

# Terms of Sale and Delivery

## 1. Scope of applicability

- 1.1 These Terms of Sale and Delivery shall apply to all sale and delivery transactions of SWISS KRONO GmbH and SWISS KRONO TEX GmbH & Co KG (hereinafter each referred to as "Seller").
- 1.2 These Terms of Sale and Delivery shall apply exclusively. The Buyer's business terms or amendments to these Terms of Sale and Delivery shall not constitute a component part of the contract even if the Seller does not object to these.
- 1.3 These Terms of Sale and Delivery shall also apply to all future sale and delivery transactions between the contracting parties.
- 1.4 These Terms of Sale and Delivery shall only apply in relation to persons who, in regard to the contractual relationship, are acting in the exercise of their commercial or self-employed occupational activities or to legal entities of public law or segregated estates under public law.

## 2. Offer and contract signing

- 2.1 A contract comes about at the time the parties have reached agreement on all essential components of the contract, in particular the price, and the Seller has confirmed the contract in writing (declaration of acceptance). Consultancy services of any kind, in particular in regard to the suitability of the purchase object for the Buyer's precisely intended purpose shall not be integral parts of the contract. The precise intended use of the goods, about which the Buyer may have informed the Seller, shall not be the commercial basis of the contract either. Testing the suitability of the goods for the Buyer's precisely intended purpose of use shall be a matter for the Buyer, possibly by engaging specialists such as structural engineers and architects.
- 2.2 Verbal agreements and quotations shall not bind the Seller. The Seller's written quotation shall bind the Seller only (in particular as relates to prices, delivery times, drawings, pictures, dimensions, weights or other specifications) only if these are explicitly stated in the quotation.
- 2.3 The Buyer shall be bound by its offer for two weeks unless a longer binding period is stated in the offer. A contract only comes about by the Seller's written declaration of acceptance, even if the offer has been made to a representative of the Seller.
- 2.4 All offer, contract and project documents may neither be copied nor made available to third parties without the Seller's consent. They must be immediately returned at the demand of the Seller, which may be done possible at any time.
- 2.5 The Seller may withdraw from the contract if the Buyer, despite the setting of a second deadline, has failed to fulfil its obligations to cooperate or if the Seller's performance of its services is not possible for reasons for which the Seller is not responsible or due to permanently insurmountable obstacles to performance that cannot be eliminated at reasonable expense. This shall also apply to the Seller's particular specifications (e.g. special models), in particular the quality and deadlines demanded.
- 2.6 The Seller may withdraw from the contract if payment of the agreed price has not been ensured by the agreed deadline for delivery (e.g. by trade credit insurance, bank guarantee, payment in advance).
- 2.7 If the seller withdraws from the contract as stated in items 2.5 or 2.6, the Buyer may not assert any other claims against the Seller apart from any advance payments made under this contract.

