

# General Terms and Conditions of Sale and Delivery

## 1. Validity of the Terms and Conditions

1.1 The present terms and conditions of sale and delivery apply exclusively to all deliveries and services, including such deliveries and services arising from future business transactions. Conflicting terms and conditions of the buyer will not be accepted unless such acceptance has been made in writing. The invalidity of individual provisions does not affect the validity of the remaining terms and conditions herein.

1.2 All previous terms and conditions of sale and delivery are hereby superseded.

## 2. Offer and Making of Contract

2.1 Our offers are non-binding and subject to confirmation. All contracts take effect upon receipt of our written order confirmation; at the latest upon delivery of the delivery items. The content of the contract is determined by the order confirmation and our terms and conditions of sale and delivery. Agreements deviating therefrom always require our explicit written confirmation.

2.2 Specifications of dryness, weight, quantities, freights, delivery dates etc. are also only binding if they are explicitly denoted as such.

## 3. Delivery Time and Delivery

3.1 The delivery time commences with the dispatch of the order confirmation, but not before the buyer has provided all necessary documents, approvals and clearances, or prior to receipt of an agreed down payment.

3.2 The delivery time or a delivery date is observed when, up to its expiry or the delivery date, the consignment has left the supplier's or our warehouse, or its readiness for shipment has been duly communicated.

3.3 If the delivery or service we owe is delayed due to unforeseeable circumstances for which we are not to be held responsible for (e.g. labour disputes, operating defects, transport obstacles, official measures – including those affecting our suppliers – as well as delayed delivery from our own suppliers), we shall be entitled, in part or entirely, to withdraw from the contract or to delay the delivery at our discretion according to the duration of the hindrance. We undertake to inform the customer as soon as such issues occur and are resolved. In the event of withdrawal, any advance payments made by the customer will be reimbursed. Compensation claims of the buyer are hereby excluded. When we have requested an extension of the delivery time and the original delivery date is exceeded by at least three months, the buyer is entitled to notify us of his/her withdrawal from the contract subject to a reasonable grace period and to rescind the contract after expiry of the time limit. We may also be entitled to withdraw from the contract when we have already requested an extension of the delivery time. If partial deliveries have been agreed upon, we shall subsequently be entitled to exercise our aforesaid rights for each separate partial delivery.

3.4 Compliance with our delivery obligations presupposes that the buyer duly, punctually and correctly fulfils his/her obligations.

3.5 The buyer shall be responsible for taking up an insurance policy covering transport risks. We shall only insure at the expressed written request of the buyer.

3.6 Partial deliveries and deliveries prior to the specified delivery time shall be permissible. We do not transact time deals.

3.7 In the event of a delay in delivery, the buyer shall, at our request, declare within a reasonable time period whether he insists on delivery or wishes to withdraw from the contract due to the delay or claim compensation for damages in lieu of fulfillment. If the buyer suffers damage due to a delay for which we are responsible, he shall only then be entitled to claim for compensation, when the delay is due to gross negligence. Moreover, the right to enforcement presupposes that we have failed to observe a reasonable grace period granted by the customer in writing. We shall not be responsible for the faults of our suppliers as they are not our vicarious agents. However, upon request, we shall assign possible claims against our suppliers to the buyer.

3.8 If the buyer requests the dispatch the consignment(s) to be postponed, he/she shall bear all costs arising from the storage and availability of such consignment(s) in our warehouse. The buyer will be invoiced for such costs incurred commencing one month subsequent to due notification that the consignment is ready for shipment. The minimum monthly charge for such storage shall be no less than 0.5% of the invoice amount. Should the buyer fail to release the consignment(s) within a set reasonable time period, we shall be entitled to dispose of the goods elsewhere and to deliver to the buyer within a reasonable extended time period.

3.9 For grading and classification, the statutory or, if unavailable, the standard quality regulations shall apply. In the case of customary or technical divergences in quantity, weight, quality, workmanship and colour, we shall not accept complaints.

