

**General Terms and Conditions (GTC) (Delivery and Payment Conditions)**

**1. Scope of Application**

- 1.1 These General Terms and Conditions of Delivery and Payment shall only apply to entrepreneurs in the sense of Art. 14 of the German Civil Code (BGB).
- 1.2 We provide all our deliveries and services exclusively under the validity of these General Terms of Delivery and Payment. We do not recognise conflicting or deviating conditions of the customer unless we have expressly agreed to their validity.
- 1.3 Our General Terms and Conditions of Delivery and Payment shall also apply to future transactions, even if they are not enclosed in the transaction documents in individual cases.
- 1.4 For all deliveries and services the following stipulations are relevant in the stated order:
  - The following General Terms of Delivery and Payment (TDP).
  - The “Tegernseer Gebräuche” stipulating the trade practices in domestic trade with round timber, sawn timber, timber materials and other semi-finished timber products, shall also apply to deliveries of foreign round and sawn timber.
  - The trade customs of the members of the German Timber Trade Association (Gesamtverband Deutscher Holzhandel e.V.) when selling sawn timber purchased from Europe and overseas.
  - In cases in which we additionally perform installation, laying or assembly of building components or provide other construction services, the provisions of the German Standard Building Contract Terms VOB, Part B and Part C in their latest version shall apply in addition.

Should the customer not be familiar with the afore-mentioned customs, we will send them to him/her immediately upon request.

**2. Quotation and Order**

- 2.1 Our quotations are subject to change and non-binding unless they are expressly designated as binding quotations.

- 2.2. Our written order confirmation is decisive for the order. If reference is made to drawings in the order confirmation, these are decisive for the contract.
- 2.3 If the order is executed immediately, our invoice or delivery note shall be deemed to be the order confirmation.
- 2.4 If the customer has objections against the content of the order confirmation, he must oppose it immediately. Otherwise, the contract shall be concluded in accordance with our order confirmation.

### **3. Delivery**

- 3.1 Periods and deadlines announced to the Ordering Party for our delivery of the goods or services are only approximate dates unless we have promised or agreed a fixed period or deadline. If dispatch has been agreed, the delivery dates and deadlines shall refer to the transfer of the goods to the forwarder, freight carrier, or other third party charged with the transport of the goods.
- 3.2 We may - without prejudice to our rights arising from default by the customer - demand an extension of delivery and performance periods or a postponement of delivery and performance dates by the period in which the customer does not fulfil his contractual obligations to the seller.
- 3.3 Even if we have agreed to bear the freight costs in exceptional cases, the delivery shall also be at the risk of the customer. If we select the mode of dispatch, the route, or the forwarding agent, we shall only be liable if we are grossly at fault in the selection concerned.
- 3.4 Deliveries are ex works, unless otherwise agreed. The risk of accidental loss and accidental deterioration of the goods shall pass to the customer upon handover of the goods to be dispatched to the forwarding agent. If the dispatch or handover of the delivery item is delayed due to circumstances for which the customer is responsible, the risk shall pass to the customer from the day on which the delivery item is ready for dispatch and we have notified the customer of this.
- 3.5 We are entitled to make partial deliveries if
  - the partial delivery can be used by the customer within the scope of the intended purpose agreed in the contract,
  - the delivery of the remaining goods of this order is ensured and
  - the customer does not incur any considerable additional work or additional costs as a result of this (unless we declare ourselves willing to assume these costs).
- 3.6 If we fail to meet a delivery deadline, the customer may only withdraw from the contract if he/she has previously set us a reasonable period of grace under threat of refusal and delivery has not been made within this set period.

- 3.7 If we are in default of delivery, we shall be liable for the damage caused by the delay to the customer in case of gross negligence. In case of slight negligence, our liability for damages caused by delay is limited to compensation for each completed week of delay of 0.5 % each, but in total not more than 5 % of the price of that part of the deliveries which could not be used for the intended purpose due to the delay. Apart from this, we shall only be liable for damages caused by delay in the case of slight negligence from the time when a reasonable grace period set by the customer has fruitlessly expired.
- 3.8 If we do not receive deliveries on our part, although we have placed orders with reliable suppliers that match, we shall be released from our obligation to perform and may withdraw from the contract. We are obliged to inform the customer immediately about the unavailability of the service and will immediately refund any counter-performance already made by him/her.

