



**BioNaturals Europe GmbH**  
**General Terms and Conditions of Business**

**General Terms and Conditions of Delivery and Payment**

**I. General**

1. The below Delivery and Payment Terms shall only apply vis-à-vis parties who conclude the contract in the scope of their commercial or freelance professional activities (entrepreneurs).
2. All deliveries and services of BioNaturals Europe GmbH shall be based upon these Terms and any separate contractual arrangements. Deviating terms of purchase of the ordering party are herewith expressly rejected. Such terms shall not become part of the contract through the acceptance of an order, unless BioNaturals Europe GmbH expressly consented in writing to such terms being applicable.
3. These Delivery and Payment Terms shall also apply to all future transactions with the ordering party.
4. BioNaturals Europe GmbH retains all rights of ownership and copyrights to samples, cost estimates, drawings and similar tangible and intangible information, including in electronic form. Such documents must not be made accessible to third parties.
5. BioNaturals Europe GmbH and the ordering party mutually undertake to disclose to third parties the respective other contractual party's information and documents marked as confidential only with such contractual party's written consent.

**II. Offer and Conclusion of Contract**

1. If no separate agreement is made, a contract shall be established upon the supplier's written order confirmation. Collateral agreements and modifications to the order must be in writing and shall require the supplier's express written confirmation.  
The offers of BioNaturals Europe GmbH are non-binding, unless BioNaturals Europe GmbH explicitly stated in writing that such offers are binding. The acceptance period for offers from BioNaturals Europe GmbH is 30 days, regardless of whether such offers are non-binding or not. Offers shall expire upon the end of the 30<sup>th</sup> day. The acceptance period for offers shall commence on the date of BioNaturals Europe GmbH's writing.

**III. Prices and Terms of Payment**

1. Where not provided otherwise in the order confirmation, the prices of BioNaturals Europe GmbH shall apply ex factory in the Netherlands (Ex Works, CIF), excluding ancillary costs such as packaging, freight, customs, insurance and the like. Such other costs shall be invoiced separately.
2. The statutory VAT is not included in BioNaturals Europe GmbH's prices. To the extent VAT applies, the statutory amount will be listed on the invoice separately on the day of invoicing.
3. BioNaturals Europe GmbH reserves the right to change the prices reasonably if any cost reductions or cost increases occur after the conclusion of the contract, in particular due to collective agreements or changes in material costs. Such changes shall be demonstrated to the ordering party upon request.
4. Claims for payment of BioNaturals Europe GmbH shall become due upon invoicing and delivery. The ordering party shall be in default if it does not settle the claim for payment within the agreed payment period and/or the term of payment set forth in the invoice.
5. The ordering party shall be entitled to offset rights only if its counterclaims have been determined in a legally binding manner, are undisputed or have been accepted by BioNaturals Europe GmbH. Furthermore, the ordering party shall be entitled to exercise a right of retention only insofar as a counterclaim is based upon the same contractual relationship.

