

§ 1 Scope

- (1) These General Purchase Conditions (hereinafter **"GPC"**) apply exclusively to both the specific purchase orders to be submitted and the ensuing Individual Agreements and to the Framework Agreement to be concluded between Biologische Heilmittel Heel GmbH (hereinafter **"Heel"**) and Supplier (Heel and Supplier hereinafter individually referred to as **"the Party"** and collectively as **"the Parties"**). They shall also apply to ancillary agreements that might come with orders and/or Framework Agreements like Quality Agreements or GMP Agreements. Other conditions of Supplier especially if they are contradictory to these GPC shall not be valid, even if Heel does not expressly object to such GPC, unless agreed upon otherwise in writing. These GPC shall also apply when Heel accepts Supplier's performance without any objection and shall only apply towards entrepreneurs within the meaning of § 310 para. 1 German Civil Code (hereinafter **"BGB"**).
- (2) The GPC shall herewith apply to all future transactions with the same Supplier.
- (3) Individual agreements made between Heel and Supplier shall always supersede the GPC. Such individual agreements shall always be made in writing.

§ 2 Offer and Acceptance

- (1) Supplier may only accept any firm order from Heel within two (2) weeks as of receipt of the offer. After the lapse of such period Heel shall no longer be bound to the offer.
- (2) Supplier is obliged to provide the contractual performance by itself. Subcontracting to third parties requires the prior written consent by Heel. Partial performance shall not be permitted, except otherwise agreed upon between the Parties.
- (3) Supplier shall not assign, sub-let or transfer any or all of its obligations under the Individual and/or Framework Agreement without the prior written consent of Heel. Such consent shall not to be unreasonably withheld or delayed.
- (4) Heel will not reimburse any expenses for travel, for preparing offers, projects, drafts, and samples.
- (5) Heel may at any time request non-material changes of the Goods or changes in rendering of Services under a Work and Labor Agreement (**"Services"**) agreed upon between the Parties if such is not unequitable to Supplier. In such case, Heel will appropriately consider additional cost and lead times and will inform Supplier with a two (2) weeks prior written notice.

§ 3 Individual Agreement and Framework Agreement

- (1) In the event of an Individual Agreement Heel shall submit one or more of the following to Supplier subject to the conditions set forth herein:
 - a) Specifications,
 - b) Requirements,
 - c) Prices,
 - d) Delivery dates.An Individual Agreement is concluded by express acceptance or by Supplier's actual performance in line with the conditions set out above. Individual orders may be issued by Heel digitally and therefore not be signed. Insofar the written form requirement shall not be applicable.
- (2) If and to the extent Heel strives for a long-lasting relationship and/or a Framework Agreement exists between the Parties, Heel shall provide Supplier with the non-binding Annual Requirements latest until the first (1st) of December of the respective year. Given that a Framework Agreement does not exist between the Parties Supplier may object to the Annual Requirements within fourteen (14) days as of its receipt. If there is no objection of Supplier within the aforementioned period, the Annual Requirements will be considered binding three (3) months before the first scheduled delivery date. Provided that a Framework Agreement has been established between the Parties Supplier and

Heel undertake to reach agreement on the Annual Requirements within four (4) weeks as of its receipt by Supplier provided that such Annual Requirements do not deviate from the previous ones by more than 20 %. If and to the extent the Parties cannot agree on binding Annual Requirements they will inform each other immediately in writing. Heel shall be entitled to exceed the Annual Requirements in its actual order by five (5) % provided that Prices agreed upon apply. If Heel's order deviates further from the Annual Requirements Supplier shall endeavor to meet Heel's additional requirements.

- (3) A Framework Agreement shall be considered concluded when the following requirements are met:
 - a) Execution of the fifth (5th) order (as from the date of receipt of offers) within one (1) calendar year time by Supplier, and
 - b) Delivery of Annual Requirements by Heel, and
 - c) Written information on the conclusion of Framework Agreement upon acceptance of the fifth order; § 3 para. 1 sentence 3 shall apply.
- (4) Notwithstanding aforementioned clauses the Parties are entitled to conclude a Framework Agreement anytime. Such Framework Agreement has to be concluded in writing.
- (5) Given that a Framework Agreement exists between the parties Individual Agreements shall be concluded impliedly unless Supplier objects thereto within fourteen (14) days as of the receipt of an order. Furthermore, once a Framework Agreement is established Supplier shall accept Heel's orders unless there is good ground to refuse e.g. when Heel has committed a material breach of contract.
- (6) Prices shall be binding according to the rules set out above. Prices shall be binding for the current Individual Agreement. Provided that a Framework Agreement has been established the Prices shall be valid only for one (1) calendar year. Price negotiations in connection with Framework Agreements shall be terminated not later than per thirtieth (30th) September of each year for the following one. If the parties do not reach agreement during Price negotiations they shall inform each other in writing. The Framework Agreement shall then terminate automatically by the end of the year. In the event neither of the parties has addressed pricing until thirtieth (30th) September the parties shall be deemed to have agreed upon Prices applicable in the current year for the next one. The Framework Agreement shall be prolonged automatically for one (1) further calendar year.
- (7) In any case, Supplier and Heel will inform each other immediately in case of deviations or other circumstances that could jeopardize the performance under a Framework Agreement or an Individual Agreement. Delivery dates foreseen in any order shall be binding provided that time shall be of the essence.
- (8) Supplier represents and warrants that it will carry out supplies even in the event of production stoppage at its own costs.