#### **4. Prices**

- 4.1 The prices stated in the order confirmation are decisive. They apply to the individual order, not to repeat orders. Unless otherwise agreed, the prices are ex works Ötisheim or ex stated place. They do not include packaging, freight, insurance, customs, unloading, erection, and VAT.
- 4.2 In so far as cost increases occur between the conclusion of the contract and the execution of the order that are unforeseeable for us, e. g. due to an increase in wage or material costs or the introduction of or substantial increase in taxes or customs duties, we are entitled to adjust the prices within the framework of the changed circumstances and without calculating an additional profit. This shall not apply if we are in default of delivery.

#### **5. Payment**

- 5.1 Unless otherwise agreed, the goods are to be paid in cash upon receipt.
- 5.2 We are entitled to demand interest on overdue accounts and, in the case of merchants, interest on maturity at a rate of 8 % above the base rate. We reserve the right to assert higher damages caused by delay.
- 5.3 Bills of exchange and cheques will only be accepted on account of payment on the basis of express agreement, but in no case in lieu of payment. Any expenses and costs arising from this are to be borne by the customer.

## **6. Rights in Case of Deterioration of Assets**

- 6.1 If we become aware that bills of exchange of this customer are protested, compulsory enforcement measures are initiated against him/her or any other significant deterioration in his/her financial situation occurs, we are entitled to demand advance payments or the provision of security even for claims that are not due and to refuse delivery on our part until then. If the customer does not comply with our request despite a reasonable period of grace under threat of refusal, we are entitled to withdraw from the contract or to claim damages at our discretion.
- 6.2 Moreover, we are entitled to prohibit the resale of the goods by the customer and - subject to further rights arising from the reservation of title - to reclaim goods not yet paid for at the customer's expense.

## **7. Set-off and Retention**

The Customer may only offset with an uncontested or legally valid counter claim. The customer is only permitted to assert a right of retention if it is based on the same contractual relationship and if the counter claims on which it is based are undisputed or have been legally established.

## **8. Notification of Defects**

- 8.1 The customer is obliged to inspect each delivery immediately upon acceptance or receipt and to report any visible defects immediately, at the latest within 5 working days. The examination shall in particular cover the species, quality, quantity, weight, grading, moisture content and, in the case of artificially dried goods, the condition of the wood. If the customer himself/herself is not in a position to carry out the comprehensive investigations, he/she will have to call in a competent third party, if necessary. In the case of direct business, the customer must give up these obligations to his/her buyer. The examination must include the entire batch delivered. Hidden defects must be reported immediately after their detection. Otherwise, the delivery is considered to be approved.
- 8.2 The customer is obliged to secure evidence of the defects and to give us the opportunity to check them. If the customer does not comply with this obligation or misses the notification deadline, the delivery shall be deemed approved. The same shall apply if the delivery has been processed in whole or in part or is no longer verifiable in its entirety for other reasons.

## **9. Material Defects**

- 9.1 In so far as there is a defect for which we are responsible, we are entitled to subsequent performance by either eliminating the defect or delivering a defect-free item, at our discretion. If we refuse subsequent performance, if it has failed or is unacceptable to the

customer, the customer may, at his discretion, withdraw from the contract or demand a reduction of the purchase price.

- 9.2 The range of natural differences in colour, structure, and other aspects within a species of wood are part of the characteristics of the natural product wood and do not constitute a defect.
- 9.3 Unless otherwise agreed in writing in individual cases, we do not guarantee the nature of the item or its durability. A use presupposed according to the contract in the sense of Art. 434 Para. 1 No. 1 BGB (German Civil Code) shall only be considered if a written agreement has been made on this.
- 9.4 Claims for defects by the customer, including claims for damages based on a defect, shall become statute-barred twelve months after the statutory start of the limitation period. However, the statutory limitation periods shall apply
- if an item which has been used for a building in accordance with its normal use and which has caused the defectiveness of this building;
  - for claims in recourse against the supplier if the goods have been delivered to the final consumer;
  - in the event of fraudulent concealment of a defect by us;
  - in the event of a guarantee being assumed by us;
  - in the event of injury to life, body, or health;
  - in the event of an intentional or grossly negligent breach of obligations by us;
  - for claims under the product liability law.

