

Terms of Delivery and Payment of BELANO medical AG (the "Terms") for the supply of microbiotic cosmetics ("ibiotics")

Valid as of: August 2020

1. Scope

- 1.1 The supply of the product series "ibiotics" consisting of the "ibiotics" product line and the "ibiotics med" product line ("**Products**") by BELANO medical AG („**BELANO**") to its customers („**Customer**") is subject to (i) BELANO's individual offer ("**Offer**"), (ii) these Terms and (iii) the Customer's individual purchase order ("**Purchase Order**").
- 1.2 These Terms shall apply to all future supplies and services with regard to the Products until the issuance of a more recent version of these Terms by BELANO.
- 1.3 Deviating purchase conditions and/or standard terms and conditions of Customer shall not apply, except if such terms and conditions have been expressly accepted by BELANO in writing. Any such acceptance shall apply only to the contract at issue, and in particular not to any past or future supplies or services.
- 1.4 In case and to the extent that the terms of the Offer deviate from these Terms, the terms of the Offer shall prevail.

2. Product(s)

- 2.1 BELANO shall manufacture the Products in accordance with the Guidelines on Good Manufacturing Practices for Cosmetics (ISO 22716:2007) and the Regulation (EC) No 1223/2009 of the European Parliament and of the Council of 30th November 2009 on cosmetic products. The Product(s) shall meet the specifications ("**Product Specifications**") as specified in the Order Confirmation. In addition, the parties may agree in the Offer that BELANO shall provide Customer with further information or documents after production in addition against appropriate reimbursement of costs. BELANO will inform the Customer of any changes to the Product. The changes shall apply from the date of transmission or the date specified by BELANO.
- 2.2 **ibiotics Products**: means products of the "ibiotics" and "ibiotics med" product line with BELANO's original formulation bearing BELANO's trademark "ibiotics" in final packaged form. Customer undertakes to promote, market and sell the ibiotics Products exclusively (i) as cosmetic product in pre-assembled and final packaged form under BELANO's trademark "ibiotics", in particular not as pharmaceutical product and/or medical device and/or bulkware, (ii) in the country where the Customer is based ("**Territory**") (iii) to resellers and end customers ("**Permitted Use**"). This provision shall, however, not restrict the right of Customer to accept passively unsolicited orders from outside the Territory and/or from other customers.
- 2.3 **Private Label Products**: means products of the "ibiotics" and "ibiotics med" product line (i) with BELANO's original formulation or (ii) with an adapted formulation according Customer's requirements, both bearing Customer's own trademark in final packaged form. Customer undertakes to promote, market and sell the Private Label Products exclusively (i) as cosmetic product in pre-assembled and final packaged form under its own private label, in particular not as pharmaceutical product and/or as medical device and/or bulkware, (ii) to resellers and end customers ("**Permitted Use**"). This provision shall, however, not restrict the right of Customer to accept passively unsolicited orders from other customers.
- 2.4 **ibiotics Bulkware**: means products of the "ibiotics" and "ibiotics med" product line (i) with BELANO's original formulation or (ii) with an adapted formulation according Customer's requirements, unlabeled and packed in canisters, drums or containers. Customer undertakes to promote, market and sell the ibiotics Bulkware exclusively (i) as cosmetic product in pre-assembled and final packaged form or as bulkware under its own private label, in particular not as pharmaceutical product and/or as medical device, (ii) to resellers and end customers ("**Permitted Use**"). This provision shall, however, not restrict the right of Customer to accept passively unsolicited orders from other customers.
- 2.5 The parties may agree in the Offer to expand the Permitted Use, in particular with regard to the Territory and/or the eligible customers.

3. Packaging

- 3.1 **ibiotics Products:** BELANO shall deliver the ibiotics Products in final packaged form (consisting of primary packaging and if requested with secondary packaging (outer packaging) and instructions for use ("**Packaging Design**").
- 3.2 **Private Label Products:** Customer can either provide BELANO with a printable file of the Packaging Design or BELANO will provide Customer upon request with a draft for the Packaging Design. Within fourteen (14) days upon receipt of the draft, Customer shall notify BELANO in writing of his agreement or possible requests for changes. BELANO reserves the right to reject a Packaging Design submitted by Customer or requests for changes made by Customer if and insofar as these, in BELANO's view, violate legal requirements for the packaging design of cosmetics products and/or affect BELANO's rights to the Trademark(s). Notwithstanding the aforementioned, Customer shall in any case be solely responsible for the design and legal conformity of the packaging.

