

# **General Terms and Conditions of Purchase of Schwan Cosmetics International GmbH, Schwanweg 1, 90562 Heroldsberg**

## **1. Scope**

1.1 These General Terms and Conditions of Purchase (hereinafter referred to as "GTCP") apply between Schwan Cosmetics International GmbH and/or affiliated companies of the Schwan Cosmetics Group (hereinafter referred to as "Schwan Cosmetics", "we" or "us") and their suppliers.

1.2 Our General Terms and Conditions of Purchase (GTCP) apply to all business relationships with our suppliers, provided they are entrepreneurs according to § 14 BGB, legal entities under public law, or have special public-law assets.

1.3 The GTCP apply in particular to contracts for the sale and/or delivery of movable goods (hereinafter referred to as "Goods"), regardless of whether the supplier manufactures the goods themselves or purchases them from suppliers (§§ 433, 651 BGB) as well as to contracts for services to be provided by the supplier. Our GTCP apply in their respective valid version as framework conditions also for future contracts for the sale and delivery of movable goods with the same supplier, without us having to refer to them again in each individual case. The GTCP are available in their respective valid version on our homepage.

1.4 Our GTCP apply exclusively. Deviating, conflicting or supplementary conditions of the supplier only become part of the contract if we have expressly agreed to their validity in writing. This requirement of consent applies in any case, even if we accept the supplier's delivery unconditionally in knowledge of conflicting or deviating conditions of the supplier from our GTCP.

1.5 All orders, as well as agreements made between us and the supplier in the execution of the delivery or service contract, require text form within the meaning of § 126 b BGB to be effective. Changes, side agreements and additions also require text form.

Legally relevant declarations and notifications, such as setting deadlines, reminders, etc. by the supplier after the conclusion of the contract also require text form to be effective.

1.6 References to the validity of statutory provisions are for clarification purposes only. Therefore, even without such clarification, the statutory provisions apply, unless they are directly amended or expressly excluded in these GTCP.

1.7 Should any provision of these conditions be or become invalid, the validity of the remaining conditions shall not be affected.

## **2. Conclusion of Contract**

2.1 Our order is binding at the earliest with the supplier's confirmation. This can be done in writing, by email, by electronic data exchange (EDI) or via our supplier portal (SUS) depending on the agreement. The supplier must point out obvious errors (e.g. typing and calculation errors) and incompleteness of the order including the order documents for the purpose of correction or completion before acceptance; otherwise, the contract is considered not concluded.

2.2 The supplier is obliged to confirm our order in writing or in text form within a period of 3 working days (Monday - Friday).

2.3 A late acceptance is considered as a new offer and requires our express acceptance.

2.4 For print documents, it is absolutely necessary that a proof is submitted and approved by us. If changes are necessary, the corrected proof must be resubmitted and approved by us.

### **3. Delivery Time, Delay in Delivery**

3.1 The delivery date specified in our order is binding for the supplier.

3.2 The delivery date is met if the delivery has arrived at the specified receiving point by the end of the delivery date or if the shipping readiness has been indicated to us if the dispatch is omitted at our request.

3.3 The supplier is obliged to inform us immediately in writing if circumstances arise or become apparent to them that indicate that the delivery date cannot be met. In the event of a delay in delivery, we are entitled to the statutory claims, in particular to withdrawal and damages. In particular, we are entitled to claim damages for delay or, after the fruitless expiry of a reasonable period, to claim damages instead of performance.

3.4 If the supplier is in default, we can demand a contractual penalty of 1% of the net price per completed calendar week, but not more than 5% of the net price of the delayed delivered goods/services. If we have incurred higher damage due to the delay, we reserve the right to assert such damage. Any paid contractual penalty will be credited against such damage claims. If we accept the delayed performance, we must assert the contractual penalty at the latest with the final payment. The supplier has the right to prove that we have incurred no or only a lesser damage.

3.5 Partial deliveries are only accepted by us if they have been expressly agreed with us in writing or in electronic form beforehand.

