

**STANDARD TERMS AND CONDITIONS  
OF SALE AND SUPPLY  
Of  
SANOCHEMIA PHARMAZEUTIKA AG  
A-1090 Vienna, Boltzmannngasse 11  
Austria**

**1. General terms:**

1.1. In the absence of any deviating, explicit, written agreement, these Standard Terms and Conditions of Sale and Supply shall form the legal basis for all current and future business relations between the purchaser and SANOCHEMIA. They shall also apply to all future orders made by the purchaser.

1.2. All other terms and conditions of the purchaser to the contrary, whether printed or unprinted, regardless of their form, shall only apply in as far as these have been explicitly accepted in writing by SANOCHEMIA. The terms and conditions pertaining to the supply of goods also apply correspondingly to the provision of services.

**2. Offers and orders:**

2.1. The offers of SANOCHEMIA shall be without engagement. The prices and other details included in any offer are non-binding.

2.2. The contents of the offer are not to be disclosed to third parties without the explicit written approval of SANOCHEMIA.

2.3. The purchaser is bound by its orders. The purchaser shall no longer be bound by its order should SANOCHEMIA, despite being granted an appropriate grace period of at least 14 days by the purchaser, issue within this notice period neither an order confirmation nor despatch the delivery.

2.4. A contract shall be deemed to have been concluded between SANOCHEMIA and a purchaser in the event that SANOCHEMIA, after receipt of an order from the purchaser, issues and sends a corresponding written order confirmation or a delivery to the purchaser. Later cancellations, amendments or supplements to the contract shall be subject to written confirmation by SANOCHEMIA in order to be valid.

**3. Prices:**

3.1. In the absence of a contradictory written agreement, the agreed prices shall be ex works or ex distribution centre (SANOCHEMIA) and exclude loading and packaging. Any value-added tax due in applicable amounts in addition to any other taxes, charges and duties, shall be borne exclusively by the purchaser and shall be invoiced separately.

3.2. In the event that the agreement stipulates transport to be provided by SANOCHEMIA, then this, in addition to any transport risk insurance cover, shall be invoiced separately to the purchaser, but shall not

include unloading and further transportation.

3.3. All prices quoted are subject to increases or decreases in the manufacturing costs of the goods sold. In the absence of an explicit written agreement defining a fixed price, invoicing shall be based on the list prices valid on the day of the delivery.

**4. Transport:**

4.1. In the absence of any contradictory, explicit, written agreement, the purchaser shall be responsible for arranging the transportation of the goods. In the event that the purchaser does not collect the goods within the period specified, SANOCHEMIA shall be entitled to arrange the transportation of the goods, including transport risk insurance cover, at the expense of the purchaser to the latter's registered address, whereby SANOCHEMIA shall be free to choose the means of transport (HGV, rail, ship, air, etc.) employed.

4.2. SANOCHEMIA shall also be free to choose the means of transport in the event that the transport of the goods, as defined by the agreement, was to be arranged by the purchaser.

4.3. In the absence of any explicit written instructions of the purchaser to the contrary and in cases where the agreement specifies that SANOCHEMIA shall arrange transport, then the latter shall also be entitled to conclude transport risk insurance cover at the expense of the purchaser, to be invoiced separately to the same.

**5. Delivery:**

5.1. Unless otherwise referred to and agreed as fixed, delivery dates and deadlines shall always be considered to be approximate delivery dates, whereby delivery dates and deadlines shall be regarded as met within ten days before or after the respective defined date. The meeting of delivery dates and deadlines by SANOCHEMIA is dependent upon compliance by the purchaser with any obligations and conditions prior to the delivery. Failure to meet such obligations shall entitle SANOCHEMIA to a corresponding postponement of the delivery dates and deadlines without such postponements constituting delays on its part. SANOCHEMIA shall be entitled to ship orders in multiple consignments or early deliveries and to invoice these accordingly. Compliance with agreed delivery dates and deadlines is subject to the occurrence of no unforeseen circumstances beyond the control or intentions of the parties such as, for example, all cases of force majeure, acts of war, interventions and prohibitions imposed by public authorities on operations or supplies, transport

and customs delays, traffic disruptions, industrial disputes, energy shortages and delivery delays on the part of subcontractors. Such independent circumstances shall apply in particular in the event that SANOCHEMIA is not supplied, or not supplied in a timely manner, with the raw materials necessary, or these materials are not of the required quality.

