

# General Terms and Conditions of Purchase of Klenk Holz GmbH

## 1. Scope of application

- 1.1 Our General Terms and Conditions of Purchase apply to all our requests and orders relating to purchase and works contracts including construction contracts; our General Terms and Conditions of Purchase shall apply exclusively. Terms and conditions of the Supplier contradicting or deviating from our General Terms and Conditions of Purchase shall not apply, unless we expressly approve such terms in writing. Our General Terms and Conditions of Purchase apply even in the event that we accept delivery unconditionally despite being aware of terms of the Supplier which contradict or deviate from our General Terms and Conditions of Purchase.
- 1.2 Customs prevailing in the wood industry, in particular the Tegernsee Customs (*Tegernseer Gebräuche*) together with their annex and their schedules and as amended from time to time, shall apply supplementally to our General Terms and Conditions of Purchase, unless they contradict our Terms.
- 1.3 Our General Terms and Conditions of Purchase shall also apply for future transactions with the Supplier, to the extent that such transactions are similar in nature.
- 1.4 Our General Terms and Conditions of Purchase shall apply only to entrepreneurs (*Unternehmer*) within the meaning of § 14 para. 1 German Civil Code (BGB), legal persons under public law (*juristische Personen des öffentlichen Rechts*) and special entities under public law (*öffentlich-rechtliches Sondervermögen*). Entrepreneurs within the meaning of § 14 BGB are natural or legal persons or partnerships with legal capacity, who, in concluding a contract, act in pursuit of their commercial enterprise or self-employed profession.

## 2. Order of priority, inclusion of VOB/B and VOB/C for construction work

- 2.1 The following order of priority shall apply when determining type and scope of the performance of the two parties:
  - the provisions of the order,
  - the additional contractual terms referenced in the order as well as special and general technical conditions,
  - these General Terms and Conditions of Purchase,
  - the provisions of general law.
- 2.2 If the Supplier owes construction work within the meaning of § 1 VOB/A, the Construction Contract Procedures Part B and Part C (VOB/B and VOB/C) shall apply as amended at the date of the conclusion of the contract, and shall take precedence over our General Terms and Conditions of Purchase and the general law.

## 3. Ordering, offers, offer documents

- 3.1 We shall only be bound by an order if the Supplier confirms the order in text form according to § 126 b BGB within 1 week after he receives the order.
- 3.2 We shall not incur any costs or obligations from offers, drafts, specimens and samples of the Supplier. Unless agreed otherwise, we shall not compensate expenses relating to visits or the preparation of offers.
- 3.3 We reserve ownership, copyright and other industrial property rights in all illustrations, drawings, calculations and other documents. Such material shall be used exclusively for production relating to our order and the Supplier shall return such materials to us on his own accord, without delay and free of charge if the Supplier fails to accept our order within the time period set out in Claus 3.1 above. If our order is accepted, the Supplier shall return the documents to us on his own accord and free of charge no later than upon completion of the order. Any existing copies shall be irreversibly deleted. At our request, the deletion shall be confirmed appropriately.

#### **4. Remuneration, payment terms, rights of retention and set-off**

4.1 The remuneration indicated in the order shall be binding; price increases are excluded. The remuneration indicated in our order is duty paid, free delivery, to our indicated delivery address, including packaging, freight and transport costs. The order values are net, plus the relevant applicable VAT.

4.2 We will only process invoices, which indicate the invoice address indicated in the order as well as our order number and which are accompanied by all billing documents (e.g. parts lists, work sheets). The Supplier shall bear the consequences if this obligation is not met, unless the Supplier is able to prove that he is not answerable.

We will pay invoices only via the bank accounts specifically notified for this purpose. Such notification shall be made exclusively via an official statement of the supplier master data. Any deviating account details printed on invoices will not be verified and we may therefore disregard them.

4.3 We will pay the remuneration at our own option either (i) within 14 days less 3% cash discount, or (ii) in full within 30 days. This deadline shall always begin only after the Supplier has completed the performance in its entirety or after our acceptance of the Supplier's performance and after we receive an invoice complying with the requirements of these General Terms and Conditions of Purchase.

4.4 The Supplier may assign his claim against us only with our prior written approval, which will not be unreasonably withheld; the same applies for the collection of such claims by third parties.

4.5 We reserve the statutory rights of retention and of set-off.

4.6 The Supplier shall only be entitled to exercise a right of retention or set-off if his counter claims are uncontested, ready for decision, legally enforceable or recognized by us. In addition, the Supplier shall only be entitled to exercise a right of retention to the extent that his counter claim arises from the same contractual relationship.

