

# General Terms and Conditions of Sale and Delivery Mercer Timber Products GmbH and Mercer Torgau GmbH & Co. KG

Mercer Timber Products GmbH based in Saalburg-Ebersdorf and Mercer Torgau GmbH & Co. KG based in Torgau are specialized in the industrial processing of wood, the trade of roundwood and sawn timber as well as wood products in the broadest sense and the production of sawdust residues.

In the following General Terms and Conditions of Sale and Delivery (hereinafter referred to as "GTC") Mercer Timber Products GmbH and Mercer Torgau GmbH & Co. KG are referred to as "we" and the contractual partner as "customer" and/or "orderer".

## 1. Scope

1.1. These terms and conditions of sale and delivery apply exclusively to entrepreneurs, legal entities under public law or special assets under public law within the meaning of § 310 paragraph 1 BGB. We will only accept any conflicting or deviating conditions of the customer if we expressly agree to their validity in writing.

1.2. These terms and conditions of sale and delivery also apply to all future transactions with the customer.

1.3. These terms and conditions of sale and delivery shall apply exclusively. Other terms and conditions are not accepted. The inclusion of other terms and conditions in the contract is already opposed.

## 2. Offer and conclusion of contract, purpose of use

The customer receives an order confirmation from us via e-mail/fax. Upon receipt of the order confirmation, the contract is concluded.

2.1. The legal relationship between us and the customer shall be governed solely by the written purchase contract, including these General Terms and Conditions of Sale and Delivery. It reproduces all agreements between the contracting parties relating to the subject matter of the contract in full. Verbal commitments prior to the conclusion of this contract are legally non-binding and verbal agreements of the contracting parties are replaced by the written contract, unless expressly agreed otherwise between the contracting parties.

2.2. Our products can be used in many different ways. We do not assume any liability for a particular suitability of the goods for a particular purpose. It is the responsibility of the customer to check whether the goods are suitable for the intended use.

## 3. Prices and payment conditions

3.1. Unless otherwise agreed on in writing, our prices apply ex works plus packaging, freight, customs, other incidental costs and VAT in the legal amount. If no value added tax is due, the customer must immediately notify and prove this. The invoice will only be issued without the VAT if the corresponding proof has been provided to our

satisfaction.

3.2. Payment of the purchase price has to be made exclusively to the account mentioned in the invoice. The deduction of discount is only permitted with special written agreement.

3.3. Unless otherwise agreed, the purchase price must be paid within 30 days of delivery and receipt of a corresponding invoice. Interest on arrears is charged at the rate of 9% points above the respective base rate p.a. We reserve the right to claim higher damages for delay.

3.4. Unless a fixed price agreement has been reached, price changes due to demonstrable changes in labor, material and sales costs for deliveries made four months or later after the conclusion of the contract are reserved. This does not apply in the event that we are in culpable delay in delivery.

3.5. If, after the conclusion of the contract concerning the client's assets, an application for the opening of insolvency proceedings is filed, such an application is rejected due to lack of assets or insolvency proceedings are opened, we are entitled to withdraw from the contract within two weeks after being notified of the contract in the event of a continuing obligation.

3.6. If it becomes known after the conclusion of the contract that the financial situation of the customer has deteriorated significantly, we

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are entitled to demand advance payment by paying the entire invoice as an advance.

3.7. If the purchaser orders for the first time, has its registered office abroad, the delivery is to be made abroad, the purchaser is in default of payment, which occurs if the purchaser is in default of payment within the scope of the contractual relationship in question or another contractual relationship with us, or if there are reasons to doubt the timely or complete payment, we shall be entitled to demand advance payments or prepayment.

3.8. The payment deadlines must also be observed in the event of a notification of defects. This does not apply if the existence of a defect has been legally determined or acknowledged by us in writing.

3.9. If the purchaser fails to pay the purchase price despite the due date, we shall be entitled to withdraw from the contract and demand the goods after fruitless expiration of a period set for payment. The setting of a deadline may be linked to the presentation of accounts. It does not require that the period of 30 days referred to in point 3.3. has already expired. A right of withdrawal associated with the right to demand the goods also exists after the expiration of the period of 30 days in accordance with point 3.3.

A refusal of payment or a retention of payment is excluded if the purchaser was aware of the defect or other reason for complaint at the

time of conclusion of the contract. This also applies if it has remained unknown to him as a result of gross negligence, unless we have assumed a guarantee for the quality of the item. Otherwise, payment may only be withheld to a reasonable extent due to defects or other complaints.

#### 4. Set-off, retention rights

4.1. The customer is only entitled to exercise a right of retention to the extent that their counterclaim is based on the same contractual relationship.

4.2. The customer is entitled to set-off against an undisputed or legally established claim.

#### 5. Delivery time

5.1. The start of the delivery period specified by us is always only approximate and presupposes the timely and proper fulfillment of the obligations of the purchaser. The objection of the non-fulfillment of the contract remains reserved. Exceeding the delivery date will only lead to a delay if we have received a grace period of at least 10 days from the customer; otherwise only applies if a delivery date has been expressly guaranteed.