5.2. All incidents involving the abovementioned circumstances shall entitle SANOCHEMIA to an extension of delivery dates and deadlines corresponding to the scope and duration of these circumstances and the associated consequences, without triggering any consequences of delay of any kind such as the option of the purchaser to withdraw from the contract or to assert claims for compensation. Sanochemia shall, however, be entitled, subject to the incidence of such circumstances, to either partially or entirely withdraw from the contract without such action entitling the purchaser to assert any claims based thereupon.

5.3. The delivery shall be regarded to have taken place, regardless of the shipping method, at the point in time that the goods leave the facility or distribution centre of SANOCHEMIA. In the event that it is not possible to ship goods ready for shipping as a result of circumstances beyond the control of SANOCHEMIA, the delivery shall be deemed to have taken place on the date on which the consignment is reported as being ready to be shipped. The agreed terms of payment shall be unaffected in such a case and SANOCHEMIA shall be entitled, from the day on which the availability of the goods for shipping is reported, to invoice the purchaser an appropriate fee for the storage of the goods or to store the goods at an external warehouse at the expense of the purchaser.

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

6.1. From the point in time of the loading and transportation of the goods or from the day on which the availability of the goods for shipping is reported to the purchaser, the associated risks shall be transferred to the purchaser, irrespective of the agreed pricing (such as e.g. delivery to purchaser's premises, distribution centre, free border, FOB, CIF), even in the event that the transportation is arranged or carried out by SANOCHEMIA.

6.2. The agreement of delivery clauses shall not influence the transfer of risk.

## **7. Payment:**

7.1. In the absence of any explicit written agreement to the contrary, upon delivery of the goods, the agreed price shall immediately be payable to an account held by SANOCHEMIA in the agreed currency in full and free of any associated charges.

7.2. The day on which the payment is credited to an account held by SANOCHEMIA shall be regarded as the date of payment.

7.3. The purchaser shall not be entitled to withhold or offset payment due to any warranty, compensation or other counter claims or receivables.

7.4. SANOCHEMIA shall be entitled to offset payments

by the purchaser against open receivables as it sees fit. This shall essentially entail the offsetting of received payments against the longest-standing liability items in addition to interest on arrears incurred.

7.5. In the case of agreed dates of payment and irrespective of defined payment conditions, all open receivables of SANOCHEMIA due from the purchaser arising out of all associated contracts, shall immediately and fully fall due for payment to SANOCHEMIA and any price reductions on list prices granted to the purchaser shall no longer be valid in the event that the purchaser falls in arrears with even a single due payment. The same shall apply in the event of the opening of bankruptcy or judicial composition or compulsory execution proceedings involving the purchaser or in the event that the same ceases making payments.

7.6. Compliance with the payment deadlines is a key precondition for the performance of deliveries by SANOCHEMIA. In the case of delayed payment, SANOCHEMIA shall be entitled to invoice all resulting expenses and costs, including the costs of involving debt collection agencies and/or lawyers, in addition to interest on arrears at a rate of 8% p.a. above the key interest rate of the Austrian central bank (OeNB). The contractual partner explicitly consents to the transfer of the necessary data to debt collection agencies and/or lawyers (such as names, dates of birth, addresses and dunning data).

## **8. Withdrawal:**

8.1. In the event that the purchaser falls in arrears with the acceptance of the goods, a payment or another contractually agreed performance, SANOCHEMIA shall be entitled to either insist upon the contractual performance and

- a) Postpone the fulfilment of its contractual obligations until such time as the outstanding obligations of the purchaser have been met
- b) Insist on the settlement of the entire residual purchase price outstanding associated with this and all other contracts (payment deadline shall be deemed to have been missed) and
- c) Interest on arrears at a rate of 8% p.a. above the relevant base lending rate of the Austrian central bank (OeNB) or, after granting an appropriate grace period and without affecting any possible claims for compensation, to withdraw from the contract, whereby this right of withdrawal shall apply as SANOCHEMIA sees fit to either this or to all other contracts with the purchaser.

8.2. Furthermore, SANOCHEMIA shall be entitled to withdraw from the contract:

a) If doubts arise as to the solvency of the purchaser and the same, at the request of SANOCHEMIA, neither renders prepayments nor provides suitable collateral prior to delivery.

b) With the definition of a grace period in the event that

bankruptcy or judicial composition proceedings are opened involving the assets of the purchaser or such an application is rejected on the grounds of insufficient assets to cover the associated costs.

