

General Terms and Conditions

Biohort GmbH, PürNSTein 43, 4120 Neufelden

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1. Validity

Our company's deliveries, services and product range are presented exclusively on the basis of the terms and conditions valid when the order was placed. We do not accept the terms and conditions of any customer that conflict with or deviate from our terms and conditions, unless we have expressly agreed to such terms in writing. For our part, fulfilment of the contract shall not be perceived as contractual terms and conditions deviating from our terms and conditions. These terms and conditions are also valid as a **framework agreement** for all further legal transactions between the parties to the contract.

Biohort GmbH terms and conditions are permanently available at www.biohort.com and can be called up and/or printed out at any time. This is also stated on the order confirmation.

Individual agreements made in individual cases with the customer (including collateral agreements, reservations, amendments and supplements) shall in any case take precedence over these general terms and conditions and must be in writing. Any amendment to this formal requirement shall must also be made in writing.

2. Conclusion of contract

Prices and products (regardless of presentation and communication) provided by Biohort do not constitute a binding offer. All data and characteristics such as weight and dimensions are also non-binding and subject to change.

All orders and requests from third parties constitute a binding offer to conclude the contract. The priority predicate of an order is always the unique Biohort article number. If an order or request contains contradictory content, the order will always be executed on the basis of the Biohort article number. Biohort GmbH accepts the order either by sending an order confirmation or shipping the goods (in the sense of implied acceptance).

Confirmation of receipt of the order according to Article 10 (2) of the Austrian E-Commerce Act (ECG) does not constitute an order confirmation within the meaning of the previous paragraph.

The contractual partner for purchases in the online store is, if there is a sales office of the Biohort Group in the respective country of delivery, this office, or Biohort GmbH in Austria. Current sales network:

Biohort GmbH (Austria)
Biohort Schweiz AG (Switzerland)

3. Price

All **prices quoted** by us are **exclusive of VAT** unless expressly stated otherwise. If salary costs change due to collective agreement changes or in-house agreements, or in the event of changes in other calculation-relevant cost centres or to costs arising from the delivery of essential services, e.g. materials, energy, transport, contracted labour or financing, then we will be entitled to **increase** or **decrease** the price accordingly. We generally reserve the right to make price/discount changes.

Assembly and installation costs as well as crane costs are not included and can be provided separately at the customer's request. If all of the information needed to correctly process the materials order is not available on concluding the contract, then the customer must provide this information without delay. If the overall costs have risen between conclusion of the contract and completion of the customer's role in the proceedings, we are entitled to increase the cost accordingly to offset any price rises.

All payments are to be made in euros although Biohort reserves the right to unilaterally accept foreign currencies. Price quotations in foreign currencies do not constitute a request for payment in the corresponding currency.

The following deviations apply in our online shop:

The prices in our online shop include local, country-specific taxes and shipping costs (mainland). Surcharges for island deliveries will be notified in advance, on request, and are to be borne by the customer. The customer is also liable for any export or import costs imposed as a result of country-specific customs duties.

These statements relating to orders in our online shop also take precedence over the statements made in section 7.

4. Payment terms and conditions, interest on arrears

A separate agreement must be concluded for discount deductions. If payments are in arrears, including partial payments, then any discount agreements shall cease to apply. Customer payments shall only be deemed to have been made when the funds have been paid into our business account. There is no obligation to accept bills of exchange or cheques. If the payment is in arrears, we are entitled, at our discretion, to claim compensation or to charge interest on arrears **at 4% above the Austrian National Bank base rate, provided that no consumer credit agreement is in place**. We may request payment in advance or settlement of unpaid invoices relating to earlier orders before executing an order. Biohort GmbH reserves the right to check credit cards when goods are being purchased via this payment method.

Unless otherwise agreed, payment must be made within 14 days of receipt of goods.

You can find the redemption conditions for Biohort vouchers at www.biohort.com/redemption-conditions.

5. Withdrawal from contract

In the case of delay in performance or delay in acceptance on the part of the customer (section 9) or other important reasons such as customer bankruptcy/insolvency or rejection of bankruptcy due to lack of assets or payment arrears on the part of the customer, we are entitled to withdraw unilaterally from the contract or adjust the contract to ensure that it is executed in full.

If the customer falls into payment arrears, we shall be exempt from all further service and delivery obligations and shall be entitled to withhold pending deliveries or services and to demand **advance payments** or **securities** or to withdraw from the contract after setting a 14-day period of grace.

In the event of withdrawal, we have the option to claim **lump-sum compensation amounting to 20% of the gross invoice and, in addition, compensation for the actual damage incurred** in the event of corresponding culpability.

6. Withdrawal

End customers (= consumers) of our online shop are entitled to withdraw from the contract within 14 days from the day on which the customer or a third party named by the customer, and who was not the carrier, took possession of the latest goods, as per FAGG (Austrian Distance and Off-Premises Contracts Act). No reasons have to be stipulated in this respect.