The costs for the creation of the draft Packaging Design (including possible revisions and/or translations) shall be borne by Customer, whereby the expenditure of BELANO shall be remunerated at an hourly rate of EUR 80.00 (plus VAT if applicable). Deviating from this, the parties may agree on a flat rate for the creation of the draft Packaging Design in the Offer.

- 3.3 **ibiotics Bulkware:** BELANO shall deliver the ibiotics Bulkware in packaged form in canisters, drums or containers in the sizes specified in the Offer.

4. Marketing

- 4.1 Customer shall – at its own expense – solely be responsible for the creation and/or conduct of any advertising and marketing materials and/or activities caused to promote, market and sell the Products as well as for the legal conformity of such materials and/or activities.
- 4.2 **ibiotics Products:** BELANO shall provide Customer with general information on the design and content of "ibiotics" advertising and marketing materials ("General Advertising Information"). Customer shall secure BELANO's prior approval of any publication, broadcast, internet presentation, packaging, label or other material prepared by Customer in connection with the use of the Products and/or Trademark(s) in connection with the advertising, distribution or sale of Products. Notwithstanding the foregoing, Customer shall not be required to obtain BELANO's prior approval for uses of the Trademark that do not materially deviate from those uses that have been previously approved by BELANO.
- 4.3 **Private Label Products and ibiotics Bulkware:** BELANO shall provide Customer with general information on the design and content of "ibiotics" advertising and marketing materials ("General Advertising Information"). Customer shall take into account the rules and principles set out in the General Advertising Information when using marketing materials or carrying out marketing measures.

5. Supply of Products

- 5.1 BELANO's Offer does not yet represent a legally binding offer (so-called *invitatio ad offerendum*), rather the Customer submits a binding offer with his Purchase Order. BELANO shall not be obligated to fulfil any Purchase Order submitted by Customer unless and until confirmation of such order in writing ("**Order Confirmation**").
- 5.2 BELANO will provide Customer with Products complying with the Product Specifications in average kind and quality. Apart from that, BELANO does not warrant or represent certain properties of the Products except if BELANO has expressly confirmed such warranty in writing. Notably, BELANO does not extend any warranty or representation of fitness or merchantability for a particular purpose and/or use outside the Permitted Use and/or in case the Customer processes and/or adds further additives to the Products. Announcements in publications of BELANO as to properties of Products shall not be deemed a guarantee. Due to the production process the delivered quantity of Product can vary between +/- 5-10%.
- 5.3 Customer shall be solely responsible that import, storage, handling, packaging, advertising, sale and use of the Products, including possible recall and reporting obligations comply with any applicable laws, rules, and regulations of the appropriate governmental authorities, including but not limited to the relevant provisions for medical devices.
- 5.4 BELANO may engage subcontractors to perform any of its contractual obligations, including but not limited for the delivery of the Products.
- 5.5 All Deliverables are delivered *ex works* (INCOTERMS 2020) at the place specified in the Offer. BELANO reserves the right to make partial deliveries. Furthermore, BELANO may, at its option, deliver from other points than that specified provided that such delivery shall be at the same price.
- 5.6 Products will be delivered at Customer's risk and cost. BELANO will arrange – to the extent agreed - for shipping (i.e. courier service), packaging and/or insurance at Customer's expense; delivery outside the usual business hours, on weekends or holidays or express delivery as well as transportation insurance is provided only if requested and paid for by Customer.

6. Inspection / Acceptance

- 6.1 Customer has to inspect any Products immediately upon arrival, to see if they are in perfect condition, in particular but not limited if there are any transport damages, quality and/or quantity deviations and other damages perceptible upon customary inspection (each a "**Visual Defect**"). Customer shall notify BELANO in writing of any Visual Defect (i) within three (3) working days after delivery and (ii) in case of defects, which could not reasonably be detected by such inspection ("**Hidden Defect**"), within three (3) working days after discovery. In absence of a timely report, the respective Product shall be deemed to be free of any defects and accepted unless BELANO has fraudulently concealed the defect.
- 6.2 If the nature of a Product requires an acceptance by Customer, such acceptance shall be deemed given seven (7) working days after such Delivery is provided or BELANO has given written notice to Customer of the Delivery being made available for acceptance, if Customer has not denied acceptance in writing.

