

# Terms and Conditions of Sale, Delivery, and Payment

- for HMS-HOLZ GmbH and
- HMS Holzindustrie Hagenow GmbH

## Scope

All sales and deliveries made by HMS-HOLZ GmbH and HMS Holzindustrie Hagenow GmbH (hereinafter referred to as the "seller") are made exclusively on the basis of the following Terms and Conditions of Sale, Delivery, and Payment ("terms"). Any buyer statements referring to their own terms and conditions are hereby rejected. Other agreements are only valid if expressly confirmed in writing by the seller. Seller deliveries are subject to the industry norms for the sale and distribution of timber, rough-sawn lumber, and finished lumber passed by the participating industry associations in Tegernsee in February 4, 1950 and as amended in 1985. German law applies exclusively, with exception of the United Nations Convention on Contracts for the International Sale of Goods (CISG). Insofar as these terms do not match the industry norms referenced above, these terms shall take precedence. If both parties issue order confirmations with differing provisions, the seller's shall prevail. The seller is entitled to make use of and store buyer corporate and personal data obtained as part of the contractual relationship.

## Offers, contract conclusion

Seller offers are subject to change until the order is confirmed in writing. The price and scope of the goods and services ordered are governed solely by what is indicated in the seller's written order confirmation. They are subject to prior sale. Agreements with seller representatives require written confirmation to be valid. The seller reserves all proprietary rights and copyrights to cost estimates, drawings, and other documents. They may be not be disclosed to third parties.

## Prices

The prices are, unless otherwise agreed, FOB ex Kleinwallstadt or Hagenow plus the applicable value-added tax. The seller reserves the right to change prices if wages, raw material prices, taxes, customs duties, freight charges, or other underlying costs change.

## Shipping

The transport is at the buyer's risk, even if delivery is FOB destination. The delivery will be made to the agreed destination. Any deviations shall be at buyer expense. If the buyer does not prescribe the shipping route, the seller may, at its discretion, hire a freight forwarder or make delivery with its own vehicles, disclaiming any liability for choosing the cheapest and fastest shipping method. The contract with the forwarding company is based on the General German Freight Forwarding Terms and Conditions (ADSp). If the seller makes the delivery with its own vehicles, the seller assumes no liability for any transport damage except that resulting from gross negligence or intent. FOB destination means delivery without unloading and assumes it can be accessed by a heavy truck. If the buyer instructs the delivery vehicle to leave the passable access, the buyer accepts liability for any damage that may occur. The buyer must carry out the unloading promptly and appropriately. The buyer will be charged for waiting periods for which it is responsible. The buyer is responsible for securing any recourse claims against the freight forwarder or other third parties. In the event of damage relating to goods deliveries, the buyer must make a proper record of the facts and notify the freight forwarder before accepting the same. If the buyer indicates that it will handle the collection of the goods itself or through a third party it will commission, then the goods must be collected by no later than five days after the seller has given notice that the goods are ready to ship. The risk passes to the buyer when the shipment is handed over to the person performing the transport or when it has left the seller's plant; otherwise, it transfers automatically five days after the seller has given notice that the goods are ready to ship. The agreed delivery times shall be extended appropriately if production or delivery is delayed by labor disputes or force majeure. A failure to comply with delivery dates and times by the seller does not entitle the buyer to assert claims until it has given the seller an adequate grace period of at least eight working days. The same applies if these circumstances occur with the seller's suppliers. If the shipment is postponed at buyer request, the costs to store the goods at the seller's location shall be charged to the buyer starting one month after the seller gave notice that the goods were ready to ship. The monthly charge shall be at least 0.5% of the invoice amount. After the expiry of an agreed period, the seller is entitled to dispose of the order goods otherwise and to supply the buyer with a reasonably extended deadline. Upon expiry of this period, the seller may withdraw from the contract and claim damages for non-performance. The same applies to stand-by orders without a specially agreed stand-by period, if three months have elapsed since the order confirmation without a delivery request. The seller may make reasonable partial deliveries and provide services and invoice the buyer accordingly.

## Payment

Unless otherwise agreed, payment must be made in cash, without deduction, within 30 days of invoicing. Any discounts agreed may only be used if paid within the stated period and do not apply to the freight costs. The date of loading is the invoice date. If the seller agrees to accept a bill of exchange, the bill of exchange must be handed over immediately upon delivery. Its maturity date may not exceed 90 days from the invoice date.

