

General Conditions of Sale of DFE Pharma KK referred to in these conditions as “DFE Pharma”

1 Scope of Application

- 1.1 All offers from and all orders placed with DFE Pharma for the sale and delivery of products by DFE Pharma, including any related services (hereinafter referred to as “goods”), and any contract with DFE Pharma in that regard (hereinafter the “contract”) are subject exclusively to these conditions.
- 1.2 The applicability of the conditions of the counterparty (hereinafter referred to as “purchaser”) is hereby expressly rejected.
- 1.3 In case of discrepancies between the provisions of the contract and these General Conditions of Sale the contract shall prevail.
- 1.4 Any modification of or addition to these General Conditions of Sale shall be valid only if expressly agreed in writing.

2 Offers and orders and formation of the contract

- 2.1 All offers of DFE Pharma are non-binding and subject to modification or cancellation at any time.
- 2.2 Orders placed by purchaser are deemed to be irrevocable. Orders of purchaser are not binding upon DFE Pharma.
- 2.3 No contract between purchaser and DFE Pharma shall be considered to be concluded until DFE Pharma has confirmed the formation of the contract in writing.

3 Conformity

- 3.1 All statements of DFE Pharma concerning quantities, measurements, weights and other indications related to goods are made with the greatest possible care. DFE Pharma cannot however guarantee that there will be no non-conformities in that regard. Non-conformities that are customary in the sector shall in all cases be permitted.
- 3.2 Purchaser shall verify that the goods it orders or has ordered and the accompanying documentation, packaging, labelling and/or other information meet the governmental requirements operated in the country of destination and shall inform DFE Pharma with respect thereto.

4 Price

- 4.1 Prices indicated by DFE Pharma or agreed with DFE Pharma are net, Ex Works (in conformity with the provisions of the latest version of the Incoterms as drafted by the International Chamber of Commerce). Prices are therefore exclusive of VAT, exclusive of import and export duties, excise duties and other taxes or levies imposed or charged in relation to goods and their transportation costs.
- 4.2 If and insofar as the prices are based on price lists of DFE Pharma, the current price list at the time of delivery shall apply. DFE Pharma reserves the right to adjust the prices, or change the price list. In case of an adjustment to the price or change to the price list, DFE Pharma shall notify purchaser in writing as soon as possible but ultimately before the effective date of such adjustment or change. In the event purchaser does not agree to the proposed price adjustment or change to the price list, DFE Pharma shall have the right to terminate the contract with immediate effect and without being liable to pay any type of compensation to purchaser.

5 Delivery (term), acceptance, storage

- 5.1 The delivery term comes into effect upon confirmation of the contract. The delivery term will be extended by the amount of time by which the contract is delayed through Force Majeure (as specified in article 9 of these conditions). Delivery is subject to availability and sufficient capacity, unless otherwise agreed upon. If a contract has been confirmed, but there is no availability or sufficient capacity, DFE Pharma and purchaser shall discuss in good faith to reach agreement on a solution.
- 5.2 DFE Pharma has the right to engage third parties (hereinafter referred to as “auxiliary persons”) for the implementation of the contract or parts of it.
- 5.3 Unless the parties have expressly agreed upon a different method of delivery, deliveries are Ex Works (according to the provisions with regard to this term as set forth in the Incoterms). DFE Pharma reserves the right to deliver in batches. For the purpose of these conditions, each batch delivery is deemed to be a separate delivery.
- 5.4 Purchaser shall have a purchase commitment. The goods must be accepted in full by or on behalf of purchaser at the agreed place and at the agreed time of delivery. Purchaser is responsible for the provision of sufficient loading and unloading facilities for fast unloading.
- 5.5 If purchaser fails to accept the goods or to accept them on time, it will be held in default without notice of default being required. In case of non-acceptance of goods by purchaser, the risk of the goods will pass to purchaser at the time at which DFE Pharma offers the goods for delivery in accordance with the contract or these General Conditions of Sale. Any costs associated with such non-acceptance will be for the account of purchaser.

