

**Purchasing Conditions of BCM Kosmetik GmbH (BCM)**

**Messenhäuser Str. 22, D-63128 Dietzenbach, Germany**

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**1. General terms**

- 1.1. The legal relationships between the supplier and BCM Kosmetik GmbH as well as companies connected with BCM, including companies with minority shareholding (hereafter referred to as BCM) are subject to these purchasing conditions and any other agreements in place between the supplier and BCM. These conditions apply to purchasing contracts, service contracts, and contracts for work and materials, including consulting and all connected ancillary services (hereafter summarized as „Deliveries“ unless otherwise specified). The conditions are accepted upon order confirmation or order acceptance by the supplier. They shall apply for the entire duration of the business relationship.
- 1.2. Contracts, work orders, material orders, agreements and the like, as well as changes or additions to them, must be in text form (e.g. e-mail or fax). Verbal arrangements are only binding after being confirmed in text form by BCM.
- 1.3. These purchasing conditions apply exclusively. Different, contradictory, or additional general terms and conditions of the supplier shall be part of the contract only if and to the extent as BCM has explicitly accepted them in writing. Such requirement for acceptance also applies when BCM, being aware of the supplier's terms and conditions, accepts the delivery without reservation. BCM hereby rejects counter-confirmations, counter-offers, or other quotations by the supplier referencing the supplier's terms and conditions. Other general terms and conditions shall not apply even if they are not explicitly rejected on a case-by-case basis. If the supplier has rejected the validity of these purchasing conditions, the effectiveness of the contract / order is not affected. In the event of contradictory regulations, the legal regulations shall apply unless other individual agreements have been made. Failure to response to different conditions provided by the supplier does not constitute an acceptance of those conditions by BCM.
- 1.4. The German version of these conditions shall apply to all contracts and orders written in German.
- 1.5. However, these purchasing conditions only apply to companies according to Article 14 BGB (German Civil Code).

**2. Quotations**

- 2.1. The supplier's quotations must adhere precisely to the request by BCM regarding type, quantity, and quality. Deviations must be referenced explicitly. Quotations must be prepared free of charge and are binding for the supplier for a minimum period of one month. Quotations do not constitute any obligation on the part of BCM.

**3. Orders**

- 3.1. If the supplier does not confirm an order within 5 working days, BCM is entitled to cancel the order. The time of receipt by BCM defines compliance with this period.
- 3.2. Complete or partial transfer or subcontracting of the ordered Deliveries or service to third parties requires prior approval by BCM.
- 3.3. Upon order confirmation, any images, drawings, calculations, or other documents enclosed with the order become part of the agreement. BCM reserves property rights and copyrights to these documents; they may not be made available to third parties. Transfer to third parties requires explicit approval by

BCM, which must be declared in text form. The documents are to be used exclusively for fulfilling the order; the supplier is to return them to BCM on his own accord after the order is completed.

- 3.4. Any correspondence, in particular invoices and shipping documents, must include the BCM order number including order date and item number. Non-compliance on the part of the supplier exempts BCM from any liability for delays in processing.
- 3.5. Where partial Deliveries are agreed, call-off orders by BCM are binding if the supplier does not reject them within 5 working days.
- 3.6. BCM is entitled, within reason, to demand changes to the delivery item, particularly the item specification. Consequences of such changes in terms of excess or reduced costs and delivery schedules are to be handled reasonably and amicably with mutual agreement.

#### **4. Prices**

- 4.1. All prices listed in quotations or orders include all packaging costs and any other additional costs unless explicitly agreed otherwise, plus currently applicable VAT. Transport costs are to be listed separately.
- 4.2. The agreed prices are fixed.
- 4.3. Price increases must be announced at least 4 weeks in advance. They do not become effective until an amicable solution has been agreed between the parties.

#### **5. Delivery dates and periods**

- 5.1. Agreed dates and periods are binding. Periods begin with the order date. The arrival date of the goods at their destination determines compliance with the delivery date or period.
- 5.2. When it becomes apparent that dates or periods cannot be complied with, the supplier is obliged to inform BCM immediately, including the reasons and expected duration of the delay.
- 5.3. When dates or periods are not complied with, the supplier is considered to be in default without further reminder. BCM may claim 0.5% of the order value per partial week of delay as damages irrespective of any other claims. BCM may claim these damages without reserving the right to do so when accepting the delivery. The supplier reserves the right to prove that BCM suffered no damage or substantially less damage as a result of the delay.
- 5.4. BCM is not obliged to accept Deliveries before the agreed delivery date. If Deliveries are accepted before the agreed delivery date, BCM is entitled to charge appropriate storage and handling fees for storing the goods until the agreed delivery date.

#### **6. Deliveries**

- 6.1. The delivery must correspond exactly to BCM's order or delivery schedule in terms of its design, type, quantity, quality, and schedule.
- 6.2. The delivery must be free of material or legal deficiencies, and must meet the latest requirements of technology and the contractually agreed characteristics and standards, as well as safety, work safety, accident prevention, and any other regulations. Pertinent certificates, test reports, and verifications are to be included at no charge.
- 6.3. Whenever possible, each delivery should come from one batch, i.e. it should form a homogeneous unit. The batch number must be noted on every packing unit and every delivery note.
- 6.4. The goods must satisfy the origin requirements of the EU preferential agreements unless otherwise specified in the order confirmation.
- 6.5. For Deliveries from an EU member state other than Germany, the supplier's EU VAT ID No. must be referenced.
- 6.6. Imported goods must be delivered duty paid. The supplier is obliged to provide declarations and information requested in the context of regulation (EC) No. 1207 / 2001 at the supplier's expense, to allow examinations by the customs authority, and to provide official confirmations.

- 6.7. The supplier is obliged to provide BCM with comprehensive written information in the quotation about any permit requirements for (re)-exports according to German, European, and US export and customs regulations, as well as export and customs regulations of the country of origin of the goods.
- 6.8. The supplier must send a detailed shipment notification for every individual shipment on the day it is dispatched. This notification is to be sent separately from the goods and the invoice. If the goods are sent by ship, the shipping papers and invoice must state the name of the shipping company and the vessel.
- 6.9. Deliveries must be made during the opening hours of goods receiving department. These are listed on the order or the call-off notification.
- 6.10. The supplier must comply with BCM's and the freight forwarder's shipping regulations. The BCM shipping regulations are defined in the document "Logistik-Anforderungen für die Anlieferung bei BCM" (Logistics Requirements for Delivery to BCM). They are considered accepted by the supplier. All shipping documents (such as delivery notes), correspondence, and invoices must state the order and item numbers and permanent BCM employee's reference, as well as the designation of the content by type and quantity.
- 6.11. The supplier is liable for damages resulting from non-compliance with this requirement and bears the costs of such damages. The supplier is also responsible for ensuring that subcontractors comply with these shipping regulations.
- 6.12. The supplier bears the costs of transport including packaging, transport insurance up to a value of € 30,000, as well as all other ancillary costs. RVS/SVS (Freight Forwarding/ Cartage Insurance) may not be billed.
- 6.13. Deliveries must be DDP (Incoterms 2010), unless explicitly agreed otherwise.
- 6.14. Generally, goods are to be delivered in commonly used disposable standard packaging. If using reusable packaging, the supplier must provide the packaging free of charge. The packaging remains the supplier's property and is returned at the supplier's expense and risk. If BCM agrees in exceptional cases to bear the packaging costs, they must be billed at verifiable cost price.
- 6.15. If devices are delivered, a technical description and user manual must be included in the delivery at no charge. For software products, the delivery is not considered complete until the entire (system-technology and user) documentation has also been provided. For software programs created specifically for BCM, the program must also be delivered in source code format.

## **7. Quantity deviations**

- 7.1. BCM will accept excess Deliveries of up to 3%. Excess Deliveries of up to 3% do not change the unit price agreed for the delivery. BCM may reject excess Deliveries of more than 3%. Any costs incurred are the supplier's responsibility. If BCM does not reject the excess delivery of more than 3%, BCM and the supplier will agree on an appropriate adjustment of the unit price.
- 7.2. In the event of weight deviations, the weight determined at the time of receipt shall be valid, unless the supplier proves that the billed weight was correctly determined by means of a generally recognized method.
- 7.3. Short Deliveries are considered a defect. In this case, BCM is entitled to claim damages under the statutory warranty provisions, on the understanding that BCM is entitled to demand delivery of the missing quantity, which the supplier must provide without relying on the objection of incurring disproportionate additional costs.

