

## **Carl von Michalkowski GmbH & Co. KG's General Terms and Conditions of Sale and Delivery**

1. The following Terms and Conditions of Sale and Delivery apply to all contracts governing the sale and delivery of goods between Carl von Michalkowski GmbH & Co. KG (hereinafter referred to as "CvM") and its customers.

2. General terms and conditions of customers and third parties do not apply, even if CvM does not explicitly object to their application in individual cases. CvM is not bound by customers' deviating terms and conditions not explicitly recognized by CvM, even if CvM does not explicitly object to their application. CvM referencing or referring to correspondence which contains terms and conditions of customers or third parties does not constitute CvM agreeing to the application of the respective terms and conditions. CvM's General Terms and Conditions even apply if a customer order is submitted with knowledge of contradicting or deviating unconditional terms and conditions.

3. CvM's General Terms and Conditions of Sale and Delivery apply both to initial orders as well as all subsequent orders.

4. In cases not covered by these General Terms and Conditions of Sale and Delivery and insofar as no individual agreement exists between CvM and the customer governing said case, the legal relationship between the customer and CvM is governed by the latest version of the customary business practices set forth by the Zentralverband Naturdarm e.V.

### **II. Offer and Conclusion of Contract**

1. Offers made by CvM are non-binding and subject to change without notice, except in cases in which CvM has explicitly declared an offer binding or if the offer contains a specific acceptance period.

2. CvM can accept an order submitted by a customer, which itself is considered an offer to enter into a purchase agreement, within a period of two weeks by either sending the customer an order confirmation or by delivering the ordered products within the same period of time. By submitting an order, the customer is making a binding declaration of intent to purchase said goods. The customer is solely responsible for the selection of the goods and the quantity.

3. The customer accepts that the delivered quantity can deviate from the ordered quantity by plus or minus 10 percent. The customer is obligated to accept the over- or under-delivery as set forth above. In such cases, the purchase price shall be increased or reduced proportional to the quantity oversupplied or undersupplied.

### **III. Payment Conditions**

1. Prices are quoted ex works without packaging insofar as not stated otherwise on the order confirmation. Prices do not include legally applicable value-added tax. The amount of this tax is calculated separately and disclosed on the invoice on the date the invoice is issued in the legally applicable amount. Transport costs are also disclosed separately.

2. CvM's applicable prices on the date of delivery apply unless prices were agreed upon between CvM and the customer upon conclusion of the contract.

3. Should the cost of raw materials, shipping, and/or human resources increase or decrease in the period of time between submitting an offer or accepting an order and its completion,

CvM is authorized to adjust the sales price accordingly irrespective of any prices specified in the offer or order confirmation.

4. If no other payment term is specified on the order confirmation, the invoice amount is due immediately upon receipt of the invoice by the customer (strictly net without deductions). A payment is only considered completed when CvM has control of the funds. In the case of payments by check, the payment is only considered completed when the check has been cashed. Cash discount deductions are only permitted if specifically agreed upon in writing.

5. The applicable legal provisions apply in the event that a customer does not remit payment within the payment period.

6. If a customer cannot fulfill its duties to remit payment as a result of

the customer's financial situation deteriorating – in particular as a result of insolvency – and this either occurs or becomes apparent after entering into a purchase agreement, CvM is authorized to demand both payments in advance and the immediate payment of all outstanding invoices, including those not yet due. In this case, CvM is authorized to halt delivery of any undelivered goods as well as stop processing any current orders.

7. Customers are only authorized to offset invoice amounts, even if lodging claims or counterclaims, if the claims being asserted have been deemed valid by a court of law or are undisputed. The customer is only authorized to exercise a right of retention if the counterclaim is based on the same contractual relationship as that from which the payment obligation stems.

#### **IV. Time of Delivery and Completion**

1. Orders are considered complete upon notification of completion and when the goods are available for pick-up or delivery. Any delivery dates or delivery periods communicated to the customer are deemed non-binding unless explicitly agreed upon as binding. The delivery period indicated by CvM only begins when all technical questions have been clarified. Likewise, customers are obligated to fulfill all contractual duties in an orderly and timely manner.