The buyer shall bear all discount and BOE expenses. If the BOE is reversed, the outstanding balance is considered paid only when the seller receives the purchase price in full and the buyer has no further outstanding liabilities to the seller. The rates charged to the seller by the bank shall apply, but at least 5 points above the base rate for consumers per §247 of the German Civil Code (BGB) and 8 points above the base rate for others. Bank terms for the acceptance of bills of exchange and checks apply. The seller assumes no liability for the timely presentation or protest of BOEs. If the buyer remains in arrears with payments due, the default interest in the amount of the credit costs the seller has to pay shall be charged, but at least 5 points above the base rate for consumers and 8 points above the base rate for others. For further deliveries, the seller may demand payment in advance or a bank guarantee before shipment or may refuse to make further deliveries. If the buyer is in default or other circumstances such as may reduce its become known, all outstanding accounts receivable and bills of exchange accepted as payment shall become immediately due. Each partial delivery is treated as a separate delivery for payment purposes, regardless of the status of the complete order. Advance payments on orders will be applied separately to individual partial deliveries. The buyer, if a merchant, may offset or retain its payments, even those resulting from complaints or counterclaims, only if the seller expressly agrees in writing or if the counterclaims have been legally established or are not a matter of dispute.

### **Quality, warranty**

Wood and wood products are a natural substance with natural (biological, physical and chemical) properties, variations, and other characteristics that buyers must always consider when making such purchases. If necessary, the buyer must seek expert advice. For merchants, the obligation to inspect and to give notice of any concerns according to §§377, 378 of the German Commercial Code (HGB) always applies. A notice of defects must be made in writing without delay, but no later than five working days after receipt of the goods by the buyer.

### **Defects**

Merchant warranty claims are forfeited one year after delivery, except in the cases listed in §438 para. 1 no. 2 BGB and §643a para. 1 no. 2 BGB or in cases of malicious concealment. The same applies to consumer claims for damages. If the goods are inspected by the buyer before shipment and no objection is made at that time, any subsequent complaint, in particular relating to their quality, condition, or dimensions that should have been recognized at that time is excluded. In the case of faulty delivery and performance, the seller is entitled and obliged to remedy the defect, to the exclusion of other rights of the buyer. If the supplementary performance fails, then the buyer is entitled, at its option, to withdraw from the contract or to reduce it.

## **Liability**

Buyer claims for damages due to breach of contract are excluded, unless they are the result of grossly negligent or intentional actions of seller, its legal representatives, or its vicarious agents. Damages due to defects are excluded unless the defect was fraudulently concealed or the seller has guaranteed condition. If the seller has culpably violated an essential contractual obligation and the buyer is a merchant, the seller is liable, however, only for the foreseeable damage, whereby any liability for lost profit and consequential damages is excluded.

## **Retention of title**

The seller retains title to the goods it delivers as well as to any new goods created from the processing of the delivered goods until such time as all of its claims against the buyer, include the redemption of bills of exchange and checks are fully settled. The buyer may resell the delivered goods and the objects resulting from their processing only in the ordinary course of business. The processing of the reserved goods is done on the seller's behalf, but does not create any obligation for the seller. The new product becomes the seller's property. In the event the goods for which the seller retains the title are processed together with goods not belonging to the seller, the seller shall acquire co-ownership in the new product in the ratio of the value of its goods to the other goods at the time of processing. If the goods are combined, mixed, or otherwise intermingled with goods not belonging to the seller in accordance with §947 and § 948 BGB, the seller becomes a co-owner in the resulting mix in accordance with the statutory provisions. The buyer must immediately notify the seller of any third-party seizure of its goods or to any assignment of claims. The buyer hereby assigns a security interest to the seller in all claims arising from the resale of said goods or for any other legal reason (extended retention of title). The buyer customer must store said goods on the seller's behalf free of charge. Provided it meets its payment obligations to the seller, the purchaser is entitled to collect the claims assigned to the seller. In the event the buyer is in breach of contract, in particular default in payment, the seller is entitled to repossess the goods at the buyer's expense. The buyer is obliged to surrender the same. The buyer must immediately notify the seller of any third-party measures designed to take possession of the reserved goods or the assigned claims and to provide the documentation necessary to seek legal recourse. Insofar as the buyer is a merchant, the repossession or assignment of a security interest in the goods does not constitute withdrawal from the contract. The buyer is obliged to insure the delivered goods and any resulting products against fire and theft risk and to provide proof of said coverage upon request. The buyer must immediately deliver the amounts collected on behalf of the seller if its payments are due. If the buyer does not fulfill this obligation, the collected amounts are due to the seller and must be kept separately. Upon suspension of payments, filing or approval of a bankruptcy petition, the buyer's right to resell, use, or install the goods still owned by the seller and the authorization to collect claims on the seller's behalf is forfeited. The right to collect claims on the seller's behalf is also forfeited if there is a check or BOE is protested.

## **Place of performance and jurisdiction**

The place of performance for delivery and payment is the seller location from which delivery is to be made. If the buyer is a legal entity within the meaning of §38 para. 1 of the Code of Civil Procedure (ZPO), the place of fulfillment stipulated above shall also serve as the exclusive place of jurisdiction, although the seller may also seek legal recourse in the buyer's general place of jurisdiction.

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