**IV. Delivery Period, Delay in Delivery**

1. The delivery period results from the contractual parties' agreements. Observance thereof by BioNaturals Europe GmbH shall be subject to the condition that all commercial and technical issues have been resolved by the contractual parties and that the ordering party has complied with all of its obligations, such as obtaining the required official confirmations or permits or making any advance payments. If this is not the case, the delivery period shall be reasonably extended. This shall not apply in case BioNaturals Europe GmbH is responsible for the delay.
2. Observance of the delivery period is subject to correct and timely self-delivery to BioNaturals Europe GmbH. Should any delays become obvious, BioNaturals Europe GmbH shall inform the ordering party thereof as soon as possible.
3. The delivery period is deemed observed if the delivery object has left the company BioNaturals Europe GmbH and if readiness for dispatch has been notified by the expiry of such period.
4. If the dispatch and/or acceptance of the delivery object is delayed for reasons within the ordering party's responsibility, the latter shall be charged the costs arising from such delay starting one month after the notification of readiness for dispatch.
5. In the event of default of acceptance or any other culpable violation of the ordering party's cooperation obligations, BioNaturals Europe GmbH shall be entitled to claim compensation for any damage arising therefrom, including any additional expenses. Further claims shall remain reserved. In such case, the risk of accidental loss or accidental deterioration of the goods shall pass on to the ordering party at the point in time of default of acceptance or other breach of cooperation obligations.
6. If non-observance of the delivery period is due to force majeure, labour disputes or other events outside the sphere of influence of the company BioNaturals Europe GmbH, the delivery period shall be reasonably extended. BioNaturals Europe GmbH shall inform the ordering party about the start and the end of any such circumstances as soon as possible.
7. The ordering party may rescind from the contract without setting any time period if the entire performance of obligations becomes finally and conclusively impossible for BioNaturals Europe GmbH before the transfer of risk. The ordering party may further rescind from the contract if the performance of a portion of the delivery becomes impossible for a particular order and if the ordering party has a legitimate interest in rejecting the partial delivery. If this is not the case, the ordering party shall pay the contractual price relating to the partial delivery. The same shall apply in the event of BioNaturals Europe GmbH's incapacity. Apart from that, the provisions on Section VII 2 shall apply.
8. BioNaturals Europe GmbH shall be entitled to perform partial deliveries and partial services at any time to the extent this acceptable to the customer.

**V. Transfer of Risk**

1. If not provided otherwise in the order confirmation, the delivery term "ex works in the Netherlands" is agreed upon.
2. Risk shall pass on to the ordering party upon dispatch of the delivery at the latest, even if freight-paid delivery or free delivery has been agreed upon or if partial deliveries are performed.
3. If the dispatch is delayed or does not take place for circumstances within the ordering party's responsibility, risk shall pass on to the ordering party upon notification of readiness for dispatch. BioNaturals Europe GmbH undertakes to take out an insurance requested by the ordering party at the latter's expense.

4. Goods that are ready for dispatch shall be called up without any delay. If the supplier sets a reasonable period for the ordering party to call up the goods, it can store the goods at the expense and risk of the ordering party following fruitless expiry of such period.
5. If not agreed otherwise, the goods shall be loaded and dispatched in the name and for the account of the ordering party.

#### **VI. Warranty**

BioNaturals Europe GmbH shall grant the following warranty for material and legal defects in the delivery, including lack of assured properties and excluding further claims subject to no. VII:

##### Material defects

1. The ordering party's claims for defects shall be subject to the condition that the latter has met its inspection and notification obligations ("*Untersuchungs- und Rügeobliegenheiten*") pursuant to Section 377 of the *HGB* [German Commercial Code].
2. The ordering party must notify BioNaturals Europe GmbH about any defects that become obvious only at a later point in time in writing within two weeks of becoming aware thereof. If the obligation of notification is not complied with, the goods are deemed accepted regarding the defect in question.
3. At the option of BioNaturals Europe GmbH, all parts that within their shelf-life period prove to be unusable or, upon closer examination, to be impaired to a non-insignificant extent due to a circumstance occurring before the transfer of risk shall be rectified or replaced free of charge. As soon as such defects are determined, BioNaturals Europe GmbH shall be informed about them in writing immediately. Replaced parts shall become the property of BioNaturals Europe GmbH. The rejected parts must be sent to BioNaturals Europe GmbH for an inspection if deemed necessary by BioNaturals Europe GmbH. If such shipment is delayed through no fault on the part of BioNaturals Europe GmbH, the warranty period shall end upon the expiry of the shelf-life of the goods.  
The limitation period is 12 months, starting from the transfer of risk.
4. There shall be no claims if the agreed-upon quality is deviated from to an insignificant extent only and/or if usability is only impaired to an insignificant extent.
5. In coordination with BioNaturals Europe GmbH, the ordering party shall grant to BioNaturals Europe GmbH the required amount of time and opportunity for the performance of any rectification work and replacement deliveries that are deemed necessary by BioNaturals Europe GmbH. Otherwise, BioNaturals Europe GmbH shall be released from the liability for any consequences arising therefrom. Only in urgent cases is the ordering party entitled to remove or have third parties remove the defect, where this is required to avert any disproportionately significant damage or if BioNaturals Europe GmbH is behind schedule with the rectification of the defect or if supplementary performance by BioNaturals Europe GmbH is unacceptable to the ordering party on any other grounds, and to demand a compensation for necessary expenses from BioNaturals Europe GmbH; in such case, BioNaturals Europe GmbH shall be notified immediately.
6. BioNaturals Europe GmbH shall bear the necessary expenses for the purposes of supplementary performance, in particular transport, road, labour and material costs.
7. BioNaturals Europe GmbH shall be liable for the goods to the same extent to which it was liable for the original delivery item.
8. No warranty is assumed in the following cases in particular: unsuitable or inappropriate use of the delivery item, faulty or negligent treatment, inadequate storage, chemical or physical influences to the extent none of the above is attributable to BioNaturals Europe GmbH's fault.
9. If the ordering party or a third party performs rectification work, BioNaturals Europe GmbH shall not be liable for any consequences arising therefrom. The same shall apply to any modification to the delivery item performed without BioNaturals Europe GmbH's prior approval.
10. The ordering party has a right to rescission from the contract (withdrawal) if BioNaturals Europe GmbH allows fruitless expiry of a reasonable grace period granted to it for rectification or replacement delivery regarding a defect caused by it. The ordering party shall also have the right to rescind from the contract in other cases of failure of rectification work or replacement delivery performed by BioNaturals Europe GmbH.
11. After expiry of a reasonable grace period set by BioNaturals Europe GmbH, the ordering party may demand a reduction similarly.

#### **VII. Liability**

1. If the delivered item cannot be used by the ordering party according to contract due to a fault on the part of BioNaturals Europe GmbH as a consequence of a failure to implement, or faulty implementation of, suggestions and discussions that were made or performed before or after conclusion of the contract as well as of a breach of other secondary contractual obligations, in particular in connection with instructions on the use of the delivery item, the provisions of Sections VI and VII 2 and 3 shall apply accordingly, excluding any further claims of the ordering party.
2. The supplier shall be liable for any damage that has not occurred on the delivery item itself
  - in the event of intentional conduct,
  - in the event of gross negligence of the owner or of executive employees,
  - in the event of lack of assured properties if the purpose of such assurance was to protect the ordering party against the damage occurred,
  - in the event of defects in the delivery item to the extent the supplier is liable pursuant to the German *Produkthaftungsgesetz* [Product Liability Act] for personal or property damage to items used for private purposes.

In the event of a culpable breach of material contractual obligations, BioNaturals Europe GmbH shall also be liable for gross negligence of non-executive employees; however, this shall be limited to the contract-typical, reasonably foreseeable damage.

3. Regarding claims for damages, the liability for any damage caused intentionally or in a grossly negligent manner and for damage to life, limb or health based upon gross negligence of BioNaturals Europe GmbH shall remain unaffected. Any intentional or grossly negligent breach of obligations by BioNaturals Europe GmbH's legal representatives or vicarious agents shall be treated as if BioNaturals Europe GmbH committed such breach itself.
4. Further claims - regardless of their legal basis - shall be excluded.

#### **VIII. Retention of Title**

1. BioNaturals Europe GmbH reserves the right to the delivery item until the receipt of all payments under the delivery contract.
2. If the ordering party does not comply with the contract, in particular where it is in default of payment, BioNaturals Europe GmbH shall be entitled to repossess the purchase item. Such repossession shall represent a withdrawal from the contract. BioNaturals Europe GmbH is entitled to dispose the delivery item after repossession thereof. The disposal proceeds shall be offset against the ordering party's liabilities, deducting any reasonable disposal costs.
3. The ordering party is obliged to treat the delivery item with due care.

