

General terms of delivery and payment for the timber trade (GTDP) for exclusive use in business transactions



As of: 1 January 2018

1. SCOPE

1.1 Unless otherwise expressly agreed, the following "General Terms of Delivery and Payment" (GTDP) apply, in addition to the customs of timber transport (Tegemseer customs), to all contracts, deliveries and other services in business transactions with entrepreneurs within the meaning of § 14 BGB (German Civil Code), legal entities of public law or public special funds (collectively "customers").

1.2 Our GTDP apply exclusively. Deviating, conflicting or supplementary terms and conditions of the buyer shall only become part of the contract if and insofar as we have expressly consented to their application. This approval requirement applies in any case, for example, even if we provide the service to the buyer without reservation in knowledge of the buyer's terms and conditions.

1.3 Within the framework of an ongoing business relationship between merchants, the GTDP will also be part of the contract if the seller has not expressly referred to their inclusion on a case-by-case basis.

1.4 On a case-by-case basis, individual agreements with the buyer (including side agreements, additions and changes) have priority over these GTDP. A written contract or our written confirmation shall be decisive for the content of such agreements, subject to contrary evidence.

1.5 Legally relevant declarations and notifications that are to be submitted to us by the buyer after the conclusion of the contract (e.g. deadlines, notification of defects, declaration of rescission or reduction) must be in writing to be effective.

2. OFFERS AND CONCLUSION OF CONTRACT

2.1 The offers contained in the catalogues and sales documents of the seller, as well as on the internet - as far as they are not expressly designated as binding - are always non-binding and without engagement, i.e. only an invitation to submit an offer.

2.2 Orders are considered accepted if they are either confirmed by the seller or executed immediately after receipt of order.

2.3 If, after the contract's conclusion, the seller gains knowledge of circumstances, especially payment delays, which would permit a conscientious entrepreneur to draw the conclusion that the purchase price claim is jeopardized due to a lack of solvency on the part of the buyer, the seller is entitled, after setting a reasonable deadline, to demand from the buyer either payment or corresponding securities at the buyer's discretion and, in the event of refusal, to withdraw from the contract, whereby the invoices for partial deliveries already made will become due immediately.

3. DELIVERY, TRANSFER OF RISK AND DELAY

3.1 The condition of correct and punctual deliveries to us as the supplier remains reserved.

3.2 The risk of accidental loss and accidental deterioration of the goods passes to the buyer at the latest with the transfer. However, in the case of consignment purchase, the risk of accidental loss and accidental deterioration of the goods, as well as the risk of delay shall pass to the forwarder, the carrier or the person or institution otherwise responsible for carrying out the consignment.

3.3 Partial deliveries are permitted to a reasonable extent.

3.4 The delivery period is individually agreed or specified by us upon acceptance of the order. If this is not the case, the delivery period is approximately three (3) weeks from the contract's conclusion.

3.5 If we are unable to comply with binding delivery deadlines for reasons for which we are not responsible (non-availability of the service), we will inform the buyer immediately and at the same time notify them of the expected new delivery deadline. If the service is not available within the new delivery period, we are entitled to withdraw from the contract in whole or in part; we will immediately reimburse any consideration already provided by the buyer. Non-availability of the service in this sense refers particularly to non-timely delivery from our suppliers, where neither we nor our suppliers are at fault or where we are not obliged to procure in the individual case.

3.6 In the event of a delay in delivery, the buyer is obliged, at the request of the seller, to declare within a reasonable period whether they wish to continue to insist on delivery or withdraw from the contract because of the delay and/or demand damages instead of delivery.

3.7 If we are in delay with delivery, then the buyer can demand lump sum compensation for their default damages. The lump sum for each completed calendar week of default amounts to 0.5% of the net price (delivery value), but in total not more than 5% of the delivery value of the goods delivered late. We reserve the right to prove that the buyer has incurred no damage or only a much lesser damage than the above lump sum.