### **4. Delivery Conditions, Default of Acceptance**

4.1 Unless otherwise agreed in writing or in electronic form, delivery within the European Union shall be DDP (INCOTERMS 2020) and outside the European Union DAP (INCOTERMS 2020). If the place of destination is not specified and nothing else is agreed, the delivery shall be made to our business address in Heroldsberg. The respective place of destination is also the place of performance (obligation to bring).

4.2 The supplier is obliged to indicate our order number, item description, exact description of the items and their individual weights or dimensions on all shipping documents and delivery notes. If delivery notes, shipping documents are missing or incomplete and we cannot assign the delivery as a result, we are entitled to refuse acceptance. All resulting costs are to be borne by the supplier. In addition, our delivery conditions in their respective valid version apply. For raw materials and primary

packaging materials, each container must be marked with a batch identification. This must be reflected on the delivery note. On the day of dispatch, the supplier sends a shipping notice to us.

4.3 The supplier is not entitled to have the performance owed by them rendered by third parties (e.g. subcontractors) without our prior written consent. The supplier bears the procurement risk for their services, unless it is a single production.

4.4 The risk of accidental loss and accidental deterioration of the item passes to us upon delivery at the place of performance. If acceptance has been agreed, this is decisive for the transfer of risk. Otherwise, the statutory provisions of the contract for work and services law apply accordingly in the event of acceptance.

4.5 The statutory provisions apply to the occurrence of our default of acceptance. However, the supplier must also expressly offer us its performance, if a specific or determinable date has been agreed for an action or cooperation on our part (e.g. provision of material). If we are in default of acceptance, the supplier can demand compensation for their additional expenses according to the statutory provisions (§ 304 BGB). If the contract concerns an item to be manufactured by the supplier that is not fungible (single production), the supplier has further rights only if we are obliged to cooperate and are responsible for the failure to cooperate. The supplier concludes the corresponding transport insurance unless otherwise agreed.

## **5. Prices, Payment Terms**

5.1 The price stated in the order is binding. The price stated in the order is exclusive of VAT.

5.2 Unless otherwise agreed in writing, the price includes all services and ancillary services of the supplier (e.g. assembly, installation) as well as all ancillary costs (e.g. proper packaging, transport costs including any transport and liability insurance). The supplier is obliged to take back their disposable and transport packaging at their own expense.

5.3 We can only process invoices and credit notes if they contain the statutory mandatory information as well as the specified order number and the correct billing address according to the specifications in our order. The supplier is responsible for all consequences arising from the non-compliance with these obligations, unless they prove that they are not responsible for this.

5.4 Claims from work, repairs, assembly, installation, maintenance, etc. are only recognized if a written, signed proof (work, repair, maintenance slip) is provided by us.

5.5 Unless otherwise agreed in writing, we pay the purchase price within 14 calendar days from receipt of the invoice with a 3% discount or within 30 calendar days net. We are only in default of payment if the supplier has expressly and in writing reminded us after the due date has occurred.

5.6 We are entitled to set-off and retention rights to the statutory extent.

5.7 The supplier is only entitled to set-off or retention rights due to legally established or undisputed counterclaims.

5.8 The supplier can only assign their existing claims with our written consent. Collection by third parties is excluded unless agreed in writing with us.

5.9 The parties agree that invoicing shall be delivered electronically within the meaning of §§ 14, 15 UStG. The supplier will send the invoices to a central email address communicated to them.

## **6. Quality and Documentation**

6.1 The supplier must comply with the recognized rules of technology, safety regulations, agreed specifications and technical requirements for their deliveries and services.

Changes to the delivery or service item require our prior written consent.

6.2 For deliveries of goods that the supplier knows will come into contact with other products, the supplier assures that the goods comply with the relevant and applicable cosmetic regulations.

6.3 The supplier undertakes to coordinate the type and scope of inspections, as well as testing equipment and methods with us before placing the order. If the type and scope of inspections, as well as testing equipment and methods, have not been firmly agreed between the parties, we are willing, at the supplier's request, to discuss the inspection with them within the framework of our knowledge, experience and possibilities to explain the respective required state of testing technology.

6.4 We are entitled to enter the supplier's plant and premises during the supplier's usual business hours and after prior notification to evaluate the quality assurance system.

