



## **General Terms and Conditions of Sale and Delivery of mytowel AG**

(valid from 01 April 2017)

### **1. General**

- 1.1. These General Terms and Conditions of Sale and Delivery (“GT&Cs”) govern quotation and delivery of all goods and services (hereinafter “Goods” or “Products”) by mytowel AG (hereinafter “Vendor”) for the area of refreshment, disinfection and cosmetic towels to a customer (“Buyer”). The GT&Cs become part of the purchase agreement. Contradictory or deviating conditions or other restrictions on the part of the Buyer shall not be acknowledged, unless the Vendor has expressly agreed to them in writing on a case-by-case basis. Supplemental terms of the Buyer require written confirmation of the Vendor.

### **2. Quotation, orders**

- 2.1. Offers, details, descriptions, including presentations online and quotations of the Vendor are subject to change and non-binding, unless the Vendor has expressly referred to them as binding in writing.
- 2.2. Orders of the Buyer shall become binding for the Vendor by written or electronic confirmation from the Vendor (also invoice or delivery note). This shall also apply regarding price, quantity, delivery deadline and delivery option.
- 2.3. On the Buyer's first order, its creditworthiness shall be verified by the Vendor.

### **3. Property of the Goods, technical advice, use and processing**

- 3.1. The property of Goods is deemed to be, as a rule, solely the property set out in the product descriptions, specifications and indications of the Vendor. Public statements, appraisals or advertising shall not constitute property indications of the Goods. Durability, product, use and application information, ingredients, weight and dimension details may not be understood to be the assurance of a property.
- 3.2. The minimum durability of the Products delivered shall be no less than 24 months as a rule.



#### **4. Export and import restrictions and obligations of the Buyer**

- 4.1. If a legal export or import approval of a government or a state authority is the requirement for the delivery or if the delivery is otherwise limited or banned due to legal import or export regulations, the Vendor shall be authorised to suspend the fulfilment of its delivery obligation and the entitlement of the Buyer to delivery until approval is granted or the restriction or the ban has been lifted. In this case, the Vendor shall also be authorised to cancel the agreement or to withdraw from it without being liable to the Buyer for this reason. The Vendor may also demand the presentation of the corresponding approval at any time. If a declaration of the end customer or an export certification is required or if the Vendor deems the obtaining of such to be necessary, the Buyer shall provide this declaration on the first written request. If an import approval is required, the Buyer shall inform the Vendor without delay and forward the approval to the Vendor as soon as it is available.
- 4.2. By accepting an offer, by concluding an agreement or accepting the Goods, the Buyer ensures that it will not conduct any business with these Goods or the relevant documentation in breach of legal export or import provisions.

#### **5. Prices**

- 5.1. Unless agreed otherwise, the Vendor's prices valid at the time of delivery, plus any statutory value added tax incurred and other surcharges, shall be charged.

#### **6. Payment**

- 6.1. Unless agreed otherwise in writing, payments shall be made by bank transfer. They shall be deemed to have been made if the amount is finally available in an account of the Vendor. The deduction of discounts shall only be permissible on special written agreement.
- 6.2. Unless agreed otherwise in writing, the payment deadline shall be thirty days net after the invoice date. In the event of late payment, default interest in the amount of 5% on the total amount payable (incl. VAT) shall be charged. Proof of a higher loss from default remains reserved.
- 6.3. The Vendor reserves the right to use payments to settle the oldest due invoice item, plus the default interest incurred on it and costs, in the following order: costs, interest, main receivable.
- 6.4. The buyer may only offset against uncontested and legally determined receivables.



## **7. Delivery**

- 7.1. Delivery deadlines shall be non-binding even if the Vendor states a precise date or a precisely determinable date within the framework of concluding an agreement. An express agreement between the parties shall be required for a binding delivery deadline.
- 7.2. If a fixed delivery deadline is agreed, the Buyer shall set an appropriate period of grace of 2 weeks as a rule in the event of a delay to the delivery. If no delivery is made during the period of grace, the Buyer may withdraw from the agreement in respect of the parts concerned if and insofar as the Vendor is responsible for the delay. Compensation claims of the Buyer due to failed or late delivery as well as compensation instead of fulfilment are governed by Item 14.
- 7.3. Partial deliveries are permissible. In the event of partial deliveries, the Vendor shall have the right to make corresponding partial payments.
- 7.4. If the Buyer delays acceptance or culpably violates other cooperation obligations, the Vendor shall be authorised to demand compensation for loss incurred in this context, including any additional costs. Further claims remain reserved.