## **10. Damages**

- 10.1 We are liable for intent and gross negligence. We shall only be liable for slight negligence if it concerns the violation of essential contractual obligations which result from the nature of the contract or whose violation endangers the achievement of the purpose of the contract. Even then, the compensation for damages is limited to the foreseeable damage typical for the contract. Otherwise, in the event of slight negligence, claims for damages by the customer, regardless of the legal basis, are excluded.
- 10.2 The above limitation of liability does not apply to claims arising from the Product Liability Act, in the event of injury to life, body or health.
- 10.3 For claims for damages due to material defects, the limitation of liability shall also not apply if we have fraudulently concealed a defect or have assumed a guarantee for the quality of the item. The provision under 9.4 shall apply accordingly to the limitation of claims for damages due to material defects.

## 11. Reservation of Title

- 11.1 We reserve the title of ownership of all goods delivered by us until all accounts receivable from previous contracts have been paid in full. Receivables also include receivables from cheques and bills of exchange as well as from current accounts. If, in connection with the payment, liability is established for us on the basis of a bill of exchange, the reservation of title shall not expire until our claim on the bill of exchange is excluded.

In the event of resale, the customer hereby assigns to us all claims arising from the resale, in particular payment claims but also other claims in connection with the sale, in the amount of our final invoice amount (including VAT), irrespective of whether the delivery item has been resold without or after processing.

The customer is entitled to collect the assigned claims in trust until revocation by us, which is permissible for good cause. The resale of the receivables within the framework of old-line factoring requires our prior consent. For good cause, we are entitled to disclose the assignment of claims to third party debtors, also on behalf of the customer. The customer's authority to collect shall lapse upon notification of the assignment to the third-party debtor. In the event of revocation of the authority to collect, we can demand that the customer informs us of the assigned claims and their debtors, provides all information necessary for collection, hands over the relevant documents and informs the debtors of the assignment.

Good cause within the meaning of these provisions shall be deemed to exist in particular in the event of default in payment, cessation of payments, opening of insolvency proceedings, protest of a bill or justified indications of over-indebtedness or imminent insolvency of the customer.

- 11.2 If the customer is in default of payment or if it becomes apparent that our payment claims are at risk due to the customer's lack of ability to pay, we are entitled to demand the return of the goods on the basis of the reservation of title.
- 11.3 In the event of seizure or other interventions by third parties, the customer must inform us immediately. The customer shall bear all costs which must be incurred to revoke the access of third parties and recover the delivery item, to the extent that these costs cannot be collected by the third party.
- 11.4 The customer is entitled, subject to revocation permissible for good cause, to dispose of the delivery item in the ordinary course of business. In particular, transfer by way of security and pledging are not permitted. The goods under reservation of title may only be passed on from the customer to the purchaser if the customer is not in default with his obligations to us.
- 11.5 Treatment and processing of the delivery item by the customer is always carried out for us. We shall be deemed to be the manufacturer in the sense of Art. 950 BGB (German Civil Code) without any further obligation. If the delivery item is processed with other items not belonging to us, we shall acquire co-ownership of the new item in the propor-

tion of the value of the invoice amount to the purchase price of the other processed goods. In other respects, the provisions applying to the delivery item shall apply in the same way to the item created by processing.

- 11.6 In the event that the delivery item is connected, mixed, or blended with movable items of the customer in such a way that the customer's item is to be regarded as the main item, the customer hereby transfers to us already now co-ownership of the entire item in the proportion of the value of the delivery item to the value of the other connected, mixed or blended items. The customer shall store the co-owned item for us free of charge. If the delivery item is connected, mixed, or blended with movable items of a third party in such a way that the item of the third party is to be regarded as the main item, the customer hereby assigns to us his claim to remuneration against the third party in the amount corresponding to the final invoice amount attributable to the delivery item.

The new item created by combining or mixing or the (co-)ownership rights to the new item to which we are entitled or which are to be transferred to us as well as the remuneration claims assigned in accordance with the afore-mentioned paragraph serve to secure our claims in the same way as the delivery item itself.

- 11.7 If the reservation of title or the assignment of claims should be ineffective or unenforceable due to foreign legal regulations which cannot be waived, the security corresponding to the reservation of title or the assignment of claims in this respect shall be deemed agreed. If the cooperation of the customer is required in this respect, he/she must take all measures necessary to establish and maintain the security.

## **12. Place of Fulfilment, Place of Jurisdiction, Applicable Law**

- 12.1 The place of fulfilment for the delivery and the payment for both parties is exclusively the registered office of our company.
- 12.2 For merchants, the place of jurisdiction for all legal disputes arising from the contractual relationship as well as from its creation and its effectiveness shall be the court responsible for the registered office of our company for both parties. At our discretion, we may also bring an action at the supplier's registered office.
- 12.3 The contractual relationship is subject to German law. The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply.