DFE pharma

General sales conditions of DMV-Fonterra Excipients GmbH & Co KG, hereinafter referred to as "DFE-GmbH & Co. KG".

---

1. Applicability

1.1 These conditions shall apply to all offers from and to all orders to DFE GMBH & CO. KG for the sale and delivery by DFE GMBH & CO. KG of products (hereinafter: goods), and to all agreements pertaining thereto with DFE GMBH & CO. KG.

1.2 These conditions are also applicable to services to be carried out by DFE GMBH & CO. KG related to the sale and/or delivery of goods, this including contracting and the rendering of advice.

1.3 The applicability of conditions of the other party or customer (hereinafter: the Customer) of DFE GMBH & CO. KG, shall hereby be expressly rejected.

1.4 Provisions deviating from these subject conditions may only be invoked by the Customer if and in as far as these have been accepted in writing by DFE GMBH & CO. KG.

2. Offers, assignments/orders and agreements

2.1 All offers of DFE GMBH & CO. KG are non-binding.

2.2 Orders and acceptance of offers by the Customer shall be deemed irrevocable.

2.3 DFE GMBH & CO. KG shall only be bound after it has accepted an order in writing or otherwise has commenced with implementation. In addition, DFE GMBH & CO. KG shall only be bound in the manner such as it has accepted in writing. Oral commitment or arrangements by or with its personnel shall not bind DFE GMBH & CO. KG until after and in as far as it has confirmed these in writing.

2.4 Amendments to these agreements shall be subject to these conditions as if they were separate agreements.

3. Conformity

3.1 All specifications provided by DFE GMBH & CO. KG of figures, measurements, weights and/or other indications with respect to goods shall be made with as much due care as possible. DFE GMBH & CO. KG however, cannot guarantee that no deviations shall occur in this respect. In the branch, customary deviations are in all events permitted. The Customer is required to check the conformity with specified or agreed figures, measurements, weights and/or other indications of DFE GMBH & CO. KG at the taking into receipt of goods as much as possible. Samples demonstrated or furnished by DFE GMBH & CO. KG, drawings or models of goods to be delivered are merely indications thereof as is meant in this article and are expressly subject to the contents of this article.

3.2 The Customer is required to ascertain that the goods it is to order and/or goods it has ordered and the documentation pertaining thereto, packaging, labelling and/or other information comply with all the provisions laid down by the authorities in the country of destination.

4. Price

4.1 The prices quoted by or agreed to with DFE GMBH & CO. KG are net, accordingly, among others, exclusive of VAT, import and export duties, excise duties and other taxes or levies imposed or levied with respect to the goods and the transport thereof, and apply only on delivery as is meant in the written order confirmation of DFE GMBH & CO. KG.

4.2 If DFE GMBH & CO. KG itself undertakes the packing, packaging, loading, transport, dispatch, unloading or insurance of goods without a price being agreed thereof expressly in writing, it shall be entitled to charge the actual costs thereof and/or the rates customary to DFE GMBH & CO. KG thereof to the account of the Customer.

4.3 The prices quoted or agreed to with DFE GMBH & CO. KG are based on the cost price at the instance of agreement by DFE GMBH & CO. KG. Should, for example, by measures of the authorities, exchange rate fluctuations, amendment of subsidies, prices of raw materials, also in connection with changing or lapse of price listings, freight tariffs, energy costs, import and export duties, excise duties or as a consequence of inflation, the cost price for DFE GMBH & CO. KG thereafter be subjected to an increase prior to delivery, DFE GMBH & CO. KG is entitled to adjust the prices accordingly.

5. Delivery time

5.1 The delivery time commences after conclusion of the agreement, after DFE GMBH & CO. KG has at its disposal all the items, documents and data to be furnished by the Customer and after any advance payment which has been agreed upon by DFE GMBH & CO. KG has been received or security for payment for the benefit of DFE GMBH & CO. KG has been furnished.

5.2 Exceeding of the delivery times does not give the Customer any right to additional or substitute damages nor to non-fulfilment by it of any of its own obligations arising from the agreement. The Customer is, however, entitled to rescind the agreement by means of a written statement, if and in as far as after the above mentioned exceeding of the delivery time DFE GMBH & CO. KG still has not delivered the goods to be delivered within a reasonable term agreed upon in writing with the Customer.