8.3. SANOCHEMIA is also entitled to withdraw from the contract with respect to an outstanding consignment of the delivery.

8.4. Without prejudice to the claims for compensation of SANOCHEMIA, performances or part-performances prior to the withdrawal from the contract are essentially invoiceable and payable in accordance with the contract. SANOCHEMIA shall nonetheless have the right to elect to demand the return of previously delivered goods.

## **9. Retention of title:**

9.1. The goods delivered by SANOCHEMIA to the purchaser shall remain the exclusive property of the former until such time as the full payment of the purchase price including any and all interest due and costs incurred associated with the collection thereof.

9.2. Any pledging or assignment of ownership of goods subject to retention of title to third parties is prohibited. In the event of any pledging or other assignment of goods subject to retention of title to third parties, the purchaser is required to enforce the ownerships rights of SANOCHEMIA and to advise SANOCHEMIA thereof without delay.

9.3. For the duration of the period in which the goods are subject to retention of title, the purchaser shall be obligated to insure the said goods at their full invoiced value against all standard risks and, at the request of SANOCHEMIA, to assign the indemnification provided thereunder to SANOCHEMIA.

9.4. In the event of the processing by the purchaser of the goods subject to retention of title supplied by SANOCHEMIA or in the event that these are combined with other materials, SANOCHEMIA shall be assigned co-ownership of the resulting materials at a ratio based on the invoiced value of the goods supplied by SANOCHEMIA relative to the value of the additional materials or services.

9.5. Any onward sale to third parties of the goods subject to retention of title, whether after combination with other materials or processing by the purchaser, is only permitted subject to the explicit retention of title until such time as the full payment of the purchase price by the third party or parties.

9.6. All future receivables of the purchaser arising out of the onward sale of goods supplied by SANOCHEMIA subject to retention of title may in no way be assigned to third parties and are already assigned by the purchaser to SANOCHEMIA on account of payment until such time as the agreed purchase price, plus interest and associated charges, irrespective of whether the goods are subject to retention of title, irrespective of whether combined with other materials or processed, and irrespective of whether sold to one or more subsequent purchasers. As long as the purchaser meets its payment obligations, the purchaser may collect its receivables

assigned by means of undisclosed assignment to SANOCHEMIA.

9.7. The payments received by the purchaser in order to settle the receivables assigned to SANOCHEMIA are to be held in trust for SANOCHEMIA to the extent of the assignment and are to be assigned to the same without delay, irrespective of the terms of payment agreed with the intermediary and/or SANOCHEMIA.

9.8. The assertion of the retention of title by SANOCHEMIA in the absence of an explicit declaration by SANOCHEMIA to the contrary shall not constitute a withdrawal from the contract.

## **10. Warranty:**

10.1. The warranty period shall, in all cases and irrespective of any observed deficiencies, not exceed a period of six months from the day of the transfer of risk or, in the case of consumers, two years from the day of transfer.

10.2. Warranty claims are restricted, at the option of SANOCHEMIA, either to the improvement or exchange of the supplied goods or to a reduction in the purchase price, and in all cases limited to a maximum of the invoiced value of the deficient goods supplied. Any rescission of sale or further claims on the part of the purchaser against SANOCHEMIA is excluded.

10.3. The purchaser shall hold a valid warranty claim only in the event that obvious deficiencies are reported to SANOCHEMIA in writing, and including relevant details, by the purchaser within 24 hours of receipt of the goods or, in the case of hidden deficiencies, within eight days of their discovery, and are duly established within two weeks of the day on which these were notified. Any and all costs and expenses incurred by SANOCHEMIA in the course of rectifying the deficiency shall be borne by the purchaser.

10.4. Goods replaced or exchanged under warranty shall remain subject to retention of title in as far as the same applied to the goods originally supplied.

10.5. Any warranty claims shall immediately lapse in the event that, without the explicit written approval of SANOCHEMIA, the purchaser or a third party undertakes any attempts to rectify the deficiency or repair work involving the goods supplied. Invoices associated with such procedures shall in no case be recognised by SANOCHEMIA.

10.6. The original warranty period shall not be extended as a result of any work or supplies associated with warranty claims.

10.7. It is the exclusive risk of the purchaser to determine whether, in any specific case, the goods supplied are suitable for the intended purpose and no guarantee shall be provided in this connection by SANOCHEMIA.