7. Terms of Payment

- 7.1 All Products are billed based on the prices in the corresponding Offer. All prices are deemed net prices.
- 7.2 In addition to the purchase price, Customer shall pay or reimburse BELANO for any applicable tax, including but not limited to VAT, shipping, packaging and insurance costs, and all increase thereof, incurred by BELANO for arranging such services for the Customer.
- 7.3 BELANO shall be entitled to adjust any agreed prices for the Product, notably but not exclusively in case the prices of the required raw materials, energy, manufacturing or packaging have increased at any time effective upon not less than ninety (90) days' prior written notice to Customer. The aforementioned shall not apply if the Products are to be delivered within four (4) months of the conclusion of the respective purchase contract.
- 7.4 The first (50) fifty percent of the purchase price for the Products are due and payable by Customer within fourteen (14) days upon the receipt of the Order Confirmation and corresponding invoice. The second (50) fifty percent of the purchase price are due and payable within fourteen (14) days upon delivery of the Products and receipt of the corresponding invoice. All invoices shall be paid upon receipt without any deduction.
- 7.5 The Products delivered by BELANO remain the property of BELANO until the purchase price has been fully paid. In the event of resale of the Products delivered under retention of title, the resulting claim shall replace the retention of title (so-called extended retention of title according to § 449 German Civil Code).
- 7.6 In the event a credit insurer refuses to provide cover, Customer's credit rating is of less than investment grade or Customer is in arrears with any payments, BELANO may (in its sole discretion) make acceptance of any further purchase order contingent upon Customer paying in advance the full amount of the purchase order value.
- 7.7 Customer shall not be entitled to set off any of its claims against claims of BELANO, or to avail himself of a right of retention under civil or commercial law, except where Customer's claims are undisputed or have been upheld by a court decision not appealed within the respective time limits.
- 7.8 The resale of the Products by Customer takes place on his own account and at his own risk.

8. Traceability, Duty to report and inform, Recall

- 8.1 Customer will install a database that enables the traceability of the Products, in particular Customer will record and store the batch designations/numbers at goods receipt and goods issue. BELANO is entitled to access this database in case of a recall or other cases of necessary identification of the Products.
- 8.2 Customer shall immediately inform BELANO in writing upon becoming aware of all quality problems and complaints about the Products as well as of any circumstances which may make it necessary for BELANO to report incidents pursuant the applicable laws, rules, and regulations of the appropriate governmental authorities with regard to cosmetic products.
- 8.3 Customer shall provide BELANO with all information, as far as known, which is necessary for the proper reporting of incidents to the authorities and which may be required by the supervisory authority.
- 8.4 If a recall or other corrective measures become necessary, these shall be carried out under the responsibility of BELANO and/or persons whom BELANO uses to perform his obligations under the purchase agreement. Customer shall support BELANO in the implementation of the measures to the extent necessary and reasonable, in particular Customer shall also immediately pass on corresponding information and recommendations for measures to its customers of the products concerned.

9. Warranty

- 9.1 Any statutory claims of Customer for defects of Products ("**Warranty Claims**") shall be excluded if and to the extent the defect in question is due to use of the Products for any purpose other than the contractual purpose, in particular but not limited to the use outside the Permitted Use.
- 9.2 BELANO declines any warranty or liability that the use of the Products and/or the trademark "ibiotics" will not violate or infringe any third party's intellectual property rights. BELANO states, however, not being aware of any such infringement.
- 9.3 Any and all claims against BELANO shall be subject to a limitation period of twelve months, if such claim is not based either on gross negligence or wilful misconduct by BELANO. The limitation period shall begin on the date specified by the applicable statutes.

