

# GENERAL TERMS AND CONDITIONS OF SALE, COMPANY GROUP PFEIFER

## I. Scope and application of terms:

The following terms apply to goods delivery contracts and correspondingly also apply to all other services provided by our company:

1. For legal transactions relating neither to the operations of the contractual partners nor to a legal entity under public law, these general terms (AGB) only apply according to the provisions of Section XV.
2. They also apply if we – in the context of our current business relationship – do not refer to them explicitly in later contracts.
3. Any provisions deviating from these terms shall only be effective if we confirm them in writing.
4. The following also apply secondarily: the respective ÖNORMEN, the generally accepted domestic Austrian timber-trading rules and the usual Tegernsee rules for contracts agreed in Germany, as well as the norms DIN 1052 and DIN 18203 applying to timber collered with wood boards, and especially also the provisions of the Company Act (UGB) in its valid version.
5. These general terms replace any earlier versions of the terms and conditions.

## II. Offers:

1. Our offers are subject to change.
2. The details shown in our catalogues, prospectuses etc. are non-binding.
3. We have copyright of all offer and project documents and these may only be copied or passed on to third parties with our consent. This must cease if requested by us.
4. Release orders for standard products:
5. The customer must agree a delivery amount to be utilised within an agreed time period by using individual release orders. We shall be informed of release orders in writing at the latest six weeks before delivery.
6. Any drawings, figures, measurements, weights and other delivery data and descriptions are only binding if this is expressly agreed in writing. The same applies to other special features and if the goods are to be suited to a particular purpose.
7. In the case of samples or templates, only the main features of the test or samples are implied unless expressly agreed otherwise. In the case of an order based on a sample or template and in the absence of an express written agreement to the contrary, these features apply as a conclusively agreed obligation.
8. In the absence of other express written agreements, any public statements about the condition of the goods made by third parties, especially in advertising, shall not be deemed contractual content.

## III. Contract conclusion:

An order shall only be deemed accepted if we either confirm it in writing or if we issue a dispatch notification or invoice, or if we carry out the delivery.

## IV. Withdrawal from the contract if seller delays delivery:

1. The Buyer is only entitled to withdraw from the contract if he first arranges for a suitable extension period in writing while threatening withdrawal at the same time.
2. When withdrawing from the contract, the Buyer shall only be entitled to compensation if we or our agents are guilty of intent or gross negligence.

## V. Delivery:

1. The delivery period at the latest starts at the following times:
  - a. Date of order confirmation;
  - b. Date of satisfying all conditions for contract performance by which the Buyer is bound;
  - c. Date on which we receive a downpayment or security to be paid before the goods are delivered;
2. The Buyer shall obtain any approvals required to operate the facilities at his expense and, if these approvals are not available in time, he shall extend the delivery period accordingly.
3. We are entitled to perform partial or early deliveries and to charge for them.
4. We are not bound by any agreed delivery and performance periods in the case of strikes or lock-outs in our business or a business working for us, in the case of an energy shortage, traffic incidents, official instructions and delayed delivery to us, a delay in transport and at customs, damages during transport, a shortage of raw materials and Acts of God. The above-mentioned circumstances shall also result in an extension of the delivery period if they affect our subcontractors or sub-suppliers. If the Buyer does not accept the goods ready to be dispatched or if it is impossible to send the goods without this being our fault, we are entitled to store the goods at the Buyer's expense, through which performance shall have been deemed provided. This shall not result in a change to the agreed payment terms.
5. The Buyer's compensation claims for goods not delivered in a timely manner shall be precluded.
6. We are not obligated to deliver goods or components, which are no longer being produced, in spite of concluding this contract.
7. Excess delivery or short deliveries of up to 10 % and any other minor tolerances are permitted and do not mean that the Purchaser/Buyer is entitled to return the goods.

