



wood & energy

Holz Schmidt GmbH | Cölbe

General Terms and Conditions for the Sawmill and Timber Industry (General Terms and Conditions of Contract, Delivery and Payment)

§ 1 General

1. These terms and conditions are an integral part of all offers and contracts for deliveries and services of the seller in current and future business relations. These terms and conditions shall be deemed to have been accepted at the latest upon receipt of the goods or services.
2. They also apply to consultancy services that are not the subject of an independent consultancy agreement.
3. In addition, unless they contradict these terms and conditions, the customs for timber deliveries, in particular the "Tegernsee Customs" in the 1985 version with all annexes and their appendices, shall apply to all timber deliveries. Their wording is assumed to be known. Otherwise the text will be sent on request.
4. Deviating terms and conditions - in particular the Buyer's terms and conditions of purchase - shall only be binding if they have been confirmed in writing by the Seller.
5. The Buyer agrees that the Seller may process the Buyer's company and personal data in accordance with the provisions of the Federal Data Protection Act.

§ 2 Offers - Conclusion of contract - Prices

1. The seller's offers to merchants are non-binding unless otherwise stated. We reserve the right to prior sale unless a binding offer has been made. Otherwise, the seller's offers are revocable until receipt of an acceptance.
2. Orders shall be deemed accepted if they are either confirmed in writing by the seller or executed immediately after receipt of the order or at the latest on time. The invoice shall then be deemed to be the order confirmation.
3. Unless otherwise agreed, prices are ex works or ex warehouse without packaging plus freight and VAT.
4. Any freight reimbursements granted shall lapse in the event of a significant deterioration in the buyer's financial circumstances, in particular if seizures or other enforcement measures are taken against him or if insolvency proceedings are opened against him.
5. If carriage paid delivery has been agreed, shipment shall be at the buyer's risk.
6. Cost increases for which the Seller is not responsible (in particular general increases in labor and/or material costs) shall entitle the Seller to a reasonable price increase if delivery is to take place at least four weeks after conclusion of the contract or later, as well as in the case of continuing obligations. A change in value added tax shall result in a corresponding price adjustment at any time. In the case of non-merchants, a price adjustment is only permissible in the case of continuing obligations or, in the case of agreed delivery, at least four months after conclusion of the contract due to cost increases for which the seller is not responsible.

§ 3 Delivery and transfer of risk

1. Delivery periods and dates shall be deemed to be approximate and subject to correct and timely delivery by the Seller, unless the Seller is responsible for non-compliance. Non-compliance shall only entitle the Buyer to assert the rights to which it is entitled if it has granted the Seller a reasonable grace period of at least 8 working days in writing.
 2. Partial deliveries shall be permitted and accepted to a reasonable extent.
 3. The Seller shall not be responsible for delays in delivery and performance due to force majeure and events that make delivery significantly more difficult or impossible - including, in particular, operational disruptions, strikes, lockouts, natural disasters, official or legal orders or disruption of transport routes, even if they occur at the Seller's suppliers - even in the case of bindingly agreed deadlines and dates. They entitle the seller to postpone the delivery or service for the duration of the hindrance plus a reasonable start-up time.
 4. The Seller shall notify the Buyer as soon as possible of the beginning and end of such a delay. At the request of the seller, the buyer is obliged to declare within a reasonable period of time whether it is withdrawing from the contract due to the delay and/or demanding compensation or insisting on delivery.
- At the buyer's request, the seller must also declare immediately whether he wishes to withdraw or deliver after the expiry of the period of grace. If the seller does not declare without delay, the buyer may withdraw from the contract. Section 6 applies to claims for damages.
5. With regard to delays in delivery and performance, the Seller shall only be liable for its own fault and that of its vicarious agents, but not for that of its suppliers. However, upon request, he is obliged to assign to the buyer any claims to which he may be entitled against his suppliers.
 6. In the event of non-compliance with the grace period set in accordance with clause 1, the buyer may withdraw from the contract or demand compensation. The claim for damages shall be limited to the reimbursement of proven additional costs (covering purchase). The covering purchase requires at least three comparative offers to be obtained. Any further claims for damages are excluded unless they are based on gross negligence.
- The seller shall not be liable for damages due to non-performance as a result of slight or normal negligence. The seller shall only be liable to merchants for gross negligence and intent if the fault is attributable to legal representatives or senior employees of the seller or if other vicarious agents have breached main or cardinal obligations. In this case, liability is limited to damages that were foreseeable at the time the contract was concluded.
7. The risk shall also pass to the buyer in the case of carriage paid delivery when the delivery has been dispatched or collected. Shipment shall be made at the best discretion of the seller.
- Delivery free construction site or free warehouse means delivery without unloading and on condition that the delivery road is passable for heavy goods vehicles. Waiting times will be charged. If the vehicle leaves the drivable access road on the instructions of the buyer or his customer, the buyer shall be liable for any defects and damage incurred.
8. If unforeseen events within the meaning of clause 3 significantly change the economic significance or the content of the delivery or have a significant impact on the seller's business, the contract shall be adapted in good faith. If this is not economically justifiable, the Seller shall have the right to withdraw from the contract. He must inform the buyer of this immediately after realizing the consequences, even if an extension of the delivery time was initially agreed.