2. If the underlying purchase agreement is considered a transaction to be settled on a fixed date as defined by Article 286, Sec. 2, No. 4 of the German Civil Code or Article 376 of the German Commercial Code, CvM's liability is determined by the applicable legal provisions. If, in the aforementioned case, the customer is authorized to assert a right to discontinue interest in the continuation of further contractual fulfillment as a result of a delay in delivery for which CvM is liable, CvM's liability is limited to the foreseeable, typically occurring scope of damage, insofar as the delay in delivery is not due to a willful breach of contract on the part of CvM. Fault on the part of CvM's representatives or agents shall be attributed to CvM.

3. In the same manner, in the event of a delay in delivery, CvM is liable to the customer pursuant to the applicable legal provisions insofar as the delay was caused by a deliberate or grossly negligent breach of contract, whereby fault on the part of CvM's representatives or agents shall be attributed to CvM. Insofar as the delay in delivery is not due to a deliberate breach of contract on the part of CvM, CvM's liability is limited to the foreseeable, typically occurring scope of damage.

4. In the event that CvM is responsible for a delay in delivery and this delay is caused by a deliberate or grossly negligent breach of contract, whereby fault on the part of CvM's representatives or agents shall be attributed to CvM, CvM is liable to the customer as set forth in the applicable legal provisions, with the stipulation that in this case, CvM's liability for damages is limited to foreseeable, typically occurring damages.

5. Otherwise, in the event of a delay in delivery for which CvM is responsible, the customer is authorized to claim damages at a flat rate of 3% of the value of the delivery for each

complete week by which delivery is delayed, yet not totaling more than 15% of the value of the delivery.

6. Further liability for a delay in delivery caused by CvM is excluded. Additional legally stipulated claims and rights due to the customer in addition to the aforementioned damage claim as a result of a delivery delay for which CvM is responsible shall remain unaffected.

7. CvM is at all times authorized to carry out partial deliveries as well as partial performance insofar as this is reasonable for the customer.

8. If the customer is in default of acceptance, CvM is authorized to demand reimbursement for any resulting damages and any possible additional costs incurred. The same applies in cases in which the customer breaches their obligation to cooperate in a grossly negligent manner. The customer assumes liability for the risk of incidental deterioration and accidental perishing at the point in time in which the customer is in default of acceptance or lack of timely performance.

## **V. Passing of Risk – Shipping/Packaging**

1. Loading and shipping are carried out uninsured at the customer's own risk. CvM will endeavor to take the customer's wishes and interests into account with regard to the type and method of shipment; the customer is liable for any additional charges incurred as a result – including in cases in which free shipping has been agreed upon.

2. The risk of incidental deterioration and accidental perishing of the contractually stipulated goods passes to the customer upon notification of completion and when the goods are available for pick-up or delivery.

3. If shipping is delayed as a result of negligence or a deliberate decision on the part of the customer, CvM will store the goods at the customer's expense and risk. In this case, notification that the goods are available for pick-up or delivery will be considered equivalent to shipping.

4. CvM will insure the shipment with a transport insurance policy at the customer's request and expense.

## **VI. Warranty/Liability**

1. The following applies to the natural casings to be delivered: The diameter of the casings indicated in the customer's order ("sales diameter") can and is permitted to deviate from the diameter of the delivered goods ("sorting diameter"). However, the diameter of the delivered goods ("sorting diameter") will meet the customer's requirements for their intended use of the goods and which were tested by the customer using samples prior to delivery, meaning a difference between the sales diameter and the sorting diameter does not constitute a defect in the delivered goods. In the case of sorted natural casings, the size offered is considered equal to the size measured in a softened state while slightly stretched.

2. The customer can only make claims for defects in the event that the customer properly fulfilled their duty to examine the goods and immediately notify CvM in the event of defects as stipulated in Article 377 of the German Commercial Code. CvM must be notified of defects pertaining to the quality of the goods and missing quantities in writing by mail, fax, or email within 5 business days of receiving the goods, whereby the day the goods were received is not included in this 5-day period.

