

Terms and Conditions

1. Miscellaneous – Field of application

- (1) All orders, deliveries and other services from Kosmetik Konzept GmbH shall be performed in accordance with the following provisions.
- (2) Solely our General Terms and Conditions of Business shall apply. We will not recognise any provisions that conflict with or depart from our General Terms and Conditions of Business unless we have expressly approved them in writing.
- (3) Our General Terms and Conditions shall also apply if we perform deliveries without reservation to the client in full knowledge of that client's provisions that conflict with or depart from our General Terms and Conditions of Business.
- (4) Our General Terms and Conditions of Business apply solely to companies as per Section 310 (1) German Federal Code.

2. Offer – Conclusion of contract – Performance of contract

- (1) Our offers and/or cost proposals are always subject to change without notice.
- (2) The act of placing an order/ordering a product by the client constitutes a binding offer, which we may accept within two weeks either by sending a written order confirmation or by providing the goods or services in question. If the order is refused, the client will be informed in writing without delay. No claims for damages may be brought by the client in respect of refused orders.
- (3) The client must check order confirmations immediately and any objections must be made within 8 days.
- (4) All contractual agreements, modifications, extensions and ancillary agreements must be made in writing. Price and service information and other declarations or assurances will not be binding on us unless issued or confirmed in writing.
- (5) The right to make changes to production as part of the further technical development of a product is reserved, provided that those changes are not significant and are reasonable for the client.
- (6) Dimensions, weights, drafts, templates etc. are not binding on production and constitute solely guidelines, unless they are expressly stated by us in writing to be binding. The client shall be solely responsible for the accuracy of the documents it supplies, such as illustrations, templates, etc.
- (7) The property and intellectual property rights in all drafts, templates and technical and other documents provided by us will remain solely vested in us. These documents may not be made accessible to third parties without our express written permission. Documents must be returned to us immediately on request.

3. Prices

- (1) Unless otherwise agreed, our prices are ex stocks or – when sending from the manufacturer's factory – ex works, excluding packaging, insurance, freight, postage and other dispatch costs. This also applies to partial deliveries and urgent deliveries, in the absence of any arrangements to the contrary. We may require that any costs incurred in advance be repaid by the client.
- (2) Prices are subject to VAT on the rate applicable on the date of invoicing.
- (3) Prices agreed on shall apply solely to the individual order placed in each case.
- (4) We are entitled to require a down payment of up to 50% of the purchase price when an order is placed.
- (5) Preliminary work performed at the client's instigation upstream of the performance of an order, e.g. creating templates, product development, graphic design, will be charged for regardless of whether the order is carried out or not. Development costs and fees for tests that are necessary for the performance of an order placed may be invoiced separately.
- (6) If goods are delivered in instalments on request from the recipient/client, we will be entitled to invoice the client separately for any storage costs incurred and for the costs of the insurance taken out for the goods.

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(7) If there is an increase in price for orders with an expected delivery time of over 4 months between the moment the order is confirmed and the delivery, owing to an unforeseen change in material/raw material costs, wage costs, transport costs or similar, we will be entitled to adjust the price accordingly. If the increased price is more than 5% higher than the price agreed on, the client will be entitled to withdraw from the contract. This right must be exercised immediately after notification of the increased price.

4. Payment conditions

(1) Subject to testing for fitness for purpose and unless expressly agreed otherwise, payments must be made free of bank charges to the point of payment designated by us within 7 days of delivery or provision of the goods and receipt of the invoice. Payment deadlines will be deemed to have been respected if we receive the amount in question within the allotted time. Discounts for cash payment agreed on individually will be valid on the provision that the client is not in arrears with the payment of previous deliverables/services.

(2) For the purchase of raw materials and/or packaging by Kosmetik Konzept GmbH, 50% of the total order value must be paid in advance to the point of payment designated by us.

(3) Payments may also, at our choice, be set off against outstanding claims.

