

## GENERAL SALES AND DELIVERY TERMS

of

Ilim Timber Bavaria GmbH (Landsberg am Lech)

Ilim Timber Europe GmbH (Landsberg am Lech)

Ilim Nordic Timber GmbH & Co. KG (Wismar)

The following General Sales and Delivery Terms (hereinafter referred to as "GBT") apply to all contractual relations of one of the three aforementioned companies as contractual partners (hereinafter referred to as "ITI") with businessmen within the framework of their business operations and with legal entities in public law including estates in public law (hereinafter referred to as "Customer").

### 1. Scope of Application

- 1.1 All deliveries, services and offers by ITI will be made and rendered exclusively on the basis of the present GBT. They will also apply to all future contractual relations.
- 1.2 Any terms contrary to or deviating from the present GBT will not become part of the contract unless ITI expressly approves their validity. The present GBT will apply even where ITI unconditionally carries out deliveries or renders services despite knowledge of contrary or deviating terms. A written agreement or written confirmation by ITI will be authoritative for the subject matter of individual deviating agreements.

### 2. Offers, Conclusion of the Contract

- 2.1 Offers by ITI are subject to change and non-binding in every case. Declaration of acceptance and orders from ITI must be confirmed in writing by ITI in every case in order to be legally binding. The latest offer will always cancel the preceding offers.
- 2.2 An order by the Customer at ITI is a binding offer by the Customer to which he is bound for at least 14 days. Within this period ITI may accept it either by sending an order confirmation or sending the ordered goods. The timely sending of the order confirmation or ordered goods will be sufficient for compliance with the deadline.

### 3. Confirmations/Guarantees

- 3.1 Any references (technical data/ standards and other information) in the offer documents by ITI do not contain any guarantees or confirmations. All drawings/illustrations or weights and measurements or other data will only be binding where expressly agreed in writing.
- 3.2 ITI is not assuming any liability for suitability of the goods for a specific purpose of use. This will also apply where ITI has made recommendations with regard to the use unless ITI guaranteed a specific feature/ suitability for specific use in writing. In every case the Customer will be obligated to inspect the product's suitability for the specified use personally. Samples are only for evaluation of the average quality of the goods in every case.

### 4. Prices

- 4.1 The prices are subject to change at all times and only apply to a full order. All orders are only accepted by ITI on the basis of the prices valid at the time of order.
- 4.2 Only prices expressly specified in writing as fixed will be regarded as fixed prices. Such fixed prices will only be regarded as fixed until the delivery date set out in the contract.
- 4.3 Unless otherwise agreed on in the written order confirmation, all prices are ex works or warehouse of ITI (ex truck or freight car, loaded) excluding packaging, shipping, transport and customs duties). In all cases, value added tax at the statutory rate will be due on all prices specified.
- 4.4 A customer domiciled outside of Germany must comply with the provisions for sales and import tax applicable to the corresponding economic zone, in particular he must report the turnover tax identification number to ITI at his own initiative and give necessary information. In the case of non-compliance the Customer will be obligated to compensate the expenditure/damage incurred.
- 4.5 Any discounts conceded and recorded such as turnover and freight remuneration will be cancelled in the case of legal proceedings, insolvency or delayed payment exceeding one month.
- 4.6 In the case of successive delivery contracts as well as all on-call orders, ITI will charge its prices as valid on the date of delivery. This will also apply to all other orders where delivery is later than four months after placement of the order.
- 4.7 ITI reserves the right to adequately increase the sales prices after six weeks after conclusion of the contract where proven significant increases of cost factors ( such as increase of taxes, increase of material and raw material costs) are incurred after conclusion of the contract). Upon request, ITI will provide proof of these price increases.

### 5. Payment Terms

- 5.1 Unless otherwise agreed, the invoice total (also in the case of partial deliveries) will be due immediately and is payable to the full amount within 30 days after the invoice date.
- 5.2 The concession of discounts must be agreed on in writing.
- 5.3 Payment will be regarded as having been effected when ITI has access to the amount. Payment per check or bill of exchange is only possible upon separate agreement. In the case of checks, payment will be regarded as having been effected only when the check has been irrevocably cashed. The contractual partner will bear the costs of discounting and collection in every case.
- 5.4 ITI will charge 5% interest p.a. as from the due date. Where the Customer is in arrears; ITI will have the right to charge interest of 9 %p.a. above the respective basic interest rate from the time of delay on. This will not exclude assertion of further damage.
- 5.5 Where ITI becomes aware of circumstances undermining the Customer's creditworthiness, in particular where the Customer stops making payments, files for bankruptcy (even preliminary bankruptcy) and where other circumstances undermining his creditworthiness become known, ITI will have the right to charge the entire remaining debt. Moreover, in such a case ITI will have the right to demand advance payments or down payments.