## **8. Quality, documentation and audit**

- 8.1. The supplier's Deliveries must comply with rules and regulations applicable within Germany and the EU, in particular those applicable to the cosmetics sector (such as the EU Cosmetics Directive, OECD Guide Lines, REACH). The supplier is obliged not to use any prohibited substances. Avoidance substances and hazardous materials according to current laws and guidelines must be identified in the supplier's

specifications. If applicable, safety data sheets must be included with the quotations and with the delivery note of the first delivery of each substance (at minimum in German or English). BCM must be informed immediately of references to exceedance of substance limitations and delivery of prohibited materials.

- 8.2. The supplier must provide samples before and during production upon BCM's request.
- 8.3. The supplier is obliged to check and monitor product quality directly. Upon BCM's request, SPC (Statistical Process Control) checks must be conducted.
- 8.4. An AQL (Accepted Qualifying Level) of 1.0 for main characteristics and 1.5 for minor characteristics shall apply as quality standard and part of the BCM order. BCM has the right – after prior written announcement – to demand an AQL of 0.65 as a minimum allowable error rate. An inspection level of PN II is accepted.
- 8.5. The supplier is obliged to provide proof of a quality assurance system and existing quality standards applied in the supplier's company upon BCM's request. The supplier is responsible for ensuring that the quality assurance system is adequate, efficient, and reliable, and that it completely covers all processes in the supplier's domain.
- 8.6. BCM is entitled to audit the supplier. The audit entails viewing the supplier's business documentation regarding quality and capacity capabilities, whether the contractual items satisfy BCM's specifications, provided that BCM announces the audit in writing 15 days in advance. The audit is carried out according to an agenda defined in advance and aligned with the requirements of relevant ISO, national laws and standards for the intended purpose of the product to be audited, or with products, content, or services to be audited.
- 8.7. Audits will be carried out at varying intervals, generally every 2 years.
- 8.8. The supplier undertakes to support BCM during the audit within reasonable limits and to grant BCM adequate access to information relevant to the audited product or the audited products, contents, and services.
- 8.9. The necessary documentation must be presented to BCM or to a third party assigned by BCM who is bound by a professional obligation to secrecy. If the audit reveals irregularities, the costs of the audit will be borne by the supplier. The supplier agrees that BCM shall not be responsible for costs incurred by aiding BCM during an audit.
- 8.10. The supplier provides BCM with necessary information and documentation such as samples, formulas, drawings, etc. concerning the goods or this contract at no charge.
- 8.11. If audits of goods are required, the supplier bears those audit costs incurred in the supplier's domain. BCM bears its own audit costs. The supplier must notify BCM of audit readiness at least one week prior to the planned audit date and confirm the audit date with BCM. If the deliverables are not presented at this date or if the audit has to be repeated because of defects, BCM's audit costs will be borne by the supplier. All costs for material certifications of raw materials are borne by the supplier.
- 8.12. Apart from product, content, and process related audits, "social audits" may also be conducted. Social audits take place at the beginning of a business relationship and are usually repeated every 2 years. Social audits may be conducted as part of a product or process audit, or separately at a later date. Social audits are intended to examine the supplier's organization with respect to BCM's requirements for treatment of employees. They focus for instance on the proper implementation of social regulations, corruption, work environment, work place design, employee motivation and satisfaction, child labor, etc.
- 8.13. The supplier must hold all subcontractors to the same standards regarding the above aspects.

## **9. Invoices, payments, transfer of risk, acceptance**

- 9.1. Invoices must be sent separately from the goods and may not be sent before the goods are shipped.
- 9.2. Invoices must comply with current legal regulations and state the BCM order number and shipping method.