(4) Payment may not be made to our agents or other auxiliary persons if the latter can furnish valid authority to collect.

(5) Bills of exchange will be accepted only by special agreement and as undertakings to pay. Charges for bank discounts and bills of exchange as well as interest are incumbent on the client and must be paid without delay. Bills of exchange will be accepted without engagement for correct presentation and protest. Credit notes for bills of exchange and cheques will be accepted subject to receipt, minus expenses as valued on the date on which we have access to the exchange value.

(6) If the client ceases payment, if it has made an affirmation in lieu of oath under Section 807 German Civil Procedure Order, if an application has been made to open insolvency proceedings in respect of its assets or if such an application is refused for absence of creditors, we shall be entitled to withdraw from the contract or to require that sufficient securities be provided. The same shall apply in the event that the client's financial circumstances degenerate significantly.

(7) The statutory rules governing the consequences of late payment shall furthermore apply.

5. Setoff, rights to withhold payment, assignment

(1) Setoff against our claims is prohibited unless the client's claim is undisputed or well-founded in law, or is in a close synallagmatic relationship with our claim.

(2) Rights of retention are excluded, unless the client's counterclaim stems from the same contractual relationship and is undisputed or well-founded in law. The presence of defects shall not grant the client any right to withhold payment unless the amount withheld is proportional to the defects and the cost of subsequent performance. We are entitled to avert the exercise of the right to retain payment by the provision of securities – including collateral.

(3) Claims and rights under this contract may not be assigned without the express written permission of the other Party in each case.

6. Delivery – Delivery deadlines

(1) Partial deliveries are permitted provided this is reasonable for the client.

(2) Unless the contrary is agreed, packaging and shipment will be carried out and calculated at our discretion and

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in accordance with statutory provisions. If the client so requires, goods may be insured by us at the client's expense.

(3) This provision is subject to the correct and timely delivery of goods to ourselves.

(4) We shall be entitled to withdraw from the contract if we have not been delivered by our supplier. Our liability for wilful or grossly negligent loss or damage under Section 10 of these General Terms and Conditions of Business remains unaffected. We will inform the client immediately in the event that the goods in question are not available and will return any consideration already provided in the event the client withdraws from the contract.

(5) Delivery dates/deadlines are not binding until they have expressly been confirmed as binding by us in writing. Delivery deadlines are calculated from the date the contract is concluded; if the client subsequently makes amendments to the contract, the start date shall be the date on which we send the corresponding written confirmation. If it is agreed that the deliverable is subject to a down-payment being made, the delivery deadline will begin to run on the date on which that down-payment is received.

(6) Observance of delivery dates/deadlines is contingent on the order being fully cleared and on all authorisations, formulations, documents, approvals, securities etc. being received by us in due time and the client meeting any other contractually imposed obligations to collaborate in good time. Delivery dates/deadlines will be postponed or extended to a reasonable extent if the abovementioned requirements are not met in due time. Delivery delays attributable to the fact that the client has expressed a wish to modify its original order will be borne by the client. The client will bear the additional costs incurred by any delay or interruption of the contractual obligations incumbent on us that is attributable to it.

(7) Unforeseen circumstances not attributable to us that occur in the course of our business or the business of a supplier and that prevent us performing our contractual obligations in good time - particularly difficulties in securing the supply of raw materials, operational disturbances, strikes, lockouts, war, civil unrest, natural disaster, transport blockages, modifications to statutory provisions, official measures or orders – will entitle us to postpone the performance of the service/deliverable for the duration of the disturbance (plus a reasonable response time). We will be entitled to withdraw wholly or partially from the contract if the abovementioned circumstances mean that we are unable to perform the contractual service or are able to perform it only at considerably disproportionate/unreasonable expense.

We reserve the right to modify the contractual service owing to production-dependent tolerances in accordance with market practice. Tolerances in accordance with market practice are defined as over- or underdeliveries of +/- 5% of the delivery quantity agreed on.