3. In the event that the goods exhibit a defect for which CvM is responsible, CvM is obligated to remedy the defect to the exclusion of the customer's rights except in cases in which legal

provisions authorize CvM to refuse to remedy the defect. The customer is required to grant CvM a reasonable period of time to remedy the defect. The remedy can take the form of either rectifying the defects or delivering new goods. In the event that CvM elects to rectify the defects, CvM must bear the costs associated with doing so, except in cases in which costs have increased because the contractual goods are no longer located at the contractually stipulated place of performance.

If CvM is not able to remedy the defects, CvM will cancel the contract to the exclusion of the customer's rights and will take back the goods. Remedying the defects will be considered to have failed after the second unsuccessful effort to do so, insofar as further efforts to remedy the defects are not considered a reasonable burden to the customer as a result of the contractual goods.

4. Pursuant to applicable legal provisions, CvM is obligated to take back the new goods even in cases in which the customer does not set a deadline as otherwise would be required in the event that the customer's own customers, acting as private consumers, could demand the customer take back the new product manufactured using the contractual goods (sale of consumer goods) as a result of the defect or if the customer is confronted with the resulting right of recourse stemming therefrom. Furthermore, CvM is obligated to compensate the customer for expenses, in particular transport, delivery, human resource, and material costs, that the customer would have to bear within the scope of the customer's contractual relationship with the end consumer arising as a result of remedying defects to the goods which existed at the time risk was passed from CvM to the customer. This obligation is only applicable in the event that the customer has properly fulfilled their duty to examine the goods and immediately notify CvM in the event of defects as stipulated in Article 377 of the German Commercial Code.

5. The obligation specified in Section VI, Number 4 of these terms does not apply in the event that the defect is due to an advertising claim or other contractual agreement not stemming from CvM, nor in cases when the customer has offered the end consumer a specific guarantee. In addition, this obligation also does not apply in the event that the customer itself was not liable to the end consumer as a result of the legal stipulations governing the lodging of warranty claims or if notification of the defect with regard to a claim did not take place. This also applies in cases where the customer offered the end consumer guarantees going above and beyond the legally specified scope.

6. CvM assumes unlimited liability pursuant to the applicable legal provisions for loss of life, bodily harm, and injury or illness resulting from a negligent or willful breach of contractual duties by CvM, its legal representatives, or agents, as well as for damages covered by the liability stipulated in the German Product Liability Act. CvM is liable pursuant to the applicable legal stipulations for damages not covered in the aforementioned clause resulting from willful or grossly negligent breaches of contract as well as fraudulent intent on the part of CvM, its legal representatives, or agents. In this case, liability for damages is limited to the foreseeable, typically occurring damages insofar as CvM, its legal representatives, or agents did not act in a willful manner. CvM is also liable within the scope of any guarantee made by CvM regarding the nature and durability of goods, or parts thereof. However, CvM is only liable for damages resulting from a lack of the guaranteed nature or durability yet have not directly affected the goods in the event that the risk of such damage is obviously covered by the guarantee regarding the nature and durability of the goods.

7. CvM is also liable for damages that occur as a result of negligence if the negligence pertains to a breach of specific contractual duties that must be adhered to in order to achieve the purpose of the contract (referred to as cardinal duties). However, CvM is only liable if the damages are typically associated with the contract and are foreseeable.

8. Further liability without consideration of the legal nature of the claim being asserting is excluded, this particularly applies to claims of a criminal nature or claims for compensation of

wasted expenditures, notwithstanding any other applicable stipulation set forth in Section VI of these terms. If CvM's liability is excluded or limited, this also applies to the personal liability of its employees, representatives, and agents.

9. All customer claims for damages as a result of defects must be asserted within one year of delivery of the goods. This does not apply to cases involving loss of life, bodily harm, injury, or illness caused by CvM, its legal representatives, or agents, or in cases in which CvM, its legal representatives, or agents acted in willful or grossly negligent manner.