## **7. Compliance and Safety Standards**

The supplier assures that all goods and services comply with the recognized, relevant and applicable legal provisions and requirements in Germany and the EU (in their respective current version). In particular, they comply with the applicable EU directives and EU regulations, the applicable DIN standards as well as the German accident prevention and occupational safety regulations, and if applicable, have the corresponding markings and/or conformity certificates, such as CE.

In particular, the supplier assures that all goods and services comply with the following regulations, directives and recommendations (in their respective current version):

- Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH),
- Regulation (EC) No 1223/2009 of the European Parliament and of the Council of 30 November 2009 on cosmetic products,
- Regulation (EU) 2019/1021 of the European Parliament and of the Council of 20 June 2019 on persistent organic pollutants (POP Regulation),
- Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No 1907/2006 (CLP Regulation),
- US Code of Federal Regulations # Title 21 - Food and Drugs.

The supplier should provide the following documents unsolicited and report any changes or updates (but no later than within 7 days after the respective change or update):

- Safety Data Sheet (MSDS) according to Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH); the identified uses include uses for cosmetic products,
- Confirmation of compliance with the requirements of REACH and GHS (Globally Harmonized System of Classification and Labelling of Chemicals), including a declaration on substances of very high concern (SVHC),
- Specification,
- Certificate of Analysis.

## **8. Defect Investigation and Warranty**

8.1 Our rights in the event of material and legal defects of the goods and services, including incorrect and short deliveries as well as improper assembly, defective assembly, operating or operating instructions and other breaches of duty by the supplier are governed by the statutory provisions, unless otherwise specified below.

8.2 According to the statutory provisions, the supplier is particularly liable for ensuring that the goods have the agreed quality at the time of the transfer of risk to us. All product descriptions that are designated as quality agreements, which are included in the contract or in the manner in which the GTCP became part of the contractual relationship, are considered quality agreements. It is irrelevant whether the product description comes from the supplier or from us.

8.3 The statutory provisions (§§ 377, 381 HGB) apply to the commercial inspection and notification obligations, with the following proviso:

Our inspection obligation is limited to defects that are apparent during our incoming goods inspection through external examination, including the delivery documents, as well as during our quality control in the sampling procedure (e.g. transport damage, incorrect and short delivery).

Otherwise, it depends on the extent to which an inspection is feasible in the ordinary course of business, taking into account the circumstances of the individual case.

8.4 The supplier must carry out and document in writing the outgoing goods inspections corresponding to the product requirements when the goods leave the warehouse.

8.5 The warranty period is 24 months from the complete delivery of the goods and/or services or acceptance of the goods and/or services.

8.6 If the supplier does not fulfill their obligation to remedy the defect - at our discretion by rectification of the defect (repair) or by delivery of a defect-free item (replacement delivery) - within a period set by us, we can remedy the defect ourselves and demand reimbursement of the necessary expenses from the supplier or an appropriate advance payment. If the supplementary performance by the supplier has failed or is unreasonable for us (e.g. due to special urgency, endangerment of operational safety or imminent occurrence of disproportionate damage), no deadline needs to be set; the supplier must be informed of this.

## **9. Product Liability**

9.1 These GTCP apply in particular to all products, raw materials and primary packaging materials (products).

9.2 The supplier is liable for ensuring that the delivered goods comply with the agreed product specifications, the current legal provisions and the usual quality standards and are free from defects or errors within the meaning of the Product Liability Act and General Product Safety Regulation.

9.3 If the supplier is responsible for a product defect, they are obliged to indemnify us against third-party claims for damages upon first request if the cause lies within their control and organizational area and they are liable themselves in the external relationship. For raw materials and primary packaging materials, the supplier guarantees the complete traceability of the respective products to the starting material.

9.4 The supplier's indemnification obligation includes all expenses according to §§ 683, 670 BGB as well as according to § 830, 840, 426 BGB or in connection with a third-party claim, including recall actions carried out by us. We will inform the supplier about the content and scope of recall measures - as far as possible and reasonable - and give them the opportunity to comment. Further statutory claims remain unaffected.