7. Transfer of risk – Default of acceptance

(1) Unless the contrary is stipulated herein, delivery is agreed as being “ex works” or “ex stocks”. Risk will pass to the client when the goods are transferred to the shipping company or the haulier, and when they leave the stocks or the factory at the latest (for direct dispatch from the factory). This shall also apply to partial deliveries or if we are still required to perform further services.

(2) The stipulations under (1) above will also apply if carriage paid delivery is agreed on.

(3) If dispatch/collection is delayed owing to circumstances applicable to the client, risk will pass at the moment it can be demonstrated that the goods are ready for shipment. If the client so requires, goods may be insured by us at the client's expense and at the client's request.

(4) If the client is in default of acceptance, we may require that the additional expenditure thereby incurred be repaid.

(5) Insignificant defects shall not entitle the client to refuse acceptance of the goods.

8. Retention of title

(1) All articles supplied will remain our property (goods subject to retention of title) until all claims arising from the commercial relationship between us and the client have been met in full.

(2) The client is under a duty to handle the goods subject to retention of title with due care, to protect them against access from third parties and – to the extent agreed on under contract – to insure them against fire “on third-party account” and to submit proof of this insurance on request; otherwise, we will be entitled to insure the goods subject to retention of title ourselves at the client’s expense. The client undertakes to assign to us any claims it may have under its fire insurance.

(3) The client is permitted to process the goods subject to retention of title, and to mix or combine with other articles. Processing, mixing or combination (hereinafter referred to jointly as “processing” and “processed” with reference to the goods subject to retention of title) is always done on our behalf; the articles created through such processing are referred to as “new goods”. The client shall conserve the new goods for us with the diligence of a prudent businessman.

(4) If the goods subject to retention of title are processed with other articles, which do not belong to us, our joint title in the new goods will be pro rata to the proportion that the value of the processed goods subject to retention of title forms as against the value of the remaining goods processed at the moment of the processing. If the client acquires sole title to the new goods, the Parties hereby agree that the client will grant us joint title to the new goods pro rata to the proportion that the value of the processed goods subject to retention of title forms, as against the value of the remaining goods processed at the moment of the processing.

(5) If the client attaches the goods subject to retention of title or the new goods to land or chattels, it will also assign to us the claim vested in it as consideration for that attachment, together with all ancillary rights, by way of security, without any additional declaration being required, pro rata with the value of the goods subject to retention of title or the new goods as against the value of the remaining goods at the moment of attachment. We will accept this assignment.

(6) If the goods subject to retention of title or the new goods are divested, the client hereby assigns to us its claim against its contractual partners in respect of further divestment, together with all ancillary rights, by way of security, and no additional declaration shall be required in this regard. We will accept this assignment. Assignment will apply including any claims for the payment of outstanding amounts. Assignment shall apply solely to the value corresponding to the price charged by us for the goods subject to retention of title. Claims assigned to us must be met in priority over other claims.

(7) Following assignment, the client will remain entitled to be enjoined to the claims assigned hereunder until the assignment is revoked. The client must forward on to us any payments made under the claims assigned up to the value of the claim insured without further notice. If there are serious grounds for doing so, such as payment arrears, cessation of payments, the opening of insolvency proceedings, bill protest or substantiated evidence for suspecting overindebtedness or imminent inability to pay with regard to the client, we shall be entitled to withdraw this authorisation to enjoin itself to claims in this manner. In addition, we may, after prior notice and after a reasonable period has elapsed, disclose this assignment of securities, realise the claims assigned and request that the client disclose the assignment of securities to its contractual partners.

(8) The client is prohibited from effecting any pledges or transfers by way of security during the continued operation of the retention of title. Disposing further of the goods subject to retention of title or the new goods is permitted only in the ordinary course of business. In the event of distraint, seizure or other confiscations or appropriations by third parties of the goods subject to retention of title, the client must inform us immediately and provide us with all documents necessary for us to intervene; this also applies to any harm of another nature, such as damage to or loss of the goods subject to retention of title. This shall apply regardless of whether the client has already informed the third parties in question of the rights accruing to us. If it becomes necessary to bring legal action under Section 771 of the Civil Process Order, the client will be obliged to repay any costs we incur, unless costs are to be awarded to the third party.