#### **5. Delivery/service, compliance with the law**

5.1 Deliveries and services shall be rendered in accordance with the current state of the art and science and must comply with our technical specifications, applicable laws, directives and regulations of the authorities and of trade associations; standards such as DIN, ISO, VDI and VDE which are generally recognized internationally shall be complied with.

5.2 The Supplier shall be responsible and shall ensure that the Supplier, his subcontractors and any other agents employed in the performance of the contractual obligations, shall pay the statutory minimum wage according to § 1 MiLoG (German Minimum Wage Law) to his/their employees in a timely fashion; the Supplier shall indemnify us against any claims asserted by employees of the Supplier, his subcontractors and any other agents employed in the performance of the contractual obligations due to any violations of the duty to pay the statutory minimum wage. If we make payments upon any such claim, the Supplier shall reimburse us for the rendered payments without delay. We shall be under no obligation to defend against such claims. However, in such cases, the Supplier may request us to authorize him to defend against such claims, subject to the proviso that the Supplier shall indemnify us against any and all related costs.

5.3 The Supplier shall test the goods in accordance with general German industrial standards and provide us with the test results free of charge at our request.

The Supplier shall review data and documentation provided by us to the Supplier for purposes of this work performance as to their appropriateness and completeness upon receipt without delay and request any missing information from us. The Supplier shall inform us of any concerns regarding the planned approach or the stipulated scope of the contracted performance, the Supplier shall notify us thereof without delay and propose alternatives.

5.4 A delivery note shall be included with each delivery, which shall indicate the content of the delivery broken down according to item, type and quantity as well as our order information (order number, delivery address, cost centre, name of recipient, material number); we shall not be answerable for delays arising due to non-compliance with this requirement.

- 5.5 The Supplier shall be entitled to make partial deliveries and render partial performance only with our written approval.

## **6. Changes in performance or delivery**

- 6.1 If, during the fulfilment, changes and expansions of the scope of delivery or services become necessary in the opinion of the Supplier, the Supplier shall inform us in text form without delay. Changes and expansions of the scope of delivery and service shall require our prior written approval.
- 6.2 The Supplier shall review our requests for changes within 10 working days (Monday to Friday) for their possible consequences, in particular with regard to consequences for the technical implementation, the costs and the schedule, and inform us of the result of this review by submitting a legally binding offer (in text form) without delay. If the change request is unreasonable or infeasible for the Supplier, the Supplier shall explain such in text form.
- 6.3 No remuneration shall be owed for the review and preparation of the offer, regardless of the extent of the review of the change request and regardless of the effects of the change request on the time schedule. If we do not place the order for the implementation of the change request, we shall pay the documented expended time for the review and preparation of the offer based on the agreed remuneration rates.
- 6.4 Should we decide to implement the changes, the Supplier shall render performance in line with the changes under the existing agreements.
- 6.5 The Supplier shall document (with our assistance) agreements for changes in services through a corresponding adjustment of the agreement. This documentation shall include, at minimum, the content of the change request, the order information and of the completed implementation as well as the signature of both parties to the agreement.

## **7. Schedule of delivery/service performance**

- 7.1 The individual delivery and service performance dates indicated in the order (intermediate and final deadlines) shall be binding. Decisive for compliance with the deadlines shall be receipt of the goods at our designated delivery address or the performance of the service owed at the relevant date at our designated place of performance.
- 7.2 If the Supplier becomes aware that the agreed deadline cannot be met, he shall notify us without delay in text form; such notification shall also provide the reasons and the duration of the delay.
- 7.3 The Supplier may only invoke our failure to supply necessary documents if the Supplier has failed to receive such documents in due time despite issuing a reminder in text form.

## **8. Missed deadline, contractual penalty**

- 8.1 In the event that the Supplier fails to meet binding individual deadlines pursuant to Clause 7.1 above, he shall pay a contractual penalty for each working day (Monday to Friday) of culpable default.

The contractual penalty for exceeding the binding individual dates shall amount to 0.15% of the net invoice amount per working day of the delay for the deliveries/services owed so far; the contractual penalty shall in each instance be capped respectively at 5% of the net invoice amount for the deliveries/services owed up to the individual delivery date. Contractual penalties applying because of earlier intermediate dates shall be deducted from contractual penalties accruing subsequently.

The overall amount of all contractual penalties under this agreement shall be limited to 5% of the net order value of the overall agreement.

- 8.2 The contractual penalty shall be deducted from default-related damages owed by the Supplier. We reserve the right to assert additional claims and rights; we shall in particular be entitled to demand contractual penalties alongside performance.

- 8.3 The unreserved receipt/acceptance of a late delivery/service shall not operate as a waiver of our entitlement to claims due to the late delivery/service.

By way of derogation from § 341 para. 3 BGB (German Civil Code), we may reserve the right to demand penalty by declaration to the Supplier within 10 working days after receipt/acceptance of the late delivery/service.