5.3 Delivery times shall be extended by the time that the performance of the agreement is delayed by force majeure. They shall also be extended by the time that the Customer is later in the fulfilment of any of its own obligations than is agreed or can be reasonably expected by DFE GMBH & CO. KG.

6. Delivery, risk, acceptance, storage

6.1 DFE GMBH & CO. KG is entitled, for the implementation of the agreement, or parts thereof, to bring in third parties, hereinafter also to be referred to as auxiliary persons.

6.2 DFE GMBH & CO. KG is entitled to deliver in parts. For the applicability of these conditions, each part delivery shall be deemed an independent delivery.

6.3 If the delivery by DFE GMBH & CO. KG is affected on the basis of such delivery conditions as carriage paid, F.O.B., CIF or for example, C&F, this shall imply the conditions corresponding to these abbreviations as is described in the Incoterms of the International Chamber of Commerce, most recent edition.

6.4 The risk of the purchased goods shall pass to the Customer either at the place and the instance pursuant to the agreed conditions of delivery as is referred to in article 6.3, or, if no regulation applies concerning passing of risk, at the place and the instance that the goods are ready for transport or dispatch to the Customer or third parties it has designated. This latter also applies if DFE GMBH & CO. KG sees to the loading, transport, despatch, unloading or insurance of the goods itself or via its own auxiliary persons.

6.5 The goods shall immediately be taken into receipt at the agreed place and the agreed point in time of delivery by or on behalf of the Customer. The Customer shall see to sufficient loading and unloading facilities and for a speedy unloading.

6.6 If the Customer does not or does not timely take possession of the goods, it shall be in default without notice thereof. In that case, DFE GMBH & CO. KG is entitled to store the goods for the account and risk of the Customer or, at its own option, to sell these to a third party. The storage costs and/or other damages to be incurred by DFE GMBH & CO. KG due to the default of the Customer, shall be for the account of the Customer.

6.7 DFE GMBH & CO. KG is not obliged to honour a request of the Customer for redelivery or delivery thereafter. Should however, DFE GMBH & CO. KG indeed proceed to do so, the costs attached thereto shall be for the account of the Customer.

7. Packing

7.1 The packing shall, in as far as this is not intended for once-only use, this including: pallets, crates, containers and other auxiliary means for the transport, remain the property of DFE GMBH & CO. KG. The Customer is accordingly, not entitled to put the packing at the disposal of third parties.

7.2 The packing may not be used for purposes other than those for which it is intended.

7.3 The Customer is obliged to return the packing, assorted and cleaned, as quickly as possible and at the latest by the very next delivery by DFE GMBH & CO. KG to the Customer.

7.4 In the event of loss or damage, where the claim of the Customer to the repayment of the deposit lapses, the Customer is obliged to compensate the loss or damage, by surrender of the deposit, to DFE GMBH & CO. KG.

8. Transfer of ownership

8.1 All goods delivered by DFE GMBH & CO. KG shall remain in the ownership of DFE GMBH & CO. KG up to the instance of full payment of all that which DFE GMBH & CO. KG is due by the Customer in connection with this subject agreement and/or prior or subsequent agreements of the same nature, this including damages, costs and interest. The Customer is not entitled to a right of retention/lien on the goods.

8.2 The Customer shall, immediately on first request of DFE GMBH & CO. KG, notify DFE GMBH & CO. KG of where the goods, of which DFE GMBH & CO. KG is still owner, are located. DFE GMBH & CO. KG retains the right, without

any other authorization thereto being required on the part of Customer, to take back on its own authority the goods which fall under its ownership, irrespective of where these goods are located.

9. Industrial/intellectual property

9.1 The industrial and intellectual property rights with respect to the delivered goods and/or services are vested with DFE GMBH & CO. KG or entitled third parties and shall not be transferred to the Customer through the agreement, accordingly, this also applies in the event the goods or services have been specifically designed, developed or composed for the Customer.

