

# General Terms and Conditions (GTCs) of Binderholz Kösching GmbH for companies

## 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 descriptions 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 by separate communication from the vendor. 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 in the event of an inability to perform in particular due to reasons of Clause 4 (5) and (6). Likewise, 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 dunning 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.
- (2) 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.
- (3) The purchaser is obligated in the event of seizures or other third-party interventions 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.
- (4) 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

third parties to which he is entitled, regardless of whether the purchased goods were sold on with or without prior further processing. The purchaser remains authorised to collect such claims even after the assignment. This shall not affect the vendor's authorization to collect outstanding debts. However, the vendor undertakes to refrain from collecting the debt as long as the purchaser fulfils his payment obligations from the proceeds received, does not become in default of payment and, in particular, no application for settlement or bankruptcy proceedings is filed or payment is suspended. If, however, one of these events should occur, the vendor shall be entitled to require the purchaser to inform the vendor of the assigned claims and debtors, to provide all the information and documentation required to collect the debt and to inform the debtor (third party) of the assignment.

- (5) Any processing or alteration of the purchased goods by the purchaser is always performed on behalf of the vendor. If the purchased goods are further processed or mixed or combined with other goods that do not belong to the vendor then the vendor shall acquire partial ownership of the resulting new goods in the ratio of the value of the purchased goods (final invoice value including VAT) to that of the other processed goods at the time of processing. The goods resulting from further processing are subject to the same provisions as the purchased goods delivered on condition.
- (6) If the purchased goods are inseparably combined with other goods that do not belong to the vendor then the vendor shall acquire partial ownership of the resulting new goods in the ratio of the value of the purchased goods (final invoice value including VAT) to that of the other processed goods at the time of processing. If the goods are combined in a way that the goods belonging to the purchaser are considered as the main goods, the parties hereby agree that the purchaser shall transfer partial ownership to the vendor. The purchaser shall take the vendor's resulting sole or partial ownership into safekeeping.
- (7) The purchaser shall also assign to the vendor any claims to collateral security to secure the vendor's claims against a third party after the purchased goods have been incorporated in real estate.
- (8) The vendor undertakes to release the securities to which he is entitled at the request of the purchaser insofar as the value of the securities exceeds the secured accounts receivable by more than 10%; the securities released shall be at the discretion of the vendor.

#### **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 of immediate inspection and complaint at the latest within 5 working days of delivery, any defect that would have been detected during such an inspection is deemed as accepted by the purchaser under the exclusion of claims under warranty.
- (4) If the inspection of packaged goods is impossible then the packaging itself shall be inspected and any external damage to the packaging that may indicate damage to the packaged goods must be reported to the vendor immediately, at the latest within 5 working days after delivery, as claims 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-

ment relates to a duty upon whose due fulfilment the purchaser is and is entitled to be reliant.

- (3) Insofar as the purchaser is entitled to claim compensation instead of fulfilment due to a negligent breach of duty on the part of the vendor, the vendor's liability to pay compensation shall be limited to the foreseeable, typically occurring damage.
- (4) Liability arising from culpable injury to life, body or health shall remain unaffected; this shall also apply for compulsory liability in accordance with product liability law.
- (5) The vendor accepts no liability whatsoever for damage caused by improper handling or use of the delivered goods. The vendor shall not be liable for work subsequently carried out on the delivered goods by third parties.
- (6) The vendor shall only be liable for an infringement of a duty to warn if he or one of his vicarious agents is at least culpable of gross negligence.
- (7) Unless otherwise regulated in the foregoing provisions any further liability is precluded.
- (8) The period of limitation for making claims on defects is 12 months, beginning with the transfer of risk. This does not apply insofar as the purchased goods are customarily used in construction and are the cause of the defect.
- (9) The period of limitation in the event of a delivery bottleneck in accordance with Clauses §§ 478, 479 German Civil Code remains unaffected; it is five years beginning with the delivery of the defective goods.

#### **Clause 9 - Applicable law, place of fulfilment, place of jurisdiction**

- (1) This contractual relationship is subject to German law. The applicability of the Uniform Law on the International Sale of Goods (UN Commercial Law) does not apply to this contractual relationship.
- (2) The place of fulfilment for payment of the purchase price and other considerations of the purchaser is always the vendor's registered place of business under corporate law. The competent court at the vendor's place of business is determined as responsible for all disputes arising from this contract.
- (3) These GTCs are available in English and German. The parties agree that the German version shall take precedence over the English translation in the event of contradictions, differences in interpretation and terminology.

#### **Clause 10 - Other stipulations**

- (1) If one or more stipulations of these terms and conditions or the attachments hereto prove to be invalid or null and void it shall not affect the effectiveness of the remaining stipulations. The contractual parties undertake to retrospectively replace the ineffective or unenforceable provisions with comparable, legally permissible provisions that assure the intended commercial success and come closest to the intended contractual purpose. These provisions apply accordingly in the event of omissions to the contractual relationship that are established retrospectively.
- (2) The vendor is entitled to correct obvious errors such as spelling and calculation mistakes in offers, quotes, order confirmations, delivery notes and invoices at any time.
- (3) Written declarations (including faxes and emails) are deemed as delivered if they are sent to the address last specified by the purchaser.
- (4) These GTCs are a supplement to the contracts concluded between vendor and purchaser. The contract takes precedence over the GTCs in the event of contradictory provisions or if the contract contains provisions with a greater scope.
- (5) The purchaser acknowledges that employees and third parties appointed by the vendor are not authorised to make any promises that deviate from the contractually agreed major performance obligations (for instance with regard to payment agreements, quality promises, conditions of delivery).

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