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## **General Terms and Conditions - Biomega e.U.**

### **1. Area of Application**

1.1 The following terms of sale and delivery apply exclusively; conflicting or differing customer terms and conditions are only binding if we acknowledge them in writing. Our terms and conditions also apply if we carry out delivery with knowledge of conflicting or differing customer terms and conditions.

1.2 Amendments or changes to the contract must be in written form in order to be valid.

1.3 Ambiguities and misunderstandings surrounding orders not placed in writing come at the expense of the customer.

1.4 Contrary arrangements and agreements made by the customer with persons who legitimately or illegitimately offer our line of products are only valid with our written confirmation. The rights and obligations of our vicarious agents are exempted from this.

1.5 Should one or more provision of the delivery contract and/or of these terms and conditions be null and void, this does not affect the validity of the contract or of these general terms and conditions. We are empowered to replace any null and void provisions with a legally effective regulation, whose economic result corresponds to the void condition as closely as possible.

1.6 Our general terms and conditions of sale and delivery apply in relation to companies exclusively in terms of § 1 of the Austrian Customer Protection Act (KSchG). Sales to consumers subject to different jurisdictions.

### **2. Delivery - Delivery Period**

2.1 The customer is bound by his confirmation, whether written, oral, or by phone, for one month. This period of time will be accordingly lengthened if delivery is disrupted by an act of nature, through some fault of the buyer's, or by other circumstances beyond our control.

2.2 A valid contract is achieved, at the earliest, with written confirmation of an order that we have received, and, at the latest, with the unconditional acceptance of delivery by the customer. If a contractual confirmation is not specified, the receipt sent is considered to be one.

2.3 The extent and content of the delivery owed results from our contractual confirmation and receipt, respectively.

2.4 The deliveries are ex works, in so far as nothing else is stipulated in writing. The risk of accidental loss or of accidental delivery failure transfers ex works to the customer. This also applies if, at the request of the customer, we deliver or allow delivery to his place of business. Provided that the customer has secured delivery insurance, he is now obliged to assign us all compensation claims, insofar as these relate to the risk of damage and price variation taken over from the customer. We hereby accept the transfer.

2.5 Insurance against damage, destruction, or loss of goods in transit takes place only at the express request of the customer and at his expense.

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2.6 Loss and damage of goods in transit by the carrier who provides delivery service are to be reported to us by the customer promptly and directly, along with simultaneous transmission of disclosure (duplicate/copy).

### **3. Delivery - Default of Acceptance**

3.1 Since the products offered are mainly natural products, whose supply is limited, orders will only be taken on the condition of availability.

3.2 In case of delay or failure in delivery, if we do not fulfill the order during the reasonable grace period granted to us by the customer, the customer is allowed to withdraw from the contract.

3.3 We are entitled to delay delivery for the duration of interference should an act of nature occur, whether it occurs to us, to the suppliers, during transport itself, or any to contractors, to whom transportation has been delegated. We are obliged to promptly inform the customer thereof, if such an incident occurs and to refund payments already made by the customer, upon request. Provided such an incident lasts for longer than three months, we are entitled to withdraw from the contract, either in total or in part.

3.4 Damage claims due to delayed or unfulfilled delivery will not be accepted, so long as no deliberate act can be verified.

3.5 If the customer is in default of acceptance, if he violates other obligations to cooperate, or if he refuses to accept delivery, we are entitled to claim compensation for any damages that arise to this extent, including any potential additional expenditures, replaced or without proof of the actual damages, as well as 25% of the sale price and the return delivery costs. We reserve the right to further damage claims.

3.6 As soon as the customer is in default of acceptance, the risk of accidental loss or accidental delivery failure transfers to the customer; however, in accordance with the regulations, we are obliged to store properly the delivery to customer's costs.

### **4. Prices - Terms of Payment**

4.1 Information in offers, brochures, advertisements, price lists and the Internet as to weight, measurements, filling degree, price, parameters of quality, and origin are subject to change. They are only binding if it is stipulated in writing or if it has been confirmed by us. Loss in weight through natural loss, storage and the like, as well as variations in the parameters of quality can not be excluded and will not be borne by us.

4.2 Unless otherwise agreed, our prices are in EUROS, including product packaging costs and additionally the applicable VAT as prescribed by law. During the delivery period, entering changes in price, transportation charges, and tolls, entitle us to a corresponding change in price, even after the conclusion of the contract.

4.3 Changes in price as to products purchased from us, even after the conclusion of the contract, entitle us to an appropriate change of the agreed-upon purchase price.

4.4 Unless otherwise agreed, the respective prices apply net ex-works.

4.5 We can nullify a binding offer, or withdraw from the contract, if the customer is behind on payments, if a credit report is demonstrably dissatisfactory, or if there is reason for us to view the fulfillment of the contract by the customer as dubious.

4.6 Due invoices must be paid before new delivery.

4.7 The customer is obliged to perform the respective payments in accordance with the guidelines of the order confirmation. Unless otherwise agreed, our receipts are payable net cash 10 days after the billing date. The deduction of discounts requires a special agreement.

