General Terms of Sale and Delivery of Klenk Holz GmbH

1. Scope of application, Tegernsee Customs, data privacy

1.1 Our Terms of Sale and Delivery are part of all offers and contracts for our deliveries and services relating to purchase and works contracts including construction contracts; our Terms of Sale and Delivery shall apply exclusively. Terms and conditions of the Customer which contradict or deviate from our Terms of Sale and Delivery shall not apply, unless we expressly approve such terms in writing. Our Terms of Sale and Delivery apply even in the event that we carry out the service/delivery unconditionally despite being aware of terms of the Customer which contradict or deviate from our Terms of Sale and Delivery.

1.2 These Terms of Sale and Delivery shall also apply for future transactions with the Customer to the extent that such transactions are similar in nature.

1.3 Our Terms of Sale and Delivery shall apply only to entrepreneurs (*Unternehmer*) within the meaning of § 14 para. 1 of the German Civil Code (BGB), legal entities under public law (*juristische Personen des öffentlichen Rechts*) or special entities under public law (*öffentlich-rechtliche 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.

1.4 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 supplemental to our General Terms and Conditions of Purchase, unless they contradict our Terms.

1.5 We will comply with all applicable provisions of data protection law in the performance of the contract; this includes in particular the General Data Protection Regulation (GDPR) and the German Federal Data Protection Law. For details on data processing and the rights of data subjects, please review our data protection notice and data privacy statement on our website under https://www.klenk-holz.de/data-protection-customers/?L=1

2. Order of priority

The following order of priority shall apply when determining type and scope of the performance of the two parties:

- the stipulations of our order confirmation, or, in the absence of an order confirmation, the stipulations of our offer;
- the further contractual provisions as well as special and general technical terms set out in our order confirmation, or, in the absence of an order confirmation, in our offer;
- these Terms of Sale and Delivery;
- the provisions of general law.

3. Offers, offer documents, conclusion of the contract

3.1 All our offers are non-binding until final confirmation of the order.

3.2 We reserve ownership and copyright in all drawings and other offer documents; these shall not be made available to third parties except with our express permission. References to technical standards and other information contained in these and our other documents shall only serve as specifications and do not constitute guarantees in particular not with respect to grade, quality or durability.

Any recommendations made by us for the use of our goods are made to the best of our knowledge. Due to the multiplicity of potential uses, differing requirements and individual conditions of use, we accept no liability for the goods being fit for any particular use, unless we have expressly warranted such fitness in writing. The Customer shall, in any event, be obligated to verify the fitness of the goods for his intended use.

3.3 All orders placed with us by the Customer shall be deemed binding offers. We shall be entitled to accept such an offer within 2 weeks by confirming the offer or by dispatching the delivery ordered to the Customer within this period. The timely dispatch of the order confirmation or the confirmed goods shall be sufficient to meet the deadline.

4. Prices

4.1 The applicable price is as indicated in the order confirmation; in the absence of an order confirmation, it shall be taken from our offer; otherwise, the price shall be determined by our price lists applicable at the time of the order.

4.2 Unless otherwise provided for in the order confirmation, prices are ex works or ex store, but excluding packing, freight, transfer and customs costs.

In addition, all prices are exclusive of the applicable customs duties and taxes, in particular VAT For deliveries within the EU, the Customer must provide his VAT ID number. The Customer must provide timely notification if a delivery is not subject to VAT, and furnish the required proof.

5. Terms of payment, due-date and default; fees, costs and expenses; assignment and set-off/right of retention

5.1 Unless indicated otherwise in the order confirmation, the purchase price is due immediately after receipt of the invoice, without any deductions; this also applies to partial deliveries. The invoice shall be issued with the date the goods are dispatched.

Payment shall be made exclusively to the bank accounts specifically notified by us for this purpose; payments other than to this account shall not discharge the debt. The Customer shall be responsible for enquiring with us to verify this bank account. We will always specifically/by separate written notification inform the Customer of any change to the relevant bank accounts, and we expect such verification also in this case. If an invoice indicates a different bank account, this shall be deemed invalid, unless the above-mentioned procedure has been followed.

5.2 Cash discounts require a separate written agreement. We shall only honour any agreed cash discounts if the agreed discount deadline for the payment is observed.

5.3 Payment by cheque or bill of exchange shall require a special prior agreement. Bills of exchange and cheques are accepted only as a form of payment and subject to their eligibility for discounting by our bank; the cost of discounting and collection shall be borne by the Customer. Payment is only deemed made on the day on which we may dispose over the funds.

