

# **General Terms and Conditions of Danubia Wood Trading GmbH**

## **§ 1 Scope**

- 1) These General Terms and Conditions from the Danubia Wood Trading GmbH (hereinafter referred to as "DWT") apply for the duration of the business relationship between DWT and the buyer (hereinafter referred to as "customer"), therefore also for future orders and deliveries, even if these conditions are not expressly agreed upon or taken as a basis in the future and includes all deliveries and services as well as any offers and order acceptances in connection with these.
- 2) Changes to these conditions must be in written form including the renunciation of this requirement. Changes will also become a component of the current business relationship starting with their validity.
- 3) Contradictory or deviating conditions from the customer do not have any applicability. These General Terms and Conditions from DWT also apply if DWT performs the delivery to the customer without reservation while fully aware of the customer's deviating conditions.
- 4) Verbal agreements must be in written form in order to be valid. This also applies to the waiver of this written form requirement.
- 5) The version valid at the time of the respective signing of the contract is relevant. The application of Austrian timber trade standards is ruled out, provided these are not explicitly agreed upon separately or receive validity through these conditions.

## **§ 2 Offer and Contract Content**

- 1) All declarations from DWT about the contract contents must be in written form to be legally valid. The electronic transfer of messages and documents is permissible. The actual fulfilment by DWT replaces the previous prerequisites for legal validity. All product descriptions, quantity and weight specifications, drawings, illustrations and dimensions only represent a legal obligation under the aforementioned prerequisites. DWT retains the right to technical and other changes. Wood is a natural product and is subject to tolerances that are described in the Austrian Timber Trade Standards and are applicable here.
- 2) Deliveries are carried out ex works from DWT on account and at the customer's risk. Anything different must be guaranteed explicitly by DWT in writing. Transport insurances are only provided upon the explicit request from the customer and at the customer's cost. If nothing different is agreed upon, DWT is free to choose the type of delivery.
- 3) DWT is entitled to reject or restrict the previously agreed upon delivery or service without being obligated to provide compensation for this due to important reasons, for example, in the event of circumstances that put the customer's solvency into question or in the event of unpredictable supply bottlenecks.
- 4) Assignments or orders from customers that deviate contextually from the originally confirmed order or original offer from DWT require explicit written confirmation from DWT in order to justify an obligation to perform.

- 5) If nothing different is explicitly agreed upon in writing, the information shared by the customer in connection with the order is not viewed as confidential.

### **§ 3 Prices**

- 1) The prices specified in an offer or in any other document from DWT apply with the reservation that the specifications of the merchandise used as a basis for the offer remain unchanged. The prices from DWT are net prices (without value added tax or sales tax). The respectively offered prices do not include costs for freight, postage, insurance and any delivery and unloading costs.
- 2) If taxes, customs, freight, fees or duties are increased or newly introduced between the signing of the contract and fulfilment of the contract, the seller is entitled to charge these additional costs. The same applies in the event of a change to any parity between the currency of the purchase contract and the EURO after assignment of the contract.
- 3) Any discounts, bonuses or commissions as well as sales and freight payments are dropped in the event of insolvency and with a default in payment of more than one month.
- 4) In the event of successive delivery agreements as well as orders on call, the valid price or the price announced by DWT on the delivery day applies.
- 5) Price offers from DWT are non-binding, unless their commitment was explicitly approved in writing. For the invoice, DWT uses the day on which - even if only partially - the delivery is made, the order is stored for the buyer or held on call for them.
- 6) Objections to the content of a delivery document, an invoice or the complete or undamaged receipt of the merchandise must be immediately asserted and specified after receipt. If the customer has no objections, the content of the delivery document or invoice is seen as confirmed and the merchandise is properly handed over. If the customer has an email address, the invoices can be sent by email as an attachment after prior notice. The customer explicitly agrees to electronic invoicing.

### **§ 4 Delivery and Transfer of Risk**

- 1) The risk is transferred to the customer as soon as the merchandise has been handed over to the carrier or has left the DWT warehouse for the purpose of delivery. The risk is also transferred to the customer at the time of provision for pick-up. The customer is obligated to immediately accept the merchandise that has been sent or prepared for pick-up. If the buyer does not fulfil this obligation, the delivery is seen as complete at the time at which the acceptance would have had to occur in accordance with the contract. The risk of accidental loss is also transferred to the buyer at this point in time. In the event that the customer delays acceptance, DWT is entitled to ensure the storage of the merchandise at the customer's cost and risk and to demand all costs from the customer affiliated with this including the carrier's stall fees, while the purchase price is due immediately.
- 2) Any delivery dates announced by DWT are non-binding, provided they are not explicitly agreed upon by DWT as fixed dates. In the event of non-existent or delayed availability, DWT will inform the customer immediately. In the event of

an agreed upon fixed date, the cooperation obligations of the buyer and their dates must be determined upon order. If the customer does not fulfil their cooperation obligations or they do not comply with the agreed upon dates, DWT is not liable for complying with the agreed upon delivery date. This also applies in the event of retrospective order changes by the buyer. Furthermore, DWT has a right to compensation for the costs that arise through this.

