

## **GTC of Tojo Cosmetics GmbH**

### **§ 1 Purview – General terms and conditions**

(1) The business relations between Tojo Cosmetics GmbH and the customer will be governed solely by the general terms and conditions (GTC) below in the version valid at the time of ordering.

(2) Hereby, any GTC on the part of the customer which differ from, oppose to or supplement these GTC are contradicted. The general terms and conditions of Tojo Cosmetics GmbH are valid even if Tojo Cosmetics GmbH should deliver our services to the customer unreservedly and in knowledge of the customer's contradicting, deviating, or supplementing terms and conditions.

The parties have not made any verbal collateral agreements. Different or collateral agreements require written consent by Tojo Cosmetics GmbH.

(3) The establishment of contact to Tojo Cosmetics GmbH involves the acceptance of these GTC.

(4) These GTC are binding with backdating effect with regard to existing contacts and customers.

### **§ 2 Terms of payment**

(1) In special cases, we reserve the right to deliver our goods only after payment of a deposit amounting to the complete order value. That procedure, in particular, applies to companies to which Tojo Cosmetics GmbH has not yet established business relations or companies which have unsettled accounts already in the dunning process at the time of receipt of order. We will inform the customer in good time in advance and coordinate things.

(2) Providing there are no other agreements, we deliver on open account. The payment of the amount of the invoice is due on the date given and has to be paid without deduction and expenses to the account of Tojo Cosmetics GmbH.

(3) The customer falls into arrears with the payment on expiry of 7 days after the date of invoice, without a reminder for payment.

(4) If the customer does not honour his obligation to pay, completely or partly, from the time of occurrence of default, he has to pay interest for default of eight percent annually over the base rate p.a. set by the European Central Bank, providing Tojo Cosmetics GmbH does not establish proof of a higher damage. Furthermore, the statutory provisions regarding the consequences of default of payment do apply.

(5) Any deductions from the amount of invoice are inadmissible. In case of justified complaints, Tojo Cosmetics GmbH will issue a credit. In any case, the amount given on the invoice has to be paid.

(6) In case the customer stops payment, announces not to pay, decides on his own to pay issued invoices at a later time, or in case of excessive debts, insolvency proceedings or if the customer is in arrears with due bills for payment, all receivables of Tojo Cosmetics GmbH will be due and payable immediately. In such cases, Tojo Cosmetics GmbH is entitled to demand the provision of securities or to rescind the contract.

(7) The period allowed for payment is deemed to be kept when the amount is available to Tojo Cosmetics GmbH within the period.

(8) The right of retention is excluded, unless the customer's counterclaim results from the same contractual relationship and is indisputable and has been established in law.

The commercial right of retention on the base of § 369 HGB (German commercial code) is excluded.

Tojo Cosmetics GmbH is entitled to avert the execution of the right of retention by the provision of securities – or guaranty.

(9) There is no right of reimbursement of delivered services at any time.

(10) The quotation of prices and services or other statements and promises made by Tojo Cosmetics GmbH is binding only when given in writing or after confirmation.

(11) Tojo Cosmetics GmbH is entitled to assign invoices of our customers without prior notice to the customer (factoring, non-notification factoring etc.).

### **§ 3 Terms of delivery / Right of revocation**

(1) Partial deliveries are permissible.

(2) Tojo Cosmetics GmbH is not obliged to deliver promptly if we have informed about a certain offer period or a delivery time.

The details of delivery time are not binding, unless, by way of exception, a fix date of delivery has been agreed.

(3) In case Tojo Cosmetics GmbH, through no fault of our own, is not able to deliver the ordered goods punctually because third parties (suppliers etc.) do not fulfill their contractual obligations towards Tojo Cosmetics GmbH, Tojo Cosmetics GmbH with respect to the customer is entitled to rescind the contract. In that case, the customer is informed promptly that the ordered product is not available. The legal claims of the customer remain unaffected.

(4) Complaints about delivery of goods must be made within 3 days after delivery and include a proof (complaint letter, picture documentation, sending some samples complained about).

(5) Unless otherwise agreed, the goods are shipped as insured dispatch.

(6) Unless otherwise agreed, the revocation of costs accumulated by then has to be based on evidences.

#### **§ 4 Passing of risk**

The risk of the disappearance of the goods passes to the customer in the moment of dispatch by Tojo Cosmetics GmbH or the transfer of the goods to a forwarding agent.

#### **§ 5 Liability for defects**

(1) In case the purchased item has any defects, the legal provisions of §§ 434 ff. BGB (German civil code) do apply. The assignment of claims for defects by the customer is excluded.

(2) Obvious defects, e.g. material or production faults, have to be announced to Tojo Cosmetics GmbH within a period of 3 days from delivery. If the announcement is not made within that period, material defect rights expire. The announcement must include the date, pictures of the defective delivery, products of the defective delivery and a description of the sort of the delivery of goods.

(3) In case the purchase is a commercial transaction for both parties, the customer has to inspect the goods immediately after receipt, providing that is feasible in the course of ordinary business. If defects are detected, the customer must immediately inform Tojo Cosmetics GmbH.

If the customer does not give any information, the goods are considered accepted. Furthermore, the §§ 377 ff. HGB (German commercial code) do apply for the commercial segment.

(4) The material defect claims, in accordance with the decision made by Tojo Cosmetics GmbH, are limited to the repair of the defect or the delivery of a faultless product (supplementary performance). In case the chosen sort of supplementary performance fails, the buyer has the right to reduce the payment or to rescind the contract.