5.4 The annual default rate of interest on late payments shall be 9 percentage points above the current base rate, calculated in accordance with § 247 of the German Civil Code (BGB). The right to claim additional damages is reserved. If we subsequently extend the terms of payment, the obligation with respect to interest will be unaffected, unless otherwise agreed.

Should the Customer default on the payment of one of our invoices, we shall be entitled to demand immediate payment of all of our claims against the Customer regardless of any prior agreement on payment dates or other determinations of performance deadlines.

5.5 The Customer shall pay all necessary and useful fees, costs and expenses arising in connection with any successful enforcement of rights inside or outside of Germany. The assertion of further costs of legal enforcement as default-related damages and claims of compensation for litigation costs in accordance with the cost allocation provisions of procedural law shall remain unaffected.

5.6 If we become aware of circumstances which put the creditworthiness of the Customer into question, or if our claim for payment is put at material risk due to the deteriorating financial situation of the Customer, or if the Customer is in arrears with payment of the price, we shall be entitled to demand payment in full, in advance, or security; should such payment or security not be provided within the set time limit, we shall be entitled to withdraw from the contract.

5.7 We shall be entitled to assign our claims (of any kind) against the Customer to a third party.

5.8 The Customer shall only be entitled to exercise a right of set-off if his counter claims are uncontested, ready for decision, legally enforceable or recognized by us in writing. The Customer shall only be entitled to exercise a right of retention to the extent that his counterclaim arises from the same contractual relationship.

Should the delivery be defective, the Customer shall only be entitled to exercise a right of retention if such defects are obvious and the Customer is obviously entitled to decline acceptance, and subject to the withheld amount being proportionate to the defects and the expected costs of the cure.

6. Delivery, partial deliveries, delivery period, procurement risk/procurement guarantee, incoming supplies/force majeure, default in delivery, withdrawal

6.1 Delivery free site or free warehouse refers to delivery without unloading and requires an access road navigable by heavy truck. Should the delivery vehicle leave the navigable access road at the direction of the Customer, the Customer shall be liable for any resulting damage. Unloading shall be carried out correctly and without delay by the Customer. Any waiting times for which the Customer is answerable shall be charged to the Customer.

6.2 The Customer shall reserve all regress claims against the carrier or other third parties. The Customer shall inform the carrier or the average adjuster without delay of any damage incurred by goods in transit and the Customer shall inform us prior to acceptance. Klenk shall not be liable to compensate any transport damage culpably not notified by the Customer.

6.3 Partial deliveries shall be permitted, if

- the Customer is able to make use of the partial delivery in accordance with the contractually agreed purpose,
- the delivery of the remaining goods ordered is assured, and
- the Customer does not incur significant additional expenditure or costs, unless we agree to bear such costs.

6.4 Delivery dates and periods indicated by us shall only be considered as approximations, unless we have expressly agreed or promised a fixed delivery date or period.

The delivery period shall commence on the day the order confirmation is dispatched, but not before the timely and proper discharge of the obligations of the Customer prior to delivery; this applies, in particular, to any documents, approvals and releases to be furnished by the Customer as well as to any advance payments which have been agreed. Delivery periods and delivery dates are deemed to have been met if the goods have been dispatched from the distribution centre or factory, or if the Customer has been notified that the goods are ready for dispatch, by the end of the delivery period.

6.5 We shall only be liable for any procurement risks if we assume such procurement risk under a separate written agreement which includes the formulation „Wir übernehmen das Beschaffungsrisiko für …“ (We assume risk of procurement for...). The mere fact that we owe delivery of unascertained goods shall thus neither constitute the assumption of a procurement risk nor the granting of a procurement guarantee.

6.6 In the event of changes to the contract which could influence the delivery period, the delivery period shall be extended accordingly, unless separate agreements have been made in this regard.

6.7 Should we, despite proper and compliant provision (i.e. matching the delivery agreed with the Customer in terms of quantity and quality), fail to receive deliveries from our sub-contractors or sub-suppliers correctly and on time, for reasons for which we are not answerable, or should events of force majeure occur (i.e. not culpable obstacles to delivery or performance lasting for more than 14 calendar days), we shall inform the Customer thereof without undue delay. In such an event, to the extent that we have complied with our abovementioned duty to inform and insofar as we have not assumed the procurement or production risk and the obstacle to performance is not temporary in nature, we shall be entitled to postpone the deliveries and services for the period for which such impediment continues, plus some reasonable recovery time thereafter, or to withdraw from the as-yet unfulfilled part of the contract in whole or in part. Strikes, lock-outs, shortages of raw materials and energy, actions of public authorities, transport difficulties and impediments of operations (e.g. due to fire, water and equipment damage) for which

we are objectively not culpable, as well as all other impediments for which we are objectively not culpable, shall be considered as equivalent to force majeure.

