

Terms of Purchase Takeda Pharma Vertrieb GmbH & Co. KG

As of: February 2019

§ 1 Scope

1. The terms of purchase shall be valid for Takeda Pharma Vertrieb GmbH & Co. KG (hereinafter referred to as 'TAKEDA').
2. The contract is accepted and implemented on the basis of TAKEDA's terms of purchase, the exclusive applicability of which has been agreed between the parties to the contract. Terms used by the supplier which oppose or contradict the TAKEDA's terms of purchase shall only be valid, when TAKEDA agrees expressly and in writing that they are valid.
3. The terms of purchase apply only in relation to contractors within the meaning of § 310(1) of the German Civil Code (BGB).
4. The TAKEDA terms of purchase apply to all future business transactions with the same supplier.
5. Deviating agreements shall be made in writing. This also applies to changes to this written form requirement.

§ 2 Quotations/transfer of obligations

1. The supplier is obliged to accept the order within a period of two (2) weeks, after which TAKEDA is no longer bound by its offer.
2. The supplier (contractor) is obliged to provide the contracted service through its own company. Provision of the contracted service, in whole or in part, by third parties is possible only after TAKEDA has given its prior express agreement in writing.

§ 3 Prices/terms of payment

1. The prices shown in the order are binding.
2. Statutory value-added tax must be shown separately on the supplier's quotations and invoices, otherwise the statutory value-added tax is included in the supplier's price.
3. Unless otherwise agreed in writing between TAKEDA and the supplier, the purchase price/contracted fee is payable net within ninety (90) days of supply and receipt of the invoice.
4. If the subject of the contract is the provision of a production service by the supplier, delivery is replaced by acceptance.
5. If there is any uncertainty about whether the invoice has been received by TAKEDA, the conditions regarding arrears apply only if the supplier can prove that the invoice has been received by TAKEDA.
6. Even in the event of late payment, TAKEDA will not be liable for any more than the statutory rate of interest payable on arrears, within the meaning of § 288(2) BGB.

§ 4 Investigation of defects/commercial transactions

1. TAKEDA will check the goods for deviations in quality or quantity within an appropriate period. In the event of clear defects or obvious deviations in quantity a complaint is deemed to have been lodged in good time if it is received by the supplier within five (5) working days after the goods have been received. In the event of unresolved but not immediately visible defects this period is extended by the time needed by TAKEDA to investigate.
2. TAKEDA is not obliged to lodge a complaint if only part of a consignment is received unless this was expressly agreed with the supplier. Whether or not a complaint is made in good time is determined by when it was sent by TAKEDA to the supplier. § 377(5) of the German Commercial Code (HGB) applies.

§ 5 Guarantee

1. The items purchased are supplied without defect of quality or of title. If a particular characteristic of an item purchased was not agreed, it is defect-free if, when the risk transfers to TAKEDA, it is supplied in the volume/quantity ordered and is suitable for its intended purpose under the contract or is suitable for its normal use and is of the quality customary for items of that type which can be expected by TAKEDA given the nature of the item involved. If installation is agreed, a defect of quality is also present if this is not done correctly by the supplier or his agents.
2. In addition, the supplier must comply with the technical and statutory provisions relating to the use or processing of the item purchased that are in force at the time of the order.
3. In the event of a defective delivery (i.e. with a defect of quality or of title), TAKEDA is entitled, at its choice, to remediation in the form of either the repair or the replacement of the item purchased. The supplier will bear the cost of such repairs. If the supplier was given an appropriate period for supply or remediation, and did nothing, TAKEDA can reduce the purchase price or, if the defect is not inconsiderable, withdraw from the contract. In the event of any culpable failure by the supplier to meet his obligations towards TAKEDA in connection with entering into and implementing the contract or in the event of a delay by the supplier regarding a service that was due to be provided by the supplier and was provided only in part or not at all, TAKEDA may also claim compensation or demand reimbursement of the expense incurred as a result of its confident expectation that the service would be provided.
4. If the subject of the contract is a production service and this is provided by the supplier (contractor) in a manner that is not free of defects or is in any way different to the service ordered or is provided in insufficient quantity, TAKEDA is entitled to remediation. The supplier (contractor) can choose to either rectify the defect or make new product. The supplier (contractor) will bear the cost of remediation. TAKEDA is entitled to rectify the defect itself and to claim reimbursement of the expense incurred in so doing if an appropriate period allowed for remediation by the supplier (contractor) passes without any result. Under the same circumstances, TAKEDA is entitled to payment of an advance by the supplier (company) equal to the anticipated cost of remediation by TAKEDA. If an additional period allowed for the supplier (contractor) to rectify the defect has elapsed without anything happening, TAKEDA can also reduce the contracted fee by an appropriate amount or withdraw from the contract if the defect is wholly or partly unacceptable to TAKEDA or if only a minor defect is present. Under the same circumstances TAKEDA is entitled to compensation if the supplier (contractor) culpably violated his contractual obligation to TAKEDA, failed to remedy a defect or if TAKEDA can no longer reasonably be expected to accept the goods or service.

5. The guarantee period is two (2) years from the date of delivery. If the service involves building work, materials or parts which are normally used for building work and if those parts or materials have rendered the building work defective, the guarantee period is five (5) years, starting from when the property is handed over.
6. If the supplier or a third party has given a guarantee declaration (guarantee of quality or durability), TAKEDA's rights under the guarantee are unaffected.

§ 6 Delivery time/late delivery

1. The execution and delivery times agreed in the order are binding.
2. TAKEDA reserves the right to agree a penalty with the supplier in case the execution or delivery times are exceeded. The supplier's undertaking regarding the penalty must form the subject of a separate agreement. If a penalty was agreed between TAKEDA and the supplier, the following shall apply: The supplier has the right to prove to TAKEDA that no damage or essentially little damage has occurred as a result of the delay. The penalty is then reduced accordingly. The penalty does not apply if the supplier can prove that he was not to blame for the agreed execution and delivery times being exceeded or that he was prevented by third parties from providing the contractually agreed service and he informed TAKEDA of this fact in writing without delay. If the supplier fails to provide that information, he is not entitled to any extension of the execution or delivery time. Penalties can be claimed by TAKEDA up to when the final payment has been received. TAKEDA reserves the right to make any further claims for compensation. The penalty is however offset against any such claim for compensation.

§ 7 Materials supplied/retention of ownership

1. Parts and samples supplied by TAKEDA and all order-related documents remain the property of TAKEDA and must be kept safely by the supplier. They must not be used for any purpose other than completion of the delivery without the express written consent of TAKEDA. The parts and documents handed over when the order is placed must be returned immediately and unsolicited to TAKEDA on delivery of the goods or when the service is accepted.
2. If parts supplied by TAKEDA are processed or incorporated, TAKEDA acquires joint ownership of the new item in proportion to the value of the parts and materials contributed by it to the processed items at the time they are processed.

§ 8 Producer liability/substitution

If a producer liability claim is made against TAKEDA on account of a defect in items provided by the supplier, the supplier shall indemnify, defend and hold harmless TAKEDA against any and all claims of third parties for any damages caused by the supplier.

§ 9 Applicable law, place of jurisdiction

This contract is governed exclusively by German law. The sole place of jurisdiction for all disputes and both parties to the contract is Berlin. TAKEDA is however also entitled to take legal action at the supplier's general place of jurisdiction.