

General Terms and Conditions

of BCM Kosmetik GmbH ("BCM"), Messenhäuser Str. 22, D-63128 Dietzenbach

(November 2017 edition)

1. Scope of application

- 1.1. The following General Terms and Conditions ("GTC") apply to goods supplied and services rendered ("Products") by BCM to undertakings within the meaning of § 310 and § 14 BGB, to legal persons governed by public law and special funds under public law ("Customer").
- 1.2. These GTC apply on an exclusive basis; BCM does not in principle acknowledge the Customer's conditions which supplement, are contrary to, or differ from the GTC unless BCM expressly agrees to their application. These GTC also apply exclusively where BCM, despite being aware of the Customer's conditions to the contrary, supplies goods and/or renders services to it without reservation and the Customer accepts same.
- 1.3. In the event of discrepancies any written framework agreement concluded between BCM and the Customer shall have priority over these GTC. Individual agreements shall also have priority over these GTC and any individual agreements shall also have priority over any framework agreement concluded.

2. Conclusion of contracts

- 2.1. Orders shall not become operative until confirmed in writing by BCM. Only the statements contained in BCM's written confirmation (including any framework agreement and these contract terms) shall constitute the substance of contracts. Ancillary arrangements, amendments and additions to a contract and the cancellation of a contract must be made in text form in order to be valid (e.g. email or by simple letter).

3. Offers, advertising, production quantity tolerance

- 3.1. BCM's offers are made without obligation.
- 3.2. Descriptions of characteristics, especially those provided during the course of contractual negotiations or in brochures, and advertising statements shall not be deemed guarantees unless expressly termed as such by BCM.
- 3.3. Statements by BCM, particularly in advertising or when identifying certain characteristics and in the course of sales talks, shall be made without obligation unless their veracity should be expressly confirmed by BCM.
- 3.4. Quantity deviations of plus/minus 5 % with reference to the number of individual Products supplied and the fill quantity of individual Products cannot be avoided for technical production reasons. Such quantity deviations do not constitute defects. In the case of quantity deviations with regard to the number of Products only the number actually supplied shall be charged and paid for by the Customer. In the case of quantity deviations with regard to fill quantity the agreed fill quantity shall be charged and paid for.

4. Prices and payment, retention, set-off

- 4.1. Prices are quoted ex BCM works in Dietzenbach ("Works") to include packaging and loading at the Works but excluding the cost of dispatch and customs duty, plus statutory VAT.

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- 4.2. Unless otherwise agreed, invoices shall be payable within 14 calendar days net without any discount. The payment period shall commence as soon as delivery or performance has been fully executed (and – in the case of performance of work – accepted by the Customer) and a properly issued invoice has been received by the Customer.
- 4.3. In the event of payment arrears BCM shall charge statutory default interest per annum in the sum of 9 percentage points above base rate together with statutory lump-sums for default of EUR 40.00. The right to claim proof of greater loss is reserved.
- 4.4. The assertion by the Customer of rights of retention or set-off against counter-claims is ruled out unless the claims are acknowledged by BCM or established by final court order.
- 4.5. Cheques and bills of exchange are always accepted by BCM voluntarily and on account of performance. BCM may claim immediate payment if a bank should not accept received bills of exchange for discounting or should recharge them after discounting. Stamp duty on bills of exchange and discount charges are borne by the Customer, as are loan charges on rejection of non-agreed payment by bill of exchange from the due date until actual payment.
- 4.6. If the calculation of BCM's underlying prices and costs, especially those relating to personnel, stock, raw materials or energy, should change after the conclusion of a contract for an agreed term of more than four months in such a way that BCM's profit (revenue minus expenditure) should alter by more than 3% then as from the date on which the profit alters BCM shall make such upward or downward adjustment to the agreed price as compensates for the change in profit. In such an eventuality BCM shall provide the Customer with evidence of the change in profit and notify the Customer of the corresponding change in price. The change in price shall apply on receipt of such notification. If the change in profit should be due to circumstances for which BCM is responsible and which do not reflect the diligence of a prudent businessman no price increase may be levied. If a price increase should exceed 10 % the Customer shall have a right of termination to be exercised within two weeks of receipt of notice from BCM. Notice of termination must be given in written form. BCM shall not be under an obligation to take or seek to take measures that would result in a lowering of agreed prices.