§ 4 Delivery Lead Times, Default, Packaging, Transfer of Risks, Excess or Partial Performance

- (1) Time is of the essence with regard to delivery dates set in the Individual Agreements. As of the first day of not meeting the deadlines set Supplier shall be in default.
- (2) In case Supplier has reasons to anticipate default or is not meeting the quality requirements it shall inform Heel immediately in writing. The delivery lead times set in the Individual Agreements are determined as of the date of receipt of Goods at the agreed upon venue of performance. In case Heel accepts such delayed delivery or a flawed Good or Service this shall not be construed as a waiver from Heel as to the rights arising out of such lack of performance.
- (3) In case of an agreement on Services the transfer of risks shall occur by way of acceptance, otherwise in the case of an agreement on the delivery of Goods by way of actual receipt by Heel. Heel shall be entitled to refuse acceptance if Goods are supplied in scratched or otherwise damaged packaging to Heel or a third party commissioned by Heel to carry out transport and/or receipt. Supplier shall bear any costs arising from returning damaged Goods.

- (4) Supplier shall pay a penalty to Heel of 0.5 % of the net purchase value for each working day by which the agreed upon delivery date is exceeded provided, however, that such amount shall not exceed 5 % of the total net value.
- (5) Supplier has the right to prove to Heel that no damage or a smaller one incurred as a result of the delay. The penalty shall then be reduced accordingly. The penalty is forfeited if Supplier can prove that it cannot be held responsible for the exceeding of the delivery deadlines or that the delay was due to Force Majeure. However, in the event of Force Majeure, Supplier shall give immediate notice thereof to Heel. Contractual penalty claims may be asserted by Heel until the final payment.
- (6) Notwithstanding the foregoing Heel reserves to claim other rights, like damage compensation based on actual damages. The contractual penalty shall be deducted from such compensation.
- (7) Excess or partial performance shall only be accepted if agreed upon in writing beforehand.
- (8) In case a shipment is made prior to the delivery date agreed upon Heel hereby reserves the right to resend Goods at Supplier's risk and cost. Otherwise, Heel shall be entitled to store such Goods at Supplier's risk and cost. In such cases payment will occur as agreed upon in the Individual Agreement.

§ 5 Warranties and Representations, Investigation of Defects

- (1) The legal provisions concerning liability of material defects and deficiencies shall apply, except hereinafter otherwise agreed upon between the Parties.
- (2) The delivery of the purchased Goods or the rendering of Services occurs free from material defects and deficiencies. Supplier shall indemnify and hold Heel harmless from all third party claims, arising out of or in connection with deficiencies unless Supplier cannot be held responsible for the deficiency.
- (3) In case of defective delivery (material defect or deficiency), Heel is entitled, at its sole discretion, to repair or replacement of Good. Supplier shall bear the costs of remedy. If such remedy is not performed by Supplier after the lapse of an appropriate notice set by Heel or if the aforementioned remedies are impossible to perform Heel shall be entitled to reduce the Price for Good or, if the defect is material, rescind the Individual Agreement or, in case of material defects in more than one Individual Agreement. Notwithstanding the aforementioned rights, Heel shall be entitled, in particular for the avoidance of imminent danger or major damage, to remedy the defects by itself or have them remedied by third parties at Supplier's expense. Aforementioned sentences shall not affect Heel's right to assert claims for compensation according to the legal provisions.
- (4) If Supplier replaces the Good, the limitation period for the replaced Good shall start after delivery unless Supplier expressly and appropriately made the reservation that the replacement was executed as a gesture of goodwill, for the avoidance of disputes or in the interest of continuing the relationship.
- (5) If and to the extent Heel suffers additional costs as a consequence of the delivery of defected Goods, in particular transport, travel, labor, material costs as well as costs for fitting removal or costs of an incoming inspection which exceed the ordinary scope, Supplier shall bear these costs.
- (6) The warranty period shall be two (2) years after delivery/acceptance except in cases of fraudulent intent. If the subject matter of the Individual Agreement or Framework Agreement is related to a building or materials/parts that are used in accordance with their customary use for buildings and if these parts have caused the defect, the warranty period shall be five (5) years from the date of transfer of title.
- (7) If Supplier or a third party has issued a quality or durability guarantee, claims of Heel from a guarantee shall not be affected hereby.
- (8) Heel will examine the Goods for quality or quantity deviations within a reasonable period. As regards open defects or obvious variations in

