

General Sales Conditions of Kaneka Pharma Europe NV**(valid from 01 March 2018)****§ 1 General, Area of Applicability**

(1) The General Sales Conditions (“*Allgemeine Verkaufsbedingungen*“) (AVB) are applicable for all of our business relationships with our customers (“*Purchasers*“). The AVB only apply if the Purchaser is an entrepreneur (Sec. 14 German Civil Code (“*Bürgerliches Gesetzbuch*“, “BGB”), a legal entity of public law or a public-law special fund.

(2) The AVB apply in particular to contracts regarding the purchase and/or delivery of medical products (“*Merchandise*“), without consideration to whether we produce the Merchandise ourselves or purchase the same from suppliers (Secs. 433, 651 BGB). Insofar as nothing else was agreed to the contrary, the AVB apply in the valid version at the time of the order by the Purchaser, in any case in the version last provided to him in writing as a framework agreement also for similar future contracts without us having to point this out again in every individual case.

(3) Our AVB apply exclusively. Deviating, contrary or supplementary General Terms and Conditions by the Purchaser are only and insofar part of the contract if and when we have explicitly agreed to their applicability. This consent requirement applies in any case, for example also when we execute the delivery without reservations in knowledge of the Purchaser’s General Terms and Conditions.

(4) Individual agreements made on a case-by-case basis with the Purchaser (including collateral agreements, supplements and amendments) in any case have priority over these AVB. A written agreement, or, as the case may be, our written confirmation is authoritative for the contents of such agreements, subject to proof of the contrary; thus, oral agreements are regularly not legally binding.

(5) Legally relevant declarations and notifications which the Purchaser must make to us after contractual conclusion (e.g. setting deadlines, notifications of deficiencies, declarations of rescinding or reduction) require the written form to be valid.

(6) Notifications regarding the validity of statutory provisions only have a clarifying meaning. The statutory provisions also thus apply without such a clarification insofar as they have not been directly amended or explicitly excluded in these AVB.

§ 2 Conclusion of Contract

(1) Our offers are non-binding and without obligation insofar as they are not explicitly marked as binding or contain a set deadline for acceptance. This also applies if we have provided the Purchaser with catalogs, other product descriptions or documents - also electronically.

(2) The order of the Merchandise by the Purchaser will occur via our order form which can be sent via facsimile or email. The receipt of the order form by us is considered a binding contractual offer by the Purchaser. Insofar as the order does not state anything to the contrary, we are authorized to accept the contractual offer within 5 working days after receipt by us. In the case that an offer by us which was marked as binding was present or the Purchaser's order form was received by us within a set deadline for acceptance, then a respective agreement is already concluded upon our receipt of the order form.

(3) The acceptance can either be declared in writing (e.g. by order confirmation via email or fax) or by delivery of the Merchandise to the Purchaser.

§ 3 Delivery Term and Delay in Delivery

(1) The delivery term is individually agreed upon or, as the case may be, will be provided by us upon acceptance of the order. If this is not the case, then the **delivery term is ca. 4 working days** as of contractual conclusion. This shall be considered by the Purchaser in the planning of treatments and operations.

(2) Insofar as we cannot keep the binding delivery terms for reasons for which we are not responsible (non-availability of the service), then we will inform the Purchaser of this without undue delay and, at the same time, inform of the new planned delivery term. If the service is also not available within the new delivery term, then we are authorized to rescind the contract in part or completely; we will reimburse an already rendered consideration by the Purchaser without undue delay. In particular, the untimely self-delivery by our supplier, if we have concluded a congruent covering transaction, neither we nor our supplier are at fault or in individual cases are not obligated to procure are cases of non-availability of service within this meaning.

(3) The occurrence of our delayed delivery is determined by the statutory provisions. In any case, however, a reminder by the Purchaser is necessary. If we should be delayed in delivering, then the Purchaser may demand a flat-fee compensation for his damage due to delayed performance. The damage flat-fee is 0.5% of the net price (delivery value) per every completed calendar week of delay; however, no more than a total of 5% of the delivery value of the delayed delivered

Merchandise. We have the right to prove that the Purchaser did not incur any or only a substantially lower damage than the aforementioned flat-fee.

(4) The Purchaser's rights pursuant to § 8 of this AVB and our statutory rights, in particular in the case of an exclusion of an obligation to service (e.g. due to impossibility or unconscionability of the service and/or supplementary performance) remain unaffected.