- 9.3. Applicable VAT must be shown separately in quotations, order confirmations, and invoices. If this is not the case, applicable VAT is included in the price.
- 9.4. The supplier is liable for any consequences from non-compliance with these requirements, unless proof is provided that the supplier is not responsible for them.
- 9.5. Payments are subject to invoice verification and do not constitute acceptance of the goods as being in accordance with the contract.
- 9.6. The payment term begins on the day of receipt of defect-free goods and correct invoice, whichever comes last, but not before the agreed delivery date.
- 9.7. If the object of the agreement is performance of work, acceptance of the work takes the place of receipt of goods.
- 9.8. Payments do not constitute acceptance of conditions or prices.
- 9.9. Payments are remitted within 14 days minus 3% cash discount or net within 30 days. Payments are remitted via bank transfer.
- 9.10. The supplier may assign claims only with prior written consent by BCM.
- 9.11. BCM will not be considered to be in default until the first reminder by the supplier is issued.
- 9.12. In the event of payment default, BCM will not owe default interest charges in excess of those defined by law according to Article 288 Section 2 BGB.
- 9.13. Irrespective of agreed pricing, risk transfers to BCM at the time of receipt at the destination specified by BCM for Deliveries without installation or assembly. For Deliveries with installation or assembly, risk transfers to BCM when the work is successfully accepted by BCM. Commissioning, utilization, or payment do not take the place of an acceptance declaration by BCM and under no circumstances constitute acceptance. This also applies if BCM has accepted shipping costs in an exceptional case due to a special contractual agreement or for "ex-works" Deliveries.
- 9.14. If the supplier is obliged to provide material samples, inspection reports, quality documentation, or other documents, these must also be provided for the delivery and/or service to be deemed complete.

## **10. Liability**

- 10.1 Except for cases of intent and gross negligence, liability on the part of BCM for loss of profits and other purely monetary damages is excluded.
- 10.2 BCM's liability for all claims arising from this contract is limited to €1,000,000, except in cases of
  - (i) intent
  - (ii) gross negligence
  - (iii) culpable violation of duties resulting in injury to life, limb, or health,
  - (iv) liability according to product liability law and
  - (v) defects that were maliciously concealed or whose absence was guaranteed.
- 10.3 The aforementioned liability exclusions also apply to non-contractual liability.
- 10.4. Any further liability by BCM is excluded.

## **11. Guarantee, defect liability, limitation**

- 11.1. The supplier is obliged to ensure that all goods delivered, work performed, and services rendered comply with the latest technological standards, applicable legal regulations, and provisions and guidelines issued by authorities, professional associations and trade associations at the time they are delivered. The supplier will inform BCM without delay of upcoming changes of which the supplier is aware.
- 11.2. If the supplier has concerns about a type of performance requested by BCM, this must be conveyed in writing without delay.
- 11.3. BCM must inform the supplier immediately in text form of defects in the Deliveries, as soon as such defects are detected during the ordinary course of business. The supplier thus waives the option of objecting to delayed complaint.



- 11.4. Defects are considered claimed in time if the supplier is notified within two weeks after the goods are received, or in case of hidden defects two weeks from the date they are noticed.
- 11.5. The date the complaint is sent by BCM determines whether the complaint was issued in time.
- 11.6. For larger quantities, random samples are inspected according to DIN ISO 2859 (Sampling procedures for inspection by attributes, general inspection level II). Defects that are not discovered during random sampling are considered hidden. Article 377 HGB (Commercial Code) does not apply to hidden defects.
- 11.7. BCM is entitled to full statutory warranty claims. In any case, BCM is entitled to demand either the correction of defects or delivery of new goods from the supplier. BCM explicitly reserves the right to damage compensation, in particular the right to damage compensation instead of the performance.
- 11.8. If the supplier does not provide supplementary performance within a reasonable period set by BMC, BMC may perform the necessary measures or have them performed by a third party at the supplier's expense. In urgent cases, when it is not possible to inform the supplier of the defects and impending damages and set a time limit, however short, for providing a remedy, BCM may remedy the defects in the interest of uninterrupted business operations without prior coordination with the supplier and invoice the supplier for the incurred expense. The same applies if unusually great damage is imminent.
- 11.9. The limitation period is 36 months, unless legal regulations or other commonly applicable rules result in / specify a longer period of limitation / shelf life of products.
- 11.10. For every complaint for which the supplier is responsible, a flat processing fee of €250.00 plus applicable VAT will be invoiced irrespective of any other claims. The supplier reserves the right to prove that BCM suffered no damage or substantially less damage as a result of the complaint.
- 11.11. In the event that, counter to this agreement, goods delivered by the supplier are not free of third-party rights, the supplier must compensate BCM for any damage resulting from this circumstance if the supplier knew or should have known about said third-party rights.

