

GENERAL TERMS AND CONDITIONS OF PARI GMBH

Sale and delivery of the products offered in the respective case by PARI GmbH to customers who are not consumers within the meaning of § 13 of the German Civil Code (hereinafter referred to as Customer(s)) shall be based on the following general terms and conditions (hereinafter referred to as General Terms and Conditions), unless on the basis of an offer and its acceptance PARI GmbH and the Customer agree otherwise for the individual case (hereinafter: **Individual Contract**).

1. Scope of General Terms and Conditions and Conclusion of Individual Contracts

- (1) The General Terms and Conditions of PARI GmbH shall exclusively apply to the sale and delivery of products by PARI GmbH to the Customer. Conflicting or deviating terms or conditions of the Customer are not accepted by PARI GmbH unless expressly consented to in writing by PARI GmbH. The General Terms and Conditions of PARI GmbH shall apply even if PARI GmbH effects delivery to the Customer without reservation despite knowledge of differing, conflicting or deviating terms or conditions on the part of the latter.
- (2) These General Terms and Conditions shall also apply to all future transactions with the Customer, insofar as their objective is the purchase and delivery of products.
- (3) All agreements concluded between PARI GmbH and the Customer for the execution of an Individual Contract shall be effective only when set down in writing or in text form.
- (4) All offers by PARI GmbH shall be non binding, unless the quotations by PARI GmbH expressly provide otherwise. PARI GmbH shall be entitled to accept offers by the Customer within two weeks of receipt by PARI GmbH.

2. Delivery Time

- (1) Delivery dates indicated by PARI GmbH shall represent only indicative declarations and shall therefore be deemed only approximately agreed (approximate periods), unless they are expressly marked by PARI GmbH as "binding delivery dates" or to this effect by similar language and agreed in accordance with Clause 1, para. (2) of these General Terms and Conditions as binding under the Individual Contract.
- (2) If an approximate period is exceeded, the Customer may request PARI GmbH in writing to deliver within a reasonable period. PARI GmbH shall be in default only after expiry of the period thus set.
- (3) If a product ordered by the Customer should not be available, not be available by a binding delivery date, or not be available within the period set pursuant to para. (2), because PARI GmbH is not supplied, not supplied with the agreed quantity, not supplied with the agreed quality, or supplied belatedly, by a manufacturer or supplier through no fault of PARI GmbH and despite the contractual obligation of said manufacturer or supplier, PARI GmbH shall be entitled to withdraw from the Individual Contract. PARI GmbH shall immediately inform the Customer as soon as it is foreseeable that the product ordered by the Customer will not be available or will be available only with a delay. In case of withdrawal, PARI GmbH shall refund any payments already received from the Customer without delay.
- (4) Compliance with an approximate term or a binding delivery date shall require timely fulfilment of all contractual obligations assumed by the Customer, in particular performance of the payments agreed in the Individual Contract and provision of any agreed collaterals. In any case, PARI GmbH reserves the defence of non performance of the contract.
- (5) In the case of binding delivery dates, PARI GmbH shall be liable for damage due to delay in performance only in case of delay in delivery not brought about by intention or gross negligence on its part for each completed week of delay by payment of a lumpsum compensation amounting to 3 % of the price of the product affected by the delay, but to no more than 15 % of this value in total.
- (6) Further legal claims and rights of the Customer from a delay in delivery shall remain unaffected. Compensation for damage that is not damage caused by delay shall be subject to Clause 5 of the present General Terms and Conditions.

3. Shipping and Proviso of Change

- (1) If shipping of the goods ordered is required, this shall be done from the head office of PARI GmbH at the expense and risk of the Customer. Unless otherwise agreed, PARI GmbH shall be free to choose the carrier and the means of transport. The risk shall pass to the Customer upon delivery to the carrier even if delivery free of transportation charges has been agreed.
- (2) PARI GmbH shall be entitled to effect partial deliveries, unless the Customer discernibly has no interest in a partial delivery.
- (3) If delivery is delayed by circumstances for which the Customer is responsible, then the risk shall pass to the Customer already at the time of readiness for shipment. The costs incurred by the delay (in particular storage costs) shall be borne by the Customer.
- (4) If the delivery is delayed by force majeure, e.g. mobilisation, war, civil unrest or similar events, e.g. strike or lockout, approximate periods and delivery dates shall be extended or postponed, respectively, by the duration of the aforementioned obstacles to delivery.
- (5) PARI GmbH shall not be obliged to take out insurance for the products against damage in transit or to have such insurance taken out, unless such an obligation has been assumed by PARI GmbH in the Individual Contract.
- (5) Unless otherwise agreed in the Individual Contract, PARI GmbH reserves changes to the technology, colour or function of the products until delivery, provided the requirements defined in the Individual Contract are substantially fulfilled, and the changes are reasonable for the Customer.