- 8.4 If the Supplier meets the agreed final deadline despite exceeding an intermediate deadline, we shall refund any contractual penalties for non-compliance with intermediate deadlines to the Supplier. This shall not apply if the scheduled start of work for other areas of performance was delayed due to the fact that the Supplier exceeded the intermediate deadline, or if we incurred default-related damage.

## 9. Supplier's declaration, safety data sheets

- 9.1 The Supplier shall provide Supplier's declarations in accordance with the requirements of Regulation (EC) No. 1207/2001. If long-term Supplier's declarations are used, the Supplier shall inform of us of any changes to the originating status in the order confirmation.
- 9.2 If the delivery includes hazardous substances within the meaning of the German Ordinance on Hazardous Substances (GefStoffV), the Supplier shall provide us with the product information and in particular the safety data sheet pursuant to Article 31 and Annex II of the Regulation (EC) No. 1907/2006 (REACH Regulation) together with § 5 GefStoffV).

## 10. Acceptance

- 10.1 After final completion of the complete contractually agreed performance, a joint acceptance inspection is carried out, the result of which shall be recorded in an acceptance record, to be signed by both parties. In the context of the joint acceptance inspection, the Supplier shall evidence that the work has the agreed characteristics.

A tacit/implied acceptance (§ 12 para. 5 VOB/B) shall be excluded. § 640 para. 1 sentence 3 BGB will remain unaffected thereof.

- 10.2 If the acceptance inspection reveals material defects, acceptance will not be declared, and a second joint acceptance inspection will be scheduled; all identified defects must be remedied in the intervening time period.

## 11. Passing of risk, documents, packaging

- 11.1 Risk shall pass to us only after we have received/accepted and approved the contractually agreed deliveries and services.
- 11.2 The shipping documents and delivery notes shall include the shipping address as well as our order information (order number, delivery address, cost centre, name of recipient, material number); we shall not be answerable for delays arising due to non-compliance with this requirement.
- 11.3 The Supplier shall take back the packaging pursuant to § 4 VerpackV (German Packaging Ordinance) at his risk and expense. To the extent that we are obliged, by way of exception, to bear the packaging costs, we shall receive full credit for the value of the packaging upon its return, insofar as it is reusable.

## 12. Insurance coverage

- 12.1. The Supplier shall take out liability insurance in line with common industry practice (minimum coverage limit of EUR 1.5 million per loss occurrence) for the duration of the agreement (including limitation periods of claims for defects).

If the delivery concerns a product manufactured by the Supplier, the Supplier shall take out additional product liability coverage in the amount of EUR 5 million (lump sum) per case of personal injury/property damage, without prejudice to any further claims for damages we might have.

Purchase and maintenance of insurance coverage shall be evidenced at our request.

- 12.2. We shall not bear the costs of insurance except by prior written agreement. Insurance coverage shall under no circumstances release the Supplier from his personal liability to us.

### **13. Subcontractors**

- 13.1 The Supplier may delegate his performance to third parties (subcontractors), unless personal performance has been agreed. We may however reject the use of a specific subcontractor for cause; in this event, this subcontractor may not be used. Cause includes, but is not limited to, cases where the ability of the intended subcontractor to render proper contractual performance is objectively in doubt, or if such subcontractor has, in connection with previous similar contracts, already violated applicable laws or the safety rules on our premises.

If the Supplier delegates performance to subcontractors, the Supplier shall, in relation to his contractual tasks, subject the subcontractors to all obligations the Supplier owes us, and the Supplier shall ensure compliance with such obligations.

- 13.2 In the event that the Supplier or his subcontractor use personnel originating from non-EU member countries, the subcontractor shall present us with the relevant work permits prior to beginning the work.

### **14. Notification of defects, claims for defects, recourse, limitation periods**

- 14.1 A notification of defects submitted by us shall in any event be considered timely for defects not identifiable upon proper inspection, within 5 working days after discovery, and for other, obvious defects, within 5 working days after delivery to the destination address. § 377 HGB (German Commercial Code) shall remain otherwise unaffected; this includes any longer notification periods for defects which may apply thereunder.

- 14.2 In the event of a defect, we shall be entitled to all statutory rights without restrictions. We shall therefore be entitled to demand from the Supplier, at our option, rectification of the defect or delivery of a new item. We expressly reserve the right to assert claims for damages, in particular the right to claim damages in lieu of performance.

We shall be entitled to rectify defects ourselves at the cost of the Supplier, if the Supplier is in default with his subsequent performance.

- 14.3 In analogy to §§ 445a, 445b BGB, we shall be entitled to claim reimbursement from the Supplier even if the Supplier has only supplied parts for an item we have newly manufactured.