## **12. Product liability, recourse**

- 12.1. If a claim is brought against BCM by a customer in the context of a purchase of consumer goods, and this claim is a result of a defect of goods delivered by the supplier, the limitation period for recourse claims will be five years after the goods are delivered to BCM.
- 12.2. If a claim is brought against BCM by a third party based on product liability or other legal regulations, the supplier is obliged to indemnify BCM upon first request, provided the cause of the claim lies within the supplier's domain.
- 12.3. If a product recall becomes necessary as a result of product liability, and the cause for the recall lies within the supplier's domain, the supplier must indemnify BCM from all expenses and costs incurred at first request.
- 12.4. The supplier is obliged to carry product liability insurance and, if appropriate, transport insurance with adequate minimum coverage for the duration of the business relationship.

## **13. Property rights**

- 13.1. BCM may use the Deliveries including underlying patents and other property rights in its concern without restriction, provided that the Deliveries was prepared especially to BCM requirements. Licensing fees for the use of patent rights and/or property rights by BCM are included in the agreed delivery price and covered by payment.
- 13.2. This utilization right also entitles BCM to change the contract object and also includes images, drawings, calculations, analytical methods, formulas, and other works prepared or developed by the supplier in the course of setting up and implementing this contract. BCM may provide documentation to third parties for the purpose of recreating or changing spare and replacement parts.
- 13.3. The supplier confirms that there are no third-party rights counteracting the intended use of the deliverables, in particular that third party property rights are not violated.

- 13.4. The supplier is responsible for claims resulting from violation of property rights and property rights applications (property rights) due to the intended use of the goods if at least one of the family of property rights is published in the home country of the supplier, by the European Patent Office, or in one of the states of the Federal Republic of Germany or the European Union.
- 13.5. The supplier indemnifies BCM and its customers from all claims resulting from such property rights.
- 13.6. This does not apply if the supplier has manufactured the goods according to specifications provided by BCM and does not know, or does not have to know, that property rights are violated by manufacturing the goods.

#### **14. Confidentiality, information and documents**

- 14.1. The supplier is obliged to treat all non-evident commercial and technical details that become known to the supplier through the business relationship as confidential and not to provide such information to third parties. This includes but is not limited to drawings, specifications, models, forming tools and special tools, print templates, corrections and samples, as well as any other documentation.
- 14.2. All documents such as drawings, drafts, technical documentation, samples, formulas, specifications, manufacturing instructions, company-internal data, tools, installations, etc. provided to the supplier by BCM for the purpose of preparing quotations or fulfilling an order shall remain property of BCM; all brand, copyright, and other property rights remain with BCM. The supplier must return all such documents including any copies on his own accord immediately after fulfilling an order; the supplier is thus not entitled to claim retention rights. The supplier may use the above mentioned materials only for fulfilling the order and may not provide them to third parties or make them accessible to third parties. Duplicating the above mentioned materials is permitted only in the extent that it is absolutely necessary for fulfilling the order. The supplier must hold subcontractors to the same obligation.
- 14.3. Manufacturing for third parties, exhibition of goods manufactured exclusively for BCM, in particular goods manufactured according to plans, drawings or other special requirements by BCM, as well as any reference to the order (such as the business relationship) made to third parties require explicit prior consent in text form by BCM. This also applies to referencing BCM in any advertising materials and/or efforts.
- 14.4. The supplier and BCM will enter into a separate confidentiality agreement which constitutes an integral part of the purchasing conditions. If a separate confidentiality agreement between the supplier and BCM is already in place, it becomes an integral part of the purchasing conditions.

#### **15. Tools**

- If the supplier develops materials for BCM such as drawings, drafts, technical documentation, samples, formulas, specifications, manufacturing instructions, company-internal data, tools, installations, etc. partially or entirely at BCM's expense, clause 13 shall apply accordingly. BCM becomes the owner of these materials upon payment, even if those materials remain in the supplier's possession. Such materials must be clearly marked. The supplier keeps these materials for BCM at no charge; BCM may at any time purchase the supplier's rights regarding these materials, compensating the supplier for any unamortized costs, and demand that the materials be turned over.
- 15.1. The supplier is obliged to keep and maintain the above mentioned materials and to repair normal wear and tear. The supplier is also obliged to insure the original value of the above mentioned materials against fire, water, and theft at the supplier's expense. At the same time, the supplier assigns all compensation claims from this insurance to BCM at this time; BCM accepts the assignment. If the supplier hires a subcontractor to prepare the materials for fulfilling the order, the supplier shall hold the subcontractor to the same obligation. The supplier assigns all claims against the subcontractor for transfer of the tools and samples to BCM at this time. BCM accepts the assignment.
  - 15.2. The above mentioned materials may not be used for other purposes, duplicated, or made accessible to third parties. The supplier is liable for damages incurred by BCM due to violation of these obligations.