9.2 The Customer shall warn DFE GMBH & CO. KG immediately in the event third parties infringe or threaten to infringe the industrial or intellectual property rights of DFE GMBH & CO. KG or in the event third parties should be of the opinion that goods of DFE GMBH & CO. KG constitute infringement of their own industrial or intellectual property rights. Should there indeed be a question of the latter, DFE GMBH & CO. KG may either replace or change the infringing goods or rescind the agreement with the Customer, all this after consultation with the Customer. In these events, the Customer shall derive no right to compensation of damages by DFE GMBH & CO. KG outside of that set forth in article 13 of these conditions. Nevertheless, DFE GMBH & CO. KG shall indemnify the Customer against the costs of defence against an entitled third party. This however, under the condition that the Customer leaves the defence to DFE GMBH & CO. KG and on first request, grants all cooperation reasonably required by DFE GMBH & CO. KG.

10. Force majeure

10.1 DFE GMBH & CO. KG is entitled to invoke force majeure if the implementation of the agreement in whole or in part, temporarily or not, should be delayed or impeded by circumstances reasonably outside its control, this including trade embargoes, strikes, lightening strikes work-to-rule and lockouts, lack of raw materials, delayed providing to DFE GMBH & CO. KG by third parties of ordered goods or services in circumstances other than can be imputed to DFE GMBH & CO. KG, accidents, breakdowns, unforeseeable problems with production or transport, devaluation, increasing of levies or taxes of whatever nature, significant change of prices of raw materials or energy, and lapse, withdrawal or non-extension of the required permits, certificates, licences and such like.

10.2 In the event of force majeure on the part of DFE GMBH & CO. KG, its obligations shall be suspended. Also, in such an event, DFE GMBH & CO. KG is authorised to rescind by written statement the non-feasible part of the agreement. If the situation of force majeure on the part of DFE GMBH & CO. KG should last longer than two months, the Customer is also authorised to rescind the agreement in the same manner, this without prejudice to that determined in article 15.

11. Confidentiality

11.1 DFE GMBH & CO. KG and the Customer shall treat as confidential information considered as such under the agreement, also if this information be considered confidential by only one of them, and they shall not publish, circulate or make this available either directly or indirectly to third parties.

12. Guarantee and claims

12.1 DFE GMBH & CO. KG guarantees the good quality of the goods it delivers and the quality of the ingredients and/or materials processed therein to be in conformity with that which the Customer may expect in these respects by virtue of the agreement.

12.2 DFE GMBH & CO. KG guarantees the characteristic properties of each of the delivered goods up to the expiry date indicated on the packaging.

12.3 The Customer shall itself approve or have approved on its behalf, the delivered goods immediately after receipt. If approval is not effected immediately, each right of claim shall lapse.

12.4 If the quality does not comply with that which has been agreed, the Customer shall lodge a claim in writing in the matter of the defect within 24 hours after taking into receipt.

12.5 If the purchaser lodges a claim in the manner referred to in the preceding paragraph, it is obliged to provide DFE GMBH & CO. KG the opportunity to inspect or have the goods inspected in order to establish the defect.

12.6 Each right of claim shall lapse if:

a. the situation arises as is referred to in article 12.3;
b. the goods have been transported, treated, used, adapted or stored improperly or in violation of the instructions given by or on behalf of DFE GMBH & CO. KG;
c. the goods have been processed by or on behalf of the Customer;
d. the Customer has not or has not properly or not timely fulfilled any of the obligations arising for it from this subject agreement.

12.7 In the event of a justified and timely claim, DFE GMBH & CO. KG shall either redeliver without charge, or credit the Customer in whole or in part for the defective goods, all this at the option of DFE GMBH & CO. KG. These conditions shall be applicable to redelivery.

12.8 If and in as far as DFE GMBH & CO. KG purchases goods which it directly and without treatment or processing on its part, delivers on to the Customer, DFE GMBH & CO. KG shall at no time be held to a guarantee exceeding that which it itself is able to claim towards its supplier.

12.9 After discovery of a defect in one of the goods, the Customer is obliged to do all that which will prevent or limit damage, this expressly including any immediate ceasing of use, treatment or processing.

12.10 Goods concerning which a claim has been lodged or shall be lodged, may only be sent back to DFE GMBH & CO. KG after DFE GMBH & CO. KG has consented thereto in writing. The costs of sending back, if the claim is justified, shall be for the account of DFE GMBH & CO. KG solely after such written consent from DFE GMBH & CO. KG.

13. Liability and indemnity

13.1 The liability of DFE GMBH & CO. KG in relation to any defects pertaining to the goods it has delivered and thereby the services related thereto is limited to the fulfilment of the obligations described in the preceding article after the lodging of claims.