§ 4 Delivery, Passing of the Risk, Acceptance, Default in Acceptance

(1) The delivery occurs ex warehouse, which is also where the place of performance is for the delivery and a possible supplementary performance. Upon the Purchaser's request, the Merchandise will be sent to another place of delivery (sale by delivery to a place other than the place of performance). Insofar as nothing to the contrary has been agreed upon, we are authorized to determine the type of dispatch (in particular transportation company, transport route, packaging) ourselves while paying consideration to the statutory provisions.

(2) The risk of accidental perishing of a chattel and the accidental deterioration of the Merchandise, however, is transferred upon handing over to the Purchaser at the latest. In the case of a sale by delivery to a place other than the place of performance, however, the risk of accidental perishing of a chattel, the accidental deterioration of the Merchandise, as well as the risk of delay are already transferred at the time of delivery of the Merchandise to the forwarder, carrier or other person or institution determined to execute the shipping. Insofar as an acceptance has been agreed upon, then this is authoritative for the transfer of risk. Apart from that, the statutory provisions of the law for the contracts of work and services are applicable accordingly for an agreed upon acceptance. It is also deemed to be a transfer or, as the case may be, an acceptance if the Purchaser is in delay of acceptance.

(3) If the Purchaser is delayed in accepting, fails to cooperate or if our delivery is delayed for reasons for which the Purchaser is responsible, then we are authorized to demand compensation for the damage incurred hereby including additional fees (e.g. costs of storage). We demand a flat compensation fee for this for every completed calendar week of delay in the amount of 0.5% of the net price (delivery value), however, no more than a total of 5% of the delivery value of the delayed delivered Merchandise, as of the delivery term or, as the case may be - for lack of a delivery term - upon notification of the readiness for dispatch.

Proof of a higher damage and our statutory claims (in particular reimbursement of additional expenses, appropriate compensation, termination) remain unaffected; the flat fee is, however, to be

credited to additional monetary claims. The Purchaser may prove that we have not incurred any or a substantially lower damage than the aforementioned flat fee.

§ 5 Prices and Payment Conditions

(1) Insofar as nothing else has been agreed upon on a case-by-case basis, our current prices as of the time of contractual conclusion, ex warehouse, are applicable plus statutory VAT.

(2) In the case of sale by delivery to a place other than the place of performance (§ 4 Subsec. 1), within the normal delivery term of ca. 4 working days as of contractual conclusion (§ 3 Subsec. 1), the delivery is free of charge for the customer. The Purchaser will bear the costs of a transport insurance possibly desired by him. Possible customs duties, fees, taxes and other public levies are to be borne by the customer.

(3) If the Purchaser desires a **shorter delivery term than 4 working days** (express delivery), then the Purchaser will bear the incurred **delivery costs ex warehouse**.

(4) The purchase price is due and to be paid within 30 days as of issuing the invoice and delivery, or, as the case may be, acceptance of the Merchandise. However, we are authorized, also in the scope of an ongoing business relationship, at any time to only execute a delivery fully or in part against prepayment. We declare such a respective reservation at the latest at the time of the order confirmation.

(5) Upon expiration of the aforementioned payment term the Purchaser is in default. The purchase price shall gain interest during the time of default at the respectively applicable default interest rate. We reserve the right to assert further default damages. Our claim to the entrepreneurial accrual interest (Sec. 353 German Commercial Code ("*Handelsgesetzbuch*", "HGB")) remains unaffected.

(6) The Purchaser only has a right to set-off or retain if his claim has been determined *res judicata* or is undisputed. In the case of deficiencies of the delivery, the Purchaser's reciprocal rights, in particular pursuant to § 7 Subsec. 6 2nd sentence of this AVB remain unaffected.

(7) If after contractual conclusion it becomes clear (e.g. by application for initiation of an insolvency proceeding) that our claim to the purchase price is at risk due to lack of capability by the Purchaser, then according to the statutory provisions regarding refusal of performance we are authorized - if applicable after setting a term - to rescind the agreement (Sec. 321 BGB). In the case of contracts regarding the production of non-fungible goods (individual production) we can declare rescission immediately; the statutory rules on the dispensability of setting a term remain unaffected.

§ 6 Reservation of Title

(1) Until the complete payment of all our current and future claims from the purchase agreement and an ongoing business relationship (secured claims) we reserve the right to ownership of sold Merchandise.