5.2. In the event of subsequent changes to the contract, the delivery time shall be extended accordingly.

5.3. Partial deliveries are permitted after notice.

5.4. In the event of a delay in deli-

very, we shall only be liable for damages due to delay in performance if the delay is caused by us or one of our vicarious agents intentionally or through gross negligence. This does not apply in the case of harm to life, body and health.

5.5. Over or under deliveries of the agreed quantities of goods are deemed to be contractually agreed up to a deviation of 10%. In these cases, however, we invoice the Buyer for the quantity of goods actually delivered and the Buyer has to pay for the quantity actually delivered.

5.6. in the event of force majeure or other unforeseen, exceptional circumstances (e.g. operational disruption, strike, pandemic, lockout, official intervention, energy supply difficulties and delays in the delivery of essential materials), the delivery time shall be extended by the duration of the delay caused by this event. The Seller shall not be liable for impossibility of delivery or for delays in delivery, insofar as these are due to force majeure or other events unforeseeable at the time of the conclusion of the contract (e.g. operational disruptions of any kind, difficulties in the procurement of materials or energy, transportation delays, strikes, lawful lockouts, shortage of manpower, energy or raw materials, difficulties in the procurement of necessary official permits, pandemics or epidemics, official measures or the lack of, non-compliance with, or late delivery by the supplier despite a congruent hedging transaction concluded by the seller) are caused for which



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the seller is not responsible. If such events make the delivery or performance significantly more difficult or impossible for the Seller and the hindrance is not only of temporary duration, the seller is entitled to withdraw from the contract. In the case of temporary obstacles, the delivery or service periods are extended or the delivery or service dates are postponed by the period of the obstacle plus an appropriate start-up period. If the customer cannot be expected to accept the delivery or service as a result of the delay, he may withdraw from the contract by means of an immediate written declaration to the seller.

### 6. Transfer of perils in shipping

6.1. If the goods are sent to the purchaser at the request of the purchaser, the risk of accidental loss or accidental deterioration of the goods passes to the purchaser upon dispatch to the purchaser, at the latest upon leaving the factory/warehouse. This applies regardless of whether the goods are shipped from the place of performance or who bears the freight costs.

6.2. If the goods are returned to us by the customer, the return takes place at the risk and expense of the customer. There is no insurance coverage by us in this case. The customer is obliged to insure the return shipment sufficiently.

### 7. Delay in acceptance

If the purchaser is in default of acceptance or culpably violates other obligations of cooperation, we shall be entitled to demand compensa-

tion for the damage incurred by us in this respect. Further claims are reserved. If the above conditions are met, the risk of accidental loss or accidental deterioration of the purchased item shall pass to the purchaser at the time when the latter is in default of acceptance or debtor.

### 8. Retention of title

8.1. The delivered goods are reserved goods, i.e. we reserve the ownership of the delivered goods until all claims from the delivery contract have been paid in full. This also applies to all future deliveries, even if we do not always expressly refer to this.

8.2. The purchaser is obliged, as long as the ownership has not yet passed to him, to treat the reserved goods with care. In particular, he is obliged to insure them at his own expense against theft, fire and water damage sufficiently at the new value. As long as ownership has not yet been transferred, the purchaser shall immediately notify us in writing if the delivered item is seized or exposed to other interference by third parties. Insofar as we have claims against the third party for reimbursement of the costs of extrajudicial or judicial proceedings, but the latter is unable or unwilling to fulfill them, the purchaser shall be liable for the loss incurred by us. In return, we assign the claims we are entitled to against the third party to the purchaser, insofar as the purchaser makes payment to us.

8.3. The customer is entitled to

resell the reserved goods in the ordinary course of business. The customer already assigns the claims against the customer arising from the resale of the reserved goods to us in the amount of the final invoice agreed with us (including VAT). The assignment applies regardless of whether the reserved goods have been resold without or after processing. The purchaser remains authorized to collect the claim even after the assignment. Our power to collect the claim ourselves remains unaffected. However, we will not collect the claim as long as the purchaser fulfills its payment obligations from the proceeds received, is not in arrears in payment and, in particular, no application for the opening of insolvency proceedings has been filed or payment has been suspended.

8.4. The processing or transformation of the reserved goods by the customer always takes place in our name and on behalf of us. In this case, the purchaser's right of title to the reserved goods shall continue to the converted goods. If the reserved goods are processed with other items that do not belong to us, we acquire co-ownership of the new item in proportion to the objective value of our reserved goods to the other processed items at the time of processing. The same shall apply in the case of mixing. If the mixing takes place in such a way that the item of the purchaser is to be regarded as the principal item, it shall be deemed agreed that the purchaser shall transfer to us co-ownership pro rata this created



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for us. In order to secure our claims against the purchaser, the purchaser also assigns to us such claims against a third party arising from the connection of the reserved goods with a property; we accept this assignment.

