

BROCKMANN-HOLZ GmbH

General Terms and Conditions of Delivery and Payment

1. APPLICABILITY

1.1 Unless otherwise expressly agreed, the following "General Terms and Conditions of Delivery and Payment" (GTC) shall apply to all contracts, deliveries and other services, including consulting services rendered in this context, which are not the subject of an independent consulting contract - in business transactions with non-consumers within the meaning of § 310, I BGB (German Civil Code), in addition to the customs in the wood industry (Tegernsee customs).

1.2 Any deviating terms and conditions, in particular the Purchaser's terms and conditions of purchase, are hereby rejected.

1.3 In the context of an ongoing business relationship between merchants, the ALZ shall become an integral part of the contract even if the Seller has not expressly referred to their inclusion in individual cases. pointed out in individual cases.

2. OFFERS AND CONCLUSION OF CONTRACTS

2.1 The offers contained in the catalogs and sales documents of the seller, as well as offers on the Internet - unless expressly designated as binding - are always subject to change, i.e. only as an invitation to submit an offer.

2.2 Orders for drop shipments of goods to be imported shall be subject to self-delivery by our foreign producer, unless we are responsible for the failure of self-delivery.

2.3 Orders shall be deemed accepted if they are either confirmed by the Seller in writing or executed immediately after receipt of the order or on schedule. In that case, the invoice shall be deemed to be the order confirmation.

2.4 If, after conclusion of the contract, the Seller becomes aware of facts, in particular default of payment with regard to earlier deliveries, which, according to due commercial discretion, indicate that the claim to the purchase price is endangered by the Buyer's lack of ability to pay, the Seller shall be entitled, after setting a reasonable deadline, to demand from the Buyer, at the Buyer's option, payment concurrently or corresponding securities and, in the event of refusal, to withdraw from the contract, whereby the invoices for partial deliveries already made shall be paid in full.

invoices for partial deliveries already made shall become due immediately.

3. DATA STORAGE

The Buyer is hereby informed that the Seller will process the personal data obtained in the course of the business in the course of the business relationship in accordance with the provisions of the Federal Data Protection Act.

4. DELIVERY, TRANSFER OF RISK AND DELAY

4.1 With the provision of the goods at the agreed place of delivery by the Seller, the risk shall pass to the Buyer.

4.2 Partial deliveries are permissible to a reasonable extent.

4.3 The delivery period shall be reasonably extended - even within a delay - in the event of force majeure and all unforeseen obstacles occurring after conclusion of the contract for which the Seller is not responsible (including, in particular, operational disruptions, strike, lockout or disruption of traffic routes), insofar as such obstacles can be proven to have a significant influence on the delivery of the sold item. This shall also apply if such circumstances occur at the Seller's suppliers and their sub-suppliers.

The Seller shall inform the Buyer as soon as possible of the beginning and end of such obstacles. The Buyer may request the Seller to declare whether it intends to withdraw from the contract or to deliver within a reasonable period of time. If the Seller does not make such a declaration without delay, the Buyer may withdraw from the contract. In this case, claims for damages are excluded.

The above provisions shall apply accordingly to the Buyer if the aforementioned obstacles occur at the Buyer.

4.4 With regard to timely delivery, the Seller shall only be liable for its own fault and that of its vicarious agents. He shall not be liable for the fault of his sub-suppliers, as they are not his vicarious agents. The Seller shall, however, be obliged to assign to the Buyer upon request any claims to which it may be entitled against its upstream suppliers.

4.5 In the event of a delay in delivery, the Buyer shall be obliged, at the Seller's request, to declare within a reasonable period of time whether it still insists on delivery or whether it wishes to withdraw from the contract due to the delay and/or to claim damages in lieu of delivery.

contract due to the delay and/or to claim damages in lieu of performance.

5. PAYMENT

5.1 Unless otherwise agreed, the purchase price shall be due immediately upon receipt of the goods without deduction.

5.2 Prepaid freight is to be paid immediately without discount, even if carriage paid delivery has been agreed.

5.3 Payments by bill of exchange are only permissible by special agreement; bills of exchange and checks are always accepted only on account of payment, not in lieu of payment. In the event of a protest of a check or bill of exchange, the Seller may demand immediate cash payment concurrently with the return of the check or bill of exchange.

5.4 In the event of default in payment, the statutory provisions shall apply. Any agreed discounts shall not be granted if the Buyer is in default of payment for earlier deliveries.

