

Validity: effective from January 01, 2006

## **General Terms and Conditions of Sale**

All technical information given out to customers such as all written information of our employees, delivery documents, invoices, etc. as well as all verbal information of our employees are based on careful investigation and our best knowledge of the subject but are without liability.

Wood is a natural product with characteristics and species specific variations in appearance and biological, physical and chemical properties. All these natural variations of color, structure and other characteristics within every species are an integral part of wood and do not qualify for a claim.

### **§ 1. Validity of these Terms**

1. These Terms and Conditions are an integral part of any contract of sales concluded between **Vinterio AG** (Seller) and the Buyer concerning products marketed by the Seller. These Terms and Conditions apply to all future business transactions as well, even if this is not explicitly mentioned.
2. All regulations contained therein are binding until and insofar as they have not been excluded by a written agreement signed by both parties. These Terms and Conditions have preference to any alternative Terms and Conditions the Buyer might have, unless the Seller has agreed to them in writing.
3. Modifications or variations from these Terms and Conditions must be agreed in writing in order to be valid.

### **§ 2. Conclusion of Contract**

1. This contract shall be deemed to have been concluded when the Seller has issued an order in writing (or by mail). Any previous offers made by the Seller are not binding and are of no legal consequence.
2. Measures, weights and other trade data are only binding if these have been agreed upon in writing.

### **§ 3. Object of Purchase**

1. All products the Seller deals with can become objects of purchase. Specification of goods and amounts will be determined by the relevant order confirmation or according to verbal agreements.

### **§ 4. Rules and Regulations at the Destination**

1. The Buyer is obligated to inform the Seller of all rules and regulations which govern the place of destination insofar as they apply to the means of delivery and services as well as of all safety and registration orders. This information has to be given to the Seller at the latest at the time of placing an order. The Buyer is liable to comply with all these rules and regulations.

### **§ 5. Delivery**

1. Unless otherwise agreed in writing, the mode of dispatch and the dispatch type sequence will be determined by the Seller.
2. Delivery times are subject to confirmation. If, however, delivery times have been agreed upon in writing they will be kept to the best of the Seller's possibilities. All delivery times shall start to run on the date of completion/assembly at our factory/storage.
3. The delivery time can be reasonably extended,
  - a. if the Seller does not receive all information necessary for the execution of the order in due time or if the Buyer alters such information at a later date and therefore causes a delivery delay;
  - b. if the Seller is prevented from delivering the goods due to "force majeure" as described in paragraph 7;
  - c. if the Buyer or a third party is not able to finish work for which they are responsible or if contractual obligations are delayed, especially if the Buyer is in arrears with payments.
4. If the products are ready to be shipped or mailed but cannot be shipped, mailed or delivered for collection, loading or dispatching problems, delivery time will be considered as having been kept and contractual obligations will be considered as having been fulfilled by the Seller.
5. If the Seller cannot meet the agreed delivery time, the Buyer is entitled to withdraw from the contract after having given the Seller an additional respite of twelve weeks in writing. In the event of delayed delivery the Buyer cannot claim any damages. The Buyer can claim damages, however, if the Seller has been grossly negligent and therewith can be held responsible for any damages. The Seller's liability under this contract, in the event of a covering purchase, shall be limited to any additional costs to a maximum of 10% of the value of the goods originally agreed upon between the Seller and the Buyer.
6. The Customer/Buyer is not entitled to any complaints if the quantity of goods exceeds or is below 10% of the agreed amount, (over- or short-delivery of goods). Partial delivery is admissible and shall be charged separately.
7. The Buyer is obligated to accept faulty goods; this does not affect the Buyer's statutory rights.

