

## **General Terms and Conditions of Purchase of Schwan-STABILO Cosmetics GmbH & Co. KG, Schwanweg 1, 90562 Heroldsberg, Germany**

### **1. Scope of validity**

**1.1** Our General Terms and Conditions of Purchase (GTC) apply to all business relations with our suppliers, to the extent that they are entrepreneurs pursuant to Sec. 14 of the German Civil Code (BGB), are legal persons governed by public law or have funds under public law.

**1.2** The GTC shall apply in particular to contracts for the sale and/or delivery of movable property (hereinafter referred to as "goods"), irrespective of whether the supplier manufactures the goods itself or purchases them from subcontractors (Sec. 433, Sec. 651 BGB) and to contracts on services to be provided by the supplier. Our GTC, as amended from time to time, shall also apply as basic conditions to future contracts for the sale and delivery of movable property with the same supplier, without any need to refer to them in each individual case. The GTC are available in their current version on our homepage.

**1.3** Our GTC shall apply exclusively. Deviating, contradictory, or supplementary terms from the supplier shall become a component of the contract only if and to the extent that we have expressly consented to their validity in writing. This consent requirement applies in any case, even if we accept the delivery by the supplier unconditionally in the knowledge of supplier terms that are contradictory to or deviate from our GTC.

**1.4** All orders, as well as agreements, made between us and the supplier in the execution of the delivery or service contract, require the text form as defined in Sec. 126 b BGB. Amendments, supplementary agreements, and additions also require the text form. Legally relevant declarations and notifications, e.g. deadlines, reminders, etc. from the supplier after conclusion of the contract shall also require the text form to be effective.

**1.5** References to the validity of statutory provisions are for clarification purposes only. Even without a clarification of this kind, the statutory provisions shall therefore apply insofar as they are not directly modified or expressly excluded in these GTC.

**1.6** Should a provision of these terms be or become invalid, this shall not affect the validity of the remaining provisions.

### **2. Conclusion of contract**

**2.1** Our order shall be deemed binding at the earliest with our confirmation. Depending on the agreement, this can be done in writing, by e-mail, by electronic data interchange (EDI) or via our supplier portal (SUS). The supplier must inform us without delay of obvious errors (e.g. spelling errors and miscalculations) and incomplete orders, including the order documents, for the purpose of correction or completion before acceptance; otherwise, the contract shall be deemed not concluded.

**2.2** The supplier is obliged to confirm our order in writing within a period of 3 working days (Monday-Friday) or to carry it out without reservation by sending the goods (acceptance).

**2.3** A late acceptance shall be considered to be a new offer and require explicit acceptance by us.

**2.4** In the case of printed documents, it is imperative that a proof sheet be presented and approved by us. Should any changes be necessary, the corrected copy must be submitted again and approved by us.

### **3. Delivery time, delay in delivery**

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

**3.2** The delivery date is complied with if the delivery has been received by us at the indicated point of receipt by the end of the delivery date, or if the shipment has been suspended at our request and the readiness for dispatch has been indicated.

**3.3** The supplier is obliged to notify us in writing without delay if circumstances arise or become apparent to them that show that the delivery date cannot be complied with. In the event of a delay in delivery, we are entitled to the statutory claims, in particular, to rescission and compensation. In particular, we are entitled to claim compensation for delay or, after fruitless expiry of a reasonable period, damages instead of performance.

**3.4** If the supplier is in arrears, we can demand a contractual penalty in the amount of 1% of the net price per completed calendar week, but not more than a total of 5% of the net price of the delayed goods / service. If the delay has caused us a higher loss, we reserve the right to claim this. Any paid contractual penalties shall be charged against such damage claims. If we accept the delayed service, we must claim the contractual penalty at the latest with the final payment. The supplier shall have the right to prove that we have suffered no or only minor damages.

**3.5** We shall only accept partial deliveries if these have been previously expressly agreed with us, in writing or in electronic form.

#### **4. Delivery conditions, default of acceptance**

**4.1** Unless otherwise agreed in writing or in electronic form, the delivery shall be effected DDP within the European Union (Incoterms 2010) and DAP outside the European Union (Incoterms 2010). If the destination is not specified and nothing else has been agreed upon, the delivery must be made to our place of business in Heroldsberg, Germany. The respective place of destination is also the place of performance (obligation to provide).

**4.2** The supplier is obliged to indicate our order number, article description, exact description of the items, and their individual weights or dimensions on all dispatch documents and delivery notes. If delivery notes or dispatch documents are missing or incomplete and we are therefore unable to assign the delivery, we are entitled to refuse acceptance. All costs arising therefrom shall be borne by the supplier. In addition, our terms of delivery shall apply as amended from time to time.