5.5 If the Buyer is in default of payment or does not honor a bill of exchange when due, the Seller shall be entitled, after prior reminder, to take back the goods, if necessary to enter the Buyer's premises and to remove the goods. The Seller may also prohibit the removal of the delivered goods.

5.6 Refusal or retention of payment shall be excluded if the Buyer was aware of the defect or other reason for complaint at the time of conclusion of the contract. This shall also apply if it remained unknown to him due to gross negligence, unless the Seller fraudulently concealed the defect or other cause for complaint or assumed a guarantee for the quality of the item.

Otherwise, payment may only be withheld due to defects or other complaints to a reasonable extent. In the event of a dispute, the amount shall be decided by an expert appointed by the Purchaser's Chamber of Industry and Commerce. This expert shall also decide on the allocation of the costs of his involvement at his reasonable discretion.

5.7 Offsetting shall only be possible with claims acknowledged by the Seller or with claims that have become res judicata possible.

6. CHARACTERISTICS OF THE WOOD

6.1 Wood is a natural product; its natural properties, deviations and characteristics must therefore always be observed. In particular, the purchaser must take its biological, physical and chemical properties into account when purchasing and using it.

6.2 The range of natural color, structure and other differences within a type of wood is part of the properties of the natural product wood and does not constitute any reason for complaint or liability.

6.3 If necessary, the buyer shall seek professional advice.

7. NOTICE OF DEFECTS, WARRANTY AND LIABILITY

7.1 The Seller shall only be liable for defects within the meaning of § 434 BGB as follows:

The Buyer shall immediately inspect the received goods for quantity and quality. Obvious defects shall be notified to the Seller in writing within 14 days.

In the case of mutual commercial transactions between merchants, §§ 377, 378 HGB remain unaffected. For the rest, reference is made to the Tegernsee customs.

Deviations in design and dimensions customary in the industry shall not constitute grounds for complaint.

7.2 If the Buyer discovers defects in the goods, he may not dispose of them, i.e. they may not be divided, resold or further processed, until an agreement has been reached on the handling of the complaint or a procedure for the preservation of evidence has been carried out by an expert commissioned by the Chamber of Industry and Commerce at the Buyer's place of business.

7.3 In the event of justified complaints, the Seller shall be entitled to determine the type of subsequent performance (replacement delivery, rectification of defects), taking into account the type of defect and the justified interests of the Buyer.

7.4 The Buyer shall inform the Seller as soon as possible about a warranty case occurring with a consumer.

7.5 Claims for material defects shall become statute-barred after 12 months. This shall not apply insofar as longer periods are prescribed by law in accordance with Sections 438 (1) No. 2 (buildings and items for buildings) 479 (1) (right of recourse) and 634a (1) No. 2 (construction defects) of the German Civil Code (BGB).

7.6 Section 8 (General Limitation of Liability) shall apply to claims for damages.

7.7 Non CE - marked plywood panels may only be used for general purposes and not as a permanent component of a structure.

7.8 Advice on the possible uses and treatment of the goods - in particular concrete plywood - or the type of further processing thereof and the materials that can be used for this purpose shall be given to the best of our knowledge, but without any liability on our part.

8. GENERAL LIMITATION OF LIABILITY

8.1 Claims for damages and reimbursement of expenses of the Purchaser (hereinafter: Claims for Damages), irrespective of the legal ground, in particular due to breach of duties arising from a contractual obligation and from tort, shall be excluded. This shall not apply in cases of the assumption of a guarantee or a procurement risk.

Furthermore, this shall not apply in cases of mandatory liability, e.g. under the Product Liability Act, in cases of gross negligence, injury to life, body or health, or breach of a condition which goes to the root of the contract. However, the claim for damages for the breach of essential contractual obligations shall be limited to the foreseeable damage typical for the contract, unless there is gross negligence or liability for injury to life, limb or health. This does not imply a change in the burden of proof to the detriment of the Buyer.

8.2 This provision shall apply accordingly to the Buyer.

9. RETENTION OF TITLE

9.1 The Seller shall retain title to the goods until the purchase price has been paid in full. In the case of goods purchased from the Buyer within the framework of an ongoing business relationship, the Seller shall retain title until all its claims against the Buyer arising from the business relationship, including claims arising in the future, including claims arising from contracts concluded at the same time or later, have been settled. This shall also apply if individual or all claims of the Seller have been included in a current invoice and the balance has been struck and accepted. If, in connection with the payment of the purchase price by the Buyer, a liability of the Seller under a bill of exchange is established, the retention of title shall not expire before the bill of exchange has been honored by the Buyer as drawee.