## VI. Performance and transfer of risk:

1. Use and risks are transferred to the Buyer with the departure of delivery ex works or ex inventory – to the extent that no agreements to the contrary have been concluded – regardless of the pricing agreed for the delivery; this also applies if the delivery is performed as part of installation or if we perform or organise and manage the transport.
2. If departure from the supplier is delayed and this is due to the Buyer, risk is transferred to the Buyer from the day when goods were ready to be sent out. In the case of on-call delivery, the goods are deemed released at the latest six months after the order.
3. Any agreed quality tests or test operations shall not affect the agreed place of performance or transfer of risk.
4. Delivery is also performed in the case of a CPT delivery at the Purchaser's/Buyer's risk. We shall not be liable for damages or losses during transport. To the extent that no specific delivery type is agreed, delivery shall be at our discretion without an obligation to choose the cheapest shipping method. Prepayments for freight must be repaid to us.

## VII. Warranty:

To the extent that this is a consumer transaction, the provisions of the Austrian Civil Code (ABGB) and the Consumer Protection Act apply; in all other cases, the following is agreed:

1. The warranty period is six months from the time when risk is transferred; this also applies to delivery items and services, which are (will be) firmly connected to a building or land.
2. Minor deviations, such as the wood grain and wood colouring, do not constitute defects as timber is a natural material.
3. In terms of the Purchaser's/Buyer's duty to examine the goods and notify of any complaints, the provisions of Sections 377 to 378 of the Austrian Commercial Code (UGB) shall apply to our deliveries, based on the following provisions: Notification of the complaint must be sent immediately; in the sense of this provision, we are particularly not bound by warranty if a proper examination would have highlighted the defect before processing and if the complaint was not submitted before processing. If complaints are not provided in time, this also absolves the Seller from his liability for consequential damages.
4. If operating and maintenance instructions by the Seller are not met, if any changes are made to the products, any parts exchanged or consumables are used, which do not comply with the original specifications, all types of warranty cease to apply unless the Purchaser/Buyer is able to refute a substantiated claim that he has caused the defect for one of these reasons.
5. Any ancillary costs incurred by us when rectifying the defects, such as installation and disassembly, transport, travel and time used for travel are charged to the Buyer. The Buyer shall provide any assistants required for this free of charge as well as any other facilities necessary from our point of view.
6. We do not accept liability when selling used goods, in the case of changes, conversions or repair orders; we also do not accept liability for natural wear and tear.
7. Warranty claims expire if changes or repairs are performed on the delivered goods by anyone without our written consent. Invoices relating to this are not accepted.
8. Details relating to technical specifications are not deemed confirmed properties.
9. The application of Section 933 b ABGB (regress or recourse right) are precluded between the Buyer and us.
10. The receiver shall bear the burden of proof that the defects occurring during the warranty period already existed at the time of the transfer. Suspected defects in the sense of Section 924 ABGB are precluded.
11. Only the direct Purchaser/Buyer shall be entitled to warranty claims against us, and these claims cannot be transferred to third parties. This does not apply to the extent that the Seller is obligated to make purely monetary payments (crediting reduced value, taking back rejected goods in turn for a compensation of the amount paid etc.).

## VIII. Compensation:

1. Compensation claims due to non-performance or sub-standard performance, because requirements were breached, through fault on concluding the contract, illegal actions and based on any other legal requirements, both against us and against our agents or assistants, are precluded to the extent that intent or gross negligence do not apply. This shall not apply in terms of compensation for defects or consequential damages, if liability is based on an expressly written confirmation, which aims at protecting the Purchaser/Buyer against such damages.
2. This shall not affect liability for damages from loss of life, bodily harm or damages to health.
3. The Purchaser/Buyer shall have the burden of proof in terms of guilt and the existence of a gross fault.
4. If, based on the above provisions, a liability applies due to damages caused by defects, we shall also be obligated under the compensation duty to rectify the defect, provide a replacement delivery or pay a monetary compensation. If the repair or replacement delivery fails after a reasonable period, the Purchaser/Buyer can in any case demand a monetary compensation.
5. As concerns compensation claims resulting from defective goods, the inspection and complaint regulations of Sections 377 and 378 UGB must be applied accordingly in accordance with VII. (3). The same applies to compensation claims based on offences and through fault on concluding the contract if the damaging behaviour is reflected in a goods defect. In any case, liability for damages for defective services shall not apply if a proper examination would have highlighted the defect.
6. We are not liable if the damages result from the inappropriate use of our products.
7. In any case, potential compensation claims shall be limited to the damages, which could be expected when the contract was concluded.