§ 4 Terms of payment

1. The invoice shall be issued for each consignment on the date of dispatch. This also applies to agreed partial deliveries.
2. Unless otherwise agreed or has become standard practice, the purchase price shall be paid within 30 calendar days of the invoice date without deduction, or after 14 days with a 2% discount, provided that the account does not show any overdue invoice amounts. Only the value of the goods excluding freight, wage labor and packaging is eligible for discount.
3. Bills of exchange shall only be accepted by special agreement with the seller and only on account of payment, with all costs incurred being charged. In the case of checks, payment shall be deemed to have been made when the checks are finally cashed.
4. If the buyer is in arrears with payments due, interest on arrears shall be payable in the amount that the seller has to pay to his bank for loans taken out, but at least 5% - if the buyer is a merchant, at least 8% - above the base interest rate in accordance with § 247 BGB, unless the buyer can prove that the damage is lower. The seller reserves the right to prove higher damages.
5. In the event of default in payment or protest of a check or bill of exchange, the Seller shall be entitled to make further deliveries only against advance payment, to declare all outstanding invoice amounts due immediately and to demand cash payment or the provision of security against the return of all bills of exchange and checks accepted on account of payment. In addition, the statutory provisions (§§ 286 ff BGB) shall apply in the event of default of payment.
6. If, after conclusion of the contract, the seller becomes aware of circumstances that jeopardize the seller's claim to counter-performance due to the buyer's inability to pay, the seller may refuse performance and is entitled to declare the entire remaining debt due.
7. In the event of justified notices of defects, payments by the Buyer may only be withheld to an extent that is in reasonable proportion to the material defects that have occurred. Offsetting against counterclaims is only permitted with undisputed or legally established claims. If the buyer is a merchant, rights of retention pursuant to §§ 369 HGB, 273 BGB are excluded.

§ 5 Quality - Warranty - Notice of defects - Liability

1. Wood is a natural product. Its natural properties, differences and characteristics must therefore always be taken into account. In particular, the biological, physical and chemical properties must be taken into account when purchasing, processing and using wood. The range of natural differences in color, structure and other differences within a type of wood is part of the properties of wood as a natural product and does not constitute grounds for complaint or liability. If necessary, the buyer must seek professional advice.

2. Only the manufacturer's product description shall be deemed agreed for the quality of the goods. Public statements, promotions or advertising by the manufacturer do not constitute a contractual description of the quality of the goods.
3. Unless otherwise agreed, the goods to be delivered are produced from fresh round timber. An agreed wood moisture content is deemed to be an approximate target moisture content, taking into account the usual tolerances. In the case of technical drying, the agreed wood moisture refers to the time of emptying the drying kiln.
4. In order to safeguard warranty claims, the buyer must inspect the delivery immediately upon arrival for quantity, contractual quality and warranted characteristics.

Obvious defects must be reported to the seller in writing within 14 calendar days of receipt. In the event of discoloration, the notification period shall be reduced to 7 calendar days, unless delivery of dry goods was agreed.

Non-obvious defects or defects arising during or after handling or processing must be reported immediately after their discovery, at the latest within 10 working days. The burden of proof for the time of discovery of the defect lies with the buyer.

In the case of mutual commercial transactions between merchants, § 377 HGB remains unaffected.

The buyer must inform the seller as soon as he becomes aware of a warranty claim made by a consumer.

5. If the buyer discovers defects in the goods, he may not dispose of them, i.e. they may not be divided, resold or processed until an agreement has been reached on the settlement or evidence has been secured by a publicly appointed and sworn expert.
6. In the event of a justified notice of defects, the seller is obliged to rectify the defect or supply a replacement - in commercial transactions at his own discretion. If the rectification of defects fails even after the 2nd attempt, the buyer may demand a reduction in price or withdrawal from the contract.

If the seller allows a reasonable period of grace granted to him to expire without rectifying the defect or supplying a replacement, or if both fail or become impossible, or if the seller refuses to rectify the defect or supply a replacement, the buyer shall be entitled, at his discretion, to demand rescission of the contract (withdrawal) or a reduction in the purchase price (reduction).

The buyer has no right of withdrawal in the case of minor defects. Defects in part of the delivered goods do not entitle the buyer to complain about the entire delivery, unless the partial delivery is of no interest to the buyer. In addition, liability for defects that do not or only insignificantly impair the value or usability is excluded, are excluded. Excess or short deliveries of up to 10% of the ordered quantity cannot be objected to.