## **11. Compensation:**

11.1. No compensation will be paid other than in cases of malicious intent or gross negligence on the part of

SANOCHEMIA. The liability of SANOCHEMIA shall in any case be restricted to damage to the goods delivered. SANOCHEMIA shall also not be required to compensate the purchaser for any injuries to individuals, damage to goods not covered by the contract, for loss of income, for losses as a result of claims asserted by third parties or for any other forms of consequential losses. The provisions of the Product Liability Act (PHG) shall be unaffected by this clause.

## **12. Data protection:**

12.1. The purchaser explicitly declares its acceptance of SANOCHEMIA being entitled to capture and process all master, transmission and content-based data of the purchaser as defined by § 87 of the Austrian Telecommunications Act (TKG), as published in the Federal Law Gazette (BGBl I. No. 100/1997). In accordance with the legal requirements of §§ 91ff of the TKG 1997 and those of the Data Protection Act (DSG 2000), these data will be processed and transmitted by SANOCHEMIA for the purposes of the contractual and related performances in as far as this is required for the management of the customer relationships. SANOCHEMIA shall be entitled to provide these data to third parties in as far as the same is legal obliged to pass these on to legal authorised parties. Moreover, SANOCHEMIA shall be entitled to pass the data on to companies providing supplies and/or services in the course of or in connection with the fulfilment of the contract by SANOCHEMIA. The master data of the purchaser will be deleted immediately after the legal relationship has expired provided that these are no longer required in order to invoice or collect payments, to process complaints or in order to fulfil other legal obligations. Similarly, transmission data will also be either deleted or anonymised after the expiry of the business relationship in as far as these are no longer required for accounting purposes or legal reasons. In this context, SANOCHEMIA is authorised in particular to store the transmission data until the expiry of the period within which invoices can be legally contested or within which claims for payment may be asserted. SANOCHEMIA is not obligated to provide evidence that the data has been deleted. SANOCHEMIA is only permitted to use the content-based data of the purchaser in as far as this is absolutely necessary in the context of the contractual relationship. The contents of messages sent by the purchaser will not be checked in terms of their legitimacy. In as far and as long as these are required for accounting purposes, content-based data may also be stored.

12.2. SANOCHEMIA shall undertake reasonable efforts to protect stored customer data as well as possible. SANOCHEMIA shall not, however, accept any liability for unauthorised third-party access to or any resulting use of these data. In particular, SANOCHEMIA shall not be liable for any losses resulting from any

illegal acts on the part of third parties.

12.3. Pursuant to § 101 of the TKG, the purchaser agrees to regular receipts of electronic mail as mass mailings and/or for advertising purposes.

## **13. Intellectual property rights:**

13.1. SANOCHEMIA shall accept no liability in the event that custom-made orders or special developments represent an infringement of patent, trademark, patented designs, copyright or other third party rights. The purchaser is therefore obligated to indemnify and hold SANOCHEMIA harmless in the event of the assertion of any such claims by third parties.

13.2. In order to prevent the infringement of third-party protective rights, in particular patent, trademark, patented designs and copyrights, the purchaser is prohibited from exporting the goods supplied by SANOCHEMIA to other territories.

## **14. Concluding terms:**

14.1. All notifications, messages, reminders, settings of deadlines, complaints and other legally relevant declarations between SANOCHEMIA and the purchaser must be made in writing in order to be legally binding.

14.2. The place of performance for all contractual performances, in particular of payments, arising out of the contract is Vienna, Austria, even if the transfer of the goods, pursuant to the contract, takes place elsewhere. The contract and all legal relations arising out of or in connection with this contract shall be subject exclusively to Austrian law. The United Nations Convention on Contracts for the International Sale of Goods shall not apply. The legal venue for all disputes arising directly or indirectly out of the contract and the termination thereof, as well as associated deliveries and/or performances, shall be the competent court of law in Vienna, Austria. SANOCHEMIA is, however, entitled to appoint another court competent for the purchaser.

In the case of consumer-related business in accordance with §1 of the Austrian Consumer Protection Act (KSchG), these Standard Terms and Conditions of Sale and Supply shall apply taking into account the provisions of the KSchG.

14.3. These Standard Terms and Conditions of Sale and Supply are an unofficial translation of the *Allgemeine Verkaufs- und Lieferbedingungen* of Sanochemia Pharmazeutika AG and are provided for information purposes only. The original German document shall be authoritative and binding in all cases.