



## **Standard Terms and Conditions of Sale for Exports subject to the United Nations Convention on Contracts for the International Sale of Goods (CISG)**

01. October 2009

### **1. General provisions, sphere of application**

The following Standard Terms and Conditions of Sale for Exports and Delivery apply to all contracts for the delivery of goods by ourselves (hereinafter referred to as "Seller") to our business partners (hereinafter referred to as "Buyer").

Any different, contrary or additional Terms and Conditions of Buyer will not be incorporated into the contract, not even if they are known.

In ongoing business relations these Terms and Conditions shall also apply to all future business transactions.

### **2. Formation of the contract**

Any information that Seller provides to Buyer concerning a possible contract is subject to confirmation and shall not constitute an offer from Seller to conclude a contract. Contracts will be concluded through the explicit acceptance of an offer or other conduct implying agreement to an offer. If Seller acknowledges an offer from Buyer, adding new terms or different terms that do not materially alter the terms and conditions of the offer, this shall constitute an acceptance of the offer unless Buyer immediately objects to the lack of agreement. If Buyer fails to do this, the additional or different terms shall become part of the contract.

### **3. Quantity and quality tolerances**

If quantities are indicated as "approx." or "around" or in similar terms, Seller shall be entitled to deliver up to 10% more or less than the quantity agreed by contract. If the contract refers to the quantity as "from ... to Seller shall only be obliged to deliver the minimum quantity, but shall also be entitled to deliver the maximum quantity. As a natural product, wood is inevitably subject to variances. Deliveries are therefore subject to the usual quality tolerances with regard to the degree of hardness, the colour and the structure.

### **4. Delivery, acceptance of the goods, import licences**

The delivery period shall be deemed complied with if, in the case of delivery from the place of dispatch, the goods are dispatched before the delivery period has expired or, in the case of an agreed collection by Buyer, the Seller has made the goods available. The goods will be loaded and unloaded by Buyer if nothing else has been expressly agreed.

If the goods are accepted before they have been shipped, a quality certificate or an acceptance record will be prepared. In this case no complaints will be accepted at a later date regarding the quality and the dimensions.



Buyer must obtain any necessary import certificates and any evidence for necessary certification as well as other documents for import in the country of destination. This must be done in good time before the agreed delivery date. At Seller's request the documents must be submitted in good time before the goods are loaded.

#### **5. Force majeure**

If circumstances of force majeure, such as flooding, fire, earthquakes, snowstorms, drought, hail, industrial disputes, war, prohibitions on import or export and other sanctions and events that are beyond Seller's control, prevent delivery from being effected on time, the delivery period shall be extended for as long as the hindrance lasts. If it is unreasonable for either of the Contracting Parties or for both Contracting Parties to perform the contract, the party for whom this is unreasonable shall have a right of rescission.

This shall not affect Art. 79 of the UN Sales Convention (CISG).

#### **6. Prices, payment**

Payment shall be made in the place where Seller has its branch office. Buyer may only set off the purchase price against counterclaims that have been acknowledged by Seller, claims that are undisputed or claims that have been recognised by a final court judgment. Rights of retention may only be asserted in relation to claims under the same contractual relationship and only to the extent that this is reasonable. On forming the contract it is assumed that Buyer is solvent and creditworthy. Seller may suspend the performance of its obligations if, after the conclusion of the contract, it becomes apparent that Buyer will not fulfil a substantial part of its obligations as a result of:

- a) a serious deficiency in Buyer's ability to perform the contract or in Buyer's creditworthiness or
- b) Buyer's conduct in preparing to perform or in performing the contract.

If Seller has already dispatched the goods before the grounds described in the preceding paragraph become evident, Seller may prevent the goods from being handed over to Buyer, even if Buyer holds a document entitling Buyer to obtain them. If Seller suspends performance before or after dispatching the goods, Seller must notify Buyer immediately; Seller shall continue to perform the contract if Buyer provides adequate assurance that it will fulfil its obligations (particularly by providing a guarantee or a surety from a bank).

#### **7. Buyer's rights if the goods are not in accordance with the contract, Buyer's obligation to give notice of defects**

Seller warrants that on the passage of risk all goods supplied by Seller shall be in accordance with the contract with regard to quality, specifications and packaging. Buyer's rights in the case of a lack of conformity of the goods delivered shall be those set out in Art. 45 et seq. of the UN Sales Convention (CISG) unless otherwise stated in these Terms and Conditions.



Incoming goods must be examined immediately, but no later than within 7 calendar days from the date that the goods reach Buyer. Buyer loses the right to rely on a lack of conformity of the goods if Seller has not been given written notice within 7 calendar days of the date that this was discovered or ought to have been discovered, precisely describing the nature and scope of the lack of conformity and also indicating the place where the goods are stored. This shall not affect Art. 44 of the UN Sales Convention (CISG).

If the measurement lists are missing on receipt of the goods, Buyer must immediately request them from Seller. In this case the period for giving notice of lack of conformity according to the preceding paragraph shall not commence until the measurement list has been received, as this is needed in order to ascertain lack of conformity of the goods. Buyer is only entitled to claim damages on grounds of lack of conformity of the goods if the preconditions set out in clause 9 have been met.

## **8. Liability and rescission due to delayed performance and nonperformance**

### **8.1. Late delivery, failure to deliver**

If Seller is late in delivering the goods or fails to deliver the goods altogether, Buyer shall be entitled to declare the contract avoided if the preconditions set out in the UN Sales Convention (CISG) have been met. If Buyer suffers loss due to late delivery, Seller shall only be liable to the extent set out in clause 9.

### **8.2. Late payment, taking up documents or opening a letter of credit**

**a)** In the event of late payment Buyer shall pay Seller interest at an annual rate of 8 percentage points above the base rate set by the European Central Bank. The criterion for judging whether payment has been made in good time is the date when the amount in question is credited to Seller's account. This shall not affect further rights that Seller may have.

**b)** If the provision of a letter of credit has been agreed, the following applies

**aa)** If Buyer does not take up the documents when offered, Buyer shall pay Seller a contractual penalty of 0.5% of the purchase price for each week or partial week of the delay, but no more than 5% of the total value of the letter of credit. This shall not affect Seller's right to avoid the contract provided that the preconditions of the UN Sales Convention (CISG) have been met. Nor shall it affect Seller's right to claim further damages.

**bb)** If Buyer does not open a letter of credit within the contractually agreed period for reasons that are the fault of Buyer, Buyer shall pay Seller a contractual penalty of 0.5% of the sum of the letter of credit for each week or partial week of the delay, but no more than 5% of the total purchase price. This shall not affect Seller's right to avoid the contract provided that the preconditions of the UN Sales Convention (CISG) have been met. Nor shall it affect Seller's right to claim further damages.



## **9. Damages for breach of contract**

**9.1.** The following provisions apply to liability for breaches of contract, but not if liability results from the German Product Liability Act or any other transposition of the European Product Liability Directive into national law.

**9.2.** Liability as regards damages for breach of contract requires that Seller is at fault. The following distinctions must be made:

- a.** In the case of death, personal injury and damage to health Seller shall be liable even in the case of ordinary negligence.
- b.** In all other cases all claims for damages of whatever kind against Seller and its legal representatives and vicarious agents shall be excluded unless in the case of deliberate intent, gross negligence or the breach of a fundamental contractual obligation. A fundamental contractual obligation in this sense is every obligation that makes the proper performance of the contract at all possible where Buyer is entitled to rely on compliance.
- c.** Damages shall at all events be limited to the loss that Seller foresaw as a possible consequence of the breach of contract at the time when the contract was formed or which Seller could have foreseen when giving consideration to circumstances that Seller was aware of or ought to have been aware of.

## **10. Retention of title**

Seller retains title to the products that are delivered until the purchase price and all further debts arising from the business relationship with Buyer have been paid.

The transformation or processing of the goods under retention of title by Buyer shall always be done on Seller's behalf, without this giving rise to any obligations on the part of Seller. Seller shall become the owner of the new items in whatever stage of transformation or processing they may be. If the goods under retention of title are processed, transformed, amalgamated, mixed or combined with other products that do not belong to Seller, Seller shall obtain co-ownership of the new item in the same ratio as that between the invoice price of the goods under retention of title and the invoice price of the other products. Buyer hereby transfers to Seller its rights of co-ownership, in the meaning of the preceding sentence, to the value of the invoice price of the goods under retention of title.