13.2 DFE GMBH & CO. KG shall on no account be bound to payment of damages except if an in as far as the damages incurred have been caused by wilful intent or deliberate gross negligence of DFE GMBH & CO. KG, of the auxiliary persons it has brought in, or of their respective employers. Save for wilful intent of the management of

DFE GMBH & CO. KG itself, liability of DFE GMBH & CO. KG for loss of profits, consequential or indirect damages shall however remain to be excluded.

13.3 In all cases in which DFE GMBH & CO. KG is bound to payment of damages, these shall never exceed that of, at its option, either the invoice value of the delivered goods and/or service through which or in connection with which the damage has been caused, or, if the damages are covered by an insurance of DFE GMBH & CO. KG, the amount which is actually paid out in that matter by the insurer.

13.4 Each claim towards DFE GMBH & CO. KG, except those which are acknowledged by DFE GMBH & CO. KG, lapses merely by the lapse of 12 months after the origination of the claim.

13.5 The employees of DFE GMBH & CO. KG, or the auxiliary persons brought in by DFE GMBH & CO. KG for the implementation of the agreement, may invoke towards the Customer all means of defence to be derived from the agreement, as if they themselves were party to the agreement.

13.6 The Customer shall indemnify DFE GMBH & CO. KG, its employees and the auxiliary persons it brings in for the implementation of the agreement against each claim of third parties in connection with the implementation of the agreement by DFE GMBH & CO. KG, in as far as these claims exceed or are different from those to which the Customer is entitled towards DFE GMBH & CO. KG.

14. Payment and security

14.1 Save for any deviating instruction from DFE GMBH & CO. KG in favour of the Customer, payment shall be affected within 14 days of the invoice date in the currency set forth in the invoice and exclusively in the manner as indicated in the invoice. DFE GMBH & CO. KG shall at all times have the right to claim advance payment in whole or in part and/or otherwise to be furnished with security for payment.

14.2 DFE GMBH & CO. KG remains authorised to set-off all that which it is due to the Customer with that which the Customer and/or the enterprises affiliated to the Customer is/are due, whether or not due and payable, under conditions or time limit, to the companies affiliated to the DFE GMBH & CO. KG concern.

14.3 The Customer waives any right to set-off of amounts due, one to the other. Claims do not suspend the payment obligations of the Customer.

14.4 If the Customer fails to effect payment of any amount due on the basis of the aforementioned, it shall be in default without notice being required. As soon as the Customer is in default of any payment, all remaining claims of DFE GMBH & CO. KG on the Customer shall become due and payable and with respect to these claims, the default is of immediate effect without notice being required thereof. On commencement of the day on which the Customer is in default, he is due to DFE GMBH & CO. KG a default interest which is 3% higher than the statutory interest.

14.5 All costs in and out of court which bear relationship to the recovery of any claim on the Customer shall be for the account of the Customer. The out of court costs shall amount to a minimum of 15% of the amount to be recovered, increased with the value added tax calculated over these costs.

15. Rescission

15.1 If the Customer does not or does not timely or not properly fulfil one or more of its obligations, is declared bankrupt, requests (preliminary) suspension of payments, proceeds to liquidation of its company, as well as when its assets are attached in whole or in part, DFE GMBH & CO. KG is entitled to suspend the implementation of the agreement or without prior notice of default, to rescind the agreement in whole or in part by a written statement, all this according to its own discretion and each time with maintaining of any of the rights it is entitled to on compensation of costs, damages and interest.

15.2 The Customer is solely entitled to rescission in the events referred to in articles 5.2 and 10.2 of these conditions and in that event, not other than after payment to DFE GMBH & CO. KG of all amounts it is due at that instant to DFE GMBH & CO. KG whether or not due and payable.

16. Disputes and applicable law

16.1 All disputes between DFE GMBH & CO. KG and the Customer shall be brought exclu- sively before the competent judge at `s-Hertogenbosch, Netherlands, unless in disregarding this article, DFE GMBH & CO. KG should give preference to another otherwise competent forum.

16.2 All relations between DFE GMBH & CO. KG and the Customer shall be subject to the law of The Netherlands.

16.3 The applicability of the Vienna Convention on the International Sale of Goods 1980 (CISG), is expressly excluded.