4. Liability for Defects

- (1) PARI GmbH shall be liable towards the Customer for defects in the products in accordance with the present Clause 4 of the General Terms and Conditions. PARI GmbH reserves the right to offer any (ultimate) buyer that buys the product from the Customer to conclude an independent warranty agreement with PARI GmbH and/or the respective manufacturer of the products (hereinafter: Certificate of Warranty). In this case, the Customer undertakes to
 - (a) take any actions necessary for issuance of such a Certificate of Warranty with the (ultimate) buyer (e.g. stamping of the Certificate of Warranty);
 - (b) inform the (ultimate) buyer in case of any notice of defect by the (ultimate) buyer pro actively about the provisions of this Certificate; and
 - (c) avail itself of any supplementary performance offered by PARI GmbH.The Customer's claims for defects against PARI GmbH, including any right of recourse by the Customer against PARI GmbH under § 478 of the German Civil Code, shall remain unaffected by the provisions of the Certificate of Warranty, unless this Clause 4 stipulates otherwise.
- (2) In the case of a mutual commercial transaction, the claims for defects are subject to the Customer's proper fulfilment of its inspection and notification obligations under § 377 of the German Commercial Code. This shall also apply to any rights of recourse of the Customer under § 478 of the German Civil Code, if the Customer should have sold a defective product as part of a sale of consumer goods to a consumer.
- (3) Customer's claims for defects shall expire 12 months after delivery of the products to the Customer. Claims for damages in case of intent or gross negligence, or in case of injury to life, limb or health of the Customer based on an intentional or negligent breach of duty by PARI GmbH, shall be subject to the statutory limitation periods. Where longer periods are mandatory under applicable law – e.g. pursuant to §§ 478, 479 of the German Civil Code –, these time limits shall apply.
- (4) Should the product delivered have a defect that was already existent at the time of the transfer of risk to the Customer, PARI GmbH shall – subject to timely notice under paragraph (2) of this Clause 4 of the General Terms and Conditions – at its own discretion rectify said defect or provide a replacement product. PARI GmbH must always be given the chance to supplementary performance within a reasonable time, insofar as § 478 I of the German Civil Code does not provide for the contrary. PARI GmbH shall be entitled to deliver a replacement product in the form of a product of higher quality, unless this is unreasonable for the Customer.
- (5) The Customer shall make the product complained about because of a defect or suspected deficiency available to PARI GmbH for the purpose of examination, if it has not disposed of said product yet. Each return of products shall be coordinated with PARI GmbH in the individual case. If the Customer detects or suspects any deficiencies of the goods, it may no longer dispose of them.
- (6) If the Customer has resold the products, particularly in the course of a sale of consumer goods to a consumer, the Customer may demand compensation of any expenses that were necessary to enable supplementary performance (hereinafter: Expenses) only if and insofar as all of the following conditions are met:
 - (a) The claims of the (ultimate) buyer against the Customer are demonstrably justified and do not exceed what is legally necessary in the individual case;
 - (b) The Expenses, including travel and transportation costs, have not been increased by the product having subsequently been transported abroad, unless such further transport was stipulated in the Individual Contract;
 - (c) The Expenses, including travel and transportation costs, have not been increased by the Customer

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- (1) (c) of this Clause and to address the coordination under para. (5) of this Clause;
 - (d) The Expenses have not been incurred or increased by the (ultimate) buyer not having required defect removal based on a Certificate of Warranty provided by PARI GmbH, said failure of the (ultimate) buyer being attributable to the Customer;
 - (e) The Expenses have not been increased by the Customer having resold the product despite a suspicion of a deficiency known to the Customer; and
 - (f) the Customer provides evidence of the origin and the amounts of the respective Expenses.
- PARI GmbH shall provide compensation for such Expenses on the part of the Customer up to a maximum of 10 % of the net purchase price of the product affected by the defect or € 15, whichever is higher in the individual case.
- Further claims by the Customer based on § 478 of the German Civil Code shall be satisfied by PARI GmbH by granting the Customer an equivalent compensation within the meaning of § 478 IV 1 of the German Civil Code by provision of defect removal immediately in relation to the (ultimate) buyer under a Certificate of Warranty with a warranty period of at least twelve months from delivery to the (ultimate) buyer.
- (7) No claims for defects on the part of the Customer shall be deemed justified in case of only minor deviation of a product characteristic from the quality agreed in the Individual Contract; of only minor impairment of the usability of the products; of natural wear and tear; and of damage arising after the transfer of risk due to faulty or negligent treatment, excessive stress, or as a consequence of particular external influences which are not expected under the Individual Contract. If the Customer or any third party should improperly perform repairs or modifications, for these and the resulting consequences any claims for defects shall likewise be excluded.
 - (8) Claims for damages by the Customer in the context of liability for defects shall be subject to Clause 5 of these General Terms and Conditions.
 - (9) Replacement in the context of liability for defects or based on a Certificate of Warranty shall not give rise to any new warranty or liability periods.