Buyer may sell the goods under retention of title in the ordinary course of business. Buyer may not pledge the goods, transfer them as a security on a debt or assign them as collateral. Buyer hereby assigns to Seller all claims arising from the resale of the goods under retention of title or the products resulting from their transformation, processing, amalgamation, mixing or combination. This shall also apply if the products are sold together at a single price with other products that do not belong to Seller. If a third party has obtained ownership or co-ownership of the product by law as a result of the transformation,



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processing, amalgamation or combination, Buyer hereby assigns the claims arising against the third party to Seller. Assignments within the meaning of this paragraph shall only ever be made to the value of the invoice price of the goods under retention of title. Buyer is authorised to collect the assigned debts until such permission is revoked, which shall be permissible at any time.

Buyer undertakes to keep the goods under retention of title insured against the usual risks. Buyer hereby assigns to Seller its claims to compensation against its insurer due to the loss of or damage to the goods under retention of title.

Seller hereby accepts Buyer's assignments provided for hereunder.

Seller undertakes to release the collateral to which it is entitled under the preceding paragraphs at Buyer's request insofar as its value exceeds the value of the debts to be secured by more than 10%. It shall be at Seller's discretion which items of collateral to release.

If Buyer's cooperation is required in order for the retention of title to be effective, such as in the case of registrations stipulated by the law of Buyer's country, Buyer must take such actions at Seller's request. If Buyer is late in remitting a payment, Seller may refuse to allow Buyer to use the goods under retention of title or impose certain restrictions on the use of the goods e.g. disallowing only the sale or resale of the goods, as Seller may choose. If Buyer meets the objective requirements for the duty to file for insolvency, the Buyer must refrain from using the goods under retention of title in any way, without being requested to do so. Buyer must immediately notify Seller of the stocks of the goods under retention of title. In this case Seller shall also have the right to rescind the contract and demand the return of the goods under retention of title.

### **11. Expert determination / appraisal**

Disputes regarding the quality of the delivered goods that the Parties cannot settle in an amicable manner must be decided by an expert (appraiser) through expert determination. If the Parties cannot agree on the person to act as appraiser, the appraiser shall be appointed on request by the President of the Hamburg Chamber of Commerce and selected from the list kept by the Chambers of Industry and Commerce of the Federal Republic of Germany of publicly appointed and sworn appraisers in the wood industry. The appraiser may also be an expert of a European classification society in the country of destination.

### **12. Place of jurisdiction and arbitration tribunal**

All disputes arising in connection with the contract or its validity shall be decided either by an ordinary court in the place where Seller has its principal place of business or by an arbitration tribunal to be formed according to the Arbitration Rules of the German Institution of Arbitration (Deutsche Institution für Schiedsgerichtsbarkeit e.V. (DIS)). This shall be decided at the discretion of the claimant. The option shall be exercised when the claimant brings an action and shall subsequently expire.



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If the claimant decides in favour of arbitration, this decision shall be binding and final. The place of arbitration shall be Hamburg. Buyer has the right to require that the proceedings take place in another German city. This right must be exercised in the statement of claim, if Buyer is the claimant, or within the time limit set for the statement of defence if Buyer is the defendant. The right otherwise lapses. The language of the arbitration proceedings shall be German. The Parties have the right to put their case in English and to file English documents without translating them into German. The arbitration tribunal has a duty to take heed of these documents.

### **13. Place of performance**

The place of performance for deliveries and payment is the place where Seller has its principal place of business.

### **14. Applicable law**

This contract shall primarily be governed by the United Nations Convention on Contracts for the International Sale of Goods (UN Sales Convention, CISG). If the UN Sales Convention fails to address certain legal questions, the gaps shall be filled by non-harmonised German law.

### **15. Miscellaneous / severability clause**

If any of these Standard Terms and Conditions of Sale and Delivery should be void, this shall not affect the validity of the remainder of the contract.