9.5 If the supplier delivers products that are used in our products, the supplier must take out and maintain product liability insurance in an appropriate amount (at least 3 (three) million Euros) for personal and property damage. The supplier will provide proof of the conclusion and maintenance of this insurance without being asked upon conclusion of the contract. In the case of permanent obligations, the supplier undertakes to provide the current proof of insurance without being asked, annually and immediately after receipt of the proof by the insurance company.

If we are entitled to further claims for damages, these remain unaffected.

## **10. Supplier Recourse**

10.1 Our statutory recourse claims within a supply chain (supplier recourse according to §§ 478, 445a BGB) are available to us without restriction in addition to the defect claims. In particular, we are entitled to demand from the supplier exactly the type of supplementary performance (repair or replacement delivery) that we owe to our customer in the individual case. Our statutory right of choice (§ 439 para. 1 BGB) is not restricted by this.

10.2 Before we acknowledge or fulfill a defect claim asserted by our customer (including reimbursement of expenses according to §§ 478 para. 3, 439 para. 2 BGB), we will inform the supplier and request a written statement with a brief presentation of the facts. If the statement is not made within a reasonable period and/or no amicable solution is reached, the defect claim actually granted by us is considered to be owed to our customer; the supplier bears the burden of proof in this case.

10.3 Our claims from supplier recourse also apply if the goods and/or services were further processed by us or one of our customers, e.g. by installation in another product, before their sale to a consumer.

## **11. Minimum Wage Act**

11.1 If the supplier provides services for us, they are obliged to comply with the provisions of the Act on the Regulation of a General Minimum Wage (MiLoG), in particular the obligation to pay the minimum wage. In the event that the supplier engages subcontractors with our consent, the supplier will also oblige them to comply with the provisions of the MiLoG. The supplier fully indemnifies us against third-party claims arising from a violation of the MiLoG by the supplier or engaged subcontractors.

11.3 Upon our request, the supplier must provide proof of compliance with the MiLoG.

11.4 If the supplier violates these requirements and does not remedy the violation within a reasonable period set by us, we are entitled to withdraw from the entire contract without notice.

## **12. Export Control and Customs**

### **12.1 Security in the Supply Chain**

The supplier takes the necessary organizational instructions and measures, particularly in the areas of property protection, business partner, personnel and information security, packaging and transport, to ensure security in the supply chain according to the requirements of corresponding internationally recognized initiatives based on the WCO SAFE Framework of Standards (e.g. AEO, C-TPAD). They protect their deliveries and services to us or to third parties designated by us from unauthorized access and manipulation. They use only reliable personnel for such deliveries and services and also oblige any subcontractors to take corresponding measures.

If the supplier culpably violates these obligations, we are entitled, without prejudice to further claims, to withdraw from the contract or terminate the contract. If the elimination of the breach of duty is possible, this right may only be exercised after the fruitless expiry of a reasonable period for the elimination of the breach of duty.

### **12.2 Reservation Clause**

Our performance of the contract is subject to the condition that there are no obstacles due to national or international regulations of foreign trade law as well as no embargoes and/or other sanctions.

### **12.3 Provisions on Export Control and Foreign Trade Data**

The supplier must comply with all requirements of the applicable national and international customs and foreign trade law ("foreign trade law"). The supplier must inform us in writing no later than two weeks after the order and immediately in the event of changes of all information and data that we need to comply with foreign trade law for export, import and re-export, in particular:

- all applicable export list numbers including the Export Control Classification Number according to the U.S. Commerce Control List (ECCN);
- the statistical commodity number according to the current classification of foreign trade statistics and the HS (Harmonized System) Code and

- the country of origin (non-preferential origin) and, if requested by us, supplier declarations of preferential origin (for European suppliers) or certificates of preference (for non-European suppliers).

If the supplier violates these obligations, they shall bear all expenses and damages incurred by us as a result, unless the supplier is not responsible for the breach of duty.

### **13. Intellectual Property Rights**

13.1 The supplier guarantees that no third-party rights, in particular no patent and utility model rights, design rights, copyrights, trademark rights, database rights, know-how rights, or any other industrial property rights (hereinafter referred to as "Intellectual Property Rights") are infringed or dependent on third-party rights in connection with their delivery and performance when used in accordance with the contract.