7. The seller shall only be liable for the absence of warranted characteristics to the extent that the purpose of the warranty is to protect the buyer against consequential damage arising from the non-existence of the characteristics. The mere reference to DIN or EN standards does not make their content a warranted characteristic.

8. If the buyer is a merchant, warranty claims shall expire 12 months after the transfer of risk. This shall not apply if the law prescribes longer periods in accordance with §§ 438, para. 1, no. 2 (buildings and items for buildings) § 479, para. 1 (right of retention) and § 634 a), para. 1, no. 2 (building defects) BGB.

9. Section 6 applies to claims for damages.

§ 6 Limitation of liability - Compensation

1. Claims for damages by the buyer, regardless of the legal grounds, in particular due to breach of duties arising from the contractual obligation and tort, are excluded, unless otherwise regulated below. This also applies in particular to consequential damages and claims for reimbursement of expenses by the buyer.
2. In the event of a breach of material contractual obligations, the Seller's liability shall be limited to the foreseeable damage typical of the contract. Damage limited.
3. The provision under items 1. and 2. shall not apply in the case of mandatory liability, e.g. under the Product Liability Act, in the case of gross negligence, or due to injury to life, limb or health. Nor does this imply any change in the burden of proof to the detriment of the buyer.
4. The provision made in clauses 1 to 3 shall apply to the buyer accordingly.

§ 7 Retention of title

1. All delivered items (goods subject to retention of title) shall remain the Seller's property until the sales price and all other claims due to the Seller from the business relationship have been paid in full. Pledging or transfer by way of security without his consent is not permitted.
2. Any treatment or processing of the goods subject to retention of title shall be carried out on behalf of the seller free of charge and without any obligation to regard the seller as the manufacturer within the meaning of § 950 BGB. The Buyer shall transfer to the Seller co-ownership of the new item in the ratio of the invoice value of the goods subject to retention of title to the other processed goods at the time of processing. The new items resulting from the processing are deemed to be reserved goods.
3. If the delivered goods are combined with a movable item in such a way that they become an integral part of another item which is to be regarded as the main item, the Buyer hereby assigns to the Seller co-ownership of the new item on a pro rata basis. In this case, the Buyer hereby assigns to the Seller the claim for remuneration arising against the third party in the amount of the value of the reserved goods with all ancillary rights and authorizes the Seller to collect the claim, subject to revocation. The seller hereby accepts this advance assignment and authorization.
4. The buyer is only permitted to resell, process and treat the goods in the ordinary course of business and only under the condition that the claims within the meaning of clauses 2 and 3 are actually transferred to the seller. This includes that the buyer receives payment from his customer or makes the reservation that the property is only transferred to his customer when he fulfills his payment obligations. The buyer must agree the same with his customer.
5. In the event of seizure, confiscation or other dispositions or interventions by third parties, the Buyer must inform the Seller immediately and in full. If the Buyer is in default of payment, the Seller shall be entitled to terminate the Buyer's right of possession by unilateral declaration and to demand the return of the unprocessed material without granting a grace period.

Upon suspension of payments and/or filing for insolvency, all rights of the buyer listed under clauses 2 to 4 shall expire. This does not apply to the rights of the insolvency administrator.

6. The assertion of the retention of title by the seller does not require withdrawal. However, the Buyer shall be obliged to grant the Seller or its agents immediate access to the goods so that the Seller can make the appropriate determinations and dispose of the reserved goods.
7. If the value of the securities granted exceeds the claims (possibly reduced by down payments and partial payments) by more than 20%, the seller shall be obliged to retransfer or release the securities at his discretion. Ownership of the goods subject to retention of title and the assigned claims shall pass to the Buyer upon settlement of all claims of the Seller arising from the business relationship.

§ 8 Construction services

For all construction services, including assembly, the German Construction Contract Procedures (VOB, Parts B and C) in the version valid at the time of conclusion of the contract, insofar as the order is placed by a contractual partner active in the construction industry.

§ 9 Place of performance - place of jurisdiction - law

1. The place of performance and jurisdiction for deliveries and payments (including actions on checks and bills of exchange) as well as all disputes arising between the parties shall be the registered office of the Seller if the Buyer is a merchant, a legal entity under public law or a special fund under public law. However, the seller is also entitled to sue the buyer at his registered office.
2. The relationship between the contracting parties shall be governed exclusively by the law applicable in the Federal Republic of Germany including the exclusion of the UN Convention on Contracts for the International Sale of Goods.

§ 10 Final provisions

Should one or more of these conditions violate a legal prohibition, or for other reasons be legally invalid, this shall not affect the validity of the remaining provisions.

In place of the invalid provision, that provision shall be deemed to have been agreed which, taking into account the other terms and conditions, would have corresponded as closely as possible to the economic interest and presumed intention of the contracting parties. The same applies to a loophole.

The contracting parties undertake to cooperate seriously in finalizing this replacement provision.