

## General Terms of Business

Kohne thanks you for your order, which is accepted exclusively according to the printed General Terms of Business.

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### § 1 Scope of application

1. These General Terms of Business apply exclusively for all business transactions with clients and purchasers (hereinafter referred to as "**Clients**"). Terms of business of the **Client** which contradict or deviate from our General Terms of Business will only be accepted with our explicit, written consent. Otherwise, the application of terms other than our General Terms of Business, regardless of whether we have been informed of these, or other deviating terms for works or services which are performed for the **Client** or the acceptance of payments or services are rejected.
2. These General Terms of Business also apply for all future business with the **Client**, if, and insofar as no new or revised General Terms of Business have come into effect.
3. These General Terms of Business apply in addition to individual contractual agreements and statutory regulations. In case of doubt, individual agreements which deviate from these General Terms of Business have priority. However, this does not imply that the General Terms of Business are revoked or are invalid in their entirety.
4. The **Client** declares his agreement with the validity and application of these General Terms of Business with his utilisation of services by **Kohne**. No further consent is required.

### § 2 Offers and conclusion of contract

1. If an offer is deemed to be an order within the meaning of Art. 145 BGB (German Civil Code), **Kohne** may accept this within two weeks. With the issue of the order, the **Client** is bound to the said order. **Kohne** is not obliged to accept an order. Furthermore, the fiction of an acceptance also does not apply. An order does not need to be refused in writing.
2. Business transactions only become binding for both parties if they have been confirmed in writing. A confirmation by e-mail shall also be deemed to be a confirmation.

### § 3 Scope of the contract

1. **Kohne** provides a service. Therefore, no success is owed, unless this is otherwise specifically agreed. **Kohne** provides the service to the best of its knowledge and belief. None of the All details and statements in catalogues, brochures, Internet pages, e-mails or which are given in consultations shall constitute a warranty with regard to the success and application of the results, unless such a warranty has been explicitly stated.
2. The **Client** is obliged to examine the suitability of services, products and recommendations from **Kohne** for further use, in consideration of statutory and official regulations, unless it is explicitly agreed that the final responsibility lies with **Kohne**.
3. The terms and regulations at the time of conclusion of the contract apply. If legal or statutory regulations should change during the provision of the service, **Kohne** shall endeavour to perform the service in accordance with the amended regulations, insofar as **Kohne** should have been aware of these. Any extra expense which is incurred due to this shall be borne by the **Client**. **Kohne** shall not be held responsible if statutory regulations change after conclusion/completion of the service.
4. Both parties are obliged to mutually inform each other of outline conditions and changes of which they are or may become aware.

#### § 4 Documents/property which are handed over, Declarations

1. **Kohne** shall retain the ownership and copyright of all documents (e.g. calculations, cost estimates) which are handed over to the **Client** in association with the placing of the order. These documents must not be made accessible to third parties unless **Kohne** has granted its explicit written permission to the **Client** to do so. If **Kohne** should not accept an order from the **Client** within a period of 2 weeks (see also § 2) at the discretion of **Kohne**, these documents must be returned immediately or destroyed or deleted. This applies in particular if the documents are provided to the **Client** in electronic form.
2. The **Client** is obliged to provide all of the declarations and documents which are necessary for the provision of the service in good time. Delays in proceedings and any disadvantages resulting from these shall be borne by the **Client**.

#### § 5 Fulfilment of order / Price adjustment

1. In principle, the service will be provided as agreed with the **Client**. If other or changed work than that which is agreed with the **Client** becomes necessary for the fulfilment of the contract due to missing or incorrect information, **Kohne** shall be entitled to perform this other or changed work if this demonstrably does not result in a price increase in excess of 10% and/or it is no longer possible to achieve a consensus due to imminent danger.
2. Necessary changes, which are reasonable for the **Client** and which are not to his disadvantage may be made by **Kohne** without prior agreement.

