 of the German Civil Code (BGB). However, Hikma shall in all cases be entitled to bring an action at the place of performance of the delivery obligation pursuant to these GT&C or a prior individual agreement or at the Buyer's general place of jurisdiction. Overriding statutory provisions, in particular on exclusive jurisdiction, shall remain unaffected.