(5) If a supplementary performance has been done in course of the replacement delivery, the buyer is obliged to return the goods delivered initially to Tojo Cosmetics GmbH within 30 days at the expense of Tojo Cosmetics GmbH. The return of the defective goods must be in compliance with the legal provisions of §§ 439 paragraph 4, 346 to 348 BGB (German civil code). Tojo Cosmetics GmbH reserves the right to claim damages in accordance with statutory provisions.

## **§ 6 Liability for damages**

(1) The liability of Tojo Cosmetics GmbH is limited to breaches of contractual obligations, intentional offences, and gross negligence. That does not apply to the injury of life, body or health of the buyer, claims due to the violation of substantial obligations (essential obligations) and compensation for damages due to delays (§286 BGB). Insofar Tojo Cosmetics GmbH is liable irrespective of the degree of fault.

(2) The exclusion of liability mentioned before also applies to slightly negligent breaches of obligations on the part of agents of Tojo Cosmetics GmbH.

(3) If a liability for damages not caused by injury of life, body or health of the buyer cannot be excluded for slight negligence, such claims lapse within one year from the creation of the claim or, with regard to claims for damages due to defects, from the time of delivery of the goods.

(4) In case Tojo Cosmetics GmbH negligently violates an essential obligation of the contract, the duty to compensate damages is limited to the typical damages to be expected.

## **§ 7 Retention of title**

(1) The delivered goods continue to be the possession of Tojo Cosmetics GmbH until the customer has fulfilled all existing present and future obligations in connection with the delivered goods. Mortgaging or security transfer of the conditional goods is inadmissible.

(2) The customer – within the bounds of the ordinary conduct of business – in the case of resale of conditional goods of Tojo Cosmetics GmbH, by way of security, already now and until complete repayment assigns all future obligations of the transfer emerging towards the customer in future from reselling or renting out. Thereby, later particular explanations become unnecessary.

The assignment includes also balance claims resulting from the existence of current account relationships or the termination of such relationships of the customer with the customer's clients. If the conditional goods are resold or rented out together with other goods without agreeing a special price for the conditional goods, the customer gives the supplier priority over other obligations and assigns to the supplier the percentage of the total amount or the total rent corresponding to the amount of the conditional goods invoiced by Tojo Cosmetics GmbH.

The customer is authorized to collect the transferred obligations from reselling or renting out until revoked. The customer, however, is not authorized to use them in other ways, e.g. assignment. At Tojo Cosmetics GmbH's request, the customer must announce the assignment and make available to Tojo Cosmetics GmbH the documents, e.g. invoices, and the information necessary to enforce our right against

the customer. If the customer, because of the authorization to collect the assigned obligations from the resale, receives bills, the assets of the bills with the vested rights pass to Tojo Cosmetics GmbH by way of security.

The transfer of the bills is replaced by the agreement that the customer takes them into custody for the supplier and thereupon promptly and after endorsement passes them to Tojo Cosmetics GmbH.

3) The customer must inform Tojo Cosmetics GmbH immediately about execution proceedings by third parties seizing the conditional goods and make available the documents needed for intervention; that also applies to other impairments. In any case, the customer must inform third parties about the existing rights to the goods.

4) In case the amount of security exceeds the claims of Tojo Cosmetics GmbH against the customer from the current business relationship by more than 20%, Tojo Cosmetics GmbH at the customer's request is obliged to release securities entitled to us.

## **§ 8 Form of declarations**

Legally relevant declarations and notifications, which have to be submitted by the customer towards the user or a third party, require writing even in case of waiver of statutory written form.

## **§ 9 Additional provisions**

(1) Test material is delivered only on a binding basis without the right of return on the part of the customer. Returns which have not been accepted by Tojo Cosmetics GmbH are sent back to the customer at the customer's expense. Accepted returns are credited for a handling charge of 15% of the price originally agreed.

(2) These GTC are available in German and English. In case of doubt, the German version is binding.

## **§ 10 Data storage – Data protection - Credit check**

(1) In accordance with § 28 Federal data protection act (BDSG) and § 3 paragraph 1 and 2, § 5 paragraph 1 and § 6 paragraph 1 German act on protection of data in telecommunication services (TDDSG) the data required in the course of business activities are processed and stored by means of an EDP system. It complies with the most recent regulation. More information under:

<https://www.Cosactive.de/kontakt/datenschutz/> .

(2) All personal data are kept confidential.  
Data required for business activities are stored.

(3) In establishing contact and ordering, the customer accepts the storage of his data. At any time, he is allowed to view his data or to have them erased.

## **§ 11 Place of performance and jurisdiction**

(1) The place of jurisdiction is the district court Pinneberg. That is also the place of jurisdiction if the customer at the time of initiation of legal proceedings has no place of general jurisdiction in the Federal Republic of Germany. The customer, however, is entitled to go to any court of competent jurisdiction.

(2) The laws of the Federal Republic of Germany have validity with the exception of the UN law on international sales.

(3) If a provision of these GTC is ineffective, the ineffectiveness applies to the complete provision. The ineffective provision is replaced by the legal regulations. Other provisions are not concerned, providing they are different from the ineffective provision; their validity is unaffected.

If a provision becomes ineffective, the rest of the contract continues to be valid.

## **§ 12 Secrecy**

(1) Each customer of Tojo Cosmetics GmbH is obliged to keep secrecy concerning all business or operating processes that become known to him due to the cooperation with Tojo Cosmetics GmbH and he is obliged not to pass them on to any third parties.