

## GENERAL TERMS AND CONDITIONS OF HOCOTIMBER GMBH, EGGENFELDEN (hereinafter referred to as the vendor)

### I. Validity of conditions

1.1 The deliveries, services and quotations of the Vendor shall be governed exclusively by these Terms & Conditions and by the "Hocotimber product descriptions". These shall herewith apply to all future business relations, even if not explicitly agreed again in subsequent dealings. These conditions shall be deemed to have been accepted on receipt of the goods or services at the latest. Conflicting confirmations made by the Buyer referring to his own terms & conditions of purchase shall be disregarded. Differing or supplementary conditions put forward by the Buyer shall apply only if they have been confirmed in writing by the Vendor.

### II. Submission of quotation, confirmation of order and conclusion of contract

2.1 The quotations issued by the Vendor shall be subject to confirmation and non-binding. Weights, measurements and other similar specifications, colors and models as reproduced and described respectively in brochures, color charts, drawings and samples are only approximate and shall only be binding if this is explicitly stated in writing. The information and features contained in the contract documents, in particular quotations and order confirmations, are designed to ensure the suitability of the purchased product, unless they are expressly designated as characteristic agreements.

2.2 Orders shall only be understood to have been accepted when confirmed in writing or delivered and/or invoiced by the Vendor. In the event that the Vendor has not issued confirmation of an order and nevertheless executes that order, the order as written by the Buyer shall determine the content of the order. Orders made only by word of mouth, telephone or fax shall essentially require, subject to sentence 1, written confirmation to be valid. The Buyer shall bear the risk and cost of the manufacture of any incorrect products, as may arise in such cases.

2.3 The approval for production to proceed is issued at the same time as the order confirmation. The Buyer shall bear the risk and cost of the manufacture of any incorrect products, as may arise in such cases.

2.4 The Vendor accepts no liability whatsoever for technical information or construction recommendations issued without obligation in response to customer enquiries.

2.5 von Seiten des Verkäufers im Rahmen von Kundenanfragen erteilte technische Auskünfte oder Ausführungsvorschläge sind unverbindlich und erfolgen nur unter Ausschluss jeglicher Haftung.

2.6 No supplementary verbal arrangements or agreements have been made, and any arrangements made with commercial agents or sales employees shall only be applicable if submitted to the Vendor in writing with the purchase order and confirmed by the latter in writing. This shall apply even if an agreement has been made to the effect that the written form need not apply.

### III. Prices

3.1 The prices are quoted net, exclusive of the relevant statutory value added tax. They include delivery from the Vendor's factory but exclude packaging, unless explicitly agreed otherwise.

3.2 Any additional deliveries and services shall be invoiced separately.

3.3 Should the delivery be delayed by more than four months after the signing of the contract for reasons beyond the Vendor's control, the list prices applicable on the day of the delivery may be charged, taking due account of the agreed discount.

### IV. Delivery, time of performance, call-off orders

4.1 Agreed dates or deadlines shall be understood to be non-binding unless specifically agreed in writing as being binding. If a fixed date was not agreed for the delivery, default in delivery shall only apply if an appropriate extension has been granted in writing.

4.2 The Vendor shall not be responsible for delays in delivery and services caused by force majeure or by circumstances which render delivery extremely difficult (not merely temporarily) or impossible for the Vendor - such as strikes, lock-outs, official directives, etc., including such as arise at the Vendor's suppliers or their suppliers - even if dates and deadlines have been agreed with binding force. They shall entitle the Vendor to defer the delivery or service for the duration of the impediment plus adequate lead time or to withdraw fully or partially from the contract on account of the unfulfilled part.

4.3 If the reason for the delay, as defined in subsection 2, should last longer than three months, the Buyer shall be entitled to withdraw from the contract in respect of the part of the contract not yet fulfilled, following a reasonable additional period of respite. If the delivery time is prolonged or if the Vendor is released from obligation, the Buyer may not claim damages on this basis. The Vendor may only cite the circumstances specified in subsection 2, however, if the latter notifies the Buyer immediately of said circumstances.