5. **Delivery/performance period, place of performance, acceptance**

- 5.1. The delivery/performance period shall commence on receipt of the order confirmation or of the latest subsequent order confirmation in the case of amendments or additions to the order, although not before the provision of any documents and means of production that have to be procured by the Customer or preliminary work that has to be undertaken by same. It is deemed complied with if a Product has left the Works or if the Customer is notified that it is ready for dispatch by the expiry date thereof. Compliance with the delivery/performance period is conditional on fulfilment of the Customer's contractual obligations. The right is reserved to plead non-performance by the Customer.
- 5.2. BCM is entitled to effect part-performance unless part-performance is unreasonable for the Customer. Part-performance is unreasonable, for example, if part-performance is not in the Customer's interest or if only minor performance has not (yet) been effected.
- 5.3. Acts of God shall release BCM from its duty to effect performance for the duration of the disruption and its effects. In this eventuality BCM may choose to either effect the agreed delivery or service later on or to cancel the contract in whole or in part with regard to the quantities not yet supplied but to the exclusion of any claims in damages on the Customer's part. If delivery or services should be delayed on the occurrence of an Act of God lasting more than eight weeks the Customer shall also be entitled to cancel the contract.

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- 5.4. BCM is entitled to withhold deliveries and performance if the Customer should also be in arrears with fulfilment of payment obligations towards BCM for other deliveries or services.
- 5.5. The place of performance is BCM's headquarters, deliveries are made ex Works.
- 5.6. Where acceptance is agreed between BCM and the Customer this is authoritative for the passage of risk. The statutory provisions in the law on contracts for goods and services shall also apply mutatis mutandis to agreed acceptance. It is deemed equivalent to handover or acceptance if the Customer is in default with acceptance.

6. Retention of title

- 6.1. BCM retains title to Products supplied until such time as full payment has been made for all debts deriving from the individual contract concerned. This also applies to all future deliveries even if BCM should not expressly refer thereto. BCM shall be entitled to take back Products if the Customer should be in breach of contract (cf. clause 6.6 GTC).
- 6.2. The Customer shall be obliged to handle the Product carefully until title has passed and shall be obliged, in particular, to insure it adequately against theft, fire and water damage at replacement value at its own expense. Until such time as title has passed the Customer shall promptly notify BCM in text form if the goods supplied should be seized or otherwise exposed to intervention by a third party. If the third party should no longer be in a position to reimburse BCM for the court and out-of-court costs of litigation under § 771 ZPO [German Code of Civil Procedure] the Customer shall be liable for the losses incurred.
- 6.3. The Customer shall have the right in the normal course of business to resell Products supplied even if title has not yet passed to it ("Retention Goods"). The account receivable from its purchaser on the resale of Retention Goods is hereby assigned by the Customer to BCM in the amount of the final invoice figure agreed with the Customer (including VAT). BCM accepts this assignment. This assignment applies irrespective of whether the Product supplied has been resold with or without further processing. The Customer remains authorised to collect the debt even after the assignment. BCM's authority to collect the debt itself is not affected hereby. However, BCM shall not collect the debt as long as the Customer fulfils its payment obligations arising from the proceeds collected, does not fall into arrears with its payments and, in particular, as long as no application has been filed to commence insolvency proceedings and no payments have been suspended. The aforementioned right of resale and debt collection does not include authority to sell the Product in the course of a factoring process (whether genuine or not).
- 6.4. The Customer's handling, processing or restructuring of Products supplied shall always be done for and on behalf of BCM. In this case the Customer's expectancy right over the Products supplied continues with the restructured object. If the restructured object should combine the Product supplied with other items that do not belong to BCM then BCM shall acquire joint title to the restructured object in the proportion that the objective value of the Product bears to the other processed items on the date of processing.
- 6.5. BCM undertakes to arrange for security held by it to be released at the Customer's request where the value thereof exceeds the receivables secured by more than 10%.
- 6.6. Irrespective of assertion of retention of title the Customer shall be obliged to notify BCM at any time as to the whereabouts of Retention Goods, the proceeds of sale made from them and the address of the purchaser. The Customer is instructed by BCM, on request, to permit access to books and accounts relating to sales of Retention Goods and their whereabouts.