4. The ordering party must neither pledge nor collateralise the goods delivered to it. In the event of an attachment or other interventions by third parties, BioNaturals Europe GmbH shall be informed in writing immediately so that a lawsuit can be filed pursuant to Section 771 of the ZPO [German Code of Civil Procedure]. To the extent the third party is not able to compensate BioNaturals Europe GmbH for the court and out-of-court costs of a lawsuit pursuant to Section 771 of the ZPO, the ordering party shall be liable for any loss incurred by BioNaturals Europe GmbH in this regard.

If the ordering party fails to inform BioNaturals Europe GmbH about any attachments and other third-party interventions, it shall be liable for any damage arising from such failure to provide a notification.

5. The ordering party is entitled to resell the delivery item in the ordinary course of business. However, the ordering party herewith assigns to BioNaturals Europe GmbH all receivables in the amount of the final invoice sum (including VAT) of the receivable of BioNaturals Europe GmbH which it acquires through the resale against its purchasers or third parties, regardless of whether the delivery item has been resold without or after processing. The ordering party shall remain entitled to collect such receivable even after this assignment. BioNaturals Europe GmbH's authority to collect the receivable itself shall remain unaffected hereby. However, BioNaturals Europe GmbH undertakes to refrain from collecting the receivable as long as the customer meets its payment obligations from the proceeds received, is not in default of payment and, in particular, no petition for the initiation of insolvency proceedings has been filed and the customer has not ceased its payments.

Where that is not the case, however, BioNaturals Europe GmbH may request the customer to disclose the assigned receivables and the related debtors, to provide all information required for the collection, to hand over the related documents to BioNaturals Europe GmbH and to inform the debtor (third party) about the assignment.

6. The processing and/or alteration of the delivery item by the ordering party shall take place on behalf of BioNaturals Europe GmbH at all times. If the delivery item is processed with other items that do not belong to BioNaturals Europe GmbH, BioNaturals Europe GmbH shall become the co-owner of the new item in proportion of the value of the delivery item (final invoice sum including VAT) to the other items processed as at the time of processing. Apart from that, the object created in the course of processing shall be subject to the same provisions as the item that was delivered with reservation.

7. If the delivery item is inseparably mixed with other items that do not belong to BioNaturals Europe GmbH, BioNaturals Europe GmbH shall become the co-owner of the new object in proportion of the value of the delivery item (final invoice sum including VAT) to the other items mixed as at the time of mixing. If the objects are mixed in a manner in which the item of the ordering party is to be regarded as the main component, it is agreed that the customer transfers a proportionate co-ownership share to BioNaturals Europe GmbH. The ordering party shall store the newly created sole property or joint property on behalf of BioNaturals Europe GmbH.

8. The ordering party shall assign its claims against third parties arising from the combination of the delivery item to BioNaturals Europe GmbH as security for the claims of BioNaturals Europe GmbH against the ordering party.

9. BioNaturals Europe GmbH undertakes to release the securities to which it is entitled at the request of the ordering party insofar as the realisable value of the securities exceeds the claim to be secured by more than 10%. BioNaturals Europe GmbH shall be free to decide which securities will be released.

#### **IX. Binding Nature of Contracts**

Where individual provisions in the contracts as well as in present Delivery and Payment Terms are invalid, this shall not affect the validity of the remainder of the contracts and/or of these Delivery and Payment Terms.

In such case, the contractual parties undertake to replace the invalid provision by a provision coming as close as possible to the commercial objective pursuant to the intent and purpose of the invalid provision within the overall contract.

#### **X. Applicable Law and Jurisdiction**

1. The legal relationship between BioNaturals Europe GmbH and the ordering party shall be exclusively subject to the laws of the Federal Republic of Germany regarding legal relationships between domestic parties, excluding the UN Sales Law.

2. The production facility of BioNaturals Europe GmbH in the Netherlands shall be the place of performance.

3. The court competent to the registered office of BioNaturals Europe GmbH shall be the place of jurisdiction. However, BioNaturals Europe GmbH is entitled to file a lawsuit at the registered office of the ordering party.