

# **General Terms of Business of Johann Offner Holzindustrie GmbH**

## **1. Scope of application**

The General Terms of Business (GTBs) apply to all present and future deliveries and to any other services provided by Johann Offner Holzindustrie GmbH, hereinafter called the Contractor, and to all its contractual business partners, hereinafter called the Customers, provided no other agreements have been reached in the individual sales contract concerned. The term "Customer" in the present General Terms of Business refers to the Customer himself, and in the event that an order is placed with a third party, also refers to the third party, as well as to the Customer's assistants. The Contractor will not accept any GTBs other than his own, and such GTBs of the Customer shall only be valid if the Contractor provides written confirmation of their validity, while at the same time expressly waiving the validity of his own GTBs. The GTBs are part and parcel of every contractual relationship which Customers enter into with the Contractor.

## **2. Commencement of the Contract**

All offers made by the Contractor are non-binding, whereby the Contractor shall, in particular, reserve the right to subsequently change the content and the scope of the offer concerned. The contract with the Contractor shall come into effect as soon as the order placed by the Customer has been accepted by post, by fax, by e-mail or by telephone. If the Contractor does not accept the order expressly, but rather through actually carrying out the order, the contract shall come into effect on commencement of carrying out the order.

## **3. Delivery**

Provided no other agreements have been reached, delivery shall be carried out at the cost and risk of the Customer. This shall apply even in the event that the Contractor has declared his willingness to bear the freight costs. The right of use and risk shall be transferred to the Customer from the moment that the Contractor hands over the contractually agreed delivery goods to the means of transport concerned. Delivery times/dates are non-binding; delivery dates specified by us are to be regarded as an approximate guide, although we always endeavour to adhere to the dates given. Partial deliveries shall, in particular, also be permissible, and will be invoiced for upon delivery. Moreover, in the event of a temporary supply shortfall, the Contractor shall be entitled to carry out partial deliveries and/or changes, after first informing the Customer, in accordance with the available stocks and the existing orders. Force majeure, disruption of operations, the impossibility of procuring any or sufficient raw materials, as a result of circumstances outside the Contractor's control, shall, at all events, release the Contractor from his obligation to adhere to the specified delivery dates, and shall entitle him to postpone these at his own discretion. In light of the fact that delivery times/dates are non-binding, in the event that delivery times/dates are overrun, the Contractor shall not be liable for any loss of business suffered by the Customer.

## **4. Warranty**

Any defects in the original raw unprocessed goods which have not been further processed, for which the Contractor bears the responsibility, shall be rectified at the Contractor's discretion, either through touching up the goods or through replacement, and/or after separate consultation, through conversion or a price reduction. In the

event of gratuitous transactions, the Contractor shall not be liable for any warranty obligations. Should the Customer refuse to accept a delivery, despite the existence of a legally valid contract, or should the Customer hinder the Contractor in some other way from fulfilling the contractually agreed delivery, the Customer shall pay the Contractor a contractual penalty amounting to 12 % of the value of the goods which he refused to accept even though they were delivered in accordance with the contract; the Contractor's right to make further claims, particularly damage compensation claims which exceed the said contractual penalty, shall remain unaffected by the above stipulation. Complaints concerning defects must - irrespective of any legally-stipulated earlier obligation of claims notification - be reported immediately after their discovery, but at the latest within 8 days (or 6 weeks in the case of non-visible defects) following the receipt of the delivery. In the case of valid complaints, warranty shall be limited only to the replacement of defective goods with fault-free goods, and can only be claimed for original raw unprocessed goods which have not yet undergone further processing. All warranty claims relating to goods delivered in an already processed state are expressly precluded by these GTBs. The Customer shall tolerate a proportion of defective goods comprising up to 3% of the total volume of a delivery, irrespective of the cause of the said defects. The Customer shall enumerate the alleged defects and notify the Contractor of these. At the request of the Contractor, the Contractor shall be given the opportunity of verifying the alleged defects on the spot. In the case of promptly lodged, fully justified complaints concerning defects, the Contractor shall be obliged, at his own discretion, to either touch up the defective goods or to replace them with fault-free goods, whereby the Contractor must be granted the time and opportunity which he estimates to be necessary for rectifying the said defects. Any damage compensation for consequential damage of any kind whatsoever is precluded by these GTBs.

## **5. Prices**

The sales prices communicated to the Customer and/or expressly displayed as of the date of concluding the contract shall apply. Basically, provided nothing else is specified, the information and prices communicated to the Customer by the Contractor shall be in Euros, and shall not include VAT/sales tax. Not included in the price shall be the costs of delivery, customs, charges and duties, etc. Should, for example, any customs, charges and duties be levied in connection with deliveries or with any other services, the Customer shall bear the costs of these. In the case of any obvious mistakes in the calculation of prices, the Contractor reserves the right to calculate the correct price. The cost of any subsequent changes made to the order at the instigation of the Customer, including the cost of any idleness of production machines connected with the said changes, shall be charged to the Customer. Should a delivery not be carried out, whereby the Contractor was prepared to carry out the delivery but was prevented from doing so due to circumstances for which the Customer is responsible, the Contractor shall therefore be entitled to receive the agreed remuneration. In this case, the Contractor will not need to offset any income he may earn or refrain from earning through using the goods in any other way. The Customer will be permitted to offset claims of the Customer towards the Contractor with claims of the Contractor towards the Customer only in the case of undisputed or legally established claims of the Customer towards the Contractor.