(2) Prior to complete payment of the secured claims, the Merchandise under reservation of title may not be pledged to third parties, nor transferred as security. The Purchaser shall inform us in writing without undue delay if an application for initiation of an insolvency proceeding was submitted or if third party access (e.g. seizure of property of judgment debtor by court authorities) has occurred in regards to Merchandise owned by us.

(3) In the case of breach of contract by the Purchaser, in particular non-payment of the due purchase price, we are authorized pursuant to the statutory provisions to rescind the contract or/and to request the Merchandise based on reservation of title. The request for return of property does not simultaneously contain the declaration of rescission; rather, we are authorized to merely request the return of Merchandise and reserve the right to rescind. If the Purchaser does not pay the due purchase price we may only assert these rights if we have previously unsuccessfully provided the Purchaser with an adequate term for payment or such a setting of term is dispensable pursuant to the statutory provisions.

(4) The Purchaser is authorized to use the Merchandise under reservation of title in the ordinary course of business.

§ 7 Claims to Deficiencies by the Purchaser

(1) The statutory provisions apply for the rights of the Purchaser in regards to material defects and legal defects (including wrong or short delivery, as well as improper assembly or deficient assembly instructions), insofar as nothing to the contrary is stated below. In all cases the special statutory provisions in the case of final delivery of the Merchandise to a consumer remain unaffected (supplier recourse pursuant to Secs. 478, 479 BGB).

(2) The basis for our deficiency liability is above all the agreement made regarding the quality of the Merchandise. All product descriptions, which are part of the individual agreement, are considered to be agreements on the quality of the Merchandise; in this it makes no difference whether the product description comes from the Purchaser, another producer or us.

(3) Insofar as the quality was not agreed upon, it shall be assessed according to the statutory provisions whether or not there is a deficiency (Sec. 434 Subsec. 1 2nd and 3rd sent. BGB). We will

not, however, accept any liability for public statements by third parties - also by other producers - (e.g. advertisement statements).

(4) The Purchaser's claims of deficiencies require that he fulfilled his statutory duties of examination and reprimand (Secs. 377, 381 HBG). If a deficiency is found during the examination or later, then we shall be notified thereof in writing without undue delay. The notification is deemed to have been effected without undue delay if it has occurred within two weeks, whereas the timely sending off is sufficient to maintain the deadline. Regardless of this obligation to examine and reprimand, the Purchaser shall notify in writing of obvious deficiencies (including wrong or short delivery) within two weeks as of delivery; here, too the timely sending off of the notification is sufficient for maintaining the deadline. If the Purchaser misses the proper examination and/or notification of deficiency, then our liability is excluded for the deficiency which was not noted.

(5) If the delivered item is deficient, then we can initially choose whether we wish to undertake a subsequent performance by removal of the deficiency (subsequent improvement) or by delivery of a non-deficient item (replacement). Our right to refuse the subsequent performance pursuant to the statutory requirements remains unaffected.

(6) We are authorized to make the due subsequent performance dependent upon the Purchaser paying the due purchase price. The Purchaser, however, is authorized to retain a part of the purchase price appropriate in relation to the deficiency.

(7) The Purchaser shall provide us with the necessary time and opportunity for the due subsequent performance, in particular, to hand over the disapproved Merchandise for the purpose of an examination. In the case of a replacement, the Purchaser shall return to us the deficient item pursuant to the statutory provisions. The subsequent performance contains neither the disassembly of the deficient item nor the renewed installation if we were not originally obligated to install the same.

(8) The expenses necessary for the purpose of examination and subsequent performance, in particular transportation, travel, labor and material costs (not: disassembly and installation costs) are borne by us if there is truly a deficiency. Otherwise we can demand reimbursement from the Purchaser for the unjustified request for removal of the deficiency (in particular examination and transport costs) unless the lack of a deficiency was not recognizable to the Purchaser.

(9) In urgent cases, e.g. in the case of endangerment of the operational security or to avert disproportionate damages, the Purchaser has the right to remove the deficiency himself and demand reimbursement for the objectively necessary expenses. We shall be notified of such a self-remedy

without undue delay, if possible in advance. The right to self-remedy does not exist if we would be authorized to refuse such a respective subsequent performance pursuant to the statutory provisions.

(10) If the subsequent performance was not successful or the appropriate deadline set by the Purchaser for a subsequent performance has expired to no avail or is dispensable pursuant to the statutory provisions, then the Purchaser can rescind the purchase agreement or reduce the purchase price. However, there is no right to rescind in the case of an insignificant deficiency.