- 5.6 The Customer will only have the right to set-off, retention or reduction, even where complaints are being made on the basis of defects or counterclaims asserted, where the counterclaims are res judicata, uncontested, ready for decision or acknowledged by ITI. However, the Customer is also entitled to retention on the basis of counterclaims arising from the same contract where the counterclaims are not claims to payment.

## **6. Delivery, Delivery Deadlines**

- 6.1 The delivery deadlines and dates of ITI are only set out in the order confirmation or separate notification by ITI. These delivery periods are subject to change by ITI in every case. Delivery dates or periods that are bindingly agreed on must always be in writing and expressly defined as fixed deadlines. Delivery deadlines refer to completion and provision to ITI ex works in every case.
- 6.2 All agreed delivery periods and deadlines are approximate only. The delivery period will commence on the date the order confirmation is sent but not before the timely and proper fulfillment of the Customer's duties (e.g. provision of necessary documents, permits, approvals, advance payments, etc.). The delivery period and delivery dates will be deemed as having been complied with where the goods have left the plant or delivery warehouse until the end of the delivery period or were handed over to the carrier or readiness for dispatch was announced. A delivery period of two weeks after the delivery period specified by ITI will still be regarded as timely.
- 6.3 In the case of subsequent changes to the contract affecting the delivery period for which ITI is not responsible, the delivery period will be extended adequately unless separate written agreements were concluded in this regard.
- 6.4 The Customer must report any damage incurred during transport to the carrier and to ITI before acceptance.
- 6.5 The agreed delivery period will be subject to the condition of accurate and timely supply by ITI's own suppliers.
- 6.6 In the case of delivery and performance delays due to force majeure or other unforeseeable, exceptional circumstances for which ITI and/or its own suppliers are not responsible (such as operational failure, strike, lockout, official intervention, energy supply difficulties and delayed supply of essential raw materials and components) –ITI will not be responsible for these even in the case of binding deadlines and dates. In such a case ITI may postpone the delivery/ services for the period of delay and an adequate warm-up period or rescind the contract wholly or partially on grounds of the non-performed part. Where the good or service becomes impossible or unreasonable due to the above circumstances ITI will be released from the delivery duty and the Customer will not be able to derive any damage compensation claims in this case. Where the impairment lasts more than three months the Customer and ITI will have the right to rescind the contract on the basis of the non-performed part after stipulating an adequate period of grace.
- 6.7 The Customer may only claim damage compensation due to delayed delivery in lieu of performance or refund of expenses in accordance with Item 11 below, even in the case where the delivery delay is attributable to ITI.
- 6.8 To the extent that ITI is obligated to effect advance payment from a contract, ITI may refuse delivery where after conclusion of the contract ITI becomes aware of circumstances undermining the Customer's solvency, in particular where the commercial credit insurer cancels or significantly cuts the credit limit or the credit limit has been reached and ITI's claim to payment is thereby jeopardized. The right to refuse performance will not apply where a deposit has been paid.

## **7. Lesser Delivery Volumes/ Partial Deliveries**

- 7.1 Partial deliveries by ITI are admissible in every case and may be invoiced separately.
- 7.2 Delivery volumes greater or less than 10% of the total volume as well as customary minor deviations of measurements are admissible and will not give the Customer the right to lodge a complaint.

## **8. Acceptance**

- 8.1 The Customer is obligated to accept the goods. Claims on the basis of defects of the delivered goods will remain unaffected. There is no acceptance duty where deviations in the volume delivered are in excess of what is admissible or in the case of defects of the goods where the defects constitute a cardinal breach of duty and where there is a risk of material or personal injury on the basis of the condition of the goods.
- 8.2 Where the Customer is in arrears with acceptance or he breaches contractual cooperation duties (such as inspection, specification, on-call, acceptance, shipping instructions), the Customer will be obligated to pay damage compensation.