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7. Incoming goods checks

- 7.1. The Customer shall be obliged to inspect performance immediately after handover. The Customer shall promptly notify BCM of any defects revealed on inspection and of any other defects immediately after their discovery – in each case giving a description of the defect and date of discovery in written form. If the Customer should fail to duly comply with this duty of notification on time then performance shall be deemed approved by the Customer.

8. Claims for defects

- 8.1. Unless otherwise stated below the statutory provisions shall apply to the Customer's rights in the event of material defects and defective title (including wrong and short deliveries and improper assembly or faulty assembly instructions).
- 8.2. BCM shall be entitled to make the subsequent performance owed contingent upon the Customer paying the price due. However, the Customer shall be entitled to withhold a part of the price reasonably proportionate to the defect.
- 8.3. The warranty period is 12 months commencing after the risk has passed to the Customer or, in the case of contracts for the performance of work, on acceptance of such performance.

9. Liability

- 9.1. In the case of loss or damage based on any legal grounds whatsoever BCM shall only be liable for
- the wilful acts or gross negligence of its executives, staff or agents, or
 - culpable harm to life, limb and health, or
 - defects that have been maliciously concealed or the absence of which was assured, or
 - defects in Products supplied where the Product Liability Act provides for liability for personal injury, or
 - damage to property in private use, or
 - culpable breach of essential contractual obligations (essential contractual obligations, also known as cardinal duties, are obligations that are a prerequisite for proper performance of the contract and on the fulfilment of which the Customer therefore relies and is entitled to rely) – limited in the present case to reasonably foreseeable damage typical of the contract.
- 9.2. If the characteristics guaranteed should be absent BCM shall be liable for damage to the Product supplied. BCM shall not be liable for damage not caused to the Product supplied unless the specific purpose of the guarantee was to safeguard the Customer from the damage that has occurred.

10. Copyright

- 10.1. The parties are agreed that rights to the textures of Products supplied by BCM shall be held exclusively by BCM even if textures should have been changed/redeveloped in a particular case in collaboration with the Customer. BCM shall be entitled, in particular, to also offer its Products to competitors of the Customer if this should not be expressly excluded in a specific case. The Customer's trademark rights are not affected by the above agreement.
- 10.2. BCM retains ownership and copyright over all copyright-relevant documentation handed to the Customer in connection with the conclusion of the contract or its performance. These documents must not be disclosed to third parties.

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11. No corporate link/no takeover of staff or resources

- 11.1. It is agreed between BCM and the Customer that, even given the implementation of an intensive and integrated logistical contractual relationship, the agreements concluded between them are not intended to create any corporate link (or any civil-law partnership, in particular).
- 11.2. It is also agreed between BCM and the Customer that the parties are not taking over any of the other party's staff or resources on either side under this contractual relationship or the performance agreements concluded thereunder.

12. Choice of law, jurisdiction, partial invalidity

- 12.1. This Agreement is governed by the laws of the Federal Republic of Germany, with the exception of its private international law. The application of the United Nations Convention on Contracts for the Sale of Goods (CISG) is excluded.
- 12.2. The place of jurisdiction shall be the headquarters of BCM. However, BCM shall also be entitled to sue the Customer at its general place of jurisdiction.
- 12.3. If any of the terms of a contract concluded under these GTC should be or become wholly or partially invalid the validity of the rest of the invalid clause or of the rest of the contract shall not be affected. In such an eventuality the parties shall be obliged to come to an arrangement that is as commercially close as possible to what was intended by the invalid clause or invalid part of a clause.

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