

# General Terms and Conditions for the Sale of Personalised Productions of IC Individual Cosmetics GmbH

## Section 1 Area of Application

These General Terms and Conditions of IC Individual Cosmetics GmbH shall apply exclusively. The orderer's General Terms and Conditions shall apply only to the extent that IC Individual Cosmetics GmbH has explicitly consented to them in writing.

## Section 2 Offer

1. Any offers of IC Individual Cosmetics GmbH shall be subject to change. Technical changes as well as any modifications in consistency, appearance, colour, smell and/or weight of any sample shall remain reserved within reason. IC Individual Cosmetics GmbH shall always endeavour to optimise the recipe.
2. The orderer shall declare in a binding manner that it intends to purchase the ordered goods. IC Individual Cosmetics GmbH shall be entitled to accept the contractual offer embodied in the order within two weeks after receipt. IC Individual Cosmetics GmbH may declare acceptance either in writing or by delivery of the goods to the customer.
3. IC Individual Cosmetics GmbH shall be entitled to withdraw from the agreement if any upstream suppliers are unable, on their part, to meet their obligations vis-à-vis IC Individual Cosmetics GmbH (for ex. scarcity of raw materials). The responsibility of IC Individual Cosmetics GmbH for wilful intent and negligence shall remain unaffected in acc. with section 7 hereof. IC Individual Cosmetics GmbH shall immediately inform the orderer of the non-timely availability or non-availability of the delivery object. If IC Individual Cosmetics GmbH intends to withdraw from the agreement due to non-deliverability or delayed delivery of the object, the right of withdrawal shall be exercised immediately and the corresponding consideration shall be immediately reimbursed to the orderer in return.
4. Unless agreed otherwise in writing, the orderer shall declare with regard to the quantity ordered that it will accept a deviation of 20% and will accept from IC Individual Cosmetics GmbH any remaining quantities existing in this respect.
5. Any delivery times and dates announced shall be non-binding. 14 days after the non-binding delivery date has been exceeded, the orderer may request the seller in writing to deliver within a reasonable time limit; IC Individual Cosmetics GmbH shall come into default upon receipt of the request.
6. Development costs and testing fees required to execute the contract awarded may be charged separately to the extent that this has been agreed between IC Individual Cosmetics GmbH and the orderer.
7. If any contract is not executed for any reasons not attributable to IC Individual Cosmetics GmbH, the orderer must bear the expense incurred; to this end, IC Individual Cosmetics GmbH shall agree with the orderer on a lump-sum cancellation fee of 50% of the volume ordered, unless the orderer demonstrates that IC Individual Cosmetics GmbH has not suffered any damage at all or considerably less damage.
8. To the extent that IC Individual Cosmetics GmbH delivers goods successively at the orderer's request, any storage costs incurred and the costs for insurances taken out to protect the goods may be invoiced to the orderer separately.
9. The orderer must immediately verify order confirmations of IC Individual Cosmetics GmbH and raise any possible objections within five workdays. The orderer shall be deemed to have accepted the order confirmation upon payment of the purchase price or making any down payment.

