

General terms of Use

for the use of pharma mall

§ 1 Subject of regulation

pharma mall Gesellschaft für Electronic Commerce GmbH, Westerwaldstraße 10-12, 53757 Sankt Augustin (hereinafter referred to as "pharma mall") operates the e-commerce platform at www.pharma-mall.de, www.pharmamall.de and www.pharma-mall.at (hereinafter referred to as the "PLATTFORM"). After successful registration as defined by § 3, the use of pharma mall's services is also possible via other websites, for example the websites of the MANUFACTURERS, insofar as these provide direct access to the PLATTFORM on their pages. pharma mall has no influence on this provision of services via the pages of third parties, in particular the MANUFACTURER, and only owes the provision of its services under the specified URLs.

The principle of PLATTFORM is to enable MANUFACTURERS to present and sell their PRODUCTS via the Internet. For this purpose, a transaction and information system is offered on the PLATTFORM which makes it possible to access the individual websites of the MANUFACTURERS via the common homepage of the PLATTFORM in order to obtain information on the services of pharma mall and PRODUCTS of the MANUFACTURERS and to place orders with the MANUFACTURERS involved via the web shop or by way of the SILENT COMMERCE as well as to process other transactions.

Furthermore, pharma mall maintains an e-mail information service for PLATTFORM USERS. Via this e-mail information service, USERS receive important information from the MANUFACTURERS, such as "blue hand information", "red hand information", approved mandatory information by the BfArM, recall actions, delivery availability, danger of confusion or risk warnings (danger to life and limb). The e-mail information service does not contain any advertising by the MANUFACTURERS.

1.2 These General Terms of Use govern the provision of services by pharma mall and their use by the USERS.

1.3 Contracts between USER and MANUFACTURER

(1) The present General Terms of Use expressly do not regulate the handling of the concrete order processes for PRODUCTS, which the USER carries out from the offers of the MANUFACTURERS which can be called up via the PLATTFORM. These require an additional activation of the USER by the respective MANUFACTURER. The regulation of the contractual relationship between MANUFACTURER and USER is left to these parties. Irrespective of this, pharma mall maintains a database for MANUFACTURERS and USERS from which the current, legally prescribed proof of entitlement can be retrieved directly by the MANUFACTURER (i.e. the current pharmacy operating permit in Germany) within the framework of the activation of a USER for the purchase of PRODUCTS from a MANUFACTURER.

(2) The use of pharma mall's services, in particular the provision of the opportunity to order PRODUCTS from HERSTELLER via the web shop or by way of SILENT COMMERCE, does not therefore establish any contractual relationship between the USER and pharma mall with regard to these orders. Claims to delivery, warranty or advice are therefore excluded vis-à-vis pharma mall.

§ 2 General definitions and elements of the contract

2.1 Elements of the contract

(1) These General Terms of Use apply to the exclusion of existing General Terms of Business of the USER and regulate the use of the PLATTFORM.

(2) Conflicting or deviating terms of use require the express written consent of pharma mall in individual cases.

2.2 Amendment of these General Terms of Use

pharma mall reserves the right to amend these General Terms and Conditions of Use at any time with effect from within the existing contractual relationships. The USER must confirm the General Terms of Use of pharma mall again in the event of such changes. pharma mall recommends that the amended version of the General Terms of Use be read carefully beforehand. Any changes shall apply exclusively to future use; no retroactive changes shall take place.

2.3 Definitions of terms:

(1) "RIGHTS" are users who are not USERS, but who derive their right of use from a USER in accordance with the provisions of § 3.3. Unless expressly provided otherwise below, the provisions for USERS shall apply mutatis mutandis to RIGHTS.

(2) "MANUFACTURERS" are the pharmaceutical companies participating in pharma mall as well as other pharmaceutical companies that use this information and distribution channel against payment of a fee.

(3) "USERS" are the customers of the MANUFACTURERS as well as other visitors to the website for whom the use of the PLATTFORM represents a free Internet offer. USERS may only be entrepreneurs within the meaning of § 14 BGB (German Civil Code).