13.2 The supplier undertakes to indemnify us and our customers against any claims by third parties due to the contractual use of the deliveries and services provided by the supplier, upon first request, and to compensate us for any damage incurred by us due to the third-party claim, including any court and attorney fees incurred for legal defense. Otherwise, the statutory provisions apply.

13.3 The above does not apply if the supplier has manufactured the delivery items identically according to drawings, models, or other specifications provided by us.

13.4 The supplier acknowledges that all Intellectual Property Rights to work results, including research and development work, that exist in the work results, arise from their use, and/or are embodied in them, including all conceivable legal positions in ideas, designs, and creations, are fully and unrestrictedly transferred to us at the time of their creation. The supplier hereby transfers all rights to the work results and all Intellectual Property Rights to us. We hereby accept this transfer.

13.5 In the event that the transfer of rights provided for in 13.4 cannot be effectively executed under mandatory applicable law, particularly with regard to copyright, the supplier hereby grants us a comprehensive, exclusive, unlimited, and unrestricted right of use to the work results and Intellectual Property Rights, valid for all types of use. To the extent permitted by applicable law, the supplier hereby unconditionally and irrevocably waives all moral rights to already existing or future work results, including the right to be named as the author and the right to object to any distortion.

13.6 The transfer or granting of rights includes, in particular, the right to exploit the created work results for own or third-party purposes in any way worldwide and indefinitely, including exploitation in and on products, whether own or for third parties, in all types of use. It also includes the right to reproduce and/or publish the work results. The rights also include the right to edit, i.e., the right to further process the work results or have them further processed by third parties.

13.7 The supplier undertakes to provide all documents and support deemed necessary by us to obtain the rights to the work results and other Intellectual Property Rights that exist or arise from them, and/or to bring such Intellectual Property Rights to registration, upon our request.

13.8 The above-mentioned transfers of rights and granting of rights of use are fully compensated by the agreed remuneration of the supplier.

13.9 The supplier assures that the granting and transfer of rights do not conflict with any existing obligation on their part. They ensure that their free and permanent employees or other third parties



commissioned by them - whether in their own or another's name - have transferred or will transfer the necessary rights of use for the realization of the respective projects to them or us, in accordance with the above provisions, to the extent that these rights are to be transferred or granted by the supplier to us. This includes, for example, the waiver of the right to be named as the author or other moral rights, as well as the unrestricted use of patentable and/or utility model inventions created by their employees. Upon request, the supplier is obliged to provide the corresponding agreements.

#### **14. Retention of Title**

14.1 We retain all ownership and copyright rights to the materials, illustrations, plans, drawings, calculations, execution instructions, product descriptions, other documents, and tools provided by us (hereinafter referred to as "provided parts"). Processing, editing, or transformation by the supplier is carried out for us.

14.2 All provided parts are to be used exclusively for the contractual deliveries and services; they must be returned to us unsolicited after the order has been processed.

14.3 If provided parts are processed with other items not belonging to us by the supplier or a third party commissioned by the supplier, we acquire co-ownership of the new item in proportion to the value of our provided parts (purchase price plus VAT) to the other processed items at the time of processing.

14.4 If provided parts are inseparably mixed with other items not belonging to us, we acquire co-ownership of the new item in proportion to the value of the provided parts (purchase price plus VAT) to the other mixed items at the time of mixing. If the mixing is done in such a way that the supplier's item is to be regarded as the main item, it is agreed that the supplier transfers co-ownership to us proportionately; the supplier holds the sole ownership or co-ownership for us.

14.5 The transfer of ownership of the goods to us is unconditional and independent of the payment of the purchase price. However, if we accept an offer from the supplier for the transfer of ownership conditional on the payment of the purchase price in individual cases, the supplier's retention of title expires at the latest upon payment of the purchase price for the delivered goods or services. We remain authorized to resell the goods in the ordinary course of business even before payment of the purchase price, with the advance assignment of the resulting claim. All other forms of retention of title, in particular the extended, forwarded, and extended retention of title for further processing by the supplier, are excluded.