Revocation is not permitted for products that are custom-made according to your specifications. This currently includes the following product families:

- CasaNova
- CasaVita
- Pergola with extended lengths (> 4 m)
- Pergola in special colours (currently: white)
- DaVinci

Our Cancellation Policy and a template cancellation form can be found [here!](#)

7. Reminder and collection charges

In the event of payment arrears, the customer shall reimburse us for the reminder charges amounting to a flat rate of €45 per reminder issued, and for documenting the arrears as part of the reminder process. A fee of €5 is also

payable every six months for the latter. If the second reminder is unsuccessful, we are entitled to appoint a **collection agency**, the cost of which will be reimbursed to us by the customer.

8. Delivery, transport

Unless otherwise stated, our retail prices do not include delivery, assembly or installation costs. Unless otherwise agreed, the risk is transferred to the customer as soon as the goods leave the Biohort GmbH warehouse. From this point onwards, the customer bears the risk of loss in transit. If the customer is a consumer, the risk is transferred only when the goods have been handed over by the carrier to the consumer or to a third party appointed by the latter, unless the customer has personally concluded the transport contract without using any of the options recommended by Biohort GmbH. Biohort GmbH is entitled to make partial deliveries provided that these are reasonable for the customer and the customer does not incur any additional delivery costs. However, Biohort GmbH reserves the right to combine several order items in one delivery.

If a delivery is made by a carrier selected by us, the customer must ensure that the order address has a suitable access road with a minimum width of 3 m and that the ground is passable for a 38 t truck. In addition, a turning facility must be available. Biohort accepts no liability for any damage arising through an inappropriate access route.

9. Delivery time, delayed acceptance

We are only obliged to deliver this service when the customer has met all of the obligations incumbent upon them, **in particular**, provision of all technical and contractual details, preparatory work and preparatory measures. The information must be provided in writing at the request of Biohort GmbH. We are entitled to exceed the agreed dates and delivery periods by up to **7 working days**. The customer is not entitled to withdraw from the contract until this period has expired and after setting a reasonable period of grace.

The customer undertakes to accept delivery of the ordered goods on the agreed date. This confirmation is binding for the customer if proper delivery to the customer's premises is confirmed by a legally competent individual who is not party to the contract. If the customer is not present on the agreed date and the goods are not handed over as agreed (**delayed acceptance**), an alternative date will be specified. The delivery costs for the 2nd journey plus a storage fee amounting to 1% of the gross invoice amount per calendar day or part thereof shall be borne by the customer if they are responsible for the second delivery. If the goods are not accepted on the alternative date, Biohort GmbH can decide to store the goods on company premises or on the premises of an authorised trade person at the customer's risk including the afore-mentioned storage fee (plus VAT), and to enforce fulfilment of the contract, or to withdraw from the contract and take back the goods. In this instance, the customer is liable for the return costs and for repackaging the items for resale. The right of Biohort GmbH to claim further damages shall not be affected.

10. Place of execution

The place of execution is the registered office of Biohort GmbH, 4120 Neufelden, Austria.

11. Minor changes in service

If this is not a consumer transaction, minor changes or other **changes** to our service or delivery obligation considered reasonable for our customers shall be deemed to have been approved in advance. This applies in particular to deviations in the goods in question (e.g. dimensions, colours and materials, etc.). We reserve the right to make design changes. Product illustrations do not always have to match the appearance of the delivered products.

12. Warranty, guarantee, examination and notification of defects

Product illustrations do not always necessarily correspond to the appearance of the delivered products. In the event of a defect that can be corrected, we shall honour the customer's warranty claims **at our discretion** either by replacing the item, repairing it within a reasonable time frame or reducing the price. In the event of an exchange, the replacement part shall be shipped free of charge. The replacement shall be carried out and paid for by the customer. **Claims for damages by the customer that are aimed at rectifying the defect are valid only in the event of a delay on our part in fulfilling the warranty claims.**

Orders that are temporarily stored must be kept dry and laid flat on a level surface. As part of the goods receipt process, the dryness and integrity of the carton must be checked. **Defects for which the above circumstances appear as causal are classified as open defects at the time of delivery to the customer by Biohort.**

The following shall apply to business transactions:

In the terms of §§ 377 f UGB (Austrian Commercial Code), the goods must be inspected immediately after delivery but within 6 working days at the latest. Any defects noted at this point must be immediately reported to us in writing, but within 3 working days of being detected at the latest, stating the nature and extent of the defect. Biohort GmbH may ask the customer to provide additional photos and further evidence in order to make a more accurate evaluation. Hidden defects must be immediately reported in writing but within 3 working days of being detected at the latest. If a complaint is not raised or made in good time, then the goods shall be deemed to have been approved.

The following applies to consumer transactions:

The customer must be present when the goods are delivered and any obvious transport damage should be documented on the handover note. Transport damage must be reported to Biohort in writing (with photographs) within 7 days of receipt of the goods. The obvious transport damage must be documented (photographs) before the transport packaging is opened.