3.10 In the event of foreign sales of round or sawn timber, the basis of calculation is either the load measurement at the port of arrival determined by a certified surveyor or the original measurement established according to the customary surveillance methods in the country of supply, subject to obvious measurement errors. The Tegernsee Rules shall apply for the measurement of sawn timber produced in Germany (latest version).

3.11 Insofar as the net measurement calculation (net tally) was inexplicitly agreed upon and confirmed, the fresh measurement calculation (green tally) applies for all sawn timber.

## 4. Acceptance and Passing of Risk

4.1 The delivery shall either be ex works or ex warehouse by collection through the buyer or via dispatch.

4.2 If the delivery item is collected by the buyer, the risk of loss or damage to the delivery item shall be transferred to him upon collection. In the event of dispatch, the risk of loss or damage to the delivery item shall be transferred to the buyer at the time, at which we transfer the goods to the freight forwarder or carrier (as well as Deutsche Bahn AG), but no later than when the goods leave the factory or our warehouse, including partial deliveries or cases where we have undertaken to assume other services (e.g. shipping costs or delivery).

4.3 If the delivery item is ready for shipment and the shipment or acceptance is delayed for reasons for which we are not responsible, the risk shall be transferred to the buyer upon receipt of the notification of readiness for shipment.

4.4 The customer shall accept and appropriately store a delivered item, even if it is defective, irrespective of the rights from Section 5.

## 5. Complaints and Warranty

5.1 Warranty claims presuppose that the obligations of examination and reproof according to Section 377 HGB have been observed. Complaints shall be sent to the seller immediately in writing, not later than within three days after the receipt of goods.

5.2 Until the complaint is delivered, nothing of the goods subject to complaint shall be removed, treated or processed without our written consent. The term "goods" refers to the entire delivery or a part of it, if it forms a complete unit in terms of dimension, origin and quality.

5.3 If we are responsible for a defect in an item, we shall be entitled to determine the kind of subsequent fulfillment (replacement or repair), taking into account the type of defect and the justifiable interests of the buyer. In the event of repair, we shall bear all the expenses required for the purpose of repair, particularly transport, shipping, labour and material costs, so long as these do not increase due to the item having been delivered to a place other than that of delivery.

5.4 If we are not prepared or able to carry out a repair or replacement delivery, there shall be a delay, particularly beyond a reasonable time period due to reasons for which we are responsible, or if the repair/replacement fails in any other way, the buyer shall be entitled, at his discretion, to withdraw from the contract or to demand a corresponding price adjustment.

5.5 Unless otherwise stated below, further claims of the buyer – regardless of the legal ground – shall be excluded. Therefore, we shall not be liable for damage that has not occurred to the delivery item itself. In particular, we shall not be liable for lost profits or other damage or loss to the assets of the buyer. Moreover, our warranty obligation shall not be applicable:

- where the buyer breaches his/her obligation from Clause 5.2,
- where other modifications or repairs have been made to the item without our written consent,
- where there has been defective, improper or negligent usage or treatment of the item by the buyer,
- where the buyer has not taken reasonable measures to grant us the time and opportunity to perform repair work or replacement deliveries,
- where there is natural wear and tear or other circumstances for which we are not responsible,
- where there are small quality variations, weight and/or freight fluctuations that are in the nature of the product.

5.6 The aforementioned warranty disclaimer shall not apply insofar as the cause of damage is intentional or due to gross negligence. Moreover, it shall not apply if we have maliciously concealed the defect or have given a guarantee for the quality of the goods or assumed a procurement risk.

5.7 Nevertheless, the warranty disclaimer shall apply when the damage has been caused through gross negligence of an assistant or vicarious agent, unless the damage is based on the breach of a major contractual obligation. In addition, the liability for compensation is limited to the foreseeable damage that can typically occur.

## 6. Joint and Several Liability

6.1 Insofar as our liability for compensation shall be excluded or limited in accordance with Clause 5, the same shall also apply to all claims on account of faults with contract negotiations and breaches of secondary obligations, in particular for claims based on the manufacturer's liability in accordance with Section 823 BGB.