## **16. Retention of title for buyer's orders**

- 16.1. Property rights for all goods delivered by the supplier are transferred to BCM upon delivery and acceptance.
- 16.2. Raw materials, auxiliary materials, operating materials, and goods provided to the supplier by BCM at no charge are to be processed and transformed exclusively for BCM. For processing with other goods not belonging to BCM, BCM is entitled to co-ownership of the new goods in the ratio of the invoice amount of the original price of the reserved goods to the original price of the other processed goods (at the time of processing) or to the normal market sales price (highest value principle).
- 16.3. If operating and auxiliary materials are provided to the supplier for use, the supplier is obliged to mark them as BCM property, store them separately from the supplier's property, and treat them with prudent business diligence.
- 16.4. The supplier is responsible for such materials in case of loss, damage, or loss of value.

## **17. Suspension of payment/insolvency proceedings**

- 17.1. In the event that insolvency proceedings are initiated against one of the contract parties' assets or out-of-court settlement proceeding are initiated, the other party is entitled to withdraw from the unfulfilled portion of the contract.

## **18. Capital goods**

- 18.1. When ordering capital goods, BCM is entitled to inspect the fulfillment of the order at the place of fulfillment – be it the supplier's premises or any other location. The supplier is obliged to provide BCM access for the purpose of the inspection during normal business hours. The supplier must hold any subcontractors to the same obligation according to sentences 1 and 2 of this clause. The supplier is to support BCM in conducting the inspection and provide any necessary installations and aides free of charge. The supplier must immediately remedy any defects in the manufacture of the capital goods detected during the inspection. An inspection does not affect BCM's right to claim defects detected after the inspection or to claim any other rights.

## **19. Adherence to compliance guidelines**

- 19.1. The supplier guarantees BCM that all locally applicable legal labor protection regulations (in particular those pertaining to work hours and work safety) are complied with in the supplier's organization).
- 19.2. The supplier also guarantees compliance with Convention No. 138 of the ILO.
- 19.3. The supplier is also obliged to conduct all business activities according to the 10 Principles of the Global Compact; <https://www.unglobalcompact.org/what-is-gc/mission/principles>

## **20. Place of fulfilment, place of jurisdiction, applicable law**

- 20.1. Place of fulfillment is the registered headquarters of BCM, unless BCM has specified a different receiving location. If the supplier is a merchant as defined by the German Commercial Code, BCM's headquarters is the place of jurisdiction. BCM is entitled, however, to sue the supplier in the supplier's general place of jurisdiction.
- 20.2. This contract is subject to German law, excluding the UN Sales Law (CISG).

## **21. Legal validity, privacy statement**

- 21.1. Should one clause of this contract or a clause added at a later date be or become partially or entirely invalid, or should this contract have any legal gaps, the validity of the remaining clauses shall remain unaffected. In place of the invalid clause or to close the gap, a valid and practicable clause shall be considered agreed that legally and economically comes closest to what the parties intended or would have intended given the intent and purpose of this contract had they considered the point when signing the contract. The contract parties are familiar with the jurisprudence of the German Federal Supreme



Court, in particular the verdict of 24 September 2002 – KZR 10/01. Nevertheless, it is the explicit will of the contract parties that this regulation shall not result in mere reversal of the burden of proof, but that Article 139 BGB is waived altogether.

- 21.2. BCM is entitled to process and store data obtained through the business relationship according to the Federal Data Protection Act or to have such data processed and stored by third parties on BCM's behalf.
- 21.3. The supplier is obliged to adhere to the legal data protection regulations, and must hold all employees and subcontractors to the same obligation.
- 21.4. The supplier will inform BCM in writing without delay of any changes and additions that affect the delivery and the contractual relationships (e.g. bank details, name changes, address changes, contact data).
- 21.5. The supplier is liable for any damages resulting from violation of one of these obligations.