#### § 6 Prices and payment

1. Unless otherwise agreed in writing, the **Kohne** prices as stated in the cost estimate which is offered to the **Client** shall apply, plus the applicable VAT as stated. In the absence of an agreement for services for whatever reason, an hourly rate of €180 net shall apply.
2. **Kohne** shall be entitled to demand a reasonable advance payment, which can amount to up to 30% of the (estimated) contract value.
3. The prices only relate to the services which are offered, and do not include costs for translations, shipping, literature, expenses, travel and accommodation expenses, material costs and fees which are levied by the responsible authorities, other expenses for the provision of services by third parties (e.g. certification and translation costs, etc.) costs and expenses for necessary legal consultation, travel expenses or costs and expenses for presentations on site.
4. Travel time will be charged at €80/hr.
5. Administration fees to the amount of €50 will be charged for the services of third parties, if these invoices are submitted after the completion of the project.
6. Payments must only be made to the account which is nominated by **Kohne**. Deduction of a cash discount is not permitted. Cash discounts and discounts are not granted.
7. Unless otherwise agreed, the amount for payment is due for payment on receipt of the invoice. If the **Client** fails to make payment he becomes in arrears immediately, without further warning. Interest on arrears will be charged at the rate of 8% above the relevant base interest rate. The right to assert claims for greater damages due to delay remains reserved.
8. If no fixed price agreement has been concluded, the right to make reasonable price adjustments due to changes in labour, materials and distribution costs for deliveries which are made 3 months or later after the conclusion of the contract is reserved.
9. **Kohne shall be entitled to make an annual price adjustment, which at least compensates for inflation.**

#### § 7 Right of retention, offset and assignment

1. The **Client** is only entitled to a right of retention insofar as his counterclaim is based on the same contractual relationship, is accepted, uncontested, ready for decision, has been legally established, or if **Kohne** has breached major obligations from the same contractual relationship and no adequate security has been offered in spite of a written warning. If the services rendered by **Kohne** should be indisputably defective, the **Client** shall only be entitled to retention to the extent to which the retained sum is in a reasonable relationship to the defects and to the foreseeable costs for the remedy of the defect.
2. Assignment of claims against **Kohne** requires the consent of **Kohne** in order to be effective.
3. Offsetting can only be made against undisputed, recognised or legally established claims.

#### § 8 Delivery times and periods

1. A delivery period commences either with the receipt of the order confirmation by **Kohne**, or if a commencement of delivery has been explicitly agreed.
2. The commencement of the delivery period stated by **Kohne** is conditional on the timely and proper fulfilment of the **Client's** obligations. Therefore, if information from the **Client** is necessary for the start of the activity, the delivery period only commences when all documents have been provided by the **Client**. The right to the plea of non-fulfilment of the contract remains reserved.
3. If the **Client** should be in arrears with delivery and/or acceptance or should otherwise culpably breach other cooperation obligations, **Kohne** shall be entitled to demand compensation for the damages which have been incurred, including any extra expenses (e.g. in particular pecuniary damages, which may be incurred due to the fact that the personnel who were originally designated to perform the tasks could not be otherwise employed, or could only be employed in a different manner). The right to claim further damages is reserved. Insofar as the

aforementioned conditions pertain, the risk of accidental loss or deterioration of the purchased object shall be transferred to the **Client** at the time at which the latter becomes in arrears with acceptance or with payment.

4. In the case of delays due to intent or gross negligence, as compensation for any damages due to delay **Kohne** shall be liable for the payment of a lump sum compensation for delay, to the amount of 3% for each full week of the delay, but up to a maximum of 15% of the value of the delivery.
5. If a binding delivery date should not have been agreed, the stated delivery dates are "approximate periods".

#### § 9 Claims for defects

1. Warranty claims by the **Client** are conditional on his proper compliance with the examination and complaint obligations of Art. 377 HGB (German Commercial Code).
2. § 11 applies with regard to the limitation period.
3. If in spite of all due care, the service which is provided should have a defect which already existed at the time of handover<sup>1</sup> of the service, subject to a timely complaint about the defect being made, **Kohne** shall at its discretion make repairs provide a replacement. **Kohne** must always be granted the opportunity for subsequent fulfilment within a reasonable period. Recourse claims remain unprejudiced without restriction due to the aforementioned regulation.
4. If the reworking fails, without prejudice to any claims for compensation, the **Client** may withdraw from the contract or reduce the payment by the amount of the service which has not been provided or which has been badly provided.
5. Claims for defects shall not be made in the case of insignificant deviations from the agreed service or in case of insignificant impairment of usability. If improper modifications should be made by the **Client** or by third parties, claims for these and the resulting consequences are void.

