

Conditions of Purchase for Biona Vertriebs- und Handelsgesmbh Co KG

Introduction and Scope

The Conditions of Purchase referred to below shall constitute the basis for a co-operation of Biona Vertriebs- und Handelsgesmbh Co KG (hereinafter referred to as „BIONA“ or „we“) with its suppliers (hereinafter referred to as „Seller“). Our Conditions of Purchase apply exclusively. We will not accept any terms of the Seller conflicting and / or deviating from our Conditions of Purchase unless we have explicitly agreed to such terms in writing. The acceptance of an order by the Seller shall simultaneously be regarded as an acceptance of our Conditions of Purchase. Any changes or modifications of these Conditions of Purchase shall expressly be reserved for BIONA. The German version alone shall be legally binding. Thus, all prior Conditions of Purchase shall cease to be valid. Our Conditions of Purchase shall also apply to all future contracts with the Seller.

Delivery / Shipping Address / Place of Performance

Unless otherwise agreed, all deliveries by the Seller shall exclusively be executed `free buyer's address` unless the collection of goods shall be performed by a pre-carriage service provider appointed by BIONA. Also, BIONA shall administer all damages of a shipment executed `free buyer's address` directly with the Seller. In case of non-observance of these Conditions of Purchase BIONA reserves the right to debit to the Seller all incurring additional costs and processing fees. The Seller agrees to inform all of his contracted providers of the contents of these Conditions of Purchase, for example, providers of logistic services and information technologies.

Unless expressly agreed otherwise and in writing the goods shall be delivered to the address stated below:

Gewerbestraße 2
5082 Grödig bei Salzburg
Austria

The place of performance shall thus be at 5082 Grödig near Salzburg, Gewerbestraße 2. If delivery of goods to an outside warehouse is agreed, the place of performance shall be the shipping address of the service provider, which we will disclose to the Seller in writing. Unless expressly agreed otherwise in writing, the Seller shall be bound to freight prepaid and custom cleared delivery. The risk of accidental loss or deterioration of the delivery goods shall in any case be borne by the Seller until the goods are handed over at the place of delivery, regardless of whether or not delivery was agreed to be carriage paid or not.

Orders

All agreements entered into between us and the Seller for the purpose of execution of a contract have definitely been laid down in these Conditions of Purchase. All of our orders shall only be made in writing. Oral agreements resp. contract modifications without prior written confirmation shall not have any binding legal effect. In particular, silence on our part shall not constitute any acceptance or approval. All offers made to us shall be free of charge and shall not imply any obligations for us.

Details regarding weight

The following data shall be included in the offering process:

Gross weight = „untreated weight“ = weight including packaging material
Tara = „package weight“
Net weight = „treated weight“ = goods without packaging material

Invoicing is effected according to the net weight of the goods as per documentation of the Buyer. Discrepancies between the weight determined by the Buyer and the Seller shall be dealt with according to the provisions referred to below:

Differences in weight upon delivery up to +/- 5 kg shall remain unconsidered. For differences in weight exceeding +/- 5 kg the net weight as determined by the Buyer by means of certificate of weight of both, the empty and full container shall be valid.

Information on delivery

All tendering must include CFR and FOB or FRH and EXW prices.

For ship and container loads cleared by the Buyer or by the forwarding agent or loads stored upon the request of the Buyer the net weight shall be determined on the basis of full load and empty gauging. Differences in weight in the net weight so determined towards the weight referred to in the bill of lading shall remain unconsidered up to +/- 0.5 %. Any costs so arising shall be born by the Seller.

Invoicing

Invoicing is performed by means of net-quantity determination of BIONA. Such invoicing has to precisely be performed in accordance with the conditions of the order and has to contain all documents, proofs and attachments (weighing report), enabling the Seller a reasonable inspection in all regards.

Order confirmation, Offer documents

The acceptance of an order has to be acknowledged immediately by stating a binding delivery period in writing. For this purpose our order shall be returned to us within two days upon receipt of such order, signed by a person authorized to sign on behalf of the Supplier via mail / fax or email. The order confirmation shall include acknowledgement of these General Conditions of Purchase. All order confirmations deviating from the order shall be treated as a new offer which may only be regarded as accepted upon express written consent on our part. If such confirmation does not exist but goods are nevertheless delivered, the agreement shall be deemed concluded solely pursuant to our General Conditions of Purchase.