Should an agreed period or date for deliveries or services be exceeded by more than four weeks due to the aforementioned circumstances, or should, in instances of non-binding dates for deliveries or services, upholding the contract objectively be unacceptable for the Customer, the Customer shall be entitled to withdraw from the unfulfilled part of the contract. In such a case, the Customer shall have no further rights, in particular not to damages.

6.8 In the event that periods or dates for deliveries or services are exceeded, we shall only be considered in arrears with the delivery after the fruitless expiration of a period of grace set by the Customer in text form according to § 126 b BGB (e.g. via email, letter, fax), such grace period to last for no less than 8 working days; this does not apply if the order confirmation expressly specifies a fixed delivery period or date.

6.9 The Customer shall be entitled to damages due to delay in performance and damages or reimbursement of expenses in lieu of performance only in accordance with clause 10 below; this applies even should we be answerable for being in default of delivery.

7. Default of acceptance

If the Customer fails to accept performance or breaches any other contractual duties of cooperation such as inspection, specification, request for delivery, acceptance or shipping instruction, we shall be entitled to claim compensation for any resulting damage or loss, including any additional expenditure. We reserve the right to assert additional claims and to exercise other rights.

8. Transfer of risk, shipping

8.1 Unless the order confirmation indicates otherwise, the agreed mode of delivery shall be delivery ex works or ex warehouse. The risk shall pass to the Customer when the delivery item is handed over to the forwarder or carrier, in any event no later than upon the departure of the delivery item from our factory or the distribution warehouse. This shall also apply if freight prepaid delivery has been agreed. Goods are always shipped on behalf of the Customer.

In the event that dispatch of the goods is delayed for reasons for which the Customer is answerable, the risk shall pass to the Customer on the day the goods are ready for shipment.

8.2 If the goods are returned, the Customer shall bear the risks relating to such return, unless we are answerable for such return. We have not taken out any insurance cover for goods returns.

9. Defects in title and material defects

Wood is a natural material and its natural properties, deviations and attributes must always be taken into consideration. The Customer shall in particular take into account its biological, physical and chemical properties when buying and using the wood and obtain expert advice if necessary. Any species of wood exhibits natural differences in regard to colour, structure etc.; such natural deviations are characteristic for wood as a natural product and do not constitute a defect in the delivery.

9.1 With regard to agreements about the grade and quality of our deliveries and services, unless the order confirmation stipulates otherwise, only our product description / specification of services shall be deemed agreed. Public statements, praise or advertising on our part however do not represent a contractual description of grade and quality of the goods.

9.2 Claims by the Customer with respect to defect are dependent upon his examining the delivered items for defects upon receipt without undue delay, and notifying us (without undue delay) in writing of any defects. This shall not affect the statutory duty of inspection and notification of defects applying to businessmen under § 377 German Commercial Code (HGB).

9.3 If the delivery item is purchased “as is” and received by the Customer or its agent at the location at which it is stored, subsequent objections shall be precluded if they remained ignorant of the defect due to gross negligence. This does not apply where we have fraudulently omitted such defect or assumed a guarantee for the grade and quality of the delivery item.

9.4 To the extent that the defect of a delivery or service is due to a cause already existing at the time of the transfer of risk, the Customer shall be entitled, at our option, to demand cure by repair of the defect or delivery of a new defect-free item.

Should items other than the defective delivered item be damaged as a result of the cure, the Customer may only demand compensation for such damage in accordance with clause 10 below.

9.5 In the event that we refuse to cure, or if two cure attempts fail, or if the cure is not reasonably acceptable to the Customer, or if the specification of a grace period can be dispensed with pursuant to §§ 281 para. 2 BGB or 323 para. 2 BGB, the Customer shall be entitled, at his option, to withdraw from the contract or demand an appropriate reduction of the purchase price (*Minderung*). This shall not apply where defective construction work is at issue; in such cases, the Customer shall not be entitled to withdraw from the contract even in cases of sentence 1 above. The Customer shall in all cases be entitled to damages or reimbursement of expenses only in accordance with the following clause 10. The statutory right of supplier recourse pursuant to §§ 445a, 445b BGB shall remain unaffected.

9.6 For timer and roundwood, § 7 of the Tegernsee Customs shall apply.

10. Damages and claims for reimbursement of expenses

10.1 Unless the preceding provisions stipulate otherwise, and subject to clause 10.2 below, the Customer shall have no claim whatever to damages or expenses, regardless of the legal basis of such claims; this shall apply, in particular, to claims for damages due to breach of obligations arising from contract negotiations, initiation of a contract and similar business contacts, other breaches of duties and tortious claims due to property damage pursuant to § 823 BGB and claims of the Customer for reimbursement of expenses in lieu of performance.