4.4 The Buyer may withdraw from the contract if the Vendor is responsible for failing to meet binding dates and deadlines or is in default of delivery. Liability for damages shall be expressly

excluded unless the delay is due to at least gross negligence on the part of the Vendor or of the latter's vicarious agents.

4.5 The Vendor shall be entitled to part deliveries at any time unless the part delivery is of no interest to the Buyer.

4.6 The fulfillment of the contractual obligations of the Vendor shall be subject to the due and proper discharge of the obligations of the Buyer, especially the settlement of payable invoices, including payments due in connection with other purchase orders placed by the Buyer. Should the Buyer be in default of acceptance, the Vendor shall be entitled to claim compensation for the damages incurred. The risk of the accidental deterioration or of the accidental loss of the purchased product shall pass to the Buyer on entering into default of acceptance.

4.7 In the case of call-off orders, the maximum period for full call-off shall be 90 days, unless specifically agreed otherwise. If make-and-hold orders are not called off by the Buyer within four weeks of the expiry of the call-off period, the Vendor shall be entitled, exercising due discretion, to either insist on immediate acceptance of the goods or to withdraw from the contract and claim damages for failure to fulfill contractual obligations.

### V. Passing of risk and transport

5.1 All consignments shall be transported at the risk of the Buyer. The risk shall pass to the Buyer, even in respect of deliveries which are free of carriage charges, on leaving the supplying factory or the shipping point selected by the Vendor at the latest. If dispatch is delayed due to action taken by the Buyer or at the latter's request, the risk shall pass to the Buyer when the latter is notified that the goods are ready for dispatch. The Buyer shall bear the risk of the conveyance of the goods. Insurance cover for goods in transit shall only be taken out at the express request and at the expense of the Buyer.

5.2 The Buyer, or the recipient acting as the latter's vicarious agent, shall be required to inspect the goods on arrival for any signs of damage sustained in transit and visible defects. The delivery shall be deemed to have been inspected and accepted if the Buyer does not issue notification of defects or report any damage sustained in transit within a cut-off period of eight days.

### VI. Payment terms

6.1 Unless agreed otherwise, our invoices shall be payable strictly net 14 days after issue, either in cash or by bank transfer free of transaction charges to the Vendor.

6.2 Regardless of any stipulations to the contrary by the Buyer, the Vendor shall be entitled to set off against earlier accounts payable by the Buyer in the first instance, duly informing the Buyer about the manner in which accounts have been settled. If costs have already been incurred and interest has accrued, the Vendor shall be entitled, in the first instance, to appropriate the payment to the costs, then to the interest and, in the final instance, to the main debt.

6.3 A payment shall be considered to have been made only when the funds are at the Vendor's disposal. Payments by check shall be considered to have been made only when the check is cleared. If bills of exchange are accepted by way of payment - subject to prior agreement - the collection charges and costs of discounting shall be borne by the Buyer.

6.4 Payments made by the Buyer to trade representatives or to employees of the Vendor shall only take legal effect vis-à-vis the Vendor if the commercial agents or employees are authorized to receive payment. The Buyer shall be responsible for checking that any such authorization is in place by asking for documentary evidence of the same before making the payment.

6.5 The Buyer shall only have the right of offset, retention or reduction - even if notification of defects is submitted or counterclaims are lodged - if the counterclaims are not disputed, ready for judgment, or recognized by declaratory judgment. This restriction on the right of retention shall not apply if the Buyer may assert counterclaims under the same contract.

6.6 If the Vendor becomes aware of circumstances which call into question the creditworthiness of the Buyer, such as a refusal to honor a check or the cessation of payments, the Vendor shall be entitled - regardless of other agreements - to call in the remaining debt in full, even if checks have been accepted. The Vendor shall also be entitled in this case to ask for payments in advance or a security deposit. If the Buyer fails to make said advance payment or security deposit within a reasonable time, the Vendor shall be entitled to withdraw from the contract without being liable for damages.