## 3. Prices

- 3.1 The agreed price is exclusive of valid statutory VAT in each case. If there are statutory provisions governing exemption from VAT, the corresponding requirements must have been met with a direct temporal link to the delivery. Tax-free EU deliveries: the Seller is obliged to provide corresponding evidence, that the delivered goods have actually left Germany and reached another EU member state (known as a "confirmation of arrival"). The Seller shall provide the Buyer with the confirmation of arrival by e-mail. For this notification, the Seller requires the Buyer to issue a declaration of consent to the electronic receipt of the confirmation of arrival (self-collector). The confirmation by e-mail may only be sent by the Buyer after the goods have actually arrived in another EU member state. The Buyer shall reimburse the consequential costs incurred by the Seller due to the lack of the abovementioned documentary evidence, e.g. subsequent VAT charges and other damage incurred. In all other respects, the agreed price applies ex delivery works; the Buyer shall be responsible for the dispatch of the goods and it shall bear the costs of packaging, insurance, freight, customs duties, import duties and other charges. Packaging will not be taken back.
- 3.2 Where changes have been agreed after signing of the contract at the Buyer's request the Buyer shall be obliged to pay for the additional expense incurred by the Seller. If the price for the additional expense has not been agreed at the time the contract is changed, the price shall be determined on the basis of the Seller's original calculation taking the contract's price level into account.
- 3.3 Should raw materials and supply prices, salaries or other price-related economic conditions increase (e.g. rate fluctuations) between contract signing and delivery for reasons for which the seller is not liable, then the Seller may at its equitable discretion (sec 315, par 1 German Civil Code) adjust the price accordingly.
- 3.4 If advance payment has not been agreed, then payments shall be due 7 calendar days after invoicing with a 2% discount and 30 calendar days after invoicing without any deduction. Partial deliveries are admissible allowed and may be invoiced separately. Payments shall only be made in Euros.
- 3.5 In case the Buyer comes in payment arrears, the Buyer shall forfeit all discounts, sales and freight reimbursements and other special terms granted in connection with the sale and delivery transaction in question. In case of payment arrears by the Buyer, the Buyer shall also owe late payment interest in the amount of 12% of the debt per annum and a lump sum of € 40.00. The Seller's claims due to arrears going beyond this shall not be affected. In case the Buyer comes in payment arrears, the Seller may suspend further deliveries to the Buyer even if they are not part of the same sale and delivery transaction.
- 3.6 Payments shall be made by bank transfer. The acceptance of drafts and cheques shall not have fulfilling effects. All costs and damages incurred due to redemption or non-redemption of drafts and cheques shall be borne by the Buyer.
- 3.7 Contrary to the Buyer's payment terms, the Seller may apply the Buyer's payments as follows: Costs of legal enforcement, interest, principal debt. The setoff may entail an increase in the interest rate. The Buyer must be notified within a month of receipt of payment of the set-off, otherwise the Buyer's payment terms shall apply.
- 3.8 Should the Buyer be entitled to claims against the Seller (counterclaims), the Buyer shall only be entitled to set-off, retention or reduction of the principal debt if the counterclaims have been definitively adjudicated or are not in dispute.
- 3.9 The assignment of the Buyer's claims against the Seller shall only be legally effective with the Seller's consent.

## 4. Delivery of the goods

- 4.1 The Seller shall at the earliest be obliged to deliver the ordered goods if payment of the agreed price within the meaning of item 2.6 has been ensured.
- 4.2 The Buyer shall take over the goods at Seller facility immediately after being notified about readiness for pick-up. If the goods are not picked up within two weeks of such notification, the goods shall be considered picked-up and may be publically stored at Buyer's expense. The Buyer shall reimburse Seller for the damages incurred in context with the delay in pick-up; any further claims in context with the delay on pick-up shall not be affected.
- 4.3 The Seller may produce the goods in modified form where that is required by statutory regulations and does not entail any deterioration of quality or fitness for intended purpose.
- 4.4 To the extent unforeseeable events (e.g. interruption of business operations, strikes, sovereign actions, traffic interruptions, fire, natural catastrophes or other cases of force majeure) make compliance with agreed delivery deadlines impossible, these deadlines extend accordingly without the Buyer being entitled to any claims. This also applies, if the buyer fails to fulfil co-operation obligations, for example to make available all released planning documents required for production of the goods.
- 4.5 Should the agreed delivery deadline be exceeded by the Seller by more than two weeks without the Buyer being responsible for this, then the Buyer may set an appropriate second deadline for the Seller in writing which must extend for a period of at least two weeks. Only after it passes to no avail may the Buyer withdraw from the contract.
- 4.6 Should the Seller be late in delivering, then the Buyer's claims shall be limited to an amount of 0.5% of the value of the contractual goods affected by the delay for every week of delay, and at most to a maximum amount of 5% of the value of the goods affected by the delay. Item 3.5, sentence 2, clause 2 shall apply accordingly in favour of the Seller. Buyer claims extending beyond this may only be considered in case of deliberate intent, gross negligence or violation of a cardinal obligation by the Seller.
- 4.7 Item 4.4 and 4.5 shall not apply where there is a forward commercial transaction; in that case sec 376 of the Commercial Code (HGB) shall apply.