In the case of 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 shall send us a shipping notice.

**4.3** The supplier is not entitled, without our prior written consent, to render the service they owe through third parties (e.g. subcontractors). The supplier shall bear the risk of procurement for their services, unless it is a single-item production.

**4.4** The risk of the accidental loss and accidental deterioration of the goods shall pass to us upon transfer at the place of performance. If acceptance has been agreed upon, this shall be decisive for the transfer of risk. In all other respects, the statutory provisions of work contract law shall also apply *mutatis mutandis* in case of acceptance.

**4.5** The statutory provisions shall apply to the occurrence of our default of acceptance. However, the supplier must also explicitly offer us their service if a specific or determinable calendar period has been agreed upon for an action or cooperation on our part (e.g. provision of material). If we go into default of acceptance, the supplier may, in accordance with the statutory provisions, demand compensation for their extra costs (Sec. 304 BGB). If the contract relates to an unacceptable item to be manufactured by the supplier (single-item production), the supplier shall only be entitled to further rights if we are obliged to cooperate and are responsible for the failure to cooperate.

**4.6** Unless otherwise agreed, the supplier shall arrange the relevant transport insurance.

#### **5. Prices, payment terms**

**5.1** The price stated in the order is binding. The price shown in the order is exclusive of value added tax.

**5.2** Unless otherwise agreed upon in writing, the price includes all services and ancillary services (e.g. assembly, installation) as well as all ancillary costs (e.g. proper packaging, transport costs including possible 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 these contain the statutory order details, as well as the correct order number and the correct invoice address according to the specifications in our order. The supplier shall be responsible for all consequences resulting from non-compliance with these obligations, unless they can prove that they are not responsible for this.

**5.4** Receivables from directing, repairs, assembly, installation, maintenance, etc. shall only be recognized if a written and signed verification (direction, repair, maintenance slip) is provided for this purpose.

**5.5** Unless otherwise agreed in writing, we will pay the purchase price within 14 calendar days, calculated from the date of receipt of invoice, with 3% cash discount or within 30 calendar days net. We shall only go into default of payment if the supplier has given us an express written warning in writing after the due date.

**5.6** We reserve the right to offset and right of retention within the limits of statutory regulations.

**5.7** The supplier is entitled to the right to offset and right of retention only on the basis of legally binding or uncontested counterclaims.

**5.8** The supplier may assign their existing claims only with our written consent. Entry by third parties, unless agreed in writing with us, is excluded.

**5.9** The parties agree that invoicing shall take place electronically as defined in Sec. 14, Sec. 15 of the German Value Added Tax Act (UStG). The supplier shall submit invoices to the central e-mail address Invoice-SSC@Schwan-STABILO.com.

## **6. Quality and documentation**

**6.1** The supplier shall comply with the recognized technical rules, safety regulations, agreed-upon instructions, and technical specifications for their deliveries and services. Changes to the delivery or service item shall require our prior written consent.

**6.2** In the case of deliveries of goods where the supplier is aware that they have come into contact with other products, the supplier shall provide an assurance that the goods comply with the applicable and currently effective cosmetic regulations.

**6.3** The supplier shall undertake to agree on the nature and extent of the tests, as well as the test equipment and methods, with us before the order is placed. If the nature and extent of the tests, as well as test equipment and methods, have not been firmly agreed upon between the parties, we are willing within the scope of our knowledge, experience and capabilities to discuss, at the supplier's request, the testing with them in order to present the necessary state of the testing technology.

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

## **7. Conformity and safety standards**

The supplier shall guarantee that all goods and services conform to the respective and applicable legal provisions and requirements recognized in Germany and the EU. In particular, compliance with the valid EU directives and EU regulations, the applicable DIN standards, as well as the German accident prevention and occupational safety regulations, and, where appropriate, having the corresponding labels and/or certificates of conformity, such as CE.

## **8. Investigation for defects and warranty**

**8.1** The statutory provisions apply to our rights in case of material and legal defects in the goods and services, including improper and short deliveries, as well as improper assembly, defective assembly, operating, or instruction manuals, and in the event of other breaches of duty by the supplier, provided nothing else is stipulated in the following.

**8.2** In accordance with statutory provisions, the supplier shall be liable in particular for the fact that the goods have the agreed-upon properties upon transfer of risk. Effective as an agreement on quality are all product descriptions designated as a consistency agreement that are included in the contract or have become part of the contract relationship in the manner of the GTC. It is irrelevant whether the product description comes from the supplier or from us.