10.2 The liability restriction pursuant to clause 10.1 above shall not apply

a) to the extent that damage or loss is caused by gross negligence or intent on our part or on the part of our representatives or agents employed by us in the performance of our obligations, subject to the proviso that in the event of gross negligence, damages shall be limited to the foreseeable damage typical for such contracts;

b) in the event of culpable breaches of cardinal contractual duties, with the proviso that in such cases damages shall be limited to the damage typical for such contracts and foreseeable at the time of the conclusion of the contract. Cardinal contractual duties are obligations protecting legal positions of the Customer which are essential to the contract and of which it was the specific purpose of the contract to provide to the Customer. Cardinal obligations also include obligations the fulfilment of which enables proper implementation of the contract in the first place and the observance of which the Customer may rely on.

c) in cases of statutory liability under the German Product Liability Act (*Produkthaftungsgesetz*);

d) in cases of damage or loss resulting from injury to life, limb or health, or

e) in cases of delays, if a fixed time was specified for delivery or performance;

f) if a defect is fraudulently omitted, by assumption of a procurement or production risk within the meaning of § 276 BGB or if (by way of exception) we give a written guarantee with respect to characteristics or durability within the meaning of § 443 BGB.

g) in other instances where mandatory statutory liability applies.

The above provisions shall not be construed to contain a reversal of the burden of proof.

10.3 Claims for reimbursement of the Customer’s expenses are limited to the value of the interest the Customer has in the fulfilment of the contract.

10.4 To the extent that our liability is excluded or limited, the same shall apply to the individual personal liability of our employees, representatives and agents employed in the performance of our obligations under the contract.

11. Limitation by lapse of time

11.1 Claims for defects lapse 12 months after the transfer of risk. With regard to deliveries and services for or on a building, the statutory periods of limitation shall apply (§§ 438 para. 1 no. 2, 634a para. 1 no. 2 BGB); the same applies to claims relating to supplier recourse pursuant to §§ 445a, 445b BGB.

Should we attempt a cure as a gesture of good will, the limitation period for claims for defects shall not recommence. Where the Customer has a right to demand cure, our implementation of such cure through subsequent improvement or replacement shall constitute acknowledgement of such claim pursuant to § 212 para. 1 no. 1 BGB only with regard to such defects as were the subject of the Customer's request for cure, or caused by a deficient attempt at cure; otherwise, the limitation period with respect to the original delivered item shall continue unbroken.

11.2 Other claims for compensation by the Customer arising from or in connection with our delivery or service lapse twelve months after the Customer learns of the damage or loss and the identity of the damaging party, or fails to do so as a result of gross negligence; in any event, such claims lapse 5 years after they arise, regardless of knowledge thereof or due to gross negligence.

11.3 In cases covered by clause 10.2, the statutory periods of limitation shall apply to any claims for damages or reimbursement of expenses.

12. Retention of title

12.1 The delivered goods shall remain our property until all claims arising from our business relationship with the Customer are paid (reserved goods), even if payments are made with regard to specific claims. Where individual claims are added to a current account or netted or accepted, this shall not affect the retention of title. Payment shall be effected only when we receive such amount or such amount is credited.

If we establish a liability under a bill of exchange in relation to the payment by the Customer, the retention of title shall not end before the Customer as the drawee pays the bill.

12.2 If the reserved goods are processed by the Customer into a new movable thing, such processing shall always be carried out for our benefit, without giving rise to any obligations on our part; the new thing shall become our property. If the reserved goods are processed with other goods which do not belong to us, we shall acquire co-ownership in the new thing, the size of our share being determined by the ratio of the value of the reserved goods (invoice total including VAT) to the other processed goods at the time of the processing. If reserved goods are combined, intermixed or mingled pursuant to §§ 947, 948 BGB, we shall acquire co-ownership in accordance with the law. Should the Customer acquire sole ownership due to combination, intermixture or mingling, he hereby already grants us co-ownership in accordance with the relationship of the value the reserved goods (invoice total incl. VAT) to the other goods at the time of the combination, intermixture or mingling. The Customer shall in these cases store, free of charge, such things which are our property or co-owned by us and which are deemed reserved goods within the meaning of the above provisions.