## 5. Passing of risk

- 5.1 The risk of accidental destruction or accidental deterioration of the goods shall pass upon acceptance or notional acceptance of delivery by the Buyer as per item 4.1, sentence 2.
- 5.2 Should shipment to the Buyer be agreed (regardless of at whose expense) the risk shall pass to the Buyer upon notification of readiness to ship.

## 6. Warranty

- 6.1 The Seller's items primarily consist of wood, a natural product. Its natural characteristics bring about a variety of natural colour, structure and other unique features and are therefore not any type of flaw or defect. Insignificant deviations from the description of the goods, in particular tolerances listed in standards and, in the case of fixed-dimension slabs, dimension deviations of up to 10% shall not constitute any flaw outside of the cases regulated in item 4.2. This shall apply analogously if the expense of remedy for the flaws does not exceed 4% of the value of the goods in the sale or delivery transaction.
- 6.2 In case of the application of melamine-resin coated products outside of Europe, the Seller shall only be liable for flaws if the Seller has been notified in writing of the intended purpose of use and the location where the goods are used and the suitability of the material has been confirmed by the Seller in writing.
- 6.3 Warranty claims are conditional upon the Buyer first providing the Seller with the flawed goods for inspection purposes. Returns must therefore be coordinated between the contract parties.
- 6.4 Warranty claims are conditional upon the Buyer making complete and timely payment to the Seller for the goods.
- 6.5 The Buyer shall under item 5 be obliged to immediately examine the goods for flaws, including wrong deliveries and incorrect quantities and to submit complaint about them in writing. This shall also apply where samples have been delivered in advance. Where flaws are only visible later, complaint must also be submitted immediately. In case of violations of the obligation to examine and complain, there shall be absolutely no entitlement to claims against the Seller.
- 6.6 In case of flaws, the Buyer's warranty claim shall at first be for subsequent fulfilment by replacement delivery; the Seller may instead at its discretion undertake subsequent fulfilment by replacement delivery. Only if the subsequent fulfilment fails or is rejected by the Seller shall the Buyer be entitled, at its own discretion, to a reduction in price or be entitled to withdraw.
- 6.7 The Seller shall only be liable for property and financial damages where there is deliberate intent or gross negligence. Liability shall be limited to damages that are contractually typical and foreseeable at the time of contract signing. This restriction shall not apply where there is injury to life, limb or health for which the Seller is responsible as well as in case of violations of essential contractual obligations and claims under the Product Liability Act. The limitation on liability shall analogously apply to damages for third-party claims against the Buyer.
- 6.8 For legal flaws in connection with patent rights, the Seller shall only be liable where there is deliberate intent or gross negligence.
- 6.9 The Buyer's claims against the Seller due to flaws shall be time-barred in one year. This shall not apply to goods covered by sec 438, par 1, no 2 of the German Civil Code. The statute of limitations shall begin to run when risk passes according to item 5.
- 6.10 The Buyer shall only be entitled to recourse claims against the Seller due to regulations on the purchase of consumer goods to the extent that the Buyer has not established with its contractual partner in the supply chain any claims going beyond statutory defect claims. The Buyer's recourse claims shall be time-barred in one year; sec 479, par 2 of the German Civil Code shall not be applicable. Items 6.7 and 6.9 shall apply analogously. Payment deadlines, rebates, discounts, assumption of shipping services and comparable services shall be deemed to be equivalent compensation within the meaning of sec 478, par 4, sentence 1 of the German Civil Code. The Buyer shall be obliged to immediately notify the Seller of any recourse event occurring in the supply chain.
- 6.11 The warranty obligation for flaws shall lapse if the goods are modified, processed or improperly handled.
- 6.12 If the Buyer demands compensation from the Seller under the warranty and it is later determined that Seller has no such warranty obligations, the Buyer must compensate the Seller for expenses incurred.