### **Section 3 Retention of Title**

1. The delivery object shall remain the property of IC Individual Cosmetics GmbH until all claims due to it against the orderer from the business relationship have been satisfied.
2. The orderer shall be authorised to process or remodel the delivery object. Processing shall be effected for IC Individual Cosmetics GmbH (if the value of the delivery object owned by the orderer is lower than the value of the goods not owned by the orderer and/or the value of processing, however, the orderer shall acquire co-ownership of the goods at the ratio of the value of the processed delivery object to the value of the remaining processed goods at the time of processing).
3. To the extent that IC Individual Cosmetics GmbH does not acquire any ownership of the new goods acc. to the above provisions, it shall be deemed to be in agreement with the orderer that the orderer shall grant IC Individual Cosmetics GmbH co-ownership of the new goods at the ratio of the value of the delivery object owned by IC Individual Cosmetics GmbH to the value of the remaining processed goods at the time of processing. The preceding sentence shall apply mutatis mutandis in case of any inseparable mixing or blending of the delivery object with goods not owned by IC Individual Cosmetics GmbH.
4. In case of any sale of the delivery object or new goods, the orderer shall herewith assign its claim from such re-sale against its customer to IC Individual Cosmetics GmbH with all ancillary rights by way of security, without this still requiring any further specific statements. The assignment shall be applicable including any balance claim. However, the assignment shall be applicable only in the amount corresponding to the price invoiced to the orderer. IC Individual Cosmetics GmbH shall accept the assignment. If prima facie evidence of any legitimate interest is furnished, the orderer must provide IC Individual Cosmetics GmbH with the information required for the assertion of their rights against the customer and deliver the required documents. The orderer shall be prohibited from any pledging or transfer by way of security for the duration of the retention of title. In cases of pledges, seizures and other disposals or interventions by third parties, the orderer must notify IC Individual Cosmetics GmbH without delay. Only resellers shall be permitted to re-sell the delivery object or new goods in the ordinary course of business and only on condition that payment of the counter-value of the delivery object is effected to the orderer. The orderer must also agree with its customers that the customers shall acquire title only upon such payment.
5. In cases of any breaches of duty by the orderer, especially in any case of default in payment, IC Individual Cosmetics GmbH shall be entitled, even without setting a time limit, to request surrender of the delivery object or new goods and/or, after setting of a time limit, appropriate applicable, to withdraw from the agreement; the orderer shall be obliged to surrender the delivered objects. The request for surrender of the delivery object shall not be deemed to represent any declaration of withdrawal of IC Individual Cosmetics GmbH, unless withdrawal is expressly declared.

### **Section 4 Notices of Defects**

The customer must immediately inspect the goods delivered; obvious defects must be reported in writing within a time limit of one week from receipt of the goods. Otherwise, the goods shall be deemed approved. Timely dispatch shall be deemed sufficient for compliance with the time limit. The customer shall bear the full burden of proof for all claim prerequisites, especially for any defects, the time of identification of said defects, timeliness of the notice of defects, as well as the degree of fault. To the extent that any defect exists in the goods, IC Individual Cosmetics GmbH shall be entitled to subsequent performance in the form of a remediation of defects. In this case, IC Individual Cosmetics GmbH shall bear the costs only up to the amount of the contract value.

## **Section 5 Payment, Default in Payment**

1. The offered purchase price shall be binding until the expiration date specified. If no expiration date has been specified, the respective offer shall be binding for six weeks. The purchase price shall not include either the statutory sales tax nor any excise duty.
2. Unless agreed otherwise in writing, the purchase price shall become due immediately after receipt of the goods.
3. For the duration of default, the customer must pay 9% interest above the basic rate of interest on the monetary debt. IC Individual Cosmetics GmbH reserves the right to demonstrate and assert higher damage caused by default vis-à-vis the company.
4. The customer shall have a right of set-off only if its counterclaims have been established in a legally effective manner or were acknowledged by IC Individual Cosmetics GmbH in writing. The customer may exercise any right of retention only if its counterclaim is based on the same contractual relationship.

## **Section 6 Delivery, Dispatch**

1. The risk of accidental destruction or accidental deterioration of the goods shall pass to the customer upon handover or, in any case of sale by dispatch, upon delivery of the item to the carrier, the freight forwarder or the other persons or establishment designated to execute dispatch.
2. Handover shall be performed irrespective as of whether or not the customer is in default of acceptance.
3. Shipping and packaging costs shall be borne by the customer.
4. In particular, no warranty shall be provided for the tolerability of the goods. Tolerability testing of the goods shall be the customer's duty.

## **Section 7 Liability**

1. IC Individual Cosmetics GmbH shall be liable in cases of wilful intent or gross negligence as well as in case of any culpably caused violation of life, body or health in acc. with the statutory provisions. Otherwise, IC Individual Cosmetics GmbH shall be liable only in acc. with the German Product Liability Act, for any culpable violation of essential contractual obligations or to the extent that IC Individual Cosmetics GmbH maliciously concealed any defect or assumed any guarantee for the quality of the delivery object. The claim for damages for violation of essential contractual violations, however, shall be limited to the contract-typical, foreseeable damage, unless any other of the exceptional cases specified in sentence 1 or 2 exists at the same time.
2. These regulations in the preceding paragraphs shall apply to all claims for damages (especially for compensation for damages in addition to performance and compensation for damages in lieu of performance)irrespective of their legal basis, especially for defects, breaches of duties from the obligation or for tort claim. It shall also apply to the claim for reimbursement of wasted expenditure.
3. IC Individual Cosmetics GmbH shall be liable without exception only up to an amount equal to three times the contract value of the order.

