Clause 1 - General

(1) Unless agreed otherwise, these General Terms and Conditions (GTCs) apply to all contracts concluded by Binderholz Kösching GmbH (referred to in the following as vendor).

(2) All agreements concluded between the vendor and the purchaser for the purpose of completing the contract to be concluded are regulated in writing herein.

(3) GTCs of the purchaser do not apply, even if they are not explicitly rejected by the vendor. Fulfilment actions of the vendor do not represent acknowledgement of the purchaser’s GTCs.

(4) These GTCs therefore contain general contractual stipulations for contracts on the production and supply (sale) of the vendor’s products.

Clause 2 - Offer and contract conclusion

(1) All quotes provided by the vendor are non-binding and apply only to undivided orders. The vendor is not obligated to accept orders from the purchaser.

(2) Orders are placed in writing by fax or email or orally by telephone at the last address, fax or telephone number communicated by the vendor. Contracts are concluded by subsequent order confirmation or delivery by the vendor. Order confirmations will be sent to the address stated by the purchaser in his order or, in the event of an ongoing business relationship, to the last known address of the purchaser. The performance detailed in the vendor’s order confirmation represents the exclusive contract subject-matter. Additional performance will be invoiced separately. Negligible material-based deviations from samples, presentation pieces or illustrations or deviations in catalogues, in particular deviations from colour or grain pattern, are reserved. Material-based deviations of this nature do not represent deficiencies.

(3) The purchaser is bound to his order for a period of two weeks.

Clause 3 - Prices

(1) All prices are stated in euro. Prices are stated net and do not include taxes or duties. Orders accepted by the vendor are subject to the prices valid at the time of order.

(2) Prices do not include packaging, freight charges, customs duties, insurance and accessory charges.

Clause 4 - Delivery and transfer of risk

(1) Contracts between vendor and purchaser are subject to Incoterms 2010, unless other terms are agreed explicitly in writing or other provisions are stipulated in these GTCs. The place of delivery and transfer of risk therefore depend on the Incoterms 2010 clause agreed between vendor and purchaser. If no explicit agreement is reached on the place of delivery and transfer of risk then delivery conditions apply EXW (ex-works) vendor.

(2) The vendor’s delivery dates and periods are determined in the order confirmation or correspondence with the purchaser from the delivery. Delivery periods always apply as of the date of the vendor’s order confirmation; in general, delivery dates are EXW (ex-works), depending on the agreement.

(3) The vendor is entitled to apply reasonable extensions or postponements to delivery dates and periods for reasons of Clause 4 (5) and (6) and in the event of other obstructions that are at least not due to gross negligence on the part of the vendor. The vendor shall inform the purchaser of any such a delay in delivery at least 24 hours prior to the original delivery date. The purchaser cannot derive any claims on the basis of such delays.

(4) The vendor is entitled to provide partial and advance deliveries and to invoice them separately.

(5) The vendor is not liable for delays or an inability to deliver due to force majeure (e.g. strike, fire, war, transport disruptions, technical problems with production systems, lack of raw materials, etc.) - including such events affecting our own suppliers or sub-contractors - or for reasons that do not lie in the vendor’s scope of influence, such as the delayed completion of preliminary work by the purchaser.

(6) The vendor is entitled to cancel promises to deliver in the event of force majeure or for reasons that do not lie in the vendor’s scope of influence. The same applies if the delay in delivery is due to default or non-performance on the part of upstream providers.

(7) The vendor is liable for delays or an inability to deliver a shipment or partial shipment for reasons other than those defined in Clause 5 (4) and (6) to the extent of the liability stipulations determined under Clause 8.

(8) The purchaser is entitled to withdraw from the contract if the vendor is still in default a grace period of at least four weeks granted by the purchaser. In the event of partial performance the purchaser shall be entitled to partial withdrawal only.

(9) The risk of accidental perishing and accidental deterioration is transferred to the purchaser when the goods are handed over at the place of delivery. If the purchaser is informed that EXW (ex-works) goods are ready for collection the goods shall be stored at the expense and risk of the purchaser after three subsequent days.

Clause 5 - Payment

(1) Payment is due 14 days after the invoice date unless other payment terms are agreed in writing.

The same applies to partial payments. Cheques are accepted merely on account of payment and only by express agreement.

(2) In the event of a delay in payment a statutory default interest rate in accordance with Clause 228 of the German Civil Code (BGB) shall apply from the due date until receipt of payment. In the event of delays in payment a running fee of 1% of the invoiced amount, but at the most 30 euro, shall apply to each reminder. If the second reminder remains fruitless a collecting agency will be appointed at the expense of the purchaser to collect the due amount. The vendor is entitled to claim compensation from the purchaser for all collecting expenses arising from the purchaser’s delay in payment unless the purchaser is not responsible for the delay. A payment default will result in the loss of any advantages granted to the purchaser such as discounts, sales or shipping bonuses, etc.

