

General Terms and Conditions of the Sanomed Gesundheits- und Sportnahrungsmittelherstellung GmbH („*sanomed*“)

1. Scope of application

1.1 All deliveries and services of *sanomed* are exclusively executed based on the following terms and conditions, unless expressly agreed on in writing with *sanomed*. Differing conditions, particularly client's conditions of purchase, are not acknowledged unless expressly agreed on in writing prior to the conclusion of the contract.

1.2 In an ongoing business relationship, the present terms and conditions shall always be an integral part of the contract, even if their inclusion is not pointed out by *sanomed* in an individual case.

2. Offer and Acceptance

2.1 If not otherwise agreed on in writing with *sanomed* for individual cases, *sanomed's* offers shall always be without engagement and nonbinding.

2.2 If *sanomed* creates a service on request of the client (amongst other things development patterns, development concepts or official documents), *sanomed* is entitled to invoice these services separately.

2.3 Regarding client orders, the contract with *sanomed* is only entered into when the client's order has been confirmed in writing by *sanomed*. This also applies for amendments and supplements of orders.

3. Free Issue Equipment

3.1 Client issued equipment are only regarded as binding, if their type and volume was confirmed in writing by *sanomed* beforehand.

3.2 Regarding new material specifications and formats, the client shall provide *sanomed* with according samples. These shall be considered as binding only after written consent by *sanomed*.

3.3 If provided print data and input material contain names, knowhow, copyright or industrial property rights, client shall guarantee their legitimacy and exempt *sanomed* from possible third party claims.

3.4 *Sanomed* assumes no liability in regards to any characteristics, functionality and/or quality of client issued equipment.

3.5 Free issue equipment is stored at client's expense.

4. Prices, deposits and payments

4.1 All prices are net prices plus the respectively valid value added tax. If not agreed on otherwise, invoices are payable within 14 days without any discounts or other deductions. *sanomed* is entitled to request deposits. Cheques, bills of exchange and other orders to pay shall only be accepted upon special agreement and for processing only. The passing on of cheques or bills of exchange as well as the prolongation of bills of exchange are not deemed as a fulfilment. In the event of a delay of payment, *sanomed* is entitled to demand interest for delay 4% above the base rate of the European Central Bank.

4.2 If *sanomed* becomes aware of facts after conclusion of the agreement, in particular in respect of payment delays from previous deliveries which, according to *sanomed's* discretion, it is deduced that the payment claim is endangered by a credibility gap of the client, *sanomed* shall be entitled to demand, at their own discretion, concurrent payment or proportionate securities. *sanomed* shall also be entitled to demand securities, if the payment claims resulting from current client orders exceed the existing commercial credit limit.

4.3 In the case of goods which are delivered within the scope of continuing obligations or which, in accordance with the contract, are not delivered until later than three months after the conclusion of the contract, *sanomed* reserves the right to make reasonable changes to the agreed prices if, after the conclusion of the contract, cost reductions or cost increases occur, in particular as a result of changes in wage costs, changes in the price of raw materials or changes in the cost of primary or secondary packaging. *Sanomed* will provide the customer with evidence of these cost changes on request. A price change may only be made once per calendar year. *Sanomed* will inform the customer within 3 months of the change and the date on which it takes effect by means of a notification in writing or in text form. The customer may object to the price increase in writing or text form up to two weeks before the notified date on which the change takes effect. If the customer does not object to the price change in due time and continues the contract, the changed prices are agreed. If the customer objects to the price increase, the contract shall be continued at the price conditions applicable to date. In this case, however, *sanomed* is entitled to terminate the current contractual relationship with the customer extraordinarily and without notice. *Sanomed* will make reference to this in the notification. Claims against *sanomed* on the basis of such termination are excluded.

5. Knowhow

Formulation and other knowhow developed by *sanomed* before, during and after the client's order shall stay with *sanomed*, unless the Parties agree in writing a transfer to the client subject to costs.

6. Deliveries and Performances

6.1 Unless expressly agreed in writing with *sanomed*, delivery dates and terms shall be nonbinding.

6.2 *sanomed* shall deliver ex works (Incoterms 2010). If, while loading, *sanomed* takes over duties of the carrier, client shall free *sanomed* of any possible claims. Shipping shall occur at client's own risk and expenses. *sanomed* shall not be liable for freight security. Pallets are to be equally exchanged.

6.3 If delivery is delayed due to client's request or fault, then it shall be stored at client's own risk and expenses. In this case, shipment and the notification of readiness for shipment shall be considered as equal. In the event that the customer is in default of acceptance, *sanomed* shall be entitled to request indemnification for damages resulting from such default. The risk of the coincidental degradation and the danger of the coincidental debasement are transferred to client at the moment of the default of acceptance.

6.4 *sanomed* is entitled to partial deliveries and partial performances, unless unreasonable for the client.

6.5 In the event of a delay of delivery or performance caused by *sanomed*, client shall be entitled to withdraw from the contract after a reasonable respite period fixed in writing. If *sanomed* did not act grossly negligent or intentionally as well as not breaching essential obligations, all other rights of the client are exempted from the delay. Besides delivery or performance, the client may request compensation for damages caused by delay only if he can prove that *sanomed* acted grossly negligent or intentionally.

6.6 In the event of a delay of delivery due to faulty sampling, faulty release of samples, data, packaging or labelling caused by the client or his subcontractors, this shall not be regarded as a delay, for which *sanomed* may be held liable. The same applies if the client's free issued equipment does not comply with agreed terms of delivery, technical parameters or provisions by *sanomed*. In these cases *sanomed* shall not be held liable for errors and consequences arising hereof. *sanomed* shall furthermore be entitled to demand additional costs or compensation expenses in the event of production failure.

7. Product Packaging and Insurance

7.1 *sanomed* agrees to store customized packaging material for current orders for a maximum of 18 months within a reasonable scope. After expiration of this period, client shall take over all remainders. Client shall bear all costs.

7.2 If product packaging materials are not part of the end product, *sanomed* shall be entitled to invoice such packaging to the client with reasonable handling expenses. This requires a prior chargeable procurement by *sanomed*.

7.3 *sanomed* shall not be obligated to conclude transport insurance. The insurance of the products shall only occur with prior written agreement with *sanomed* and to client's expenses.

8. Force majeure

Sanomed shall not be held liable for delays in delivery and service caused by force majeure, thunderstorms or due to events beyond the control and influence of *sanomed* and which make delivery difficult or impossible, specifically operational malfunctions, strike, lockouts or disturbances of traffic routes, even if binding delivery terms were fixed. The delivery terms shall be extended accordingly – also within the delay. This also applies if the circumstances happen to suppliers of *sanomed*, the client or his subcontractors. *sanomed* shall immediately inform the client of above mentioned events. Should the disturbance last longer than four months, the client shall be entitled to withdraw from the contract.

9. Transfer of Ownership

sanomed retains ownership of the products until full payment of the purchase price. Regarding products, which the client purchases under an ongoing business relationship, *sanomed* retains ownership until all claims against the client resulting from such business relationship are settled.

10. Warranty and Liability

10.1 Any warranty or compensation claims of the client for whichever legal reason, also for possibly issued warranties are subject to a limitation period of 12 months from the moment of transfer of risk.

10.2 The client shall immediately examine the received goods for quantity and condition. Apparent damages noticeable upon examination shall be notified in writing to *sanomed* immediately, at the latest within seven working days after receipt of the products or performances while stating in detail the nature of the damage. Damages, which were not detectable during a duly examination shall be notified in writing to *sanomed*, as soon as they were detected within the framework of an orderly course of business. The notification shall be considered as being in time, if it occurs within a period of 14 working days after detection of the damage. If the client fails provide the notice, the products shall be deemed approved irrespective of the defect. Over or under deliveries of up to 10% shall not be deemed as damages, provided that *sanomed* takes them into consideration while invoicing.

10.3 In case of justified complaints the client shall be entitled to demand a supplementary performance. *sanomed* shall be entitled to decide on the nature of such supplementary performance (repair or replacement) while taking into account the nature of the damage and the client's interests. Client shall give *sanomed* the necessary time and opportunity for the correction of defaults, particularly providing them with faulty products or samples for the purpose of an examination of the fault or to reorder raw and other ingredients customized for the client. Client's warranty claim expires with his culpable rejection.

10.4 Only if *sanomed* wrongly rejects or lets the period for the correction of the damages pass despite the fact that a reasonable deadline was set without repairing the damage or providing replacement, or if a repeated rectification or replacement delivery is impossible or refused by *sanomed*, the client shall be entitled, at his own discretion, to withdraw from the contract or to request a reduction of the price. Defects of a batch do not entitle the client to withdraw from the entire contract or to reduce regarding other batches. The return of defective products requires prior written consent by *sanomed*.

10.5 If the client himself delivers bulks, he shall remain liable for its quantity and quality. A warranty by *sanomed* is excluded as far as legally admissible. If *sanomed* itself produces bulks and delivers it to the client, its warranty shall then be limited to the production of such bulks.

10.6 The liability for damages caused by simple negligence is excluded, as far as they do not concern essential contractual obligations or damages arising from the violation of life, the body or health. With the violation of essential contractual obligations, the liability for cases of simple negligence shall be limited to those damages which are typical connected with the contract and which are predictable. The liability according to the product liability laws for fraudulent concealment of a defect or with the assumption of a warranty remains unaffected.

11. Microbiological Release

sanomed's warranty is excluded, as far as legally admissible, if the delivery of the products occurs, on client's request, before completion of the microbiological release without a corresponding analysis certificate.

12. Minimum Durability

In the event that a client wishes a minimum durability period exceeding *sanomed's* recommended period, this shall be possible by a written assignment of areas of responsibility. The responsibility shall be transferred to the client after expiration of the recommended minimum durability period.

13. Right of Retention, Assignment

13.1 The client shall have a right of retention as far as it is based on the same contractual relationship.

13.2 Contractual rights of the client against *sanomed* shall only be transferrable with its prior written consent.

14. Offset

Without prior written consent of *sanomed*, an offset shall only be possible with indisputable or legally determined demands.

15. Final Provisions

15.1 Place of performance for all contractual deliveries and services shall be Vöhringen, DE.

15.2 Place of jurisdiction shall be Neu-Ulm, DE. *sanomed* shall be entitled to take proceedings against the client at the competent court at his business location.

15.3 The relationship between *sanomed* and the client is subject to the law of the Federal Republic of Germany excluding the UN Convention on Contract for the International Sale of Goods (CISG).