## **9. Guarantee**

- 9.1 The product wood is a natural material with natural properties. Deviations and characteristics such as in particular the different physical, biological and chemical properties must accordingly be taken into account by the Customer. Colour, grain, structure and other differences within a type of wood are part of the good's natural properties and do not constitute a defect.
- 9.2 The product specifications by ITI will be regarded as specification of the features of the goods.
- 9.3 Minor deviations of wood products caused by the natural characteristics of the material do not constitute defects. In the case of minor deviations from an agreed feature or minor impairment of usability for the purpose of use, claims on the basis of defects are excluded. Complaints on the basis of such defects must be made before processing/treatment of the goods.
- 9.4 The guarantee period for the goods supplied by ITI is one year. It will commence upon passing of the risk. §377 HGB will apply in every case to the Customer's inspection and duty to report defects. Where the Customer fails to comply with this immediate inspection and reporting duty within 3 work days after delivery by the latest, the good will be regarded as having been approved where the defect is visible.
- 9.5 Where the goods are bought upon inspection and assumed by the Customer at the storage site for the goods, subsequent complaints are excluded even where the Customer was unaware of the defect.
- 9.6 In the case of legitimate/ timely complaints on the basis of defects ITI will be obligated to provide as it chooses either make-up performance as rectification or replacement of the goods. ITI may refuse make-up performance to the extent that the Customer does not fulfill his payment obligations toward ITI to the extent equivalent to the defect-free part of the performance. Where make-up performance is not possible or reasonable, ITI will have the right to opt to credit the lesser value and to take back the queried goods in return for a refund of the purchase price. Where rectification or replacement fails twice in spite of adequate stipulation of a period of grace or where the latter is unjustifiably denied the Customer may opt to demand reduction of payment or rescission of the contract.
- 9.7 ITI will have the right to change/improve the goods in every case (without permanent detriment to the function of the goods) without informing the Customer thereof in advance, to the extent that this is reasonable to the Customer.

- 9.8 Only the Customer will be entitled to guarantee claims against ITI and they are not assignable to third parties.  
9.9 The above paragraphs contain all guarantee provisions for the goods; in other respects Item 11 will apply.

#### **10. Passing of Risk**

- 10.1 The risk will pass to the Customer as soon as the goods are handed over to the carrier/shipping agent or to the party assigned with carrying out the shipment. Shipping will be at the risk of the contractual partner in every case, even in the case of freight-paid delivery. ITI will not be liable for damage, delay or loss during transport. To the extent that no specific mode of shipping was agreed on, shipping will be at ITI's discretion without any obligation to use the cheapest or a particular type of shipment. Shipping expenses are to be reimbursed to ITI. Where shipment is not possible or delayed without ITI's fault the risk will pass to the Customer upon notification of readiness for shipment.
- 10.2 A return shipment of the goods to ITI will be at the risk and expense of the contractual partner in every case unless the return shipment is attributable to ITI.

#### **11. Liability**

- 11.1 Unless otherwise expressly agreed below all damage compensation claims by the contract partner, in particular also on the basis of positive violation of a contractual duty, culpa in contrahendo and illegal acts as well as all other legal bases both against ITI and its vicarious agents are excluded. This will also apply in particular to damage compensation in lieu of performance, however only where compensation of indirect or consequential damage is being demanded.
- 11.2 The above restriction of liability as set out in Item 11.1 will not apply
- (a) where the cause of damage is attributable to willfulness or gross negligence by ITI or its representatives or vicarious agents,
  - (b) in cases of liability according to the Product Liability Act,
  - (c) in the case of injury to life, limb or health,
  - (d) where the liability is based on a guarantee/confirmation by ITI.
- 11.3 In every case, liability will be limited to damage that is typical and foreseeable upon conclusion of the contract.
- 11.4 ITI will not be liable for damage resulting from improper use of the products.

#### **12. Statute of Limitations**

All claims by the Customer in connection with the delivery of goods will expire without regard to awareness or negligent ignorance of the claim in 12 months as from the date of passing of risk, unless longer periods are prescribed by law.