#### § 10 Restriction and exclusion of liability

1. **Kohne** shall only be held liable for compensation for damages for whatever legal reason, in particular in case of breach of contractual obligations and due to unauthorised actions, in the following cases:
  - a. in the case of intent;
  - b. in the case of injury to life, limb and health;
  - c. if **Kohne** has given guarantees for the quality of the service or the existence of a success, to the extent to which **Kohne** has given guarantees
  - d. in the case of liability according to the Product Liability Act or mandatory regulations of the Medicines Act
  - e. in the case of grossly negligent breach of duty
  - f. insofar as liability according to § 9 is not based on the breach of major contractual obligations. "Major contractual obligations" are those which protect the legal position of the **Client** and which are granted according to the meaning and purpose of the contract. Furthermore, major contractual obligations are those which are essential for the proper fulfilment of the contract and for which the **Client** can normally expect compliance.

Liability is excluded in all other cases.

2. The aforementioned restriction of liability also applies for **Kohne** employees, as well as for the responsibility of agents of **Kohne**.
3. In cases of intent or gross negligence, **Kohne's** liability shall be according to the statutory regulations.
4. In the case of gross negligence, **Kohne's** liability is restricted to damages which are typical for the contract if none of the exceptions listed in No. 1 pertain.
5. Liability by **Kohne** for damages to legal assets of the **Client**, e.g. to other assets, loss of profits or other damage to assets due to the service or the object which is supplied or is the subject of the service is excluded if none of the exceptions which are listed in No. 1 apply.
6. Compensation claims against **Kohne** due to damage to material and product assets are restricted to the sum which is insured in the context of the business and product liability insurance which is concluded by **Kohne**. This limitation of liability does not apply if **Kohne** is liable due to intent, gross negligence or culpable breach of major contractual obligations, as well as in cases in which the **Client** makes claims for compensation on the basis of a warranty or assurance by **Kohne**, however not for the risk of consequential damages.
7. Furthermore, obligation for compensation is excluded if the **Client** has effectively restricted his liability towards his own **Client**. The **Client** shall endeavour to agree restrictions of liability to a legally permissible extent, including in favour of **Kohne**.
8. Insofar as liability for compensation by **Kohne** is excluded or restricted by law or by Nos. 1-7, this shall also apply for all claims by the **Client** due to fault on conclusion of the contract, breach of ancillary obligations, claims according to Art. 823 BGB as well as for claims due to impossibility and arrears. If liability by **Kohne** is excluded or limited, this shall also apply for the personal liability of our employees, workers, representatives and vicarious agents.
9. **Kohne** accepts no liability for material or legal defects of the finished or semi-finished product in a therapeutic or pharmaceutical regard and is not obliged to check the documents which are handed over to it for their implementation with regard to their pharmacological correctness and suitability, their effectiveness or safety. The **Client** bears sole responsibility for the reliability of manufacture and

<sup>1</sup> Handover is deemed to have been made if all that is necessary has been done, so that according to the generally accepted standards it can be assumed that the order/project/work can be considered to be complete.

distribution and must indemnify **Kohne** immediately against all claims by third parties which may be made against **Kohne** due to reliability, production or distribution.

#### § 11 Limitation period/Postponement of limitation period

1. The limitation period for claims and entitlements due to defects of products and services by **Kohne** as well as for consequential damages is 1 year subsequent to the **Client** having gained knowledge of the circumstances on which the claim is based, or would have gained such knowledge without gross negligence. The aforementioned limitation period does not apply if longer periods are prescribed by law in cases according to Arts. 438, Paragraph 1, No. 2, 479 and 634 a No. 2 BGB. The limitation period according to Sentence 1 also applies for all claims for compensation against **Kohne**, regardless of whether these are associated with a defect and regardless of the legal basis of the claim. The period according to No. 1 commences with the delivery/completion/conclusion of the service.
2. Complaints due to obvious defects can only be considered if these are made in writing within the aforementioned period according to No.1 within 8 days of receipt of the service. If this does not pertain, the service shall be deemed to have been accepted. Timely notification depends on the date of receipt by **Kohne**. The onus of proof for the existence of a concealed defect lies with the **Client**.
3. The same period applies for concealed defects. These must be claimed according to the periods stipulated in No.2 after detection of the defect.
4. The limitation period according to No. 1, Sentence 1 does not apply in case of intent if **Kohne** has maliciously concealed the defect or has accepted a warranty for the condition of the object/service, in which claims for compensation due to injury to life and limb or the health or freedom of a person, claims according to the Product Liability Act, grossly negligent breaches of duty, or statutory regulations pertaining to consumer sales apply.
5. Subsequent fulfilment measures, i.e. the delivery of an object which is free from defects, or the remedy of defects do not commence a new period of limitation, but rather only suspend the limitation period for the original object which is supplied, for the period which is required for the subsequent fulfilment measures. In case of doubt with regard to the performance of subsequent fulfilment by **Kohne**, an acknowledgement within the meaning of Art 212 No. 1 BGB does not pertain.
6. The aforementioned provision does not constitute a change to the onus of proof to the detriment of the **Client**.
7. Unless otherwise explicitly provided, the statutory regulations for the commencement of the limitation period, its suspension and the recommencement of periods remains unaffected.