12.3 If the Customer sells the reserved goods alone or together with other goods not owned by us, the Customer hereby already assigns to us all claims (including all ancillary rights) arising from the reselling, in the amount of the value of the reserved goods; our rights shall have priority to the rights of others; we hereby accept such assignment. The value of the reserved goods is the invoice total of our claim (including VAT) plus a safety margin of 10 per cent, which however shall only apply to the extent that it does not collide with the rights of third parties. If we are co-owners of the resold reserved goods, the assignment of the claims shall also cover the amount corresponding to the value of our co-owner interest.

12.4 If the Customer integrates the reserved goods as an essential part in a plot of land of a third party, the Customer hereby already assigns any arising, assignable claims for remuneration against the third party or whomever it concerns, in the amount of the value of the reserved goods (invoice total including VAT) together with all ancillary rights including the entitlement for the creation of a mortgage as security for such claim; our rights shall have priority to the rights of others; we hereby accept such assignment. The preceding clause 12.3 sentences 2 and 3 shall apply mutatis mutandis.

12.5 If the Customer integrates the reserved goods as an essential part in a plot of land owned by the Customer, the Customer hereby already assigns any claims arising from the sale of the plot of land or of interests in the land in the amount of the value of the reserved goods (invoice total including VAT) to us, together with all ancillary rights; our rights shall have priority to the rights of others; we hereby accept such assignment. The preceding clause 12.3 sentences 2 and 3 shall apply mutatis mutandis.

12.6 The Customer is entitled and authorised to sell, use or integrate reserved goods only in the ordinary course of business and only subject to the proviso, that the claims within the meaning of clause 12.3, 12.4 and 12.5 are, in fact, transferred to us. The Customer shall not be entitled to any other dispositions with regard to the reserved goods and he shall in particular not pledge or assign the reserved goods as security.

12.7 The Customer shall remain authorised to collect the claims assigned in accordance with clauses 12.3, 12.4 and 12.5 (above) until we rescind such authorisation; this shall not affect our authority to collect such assigned claims ourselves. We shall not make use of our right to collect such debts or to rescind such authorisation as long as the Customer renders the payments due from the obtained proceeds and is not in arrears with its payment obligations. At our request, the Customer shall inform us of the debtors owing the assigned claims and shall provide us with all information necessary for their enforcement and release to us all related documents and notify the debtors of the assignment; we shall be authorised to notify the debtors of the assignment.

12.8 The Customer shall be obligated to inform us without undue delay of any attachment or seizure of the reserved goods or claims, which have been assigned in advance or of any other infringement upon such goods or claims by third parties; the Customer shall also provide us with the documents necessary for an intervention. The Customer shall bear all costs of our intervention unless such costs are otherwise covered.

12.9 The right to sell, use or integrate the reserved goods and the authorisation to collect the assigned claims shall be cancelled if the Customer suspends payments of its debts or an application for insolvency proceedings is filed against the assets of the Customer; any protests of cheques or bills of exchange shall also cancel the authorisation to collect the claims.

12.10 In the event of contractual breaches by the Customer, in particular in cases of payment defaults, we shall be entitled, if the further conditions of § 323 BGB are met, to repossess the reserved goods if we withdraw from the contract. We shall be entitled to realise the reserved goods after their repossession; the proceeds (less reasonable selling expenses) shall be deducted from the Customer's debts.

12.11 We hereby undertake to release our security interest at the request of the Customer to the extent that the realisable value of our security interests exceeds the secured debts by more than 10 per cent; we shall be free to select the security interests to be released.

12.12 The Customer shall be obligated to treat the reserved goods with care, and to insure them sufficiently at replacement value against fire, water and theft, at his own cost; the Customer hereby already assigns to us any claims (in the amount of the value of the reserved goods) against the insurer which arise due to any insured events relating to the reserved goods; we hereby accept the assignment.

13. Place of performance, place of jurisdiction, governing law

13.1 Our distribution warehouse shall be the place of delivery and the place of cure. Our principal place of business shall be the place of performance for payment of the purchase price and any other performance by the Customer.

13.2 If the Customer 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 Customer in any other lawful venue.

13.3 The law of the Federal Republic of Germany shall apply. If the Customer's place of business (Art. 10 CISG) is not in Germany, the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall apply in addition to the contractual arrangements and our general Terms of Sale and Delivery and shall take precedence over the statutory provisions of German law.

13.4 If the UN Convention on Contracts for the International Sale of Goods is applicable, the following provisions shall apply by way of derogation from clause 9.2: The Customer shall examine the goods for defects in quality or title in as short a time period as possible. The Customer shall be barred from claiming non-compliance of the goods with the contract, if he fails to inform the seller of such non-compliance (describing precisely the nature of the non-compliance) within a reasonable time period after he has discovered or should have discovered such non-compliance. A period of up to four weeks shall be deemed reasonable in this context.

Dated: May 2019