6 Transfer of risk and ownership

- 6.1 The risk of the purchased goods transfers to purchaser at the time at which DFE Pharma offers the goods for delivery in accordance with the contract or these General Conditions of Sale.
- 6.2 All goods delivered by DFE Pharma remain the property of DFE Pharma until the time of full payment of all that which is owed to DFE Pharma by purchaser in connection with the underlying contract and/or previous or later contracts of the same nature, nature, including damages, costs and interest. Purchaser waives any rights of retention in respect of the goods in advance and shall not attach those goods.
- 6.3 Purchaser is obliged to keep and/or render the goods subject to retention of title in DFE Pharma's favour identifiable and to keep them separate from each other and from other goods held by purchaser.
- 6.4 For as long as the ownership of the delivered goods is reserved by DFE Pharma, purchaser does not have the right to dispose of them other than in the course of his business, or to establish any liens on them.

7 Intellectual and industrial property rights

- 7.1 All intellectual and industrial property rights related to delivered goods and/or rendered services and/or any know how related thereto are owned by and shall remain with DFE Pharma or third party entitled parties and are not transferred to purchaser by virtue of the contract with DFE Pharma, even if the goods or related know how have been designed, developed or compiled specifically for purchaser.
- 7.2 Purchaser will immediately alert DFE Pharma if it becomes aware that a third party infringes or threatens to infringe the industrial or intellectual property rights or knowhow of DFE Pharma or if third parties adopt the position that goods of DFE Pharma infringe their own industrial or intellectual property rights or know how.

8 Confidentiality

- 8.1 Purchaser is obliged to, and shall procure that its officials, employees and any third parties engaged by it, shall protect the confidentiality of all information that comes to its notice about DFE Pharma, even if that information is not designated as being confidential, and shall refrain without the prior written permission of DFE Pharma from making direct or indirect use of its relationship with DFE Pharma for promotional activities or other purposes.
- 8.2 In the event purchaser is obliged to disclose confidential information on the basis of a court, or regulatory order, purchaser shall only be allowed to disclose such information after having obtained written approval from DFE Pharma shall not unreasonably withhold such approval.

9 Force majeure

- 9.1 In the event of force majeure on the part of either party, the performance of the contract shall be fully or partly suspended for as long as the situation of force majeure continues, without either party being liable for payment of any compensation to the other party.

- 9.2 If the force majeure situation is reasonably expected to continue for more than two months or has already lasted for two months, the other party may terminate the contract with immediate effect and without recourse to the courts, without thereby creating any rights to compensation.
- 9.3 Force majeure on the part of DFE Pharma shall in any case include:
 - (a) circumstances relating to persons and/or material of which DFE Pharma avails itself or customarily avails itself to perform the contract, of such nature as prevents performance of the contract or makes it so objectionable and/or unreasonably costly for DFE Pharma that DFE Pharma can no longer be required to perform the contract or to perform it immediately;
 - (b) the circumstance that any performance that is relevant for DFE Pharma's own performance is not rendered or is not rendered properly or on time;
 - (c) strikes and
 - (d) war, riots and similar.

10 Sale, delivery to third parties

- 10.1 Purchaser's sale, delivery or other form of provision of the goods delivered by DFE Pharma to purchaser to third parties shall take place in the original and undamaged composition and packaging of the goods per unit originating from DFE Pharma.

11 Claims

- 11.1 Immediately upon receipt, purchaser is obliged to inspect or have inspected the goods by purchaser himself or by a third party acting on the instructions of purchaser. Any complaints regarding visible defects must be reported to DFE Pharma within no more than ten days from delivery, failing which purchaser's claims on DFE Pharma become null and void. Any complaints shall contain an accurate description of the failure. The complaints shall not relieve the customer from its payment obligations.
- 11.2 Claims of purchaser concerning “hidden” defects shall be made within ten days after they could have been discovered reasonably, however, within six months at the latest following delivery, unless the goods have an expiry date and the defect results in a shorter shelf life of the goods than the indicated expiry date, in which case a claim can be filed until the expiry date has elapsed.
- 11.3 All rights to submit a claim shall be null and void if:
 - (a) the goods have been transported, handled, used, processed or stored by or for purchaser incorrectly or contrary to the instructions given by or on behalf of DFE Pharma;
 - (b) the goods have been processed by or on behalf of purchaser;
 - (c) purchaser acts contrary to the provisions of Article 11 of these conditions.
- 11.4 In cases of a justified and timely claim the exclusive remedy for purchaser will be either redelivery of the goods free of charge or credit of the purchase price of the goods which are defective in full or in part, to be decided between parties.