8.5. We undertake to release the goods subject to retention of title at the request of the purchaser if their value exceeds the claims to be secured by more than 20%.

8.6. The purchaser shall inform us immediately about compulsory enforcement measures of third parties in the reserved goods or in the assigned claims by handing over the documents necessary for the objection.

### **9. Warranty and notification of defects as well as recourse**

9.1. The purchaser must always bear in mind that wood is a natural material. The characteristics and properties of this natural substance must be assessed by the purchaser himself at the time of its intended use. The property as a natural material can lead to differences in structure, grain, color, etc. for wood products of the same type of wood. This is not a defect. With regard to the quality of the goods, only our product description as per offer applies.

9.2. Warranty rights of the purchaser presupposes that he has duly complied with his investigation and complaint obligations under § 377 HGB. The goods must then be inspected for defects immediately after receipt and the defects must

be reported immediately. Otherwise, the goods are deemed to be approved according to § 377 HGB.

9.3. Should, in spite of all due care, the delivered goods show a defect that already existed at the time of the transfer of risk, we will repair the goods, subject to timely notification of defects, or deliver replacement goods. It is always possible to give us the opportunity for subsequent performance within a reasonable period of time (at least 4 weeks). Claims for recourse remain unaffected by the above regulation without restriction. We are entitled to refuse to rectify the defects until our payment claims from the actual transaction have been fulfilled. This does not apply in the cases referred to in point 3.8., second sentence. Before a possible return of the goods, this must be agreed with us.

9.4. If the customer notices defects in the goods and indicates them, he may not dispose of them, i.e. they may not be divided, resold or processed until an agreement has been reached on the handling of the complaint.

9.5. If the subsequent performance fails, the purchaser may - without prejudice to any claims for damages - withdraw from the contract or reduce the remuneration.

9.6. Claims for defects shall not exist in the event of only insignificant deviations from the agreed quality, in the event of only insignificant impairment of usability, in the event of natural wear or tear and in the event of damage which occurs after the transfer of risk

and as a result of special external influences which are not foreseen under the contract. If changes are made to the product by the customer or third parties, there are no claims for defects for these and the resulting consequences. Samples sent, if any, are of average quality. We do not assume any warranty of quality or durability, unless this is agreed individually.

9.7. Claims of the purchaser for the expenses necessary for the purpose of the subsequent performance, in particular transportation, travel, labor and material costs, are excluded insofar as the expenses increase because the goods delivered by us have subsequently been transported to a place other than the purchaser's branch office, unless the transfer corresponds to their intended use.

9.8. Claims of recourse of the purchaser against us only exist insofar as the purchaser has not entered into agreements with its purchaser that go beyond the legally binding claims for defects. § 425 HGB applies to the extent of the customer's claim against a forwarder employed by us in the event of a delivery obligation.

### **10. Compensation**

10.1. Claims of the customer against us for damages are excluded. This applies equally to claims for damages arising from warranty for defects, claims for compensation for expenses and other claims for damages.

10.2. The above disclaimer of liabi-



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lity shall not apply to claims arising from injury to life, body and/or health which are based on intentional or negligent breach of duty on our part or on an intentional or negligent breach of duty of a legal representative or vicarious agent by us, as well as for other damages that are based on a grossly negligent breach of duty of a legal representative or vicarious agent by us.

### 11. Limitation period

11.1. Claims for defects expire 12 months after delivery of the goods to our customer. This does not apply to liability for damages resulting from injury to life, limb or health, as well as in the case of other damages based on a grossly negligent breach of duty on our part or on an intentional or grossly negligent breach of duty on our part by a legal representative or vicarious agent. In this case, the statutory limitation period applies.

11.2. Insofar as the law pursuant to § 438 para. 1 No. 2 BGB (Buildings and Objects for Buildings), § 478 para. 1 BGB (Right to Recourse) and § 643a para. 1 BGB (Construction Defects) require longer periods, these periods shall apply.

### 12. Data protection, confidentiality

12.1. The customer agrees that the order-related data is stored and processed by us. Of course, we comply with the provisions of data protection.

12.2. We and the customer undertake to keep all information from

the business relationship confidential, in particular with regard to pricing and calculation, intended use of the goods, operational activities and scope of each other even after termination of the contract. The obligation of confidentiality does not apply if we are obliged to disclose for legal or tax reasons.

### 13. Other

13.1. This contract and the entire legal relations of the parties are subject to the laws of the Federal Republic of Germany to the exclusion of the UN Sales Convention (CISG).

13.2. The place of performance and exclusive place of jurisdiction and for all disputes arising from this contract is our registered office, unless otherwise stated in the order confirmation.

13.3. Should any of the above clauses be or become ineffective and/or incomplete, the validity of the remaining clauses shall remain unaffected.

13.14. Changes to existing contracts between us and the customer require text form.

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