## **§ 6. Passing of Risks and Costs**

1. Passing of risks and costs is governed by contractual terms and conditions according to Incoterms 2000.
2. Until the agreed time of collection by the Buyer, the goods are stored at the risk and at the costs of the Seller and they have to be insured by him against loss or damage through fire, theft, influence of weather etc. After the agreed collection date the goods are stored at the risk and at the costs of the Buyer.
3. If the goods are sent with delivery paid, usage and risks are carried by the Buyer as soon as the goods are received or, in the event of other means of delivery, when the carrier receives the goods. If the goods are ready to be shipped but shipping is delayed due to reasons the Seller can not influence, all risks pass to the Seller at the time notification is given that the goods are ready to be shipped. Loading and transportation will be governed according to the general terms and conditions of haulage contractors and/or carriers which are applicable to the relevant loading and transport procedures.
4. In case the Buyer refuses to accept the goods, the passing of risk has moved to the Buyer at the time of the refusal. At the same time the purchase price has to be paid immediately, disregarding any other periods of payment which may have been agreed upon. Furthermore, the Seller is entitled to claim any expenses from the Buyer which he incurs or might incur in the future due to delayed acceptance of the goods, for example default interest, costs for storage and transport etc.
5. After the passing of risks, the Buyer is responsible for insuring against any possible damages. Furthermore, any insurance which has to be borne by the Seller before the passing of risks is considered as concluded on behalf of and on account and risk of the Buyer. In the event of FOB and CFR deliveries the Buyer is obligated to cover the insurance immediately after the conclusion of the contract. International terms of trade are understood according to Incoterms 2000.

## **§ 7. Force Majeure**

1. The Seller is not liable for the consequences of circumstances beyond the control of the parties including wars, natural disasters, boycotts, strikes, failure of supplies of power, fuel and raw materials or similar events. In the event of any such event, the Buyer is entitled to withdraw from the contract (*or to suspend its execution*). No claim for damages can be made. This clause applies as well if subcontractors, without any fault of the Seller, do not fulfil their delivery obligations in time or if normal means of procuring goods or transporting them are interrupted.
2. In case paragraph 1 applies and the amount of goods at the disposal of the Seller is not sufficient to meet the demands of all customers, the Seller retains the right to make reductions of all agreed quantities. Furthermore, the Seller is not bound any more by delivery contracts. The Buyer is entitled to withdraw from the contract if the acceptance of a lesser amount of goods is economically unacceptable to him. Any claims for damages are explicitly excluded.

## **§ 8. Purchasing Price**

1. Unless otherwise agreed in writing, the prices shall apply net of VAT in euros (€). In case any other currency has been agreed upon, the Buyer is responsible for any exchange rate losses compared to euros (€) incurred as of the date of default of payment. The final price is the one stated by the Seller in his order confirmation plus applicable VAT at the statutory rate. Unless otherwise agreed, prices shall apply from ex works or seat of the Seller.
2. In case public costs have increased, between the date of order confirmation and the date of delivery, beyond the control of the Seller (e.g. taxes, custom duties, fees, charges) or costs for transportation, manufacturing or marketing of the goods have increased or are arranged in a different way, the price which the Buyer has to pay will increase accordingly. This shall also apply if such costs have not been put down separately. In case the Seller is legally unable claiming such costs from the Buyer, he may withdraw from the contract.

## **§ 9. Terms of Payment**

1. Payments shall be made without discount within 30 days of the date of the invoice unless otherwise agreed in writing (or by email). The Seller is not obliged to accept cheques or bills of exchange but can insist on cash payments. All expenses for cheques or bills of exchange have to be met by the Buyer.
2. The Buyer shall only be entitled to set off counterclaims or to retain payments, if the Seller has explicitly agreed to this or if his counterclaims are established with legal effect.

## **§ 10. Decline in Available Assets**

1. In the event that the Buyer or a company connected to him does not meet payment obligations, or, in the event that the Seller receives information that the Buyer has suffered a decline in available assets – even if the value of these assets has been the same at the time of the conclusion of the contract – then the Seller is entitled to demand immediate payment of all due or undue bills, disregarding any prior payment agreements. Furthermore, the Seller is entitled to stop any further deliveries or to execute deliveries only against advance payment or provision of security. The Seller is entitled to withdraw from all contracts and to demand the return of all goods already delivered. Information by a bank or any other relevant authority will be considered as proof of such circumstances.
2. All clauses in paragraph 1 apply accordingly, if after acceptance of a bill of exchange such deterioration in the acceptant's available assets has occurred or if the bank refuses to discount a bill of exchange. If bills of exchange or an agreed instalment is not paid on time, all bills of exchange and/or all other outstanding demands by the Seller against the Buyer have to be paid in full immediately, irrespective of any prior payment agreements.