4.8 We only accept bills of exchange, if it is agreed upon in writing. In this case, the customer bears the discount expenses. Payment is only deemed made, if the amount owed is irrevocably credited to us.

4.9 Checks are only credited after validated receipt of payment.

4.10 In case of dishonour of an agreed-upon automatic debit transfer, the incurred bank fees will be recharged to the customer.

4.11 If the customer is in default of payment, we are entitled to claim interest in the amount of eight percentage points as default costs, by means of the respective base interest rate stipulated in § 352 UGB. The damage will be set higher, provided that we prove greater damages caused by the default.

## **5. Defect Liability**

5.1 The customer is obliged to immediately examine deliveries and make any defect-related complaints in accordance with BGBl I 2001/48. Recognizable defects must be contested within 7 days after acceptance of delivery, concealed defects must be contested immediately upon discovery. The customer shall bear the full burden of proof for all claim requirements, in particular for the defect itself, as well as for the time at which defect was identified and for the prompt notification thereof.

5.2 Paragraph (1) also applies to excessive and insufficient deliveries, as well as for wrong delivery.

5.3 The product description alone applies where the nature of the goods is concerned. Our public statements, offers, or advertisements do not constitute a contractual agreement about the quality of the goods.

5.4 Provided a defect exists and has been promptly identified, we are entitled, at our discretion and within a reasonable period of time, to remedy the defect by carrying out a repair or by supplying a new product which is free of defects. The expenditures towards replacement shall be borne by us. If the replacement proves faulty or intolerable to the customer, the customer is entitled to withdraw from the contract or to demand an appropriate reduction in price, provided it does not incur any breach of duty on his part. The depreciation is generated from the difference between the agreed-upon purchase price and the actual value of the goods. Provided that no deliberate action or fraud can be demonstrated to us, any further compensation is precluded.

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In case of a slight breach of contract, especially in the event of minor defects, the customer does not have the right to withdraw from the contract.

5.5 The period of limitation shall be one year, expiring, at the latest, after the given expiration date has been reached.

5.6 Insofar as we have guaranteed the quality of a product, we are liable according to the legal provisions.

## **6. Mail-Order and Resale to Businesspeople**

6.1 The distribution and resale of goods supplied by us through mail-order businesses or to tradespeople of the same commercial level (wholesale to wholesale or retailer to retailer) or to tradespeople of upstream commercial level (retailers to wholesale), is only permitted with written approval from us. Permission given can be revoked by us at any time without providing reasons.

## **7. Retention of Ownership**

7.1 We retain ownership of all deliveries until the receipt of payment, which arose between the customer and ourselves because of the existing business relationship after the respective signing of the contract. If a current account relationship is agreed upon by ourselves and the customer, the retention of ownership also refers to the current recognized account balance. The same applies if an account balance is not recognized, but rather a "causal" account balance is drawn.

7.2 The customer is entitled to sell the conditionally delivered products to third parties within his regular course of business. If this occurs, the customer is then obliged to transfer to us all claims which accrue to him from resale with regard to his purchasers. The transfer is confined to the amount of the claim which has been agreed upon as net invoice between ourselves and the customer. We accept the transfer. The customer is entitled to collect this claim so long as he is not in default of payment. If this occurs, we are entitled to revoke the authorization to collect; in this case, the customer is obliged to make all relevant information available to us, so that we are in the position to collect the claims with regards to the purchasers ourselves. We are entitled to revoke the authorization to resell and collect, if the customer gets into substantial financial difficulties, or if an application to open insolvency proceedings is filed.

7.3 If the customer also further processes the goods subject to retention of ownership, the retention of ownership entitled to us extends to the further processed goods in proportion to the amount of the current open and unsettled claims (net invoice plus VAT), as stipulated between ourselves and the customer.

7.4 If the goods subject to retention of ownership that we deliver are indiscriminately mixed with other things or objects, the amount of the current open claims (net invoice plus VAT) is due to us, as agreed between ourselves and the customer. In this amount the customer concedes joint ownership to us. He keeps safe this joint ownership for us.

7.5 If the realizable value of the securities entitled to us exceeds the nominal value of our claims by more than 10%, we are obliged, at the request of the customer, to release the respective securities; the choice of the securities to be released is incumbent upon us.

7.6 Instead of withdrawing, we are allowed to claim damages on account of non-fulfillment.

## **8. Jurisdiction – Miscellaneous**

8.1 The exclusive, local place of jurisdiction for all disputes, including any tort claims, arising from or in connection with this contract, is our place of business (registered office); however, we are entitled to institute proceedings against the customer at his place of business. Sentence 1 applies only to merchants, legal persons governed by public law, or public-sector special services.

8.2 For all contracts, the law of the Republic of Austria is applied as agreed upon; the conditions of the UN Convention on Contracts for the International Sale of Goods are excluded.

8.3 The place of fulfillment for all commitments, including the customer's duty of payment, arising from this contract, is our place of business. Sentence 1 applies only to merchants, legal persons governed by public law, or public-sector special services.

8.4 The contractual language is German.

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