#### **13. Retention of Title**

- 13.1 The goods delivered remain as property of ITI until full payment of the respective purchase price for the goods. Payment will be regarded as having been effected only after receipt of the money by ITI or crediting of the money. Until transfer of ownership to the Customer the Customer will safeguard ITI's (co)ownership of the goods free of charge.
- 13.2 The Customer will have the right to resale subject to retention of title to the goods within the framework of proper business operations and he will likewise have the right to processing and treatment of the goods within the framework of proper business operations but only as long as the Customer satisfies his payment duties, is not in arrears with payment and in particular bankruptcy has not been filed for or payments have been suspended. The Customer is assigning his claims from the resale of the goods at the respective invoice amount of the goods in advance to ITI already at the time of the order. ITI hereby accepts this assignment. The Customer will remain authorized to collect the claim within the framework of proper business operations-subject to revocation at any time.
- 13.3 Upon suspension of payment, filing for or instatement of bankruptcy (including preliminary bankruptcy), instatement of court or out-of-court conciliation proceedings, the right to resale, use or installation of the goods and authorization to collect the assigned claims will be extinguished.
- 13.4 Combination, mixing, processing or restructuring of the goods will be exclusively for ITI without any obligations arising for ITI from this. In such a case ITI will acquire a share of the ownership of the finished product or in the new item equivalent to the ratio of the value of the good to the value of the finished good or new item. In this case the customer will also safeguard ownership/co-ownership of the goods owned by ITI free of charge for ITI.
- 13.5 Pledging or assigning the goods as security is not permitted to the Customer. In the case of third party access to the goods the Customer will inform the third party (ies) of ITI's ownership and inform ITI immediately, submitting the necessary documents. At ITI's request, the Customer will be obligated to submit a list of the claims passed on to ITI in accordance with Item 13 with names and addresses of the customers as well as necessary information for assertion of the claim against the third party. ITI has the right to notify the debtors of the assignment at any time.
- 13.6 In the case of breach of contract, in particular delayed payment, also from other and future goods and services by ITI to the Customer or in the case of indications of a deterioration of ITI's financial situation ITI will have the right to demand return of the goods from the Customer. All costs of the return of the goods and free use will be borne by the contract partner. In order to assert these rights ITI may enter the Customer's business premises and take the goods or demand the assignment of the Customer's claims to release of the goods against his customers. Exercise of the rights to retention of title or right to demand return of the goods will not constitute rescission of the contract. Notwithstanding ITI reserves the right to assert damage compensation claims and rescind the contract.
- 13.7 The Customer will be obligated to treat the goods subject to retention of title with care, in particular, he will be obligated to adequately insure them at his own expense against damage caused by fire, water and theft.

#### **14. Return of Goods**

In the case of consensual return of the goods or return of the goods in the case of insolvency ITI will credit the present value of the goods, taking their condition into account, to the extent that use of the goods is possible. A return of the goods is only possible with the express written consent of ITI.

**15. Confidentiality**

- 15.1 The Customer will be obligated to observe strict secrecy regarding all technical, business and company information (business and company secrets) of ITI and its suppliers or other company affiliated with ITI received by the Customer during and after termination of the contract within the framework of the conclusion and performance of the contract.
- 15.2 The duty of confidentiality will continue to apply even after termination of the contract. The duty of confidentiality will also apply to information as set out in para. 1 that has been disclosed to the Customer by third parties.

**16. Place of Performance, Place of Jurisdiction, Choice of Law**

- 16.1 The domicile of ITI is the agreed place of performance for delivery and payment.
- 16.2 Munich is the place of jurisdiction for all disputes arising from or in connection with the contract; ITI will also have the right to sue the Customer in a different legal jurisdiction.
- 16.3 German law will apply exclusively excluding all principles of conflicts of law of the IPR and excluding the provisions of the United Nations Sales Convention (CISG).
- 16.4 The Customer does not have the right to assign his claims from the contract without the prior consent of ITI.
- 16.5 Should provisions of the present terms be or become wholly or partially legally invalid or infeasible this will not affect the validity of the remaining terms. The same will apply where a legal gap in the contract arises.

**17. Data Protection**

- 17.1 Order processing will be within the ITI-company group in every case with the aid of automatic data processing. ITI will record, process and use the data disclosed within the framework of the contractual relations and which are necessary for processing of the order. Provision of data gained from the business relationship with the customer to third parties will be within the ITI organization for the purpose of processing the order. To the extent that it is necessary to safeguard legitimate interests of ITI, ITI will send the invoicing data directly or via a customer to collection agencies as part of a transfer of functions (§28 BDSG). After termination of the contractual relationship, ITI will delete the customer data again.
- 17.2 ITI reserves the right to obtain information regarding the Customer's creditworthiness from business information agencies for checking the Customer's creditworthiness and to report data to them- restricted to the case of non-compliant performance of the contract. Data transmission will only take place where necessary for safeguarding the legitimate interests of ITI.
- 17.3 The Customer is giving his express consent to the aforementioned use of data.

As per: November 2016