Delivery Dates

Unless otherwise agreed upon, delivery of goods shall only be performed from Monday to Friday from 07:00 am to 03:00 pm. The delivery dates provided by us shall be binding. The delivery date referred to in the order shall be the day of goods receipt. In case of foreseeable non-compliance of the delivery date provided the Seller shall immediately inform the contact person responsible in the purchasing department at BIONA., yet not later than two work days prior to the intended delivery date of such incident. Postponements shall only be possible upon consultation of the Seller with the controller responsible at BIONA.

Non or Partial Delivery

The delivery date stated in the order shall be binding. Should no delivery date have been stated on the order the Seller shall deliver / render his services immediately. In case of non or partial delivery the respective contact person in the purchasing department of BIONA shall instantly be informed of such non-or possible partial delivery of the goods by the Seller in writing, yet not later than two work days prior to the delivery date agreed, if any circumstance occur or are identified by him, from which it can be concluded that the delivery date agreed cannot be met or can only be met partially. Subsequent deliveries may only be performed upon prior consultation with our purchasing department.

In the event of a delay in delivery we are entitled to our statutory claims. In particular we shall be entitled to withdraw from the contract after an appropriate period of time and to claim indemnification instead of delivery. We shall fully and completely be entitled to any compensation in this regard. In case of delayed delivery we shall be entitled to gain compensation for any costs and damages resulting from such incident; in case of shortfall in delivery we shall also be entitled to replacement goods at Seller's costs from a third party and the Seller will have to replace any additional costs from such covering purchase.

Type of Vehicle for Delivery

Delivery must be performed with transportation vehicles with a ramp level of at least 1.20 m. It is strongly recommended to only use trucks with firm platform superstructure with tarpaulins but no trucks with box superstructure. It must be possible to place the ramp to the loading area of the truck. Unloading may only be performed from the back of the truck. For vehicles that cannot be unloaded via a ramp no unloading will be performed. Diverging methods of delivery (e.g. such as express goods and courier service) shall not be permissible.

Third-party Goods and Transport safety on Delivery

Upon delivery it is clearly prohibited to position third-party goods in front of the goods designed for BIONA in the truck in such a way, that the third-party goods will have to be removed and unloaded before the goods for BIONA can be unloaded. In such case no unloading will be performed.

Especially when goods are delivered in containers great care must be taken to ensure that the goods are always secured in such a way that they will not fall out once the container doors are opened.

Defective Delivery

Should one or more of the following conditions apply, no acceptance of the goods by BIONA shall be possible:

- Mixed pallets (no homogenous goods on pallets)
- Third-party products prior to goods for BIONA
- Delivery of goods not on pallets (exceptional acceptance in case of delivery via container or upon explicit written consent)
- Heavily soiled goods (e.g. caused by dust)
- Pallets with a total height exceeding 1.95 m (incl. wood)
- One-way pallets
- Pallets with goods protrusion
- Heavily wrapped goods on pallet (damaged packaging units)
- Defective containers
- Delivery of damaged goods
- Delivery of wet goods
- Delivery of goods with mildew and / or pest infestation
- Delivery with vehicles not able to be unloaded from a loading ramp (e.g. Sprinter)
- Missing delivery documents
- No uniform packaging scheme (e.g. varying assembly of pallet layers)

The following issues should generally be avoided upon delivery:

- Articles with diverging logistical data
- Unstable pallets not stretched with films
- Missing film cover of pallets
- Drooping film remnants (film streamers)
- Loose and torn films
- Two pallets connected by means of film
- Winding of pallets with wire mesh or with bands of wool
- Incomplete pallets

BIONA shall be entitled to also refuse acceptance in such cases at its own discretion.

Requirements regarding Quality and Safety

All deliveries must entirely comply with the features as set forth in the order or if no explicit requirements were made in the order comply with the quality and suitability customary in the trade. The quality and suitability as

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set forth in the order shall be rated as warranted properties. It is required that for all foodstuffs and for all packaging material delivered to us, no matter whether they are designed for production or testing purpose, the respective specifications must be presented immediately and without request. In case of change and / or alterations the Seller must immediately update the respective specifications and make these available to us. It shall be assured that for all foodstuffs upon delivery as well as for all materials, packaging material for foodstuff as well as for all other materials used in the production of foodstuffs coming into contact with foodstuffs in the process of production and filling all relevant stipulations correspond to the provisions of the food laws of Austria and of the EU are complied with.