12 Liability

- 12.1 DFE Pharma cannot under any circumstances be held liable for indirect or immaterial losses, such as but not limited to trading losses, consequential losses or demurrage and loss of income and profits, loss of clients, damage to reputation and/or goodwill, unless such losses have been caused by the gross negligence or willful misconduct of any members of its management staff.
- 12.2 In all cases where DFE Pharma is obliged to pay compensation for damages, those damages shall in any case never exceed the amount actually paid out by its insurer in that regard.
- 12.3 Purchaser shall notify DFE Pharma in writing of any damages having occurred within 30 calendar days after purchaser has become aware or could have reasonably become aware of such damage. Failure to notify DFE Pharma within the abovementioned term shall release DFE Pharma of any liability in connection with such damages.

13 Product recall

- 13.1 DFE Pharma may obligate purchaser and instruct to purchaser to remove DFE Pharma goods or goods that include DFE Pharma goods that it has brought onto the market and which are defective, or in which a defect threatens to manifest itself, from the market within a reasonable period of time to be stipulated by DFE Pharma (product recall). Purchaser shall comply with this obligation and these instructions.

14 Payment and security

- 14.1 Payment shall be made, without any discount, at the agreed time or, if no time has been agreed, within 14 days of the invoice date, in the currency stated in the invoice and exclusively in the manner stipulated in the invoice. DFE Pharma reserves the right at all times to demand full or partial advance payment and/or otherwise require security for payment in the form of a bank or group guarantee.
- 14.2 As soon as purchaser fails to remit any due payment, all claims of DFE Pharma on purchaser shall become immediately due and payable and purchaser shall be placed in default with regard to all claims with immediate effect and without notice of default being required.
- 14.3 Purchaser relinquishes all rights to set off mutually owed amounts. Submitted claims do not suspend purchaser's payment obligation.

15 Termination

- 15.1 DFE Pharma reserves the right to suspend the execution of the contract or, at its own discretion, to terminate the contract whilst retaining all its rights to compensation for costs and damages by means of a written notification to that effect and without prior notice of default, announcement or legal intervention being required, in full or in part and with immediate effect, to be decided at its own discretion, if:
 - (a) either Party fails to meet one or more of its material obligations under the contract or to meet them on time or in full, or in case it is established that full compliance will be impossible;
 - (b) purchaser is declared bankrupt or its bankruptcy or (provisional) suspension of payment is obliged for or granted, if its business is liquidated or discontinued or it otherwise proves to be insolvent;
 - (c) in the opinion of DFE Pharma, major changes are made to direct or indirect ownership or control ratios at the business of purchaser.
- 15.2 DFE Pharma is further entitled to terminate the contract in full or in part at its own discretion if any advantage is offered or granted by purchaser in connection with the formation or execution of the contract to a person forming part of DFE Pharma.
- 15.3 Both parties are furthermore entitled to terminate the contract in accordance with 9.2 (force majeure) of these conditions.

16 Further provision, applicable law and court of competent jurisdiction

- 16.1 In the event of one or more of the provisions of these General Conditions of Sale proving to be invalid or being set aside by a court of law, the other provisions will remain fully in force.
- 16.2 All contracts between DFE Pharma and purchaser and these General Conditions of Sale are exclusively subject to the laws of Japan. The applicability of the United Nations Convention on Contracts for the International Sale of Goods of 1980 (CISG) is however excluded.
- 16.3 Any disputes between the parties that result from or are otherwise connected with any contract and/or these General Conditions shall exclusively be brought before the Tokyo District Court, unless DFE Pharma prefers another competent court.