14.6 We acquire at least a contingent right or sole or co-ownership of models, matrices, templates, samples, tools, and other production means that we pay for in whole or in part, corresponding to our financing amount. The transfer is replaced by a custodial relationship that entitles the supplier to possession. The supplier bears the costs of maintenance and renewal as well as the risk of loss and deterioration. Without prior written consent, our production means may neither be destroyed nor sold, pledged, transferred as security, or otherwise disposed of.

#### **15. Confidentiality**

15.1 The supplier is obliged to keep all provided parts and illustrations, drawings, calculations, recipes, and other documents and information strictly confidential. They must return them to us immediately upon request after inquiries have been processed or orders have been completed. They must be kept confidential from third parties or made accessible to them without our express consent.

The confidentiality obligation continues even after the processing of this contract. It only expires when and to the extent that the contents contained in the provided documents have become generally known.

15.2 The above provision applies accordingly to materials, parts, tools, production means, etc. provided by us.

## **16. Data Protection and Supplier Code of Conduct (SCoC)**

Personal data arising in connection with the contractual relationship is processed in accordance with the applicable legal provisions, in particular the GDPR. More information can be found in our data protection information: [Data Protection Provisions – Schwan Cosmetics](https://www.schwancosmetics.com/data-privacy-statement) (<https://www.schwancosmetics.com/data-privacy-statement>)

The supplier undertakes to comply with all applicable legal provisions in fulfilling their contractual obligations. Furthermore, the supplier is obliged to meet the requirements set out in our Supplier Code of Conduct. This describes fundamental principles on human rights, working conditions, environmental protection, etc., and can be accessed online at the following link:

[Supplier-Code-of-Conduct-EN](http://www.schwancosmetics.com/fileadmin/supplier/Supplier-Code-of-Conduct-EN.pdf)

([www.schwancosmetics.com/fileadmin/supplier/Supplier-Code-of-Conduct-EN.pdf](http://www.schwancosmetics.com/fileadmin/supplier/Supplier-Code-of-Conduct-EN.pdf))

## **17. Limitation Period**

17.1 Mutual claims of the contracting parties become time-barred in accordance with the statutory provisions, unless otherwise specified below.

17.2 Contrary to § 438 para. 1 no. 3 BGB, the general limitation period for defect claims is 3 years from the transfer of risk. If acceptance is agreed, the limitation period begins with acceptance. The 3-year limitation period also applies accordingly to claims arising from legal defects, whereby the statutory limitation period for third-party claims for restitution (§ 438 para. 1 no. 1 BGB) remains unaffected; claims arising from legal defects do not become time-barred as long as the third party can still assert the right against us - in particular due to the lack of limitation.

17.3 The limitation periods of sales law, including the above extension, apply - to the statutory extent - to all contractual defect claims. If we are also entitled to non-contractual claims for damages due to a defect, the regular statutory limitation period (§§ 195, 199 BGB) applies, unless the application of the limitation periods of sales law leads to a longer limitation period in individual cases.

17.4 Upon receipt of our written notice of defects and request for discussion (in writing or orally) by the supplier, the limitation period for warranty claims is suspended until the supplier has finally and unequivocally dealt with these discussions. In the case of replacement delivery and rectification of defects, the warranty period for replaced and rectified parts begins anew, unless we had to assume from the supplier's behavior that they did not consider themselves obliged to take the measure, but only carried out the replacement delivery or rectification of defects for reasons of goodwill or similar reasons.

## **18. Place of Performance**

The place of performance for all services is the shipping address specified by us; for payments, it is generally Heroldsberg. If the place of destination is not specified and nothing else is agreed, delivery

must be made to our business address in Heroldsberg. The respective place of destination is also the place of performance (obligation to bring).

**19. Jurisdiction**

The place of venue for all claims arising from the business relationship is Nuremberg. However, we are also entitled to sue the supplier at the court of their place of business or residence.

**20. Law**

The contractual relationship is governed by German law. The applicability of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is expressly excluded. The prerequisites and effects of the retention of title are subject to the law at the respective storage location of the item, insofar as the choice of law in favor of German law is inadmissible or ineffective.

**21. Severability Clause**

Should one or more provisions of these conditions be or become invalid, the validity of the remaining provisions shall not be affected. An invalid provision of these conditions shall be replaced by the valid provision that comes closest to the economic result of the invalid provision.

Status: November 2024