(11) Claims by the Purchaser for compensation, or, as the case may be, reimbursement of futile expenses in regards to deficiencies only exist pursuant to the requirements of § 8 and are excluded otherwise.

§ 8 Other Liability

(1) Insofar as these AVB, including the subsequent provisions, do not state anything to the contrary, we are liable in the case of violations of contractual and extra-contractual obligations pursuant to the statutory provisions.

(2) We are liable for compensation - regardless of the legal reason - in the scope of the fault liability in the case of intent and gross negligence. We are liable - subject to a milder standard of liability - pursuant to the statutory provisions (e.g. for care in own matters) in the case of simple negligence only

(a) for damages arising from infringement of life, limb or health,

(b) for damages arising from the substantial violation of a material contractual obligation (obligation whose fulfillment the proper execution of the agreement only makes possible in the first place and the adherence to which the contractual partner does or may regularly rely upon); in this case our liability is, however, limited to the replacement of the foreseeable, typically occurring damage.

(3) The limitations to liability set out in Sec. 2 are also applicable in the case of violations of obligations by, or, as the case may be, in favor of persons whose fault we are responsible for according to statutory provisions. They do not apply, however, insofar as we have maliciously not disclosed a deficiency or have provided the guarantee for the quality of the Merchandise and for claims by the Purchaser pursuant to the Product Liability Act ("*Produkthaftungsgesetz*").

(4) The Purchaser may only rescind or terminate due to a violation of an obligation which does not consist of a deficiency if we are responsible for the violation of the obligation. A free right to

terminate by the Purchaser (Secs. 651, 649 BGB) is excluded. Beyond that the statutory requirements and legal consequences apply.

§ 9 AVB for the Establishment and Maintenance of Consignment Warehouses

Insofar as nothing to the contrary is stated in this paragraph, the designated provisions stated above in §§ 1 - 8 of the AVB for the establishment and maintenance of consignment warehouses apply. Individually agreed upon regulations have precedence over provisions in the following paragraphs:

(1) The Purchaser shall examine the products of every shipment after delivery without undue delay, at least within 5 working days. The examination of the consignment goods includes the examination of quantity, visual examination of the packaging for visible damages and an examination of identity by comparison of the shipping documents to the order documents.

(2) Every item of the consignment products shall also be stored separately in a locked area where an eye-catching sign states that this is a Kaneka consignment warehouse.

(3) The products in consignment may not be removed from the secured consignment warehouse unless we have confirmed in writing that these items may be removed.

(4) The Purchaser obligates himself to maintain for the consignment products the storage, life-period and quality maintenance requirements for these items.

(5) The Purchaser is liable for the complete or partial loss of the products in the consignment warehouse, as well as for all damages to the products or their deterioration.

Ownership of the products in the consignment warehouse remains with us until the products in the consignment warehouse are taken out and paid for by the Purchaser (see § 6).

§ 10 Statute of Limitations

(1) Deviating from Sec. 438 Subsec. 1 No. 3 BGB the general statute of limitations for claims from material and legal deficiencies is one year as of delivery. Insofar as an acceptance has been agreed upon, the statute of limitations begins as of acceptance.

(2) The aforementioned statute of limitations of the law of purchases also applies to contractual and extra-contractual claims for damages by the Purchaser which are based on a deficiency of the Merchandise unless the application of the regular statutory statute of limitations (Secs. 195, 199 BGB) would lead to a shorter statute of limitations on a case-by-case basis. The Purchaser's claims to damages pursuant to Sec. 8 Subsec.2 1st sent. and sent. 2(a), as well as pursuant to the Product

Liability Act, however, exclusively become statute-barred pursuant to the statutory statutes of limitation.

§ 11 Choice of Law and Place of Jurisdiction

(1) The laws of the Federal Republic of Germany apply exclusively for these AVB and the contractual relations between us and the Purchaser, while excluding the German and international conflict of laws provisions and the UN Sales Convention.

(2) If the Purchaser is a merchant within the meaning of the German Commercial Code, a legal entity of public law or a public-law special fund, then the exclusive - also international - place of jurisdiction for all disputes arising from this contractual relationship either directly or indirectly is our place of business in Eschborn (Hesse). The same applies if the Purchaser is a merchant within the meaning of Sec. 14 BGB. However, we are authorized in all cases to also file claims at the place of performance of the delivery obligation pursuant to these AVB, or, as the case may be, an overriding individual agreement or at the Purchaser's general place of jurisdiction. Overriding statutory provisions, in particular regarding exclusive jurisdictions, remain unaffected.