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(9) If a claim is substantiated by an interested party, the client must provide us with the necessary information to enable us to exercise our rights, and must supply the requisite documentation.

(10) If the client breaches its obligations, in particular if it falls into arrears with payment, we will be authorised to require that the goods subject to retention of title be returned forthwith and/or – by giving notice if appropriate – withdraw from the contract. The client will then be obliged to hand over the goods in question. A demand that the goods delivered be returned shall not constitute a declaration of withdrawal from the contract unless the contrary is expressly stated by us.

(11) All costs for withdrawal and for reselling the goods subject to retention of title will be borne by the client. The costs of reselling are set at 10% of the proceeds of sale, including VAT. They may be increased or decreased if we or the client can demonstrate that the actual costs were higher or lower. The proceeds will be credited to the client once the costs and other claims associated with the contract have been deducted.

9. Rights and obligations in the event of defects

(1) If the purchase is a commercial transaction for both parties, the client must examine the goods immediately on receipt, to the extent this is permitted by its conventional course of business, and inform us without delay in the event of any defects. If the client fails to notify us in this manner, the goods will be deemed to have been accepted, unless the defect involved was undetectable by the examination performed. Sections 377 et seq. of the German Commercial Code shall furthermore apply.

(2) Defects to part of the goods delivered shall not entitle the client to reject the entire delivery, unless a partial delivery would be of no benefit to the client.

(3) Claims for defects shall not arise if the discrepancy from the contractual characteristic is only minimal or if the usability of the goods is not significantly affected.

(4) Claims for defects are restricted to either the rectification of the defect or the delivery of a defect-free replacement (subsequent performance), at our choice. If subsequent performance fails to remedy the situation, the client may either request that the price be lowered (rebate) or may exercise its right to withdraw from the contract (withdrawal). Subsequent performance will typically be deemed to have failed once the second attempt has failed to produce the desired effect.

(5) The expenditure involved in subsequent performance shall be borne by the ordering party if there is an increase in cost caused by the fact that the place of delivery is somewhere other than the ordering party's premises, unless such shipment corresponds to its conventional practice. The application of Section 478 Commercial Code (Traders' right to withdraw) shall remain unaffected.

(6) The right to withdraw vested in the client (or the trader, under Section 478 Commercial Code) shall be enforceable against us on the condition that the client has concluded no agreements with its buyer that extend beyond the statutory provisions for claims for defects. Paragraph 5 shall apply accordingly.

(7) For claims for damages resulting from a defect, the provisions of Sect. 10 of these General Terms and Conditions of Business shall apply.

10. Liability - Damages

(1) We shall be liable in the event of wilful misconduct or gross negligence, including the wilful misconduct or gross negligence of our representatives or auxiliaries, as well as for any culpably occasioned damage to life, limb or health as stipulated by statutory provisions. Our liability in the event of gross negligence is limited to the foreseeable loss or damage typical for this type of contract, unless one of the circumstances set out in Sentence 1 or 3 of Paragraph 1 hereof is present. We shall furthermore be liable under the German Product Liability Act solely for culpable breach of significant contractual duties, for fraudulently concealing a defect or if we have warranted the fitness for purpose of the goods in question. Claims for damages for the breach of significant contractual obligations are however confined to foreseeable loss or damage typical for this type of contract,

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unless one of the circumstances set out in Sentence 1 or 3 of Paragraph 1 hereof is present.

(2) The provisions of Paragraph 1 above apply to all claims for damages (in particular for damages following performance and damages instead of performance) regardless of their legal foundation, especially for defects, breach of contractual obligations or prohibited acts. They also apply to claims for the restitution of wasted expenditure.