10. Liability / Indemnification

- 10.1 BELANO shall be liable for claims for damages, whether based on contract or any other legal theory, only to the extent that the damage was caused by wilful misconduct or gross negligence of BELANO, its directors, employees and persons whom BELANO use to perform his obligations under the contract ("Erfüllungsgehilfen"). In the event of (i) injury of life, body or health or (ii) non-performance regarding a fundamental duty ("Kardinalpflicht") under the contract, BELANO shall be liable also for negligence.
- 10.2 Except for the cases according to 10.1 (i) and (ii), BELANO's liability for any damages and/or reimbursement of expenses (together "**Claim**") shall not exceed the following amounts:
- a) For each individual event resulting in a Claim: EUR 10,000.00 (several Claims based upon the same cause shall be deemed one event only);
 - b) For all Claims of Customer together: EUR 50,000.00.
- 10.3 The limitations of liability set forth in sect. 10.1 and 10.2 shall not apply in case BELANO has (i) extended a guarantee, or (ii) fraudulently concealed a defect, or (iii) if the liability results from contingent provisions of the applicable product liability laws.
- 10.4 BELANO shall not be liable in any case for consequential, indirect or incidental damages, for damages resulting from loss of use, loss of profits, interruption or loss of business and lost goodwill.
- 10.5 Customer shall hold harmless and indemnify BELANO and its affiliated companies (as defined in §§ 15 ss. German Share Corporations Act) and its and their directors, employees and persons whom BELANO use to perform his obligations under the purchase agreement ("**BELANO Indemnified Parties**") against all loss, claim, damage or liability, including reasonable attorneys' fees, arising from the promotion, marketing, sale and use of the Products by the Customer except the loss, claim, damage or liability results from (a) wilful misconduct or gross negligence of any of the BELANO Indemnified Parties or (b) a defect of the delivered Products as far as Customer has a valid warranty claim against BELANO according to sect. 6.4.

11. Force Majeure

- 11.1 If, in the case of Force Majeure, a party shall be unable to fulfil its contractual obligations, this shall not be considered a breach of contract. Force Majeure shall be fire, explosions, natural disasters, war, civil war, riots, revolution, strike, interruption of operation, shortage or significant price increase of raw materials or energy, epidemics, pandemics (e.g. COVID-19) and quarantines (irrespective of whether (i) imposed upon a party, its employees or third parties, (ii) imposed by a public or private authority, (iii) imposed or only recommended and/or (iv) whether know or unknown at the time of conclusion of the purchase agreement) or any similar reasons beyond the reasonable control of the parties. Any occurrence of Force Majeure shall promptly be reported to the other party and competence evidence thereof shall be applied simultaneously. The Party prevented from or delayed in performing of its obligations shall resume performance of its obligations as soon as reasonably possible after removal of the cause the failure or delay in performance.
- 11.2 BELANO may allocate its available supply among its purchasers on such basis BELANO may deem fair and practical without liability to Customer.

12. No Reverse Engineering

Customer undertakes not to carry out, nor to have carried out, any reverse engineering of confidential information and/or Products received from BELANO.

13. Trademark Use

- 13.1 Customer acknowledges the exclusive right, title, and interest of BELANO to all trademarks, trade names, copyrights, trade secrets, patents and other intellectual property (all of which is referred to as the "BELANO Intellectual Property") relating to the Products or BELANO's business which BELANO now owns or hereafter acquires.
- 13.2 Customer shall not be entitled to use BELANO Intellectual Property including but not limited to the trademark "ibiotics" and/or any sign or product presentation similar in connection with the promotion, marketing, distribution, sale or use of the Products in any way, unless and to the extent such use is permitted by mandatory laws and/or BELANO has expressly granted rights to Customer.
- 13.3 **ibiotics Product:** Customer shall promote, market and sell the Products under BELANO's trademark "ibiotics" ("**Trademark**"):
- a) Customer is entitled to (i) use the Trademark on the Products or their means of presentation or packaging, (ii) distribute or offer the Products under the Trademark and/or (iii) use the Trademark in advertising as described in **Annex 1**.

