

# **General Terms and Conditions of Sale and Delivery of CDS Hackner GmbH**

## **Art. 1 General – Scope of Application**

- (1) Except if and insofar as specifically agreed otherwise, all our supplies of goods and services are effected on the basis of these Terms and Conditions of Sale and Delivery (the "Terms and Conditions") only. Our Terms and Conditions shall apply exclusively; terms and conditions of the Customer which conflict with or deviate from our Terms and Conditions are not recognized by us except in cases where we have expressly agreed in writing that they shall apply instead. Our Terms and Conditions shall also apply even in cases where we supply to the Customer without reservation despite having knowledge of terms and conditions of the Customer that conflict with or deviate from our own Terms and Conditions.
- (2) Our Terms and Conditions apply only in business with enterprises as defined in Section 310 Subsection 1 BGB [German Civil Code].
- (3) Our Terms and Conditions shall also apply to all future business with the Customer.
- (4) Except as provided otherwise in our Terms and Conditions or specifically agreed otherwise with the Customer, our business relations with the Customer shall also be governed by the customary trading rules ("Handelsbräuche") of the Zentralverband Naturdarm e.V. [German Association of Natural Casing Processors and Traders] in the version in force from time to time.

## **Art. 2 Offers, Contract Content**

- (1) Special offers are limited to the quantity of stock available for that purpose. As soon as the said quantity of stock is exhausted, the normal selling prices again apply.
- (2) "Approx." means that, depending on the sales pack, the delivery may, at our option, exceed or fall short of the ordered quantity by up to 10%.
- (3) In the case of sorted natural casings, the stated dimension shall be that as measured in soaked condition.
- (4) The following applies to natural casings being supplied by us:  
The calibre stated in the Customer's order ("order calibre") may deviate from the calibre of the delivered goods ("sorted calibre"). The calibre of the delivered goods ("sorted calibre") will, however, meet the stipulations made by the Customer so as to fulfil his particular purposes and have been tested with the Customer through supplies of samples prior to delivery, so that any discrepancy between the order calibre and the sorted calibre may not count as a defect in the delivered goods.

To describe the ordered goods, however, we will, in business with the Customer, use the article designation given by the Customer, including the calibre specified by the Customer ("order calibre"), in all accompanying documents, invoices and such like.

**Art. 3**  
**Prices, Payment Terms**

- (1) Unless indicated otherwise in the order confirmation, our prices are quoted "ex works".
- (2) Unless agreed otherwise, the purchase price is due and payable net, plus value added tax and without any deduction, within fourteen days from the date of invoice.

**Art. 4**  
**Delivery**

- (1) If the goods are ready for dispatch but shipment is delayed for reasons for which we are not responsible, the risk shall pass to the Customer together with our advice of readiness for dispatch.
- (2) In the case of call-forward orders, the Customer must call the goods forward in good time within the agreed periods. If the goods are not called forward on time, we shall have the right to contact the Customer in writing and allow an additional period of time of at least three days and on expiry of the said period dispatch the goods or hold them at the Customer's disposal and issue the invoice to the Customer, or to cancel the respective part of the order. This shall be without prejudice to our other statutory rights.
- (3) Unforeseen obstacles or disruptions which, despite having taken all such care as was reasonable under the circumstances, we have not been able to avert and which affect our own operations or those of any of our suppliers, such as strikes, lockouts, war, civil unrest, Acts of God, export and import prohibitions and all other cases of force majeure, shall entitle us to rescind the delivery contract in whole or in part or to extend the period for delivery by the duration of the obstacle.
- (4) In the case of any delay in delivery, we may be held liable in accordance with statutory regulations provided the delay in delivery is due to a wilful or grossly negligent breach of contract for which we are responsible; fault on the part of any of our representatives or vicarious agents may also be attributed to us. If a delay in delivery is not due to a wilful breach of contract for which we are responsible, our liability for damages shall be limited to the amount of foreseeable and typical loss or damage. We shall also be liable in accordance with statutory regulations if a delay in delivery for which we are responsible is the result of a culpable breach of a material contractual duty; in this case, however, our liability for damages shall be limited to the amount of foreseeable and typical loss or damage.

- (5) Transport of the goods from our stock or warehouse shall in all cases be for the account and risk of the Customer.