**8.3** The statutory provisions (Sec. 377, Sec. 381 of the German Commercial Code, HGB) shall apply to the commercial obligation to inspect and to notify, with the following proviso: Our obligation to inspect is limited to deficiencies that are revealed during our incoming goods inspection under external assessment, including the delivery documents, as well as during our

quality control in the sampling procedure (e.g. transport damage, incorrect delivery and short delivery).

In addition, it is a matter of the extent to which an investigation is feasible in light of the circumstances of the individual case after the proper course of business.

**8.4** The warranty period is 24 months from the complete delivery of the goods and/or service, or acceptance of the goods and/or service.

**8.5** If the supplier fails to fulfill their obligation to supplementary performance – at our option by removing the defect (later improvement) or by delivering a defect-free item (replacement delivery) – within a reasonable period set by us, we can eliminate the defect ourselves and require that the supplier provide compensation for the necessary expenses or a corresponding advance. If the supplementary performance by the supplier fails or is unacceptable to us (e.g. due to a special urgency, hazard to operational safety, or the threat of disproportionate damage), no deadline is required; the supplier shall be informed thereof.

## **9. Product liability**

**9.1** The supplier shall be liable for ensuring that the delivered goods meet the agreed product specifications, the current legal requirements, as well as the customary quality standards and, in addition, are free from defects or errors as defined in the German Product Liability Act (ProdHaftG).

**9.2** If the supplier is responsible for a product defect, they are obligated to indemnify us from claims to damages by third parties upon first demand if the cause is placed within their domain and organizational area and if they are liable in the external relationship itself. In the case of raw materials and primary packaging material, the supplier shall guarantee the complete traceability of the respective products to the starting material.

**9.3** The supplier's obligation to indemnify is applicable to all expenses, pursuant to Sec. 683, Sec. 670 BGB as well as Sec. 830, § 840, § 426 BGB, or in connection with a claim by third parties, including recall campaigns carried out by us. We shall inform the supplier about the content and extent of recalls – to the extent possible and reasonable – and give them the opportunity to comment. Any further statutory claims shall remain unaffected.

**9.4** If the supplier supplies products that are used in our products, the supplier must conclude and maintain product liability insurance in an appropriate amount for personal injury and property damage. The supplier shall provide proof of the conclusion and maintenance of this insurance at our request. If we are entitled to further damages claims, these shall remain unaffected.

## **10. Supplier recourse**

**10.1** Our statutory claims to recourse within a supply chain (supplier recourse pursuant to Sec. 478, § 479 BGB) are granted to us unconditionally, in addition to the deficiency claims. In particular, we are entitled to demand exactly the type of supplementary performance (subsequent improvement or replacement delivery) from the supplier which we owe to our customer in individual cases. This does not limit our statutory right to choose (Sec. 439 (1) BGB).

**10.2** Before we acknowledge or fulfill a defect claim asserted by our customer (including the reimbursement of expenses pursuant to Sec. 478 (3), Sec. 439 (2) BGB), we shall notify the supplier and ask for a written statement, subject to a brief statement of the facts. If the statement is not made within a reasonable period and/or if no amicable solution is achieved, the defect claim actually granted by us shall be owed to our customer; the supplier shall be responsible in this case to provide proof of the contrary.

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

## **11. Compliance, minimum wage law**

**11.1** The supplier is aware of our Code of Conduct in the latest version. By acknowledging the Code of Conduct, the supplier undertakes to comply fully with the regulations set out therein. The current version of the Code of Conduct will be sent upon request.

**11.2** If the supplier provides services for us, they are obliged to comply with the provisions of the Act Regulating a General Minimum Wage (“MiLoG”), in particular the obligation to pay the minimum wage. In the event that the supplier commissions subcontractors with our consent, the supplier shall also oblige these subcontractors to comply with the provisions of the MiLoG. The supplier shall indemnify us from claims from third parties resulting from a violation of the MiLoG by the supplier or commissioned subcontractor.

**11.3** At our request, the implementation of the Code of Conduct as well as compliance with the MiLoG shall be demonstrated by the supplier.

**11.4** If the supplier violates these specifications and if they do not remedy the violation within a reasonable period set by us, we are entitled to withdraw from the entire contract without observing a deadline.