#### **IX. Withdrawal from the contract.**

1. We are entitled to withdraw from the contract:

- a. If performance of the services or the start or continuation of the services become impossible for reasons, which are the Buyer's responsibility, or if it is postponed further in spite of a suitable extension period having been set;
  - b. If there are concerns regarding the Buyer's creditworthiness and if the latter does not make a downpayment at our request nor provides an appropriate security before delivery;
  - c. If the extension of the delivery period due to the circumstances set out in V. 4. exceeds more than half of the originally agreed delivery period and at least six months.
  - d. If insolvency or composition proceedings are opened or rejected due to a lack of assets.
2. In the case of a withdrawal from the contract, or a cancellation by the Seller, or if the Buyer does not accept the goods, we shall be entitled, irrespective of any other claims, to charge a cancellation fee of 20 % of the contract total in order to cover our expenses. In addition, the Purchaser shall be liable for any costs, particularly the costs of processing, making the offer etc. In all other cases, orders shall be irrevocable. We neither exchange nor take back ordered goods and components.

#### **X. Pricing and payment terms:**

1. To the extent that no agreements are made to the contrary, the following provision applies:

2. The prices apply ex works or ex inventory, excluding packaging, loading and VAT. The Buyer shall be responsible for any potential fees, taxes, customs duties or other deductions incurred due to the delivery. If delivery by us is agreed, the Buyer shall, if he wishes, pay the costs of transport insurance including for unloading and carriage. We do not take back the packaging.
3. The prices are based on the costs at the time of the original offer. If the costs change up to delivery, we are entitled to adjust the prices accordingly.
4. Services and additional services, whose necessity and expediency only becomes apparent during performance of the order, are charged accordingly to actual costs; the Buyer need not be notified of this separately.
5. When the Seller compiles offers, regardless of the format, or assessments, the Buyer shall replace the costs incurred by the Seller to him; even if no order is placed in the end.
6. We reserve the right to accept or not accept bills of exchange and cheques. If applicable, acceptance can be only on account of payment. Discount, collection and all other fees shall be at the Buyer's expense and must be paid immediately in cash. We are not obligated to present this or protest etc. in a timely manner.
7. If payment is delayed, we may, regardless of any other claims, charge the usual bank fees and at least interest of 4 % over the relevant discount rate of the Austrian National Bank.
8. If the Buyer delays payment, we are entitled, at our option, to make additional deliveries or services dependent on prepayments or on the payment of securities, to demand compensation due to non-performance or to withdraw from the contract, irrespective of any potential compensation claims. Furthermore, we are entitled to return any bills of exchange, which we have accepted, before they expire and demand immediate payment in cash.
9. All of our claims immediately become due as soon as the Buyer defaults on paying a liability to us.
10. The Buyer is not entitled to withhold or refuse payments due to claims, even if they are defect claims. He is also not entitled to set off obligations with counter-claims, except if these are undisputed and have been confirmed legally.
11. If no separate payment agreement has been concluded with an authorised representative or authorised agent of our company, the goods delivery becomes due for payment within one week of the invoice date, including the relevant VAT. Payments must be in the Seller's currency without deductions and free of transaction fees for the Seller.
12. In the case of partial deliveries, partial payments are expressly agreed, which are due without deductions within one week of receiving the partial invoice.
13. A payment is deemed as having been made on the day on which the Seller has access to it.