4. IC Individual Cosmetics GmbH shall not be liable for any defects in the goods delivered by or at the instigation of the orderer. IC Individual Cosmetics GmbH shall not be liable for any defects once the orderer delivers any own containers for printing or filling. IC Individual Cosmetics GmbH shall not be liable for the lettering used by the orderer for the containers, folding box or media.
5. IC Individual Cosmetics GmbH reserves the right to reject any potential follow-up orders at any time. IC Individual Cosmetics GmbH shall not be liable for any damage caused during storage or safekeeping of any goods delivered by the orderer.

## **Section 8 Statute of Limitations**

1. The period of limitation for claims and rights due to defects in the item for any legal reason whatsoever shall be one year. This shall not apply, however, in the cases of the entrepreneur's recourse claims in acc. with Section 445a Para. 1 & 2 German Civil Code [*Bürgerliches Gesetzbuch - BGB*].
2. The periods of limitation acc. to para. 1 shall also apply to any claims for damages of the orderer against IC Individual Cosmetics GmbH that are associated with the defect. To the extent that claims for damages of any kind exist against us which are not associated with any defect, they shall be subject to the period of limitation of para. 1.
3. The periods of limitation acc. to para. 1 and para. 2 shall apply subject to the following proviso:
  - a) In general, the periods of limitation shall not apply in any case of wilful intent.
  - b) Neither shall periods of limitation apply if the defect has been maliciously concealed; in this case, the statutory periods of limitation shall apply.
  - c) Moreover, the periods of limitation for claims for damages shall not apply in cases of any violation of life, body or health or freedom, for claims acc. to the German Product Liability Act, in case of any grossly negligent breach of duty or in case of any violation of essential contractual obligations.
4. The period of limitation for all claims shall commence upon delivery.

## **Section 9 Orderer's Capacity as Manufacturer**

1. The orderer shall place the goods on the market as the manufacturer; it shall indemnify IC Individual Cosmetics GmbH from any potential claims of third parties based on manufacturing defects. The orderer shall be responsible for ensuring admission of the sold goods for trading. Any deviating arrangements shall require the written form.
2. The orderer shall be responsible for placing the goods on the market; it shall obtain and present upon request any required approvals at its own expense.
3. IC Individual Cosmetics GmbH explicitly points out to the orderer that the regulations of the European Regulation on Cosmetic Products, of the German Foodstuffs and Consumer Goods Act [*Lebensmittel- und Bedarfsgegenständegesetz - LMBG*], FBEV, Medicinal Products Act [*Arzneimittelgesetz*], German Chemicals Act [*Chemikaliengesetz*], German Hazardous Materials Regulations [*Gefahrgut VO*] along with annexes must be complied with by the customer.

## **Section 10 Data Protection**

On account of the German Federal Data Protection Act (*BDSG*), IC Individual Cosmetics GmbH is obliged to inform the orderer that any data of the orderer that is relevant for the business relationship will be stored and processed electronically.

### **Section 11 Place of Jurisdiction and Applicable Law**

Spangenberg, Germany, shall be deemed agreed as the place of performance and the place of jurisdiction for both parties, provided that both parties are merchants. IC Individual Cosmetics GmbH shall be entitled, however, to define the orderer's location as the place of jurisdiction. The same shall apply vis-à-vis any individuals not having a place of general jurisdiction in Germany or any individuals having relocated their place of residence or habitual abode to any location outside Germany following conclusion of the agreement or whose place of residence or habitual abode is unknown at the time any suit is filed. The relations between the contracting parties shall be exclusively governed by the laws applicable in the Federal Republic of Germany to the exclusion of the UN Sales Law.

### **Section 12 Severability Clause**

If one or several provisions of this agreement are or become ineffective either in whole or in part, this shall not affect the validity of the remaining provisions hereof. To the extent that ineffective clauses contain any effective, appropriate portion, such portion shall be maintained. In this case, the effective clause coming closest to the economic purpose of the ineffective clause shall be deemed agreed between the parties. This shall also apply in the event of any loophole in the agreement.

Spangenberg, 15/02/2018