In the event of default in payment by the Buyer, the Seller shall be entitled to take back the goods after issuing a reminder and the Buyer shall be obliged to surrender the goods.

9.2 If the goods subject to retention of title are processed by the Buyer to form a new movable item, the processing shall be carried out on behalf of the Seller without the Seller being obliged as a result; the new item shall become the property of the Seller. In the event of processing together with goods not belonging to the Seller, the Seller shall acquire co-ownership of the new item in proportion to the value of the reserved goods to the other goods at the time of processing. If the reserved goods are combined, mixed or blended with goods not belonging to the Seller in accordance with §§ 947, 948 BGB, the Seller shall become co-owner in accordance with the statutory provisions. If the Buyer acquires sole ownership as a result of combining, mixing or blending, he hereby assigns co-ownership to the Seller in proportion to the value of the reserved goods to the other goods at the time of combining, mixing or blending. In such cases, the Buyer shall store free of charge the item owned or co-owned by the Seller, which shall also be deemed to be reserved goods within the meaning of the above conditions.

9.3 If goods subject to retention of title are sold alone or together with goods not belonging to the Seller, the Buyer hereby assigns the claims arising from the resale in the amount of the value of the goods subject to retention of title with all ancillary rights and priority over the rest; the Seller accepts the assignment. The value of the goods subject to retention of title shall be the invoice amount of the Seller, which shall, however, remain out of account insofar as third party rights oppose it. If the resold goods subject to retention of title are co-owned by the Seller, the assignment of the claims shall extend to the amount corresponding to the share value of the Seller in the co-ownership.

9.4 If goods subject to retention of title are installed by the Buyer as an essential component in a property, ship, ship under construction or aircraft of a third party, the Buyer hereby assigns the assignable claims for remuneration arising against the third party or the party to whom it relates in the amount of the value of the goods subject to retention of title with all ancillary rights, including a right to the granting of a security mortgage, with priority over the remainder; the Seller accepts the assignment. Paragraph 9.3 sentences 2 and 3 shall apply accordingly.

9.5 If goods subject to retention of title are installed by the Buyer as an essential component in a property, ship, ship under construction or aircraft of the Buyer, the Buyer hereby assigns the claims arising from a sale of the property, rights to property, ship, ship under construction or aircraft in the amount of the value of the goods subject to retention of title with all ancillary rights and with priority over the rest; the Seller accepts the assignment. Paragraph 9.3 sentences 2 and 3 shall apply accordingly.

9.6 The Buyer shall be entitled and authorized to resell, use or install the Retained Goods only in the ordinary course of business and only subject to the proviso that the claims within the meaning of paragraphs 3 to 5 are actually transferred to the Seller. The Buyer shall not be entitled to dispose of the Retained Goods in any other way, in particular by pledging them or assigning them as security.

9.7 The Seller authorizes the Buyer, subject to revocation, to collect the claims assigned pursuant to paras. 3-5. The Seller shall not make use of its own collection authority as long as the Buyer meets its payment obligations, also towards third parties. At the Seller's request, the Buyer shall name the debtors of the assigned claims and notify them of the assignment; the Seller shall be authorized to notify the debtors of the assignment itself.

9.8 The Buyer shall notify the Seller without delay of any compulsory enforcement measures by third parties against the reserved goods or the assigned claims, handing over the documents necessary for the objection.

9.9 The right to resell, use or install the reserved goods or the authorization to collect the assigned claims shall expire upon cessation of payments and/or filing for insolvency proceedings; the authorization to collect shall also expire in the event of a protest of a check or bill of exchange. This shall not apply to the rights of the insolvency administrator.

9.10 If the value of the securities granted exceeds the claims (reduced by down payments and partial payments, if applicable) by more than 10%, the Seller shall be obliged to retransfer or release them at its discretion. Upon settlement of all claims arising from the business relationship, ownership of the reserved goods and the assigned claims shall pass to the Buyer.

10. CONSTRUCTION SERVICES

For all construction work, including assembly, the German Construction Contract Procedures (VOB, Parts B and C) shall apply 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 contracting party engaged in the building trade.

11. JURISDICTION AND APPLICABLE LAW

11.1 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 Seller's principal place of business if the Buyer is a merchant, a legal entity under public law or a special fund under public law. However, the Seller shall be entitled to sue the Buyer at the Buyer's place of business.

11.2 The relations between the contracting parties shall be governed exclusively by the law applicable in the Federal Republic of Germany to the exclusion of the UN Convention on Contracts for the International Sale of Goods.

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