

**STANDARD TERMS AND CONDITIONS OF PURCHASE**  
of  
**SANOCHEMIA PHARMAZEUTIKA AG**  
**A-1090 Vienna, Boltzmannngasse 11, Austria**

**1. General terms:**

1.1. The following Standard Terms and Conditions of Purchase shall apply to all legal relationships between a supplier and SANOCHEMIA, in particular also those relating to enquiries of and orders from SANOCHEMIA, unless contradictory written agreements are explicitly concluded in this respect.

1.2. These Standard Terms and Conditions of Purchase are also be considered to apply with regard to any similar terms and conditions of supply or standard terms and conditions of business provided by a supplier unless SANOCHEMIA explicitly acknowledges in writing those terms and conditions which deviate from these Standard Terms and Conditions of Purchase.

**2. Orders and confirmations:**

2.1. Orders and delivery forecasts as well as any order amendments and/or additions are to be made in writing. Verbal, telephone, email or fax-based orders essentially require a written order or confirmation in order to be valid, unless the fax, email or fax order specifically contains a notification that no written order or confirmation is to follow.

2.2. Every order is to be immediately confirmed, accompanied by details of the price, the binding delivery time, the acceptance of these Standard Terms and Conditions of Purchase, the order number and is to be signed on behalf of the company. The order numbers are to be quoted on all correspondence. If the delivery is not accepted by the supplier within the desired delivery period, no later than three days after receipt, SANOCHEMIA shall be entitled to revoke the order. Delivery forecasts shall become binding if not disputed within three days of receipt by the supplier. Within the available technical means of the supplier, SANOCHEMIA shall be permitted to demand amendments to the ordered goods or services in terms of their substance or performance. The consequences thereof, particularly in terms of additional or reduced costs and delivery dates, are to be mutually agreed.

2.3. SANOCHEMIA is entitled to immediately cancel an order or to immediately withdraw from a contract in the event that bankruptcy or judicial composition proceedings are opened relating to the assets of the

supplier, or such proceedings are not initiated on the grounds of insufficient assets.

**3. Payment and price:**

3.1. Unless explicitly agreed otherwise in writing, payment shall be rendered, at SANOCHEMIA's choice, either 14 days after full and correct delivery and receipt of invoice, less a three percent early settlement discount, or within 60 days net. In the event of early deliveries, the due date of the payment shall be the agreed delivery date. If the agreed documentation and/or certificates are not available on the payment due date, the delivery shall be regarded as not having taken place and the payment shall be made only when all due documentation has been received.

3.2. SANOCHEMIA shall render payment either by bank transfer, cheque or 90-day bill of acceptance, whereby the latter shall be free of expenses for the supplier. The day of payment for timely settlement shall be that on which the transfer is undertaken or, in the case of cheques and bills of acceptance, the date on which these are post marked. The next working day shall apply in the case of settlement dates falling on a weekend, a public holiday, Good Friday or Christmas Eve. Fees and charges associated with payment transfers shall be borne by the supplier.

3.3. In the event of incorrect deliveries, including incomplete deliveries, these shall entitle SANOCHEMIA to withhold the entire payment due, without interest charges, until such time as the delivery is correct and complete.

3.4. Any assignment of receivables arising out of an order or retention of title is subject to the *a priori* and explicit agreement therewith of SANOCHEMIA.

3.5. The supplier shall accept the offsetting of receivables and payables irrespective of the reasons therefor.

3.6. Two copies of the invoice are to be sent to SANOCHEMIA. These are to include the order number, delivery address, the number and date of the delivery note, the article number(s) and the quantity of the goods invoiced. The invoice may only make reference to a single delivery note.

3.7. In the event that one of the above data is missing, SANOCHEMIA shall have the right to refuse and return the invoice for this to be amended by the supplier. The return of an invoice shall have no bearing on any early settlement discount and no interest on arrears shall be incurred as a result.

3.8. The relevant price shall generally be regarded as a fixed price. Any contradictory agreements must be explicitly acknowledged in writing by SANOCHEMIA. The price includes the costs of the appropriate packaging of the goods purchased and the associated expenses and documentation as well as any ancillary costs irrespective of the reason(s) therefor and, unless otherwise explicitly agreed in writing, delivery to the premises of SANOCHEMIA. In the event that the price has not been defined at the time the order was placed or the delivery forecast issued, then this is to be advised by the supplier no later the time of the confirmation. The ultimate acceptance or rejection thereof remains the right of SANOCHEMIA. General price reductions or reductions pertaining to ancillary order-related costs prior to delivery are to be credited to SANOCHEMIA.