## **12. Export control and customs**

### **12.1 Security in the supply chain**

The supplier shall provide the necessary organizational instructions and measures, in particular in the areas of property security, business partner, staff and information security, packaging and transport, in order to ensure security in the supply chain in accordance with the requirements of corresponding internationally recognized initiatives based on the WCO SAFE Framework of Standards (e.g. AEO, C-TPAT). They shall protect their deliveries and services to us or to third parties, which we designate, against unauthorized access and manipulation. They shall use only reliable staff for such deliveries and services, and require any subcontractors to take appropriate measures.

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

### **12.2 Reservation clause**

The fulfillment of the contract on our part is subject to the proviso that there are no obstacles to fulfillment 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 external 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 notify us without delay, in writing, at the latest two weeks after the order has been placed, of all information and data which we need to comply with foreign trade law in the case of 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 number of goods according to the current classification of foreign trade statistics and the HS (Harmonized System) code;
- the country of origin (non-preferential origin) and, if requested by us, supplier declarations on the 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 which result from this, unless the supplier is not responsible for the breach of duty.

## **13. Property rights**

**13.1** The supplier shall guarantee that in connection with their delivery or services rendered no rights of third parties, in particular 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 “property rights”) are violated during contractual use, and that such use is independent of rights of third parties.

**13.2** The supplier undertakes to indemnify us and our customers upon first request from any claims by third parties made against us or our customers in connection with the contractual use of the deliveries and services provided by the supplier, and to indemnify us against any damage caused to us by reason of the claim by the third party, including any court or legal costs incurred for legal defense. Otherwise, the statutory provisions shall apply.

**13.3** The above shall not apply insofar as the supplier has manufactured the delivered goods identically according to drawings, models, or other equivalent data supplied by us.

**13.4** The supplier acknowledges that all property rights to deliverables, including research and development work resulting from the deliverables, created and/or embodied in their use are transferred to us completely and without limitation, including all conceivable legal positions in ideas, drafts, and designs at the time of their creation.

The supplier hereby assigns all rights to the deliverables and all property rights to us. We hereby accept this transfer.

**13.5** In the event that the transfer of rights provided for in section **13.4** is not effective according to the applicable law, in particular with regard to copyright, the supplier shall hereby grant us a comprehensive, exclusive, spatially and temporally unlimited right of use to the deliverables and/or property rights for all types of use. Insofar as it is possible under applicable law, the supplier hereby unconditionally and irrevocably relinquishes all moral rights which are based on already existing or future deliverables, including the right to name credit and the ban on distortion.

**13.6** The transfer or granting of rights includes in particular the right to exploit the deliverables for our own or third-party purposes in any way worldwide and for an indefinite period, including the utilization in and on products, whether for others or for third parties, in all types of use. It also includes the right to reproduce and/or publish the deliverables. The rights also include processing rights, i.e. the right to further process the deliverables or to have them processed further by a third party.

**13.7** The supplier undertakes to promptly provide all documents at our request, and to provide any assistance which is, at our discretion, necessary to acquire the rights to the deliverables, as well as the other property rights arising from or resulting from the deliverables and/or to register such property rights.

**13.8** The aforementioned transfers of rights and the granting of rights of use are fully settled with the agreed remuneration of the supplier.

**13.9** The supplier shall ensure that the granting and transfer of rights is in no way inconsistent with any existing obligation on their part. They shall ensure that their freelance and permanent employees or other third parties who have been appointed by them – in their own name or by a third party – have transferred or will transfer the rights of use required for the realization of the respective projects to them or us or have granted or will grant the same to them or directly to us in accordance with the above regulations, to the extent to which these rights have to be transferred or granted to us by the supplier. This includes the waiver of the right to originator name credit or other moral rights, as well as the unrestricted use of – inventions made by their employees that can be patented or registered as utility models. On request, the supplier is obliged to disclose the corresponding agreements.

#### **14. Retention of title**

**14.1** We reserve all rights of ownership and copyrights to the materials, illustrations, plans, drawings, calculations, execution instructions, product descriptions, and other documents and tools (hereinafter referred to as “provided parts”). Processing, handling, or transformation by the supplier shall be done for us.

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

**14.3** If parts we supply are processed with other items not belonging to us by the supplier or a third party commissioned by the supplier, we shall acquire the co-ownership of the new item in

proportion to the value of our parts ordered (purchase price plus VAT) to the other processed items at the time of processing.

**14.4** If parts we supply are inseparably mixed with other items not belonging to us, we shall acquire the co-ownership of the new item in proportion to the value of the supplied parts (purchase price plus VAT) to the other mixed items at the time of the mixing. If the mixing is carried out in such a way that the supplier's item is to be regarded as the main item, then it is agreed that the supplier shall transfer to us proportionate co-ownership; the supplier shall keep the sole proprietorship or co-ownership for us.