## **VII. Retention of Title**

1. Title to delivered goods (hereinafter referred to as "conditional goods") shall remain vested in CvM until the customer remits full payment of all current or future outstanding amounts, including outstanding balances on current accounts. In the event of a breach of contract on the part of the customer, such as late payment, CvM reserves the right to repossess said conditional goods after setting a reasonable deadline. Reclamation of said conditional goods by CvM shall constitute a cancellation of the contract. Repossession of said conditional goods by CvM shall constitute a cancellation of the contract. CvM is authorized to sell said conditional goods after repossession. The proceeds from the sale of said conditional goods will be offset with any outstanding amounts owed by the customer to CvM after deduction of a reasonable amount for cost of sales.

2. The customer is obligated to handle conditional goods with care as well as sufficiently insure them to their full replacement value against damage due to fire, water, or theft at the customer's own expense.

3. The customer is authorized to properly sell and/or use the conditional goods within the course of conducting business as long as the customer is not in arrears. The customer is prohibited from pledging or assigning conditional goods to third parties as a security. The customer hereby transfers to CvM by way of security the receivables in their entirety arising from the sale of said conditional goods (or based on any other legal grounds such as insurance claims or an unlawful act), including all outstanding balances on current accounts; CvM hereby accepts the transfer. CvM grants the customer revocable authorization to collect the transferred receivables on behalf of CvM in its own name. The authorization to collect the receivables can be canceled at any time if the customer does not properly meet its payment obligations. The customer is also prohibited from transferring this receivable for the purposes of collecting the receivable within the scope of factoring, except in cases in which the factor is simultaneously obligated to directly transfer the consideration it receives to CvM for as long as the customer has outstanding invoices owed to CvM.

4. In any case, the customer will process or alter the conditional goods for CvM. In the event that the conditional goods are processed together with goods not belonging to CvM, CvM acquires joint ownership of the new goods proportional to the value of the conditional goods (final invoice value including value-added tax) in relation to the other processed goods at the time of processing. All stipulations that apply to the conditional goods equally apply the new goods created through processing. In the event that the conditional goods are inseparably mixed together with other goods not belonging to CvM, CvM acquires joint ownership of the new goods proportional to the value of the conditional goods (final invoice value including value-added tax) in relation to the other processed goods at the time of processing. If the goods created as a result of mixing can be viewed as the customer's main product, the customer and CvM agree that the customer will transfer proportional joint ownership of the new goods to CvM; CvM hereby accepts the transfer. The customer will store CvM's resulting sole or joint property for CvM.

5. In the event of third party access to the conditional goods, particularly in the case of seizures, the customer will notify the third party of CvM property rights and immediately inform CvM so that CvM can enforce said rights. The customer is liable to CvM for any legal fees or

out-of-court costs incurred in conjunction with the aforementioned in the event that the third party is not able to reimburse CvM for said costs.

6. CvM is obligated to release any collateral it is entitled to in the event that the realizable value of the collateral exceeds the value of the secured receivable by more than 10%, in this context CvM has the right to select which collateral to release.

#### **VIII. Place of Fulfillment, Court of Jurisdiction, Applicable Law, Severability**

1. Place of fulfillment and court of jurisdiction for deliveries and payments (including legal action related to checks and invoices) as well as any and all disputes between CvM and the customer resulting from the purchase agreements entered into by CvM and the customer is Hamburg. CvM is also authorized to sue the customer at their location of residence or business, however.

2. The relationships between the contractual parties are subject exclusively to the applicable law of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods does not apply.

3. If any provision or provisions of the agreements between the parties shall be held to be invalid or unenforceable or become invalid or unenforceable after entering into an agreement, the validity and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The parties agree that such an invalid or unenforceable provision will be replaced with a valid and enforceable provision that accomplishes the original business purpose of the provision declared invalid or unenforceable. The previous provisions also apply with respect to an omissions in the agreement.