- 3) Events of force majeure, general or particular supply difficulties, political unrest, disruptions in transportation companies - even if these occur for the suppliers - free DWT of the obligation to deliver for the duration of the disruption and in the scope of its effects. Such events entitle DWT to step back from the contract if the events are of such a long and unpredictable duration that the usage purpose is in danger. In such a case, DWT is not liable for compensation, provided that the event or the consequences do not occur because of gross negligence on DWT's behalf. Any assert of claims due to delivery delays may only be carried out after the written setting of an appropriate grace period. Penalties are ruled out in all cases. DWT is entitled to partial deliveries.
- 4) Excess or reduced deliveries of up to 10% of the agreed upon delivery quantity are to be accepted against a proportionate settlement of the invoice amount - normal and insignificant tolerated amounts, but without settlement of the invoice amount - and therefore do not represent a defect. Partial deliveries are permissible and may be charged separately. Weight specifications are non-binding unless the merchandise is billed to the customer explicitly according to weight.
- 5) The delivery is also carried out at the customer's risk for prepaid delivery. DWT is not liable for damages or losses that occur during transportation or any delays that may arise. If nothing different is agreed upon, the delivery is carried out at our best discretion without the obligation for the cheapest shipping.
- 6) If the events named under §4 para. 3 make the delivery or performance significantly difficult or impossible for DWT and the impairment is not only of a temporary nature, DWT is entitled to step back from the contract.

## **§ 5 Payment**

- 1) Payments from the customer are seen as effective at the point in time and the degree at which they have permanently and irrevocably been credited to the account specified by DWT and DWT can access the amount. If nothing different is agreed upon, the demands from DWT are due immediately upon handover of the merchandise and must be paid in cash. Discount reductions require a separate agreement.
- 2) If the payment target is exceeded, the customer is in default without warning and starting on the first day of the delay of the payment target, DWT has the right to the payment of legal default interest in accordance with § 456 Austrian Corporate Code (UGB) at an amount of 9.2% over the basic interest rate (currently 9.08%) as well as any costs that arise due to the default of payment.
- 3) DWT is entitled to credit the payments from the customer, despite any other conditions, to their older debt and in this case, the customer will be informed about the type of crediting that has occurred. If interest and costs have already

been incurred, DWT is entitled to credit the payments to these costs/interest, etc. and lastly to the main claim.

- 4) In the event of a worsening of the customer's economic conditions or other circumstances that put the customer's solvency into question, DWT is entitled to make open claims from the customer due prematurely and to demand a security through an advance payment or other guarantees before fulfilment of their own contract obligations.
- 5) Any rights of retention and set off from the customer are ruled out unless they are claims that have been confirmed in writing by DWT or by a legally effective decision.
- 6) In the event of a default of payment, the customer is obligated on demand to provide the required information about the stock of the merchandise in their possession that is the DWT property. If the default of payment is longer than 4 (four) weeks, DWT is entitled to pick up the merchandise delivered under the right to retention provided that they have not yet been paid for. The pick-up of the reserved goods is not seen as an exit from the contract, provided that DWT does not explicitly declare their exit in writing. Regardless of the payment obligations of the customer, DWT is entitled to accept returned reserved goods at the net value that they would have for DWT at the time of the pick-up credited to the purchase price after the customer was informed of this type of usage under determination of an appropriate period for payment.

## **§ 6 Warranty**

- 1) Wood is a natural product and therefore has chemical-biological and physical properties as such. The natural properties, deviations and characteristics must therefore be respected by the customer and considered while purchasing, storing and using the merchandise. The merchandise may also deviate compared to the sample and brochures in regards to its colour, structure and other properties. These deviations do not represent a reason for guarantee claims or other forms of liability from DWT.
- 2) The customer's warranty rights require that they fulfilled their immediate inspection and objection obligations and any defect was already present upon handover. A supposed deficiency is ruled out. The customer must examine the conformity of the delivered merchandise immediately - definitely before further processing or sale. Obvious defects must be reported immediately in writing after the merchandise has been handed over. Other defects must be asserted against DWT immediately after observance. The carrier must be informed immediately of any transport damage and this must be noted on the cargo documents (e.g.: CMR), which must be sent in advance to DWT by fax.
- 3) The warranty period for deliveries and services from DWT amounts to 6 months after delivery or provision. DWT is not liable for any defects that occur later.
- 4) If the customer violates their obligation to proper storage, in particular protective measures to avoid moisture, makes changes to the product or uses the delivered merchandise improperly, they lose all claims from the warranty.
- 5) A liability for normal wear is ruled out. DWT is not liable for damage that occurs through incorrect storage or improper usage of the merchandise by the customer or third parties.