- 14.4 Regardless of their legal basis, our claims for defects shall lapse 3 years after the passing of risk, unless the mandatory provisions of §§ 445b, 478 para. 2 BGB apply. Longer statutory limitation periods and provisions regulating the beginning of the limitation period, the suspension of the expiry or the recommencement of the limitation period shall remain unaffected thereof.

By way of derogation from § 13 para. 4 VOB/B, in the case of construction work within the meaning of § 1 VOB/A, our claims for defects shall expire in accordance with the statutory limitation periods and no earlier than after 3 years.

### **15. Liability, product liability and indemnification**

- 15.1 We accept no liability restrictions on the part of the Supplier.

- 15.2 To the extent that the Supplier is responsible for damage caused by a product, he shall indemnify us, upon our first request, from third-party claims for damages, to the extent that the cause lies in the Supplier's sphere of control and organization and that he is liable to third parties himself.

- 15.3 In the context of his liability for loss events under Clause 15.2, the Supplier is also obligated to reimburse any expenses pursuant to §§ 683, 670 BGB and §§ 830, 840, 426 BGB resulting from or in connection with a recall issued by us. We will inform the Supplier of the nature and scope of planned recall measures and give the Supplier the opportunity to respond. We shall not be required to inform the Supplier if immediate action is required, in particular in cases of imminent danger. This shall otherwise not affect any other statutory claims we may have.

## 16. Termination

We shall be entitled to terminate contracts for work performance at any time in accordance with § 649 BGB; the right of extraordinary termination shall be unaffected.

## 17. Industrial property rights

- 17.1 The deliveries and services and their use by us shall not infringe on the industrial property rights of third parties within the European Economic Area (EEA) and Switzerland. We shall inform the Supplier of any alleged third-party claims. We shall not recognize such claims on our own initiative. We hereby authorize the Supplier to take over the handling of such disputes with third parties, both in and out of court; we shall be kept informed of the progress of such dispute on an ongoing basis.
- 17.2 In the event of a culpable infringement of third-party industrial property rights, the Supplier shall defend himself, at his own cost, against claims of third parties that third parties bring against us due to the infringement of industrial property rights stemming from deliveries and services rendered to us by the Supplier. The Supplier shall indemnify us, upon first demand, against any claims based on such industrial property rights.
- 17.3 In the event that our use of the deliverables or services is hindered by existing third-party industrial property rights, the Supplier shall, at his own cost, either obtain the relevant approval or alter or replace the relevant parts of the deliverable/service, so that our use of the deliverable/service is no longer hindered by third-party industrial property rights; in case of alterations and replacement, the deliverable/service shall offer, at minimum, the agreed features (functionalities). If the Supplier is unable to comply with these requirements at reasonable terms, we shall be entitled to exercise our statutory rights without restrictions.

## 18. Reservation of title, provision of parts by us

- 18.1 We do not accept any extended or expanded retention of title in the goods delivered to us on the part of the Supplier.
- 18.2 Provided we provide the Supplier with material or parts, we shall retain title. In processing the material and assembling the parts, the Supplier is acting on our behalf. If our materials or parts are processed, combined or commingled with other items which do not belong to us, we shall acquire joint ownership in the new thing, the size of our share being determined by the ratio of the value of our materials and parts (purchase price plus VAT) to the other processed items at the time of the processing. If the thing of the Supplier is deemed the principle thing (*Hauptsache*), the Supplier shall transfer proportional co-ownership to us. The Supplier shall hold things in which we have sole or partial ownership for us, free of charge.

## 19. Confidentiality

- 19.1 The Supplier shall keep all information received from us in the context of implementing the contract strictly confidential. This shall not apply for information already known to the Supplier or which the Supplier has learned in other ways.
- 19.2 The Supplier shall observe the data protection laws. In particular, the Supplier's employees shall be obligated to observe the data protection requirements under the GDPR. The Supplier shall also subject any subcontractors to these obligations within the meaning of Clause 13 above.

19.3 The Supplier shall not disclose documents to third parties that he has received in the context of the order unless with our express written permission. Subcontractors within the meaning of Clause 13 above shall not be considered third parties, if such subcontractors have undertaken to maintain confidentiality vis-à-vis the Supplier.

**20. Place of performance, jurisdiction, governing law**

20.1 Unless the order indicates otherwise, the place of performance for the delivery/service obligation shall be the delivery address given by us.

20.2 If the Supplier is a merchant (*Kaufmann*), a legal person under public law or a special entity under public law, the place of jurisdiction shall be determined by our principal place of business; however, we shall be entitled to bring a claim against the Supplier in any other lawful venue.

20.3 This agreement shall be governed by the laws of the Federal Republic of Germany, excluding the UN Convention on Contracts for the International Sale of Goods (CISG).

As of: October 2018