

## **Terms and conditions of delivery and payment of PREMIUM COSMETICS GMBH with registered offices in Stuttgart**

### **1. Scope**

- 1.1 The following terms and conditions shall apply exclusively to all deliveries made by Premium Cosmetics GmbH (hereinafter referred to as 'PRC') to companies, legal entities under public law or a fund under public law (hereinafter referred to as the 'Customer'). They shall furthermore apply to all future transactions, without the need for separate reference to be made to this. These terms and conditions shall be deemed to have been accepted at the latest upon receipt of the goods, even if the Customer has made reference to its own terms and conditions before such time.
- 1.2 Any counterclaims made by the Customer on the grounds of its terms and conditions of business are hereby rejected. Terms and conditions on the part of the Customer shall require the express written consent of PRC. Agreement to differing conditions cannot be inferred from the implementation of orders placed.

### **2. Offer and Price**

Offers made by PRC shall be non-binding. A contract shall not be deemed to be concluded until the order has been acknowledged in writing or the goods have been delivered.

### **3. Scope of delivery**

- 3.1 Mutual acknowledgement in writing shall apply in terms of the scope of supplies. In the absence of this, written acknowledgement of the order on the part of PRC shall apply.
- 3.2 PRC retains all rights of ownership and copyright in respect of any samples and advertising material supplied as well as any display stands provided to the Customer (e.g. shop counters). These may not be forwarded to third parties.
- 3.3 The information featured in the PRC advertising material or contained in documentation relating to the offer shall only be deemed to be approximate, insofar as they have not been expressly stated to be binding. Information relating to percentage of contents and mix ratios, in particular that in respect of formulae, shall only be regarded as approximate average values.
- 3.4 Unless otherwise agreed, EAN bar codes shall be printed using state of the art technology and with due observance of the relevant CCG regulations on implementation ('Coorganisation' series, book 2 – The EAN bar code). No guarantees shall be accorded, in particular with regard to the legibility and reading result at the retail points of sale.

### **4. Prices at the time of delivery**

The prices stated in the order confirmation plus the sales tax applicable at the time of delivery shall apply as the agreed prices. The price shall include the cost of packaging, whereby PRC reserves the right to select the type of packaging as it sees fit. The Customer shall bear the costs of transport if and insofar as no other contractual agreements have been made.

### **5. Transfer of risk**

The risk with regard to the goods supplied shall transfer to the purchaser once the goods are passed to the forwarding agent or have left the plant or warehouse. This shall similarly apply in the event that PRC bears the costs of transport. PRC shall select a seemingly appropriate form of transport with the same care that PRC observes in its own affairs. If transport insurance is taken out at the Customer's request, the relevant costs shall be borne by the Customer. PRC is under no obligation to take out insurance.

### **6. Delivery**

- 6.1 Delivery shall take place within the agreed delivery time ex works or from stock. Partial deliveries shall be permitted and shall be regarded as independent deliveries.
- 6.2 Observance of the agreed delivery time shall be subject to punctual delivery of the appropriate goods. PRC shall inform the Customer as soon as possible of any signs of a delay.
- 6.3 The delivery time shall be deemed to have been observed if the goods left PRC's plant or warehouse or if notification that the goods are ready for dispatch is issued before expiry of the agreed delivery time.
- 6.4 In the event that the delivery deadline is not adhered to as a result of force majeure, labour disputes or any other circumstances that are beyond the influence of PRC, the delivery period shall be extended as appropriate. PRC shall inform the Customer of the beginning and end of such circumstances.

### **7. Liability for defects**

- 7.1 In the event that the goods are defective at the time of transfer of risk, PRC shall make amends as it sees fit in the first instance, either in the form of a replacement delivery or rectification of the defect. The customer must inform PRC immediately, or at the latest 8 working days following receipt of the goods, of any complaints as a result of defective goods, incorrect delivery or quantity variance, insofar as these are identified by means of reasonable investigations.
- 7.2 If the replacement provided is also defective, the Customer may assert its legal rights. Claims for damages are exclusively set out under Articles 7.3 and 10 below.
- 7.3 If the Customer chooses to cancel the contract due to legal or material defect following defective replacement, it shall not be entitled to any additional claims for damages as a result of the fault. If the Customer opts to claim compensation following a defective replacement, the Customer shall retain the goods if it deems this to be reasonable. Compensation shall be limited to the difference between the purchase price and the value of the defective

goods. This shall not apply if the breach of contract was caused intentionally by PRC or was the result of gross negligence on the part of PRC.