6.2 The regulation in accordance with Clause 6.1 shall apply not only to claims pursuant to Sections 1 – 4 of the Product Liability Act or in the event of damage from injury to life, body or health due to a negligent breach of duty on our part or due to an intentional or negligent breach of duty by a legal representative or a vicarious agent or insofar as we are forcibly liable.

6.3 Insofar as our liability shall be excluded or limited, the same shall apply for the personal liability of our clerks, employees, assistants, representatives and vicarious agents.

## 7. Prices and Payments

7.1 The prices specified by us shall apply. The statutory value added tax is not included in the price. Unless explicitly agreed upon in an individual case, the prices shall be ex work and ex warehouse and for rail travel, ex wagon from the shipping station of the seller. The required packaging shall be charged at cost price and may not be returned to us. The shipping costs and additional costs for requested express delivery shall be borne by the customer. CIF and C+F pricing shall be based on the freight rates and insurance premiums valid at the time of the making of the contract. Amendments thereto made after entering the contract shall be borne by the buyer or be for his benefit.

7.2 Duty-paid sales shall be made at their valid rates at the time and date of the sale contract. Each amendment thereto up to the point of delivery shall be borne by the buyer.

7.3 We reserve the right to raise the price up to the amount of the valid sale price on the day of delivery.

7.4 A discount is only possible when there are no other payment obligations due.

7.5 Payment shall only be considered to have been completed once we have final access to the amount paid. Cheques and bills of exchange shall only be accepted upon explicit agreement. Insofar as cheques and bills of exchange shall be accepted, it is only on account of performance. By accepting cheques and bills of exchange, we undertake no obligation with regard to protests and their timely presentation. All expenses incurred by the use of cheques and bills of exchange or other costs shall be borne by the customer. The guarantee of a discount shall be excluded upon the presentation of a bill of exchange.

7.6 If the buyer fails to meet his payment obligations despite a reminder or if there are prevailing circumstances, which indicate a substantial deterioration in his/her financial situation, we shall therefore be entitled to declare the residual debt due, even if we have already accepted bills of exchange or cheques. Furthermore, we are also hereby entitled to request advance payments or securities and to refuse the fulfillment of our obligations until advance payments or securities have been made. If our requests are not met within a reasonable time period specified by us, we shall therefore be entitled to withdraw from the contract and/or to request compensation due to non-fulfilment as opposed to fulfillment of the contract. If the payments are suspended or the buyer is over-indebted, a grace period shall not be granted.

7.7 From the commencement of default, the buyer shall pay default interest amounting to 8 % above the base interest rate of the European Central Bank at that time. Insofar as we can prove greater damage, we shall be entitled to demand this compensation.

7.8 Complaints regarding the goods shall not release the buyer from his/her duty of payment unless the complaints are indisputable and have been legally upheld through arbitration or in court.

7.9 The right to maintenance shall only be available to the buyer when his counterclaims have been legally upheld through arbitration or in court, are indisputable or are recognised by us. Furthermore, he shall be entitled to exercise a right of retention insofar as his counterclaim is based on the same contractual relationship.

## 8. Retention of Title

8.1 Until the payments of all claims arising from the business relationship with the buyer have been settled in full, we reserve the right to the property of the sold goods.

8.2 The buyer shall hereby treat the sold goods with care and insure them against fire and theft. The seller shall be entitled to demand that the insurance policy is presented to him at any time.

8.3 In the event of seizure or other third party access to the reserved goods, the buyer shall inform us immediately in writing.

8.4 The buyer shall be entitled to sell on the purchased goods in the scope of proper business. However, selling on to an end buyer who has excluded or limited the assignment of any claims against him/her is inadmissible. Other sales of the reserved goods undertaken by the buyer, particularly pledging and the transfer of ownership by way of security, are inadmissible without our consent.