## **6. Retention of Title**

The delivered goods shall remain the property of the Contractor until full payment of all claims arising from the business connection has been made. Before full payment for the goods has been made, the Customer shall be forbidden to impawn or to assign the goods by way of security, or to grant third parties any other rights to the Con-

tractor's property. The Customer shall promptly notify the Contractor of any compulsory enforcement measures, or of any other attempts by third parties to appropriate the said goods subject to the Contractor's reservation of proprietary rights which may be detrimental to the legal status of the Contractor, in order to enable the Contractor to assert his property rights. The Customer shall be liable to the Contractor for any damages which may arise through the Customer's neglecting to fulfil this duty. The Customer shall immediately raise an objection to any such appropriation measures, while pointing out the Contractor's reservation of proprietary rights with regard to the said goods. Moreover, the Customer hereby cedes to the Contractor all claims relating to any resale of the said goods subject to the Contractor's reservation of title, and likewise insofar as the said goods have been further processed.

#### **7. Limitation of the Right to Return Goods/Exemption from Liability**

Damaged goods shall not be included in the right to return goods, unless such damage verifiably existed at the time of shipment to the Customer. The Contractor shall be exempt from any liability which goes beyond the limits of the above stipulations concerning warranty, provided the damage concerned does not arise from malice aforethought or gross negligence. In particular, these GTBs also preclude any liability for consequential damage, for any other indirect damage, and for any losses or unrealised profits which may be caused by wrong, omitted or delayed delivery. Moreover, the Contractor shall not be liable for any damage arising from changes to the delivered goods made subsequently by the Customer or by third parties, or from improper use of the goods. The Contractor's liability shall, at all events, be limited to defects in the raw unprocessed goods delivered in their original state. Any liability of the Contractor for goods which are already in a wholly or partly processed state is therefore expressly precluded by these GTBs. Any damage compensation claims can only be legally asserted in a court of law within six months of the claimant(s)' learning of the damage, but at the latest within three years of the occurrence upon which the claim is based, provided no other mandatory limitation periods are stipulated by law. In the case of deliveries to entrepreneurs in accordance with the Consumer Protection Law, these GTBs preclude any duty of replacement in the case of property damage claims based on the Product Liability Law or in the case of product liability claims based on any other regulations. Should goods be delivered to entrepreneurs in accordance with the Consumer Protection Law, these entrepreneurs shall, in contracts with their recipient purchasers, be obligated to agree on the exemption from liability for products stipulated above. Should they fail to fulfil this contractual obligation, the recipient purchaser shall be liable for any damages resulting from that omission. The delivery item offers only the degree of assurance which can be expected based on Austrian Standards (ÖNORMEN), authorization regulations, operating instructions, regulations on handling the delivery item issued by the delivering works, and any other guidelines given.

#### **8. Data Protection**

The Contractor agrees to process, use and, if necessary, to draw upon the personal data of the Customer in accordance with the regulations of the applicable Austrian Data Protection Law. In signing the contract, the Customer gives his consent for the Contractor, and for firms and assistants associated with the Contractor, to draw upon, process, store and use his personal data (name, registered office, addresses, date of birth, e-mail address, telephone number, etc.) and his order data for the purpose of drawing up offers, as needed, and of utilising the said data for accounting purposes, for the protection of his own rights and of those of third parties within the framework of the valid legal situation. In order to enable the Contractor to exercise the rights and fulfil the obligations arising from the concluded contract, he shall be

entitled to pass the data on to third parties who are involved in executing the terms of the contract. These GTBs preclude any liability on the part of the Contractor for the passing-on or the misuse of the data by any third parties and assistants who are involved in executing the terms of the contract.

#### **9. Industrial Property Rights/Copyright**

The Customer shall assume sole liability in the event that the rights of third parties, particularly copyright or any other industrial property rights, are infringed through the fulfilment of his order. The Customer shall indemnify and hold harmless the Contractor in respect of any such infringements of rights.

#### **10. Severability Clause**

Should any individual clauses of the contract concluded between the Contractor and the Customer, and likewise of these GTBs, prove ineffective, either in whole or in part, this shall not affect the validity of the remaining contractual clauses or of any parts of the said clauses. The relevant legal regulations shall take the place of the ineffective or missing clauses. Even in the event that the Contractor either does not exercise, or has not exercised, either individual rights or all of the rights to which he is entitled, it may not be therefore inferred that he has waived the said rights.

#### **11. Legal Venue/Applicable Law**

The Austrian court responsible for the place of business of Johann Offner Holzindustrie GmbH has exclusive competency for all disputes arising directly or indirectly from the contractual relationship, including disputes over its validity, breach, dissolution, or nullity up to a value of € 50,000.00. Such disputes in excess of € 50,000.00 shall be finally resolved, without recourse and exclusively under the Rules of Arbitration and Conciliation of the Arbitration Court of the Vienna Commodity Exchange by arbitrators appointed in accordance with these rules, whereby disputes up to € 100,000.00 must be decided by individual arbitrators and disputes in excess of € 100,000.00 must be decided by a senate of 3 arbitrators. The place of arbitration is Vienna; the language of the court is German. All legal relationships between the contractor and the client shall be governed exclusively by Austrian law, excluding the conflict of laws rules of international private law and UN CISG. The language in which all business, contracts, and complaints shall be conducted is exclusively German. The place of performance is Wolfsberg, even if ordered goods are delivered to another location in accordance with the agreement. The contractor reserves the right to change the general terms and conditions without specifying reasons.

#### **12. Consumers**

In the case of legal transactions concluded between the Contractor and consumers, the above General Terms of Business shall apply only insofar as they do not contradict any mandatory provisions in the Austrian Consumer Protection Law.

#### **13. General Stipulation**

Any regulations which contradict or which deviate from these GTBs, as well as any verbal or subsidiary agreements, shall have validity only after being approved and confirmed in writing by Johann Offner Holzindustrie GmbH.