- 6) In the event of a punctual notice of defects, the customer must allow DWT to examine the merchandise on request.
- 7) In the event of a warranty, DWT is entitled to a follow-up or replacement delivery, improvement or also to credit the reduced value or to convert it depending on what is feasible.
- 8) Any defects do not affect the customer's obligation to payment
- 9) Only the customer is entitled to any warranty claims and which cannot be assigned.
- 10) Rights of recourse from the warranty, in particular any according to § 933b ABGB, are ruled out.
- 11) The customer's contract withdrawal is limited to severe contract violations not repaired within an appropriate period and a default in improvement and is only in regards to the deliveries affected by the defects.

## **§ 7 Liability restrictions**

- 1) Any liability from DWT and their employees and assistants from the fulfilment of their contractual obligations is ruled out with the exception of intentional and gross negligent behaviour and is limited in its amount with the value of the delivery or service. The claim must be asserted within twelve months after acknowledgment of the damage.
- 2) The replacement for indirect damages, like pick-up costs, production failure costs and other subsequent damage including lost profit, pure asset damage, savings not obtained, interest loss, damage due to improper usage and damage from claims of third parties against the customer is ruled out.
- 3) The customer must prove DWT's fault, in particular in the event of gross negligence and intention as well as for any other type of damage,
- 4) The liability for damage due to a violation of protection rights from third parties is ruled out and the customer holds DWT harmless.
- 5) A recognition of claims against third parties that could justify a liability from DWT is explicitly permitted for the customer. The customer must inform DWT immediately in writing of all required information about alleged claims from third parties against a violation of rights of all types in connection with the delivery of merchandise and services and provide DWT with appropriate support during the defence of claims.

## **§ 8 Retention of title**

- 1) The delivered merchandise remains the property of DWT until complete payment of all claims from DWT against the customer existing on the invoice date. With a current invoice, the reserved property is seen as security for the outstanding claim from DWT. The merchandise with a retention of title is referred to as reserved merchandise in the following.  
The claims from the customer to DWT from the sale of the reserved merchandise are only rescinded with the assignment of the order to secure all claims from DWT from the business relationship. The customer is only entitled and authorized to sell the reserved merchandise if the claim comes from the sale to DWT.

- 2) In the event of the sale of merchandise delivered by DWT to the customer, DWT retains a proportionate co-ownership of the newly produced merchandise. This also applies with an equal mixing of merchandise from DWT with other merchandise by the customer. The customer will store the reserved goods free of charge and is obligated to store these to sustain value and separate from other merchandise. Pledges, chattel mortgages or other orders that could harm DWT's rights are not permissible.
- 3) The claims arising from orders on the reserved goods (including all balance claims from the current account) will be rescinded by the customer to DWT already upon the signing of the contract. The customer is obligated to place corresponding notes in their books and on invoices and to prove this to DWT on request. A separate bank account must be held for the collection of such claims rescinded to DWT.
- 4) If third parties access the reserved goods, the customer must identify the property from DWT and immediately inform DWT of this in writing, in particular of seizures and any impairments to the merchandise.
- 5) On request from DWT, the customer is obligated to send a written, exact list to DWT of the claims passed over according to this guideline with the data from the debtors and to provide the required information for the assertion of the rescinded claims and to provide miscellaneous support in the provision or recovery, whereby all of costs affiliated with this must be covered by the customer.

## **§ 9 Final clauses**

- 1) Austrian law applies. The applicability of the UN sales law is ruled out.
- 2) The jurisdiction for all disputes from the legal relationship justified through an individual order and its acceptance is either the Commercial Court of Vienna or the general jurisdiction of the customer, as chosen by DWT.
- 3) The place of fulfilment for delivery and payment is the headquarters from DWT.
- 4) The rights and obligations from the business relationship between DWT and the customer are solely in regards to these parties, as well as their permissible legal successors.
- 5) If a regulation in these previous conditions or any other clause in other agreements between DWT and the customer is or becomes invalid, the effectiveness of all other regulations and clauses in these previous conditions and other agreements are not affected by this.

Vienna, April 2016

Subject to changes and updates