Except as expressly stated otherwise in writing, the product must be "all nature". I. e. it must be free from all types of additives (e.g. chemical additives) or treatments. It goes without saying that in addition the product must not be irradiated and / or genetically manipulated.

Notification of Defects

BIONA may require to notify the Seller within a reasonable timeframe and to reprimand identified defects if upon checking the goods and the proper packaging provided upon delivery as well as the transport carrier (palette) for verification of possible defects regarding deviations on quality and quantity.

The complaint of obvious defects shall take place in due time if it is dispatched within 7 working days from receipt of the delivery items by BIONA to the Seller. Contrary to the provisions of §§ 377, 378 UGB (Austrian Enterprise Code) the failure to give immediate notice of defect upon receipt and takeover of goods shall not constitute approval of the delivery.

Complaints regarding hidden defects shall be considered valid if it is dispatched within 7 working days from detection by BIONA to the Seller.

If goods are delivered to the outside warehouse of an external provider the complaint of obvious defects shall be performed in due time if it is dispatched within 14 working days from receipt of the delivery of the goods by BIONA to the Seller. Complaints regarding hidden defects shall be considered valid if dispatched within 14 working days from detection by BIONA to the Seller.

Liability

BIONA shall be entitled to the statutory damage claims in full. The Seller shall indemnify BIONA from all claims commercial customers or private consumers might make towards BIONA for damages they might have suffered in the course of proper use or in the course of foreseeable use of the product and which may be attributed to defect or fault or to any other condition of the delivery item that infringes the agreement and / or infringement of the Seller's obligation to ensure due care, control and monitoring.

As far as no other mandatory legal deadlines apply the period of limitation for each and all warranty and compensation claim against the Seller shall be 36 months.

If damage may occur caused by the products delivered and hence a recall action must be started as a precautionary measure, as final clarification with the Seller will not be possible, he shall be liable for any costs caused in this way; even it, however, at a later point in time becomes obvious that such recall action has not really been necessary.

Returns Processing

Incurring returns must be picked up by giving 7 – 10 days notice. Such period shall commence with the first establishing of contacts between the purchase department and the quality management department and the Seller. For the processing of returns it is mandatory to inform of the pick-up with a lead-time of at least one workday in writing, as otherwise a presentation of the goods may otherwise not be ensured. Upon collection of returned goods the written pick-up order will have to be presented. Moreover, empty product pallets in good

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shape and equaling the number of pallets for pick-up have to be brought along (pallet exchange system). Should this not be the case BIONA will charge the Seller € 25.00 net (twenty-five) per loading device.

Load Carrier

Delivery shall exclusively be performed on Euro pallets, CHEP pallets or LPR pallets with maximum dimensions of:

Length: 1.20 m

Width: 0.80 m

Height: in case of full pallets according to product pass, max. 1.95 m including wood. Europool pallets from wood may in principle only be loaded up to 1,000 kg including wood. In regards to the load carrier the goods shall be delivered in such a way that under normal conditions of use of the packaging and of the load carrier the goods delivered may be stored without any impairment of the goods and the conveying process. Only Europool pallets apt for storage as laid down in the EPAL guidelines shall be delivered. One-way pallets are prohibited.

In case a certain pallet does not meet the requirements as referred to above, the Seller will have to already now assign BIONA with subsequent improvement to the extent that no costs more than € 100 net (one-hundred) per pallet shall arise, which shall be borne by the Seller. Such subsequent improvement shall be performed by means of a restructuring of the goods by employees appointed by us. The costs invoiced in this regard are calculated according to the actual time spent on the subsequent improvement, whereby one man-hour shall be budgeted with an amount of € 25.00 net (twenty-five). The obligation to bear the costs shall only come into effect if BIONA has reported the defect towards the Seller on time. The Seller shall only be able to object to the subsequent improvement through BIONA immediately upon receipt of the complaint in writing. He shall be obligated to immediately pick up the goods at his own costs and also to again deliver the same goods on a defect-free pallet without delay. For BIONA such discrepancy is substantial, if – at the same time – the date of pick-up of goods and re-delivery of (replacement) goods are announced.