3.8 The rights of the buyer in accordance with section 7 of this GTDP and our statutory rights remain unaffected, particularly in the case of an exclusion of the obligation to perform (for example due to impossibility or unreasonableness of the service and/or subsequent performance).

4. PRICES AND TERMS OF PAYMENT

4.1 Unless otherwise agreed, our current prices are those valid at the time of the contract's conclusion, ex warehouse (plus statutory VAT) and the purchase price is due immediately upon receipt of the goods without deduction.

4.2 If buyers and sellers participate in a business-to-business direct debit scheme, it is sufficient if the prenotification on the debit amount and the due date reaches the buyer one day before the due date.

4.3 We are entitled at any time, even in the context of an ongoing business relationship, to only carry out a delivery in whole or in part in return for advance payment. We declare a corresponding reservation at the latest with the order confirmation.

4.4 In the event of default, interest shall be charged in the amount of the respective bank rates for overdrafts, but at least the statutory default interest. Any agreed discounts will not be granted if the buyer is in default of payment for previous deliveries. Discount periods begin on the invoice date.

4.5 If the buyer defaults on payment after a reminder (§ 286 (1) BGB) or fails to honour a bill on the due date, the seller is entitled to take back the goods or to demand them back after a prior reminder. The seller may also prohibit the removal of the delivered goods. The return is considered a withdrawal from the contract.

4.6 A refusal to pay or retention is excluded if the buyer knew of the defect or other reason for complaint at the time of the contract's conclusion. This also applies if the defect remained unknown to the buyer as a result of gross negligence, unless the seller has fraudulently concealed the defect or any other reason for complaint or provided a guarantee for the quality of the object.

Otherwise, the payment may only be retained to a reasonable extent due to defects or other complaints. In the event of a dispute, an expert appointed by the Chamber of Commerce and Industry of the buyer shall decide on the amount. This expert shall also decide on the distribution of the costs of their intervention at their own discretion.

4.7 Offsetting or retention is only possible with undisputed or legally binding claims.

4.8 If, after the contract's conclusion, it becomes apparent (e.g. by application for opening insolvency proceedings) that our claim to the purchase price is jeopardized due to a lack of solvency on the part of the buyer, we are entitled according to the statutory provisions to refuse service and - if necessary after setting a deadline - to withdraw from the contract (§ 321 BGB). In the case of contracts for production of items made to specification (single-unit products), we can declare our withdrawal immediately, without prejudice to the statutory provisions on the dispensability of the deadline.

5. WOOD PROPERTIES

5.1 Wood is a natural product; therefore, its inherent properties, deviations and unique characteristics can always be observed. Most importantly, the buyer must take into account the biological, physical and chemical properties of wood when buying and using this material.

5.2 The range of natural colour, structure and other differences within the one type of wood are due to the properties of the natural product and do not represent any reason for complaint or liability.

5.3 If necessary, the buyer is to seek expert advice.

6. DISCLAIMER, WARRANTY AND LIABILITY

6.1 The properties of the goods, particularly quality, type and dimensions, are determined by the agreements made between the parties. Agreements on the condition of the goods are all product descriptions that are subject matter of the individual contract, it makes no difference whether the product description comes from the buyer, the manufacturer or us. If there is no such agreement, the relevant DIN and EN standards shall prevail. Declarations of conformity and CE marks do not constitute independent guarantees. The buyer is responsible for risks relating to the suitability and usage of the goods.

6.2 For defects within the meaning of § 434 BGB, the seller is liable only as follows:

The buyer must examine the received goods immediately for quantity and condition. Obvious defects must be reported to the seller within 14 days in writing. In mutual commercial transactions among merchants, §§ 377, 381 HGB (German commercial code) remain unaffected. Incidentally, reference is made to the Tegemseer customs.

6.3 If the buyer finds defects in the goods, they must not dispose of said goods, i.e. they may not be shared, resold or further processed until an agreement has been reached on the handling of the claim or a procedure for securing evidence has been carried out by an expert commissioned by the Chamber of Commerce and Industry at the buyer's place of business.