## **8. Operating and production disruptions, force majeure, contractual obstacles**

- 8.1. The Vendor shall not be liable for failed service or late service if this was caused by operating disruptions, in particular if a delivery is no longer available due to the interim switch of the production unit to another product or if a necessary quality criterion cannot be guaranteed for technical reasons. This shall not apply if the operating disruption was caused by the intent or gross negligence of the Vendor.
- 8.2. In the event of a sustained fault or disruption to production, for whatever reason, the Vendor shall be authorised to spread its available production capacities or the available goods at its commercially substantiated discretion across its customers and, as a result, potentially deliver less than the contractually agreed quantity. Force majeure of any kind, unforeseeable operating, transport or dispatch disruptions, damage from fire, flooding, unforeseeable lack of labour, energy, raw materials or auxiliary materials, industrial action, lock-outs, official orders or other obstacles that are not the responsibility of the party obligated to provide a service, which reduce, delay, prevent or make unacceptable the acceptance or consumption, shall release from the delivery or acceptance obligation for the duration and scope of the disruption. If as a result of the fault the delivery or acceptance is exceeded by more than eight weeks, both parties shall be authorised to withdraw. In the event of partial or complete loss of the procurement sources of the Vendor, it shall be obligated to procure from preliminary suppliers. In this event, the Vendor shall be authorised to distribute the available goods volumes taking into account its own needs.



## **9. Dispatch, risk bearing**

- 9.1. The Vendor reserves the right to choose the dispatch route and type. Additional costs caused by special dispatch requests of the Buyer shall be borne by it.
- 9.2. Unless agreed otherwise, the risk of accident loss and accidental deterioration of the Goods shall be transferred to the Buyer at the time of arrival at the Buyer or of any delayed acceptance ("Transfer of Perils").
- 9.3. If the Buyer exports the Goods, it shall provide the Vendor with the necessary export information.

## **10. Retention of title**

- 10.1. The Goods shall only be transferred to the property of the Buyer if it has settled all its liabilities from the business relationship with the Vendor, including ancillary claims, and compensation claims. The retention of title shall also continue to exist if individual claims of the Vendor are included in an open invoice and the balance has been drawn and is recognised.  
The Vendor shall be authorised to demand from the Buyer the release of the goods subject to retention of title without setting a period of grace and without withdrawing from the agreement if it defaults on fulfilling its obligations in relation to the Vendor. Taking back the goods subject to retention of title shall only constitute a withdrawal from the agreement if the Vendor has expressly declared this in writing.

## **11. Warranty**

- 11.1. Complaints due to incomplete or incorrect delivery as well as complaints of obvious faults must be reported without delay, but no later than within seven working days after receipt of the Goods, in writing and returned with the corresponding delivery note, otherwise the Goods shall be deemed to have been accepted.
- 11.2. The Buyer undertakes to conduct an immediate inspection regarding the following features on receipt of the Goods:
  - a) Identity (product designation, comparison of batch no. with delivery note)
  - b) Quantity
  - c) Product presentation and product labelling as well as
  - d) Transport costs

For temperature- and shock-sensitive goods, the Buyer shall conduct a quality-related incoming goods inspection as regards concealed faults caused during transport or interim storage, insofar as this is technically possible and commercially acceptable.

- 11.3. In the event of concealed faults, the written complaint must be made immediately on determination of the fault, otherwise the Goods shall be deemed to have been accepted. The burden or proof that this is a concealed fault shall be with the Buyer. Expired goods shall neither be replaced nor credited.



11.4. The time of receipt by the Vendor shall be authoritative for the timeliness of the reports. Faults that are claimed contrary to the above investigation and complaint obligations shall be ruled out from the warranty cover.

11.5. Unless agreed otherwise by the parties, the fault claims of the Buyer shall be limited to the right to subsequent performance. If the subsequent performance by the Vendor fails, the Buyer may reduce the purchase price or withdraw from the agreement at its discretion. Compensation claims under Item 14 shall remain unaffected by this.

## **12. Returns**

12.1. Goods complained about may only be returned with the express approval of the Vendor and only in accordance with Item 11.1. Returns must be sent to the place of dispatch.

12.2. In no event shall replacement be supplied for a) products marked as samples, b) damaged, partially fractured or opened packages, unless these are faults of the deliverer and c) expired Goods.

12.3. Products whose recall takes place for reasons of medication safety (on the initiative of an authority or a company, for instance for disinfection) shall be remunerated at the purchase price, if the return takes place subject to Item 12.2 within one (1) month of publication or notification of the product recall.

12.4. Products that mytowel deletes from its range shall neither be remunerated nor refunded as a rule.

## **13. Infringements of industrial property rights**

13.1. The Vendor shall not be liable for the violation of patents, copyrights, marks, business secrets or other rights that occur due to requirements of the Buyer or any use of the Goods not foreseeable for the Vendor or due to these being changed by or at the initiative of the Buyer. This shall apply, in particular, if on the Buyer's initiative a certain product packaging or product designation is delivered, which may violate name or brand rights.

13.2. The Buyer undertakes to inform the Vendor in writing at the earliest possible time if a third party claims an industrial property right regarding the contractual products or assets this in court or out of court. If the Buyer violates this obligation, it shall be liable to the Vendor for the resulting loss.

13.3. The Buyer shall at its cost (i) defend the Buyer against the claim of the third party, if a direct industrial property right violation is asserted in it by the Goods delivered by the Vendor and (ii) indemnify the Buyer regarding compensation claims and other costs to which it has been sentenced with legal force, if they were caused directly and exclusively by such a violation.