It is hereby clarified that products of the "ibiotics" product line may not be promoted, marked or sold with the addition "med"; such addition shall exclusively used for products of the "ibiotics med" product line;
 - b) Customer shall clearly indicate BELANO's interest in said Trademark at least once in each publication, broadcast, internet presentation, packaging, label or other material by use of the following language: "ibiotics" is a BELANO medical AG trademark";
 - c) Customer shall use the superscript "®" in connection with use of the Trademark in all instances in any online or offline publication, provided that the Trademark is validly registered;
 - d) Customer shall, at least once per year, submit to BELANO specimens (e.g. product packages, catalogues, photos, advertisements, anonymized invoices to customers) of the actual use of the Trademark in each country;
 - e) Customer undertakes to comply with all applicable laws pertaining the use of the Trademark and/or import, advertising and sale of Products under such Trademark. Furthermore, Customer shall not use the Trademark in any manner that conflicts with the rights of any third party or weakens BELANO's rights in the Trademark.
- 13.4 [**ibiotics Product**]: Customer agrees that use of the Trademark by Customer or its affiliates shall not create in Customer's favour any right, title or interest in or to said Trademark, and all rights which might arise from use of said Trademark by Customer or its affiliates shall inure exclusively to benefit of BELANO.
- 13.5 [**ibiotics Product**]: Customer, upon becoming aware of any third party (i) infringing or misusing the Trademark or (ii) claiming infringement of its intellectual property rights by Customer using the Trademark, shall immediately inform BELANO thereof and shall cooperate in the prosecution of such infringement respectively defense against any such claim. Prosecution and defense of the Trademark shall be in the sole discretion of BELANO and Customer shall not be entitled to act against an infringer of the Trademark without prior written approval by BELANO.
- 13.6 Customer is not entitled to use, file or register any sign "ibiotics" or containing the component "ibiotics" or "biotics" (in particular "i-biotics" or "hi-biotics") as trademark or domain name (or incite and/or assist third parties to do so) in the connection with promotion, advertising, marketing, distribution and sale of the Products.
- 13.7 Customer is not entitled to use "ibiotics" as an element of its company name, as a special characterization of its business operation or company or in any other manner as a mark to distinguish its business operation from others.

14. Confidentiality

- 14.1 Both parties shall keep strictly confidential any information received or obtained from the other party which either (i) is marked as "confidential" or (ii) which by its nature is deemed to be confidential ("**Confidential Information**"). Either party engages to only use the other party's Confidential Information to exercise its rights and perform its obligations under the Offer, these Terms and the individual purchase order. Either party may disclose the other party's Confidential Information to its officers, employees, agents, consultants and licensees ("**Recipients**"); provided that such Recipients (i) have a need to know such Confidential Information to execute the Offer, these Terms or the individual purchase order and (ii) are subject to confidentiality and non-use obligations at least as strict as those set forth herein. The aforementioned obligations shall continue for a period of ten (10) years after conclusion of the respective purchase agreement.
- 14.2 The obligations set forth above in sect. 13.1 shall not apply to the extent such Confidential Information
- a) was already known to the receiving party before its disclosure, or

- b) is or becomes part of the public domain through publication or in any other way through no fault of the receiving party, or
- c) is disclosed, revealed or otherwise made available to the receiving party by a third party that is under no obligation of non-disclosure and non-use to the disclosing party, or
- d) is required to be disclosed under applicable laws or by court or administrative order; provided, however, that the receiving party shall inform the other party thereof without undue delay, so as to permit the disclosing party to take appropriate action to prevent such Confidential Information from passing into the public domain or becoming generally available to the public.

15. Miscellaneous

- 15.1 Customer shall not be entitled to assign any rights under these Terms or any purchase agreement to third parties without BELANO's prior written consent. Sect. 354a German Commercial Code shall remain unaffected.
- 15.2 Nothing herein contained shall be construed to create a partnership, joint venture or agency between BELANO and Customer, and Customer shall have no power obligate or bind BELANO in any manner whatsoever.
- 15.3 Any addition to or modification of the Terms shall require written form duly signed by authorized representatives of the Parties. This written form requirement shall also apply to the amendment of this written form clause.
- 15.4 The purchase agreement and these Terms shall be governed and interpreted in accordance with the laws of the Federal Republic of Germany without giving effect to its choice of law provisions and the provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG).
- 15.5 All disputes arising under or in connection with the purchase agreement and these Terms shall be submitted exclusively to the competent courts of Berlin. BELANO may also choose the competent court at Customer's (i) residence, (ii) place of business or (iii) registered office for any action arising hereunder. The right of either party to claim injunctive relief before the courts competent under the applicable laws remains unaffected.

Depending on the product line (ibiotics or ibiotics med), Customer may only use the Trademark in standard characters ("ibiotics" or "ibiotics med") and/or in the form of the trademark logo shown below (black and white or in colour):

a) ibiotics

The logo for 'ibiotics' consists of a stylized minus sign with a dot at its end, followed by the word 'ibiotics' in a bold, lowercase, sans-serif font.

b) ibiotics med

The logo for 'ibiotics med' consists of a stylized minus sign with a dot at its end, followed by the word 'ibiotics' in a bold, lowercase, sans-serif font. Below 'ibiotics', the word 'med' is written in a smaller, lowercase, sans-serif font.