#### **4. Timing of the delivery:**

4.1. The agreed delivery date, the date on which the order is to arrive at the delivery location, is a fixed deadline. If this deadline is not met, SANOCHEMIA shall be entitled to demand, at its choice, subsequent delivery and compensation for delay or compensation due to non-compliance, and to withdraw from the contract without the definition of a revised delivery date. Subject to the explicit written agreement of SANOCHEMIA, the delivery may be made prior to the agreed delivery date, although the associated deadlines shall nonetheless remain linked to the original delivery date agreed. Non-agreed part deliveries in addition to deliveries on a COD basis, as well as deliveries on a delivery date not agreed, may be refused by SANOCHEMIA. Without being obliged to establish associated losses arising out of a delayed delivery, SANOCHEMIA shall be entitled to levy from the supplier a penalty for delay of one percent of the value of the total order per week or part thereof for any failure to comply with the agreed delivery date. This does not exclude the right to assert demands for additional compensation as a result of delay. SANOCHEMIA is therefore entitled, in particular, to demand reimbursement of resulting expenses and costs, including those associated with the involvement of lawyers. This contractual penalty is not subject to the rights of any court to reduce or abate such penalties. SANOCHEMIA is thereby explicitly not obligated to advise the supplier of the existence of a delay or the associated consequences thereof. Irrespective of whether the delivery is accepted entirely or partially subject to qualification, or even paid for, this shall have no influence on the contractual penalty and shall in no way act as a waiver thereof.

4.2. In the event that the agreed delivery date cannot be met as a result of force majeure or subsequent instructions issued by SANOCHEMIA, then this is to be advised to SANOCHEMIA in writing without delay. In the absence of such a notification, a request for an extension of the delivery date will not be accepted and the abovementioned consequences of delayed delivery shall come into effect. In the event that a postponement of the delivery date is well founded (force majeure or as a result of subsequent instructions issued by SANOCHEMIA advised to the same without delay), then a new delivery date is to be agreed in writing between SANOCHEMIA and the supplier. In the event that this new delivery date is not met, the conditions originally agreed shall apply automatically.

4.3. Force majeure as valid grounds for postponing the delivery date shall relate only to those circumstances which are unavoidable and which could not have been foreseen by the contractual party citing such at the time the contract was entered into, and those which prevent the same from fulfilling its contractual obligations. Force majeure shall in any case exclude all industrial disputes, manufacturing errors, delays or quality defects relating to subcontractors.

#### **5. Packaging and carriage:**

5.1. In as far as not explicitly agreed otherwise, the goods to be delivered are to be appropriately packaged whereby, at the request and on the instructions of SANOCHEMIA, original packaging materials from SANOCHEMIA or other specific packaging materials are to be used.

5.2. The supplier is obligated, in the case of the supply of cold-chain goods, to appoint an ISO-certified forwarder or carrier which complies with all relevant legislation and guidelines, including GDP guidelines.

5.3. The supplier shall be liable for all losses or damage as a result of inappropriate or insufficient packaging materials. The supplier alone shall be responsible for ensuring that the packaging materials of the goods are not subject to the ARA (Altstoff Recycling Austria) regulations. The responsibilities associated with reusable packaging materials (unit load devices - ULDs) shall be borne by the supplier. The supplier shall be required to arrange and cover the costs of the return of such packaging materials and ULDs.

5.4. At the request of SANOCHEMIA, the supplier shall be obligated, using a form provided by SANOCHEMIA, to complete and submit a written declaration regarding the origin of the delivered goods as required by customs legislation. This declaration is to be provided to SANOCHEMIA no later than the time of the delivery or first part delivery.

5.5. The supplier shall be liable for all disadvantages and losses incurred by SANOCHEMIA as a result of the incorrect, incomplete or delayed submission of the supplier declaration. At the request of SANOCHEMIA, the supplier shall be required to establish the origin of the goods by means of a form confirmed by its customs office.

5.6. Risks shall always be borne by the supplier until such time as the contractual acceptance of the goods by individuals acting on behalf of SANOCHEMIA. The costs of the packaging shall only be borne by SANOCHEMIA when this has been explicitly agreed in writing. Such packaging materials are to be separately detailed on the delivery note and on the corresponding invoice. Additional costs incurred as a result of non-compliance with the shipment instructions shall be borne by the supplier. Goods which are delivered without a delivery note or other consignment documents, or without citing an order number, will not be accepted by SANOCHEMIA, as a result of which no consequences of delay shall arise for SANOCHEMIA. Any resulting additional costs, particularly those relating to transport and storage, shall be borne by the supplier.

5.7. In the absence of an explicit written agreement to other effect, the goods are to be insured by the supplier, and at the expense of the same, against all transport risks.

5.8. Delivery notes (two copies) are to be handed over coterminously with the goods.

## **6. Transfer of risk:**

6.1. The risk shall first be transferred to SANOCHEMIA at the point of delivery assuming the shipment is as contractually agreed. This also applies in the event that Incoterms define other rules. Besides this provision, the Incoterms, as amended, shall apply for the relevant contract of supply.