- 13.4. The Vendor shall not be liable to the Buyer if the Vendor is not (i) informed immediately in writing of a claim, (ii) granted the exclusive right to clarify, prepare, defend and process the case as well as the choice of legal representation and (iii) given all acceptable support and co-operation by the Buyer in the clarification, processing, preparation and defence, The liability of the Vendor shall not apply also if the claim is asserted after a period of one year from the time of delivery.
- 13.5. If a product becomes the subject of a violation proceedings, as described above under 13.2, or if such a proceedings is likely in the Vendor's opinion, the Vendor may at its discretion (i) obtain for the Buyer the right to continue to use or to sell the product, (ii) make a replacement delivery or (iii) subsequent performance so that the product no longer violates any industrial property rights or (iv) withdraw from an agreement as regards such a product. Further rights and claims to reduction, withdrawal or compensation shall only exist under these GT&Cs.
- 13.6. For compensation claims, Item 14 shall apply in addition. Further claims of the Buyer regarding an actual or alleged violation of industrial property rights or other property rights than those specified in this Item 13 shall not exist.

#### **14. Compensation**

- 14.1. Without consideration of the nature of the claim asserted, the Vendor shall only be liable for losses that the Buyer incurred due to the intent or gross negligence of the Vendor. Any further liability shall be ruled out, inasmuch permissible.
- 14.2. The Vendor shall not be liable to the Buyer or other parties in any circumstances for direct or, at the time of concluding the agreement, unforeseeable damage, consequential damage, for losses, costs and expenses, in particular for lost sales or profits, late deliveries, walkouts, production failure, deterioration of other goods or losses sustained by other causes, regardless of whether they were sustained by violation of warranties, breach of contract, negligence or otherwise.
- 14.3. The disclaimers and liability restrictions under this Item 14 shall apply to the same extent as regards actions of the employees, workers, staff, representatives and vicarious agents of the Vendor. They shall also apply for their personal liability.

#### **15. Information obligations regarding risks, side effects, etc.**

- 15.1. The Buyer shall observe all applicable, legal and official obligations to report risks, side effects, detrimental unintended reactions, which occur during the intended use of the Goods and comparable events, and inform the corresponding offices.



## **16. Cancellation and other termination of agreement**

- 16.1. Notwithstanding other contractual and legal claims, each party may cancel the agreement in full or in part by written notification with immediate effect or withdraw from it without being liable to the other party,
- a. if an insolvency proceedings has been instigated in relation to the assets of the other party or a restructuring, liquidation or winding-up proceedings is initiated. This shall apply both in the event of a voluntary proceedings being instigated by the other party itself as well as in the event of debt enforcement if an administrator or receiver is appointed or a transfer in favour of the creditors of the other party is carried out.
  - b. If major changes have occurred to the capital or ownership circumstances of the other party and the party is of the free opinion that these changes are unacceptable for the further execution of the agreement.
- 16.2. If the Vendor uses its cancellation right under Item 16.1 and has already fulfilled its obligations under the agreement, all payments to be made under this agreement shall become immediately due.
- 16.3. In the event of cancellation, withdrawal or expiry of an agreement, the provisions that should continue to apply beyond the term of the agreement in terms of their meaning and purpose, shall continue to be in effect.

## **17. Place of performance, standard clauses, warranty, effectiveness clause**

- 17.1. The place of performance for the delivery shall be the relevant place of dispatch, for the payment the place stated on the invoice of the Vendor.
- 17.2. The agreement of a warranty must be made in writing. A warranty declaration shall only be effective if it describes with sufficient determination the content of the warranty and the duration and the spatial scope of validity of the warranty cover.
- 17.3. If individual clauses of these General Terms and Conditions of Sale and Delivery are invalid in full or in part, this shall not affect the effectiveness of the other clauses or the other parts of such clauses. Instead of the ineffective clause, an appropriate regulation shall apply that comes as close as possible to the commercial purpose of the ineffective regulation and is effective.

## **18. Data protection**

- 18.1. All data, which the Vendor requires for the delivery and for statement, for instance, shall be archived electronically. The data are subject to the legal provisions on data protection and are used for internal purposes only.
- 18.2. If the ordering party provides its e-mail address, it agrees, unless noted otherwise, automatically to the use of the e-mail address by the Vendor (e.g. for information, newsletters, etc.). The approval for use of the e-mail address may be withdrawn at any time.



**19. Applicable law, jurisdiction**

- 19.1 The rights and obligations of the parties from or in connection with these General Terms and Conditions of Sale and Delivery are governed by Swiss law and must be interpreted accordingly regardless of its provisions on the conflict of laws.
- 19.2. The parties undertake to amicably settle all disputes from or in connection with an agreement initially by talks and negotiations. All disputes that cannot be settled amicably shall be decided exclusively by the competent courts of the Canton of Schwyz, subject to the requirement that the Vendor is also authorised to assert its claims in the general jurisdiction of the Vendor.