5. Liability of PARI GmbH

- (1) Claims by the Customer for compensation and reimbursement of expenses (hereinafter: Claims for Damages), irrespective of the legal base, including infringement of contractual duties and tort, are excluded. This shall not apply in case of provision of a warranty or assumption of a procurement risk. This shall not apply either insofar as liability is mandatory, e.g. under the German Product Liability Act, in cases of intent or gross negligence or of injury to life, limb, or health of the Customer, as well as of breach of essential contractual obligations. However, the Claim for Damages in case of breach of essential contractual obligations shall be limited to foreseeable damage typical for the contract insofar as there is no gross negligence and no liability for injury to life, limb, or health of the Customer.
- (2) The provisions of the preceding paragraph shall apply to all Claims for Damages, regardless of the legal base, in particular such as are due to defects, to breach of duties arising from the obligation or to tort. They shall also apply to claims for reimbursement of futile expenses.
- (3) The Customer's right of rescission of the Individual Contract shall remain unaffected. This Clause 5 shall entail no change in the onus of proof to the Customer's detriment.

6. Terms of Payment

- (1) Unless stipulated otherwise in the Individual Contract, the prices of PARI GmbH according to Clause 3 of these General Terms and Conditions shall apply "ex works", excluding shipping and excluding packaging costs; these are to be invoiced separately.
- (2) The statutory VAT shall not be included in the prices of PARI GmbH; it will be presented separately in the invoice as applicable by law on the date thereof.
- (3) Deduction of discount shall require a special stipulation in the Individual Contract.
- (4) Unless agreed otherwise in the Individual Contract, the deliveries by PARI GmbH shall be effected only against prepayment, cash on delivery or provision of any other reasonable collateral.
- (5) If and insofar as the Customer does not pay in accordance with para. (4) of this Clause 6 by prepayment, cash on delivery or collateral, the Customer shall pay immediately upon receipt of the invoice, unless a different term of payment has been agreed in the Individual Contract. The invoice will be issued simultaneously with the delivery.
- (6) If the Customer is in arrears with respect to a claim or partial claim, PARI GmbH shall be entitled to effect further deliveries only against prepayment; to demand immediate payment for all outstanding invoices; and to effect further deliveries only subject to provision of a reasonable collateral.
- (7) Withholding of payments or offsetting with any counterclaims of the Customer is excluded, with the exception of uncontested or non appealable claims. In addition, the Customer shall be entitled to exercise a right of retention only insofar as its counter claim is based on the same Individual Contract.
- (8) All claims of PARI GmbH against the Customer, regardless of the underlying legal relationship, shall become due for payment immediately if and when any circumstances arise that entitle PARI GmbH to rescind an individual Contract pursuant to statutory or contractual provisions.
- (9) Payments shall be made, subject to the provisions in para. (3) and (7) of this Clause 6, without deduction by transfer to the bank account indicated by PARI GmbH, unless the Contracting Parties stipulate payment by the SEPA Business to Business Direct Debit Scheme in the Individual Contract. Any discount and bank charges shall be at the Customer's expense. The Contracting Parties agree that during the period of an agreed SEPA Business to Business Direct Debit procedure the term for advance information (notice) about a pending debit shall be shortened to five (5) days. The debit is to be notified by indication on the respective invoice.

7. Retention of Title

- (1) PARI GmbH shall retain title to the products delivered until full payment of all claims from the Individual Contract. This shall also apply to all future deliveries, even if PARI GmbH should not always expressly refer thereto. PARI GmbH shall be entitled to take back the product if the Customer breaches the contract.
- (2) The Customer shall handle the products with care, as long as ownership has not been transferred. In particular, the Customer shall take out sufficient insurance at replacement value for them at its own expense against theft, fire and water damage. As long as ownership has not been transferred, the Customer shall notify PARI GmbH immediately in writing if the delivered goods are seized or exposed to other interference by third parties. If the third party is unable to reimburse PARI GmbH for the judicial and extrajudicial costs of an action pursuant to § 771 of the German Code of Civil Procedure, the Customer shall be liable for the loss incurred by PARI GmbH.
- (3) The Customer shall be entitled to resell the retained goods in the ordinary course of business. Even hereby, the Customer assigns its claims against the (ultimate) buyer from the resale of the retained goods to PARI GmbH to the amount of the final invoice agreed with the latter (including VAT). The Customer shall remain entitled to collect the receivable even after the assignment. The entitlement of PARI GmbH to collect the receivable by itself shall remain unaffected thereby. However, PARI GmbH will not collect the claim as long as the Customer meets its payment obligations and is not in arrears, and in particular as long as no application for opening of insolvency proceedings has been filed and payments are not suspended.
- (4) PARI GmbH undertakes to release the collaterals in its possession upon the Customer's request if their value exceeds the collateralised claims by more than 20%.

8. Change of Contracting Party

PARI GmbH is entitled to assign individual contracts to a third party, in particular to pharmaceutical wholesalers, unless opposed by legitimate interests of the Customer.

9. Applicable Law, Place of Performance and Legal Venue

- If any provision of the present General Terms and Conditions or of the Individual Contract should be invalid or unenforceable, the remaining provisions thereof shall remain valid.
- (2) The contractual relationship between PARI GmbH and the Customer shall be subject exclusively to the law of the Federal Republic of Germany, excluding its private international law and excluding the UN Sales Convention.
- (3) The place of performance shall be the head office of PARI GmbH.
- (4) As the exclusive legal venue, District Court Munich I is agreed.