## **§ 11. Default**

1. If the Buyer delays making any payments, he will immediately be considered to be in default and he will be liable to pay default interest of EURO-LIBOR, valid 3 months, plus 8%. Without further notice the Seller has the right to stop any further deliveries and/or to withdraw from the contract. All costs arising due to sending reminders or costs incurred for collecting (even by third parties) will be charged separately. The right to claim any other damages caused by default is reserved.

## **§ 12. Place of Performance**

1. The place of performance for the purchasing price and for any obligations the Buyer might have is the registered office of Vinterio AG in CH-6342 Baar, Switzerland.
2. The place of performance for the deliveries is the place where the goods are stored ready for shipment. The place of performance will not be changed by the fact that the Seller arranges in person for the shipment of the goods.

## **§ 13. Retention of Title**

1. The Seller retains the title of delivery until full payment of the purchase price is received. The Seller has the right at any given time to register the reservation of title in the register for the reservation of titles in case delivery is made to Switzerland.
2. Insofar as the delivered goods become mixed up or connected to goods not belonging to the Seller and insofar as these goods cannot be separated anymore without causing damage or causing unproportionally high expense, the Seller shall acquire co-ownership of these new goods in proportion to the value of the other materials at the time the products were first mixed or at the time the new product emerged (paragraph 727, section 1 ZGB). If the Buyer acquires sole ownership of the new product according to paragraph 727, section 2 ZGB, the two parties agree that the Buyer will transfer to the Seller title of joint ownership up to the value described above. In all these circumstances the Buyer will store these manufactured or new goods free of charge.
3. Any demands resulting from reselling goods under reservation of title will be regarded as having been signed over from the Buyer to the Seller. Any demands resulting from reselling goods under joint ownership according to paragraph 2 will be regarded as having been signed over from the Buyer to the Seller to the value which corresponds to the raw materials used for the product in question (as described in paragraph 2). The Seller accepts the above mentioned transfer of demands. The Buyer is obliged to make known to the Seller, if so demanded, the names of all third party debtors, the amounts due, their details, settlement dates etc. as well as to inform third party debtors about this transfer of demands. Irrespective of the right of the Seller to collect, the Buyer has the right of collection to the assigned demands, but only insofar as he fulfils all his obligations towards the Seller. Any other claims which might occur through any other legal reasons (e.g. insurance, forbidden actions) concerning the goods under reservation shall be transferred by the Buyer to the Seller at this time for the purpose of security.
4. The Buyer is entitled to rework or to resell the goods under reservation of title during the ordinary course of business if he is not in arrears with his payments. The Buyer is obliged to secure the rights of the Seller if he resells such goods on credit, and he is obliged to inform the purchaser about the reservation of title. The Buyer is not entitled to pawn or transfer as security etc. any goods under reservation of title without prior consent of the Seller until reservation of title has passed onto him. Insofar as third parties start enforcement procedures concerning goods under the reservation of title, the Buyer shall be obliged to pass on relevant information about the Seller's right of ownership and he will inform him immediately about these procedures, including passing on all relevant documentation necessary for an intervention. In such circumstances, all demands the Seller might have against the Buyer must be met immediately, irrespective of any periods of payment agreed before. This does not affect the Seller's statutory rights. All goods under reservation of title have to be treated with care and have to be insured against theft, fire and water.
5. If the Buyer violates any clauses of this contract – especially in the event of default of payment – the Seller has the right to reclaim all goods under reservation of title delivered to the Buyer under this or any other contract or to demand that the Buyer transfers to the Seller his right against third parties to claim back these goods. Exercising proprietary rights or the Seller's impounding of goods under reservation of title do not constitute a withdrawal of contract. The Buyer is liable to reimburse the Seller for all costs incurred due to inferiority of the goods, costs for reclaiming up to the value of 10% of the purchase prices and loss of profit, disregarding any further claims for damages. In the event of default of payment or in case the Buyer has arranged non-assignability with his customers the right to resell or to use the goods under reservation of title as well as the right to collection of assigned claims is invalid. In the event of a cheque- or bill-protest, the right to cash in these is considered to be expired.
6. The Seller is obliged to unblock all securities to which he is entitled, if the Buyer so demands, if the realizable value of the goods exceeds 10 % of the value of the claims which have to be secured. The selected securities which will be unblocked have to be decided by the Seller.