- 7.4 The entitlement to seek redress in respect of faults shall expire one year following delivery of the goods.
- 7.5 If second-hand goods are sold, PRC shall not be held liable for any defects unless these were maliciously concealed by PRC.
- 7.6 PRC shall not accord the Customer any legal guarantees.

## **8. Payment**

- 8.1 In all cases, payment shall be made to PRC's registered office without deductions. The agreed purchase price must be paid within 30 days of the invoice date. This date shall be stated on each invoice.
- 8.2 If payment is not made on the due date, the Customer must pay interest at 8 percentage points above the respective basic interest rate. This shall not affect any other liability claims resulting from late payment.
- 8.3 If, following conclusion of the agreement, PRC becomes aware of circumstances that call the creditworthiness of the Customer into question, in particular in the event that a cheque issued by the Customer is not honoured or the Customer suspends payments, PRC shall be entitled to opt to request payments in advance or payment of a security as well as to revoke payment terms granted and other agreements as to deferment of payment.
- 8.4 The Customer shall only be entitled to set-off if the counterclaims are undisputed in terms of their legality. The Customer shall only be permitted to withhold payment on the basis of undisputed or legally enforceable claims relating to the same contractual relationship.

## **9. Retention of ownership**

- 9.1 Goods supplied shall remain the property of PRC until such time as all claims owed by the Customer to PRC have been fulfilled, irrespective of the legal grounds on which they are based. In the case of ongoing invoices, retention of ownership shall be deemed to be security for claims for payment on the part of PRC.
- 9.2 The Customer shall be authorised to resell the goods to which it retains title in the normal course of business. The Customer shall hereby assign to PRC in advance any claims which may arise from resale of goods to which PRC retains title to third parties. PRC hereby assumes the act of transfer. The Customer shall be entitled to collect debts. PRC reserves the right to collect debts on its part if the Customer fails to duly meet its financial obligations, and defaults. If this is the case, the Customer must disclose the claims assigned and the debtors in respect of these, as well as any details necessary in order to carry out collection, and provide PRC with the associated documents. It must also inform the debtors (third parties) of the act of transfer.
- 9.3 If these terms and conditions of delivery have not effectively been agreed, transfer of ownership of the goods shall always take place subject to the condition precedent that the purchase price is paid in full (simple retention of ownership).

## **10. Liability**

Liability for damages that have not resulted to the delivered goods themselves and / or for other consequential damages is excluded. This limitation of liability shall not apply in the case of wilful intent or gross negligence or upon breach of essential contractual duties resulting from negligence. In the event of breach of essential contractual duties resulting from negligence, PRC's liability shall be restricted to that which in accordance with the Agreement could be regarded as typical and reasonably foreseeable. Furthermore, limitation of liability shall not apply in the case of compulsory liability in accordance with the provisions of the law on product liability, in the event of death, human injury or damage to human health or upon submission of guarantee commitments, the very purpose of which is to protect the Customer against such damages.

## **11. Final provisions**

- 11.1 All legal relationships that exist between PRC and the Customer shall be governed exclusively by the law of the Federal Republic of Germany. The applicability of the provisions of International Private Law shall be excluded. The provisions of the UN Convention on Contracts for the International Sale of Goods (CISG) shall not be applicable.
- 11.2 The place of performance for both contracting parties shall be Stuttgart. The exclusive place of jurisdiction for any disputes arising from this business relationship shall be Stuttgart. PRC shall however be authorised to institute legal action against the Customer at the court having general jurisdiction over the Customer.
- 11.3 Any agreements which deviate from those above shall only be valid when made in writing. This shall also apply to any statement decreeing that the written form is no longer required.
- 11.4 PRC shall be entitled to process any data obtained on the Customer relating to the business relationship or in connection with this, in accordance with the provisions of the German Federal Data Protection Act, regardless of whether or not this information is supplied by the customer itself or by a third party.
- 11.5 In the event that individual provisions of this Agreement with the Customer are or become partially or entirely invalid, including these provisions, the validity of the remaining provisions shall not be affected. Any partially or entirely invalid provision shall be replaced by a provision that comes as close as possible to achieving the original commercial aim of the invalid provision.