**Art. 5**  
**Liability for Defects**

- (1) The rights of the Customer to claim for defects shall depend on the Customer having duly fulfilled his duties to inspect and notify as set forth in Section § 377 HGB [German Commercial Code].
- (2) In respect of defects which are capable of discovery by a proper inspection for defects, claims will only be allowed if notified to us within a period of three working days from arrival of the goods at the place of destination.
- (3) Claims for hidden defects can only be made within a reasonable period of time depending on the nature of the goods and must be notified to us within one working day from discovery. In this case, the presence of the defect must be confirmed by the report of an independent expert.
- (4) We may be held liable in accordance with statutory regulations if the Customer makes claims for damages against us based on wilful intent or gross negligence, including wilful intent on the part of our representatives and vicarious agents. Providing that no charge of wilful breach of contract is asserted against us, our liability for damages shall be limited to the amount of foreseeable and typical loss or damage.
- (5) We may be held liable in accordance with statutory regulations if we culpably commit a breach of a material contractual duty; in this case, however, our liability for damages shall be limited to the amount of foreseeable and typical loss or damage.
- (6) In cases where the Customer is entitled to compensation for loss or damage in lieu of performance, our liability shall be limited to the amount of foreseeable and typical loss or damage.
- (7) The foregoing shall have no effect on our liability for culpable damage or injury to life, limb or health, nor on our mandatory liability under the German Product Liability Act ("Produkthaftungsgesetz").
- (8) Except as provided otherwise above, all liability on our part is excluded.

**Art. 6**  
**Reservation of Title**

- (1) We reserve title to the item of sale until receipt by us in full of all payments due under the delivery contract or, in the case of sale in return for acceptance of a bill of exchange, until the bill has been honoured in full. In the case of any breach of contract by the Customer, and in particular any delay in payment, we shall have the right to recover the item of sale. Recovery of the item of sale by us shall not cause the contract to be cancelled unless we expressly declare it as doing so. After recovery of the item of sale we shall have the right to sell it elsewhere, whereby the sale proceeds - after the deduction of reasonable selling expenses - will be credited towards the Customer's liabilities.
- (2) The Customer must inform us without delay in writing of any seizure or other interference by third parties so as to enable us to bring legal action under Section 771 ZPO [German Code of Civil Procedure]. If and insofar as the third party is not able to refund us for the court and out-of-court costs of legal action under Section 771 ZPO, the Customer shall be liable for the loss or shortfall sustained by us.
- (3) The Customer has the right to resell the item of sale in the ordinary course of business; however, he hereby already assigns to us, up to the total invoice amount of our claim (including VAT), all the claims accruing to him against his customers or third parties from resale, regardless of whether the item of sale has been sold without any further processing or after such processing. On our request, the Customer must notify the third-party debtor of the aforesaid assignment at any time. The Customer shall continue to have the right to collect the claims even after the assignment. However, this shall not affect our own right to collect the claims ourselves. We undertake, however, not to collect claims ourselves for as long as the Customer fulfils his payment obligations out of the resale proceeds, does not fall into arrears with payment and, in particular, does not become the subject of a petition for the opening of insolvency proceedings and does not cease payments. In any such case, however, we may require that the Customer inform us of the assigned claims and of the parties by whom they are owed, furnish us with all information needed to make collection and release to us all the appurtenant documents.
- (4) If, after conclusion of the contract, facts become known to us which indicate a material deterioration in the Customer's financial situation or we acquire knowledge that the Customer was already in difficult financial circumstances at the time of conclusion of the contract, we shall have the right to alter any payment terms already agreed in such manner as we may deem fit and to demand security for or payment in advance of the full amount of the order or to repudiate the contract without this giving rise to any claims for compensation or damages against us.
- (5) All processing or transformation of the item of sale by the Customer shall be deemed done on our behalf. If the item of sale is processed with other items not belonging to us, we shall have co-title to the new item so produced in the same proportion as that between the value of the item of sale (final invoice amount including VAT) and of the other items included in processing at the time of processing.

In all other respects, the same shall apply to the item created through processing as to the item of sale supplied subject to our reservation of title.

- (6) If the item of sale is inseparably mixed with other items not belonging to us, we shall have co-title to the new item in the same proportion as that between the value of the item of sale (final invoice amount including VAT) and the other items included in mixing at the time of mixing. If mixing is done in such manner that the Customer's item is to be seen as the principal item, it is agreed that the Customer shall assign co-title to us in a proportionate amount. The Customer shall preserve the sole or co-title so created on our behalf.
- (7) We undertake, on the Customer's request, to release that portion of any security to which we are entitled whose realizable value exceeds the value of the secured claims by more than 10 %; the choice of security to be released shall lie with us.

**Art. 7**  
**Legal Venue – Place of Performance**

- (1) Where the Customer is a registered trader, the legal venue for all disputes between the parties is Crailsheim; we may, however, also bring legal action against the Customer at any other court having jurisdiction in the matter.
- (2) Unless expressly agreed otherwise, our place of business (Crailsheim) is the place of performance.
- (3) The legal relationship between the parties shall be governed by the law of the Federal Republic of Germany; application of the UN Treaty on Contracts for the International Sale of Goods is barred.