#### **XI. Security interests:**

1. Goods delivered on the basis of this contract shall remain our property until the Buyer fully satisfies his obligations resulting from this agreement (retention of title).
2. The Buyer shall store the goods delivered by us with the diligence of a prudent businessman until title is transferred. However, he is entitled to process, combine, mix and/or sell on the goods in the course of ordinary business.
3. The Buyer hereby transfers all claims against his customers, including ancillary rights, resulting from the sale of the goods subject to a retention of title to us – without the need for a separate declaration of transfer – until all obligations to us have been satisfied, i.e. at the value of our delivery. This correspondingly applies to processing and manipulating, combinations and mixtures.
4. If our goods and items made from them become an essential part of a third-party property, the Buyer hereby transfers the claims obtained for this to us, which can also cover his other services, including all ancillary rights, i.e. at the value of our delivery.
5. To the extent that we request this, the defaulting Buyer shall demonstrate having transferred his debts, provide us with the information required to assert our rights against his debtors and hand over any required documents.
6. The Buyer may not pledge or transfer the goods subject to a retention of title as a security. If the case of potential pledges or other avancements through third parties, the Buyer is obligated to assert our right of ownership and to inform us immediately. If deliveries are added to a current invoice, the retention of title is deemed the security for our payment claim.
7. The Buyer is obligated to include a notice referring to the pledged property in his books or on his invoices.
8. The Purchaser/Buyer shall be responsible for any costs resulting from the repossession of the delivery item. We are entitled to use to repossessed delivery item at our option.

#### **XII. Liability:**

1. We are only liable for damages outside the scope of the Product Liability Act to the extent that there is evidence of intent or gross negligence. Liability for simple negligence is also precluded, as is compensation for consequential damages and lost income, unachieved savings, interest losses and damages from third-party claims against the Buyer.
2. Within the scope of the Product Liability Act, we are liable for personal and material damages suffered by a consumer. Neither we nor our suppliers are liable for material damages suffered by an entrepreneur.
3. All compensation is precluded for non-compliance with potential conditions regarding installation, set-up and use or official approval requirements.
4. The above-mentioned restrictions to liability must be fully assigned to potential customers, including the duty to assign them further.

#### **XIII. Rights of third parties:**

1. Based on this contract, the Seller is only liable for third-party rights based on commercial or other intellectual property if property rights exist according to the law of the country, in which the Purchaser's/Buyer's billing address is located. Liability for freedom from third-party rights according to the law of other countries is only accepted if this is agreed explicitly and in writing.
2. The Seller's duty according to 1 does not relate to cases in which the legal intervention is based on the fact that the Buyer used technical drawings, designs, formulas and other information provided by the Purchaser/Buyer. In such a case, the Purchaser/Buyer is obligated to indemnify us and hold us harmless in terms of third-party claims, which result from an alleged or actual breach.
3. If a third party makes claims to the Purchaser/Buyer as to having been violated in a property right, the Purchaser/Buyer shall inform the Seller of the most important circumstances immediately.
4. To the extent that this has not been agreed otherwise, the warranty and compensation claims in Sections 377 and 378 UGB apply to violations of third-party rights. The legal provisions apply to the start of the warranty period. The Purchaser/Buyer shall notify of third-party rights by applying the provisions of VII. (3) accordingly.

#### **XIV. Non-Disclosure:**

Unless expressly agreed otherwise in writing, the information provided with the orders is not confidential.

#### **XV. Scope of Terms and Conditions for Consumers according to Section 1 of the Consumer Protection Act:**

1. Our cost estimates are prepared according to the best of our technical knowledge; nonetheless, we cannot guarantee their correctness.
2. III applies with the addition that the order must be confirmed within fourteen days of the order being placed. If no delivery period has been agreed, the contract is also concluded without an order confirmation if the goods are delivered within 14 days of the period mentioned above.
3. Defect claims must be asserted within the legal warranty periods; in the case of instalment purchases, Section 23 of the Employment Protection Act (KSchG) also applies.
4. Agreements regarding the place of performance and jurisdiction do not apply if the consumer's residence or normal domicile is located domestically or if he is employed domestically. In such a case, the jurisdiction shall be based on the community of residence, the normal domicile or the place where the consumer is employed.

#### **XVI. Place of performance and jurisdiction, law, partial nullity:**

1. The registered offices of our company are the place of performance.
2. The competent court for the registered offices of our company is responsible for any disputes resulting from this contract.
3. We hereby expressly agree the application of Austrian law for this contract as well as to solve all disputes resulting from this contract.
4. The application of the United Nations Convention on Contracts for the International Sale of Goods (UN CISG) is expressly precluded for these terms and the legal relationship between the Purchaser/Buyer and us as a whole.
5. If a provision of these terms or a provision in the context of other agreements is or becomes invalid, this shall not affect the validity of the remaining provisions or agreements.