6.2. In the event that the delivery is not in accordance with the contract, no legally effective receipt of the delivery shall be deemed to have taken place and SANOCHEMIA shall not be liable for delay. Moreover, SANOCHEMIA shall have the right to withdraw from the contract with immediate effect and to arrange procurement of replacement goods or services from a third party for those deliveries contractually due, and to do so at the expense of the original supplier.

## **7. Warranty, guarantee and product liability:**

7.1. The supplier guarantees that the goods are free of defect and comply with any qualitative requirements agreed between SANOCHEMIA and the supplier for a period of three years from the point in time of the contractually conform transfer or acceptance of the goods. In the event of hidden

defects, this period shall commence on the date on which the defect was noticed. The guarantee shall require that the supplier either replaces the defective parts without delay and at its own risk and expense and shall indemnify and hold SANOCHEMIA harmless. The guarantee-related performances shall take place at the site at which the goods supplied are located. In addition, SANOCHEMIA shall have the right, at the expense of the supplier, either itself or through the actions of third parties, to rectify defects either through corrective work or exchange, or to reduce the purchase price. Once the defect has been rectified, the full guarantee period for all goods shall recommence.

7.2. Complaints, irrespective of their nature, shall be deemed to have been reported in a timely manner by SANOCHEMIA provided that the complaint is reported as soon as the defect is discovered in the course of the proper use of the goods or if the complaint is reported to SANOCHEMIA by a third party to whom the goods were subsequently delivered and this complaint is then reported to the supplier by SANOCHEMIA.

7.3. Complaints are still permissible despite subsequent processing of the goods. SANOCHEMIA shall retain the right to assert claims for compensation in spite of the provision of guarantee or warranty-based services by the supplier.

7.4. By means of the acceptance of the order by SANOCHEMIA, the supplier explicitly declares that the ordered goods are not subject to any rights held by third parties, in particular any third-party copyrights. Should, despite the above declaration, any such rights be asserted by third parties, SANOCHEMIA shall be indemnified and held harmless by the supplier for any resulting losses regardless of their nature.

7.5. The supplier shall be liable to SANOCHEMIA for any losses, regardless of the extent of responsibility, caused by the personnel of the supplier or other individuals acting on behalf of the same. This liability is unrestricted and not subject to restriction.

7.6. Any goods or parts thereof exchanged under warranty shall again become the property of the supplier and are to be removed by and at the expense of the same.

7.7. The supplier commits to indemnify and hold SANOCHEMIA harmless in the event of any and all claims pertaining to product liability irrespective of whether these partially or entirely relate to products provided by the supplier. The above liability shall also cover costs incurred by Sanochemia in the course of efforts to avert such losses such as those associated with product recalls. At the request of SANOCHEMIA, the supplier shall be obligated to mitigate the liability risk associated with product liability by means of suitable insurance cover and to

provide evidence thereof to SANOCHEMIA and, at the latter's request, to assign the indemnification provided thereunder to SANOCHEMIA.

purposes only. The original German document shall be authoritative and binding in all cases.

7.8. The supplier explicitly commits to provide replacement parts for a period of at least five years after the contractually conform delivery of the goods.

## **8. Intellectual property rights and marketing:**

8.1. The supplier commits to handle all documentation and information provided by SANOCHEMIA relating to the placing and fulfilment of orders, or which are otherwise made available, as the intellectual property of SANOCHEMIA. The supplier also commits to respect the confidentiality of this information vis-à-vis third parties and to make use of this information solely for the purposes of the fulfilment of the order. Any and all documents provided are to be returned to SANOCHEMIA no later than the point in time that the ordered goods are delivered.

8.2. The supplier commits to impose similar requirements relating to all intellectual property rights on all individuals or entities which it appoints in any way in connection with the fulfilment of the order.

8.3. The supplier is not permitted to use its business relationship with SANOCHEMIA for any advertising purposes unless explicit written approval to do so is provided by SANOCHEMIA *a priori*.

## **9. Concluding terms:**

9.1. Unless separately agreed otherwise, the supplier commits to pay a contractual penalty in the amount of the relevant total equivalent contractual value in the event of a breach of one of the terms and conditions of these Standard Terms and Conditions of Purchase. This shall have no bearing on the right of SANOCHEMIA to assert additional claims for compensation.

9.2. The place of performance (with the exception of payments made by SANOCHEMIA) shall be the point of destination. The place of performance for payments rendered by SANOCHEMIA shall be Vienna, Austria. The contract and all legal disputes arising out of or in connection with this contract shall be subject exclusively to Austrian law. The legal venue for all disputes arising out of or in connection with the contract and the termination thereof and associated deliveries and/or performances shall be the competent court of law in Vienna, Austria. SANOCHEMIA is however also entitled to assert claims against the supplier in the jurisdiction of the latter.

9.3. These Standard Terms and Conditions of Purchase are an unofficial translation of the *Allgemeine Einkaufsbedingungen* of Sanochemia Pharmazeutika AG and are provided for information