### VII. Customized products, property rights

7.1 When making products to individual specifications which are not in the list of products currently sold by the Vendor, the latter reserves the right to supply up to 15 % more or less than the amount ordered in order to allow for typical fluctuations in the quality of the raw materials.

7.2 Products with a separately agreed surface finish shall only be made by the Vendor

on the basis of samples approved by the Buyer. Until such time as the Vendor gives express written notice of cancellation, these samples shall be binding in respect of the color and surface quality of the products based on these samples. Non-conformities due to the type or structure of wood shall not constitute product defects.

7.3 The Buyer shall guarantee the Vendor that no third-party property rights shall be infringed by the manufacture and supply of products made according to the Buyer's specifications. However, should claims be made against the Vendor by a third party for the infringement of property rights, the Buyer shall exempt the Vendor internally from all costs incurred thereby (including any court costs, consultants' fees and lawyers' fees).

#### **VIII. Reservation of title**

8.1 Until such time as all claims have been satisfied (including all outstanding balance claims from current account), to which the Vendor is entitled for any legal reason against the Buyer now or in future, the following securities shall be granted to the Vendor and released at the discretion of the latter on request if their value exceeds the claims by more than 20 % on a sustained basis.

8.2 The Vendor shall retain title to the goods. Any processing or alteration shall always be undertaken for the Vendor as manufacturer but without imposition of any obligation for the latter. Should the (co-)ownership of the Vendor cease to exist due to combination, it is hereby agreed that the (co-)ownership of the Buyer of the single article shall pass to the Vendor in proportion to its value (invoice value). The Buyer shall store the (co-)owned property of the Vendor at no cost. Goods which are subject to the Vendor's right of (co-) ownership shall be referred to below as the reserved goods.

8.3 The Buyer shall take out and pay for adequate theft and fire insurance cover for the reserved goods and shall pay for adequate storage to maintain them in good condition for the entire reservation period.

8.4 The Buyer shall be entitled to process and sell the reserved goods in the normal course of business as long as he is not in default of payment. Pledges and transfers by way of security are not permitted. The Buyer hereby assigns in full to the Vendor, as a precaution, the claims relating to the reserved goods arising from the resale or from any other legal ground (e.g. insurance, tort) (including all outstanding balance claims from current account). The Vendor hereby authorizes the Buyer revocably to collect the receivables assigned to the Vendor for the former's account on the latter's own behalf. This authorization may only be revoked if the Buyer fails to duly discharge payment obligations.

8.5 Should the property of the Vendor cease to exist when the reserved goods supplied by the Vendor are fitted in a third-party property, all ensuing rights of the Buyer against the property owner shall pass to the Vendor as a precaution for the outstanding claims.

8.6 If third parties have access to the reserved goods, especially attachments, the Buyer shall refer to the ownership of the Vendor and inform the latter immediately so that the Vendor can assert property rights. If the third party is not able to refund the Vendor the judicial or extrajudicial costs incurred in this connection, the Buyer shall be liable for said costs.

8.7 If the Buyer acts in breach of contract - especially default of payment - the Vendor shall be entitled to withdraw from the contract and claim back the reserved goods.

#### **IX. Notification of defects and rights of the Buyer**

9.1 The products shall be supplied free of manufacturing and material defects; claims for defects may be made up to five years after delivery of the products insofar as they have been used for buildings and structures as normal and intended and have caused their own imperfection; claims for defects in relation to other products must be made within two years of their delivery.

9.2 The Buyer shall be required to inspect the condition of the goods immediately on receipt and shall give immediate written notification of any defects within one week of receipt of the goods. In the event of failure to carry out this inspection, undue delay or insufficient thoroughness in carrying out this inspection, or in the event of failure to report evident defects to the Vendor without delay, the goods shall be deemed to have been accepted with any such defects. Defects which cannot be detected within the above time period, even if the inspection process is carried out with due care and diligence, must be reported to the Vendor in writing immediately on their discovery. Article 377 of the German Commercial Code (HGB) shall apply in business dealings.

9.3 If the goods which have been supplied are found to be defective, they may no longer be fitted or processed any further. If the Buyer acts in opposition to this obligation, the Vendor shall accept no liability for any damages arising as a result.