6.4 In the case of legitimate complaints, the seller is entitled to determine the type of supplementary performance (replacement, subsequent improvement), taking into account the nature of the defect and the legitimate interests of the buyer. We are entitled to make the owed supplementary performance dependent on the buyer paying the due purchase price. The buyer is, however, entitled to retain a portion of the purchase price which is reasonable in relation to the defect.

6.5 The buyer must notify the seller as soon as possible about any case of warranty communicated by a consumer.

6.6 The buyer must give us the time and opportunity required for the owed supplementary performance, most importantly, by handing over the rejected goods for examination purposes. In case of replacement, the buyer must return the defective item in accordance with the legal regulations.

6.7 Claims for defects of quality shall become statute barred within 12 months. This does not apply insofar as the law requires longer periods in accordance with §§ 438 (1) no. 2 (buildings and items used for buildings), 479 (1) (right of recourse) and 634a (1) no. 2 (building defects) BGB.

6.8 The place of performance of the supplementary performance is the seller's place of business.

6.9 If the defective goods were concealed at the time of the transfer of the risk to the purchaser, or depending on their type and intended purpose, were incorporated into another item or attached to another item, the seller bears the necessary expenses for the removal of the defective goods and the installation or attachment of the rectified items or newly delivered goods, as well as the expenses for transport, travel, labour and material costs required for supplementary performance.

7. GENERAL LIMITATION OF LIABILITY

7.1 Insofar as these GTDP, including the following provisions, do not state otherwise, we shall be liable in the event of a breach of contractual and non-contractual obligations in accordance with statutory provisions.

7.2 We shall be liable for compensation - for any legal ground - in relation to fault-based liability in cases of intent and gross negligence. In the case of ordinary negligence, we are liable subject to a milder liability standard in accordance with legal regulations (e.g. for the diligence we exercise for our own matters) only a) for damages resulting from injury to life, limb or health and b) for damages resulting from a material breach of contract (an obligation, the fulfilment of which is essential for the proper performance of the contract and the compliance with which the contracting party may regularly rely and trust), in which case our liability is limited to compensation for foreseeable, typically occurring damage.

7.3 The liability restrictions derived from section 7.2 also apply to breaches of duty by or for the benefit of persons for whose fault we are responsible under statutory provisions. These restrictions do not apply if we fraudulently concealed a defect or assumed a guarantee for the quality of the goods and for claims of the buyer under the Product Liability Act.

7.4 For a breach of duty that does not result in a defect, the buyer can only withdraw or terminate if we are responsible for the breach of duty. A free right of termination of the buyer (in particular pursuant to §§ 651, 649 BGB) is excluded. Incidentally, the legal requirements and legal consequences apply.

8. STATUTE OF LIMITATIONS

8.1 Notwithstanding § 438 (1) no. 3 BGB, the general limitation period for claims arising out of defective goods and defective title is one (1) year from the date of delivery. Insofar as an acceptance has been agreed, the statute of limitations begins with the acceptance.

8.2 However, if the goods are a building or a thing that has been used in accordance with its normal use for a building and has caused its defectiveness (building material), the limitation period is five (5) years from the date of delivery pursuant to the legal provisions (§ 438 (1) no. 2 BGB). Further statutory special regulations regarding the statute of limitations remain unaffected (particularly § 438 (1) no. 1, (3) §§ 444, 479 BGB).

8.3 The above limitation periods under the law governing the sale of goods also apply to contractual and non-contractual claims for damages of the buyer, which are based on a defect of the goods, unless the application of the regular statutory limitation period (§§ 195, 199 BGB) would lead to a shorter limitation period in the individual case. Claims for damages of the buyer in accordance with section 7.2 sentence 1 and sentence 2 a), as well as according to the Product Liability Act expire in accordance with the statutory provisions.