quantity, the complaint shall be deemed valid if Supplier receives it within five (5) days after the receipt of the Goods. Regarding hidden defects, this period is extended by the duration of the investigation by Heel.

§ 6 Terms of Payment

- (1) The Prices agreed on according to aforementioned § 3 shall be binding upon the Parties. They shall be delivery free Baden-Baden unless agreed upon otherwise including packaging and transport.
- (2) Invoices shall include the full order number and shall be in compliance with the current legislation applicable. Two originals shall be sent to Heel's address according to the Individual Agreement. Invoices that are not in line with the aforementioned shall be deemed received by Heel when adjusted accordingly.
- (3) VAT is specified as a line item in the Individual Agreement and the Framework Agreement and in the invoice of Supplier. Otherwise, VAT is considered included in the Price set out by Supplier.
- (4) Unless agreed upon otherwise in writing between Heel and Supplier, invoices are payable net within 30 days after delivery and receipt of invoice.
- (5) Insofar as Supplier undertakes to provide Heel with any documentation, operator's manuals or other written material the payment term does not begin prior to Heel's receipt of such materials.
- (6) The payment of invoices without reservation by Heel shall not constitute an acceptance of the invoice or an approval of delivery as agreed upon between the Parties.
- (7) Even in the case of default Heel does not owe more than the statutory default interest rates within the meaning of § 288 para. 2 BGB.
- (8) Heel shall be entitled to off-set or withhold payment according to the rules of the BGB.

§ 7 Materials, Toolings / Retention of Title

- (1) All parts, materials and samples and all contract-related documents provided for by Heel shall remain the property of Heel and shall be kept carefully by Supplier. It shall not be permitted to use such items for other purposes than the performance under the Individual Agreement or the Framework Agreement unless agreed upon otherwise in writing. Such items shall be returned at any time without any reason to Heel after delivery or acceptance of the performance. Supplier shall waive any rights of retention of any kind whatsoever.
- (2) All toolings required for the performance under the Individual Agreement or the Framework Agreement that are either designed by Heel, Heel has intellectual property in and/or Heel has paid for partly or entirely shall remain Heel's property. Such tooling shall be marked as "Property Biologische Heilmittel Heel GmbH" and be stored separately at Supplier's premises. In the event the toolings are located on premises different than those of Heel or Supplier, Supplier shall inform Heel and the third party where the toolings are located in due course and have Heel and the third party conclude an agreement on property and storage of the toolings and Heel's right to redeem property in those toolings, which shall contain at least the provisions set out in § 7 of these GPC. In any event shall Heel be the owner of all intellectual property embedded in the toolings. If Supplier itself stores the toolings the parties herewith conclude a Custody Agreement, for which the legal provisions shall apply additionally.
- (3) Supplier shall use materials only for the purposes of the Individual Agreement. Any processing, mingling or other shall be made on behalf of Heel. Materials that come with the Individual Agreements from Heel shall remain Heel's property. Heel shall have joint ownership of the items produced with materials and components provided for by Heel and stored at Supplier's premises for Heel in relation to the overall value.

§ 8 Change/Shut down of production by Supplier

- (1) Supplier shall not change its procedures in manufacturing or supply unless agreed upon otherwise with Heel. The parties may agree on a specific agreement on quality control in writing which shall become an integral part of the Individual Agreement and/or the Framework Agreement.
- (2) If Supplier intends to change or shut down its production activities it shall inform Heel beforehand within due course in writing. In the event of a shutdown of production Supplier warrants that Goods and materials will be available for twelve (12) months as of Heel's receipt of Supplier's written notice.