Pallet Exchange System

For load carriers Europool pallets, standardized according to EN 13698-1, reusable, on which the goods are delivered, we exclusively exercise the Cologne Pallet Exchange System. After collection of the goods the provider will get back pallets from our pool. An exception here shall be the delivery by means of container. Only flawless pallets will be exchanged.

Defective Containers

Containers shall be considered defective if the following defects exist:

- Absence of marking „EUR“ on the right as well as absence of the identification marking / pallet organization on the left.



- A board is missing.



- A bottom board or an upper edge board is so heavily splintered that more than a nail or screw shank is visible.



- One board is diagonally or transversely broken off.



- More than two bottom or upper edge boards are splintered in such a way that more than a nail or screw shank is visible.



- One wooden block is missing or is fragmented in such a way that more than one nail is visible.



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Additional features of defective load carriers are:

- The bearing capacity is no longer assured (rotten and decayed, heavy splintering).
- The soiling is so strong that also the cargoes are soiled.
- Heavy splintering existing with several wooden blocks.
- Inadmissible components have apparently been used (e.g. boards that are too thin, blocks that are too narrow)

In case a certain pallet does not meet the requirements as referred to above, the Seller will have to already now assign BIONA with subsequent improvement by means of exchange to the extent that no costs more than € 100 net (one-hundred) per pallet shall arise, which shall be borne by the Seller. Such subsequent improvement shall be performed by means of a restructuring of the goods by employees appointed by us. The actual costs invoiced in this regard are calculated according to the actual time spent on the subsequent improvement, whereby one man-hour shall be budgeted with an amount of € 25.00 net (twenty-five). The costs of the exchange of a defective load carrier into a defect-free load carrier also amount to € 25 net (twenty-five). The obligation to bear the costs shall only come into effect if BIONA has reported the defect towards the Seller on time. The Seller shall only be able to object to the subsequent improvement through BIONA immediately upon receipt of the complaint. He shall then be obligated to immediately pick up the goods at his own costs and also to again deliver the same goods on a defect-free pallet without delay. For BIONA such discrepancy shall be substantial, if – at the same time – the date of pick-up of goods and re-delivery of (replacement) goods are announced.

Efficient Pallet Use

The arrangement of the base area of the packaging units shall guarantee the most efficient pallet use. The basic dimension of 80x120 cm of a pallet must not be exceeded. Pallets with goods protrusion will not be accepted as such incident may lead to considerable faults in the transport and storage process and may also result in a damaging of the goods. A connection between the wood of the pallet and the foil must be existent.

Delivery Notes and Freight Documents

For dispatch of goods to us the following documents have to be issued for each consignment: principally one delivery note and one consignment note as well as the legally required accompanying documents. All such documentation must be presented to the goods receipt office prior to the unloading of the goods. Please note, that such documentation must not be attached to the pallets. Should the necessary papers not be available at the time they should be submitted the goods cannot be accepted.

The following details have to be stated on the delivery note:

- Sender with GLN (Global Location Number)
- Recipient including complete delivery address
- BIONA order number and order date
- Delivery date
- Exact article number + Lot number + batch number
- Delivery quantity (pcs.) and number of packing units and weight
- Delivery note number

The following details have to be stated on the freight document:

- Sender with complete sender address and GLN (Global Location Number)
- Recipient with complete receiving address
- Number of pieces of loading equipment / packaging items
- Type of loading equipment (Euro pallets, CHEP pallets, LPR pallets)
- BIONA –order number and order date

In case of subsequent changes regarding quantity on the delivery notes of the Seller it must be clearly evident that such alterations were performed by the Seller. The old statement of quantity must tidily be crossed out and must be accompanied by a date and a signature, in order to allow transparency. In general the following applies:

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for each order number a separate delivery note has to be provided. In case a delivery consists of more than one truck, partial delivery notes will have to be issued per truck.