The buyer hereby assigns to us all claims amounting to the invoice total (including value added tax), resulting from the resale of the reserved goods – including those already processed – which he acquires against his employers or third parties. If we are only co-owners of the reserved goods and the processed product, in addition to our reserved goods, contains only such items that either belonged to the buyer or have been delivered under a simple retention of title, the buyer shall assign the entire claim to us. In all other cases, i.e. concurrence of numerous assignments to numerous suppliers, the advance assignment shall be limited to that part of the claim that corresponds with our share of co-ownership (based on the invoice amount).

If the buyer installs the reserved goods as an essential part of a property, ship, ship under construction or an aircraft of a third party, the buyer hereby assigns to us all transferrable claims for compensation against third parties or other relevant parties to the amount of the value of the reserved goods with all ancillary rights including the granting of a debt-securing mortgage with priority over the rest. We hereby accept the assignment. Otherwise, Section 2 of this Clause applies accordingly.

If the buyer installs the reserved goods as an essential part of a property, ship, ship under construction or an aircraft of the buyer, the buyer hereby assigns to us all claims arising from the sale of the property, the property rights, the ship, the ship under construction or the aircraft to the amount of the value of the reserved goods with all ancillary rights with priority over the rest. We hereby accept the assignment. Otherwise, Section 2 of this Clause applies accordingly.

The buyer shall also have the revocable right to collect the claim after the assignment. Our right to collect the claim shall remain unaffected. However, we shall hereby not collect the claim so long as the buyer complies with his duties of payment, does not default in payment and in particular, has no application for the initiation of insolvency and has not suspended payments. If this is the case, we can hereby demand that the buyer notify us of the assigned claims and debtors of the same, provide us with all necessary information and documents for collection and inform his debtors of the assignment. Received payments shall be accumulated in a special account.

8.5 Any processing or alteration of reserved goods by the buyer is always carried out for us. However, should the retention of title expire for any reason, the buyer and we already agree that the property of the goods shall be transferred to us with the processing of the same and that we accept the transfer. The buyer shall remain custodian free of charge. If the purchased items are processed with other items that do not belong to us, we shall thereby acquire co-ownership of the new items in relation to the value of the purchased items compared with the other processed items at the time of processing.

8.6 For items within our ownership or co-ownership in accordance with Clause 8.5, the same shall otherwise apply for items delivered under retention of title.

8.7 We hereby undertake to release the securities due to us upon the request of the buyer insofar as the value of our securities exceeds the claims to be secured by more than 20%. The choice of securities released shall be at our discretion.

8.8 If the buyer fails to fulfil his/her obligation to perform in spite of the due date and a reminder, we are hereby entitled to demand restitution and utilisation of the goods. A withdrawal from the contract is only considered such if the German Consumer Credit Act is applicable, unless we agree with the buyer to compensate the usual sales value of the item at the time of removal.

## 9. Ban on Assignment

The rights of the buyer arising from the business relationship with the seller are hereby non-transferrable.

## 10. Applicable Law, Place of Fulfilment

10.1 The laws of the Federal Republic of Germany shall exclusively apply to the business relationship and all legal relationships between the buyer and us.

10.2 The sole place of fulfilment for delivery and service is the location of the business address of the seller.

## 11. Place of Jurisdiction

11.1 The place of jurisdiction for all disputes that arise from business transactions, including cross-border deliveries and services (as well as bill of exchange and cheque litigation) shall be Bremen. We also have the right to pursue legal action against the buyer at his general place of jurisdiction.

## 12. Final Provisions

12.1 In addition to the present General Terms and Conditions of Sale and Delivery, the trade customs of the members of the Association of German Timber Traders (BD Hol-VDH) shall also apply, insofar as they do not contradict with the General Terms and Conditions of Sale and Delivery.

12.2 Should any provision prove ineffective or lack legal validity, the effectiveness of the other provisions remains unaffected. The ineffective or invalid provision shall be replaced by a dispositive law or another provision, which fulfils the purpose of the ineffective or invalid provision.