(4) "PRODUCTS" are drugs and related articles (e.g. dietary foods, cosmetic products) for which the MANUFACTURERS make use of pharma mall's information and distribution channels.

(5) "SILENT-COMMERCE" refers to automated transaction processes which can be carried out regularly via the PLATTFORM without the USER's involvement in a specific individual case in order to meet the USER's requirements.

(6) "WORK DAYS" are the days from Monday to Friday in the period from 8.00 a.m. to 5.30 p.m. with the exception of the statutory public holidays of the Federal State of North Rhine-Westphalia as well as the 24.12. and the 31.12. of a year. The time zone Berlin applies.

§ 3 Admission requirements

3.1 General information

In order to use the PLATTFORM, the USER must register (3.2.); in order to place an actual order, the respective MANUFACTURER (3.4.) must also grant the USER access to the Portal.

3.2 Registration

(1) The use of the PLATTFORM requires registration. There is no entitlement to use by any applicant. pharma mall is therefore entitled to reject registration requests without stating reasons.

(2) The registration is exclusively permitted to entrepreneurs within the meaning of § 14 BGB (German Civil Code). For the registration of legal entities, the application must be made by a natural person with unlimited legal capacity and power of representation.

(3) The contact data and other information requested during registration must be complete and correct. When registering a legal entity, the natural person authorized to represent must also be specified.

(4) After the registration data have been provided, pharma mall will check them for completeness and plausibility. If the information is then correct and there are no other objections against the registration, the desired access will be activated. pharma mall will inform the new USER of this by e-mail. This e-mail is regarded as a declaration of acceptance of the application to participate.

(5) After activation, a user name and a temporary password will be sent to the USER at the postal or e-mail address specified during registration. The password can be changed by the USER. pharma mall recommends a regular change of the password for reasons of data security.

(6) After the final activation by sending the user name and password, the USER is entitled to use the functions of the PLATTFORM and the services of pharma mall.

3.3 Activation of RIGHTS by the USER

After successful registration, the USER has the opportunity to activate RIGHTS. It is the sole responsibility of the USER to activate only those RIGHTS that may be granted access to the data transmitted by the USER via the PLATTFORM in accordance with the applicable legal provisions, in particular the applicable data protection laws for the medical and healthcare sector. The USER acknowledges that it is impossible for pharma mall to check in advance whether the activation of RIGHTS is permissible under data protection law. Otherwise, the provisions of § 3.5 shall apply.

3.4 User access

(1) Registration alone does not enable the ordering of PRODUCTS via the MANUFACTURERS' portals or other transactions. This requires the activation of the USER for each individual portal.

(2) The regulation of access to the portals is the sole responsibility of the MANUFACTURERS. It is at the discretion of the respective MANUFACTURER to grant the USER access to the respective portal. There is therefore no entitlement to the granting of user access by the respective MANUFACTURER.

(3) The decision as to whether the user access may be restricted or cancelled at any time shall be made solely by the MANUFACTURERS. pharma mall has no influence on this.

3.5 Duties of the USER

(1) The USER is obliged to keep secret the username and password generated by pharma mall (both the one generated during registration and one that may be changed later) and to exclude unauthorised third parties from their use. Notwithstanding the foregoing, it is the responsibility of the USER to restrict access to the PLATTFORM and the PRODUCTS of the MANUFACTURERS in their portals exclusively to authorized persons. The USER is obliged to inform pharma mall immediately if there are reasonable grounds to suspect that unauthorised third parties have gained or will soon gain knowledge of the access data or have otherwise gained access to the USER's user profile.

(2) The USER is liable to pharma mall for any use of his user profile by unauthorized third parties, unless the USER can prove that he is not at fault for this unauthorized use.

(3) The USER is obliged to keep the data entered during registration up to date, in particular but not limited to the contact details and details of the entitlement to purchase PRODUCTS (pharmacy operating licence or adequate proof under the respective law to which the USER is subject). Therefore, the USER is obliged to change any changes to the data immediately by changing the corresponding entry in the user profile. Should the USER not be able to change the data in this way, he will immediately send the changed data by e-mail to pharma mall.

§ 4 Services provided by pharma mall

4.1 pharma mall transmits transactions and information between the USER and the MANUFACTURERS for PRODUCTS and services electronically. pharma mall undertakes, within the framework of the following provisions, to immediately forward the data received from the USER to the MANUFACTURERS and vice versa to forward the data received from the MANUFACTURERS to the USER.

4.2 pharma mall owes an effort to ensure that the data stored by the USER in accordance with the contract can be retrieved to the extent agreed in time within the agreed availability periods and outside the agreed maintenance windows (§ 4.5.). The term "retrievable" refers to the fact that the USER can load the data into the working memory of his computer and has access to his own data, which are stored and processed for him in the computing center of pharma mall. pharma mall assumes no responsibility for the success of the respective access to the PLATTFORM, unless exclusively the network operated by pharma mall including the interfaces to networks of third parties is used.

4.3 pharma mall cannot guarantee the accessibility of target addresses, i.e. the PLATTFORM itself and/or the portals of the MANUFACTURERS, due to the structure of the Internet and the fact that it neither selects the operators and intermediaries of the data networks itself nor has actual control over them.

4.4 pharma mall ensures that the bandwidth of the connection to the nearest Internet node corresponds to the state of the art and that the USER achieves the highest possible data transmission speed.

4.5 The PLATTFORM is available within the framework of the technical and operational possibilities of pharma mall and therefore not in particular in the event of downtimes due to maintenance and times when the computer centre cannot be reached via the Internet due to technical or other problems beyond the control of pharma mall (force majeure, fault of third parties, etc.).

4.6 Notwithstanding the above provisions, pharma mall will send the USER an acknowledgement of receipt by e-mail immediately after entering the data and sending the order within the framework of orders from PRO-DUCTEN. On the basis of this acknowledgement of receipt, the USER has the opportunity to check the correctness of the order data received from pharma mall again.

4.7 Error or fault messages as well as other support requests can be made via the chat function of the PLATTFORM. In justified exceptional cases, the error message can also be sent by telephone via the official hotline number of pharma mall. The chat function and hotline can be reached at WORK DAYS. Support within the meaning of this provision is any problem-related answer to the USER's presentation of a problem in connection with the use of the PLATTFORM. No support within the meaning of this provision, on the other hand, is the clarification of questions of content and organisation on the part of the USER as well as the introduction to the functionality of the PLATTFORM or the portals of the MANUFACTURERS. Each request from a USER is electronically documented and given a unique processing number. Before using the hotline, the USER must try to solve the problem himself within a reasonable framework. In particular, he must observe the help function of the PLATTFORM.

§ 5 Obligations of the USER

5.1 The USER himself is responsible for creating the prerequisites for the use of pharma mall's services that fall within his area of responsibility. In particular, he must create and maintain the necessary technical prerequisites for the use of the services. pharma mall does not owe any advice in this regard, which goes beyond the transmission of the system requirements. The USER requires a current web browser in order to operate the website.

5.2 When using the services of pharma mall, the USER has the right to observe, in particular but not exclusively, the rights of third parties and to comply with the provisions of competition and unfair competition law. The USER is then prohibited from using the PLATTFORM, in particular in connection with the chat function.

(1) to transmit pornographic, youth-endangering, violence glorifying or otherwise offensive content,

(2) to transmit incitement, anti-Semitic, xenophobic, homophobic or otherwise inhuman content,

(3) to transmit terrorist-supporting or propagandistic content,

(4) to transmit insulting, reputation-damaging or otherwise degrading contents,

(5) to transmit contents violating personal rights or contents contrary to the provisions of the data protection laws,

pharma mall cannot check the content for legal violations of the aforementioned kind before transmitting content on or via the PLATTFORM. pharma mall is also not in a position to do this either practically or legally.

5.3 The USER is responsible for the immediate knowledge of electronically delivered messages in business transactions (in case of their activation also via the chat function of the PLATTFORM). pharma mall does not owe any such monitoring of the USER's usage activities.

§ 6 Protection and Disclaimer of liability of the PLATTFORM contents

6.1 The contents available on the PLATTFORM are predominantly subject to industrial property rights of pharma mall, HERSTELLER or other third parties. In particular, they are subject to the protection of copyright law, competition law or trademark law. The compilation of the contents may be protected by copyright as a database or database work.

6.2 If the contents of the site do not originate from pharma mall itself, pharma mall assumes no responsibility or warranty for the completeness, legality, correctness and topicality of these contents of third parties. This also applies with regard to the quality of these contents as well as their suitability for a certain purpose and also as far as contents of third parties on linked external websites are concerned. In particular, pharma mall assumes no responsibility for the compliance of the PRODUCTS offered by the MANUFACTURERS with the regulations of pharmaceutical advertising or competition law.

6.3 The contents of third parties within the meaning of the above paragraphs shall in particular include all contents relating to the PRODUCTS in the portals of the respective MANUFACTURERS.

§ 7 Liability

7.1 The use of the PLATTFORM is free of charge. Any liability on the part of pharma mall is therefore excluded unless damage has been caused by the contractual use of the free content and/or services of pharma mall and pharma mall has acted wilfully or with gross negligence.

7.2 If and to the extent that the USER calls up fee-based services via the PLATTFORM, in particular acquires PRODUCTS of the MANUFACTURER via their portals, the following shall apply to the liability of pharma mall:

(1) pharma mall is liable without limitation for all damages incurred by the USER due to the intentional or grossly negligent conduct of pharma mall or the persons acting on its behalf (legal representatives, employees or vicarious agents). Likewise, pharma mall's liability is unlimited for damages to the USER's life, limb or health or which arise through the breach of a guarantee promise. Liability under the Product Liability Act shall also remain unaffected.

(2) The liability of pharma mall for otherwise negligently caused damages of only insignificant contractual obligations is excluded. For the otherwise negligent breach of essential contractual obligations, the liability of pharma mall is limited to those damages which must typically be expected to occur within the framework of the concrete contractual relationship (contract-typically foreseeable damages). Essential contractual obligations are those which are constitutive for the contractual relationship and which the USER can expect to be fulfilled. This also applies to breaches of duty by legal representatives, employees or vicarious agents of pharma mall.

§ 8 Temporary blocking

8.1 To protect the USER, pharma mall will temporarily block access to the user profile if an incorrect password has been entered three (3) times for the respective user name in quick succession. Use of the PLATTFORM is then no longer possible until a new password has been generated by pharma mall and sent to the USER by post or e-mail. The new password will only be created and sent after the USER has informed pharma mall that the use of the PLATTFORM is to be continued.

8.2. pharma mall is entitled to temporarily interrupt the connection to the Internet and thus to exclude the use of the PLATTFORM by the USER if there is sufficient suspicion of illegal contents of the data transmitted and stored by the USER (in particular in accordance with § 5.2.) and/or a corresponding official order has been issued against pharma mall.

8.3 The blocking according to clause 8.2. shall be lifted as soon as the suspicion has been invalidated and/or a judicial and/or official decision has been made

§ 9 Termination of participation

9.1 A termination of participation by the USER is possible at any time without giving reasons by unsubscribing from the user profile. The termination is effective immediately.

9.2 Pharma mall may terminate participation if pharma mall itself or the MANUFACTURERS cannot reasonably be expected to continue using the PLATFORM by the USER. pharma mall shall decide at its own discretion whether the termination shall be declared without notice or subject to a use-by period, taking into account the circumstances justifying the termination, i.e. in particular the USER's legal infringements, on the one hand, and the USER's legitimate interest in using the PLATTFORM, on the other hand.

9.3 Upon termination, the right to use the terminated user profile ends. The pharma mall is therefore allowed to block the corresponding user name and/or password. 9.4.

9.4 After 30 days have elapsed since the end of participation, pharma mall is entitled to irretrievably delete all data created within the framework of the use of the PLATTFORM. Up to this point in time, the USER may request pharma mall to surrender the personal data stored about him/her during the term of the contract in a file format customary in the market at the time of the request for surrender; the surrender shall be made in accordance with the request to the USER himself/herself or to a third party designated by him/her against reimbursement of the expenses and costs incurred by pharma mall as a result thereof. Any longer statutory or other storage periods for all or certain data stored by the USER shall remain unaffected by this.

§ 10 Data protection

10.1 Guarantee of privacy, respectively personal data protection

(1) If personal data of the USER is processed within the framework of the use of PLATTFORM, pharma mall ensures compliance with the legal standards, in particular the Basic Data Protection Ordinance (DS-GVO).

(2) pharma mall guarantees that the personnel employed by pharma mall and dealing with sensitive personal data comply with the security and confidentiality standards, in particular that they are particularly obliged to maintain confidentiality.

(3) pharma mall will only process the personal data of the USER provided within the scope of registration and the creation of a user access and, if applicable, supplemented or changed later, to the extent necessary for the processing of this contractual relationship, unless further processing is permitted by statutory provisions or the USER declares his consent to certain additional processing operations.

(4) For details on how pharma mall handles the personal data of the USER or the USERS, please refer to the data protection notices at <https://www.pharma-mall.de/shop/overview/privacy> for the use of pharma mall.

10.2 Security

In order to ensure the security and confidentiality of the personal data recorded online by pharma mall, the order process is secured by pharma mall using SSL encryption. SSL (Secure Socket Layer) is a protocol used to enable secure data transmission over the Internet.

10.3 Links to other websites

(1) The data protection policy explained here only applies to websites of pharma mall to the exclusion of websites of third parties. pharma mall can set so-called links to other websites. pharma mall tries as far as possible to ensure that the sites linked to the pharma mall websites meet the highest standards.

(2) Due to the nature of the World Wide Web, however, pharma mall cannot guarantee a high standard of all linked websites in every respect or even assume liability for non-pharma mall websites.

§ 11 Rights of use

11.1 Subject matter of the licence conditions

(1) The object of these license conditions is the transfer and restriction of the possibilities of use of the software required for the use of the PLATTFORM services in the version current at the time of conclusion of the contract. These license conditions apply to all versions of the standard software, including full versions, upgrades and updates.

(2) If necessary, the USER shall be granted rights of use to Free and Open Source Software made available together with the software or to proprietary software from third party manufacturers in accordance with the license provisions of the manufacturers valid at the time. In this case, the USER will be referred to the content of the license terms of the manufacturer or the content of the Free and Open Source Software license terms prior to conclusion of the contract.

11.2 Rights of Use to the Software (Web Access)

The software is made available to the USER via data networks. The necessary simple rights of use according to § 69c No.4 UrhG are transferred to the USER for a limited period of time during the term of this contract.

11.3 Legal restrictions

Unless otherwise regulated by these license terms, the USER is not entitled to modify, edit, translate, port, reverse engineer, disassemble, decompile or otherwise interfere with the software to determine its source code, unless this is expressly permitted by mandatory legal regulations (§§ 69d, 69e UrhG).

11.4 Databases

The USER receives the rights of use necessary for the fulfilment of the contractual purpose for the databases and database works of pharma mall made accessible to him.

§ 12 Other provisions

12.1 These General Terms of Use are subject to the law of the Federal Republic of Germany.

12.2 If the USER is a merchant within the meaning of the German Commercial Code, a legal entity under public law or a special fund under public law, Bonn shall be agreed as the place of jurisdiction for all disputes arising within the scope of the execution of this contractual relationship; pharma mall shall also be entitled, notwithstanding this, to bring an action before the court having jurisdiction for the registered office of the USER.

12.3 The place of performance shall be Sankt Augustin.

12.4 Should individual provisions of this Agreement be or become invalid or void, this shall not affect the remainder of the Agreement.

12.5 The transfer of this contract or the assignment of claims arising from this contract to third parties requires the prior consent of the other contracting party.

12.6 Amendments and supplements to this contract must be made in writing.