(3) The extent to which our liability is excluded or restricted shall also apply to the corresponding personal liability of our staff, employees, colleagues, representatives and auxiliary persons.

(4) We shall not be liable for loss or damage caused by inappropriate modifications by the client or by third parties in the latter's employment to the goods delivered. We shall not be liable for any of the client's advertising claims on packaging or other advertising media. The client must keep us indemnified from any claims from third parties in this respect.

(5) No modification of the burden of proof to the disadvantage of the client is associated with the provisions of Paragraphs 1-4 above.

(6) If the customer provides goods and/or services for production purposes then the binding provisions of the contractor's "Guidelines for the provision of goods and/or services by the customer" apply.

11.

(1) The limitation period for claims and rights pertaining to defects – on any legal ground whatsoever – shall be one year. This shall not apply however in the circumstances set out in Section 479 (1) Civil Code (Traders' right to withdraw), Section 438 (1) (1) Civil Code (Legal defects in immovable property), Section 438 (1) (2) Civil Code (Constructions, property for constructions) or Section 634 a (1) (2) Civil Code (Constructions or work consisting of the performance of planning or supervision services).

(2) The limitation period under Paragraph 1 shall also apply for all claims for damages against us connected with defects, regardless of the legal basis for the claim.

(3) The limitation periods under Paragraph 1 and Paragraph 2 shall apply with the following provision:

a) The limitation periods shall generally not apply in the event of wilful misconduct or fraudulent concealment of a defect, or if we have expressly issued a warranty of fitness for purpose in respect of the goods involved.

b) The limitation periods shall also not apply in the event of harm to life, limb or health or to freedom, claims under the Product Liability Act, a grossly negligent breach of duty or the culpable breach of significant contractual duties (which shall not include the delivery of a defective item/the performance of a defective service).

(4) Unless the contrary is expressly stipulated, the statutory provisions concerning the beginning, suspension of expiration, suspension and recommencement of limitations periods remain unaffected.

(5) These stipulations shall apply mutatis mutandis to claims for damages not associated with a defect; the limitation period is governed by Paragraph 1 Sentence 1.

(6) No modification of the burden of proof to the disadvantage of the client is associated with these provisions.

12. Provision of goods by the client

(1) We cannot accept any liability whatsoever for the dependability or compatibility of raw materials or packing media provided by the client.

(2) Materials provided will be subjected to Goods Inward inspection according to our internal guidelines and without any acceptance of any liability whatsoever on our part. If the customer commissions additional Goods Inward inspections then same will be invoiced separately.

(3) Formulae provided by the client will not be checked for their suitability or marketability. We cannot accept any liability whatsoever for formulae provided us.

(4) The "Guidelines for the provision of goods and/or services by the customer" apply in addition.

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13. Suitability as primary packaging

(1) Unless otherwise agreed, the Client shall be responsible for thoroughly verifying the tolerance and compatibility of the filling material with the primary packaging (including all necessary fastenings). The Client shall carry out realistic filling tests in this regard.

(2) If the packaging is provided by us in accordance with the contract, samples shall be provided by the Client for testing purposes. When approving these samples, the Client shall be solely liable for the suitability, compatibility and usability of the packaging. No liability will be incurred for loss or damage incurred as a result of the insufficient suitability, compatibility or usability of the primary packaging.

14. Place of performance – applicable jurisdiction – applicable law

(1) Unless the contrary is stated in this contract, the place of performance for deliveries/services and payment is our registered office.

(2) If the client is a merchant, the court having jurisdiction over our registered office shall have exclusive jurisdiction in the event of dispute – including for proceedings involving cheques and bills of exchange. The same jurisdiction shall apply if the client has no regular jurisdiction in the Federal Republic of Germany at the moment legal proceedings are brought. We shall however be entitled to bring proceedings before any other legally competent court.

(3) The law of the Federal Republic of Germany shall apply, to the exclusion of the UN Convention on Contracts for the Sale of Goods.

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