## 7. Retained title

- 7.1 The goods delivered shall remain the Seller's property pending complete fulfilment of all of the Seller's claims against the Buyer under the sale and delivery transaction. The inclusion of individual claims in a current account invoice or their balancing out and acknowledgement by the Seller shall not rescind retained title.
  - 7.2 The goods delivered shall remain the Seller's property pending complete fulfilment of all claims against the Buyer to which the Seller is entitled, regardless of the legal reason for this, at present or in the future. Item 7, sentence 2 shall apply analogously.
  - 7.3 The Buyer shall be entitled to combine, commingle and process the retained title goods in its regular commercial business, and more specifically for the Seller as producer, but without any obligation on the latter. Should the Seller's title to the delivered goods lapse due to combination, commingling or processing, the Buyer hereby assigns co-title to the new object to the Seller in the ratio of the value of the goods delivered to the Buyer's object at the time of combination, commingling or processing.
  - 7.4 The Buyer shall bear the risk for the Seller's goods. It must store them carefully, label them as the Seller's property and separate them and insure them against loss, theft, fire, etc. It hereby assigns the claim for insurance in the event of damages to the Seller, who simultaneously accepts such assignment. In case of attachment or any other impairment of the Seller's rights by third parties, the Buyer must advise said third parties of the Seller's rights and immediately notify the Seller in writing. Costs incurred due to attachment or other impairment or due to failure to notify of the Seller's rights (including those of legal enforcement) as well as damages shall be borne by the Buyer.
  - 7.5 The Buyer shall be entitled to sell the Seller's goods or the new object in its routine business operations. Pledging or collateralization shall be barred. Claims incurred by this sale are hereby assigned by the Buyer to the Seller, who simultaneously accepts such assignment. The Buyer shall be obliged to keep the proceeds for the Seller separate from its own or third-party assets and to document the same in its accounts or on its invoices. Should the Buyer's claims from sale be included on the current account of a third party, then the Buyer must object to this by referring to the Seller's rights and to immediately inform the Seller in writing. The Seller hereby authorises the Buyer to collect on the assigned claims on its own behalf; the authorisation may be revoked in the if the Buyer is in arrears in fulfilment of its obligations towards the Seller.
  - 7.6 Should the value of the above cited collateral permanently exceed 20% of the Seller's claims, then the Seller may to that extent release them at its own discretion.
  - 7.7 The Buyer shall be obliged to make all efforts, in particular to issue every legal declaration in relation to the Seller or third parties in order to assert the retained title agreed above to the full extent, including as well under the foreign law of the place of delivery or of the Buyer's legal domicile.
- ## 8. Release from liability
- 8.1 The Buyer shall be solely liable in its internal relationship as co-producer under the Product Liability Act. It shall hold the Seller harmless against all third-party claims.
  - 8.2 Where the Buyer has provided the Seller with specifications for production of the goods the implementation of which entails a violation of patent, copyright, trademark or any other intellectual property right then the Buyer shall hold the Seller harmless against third-party claims.

## 9. Miscellaneous

- 9.1 All disputes shall be adjudicated under substantive German law. The application of the provisions of the UN Convention on the International Sale of Goods (CISG) shall be barred.
- 9.2 Where the Buyer lacks a general court jurisdiction in Germany (sec 38, par 2 of the Civil Procedure Code ZPO) or where the Buyer is a merchant, legal entity of public law or a segregated estate under public law (sec 38, par 1 of the Civil Procedure Code), Neurrupin shall exclusively be place of jurisdiction for all disputes arising from the contract. The Seller may at its discretion also initiate action in the courts of the Buyer's own jurisdiction.
- 9.3 Place of fulfilment for all obligations under the contract shall be at Heiligen-grabe near Wittstock.
- 9.4 If a clause of the contract is or becomes ineffective, the validity of the remaining clauses shall not be affected. The contract parties shall be obliged to agree on a new regulation of the matter coming closest in business terms to what the parties had originally intended.
- 9.5 No ancillary verbal understandings have been reached. Any amendment shall require written form, in which context transmission of a written statement by fax shall suffice. This shall also apply to any amendment of the requirement of written form itself. The requirement of written form shall also apply to statements with an impact upon the legal relationship of the parties, in particular to withdrawal and the setting of deadlines.

Heiligengrabe, September 2016