**14.5** The transfer of ownership of the goods to us shall be absolute and independent of the payment of the purchase price. If, however, we accept an offer by the supplier for transfer of ownership as a result of the purchase price payment, an agreed-upon retention of title by the supplier shall expire at the latest upon payment of the purchase price for the delivered goods or service rendered. In the course of the normal course of business, we shall remain authorized to sell the goods before payment of the purchase price, subject to advance assignment of the resulting claim. This excludes all other forms of retention of title, in particular the extended, forwarded retention of title extended by the supplier to further processing.

**14.6** We shall acquire at the minimum an expectant right or sole or co-ownership of models, matrices, templates, samples, tools, and other means of production for which we pay in whole or in part, according to the amount of financing provided by us, . The transfer shall be replaced by a custodial relationship which entitles the supplier to possession. The supplier shall bear the costs of maintenance and renewal, as well as the risk of loss and deterioration. Without prior written consent, our production equipment may neither be destroyed nor sold, pledged, surrendered as security or passed on, nor may it be otherwise disposed of.

## **15. Nondisclosure**

**15.1** The supplier is obliged to keep strictly confidential all received parts and illustrations, drawings, calculations, recipes, and other documents and information. They shall immediately return the above to us upon request after handling inquiries or processing orders. The above must be kept secret from and not made accessible to third parties without our express consent. The obligation to secrecy continues to apply even after the execution of this contract. It shall expire only if and to the extent that the contents contained in the delivered documents have become demonstrably publicly known.

**15.2** The above provision shall apply *mutatis mutandis* to materials, parts, tools, and means of production, etc., which we provide.

## **16. Data protection**

Personal data relating to the contractual relationship are stored for the purpose of data processing (Sec. 28 Federal Data Protection Act (BDSG)).

## **17. Statute of limitations**

**17.1** Reciprocal claims by the contracting parties shall be statute-barred according to the statutory provisions, unless otherwise stipulated in the following.

**17.2** Notwithstanding Sec. 438 (1) no. 3 BGB, the general limitation period for deficiency claims shall be 3 years from the transfer of risk. If an acceptance is agreed upon, the limitation shall begin with the acceptance. The 3-year limitation period shall apply *mutatis mutandis*, also for claims from legal deficiencies, whereby the statutory period of limitation for in rem rights to surrender on the part of third parties (Sec. 438 para. 1 no. 1 BGB) shall remain unaffected; in no event shall claims arising from legal defects become statute-barred as long as the third party is able to assert the rights against us – especially in the absence of a statute of limitations.

**17.3** The limitation periods of the purchase right, including the preceding renewal, shall apply – within the limits of statutory regulations – to all contractual deficiency claims. Insofar as we are entitled to non-contractual claims to damages due to a defect, the regular statutory limitation period (Sec. 195, Sec. 199 BGB) shall apply, unless the application of the limitation periods of purchase law leads to a longer period of limitation in individual cases.

**17.4** Upon receipt of our written notification of defects and a request for discussion (written or oral) with the supplier, the statute of limitation for warranty claims shall be suspended until these discussions have been dealt with finally and clearly by the supplier. In the case of a replacement delivery and elimination of the defect, the warranty period for replaced and reworked parts shall begin again, unless we had to assume from the supplier's conduct that the supplier did not consider themselves obliged to take such action, but instead made the replacement delivery or eliminated the defect only for reasons of good faith or similar reasons.

#### **18. Place of performance**

The place of performance for all services shall be the shipping address stated by us; for payments, Heroldsberg, Germany. If the destination is not specified and nothing else has been agreed upon, the delivery must be made to our place of business in Heroldsberg, Germany. The respective place of destination is also the place of performance (obligation to provide).

#### **19. Place of jurisdiction**

The place of jurisdiction for all claims resulting from the business relationship shall Nuremberg, Germany. However, we are also entitled to sue the supplier at the courts of their place of business or residence.

#### **20. Law**

German law shall apply for the contractual relationship. The applicability of the United Nations Convention on the International Sale of Goods (UN purchase law) is expressly excluded. The prerequisites and effects of the retention of title are subject to the law at the respective place of storage 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 terms be or become invalid, the validity of the remaining provisions shall remain unaffected. An ineffective provision of these terms shall be replaced by the effective provision closest to the invalid provision in its economic results.

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