9.4 Notification of defects must be given in writing, stating the deficiencies and the invoice

number. Notification of defects addressed to sales employees or commercial agents of the Vendor shall be ineffective. Rejected goods may only be sent back subject to the express agreement of the Vendor. Deficiencies in one part of a delivery shall not entail the rejection of the entire consignment.

9.5 Goods accepted by the Buyer must be stored properly, especially in respect of the ambient conditions required for the product in any given case. The Vendor shall not be liable for damage caused to the products by moisture absorption or excess dryness (swelling or contraction) while they are kept in storage by the Buyer. Even 24 hours in an excessively damp or excessively dry atmosphere can cause such damage, therefore defects which are symptomatic of excessively dry or excessively damp storage must be reported as soon as the goods arrive.

9.6 Minor and typical non-conformities in the design, structure, dimension, weight and color of the supplied goods shall not constitute grounds for complaints as long as the non-conformities are within the tolerances allowed in the "Hocotimber product description" and in the relevant European standards for parquet. This shall not apply if the above criteria are the subject of a specific agreement on product properties and characteristics under § 434 I, sentence 1 of the German Civil Code (BGB).

9.7 The Vendor shall take remedial action - with the agreement of the Buyer - in response to duly asserted and substantiated claims for defects. Should the attempts at rectification prove fruitless after a reasonable period of time has been allowed, or should the Vendor ultimately decline to make any such attempts, the Buyer may choose to claim a reduction of compensation or to withdraw from the contract.

9.8 No liability will be accepted for normal wear and tear. If installation and care instructions given by the Vendor are not followed, claims for product defects shall cease to apply if the Buyer does not refute a duly substantiated statement to the effect that one of these circumstances has brought about the defect. Express reference is made by the Vendor to the state of the art, according to which color durability cannot be guaranteed on wood finishes or surfaces finished with other treatments. Due to exposure to light, such surface finishes are subject to constant changes which do not constitute defects.

9.9 Claims for defects may only be made against the Vendor by the direct Buyer and may only be assigned subject to the prior consent of the Vendor.

#### **X. Liability**

10.1 Claims for damages shall be excluded regardless of the nature of the breach of duty, including tort, unless based on wilful intent or gross negligence.

10.2 If in breach of major contractual duties, the Vendor shall be liable for each instance of negligence, albeit not beyond the amount of foreseeable damage. Claims for lost profit, saved expenses, arising from third-party claims for damages and for other indirect and consequential damages may not be asserted unless a feature guaranteed by the Vendor is specifically intended to protect the Buyer from such damages.

10.3 The limits and exclusions of liability set out in paragraphs 1 and 2 shall not apply to claims arising on account of fraudulent behavior on the part of the Vendor, nor in case of liability for guaranteed product features. Nor shall they apply to claims under the Product Liability Act or to damages arising from injury to life, limb or health.

10.4 Any exclusions and limitations of the liability of the Vendor shall apply equally to staff members, employees, representatives and vicarious agents of the Vendor.

#### **XI. Applicable law, place of performance, place of jurisdiction, partial nullity**

11.1 The law of the Federal Republic of Germany shall apply to these Terms & Conditions and to all the legal relations between the Vendor and the Buyer. The provisions of the United Nations Convention on Contracts for the International Sale of Goods shall not apply.

11.2 The place of performance for all rights and duties of both parties shall be the registered domicile of the Vendor, unless alternative arrangements are made in the order confirmation.

11.3 If the Buyer is a merchant entered as such on the commercial register, the exclusive place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be the court having local and subject matter jurisdiction for the domicile of the Vendor, the „Amtsgericht Eggenfelden“ and „Landgericht Landshut“ courts in Germany.

11.4 Also agreed as the international, exclusive places of jurisdiction are the „Amtsgericht Eggenfelden“ and „Landgericht Landshut“ courts in Germany.

11.5 Should one or more clauses in these Terms & Conditions or contained in other agreements be or become ineffective, this shall not affect the validity of all the other clauses or agreements.

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