## **§ 14. Warranty**

1. All sales are subject to the general terms of trade and conditions for round timber or veneer or trimmed timber unless otherwise specified in separate contracts or in these terms and conditions of business.
2. The Seller guarantees that the goods are in accordance with the specifications given with the order confirmation. Any other liabilities are excluded, unless otherwise specified by law. All information given by the Seller with regards to the suitability, usability and processing properties of his products are not binding and they do not release the Buyer from conducting his own tests and examinations. If the Buyer has inspected the goods and not made any complaints before the time of shipment or before collecting the goods, all further warranty claims because of obvious faults especially with regards to the composition, quality, measurements, amounts etc. are excluded.
3. Differences in the colour of the wood, which is a natural product, do not constitute a defect within the framework of any warranty agreements. In the case of veneers, a possible variance in thickness up to 5 % has to be tolerated. The contractual measurement is the measurement with which the veneer has been sliced or peeled. The surface area is calculated electronically. A possible variance has to be tolerated up to 3 % of the overall surface area.
4. Immediately after arrival, the goods have to be inspected by the Buyer any complaints have to be made known to the Seller in writing within 14 days from receiving the goods at the destination. Any hidden damages have to be made known in writing to the Seller immediately after their discovery, but not later than 6 months after delivery. In the event of any damage caused during transportation and any obvious damage to the packing, the Buyer has to make a reservation in writing on the delivery note or on the bill of freight and the Seller has to be informed in writing immediately. The Seller can not be made liable for any defects which occur while processing or after processing the goods, even concealed defects. This clause applies to any spliced or unspliced veneer as well insofar as defects occur during processing.

5. Any defective goods which have been purchased have to be stored carefully and free of charge by the Buyer in the condition they were at the time the defect was noticed. They have to be made available for inspection by the Seller. If the quality complaint is justified and claims are not excluded by above mentioned clauses, the Seller will deliver faultless goods or repair the damages according to his choice. If repairs or replacements chosen by the Seller fail, the Buyer has the right to an appropriate reduction of the purchase price or to withdraw from the contract.
6. If the damages are insignificant the Buyer has no right to withdraw from the contract. If no quality complaint is lodged within six months of receipt of the goods at the destination, all warranty claims shall be excluded. The Seller is not liable for any further claims for damages or liabilities unless otherwise legally obligated.
7. In the event of deliveries being made under special conditions or free of charge, the Seller is excluded from all liabilities.

**§ 15. Signing over Rights and Obligations**

1. Any signing over of rights and obligations arising from a contract between the parties can only be made in writing between the parties involved in the contract.

**§ 16. Place of Jurisdiction and Applicable Law**

1. If one or more of these general terms and conditions of sale are or become ineffective, this contract generally remains effectual. The ineffective conditions shall be replaced by such provisions that are covered by applicable law.
2. For all business and legal relations between the parties the law of Switzerland shall apply. Especially the Swiss Code of Obligations, excluding the Agreements of the United Nations Concerning Contracts for the International Sales of Goods of 11<sup>th</sup> April 1980.
3. Any disputes arising from this contract shall be settled before a competent court of law at the Seller's place of residence. The Seller is entitled to prosecute the Buyer at his place of residence.
4. The place of jurisdiction is 6342 Baar, Canton Zug, Switzerland.