9. RETENTION OF TITLE

9.1 The seller reserves ownership of the goods until full payment of the purchase price.

9.2 If the reserved goods are processed by the buyer into a new movable item, the processing is carried out for the seller, without the latter being bound thereby; the new thing becomes the property of the seller. When processing together with goods not belonging to the seller, the seller acquires co-ownership of the new object according to the ratio of the value of the reserved goods to the other goods at the time of processing. If the reserved goods are combined, mixed or blended with goods not belonging to the seller in accordance with §§ 947, 948 BGB, the seller becomes co-owner in accordance with the statutory provisions. If the buyer acquires sole ownership by combining, mixing or blending, they already transfer co-ownership to the seller according to the ratio of the value of the reserved goods to the other goods at the time of combining, mixing or blending. In these cases, the buyer must store the property owned or co-owned by the seller, which also counts as reserved goods within the meaning of the preceding conditions, free of charge.

9.3 If reserved goods are sold alone or together with goods not belonging to the seller, the buyer hereby assigns the claims resulting from the resale in the amount of the value of the reserved goods with all ancillary rights and ranking ahead of the rest; the seller accepts the assignment. The value of the goods subject to retention of title is the amount invoiced by the seller, which will, however, be left out of account if it conflicts with third party rights. If the resold reserved goods are still co-owned by the seller, the assignment of the claims extends to an amount corresponding to the seller's share value in the co-ownership.

9.4 If the buyer incorporates the reserved goods as an integral part of an immovable object (a) of a third party or (b) of the buyer, the buyer hereby assigns the assignable claims for remuneration that arise against (a) the third party or (b) the buyer in the event of the sale in the amount of the value of the goods subject to retention of title with all ancillary rights, including such upon granting a lien, with a rank above the rest; the seller accepts the assignment. Section 9.3, sentences 2 and 3 apply accordingly.

The buyer is only entitled to resell, use or install the reserved goods in the normal course of business and only on the condition that the claims in the sense of sections 9.3 or 9.4 are actually transferred to the seller. The buyer is not entitled to other dispositions of the reserved goods, particularly pledging or transfer by way of security.

9.6 The seller authorises the buyer, subject to revocation, to collect the claims assigned under sections 9.3 and 9.4. The seller will not make use of their own collection authority as far as the buyer meets their payment obligations, also towards third parties. At the request of the seller, the buyer must name the debtors of the assigned claims and notify them of the assignment; the seller is also authorised to inform the debtors of the assignment themselves.

9.7 Upon suspension of payment and/or application for the opening of insolvency proceedings, the right to resell, use or install the reserved goods or to authorise the collection of the assigned claims expires. This does not apply to the rights of the insolvency administrator.

9.8 If the value of the granted securities exceeds the claims (if applicable, reduced by payments on account and partial payments) by more than 20%, the seller is obliged to retransfer or release such securities at their discretion.

10. FINAL PROVISIONS

10.1 The place of fulfilment and place of jurisdiction for deliveries and payments (including cheque and bill actions), as well as all disputes arising between the parties is the headquarters of the seller, as far as the buyer is a merchant,

a legal entity under public law or special fund under public law. However, in all cases, we are also entitled to bring action at the place of performance of the delivery obligation in accordance with these GTDP or a priority individual agreement or at the general place of jurisdiction of the buyer. Preferential legal provisions, especially exclusive jurisdictions, remain unaffected.

10.2 The relations between the contracting parties are governed exclusively by the law applicable in the Federal Republic of Germany to the exclusion of the UN Sales Convention.

10.3 The buyer is hereby informed that the seller collects, processes and uses the necessary personal data obtained in the context of the business relationship in accordance with the provisions of the applicable European and German data protection laws.

10.4 Should a provision of these GTDP be invalid (e.g. unlawful or otherwise unenforceable), this shall not affect the validity of the remaining provisions. The invalid provision shall be replaced by a mutually agreed legally effective provision with a similar economic and legal effect. The same applies to any gaps or omissions in the GTDP.

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Original version from the Gesamtverband Deutscher Holzhandel e.V. (German Timber Trade Federation), Wiesbaden, pursuant to § 38 (2), No. 3 GWB, filed with the Federal Cartel Office on 22.03.2002 and published in the Federal Gazette No. 80 dated 27.04.2002.