Any specific guarantees or guarantee conditions are separate from legal requirements and, as such, are of a private legal nature. Any legal analogy with regard to design or impact on a legal warranty claim is excluded.

All Biohort products are generally packaged for self-assembly in boxes (including a photo assembly manual) and are delivered disassembled and not pre-assembled. Biohort products feature integrated, partially visible ventilation. This ensures the necessary air circulation. Since the different components are not manufactured in the same production process, the parts may always show slight colour variations.

13. Compensation claims

Apart from personal injury, claims for damages arising through minor negligence are excluded. Additional costs due to delays or other additional assembly-related expenses cannot be claimed (e.g. goods cannot be assembled due to delivery damage). These are excluded in the event of consequential damage arising through transport damage. The injured party must prove the existence of **negligence** unless it is a consumer transaction. **If the transaction is not a consumer transaction, the limitation period for claims for damages shall be two years from the transfer of risk.**

The damage provisions specified in these terms and conditions or otherwise agreed shall also apply if the claim for damages is asserted in addition to or instead of a warranty claim.

14. Product liability

Compensation claims arising through the mutual business-related transaction in terms of the Austrian Product Liability Act are excluded unless the party claiming compensation can prove that the defect is attributable to Biohort and constitutes at least gross negligence.

15. Assembly service

The location specified as part of the assembly of Biohort products must have appropriate load-bearing strength and must be free of pipes or other contamination, especially when installing floor frames or a (Smartbase/SmartbasePlus) foundation. The customer has a disclosure obligation in this respect. The contractor may, in any case, assume that the site is suitable, and is not liable for any damage to any kind of pipework, for example.

The customer must ensure that all of the necessary public and legal permits (and notifications) are available at the start of the assembly process (disclosure obligation). If no further information is provided, the contractor may, in any case, assume that all of the relevant documents are available.

16. Retention of title and assertion thereof

All goods are delivered by us subject to retention of title and shall remain our property until payment has been received in full. Assertion of the retention of title shall only lead to withdrawal from the contract if this is expressly declared. If goods are returned, we are entitled to charge any transport and handling costs incurred. In the event of third-party access to reserved goods, particularly through seizures, **the customer is obliged to state that we own the goods and to notify us immediately.** If the **customer is a consumer or not a contractor whose ordinary business operations include trading in the goods purchased from us, they may not acquire the reserved goods or, in particular, sell, pledge, gift or lend the said goods until the full outstanding purchase price requested has been paid. The customer shall bear the full risk for the reserved goods,** particularly with regard to the risk of destruction, loss or deterioration. If the customer falls into payment arrears, if insolvency proceedings are applied for or opened in relation to their assets, or if other contractual obligations are breached, Biohort GmbH is entitled, at its discretion and whilst the contract remains in place, to demand that the reserved goods be handed over and/or to collect the said goods.

17. Compensation, assignment of claims

The customer waives the option of compensation. **In the case of delivery, with retention of title**, the customer hereby assigns to us their claims against third parties insofar as these arise from the sale or processing of our goods, up until the final payment of our claims. Upon request, the customer shall list their buyers and notify them of the assignment in good time. The assignment shall be documented in business ledgers, delivery notes and invoices, etc. If the customer is in arrears with their payments to us, the sales proceeds they receive are to be listed separately and held by the customer on our behalf. Any claims against an insurer are already assigned to us within the limits of § 15 VersVG (Austrian Insurance Contract Act). **Claims against us** may not be assigned without our express consent.

18. Retention

If the transaction in question is not a consumer transaction, the customer shall not be entitled to retain the entire gross invoice amount, **but only an appropriate part thereof, in the event of a justified complaint, except in cases of reversal.**

19. Choice of Law, Jurisdiction

Jurisdiction: The exclusive place of jurisdiction, excluding arbitration, is Linz (Austria).

Choice of Law: Austrian law shall apply to legal disputes arising from the contract, excluding the UN Convention on Contracts for the International Sale of Goods (CISG) and the Austrian Act on Private International Law (IPRG).

For consumer transactions, differing provisions under the Consumer Protection Act shall apply.

20. Change of address and copyright

The customer is obliged to notify us of changes to their **residual or business address** as long as the contractual legal transaction has not been completed in its entirety by both parties. If the **notification is not made**, declarations **will then be deemed to have been received, even if they are sent to the last known address.**

The customer shall bear any additional costs arising through incorrect address data.

Plans, sketches or other technical documents together with show models, catalogues, figures and similar items shall always remain our intellectual property. The customer shall not be granted any rights to use or exploit them under any circumstances.

21. Severance clause

If individual provisions of this contract prove ineffective or unworkable or become ineffective or unworkable after the contract has been concluded, the validity of the remainder of the contract shall not be affected. The ineffective or unworkable provision shall be replaced by an effective, workable provision closest to the economic objective being pursued by the ineffective or unworkable provision. The above provisions shall apply mutatis mutandis should the contract prove incomplete.