Invoices

Invoice recipient: Biona Vertriebs- und Handelsgesmbh Co KG
Ludwig Ganghofer Straße 33 1/2
Berchtesgaden- 83471
Germany

The following details and legal requirements must be stated on the invoices:

1. the complete name and complete address of the rendering entrepreneur and of the beneficiary
2. the tax number as provided to the rendering entrepreneur by the tax authorization or the value-added-tax-identification number provided by the Federal Central Tax Office
3. the date of issue,
4. a sequential number with one or more numerical series, which are uniquely assigned for an identification of an invoice by the issuer of the invoice (invoice number),
5. the amount and the type (commercial name) of the goods / objects delivered,
6. point of time of the delivery (delivery date),
7. payment for delivery broken down according to tax rate and individual tax brakes,
8. any reduction of the remuneration agreed beforehand, to the extent such reduction is not already included in the remuneration (Reference to reduction of remuneration),
9. the applicable tax rate as well as the amount of tax payable for the remuneration or in case of a tax exemption, reference regarding the fact, that there is an existing tax exemption for the consignment.
10. in case of intra-community delivery the sales tax identification number of the Supplier and of the beneficiary has to be stated.

In addition, the following information must be noted on the invoice:

- delivery note number
- order number of BIONA
- order date of BIONA

A separate invoice has to be compiled for every BIONA order number. Should one order consist of several partial deliveries, a separate invoice has to be produced for every such partial delivery.

Payment

The time limit for paying the received invoice shall commence as soon as the respective delivery or service has wholly been accepted by BIONA and as soon as the duly issued original invoice has been received. To the extent the Seller has to produce test reports, quality documents or any other documents, the completeness of such delivery or service shall also require receipt of such documents.

Unless not otherwise agreed upon, payments by BIONA shall be performed – at the buyer's option – within 30 days at 3% discount or within 60 days net. BIONA shall have the right to withhold payment until possible shortcomings are remedied. Payment does neither signify recognition of a properly executed delivery nor a waiver of any rights on the part of BIONA. Payment shall be considered as made if the execution of the transfer order has been performed by the bank of BIONA on the due date at the latest. Bank charges of the receiving bank must be covered by the Seller.

BIONA shall have the right to set off obligations towards the Seller with counterclaims of all types and to pay off all types of receivables.

The Seller shall not have the right to set off own obligations, unless such claims have explicitly been acknowledged by BIONA in writing or have been determined by court.

Claims on the part of the Seller may only be assigned upon prior written confirmation by BIONA. Fa. BIONA does expressly contradict to possible prolonged and extended reservations of ownership.

Validity of Collateral Agreements

All and any agreements concluded between Seller and the employees of BIONA are entered into under the suspensive condition that such agreements are approved in writing by the management or the authorized signatory. The Seller shall be informed accordingly within 2 weeks.

Secrecy

All statements and all documents as well as all drawings compiled by the Seller according to our specifications shall not be made available to any third party and must immediately be returned to us upon request. Moreover, the Seller shall treat confidential all business information gathered in the course of the order concerning BIONA including the placing of the order unless said information is generally known. The obligation to maintain secrecy shall continue to exist also after execution of the contract. An infringement of such obligation of secrecy will entail a non-fault penalty up to € 10,000, depending on the violation. This shall not prejudice the right to claim damages exceeding the amount of the penalty.

Applicable Law – Place of Jurisdiction

The legal relationship between us and our customers resp. the Seller shall exclusively be subject to the law of the Federal Republic of Austria. The application of the UN Sales Law and of the Uncitral agreement of the United Nations on international purchase of good shall mutually be excluded. The place of all jurisdictions for disputes arising from the contractual relationship shall be the competent court in each case for Germany, Berchtesgaden under exclusion of any other place of jurisdiction.

Deviations – Collateral Agreements – Partial Effectiveness

Any changes to these Conditions of Purchase shall only be valid when acknowledged in writing. All and any collateral agreements require the written form in order to be effective. The same shall be valid for the abandonment of the requirement of the written form. The written form requirement is also deemed complied with if communications are sent by means of fax or email transmission if the agreements contain therein are acknowledged by the recipient.

Should individual or all provisions of these Conditions of Purchase are or become invalid in whole or in part, the validity of the remaining contract established thereon shall not be affected. The invalid term(s) shall be replaced by an appropriate arrangement that, as far as legally possible, come closest to the expectations of the contract parties and which come closest to the economic effect of the ineffective provision(s).