§ 9 Products Liability/Hold Harmless

- (1) If a claim based on products liability has been made against Heel due to a defect of Goods delivered by Supplier the Supplier shall hold Heel harmless from such claims upon first request, if and to the extent the damage was caused by the Goods delivered by Supplier. In cases of liability depending upon culpability, however, aforementioned sentence shall only apply if Supplier is at fault. In case the cause of damage is at Supplier's responsibility, it shall prove that the damage was due to no fault of Supplier.
- (2) In cases according to aforementioned § 9 para. 1 Supplier shall bear all costs and expenditures arising at Heel.
- (3) Supplier undertakes to purchase a products liability insurance policy with a coverage of not less than € 10 m per capita during the term of the Framework Agreement or the longest lasting Individual Agreement whichever takes longer. Supplier shall prove its products liability insurance upon request of Heel.

§ 10 Confidentiality

Any information or data given by a Party hereto to the other Party which is not generally accessible, in particular, but not only business secrets of each Party shall be kept and treated as confidential during the term of the Individual Agreement and/or the Framework Agreement and thereafter for a further period of five (5) years. Supplier shall also treat the conclusion of the Individual and/or Framework Agreement as confidential and shall use the business relationship with Heel for merchandising purposes only as agreed upon between the Parties in writing.

§ 11 Term of Individual Agreement or Framework Agreement; Rescission and Termination

- (1) The Individual Agreement is a one-time agreement effective until full performance, unless it will be rescinded in the cases set forth below.
- (2) The Framework Agreement is effective for a term of one calendar year as from the date of express or implied acceptance of the offer to conclude such Framework Agreement. It may be terminated with a three (3) months prior written notice by either party effective by the end of the calendar year or the provisions of aforementioned § 3 para. 2 and/or § 3 para. 6 shall apply. The Framework Agreement will renew automatically for a term of one calendar year each if there is no termination according to the aforementioned sentence. If for a term of one (1) calendar year no Individual Agreement has been concluded between the parties the Framework Agreement shall become void automatically as of the date of lapse of such calendar year.
- (3) Heel shall be entitled to rescind Individual Agreements, if
 - a) Supplier's financial circumstances deteriorate materially or threaten to deteriorate which jeopardizes the fulfilment of obligation to deliver towards Heel, or
 - b) imminent insolvency of Supplier according to § 18 German bankruptcy code ("InsO") or insolvency of Supplier occur or a debt overload emerges, or
 - c) Supplier files for insolvency proceedings or a comparable procedure for settlements of debts, or

d) any action or proceeding under any bankruptcy or insolvency law is rejected due to lack of assets,
e) change in production materially affects the usage of Goods and material.

- (4) Given a Framework Agreement exists aforementioned para. 3 shall apply accordingly provided that instead of the right to rescind Heel shall have the right to forthwith terminate in the event of a due cause. Aforementioned sentence shall also apply in cases of repeated defects and its persistent failure for remedies or any reason which is unreasonable for Heel to continue the Framework Agreement.
- (5) Termination and/or declaration of rescission shall be in writing.
- (6) If and to the extent Heel terminates or rescinds according to aforementioned provisions, Supplier shall compensate Heel for all damages arising from the termination or rescission. Aforementioned sentence shall not apply if termination or rescission is not at Supplier's fault.

§ 12 Place of Jurisdiction, Miscellaneous

- (1) In the event of a letter of confirmation with deviations to the provisions of an Individual Agreement concluded later on, the provisions of the Individual Agreement shall prevail.
- (2) These GPC shall be governed in accordance with the laws of Germany without any reference to German Conflict of Laws. The Convention relating to a Uniform Law on the International Sale of Goods of 1964 and the United Nation Convention on Contracts for the International Sale of Goods of 1980 shall not apply.
- (3) Place of performance and exclusive venue of jurisdiction for all disputes arising out of the Individual Agreement and/or the Framework Agreement shall be Baden-Baden, Germany. Notwithstanding the foregoing, Heel shall be entitled to also file for litigations at the general place of jurisdiction of Supplier.
- (4) If any term or other provision of these GPC, an Individual or Framework Agreement is invalid, illegal or incapable of being enforced by any rule of law or public policy, all other terms and provisions of these GPC, an Individual or Framework Agreement shall nevertheless remain in full force and effect. Upon any such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties shall negotiate in good faith to modify said term or provision so as to give effect to the original intent of the Parties to the greatest extent possible and in an acceptable manner, so that the transactions contemplated in the invalid, illegal or incapable of being enforced provision are saved to the greatest extent possible.
- (5) These GPC represent the entire agreement between the Parties and supersede all previous agreements, promises, and representations made by either Party to the other. No amendment or variation of these GPC, the Individual or the Framework Agreement shall be binding and valid unless in writing and signed by both Parties.