#### § 12 Transfer of risk on dispatch

If the service (or the result of the said) is dispatched to the **Client** at his request, the risk of accidental loss or deterioration of the service shall be transferred to the **Client** on dispatch to the **Client**, at the latest on leaving the company. This shall apply regardless of whether the dispatch of the goods is made from the place of fulfilment or who bears the shipping costs. This also applies in the case of electronic transmission, or if the service is to be sent directly to a recipient other than the **Client** at the request of the **Client**.

#### § 13 Force majeure

Events of force majeure, as well as serious, unforeseeable obstructions which are outside of the sphere of influence of **Kohne**, e.g. strikes, lock-outs, late deliveries or non-delivery by other suppliers and/or partners, disturbances to operation, distribution or supply due to shortages of energy, raw materials or labour, difficulties in obtaining transport, traffic obstructions, official orders for us or our suppliers release **Kohne** from the relevant contractual obligations according to the duration of such measures and obstructions. The aforementioned circumstances are also not the responsibility of **Kohne** if they occur during a delay which already exists. The start and end of such measures and obstructions or the non-availability of the object will be notified to the **Client** immediately. If the delivery is delayed by such measures and obstruction by more than 4 weeks, the parties to the contract shall be entitled to withdraw from the contract. In case of withdrawal, considerations which have been provided shall be reimbursed. Further claims are excluded.

#### § 14 Confidentiality

1. The **Client** and **Kohne** commit to only utilise all information for the agreed purpose of the service and otherwise to keep confidential all of the information which this contains and not to transfer this, or parts thereof to third parties. Transfer of information which is received to third parties is not permitted without the written permission of the other party involved, even with an appropriate confidentiality agreement. Third parties are companies which are not associated with the **Client** or **Kohne**.
2. The **Client** is prohibited from utilising the information which is contained in the service or parts thereof in any direct or indirect form for commercial, scientific or other manner or means without the written consent of **Kohne**.
3. The **Client** furthermore commits to only make the results of the service accessible to employees or natural or legal persons who work in any other manner for the **Client** to the extent which is necessary for the purpose of the agreed service and who are concerned with these results due to their position within the company. These persons shall be bound to the same level confidentiality by the **Client** including for the period subsequent to termination of the contractual relationship with the **Client** insofar as this is legally permissible.
4. The duty of confidentiality does not apply for the service provided, the information contained therein or parts thereof if:
  - a) They were already known to the **Client** before, or at the time of disclosure by **Kohne**;
  - b) They were publicly known or generally accessible before or at the time of disclosure by **Kohne**;
  - c) They become accessible to the public after disclosure by **Kohne** without the action or culpability of the **Client**;
  - d) They are made accessible to the **Client** at any time by an authorised third party without breach of confidentiality, or
  - e) They have been developed or have been caused to be developed by the **Client** independently of knowledge of the facts

f) They are used for presentation to or inspection by authorities.

5. The onus of proof for the existence of such exceptional circumstances shall be borne by the **Client**.
6. The period of confidentiality applies for a period of 10 years from the date of the last issue of an order (individual order) on the basis of these General Terms of Business.

#### **§ 15 Miscellaneous**

1. These General Terms of Business and the entire legal relationships of the parties are exclusively subject to the law of the Federal Republic of Germany.
2. The place of fulfilment and exclusive place of jurisdiction for all disputes is our registered place of business unless otherwise stipulated in the order confirmation.

#### **§ 16 Severability clause**

If a provision of these General Terms of Business and the further agreements which are concluded are or become ineffective, this shall not prejudice the validity of the remaining provisions. The parties to the contract shall endeavour to replace the ineffective clause with another clause which takes into account the relevant legal regulations and which is as close as possible to the intended commercial purpose and legal sense of the original formulation.