Furthermore, all other claims not yet due will become due with immediate effect.

(3) All payments made by the purchaser will first be offset against open interest and expenses payments and then offset against the goods delivered under retention of title. Moreover, the vendor is entitled to offset payments received from the purchaser against the latter’s older debts.

(4) Claims for deficiencies do not release the purchaser from his obligation to comply with the terms of payment. The negotiation of complaints does not constitute the acknowledgement by the vendor of any obligation to remedy defects.

(5) The purchaser is only entitled to the right to offset if his counterclaim has been established as final and absolute or is uncontested or acknowledged by the vendor. Moreover, he is authorised to exercise a right to retention only insofar as it is based on the same contractual relationship.

(6) If a deterioration occurs in the purchaser’s financial situation or if the vendor only becomes aware after conclusion of the contract that the purchaser was already in such a poor financial condition at the time of the conclusion of the contract to the extent that the performance of the purchaser’s contractual obligations was at risk, the vendor can refuse to perform until provision or guarantee of the purchaser’s performance.

Proof of such financial circumstances affecting the purchaser is considered as given in the form of information provided by a reputable credit agency or bank.

(7) In the event of a payment default the vendor can withdraw from the contract after granting the purchaser a reasonable period of grace. If the purchaser is insolvent the vendor can withdraw from the contract without granting a period of grace. The vendor is entitled to reclaim products that have been delivered but not yet paid for.

(8) The vendor retains the right to charge the purchaser for damages incurred by the vendor due to non-compliance with payment agreements.

Clause 6 - Retention of ownership

(1) All purchased goods remain in the ownership of the vendor until the goods and any accessory charges are paid in full.

The purchaser is obligated to treat the purchased goods with due care; in particular, he is obligated to insure them at their reinstatement value and at his own cost against damage through fire, water and theft.

(2) The purchaser is obligated to inform the vendor immediately in writing so that the vendor can take action in accordance with Clause 771 of the German Code of Civil Procedure. The purchaser shall be liable for the vendor’s judicial and extrajudicial expenses incurred due to legal action in accordance with Clause 771 of the German Code of Civil Procedure in the event the third party is unable to do so.

(3) The purchaser is entitled to sell on the purchased goods in the course of his normal business; however, the purchaser hereby assigns to the vendor all future claims to the final value of the sales invoice (including VAT) arising from the sale of the purchased goods to his customers or
Clause 7 Claims for faults

(1) Wood is a natural material. Its natural biological, chemical and physical properties must therefore be granted due consideration when purchasing and using the product.

(2) The obligation of immediate inspection and complaint in accordance with Clause 377 f of the German Commercial Code.

(3) If the purchaser fails to comply with the obligation to inspect the goods and to issue an immediate complaint, the goods may be deemed to be accepted by the purchaser under the exclusion of claims under warranty.

(4) If the inspection of packed goods is impossible then the packaging itself shall be inspected and any external damage to the packaging that may indicate damage to the packed goods must be reported to the vendor immediately, at the latest within 5 working days after delivery, as complaints under warranty will otherwise be excluded.

(5) The vendor must be informed immediately if normal business routine does not allow the immediate inspection of the goods; any defects detected during a subsequent inspection must be reported in writing within 14 days of delivery. This also applies to defective and incorrect deliveries. Defects that do not become detectable until later must be reported immediately, at the latest within 5 days of detection, as the goods will otherwise be deemed as accepted despite the defect. Engaging in negotiations relating to a complaint does not mean that the vendor waives the objection that a complaint was raised too late or is insufficiently specified.

(6) The return of goods requires the express written consent of the vendor and will be made at the expense and risk of the purchaser.

(7) In the event of an unfounded complaint necessitating extensive investigations the resulting costs may be charged to the purchaser.

(8) Further processing of the goods will result in the exclusion of warranty.

(9) Raising a claim under warranty does not release the purchaser from his payment obligations.

Clause 8 - Liability

(1) The vendor shall be liable in accordance with legal provisions insofar as the purchaser raises claims based on the intentional or gross negligence of the vendor or his representatives or vicarious agents. Insofar as the vendor is not charged with intentional breach of contract his liability shall be limited in its amount to the foreseeable, typically occurring damage.

(2) The vendor shall be liable in accordance with statutory provisions if he has culpably infringed a material contractual duty; in this case, however, his liability shall also be limited in its amount to the foreseeable, typically occurring damage. A material contractual duty is given if the infringe-