

# GENERAL TERMS AND CONDITIONS OF BUSINESS AND DELIVERY

of the registered company Johann Pabst Holzindustrie GmbH (FN 79262 m)

## 1. GENERAL PROVISIONS/SCOPE

These General Terms and Conditions of Business and Delivery (GTC) constitute an integral part of each offer made by the registered company Johann Pabst Holzindustrie GmbH (hereinafter referred to as "Pabst") and each contract concluded with Pabst unless deviations from that are agreed expressly and in writing.

General Terms and Conditions – of whichever kind – of the contracting partner (Buyer) which conflict with these GTC shall be deemed not agreed and shall be legally invalid; an acceptance of such general terms by implication is excluded, the legal ineffectiveness of such general terms shall require no express objection by Pabst.

Insofar as contracts are concluded with consumers as defined by the Consumer Protection Act (in exceptional cases), the mandatory provisions of the law (e.g. of the Consumer Protection Act [KSchG], of the Austrian General Civil Code [ABGB], etc.) shall apply without any restrictions.

## 2. OFFERS/PURCHASE ORDERS

All offers from Pabst are non-binding; Pabst is not obliged to accept purchase orders from the Buyer.

The Buyer himself is bound to his purchase order for the duration of 14 days.

Offer documents – of whichever kind – must neither be copied nor made accessible to or passed on to third parties without the written consent of Pabst.

Pabst reserves all rights for these documents. Offer documents may be claimed back at any time.

## 3. CONCLUSION OF CONTRACT

Contracts shall come into existence either by way of the written order confirmation following the purchase order or a delivery which was actually carried out and was in accordance with the purchase order.

A written order confirmation or the actual performance of the delivery (forwarding) notwithstanding, accepted blanket orders (quantity contracts with agreed due dates for the calls to be made) shall constitute legally binding orders for Pabst.

Solely the services from Pabst specified in the order confirmation shall be the object of a contract. Subsequent alterations or amendments and ancillary agreements shall only be valid if they are made in writing. Services outside the scope of the order confirmation shall be invoiced separately.

The descriptions contained in technical documents, in public statements of Pabst, but above all in advertisements or information enclosed with the item shall only be applicable if the order confirmation expressly refers to them.

## 4. PRICES

Unless otherwise agreed in writing, prices shall be ex works or ex warehouse of Pabst excluding packaging, loading, installation, insurance and value-added tax. The price calculation is based on the costs at the time of conclusion of the agreement (order confirmation). If increases in material costs or circumstances occur which result in additional services and/or additional costs and are not within Pabst's sphere of influence between conclusion of the individual contract (conclusion of the master agreement or the blanket order) and the service performance, Pabst shall have the right to base the invoice on the prices increased in that way unless there are less than 45 days between conclusion of contract and service performance.

## 5. DELIVERY

Unless expressly agreed otherwise, delivery terms shall always be non-binding. The delivery period shall commence on the date of the order confirmation. Unless otherwise expressly agreed, the delivery shall be made ex works (ExW) Pabst.

Even in the event of carriage-free delivery, forwarding shall always be for account and at the risk of the Buyer. After handing over of the goods ordered by the Buyer to the forwarder (mail, railway, airplane, ship or forwarders), Pabst shall have fulfilled its contractual obligations and the risk shall pass to the Buyer. The selection of the mode of forwarding shall be the responsibility of Pabst and accepted by the Buyer in advance.

Pabst shall have the right to make partial deliveries and to invoice them separately. Delivery dates shall be approximate dates unless a fixed date was expressly agreed. During delivery, it is expected that accessing and driving away with an articulated truck (total weight up to 40 tons) are possible without any problems; the same shall apply accordingly also to deliveries of special lengths with special-purpose vehicles. Equipment required (crane/forklift truck including staff, etc.) for unloading taking place at ground level, alongside or from above shall be provided by the Buyer at the possibly different place of delivery in order to enable fast unloading within maximum 4 hours after arrival at the place of delivery that may have been agreed. Alternatively, a suitable and safe parking place shall be made available.

Delays, damage to the goods or other incidents which may constitute the basis for claims on the part of the Buyer shall be noted in a legible manner in the consignment note (CMR) without exceptions, failing which the claim shall be forfeited.

If the delivery is delayed due to circumstances independent of the party's will, such as industrial disputes, fire, seizure, embargo etc., an adequate extension of the delivery term shall be deemed agreed in advance. Pabst assumes no liability for delays in delivery caused through no fault of their own or delays in delivery caused only negligently. In such a case, the Buyer shall waive the right to rescind the contract and to claim damages. Just in case that Pabst caused the delay in delivery at least grossly negligently, the Buyer may either demand performance or rescind the contract after having

set an adequate period of grace. In the event of custom-made articles, the fact that Pabst cannot use parts in process for other purposes shall be considered for the fixing of the period of grace.

If the Buyer fails to accept the goods supplied according to contract at the contractually agreed place or at the contractually agreed time, Pabst may either request performance or rescind the contract after having fixed a period for acceptance.

From that point in time onwards, the storage of goods shall be carried out for account and at the risk of the Buyer.

## 6. PAYMENTS

Unless different terms of payment were agreed in writing, payments shall be made net within 14 days to the point of payment specified by Pabst.

The Buyer shall not have the right to withhold payments based on warranty claims or other counter-claims not acknowledged by Pabst.

In case of default in payment, statutory default interest pursuant to § 352 Austrian Commercial Code [UGB] will be charged for the time from the due date until receipt of payment. Dunning costs, lawyer's fees and all pre-trial costs, respectively, shall additionally be borne by the Buyer in this case.

Discounts or bonuses granted shall be subject to the condition precedent of receipt of the complete payment. In case of agreed offsetting on an open item basis, § 1416 ABGB shall not apply. Payments from the Buyer may be offset against any debt of the Buyer at Pabst's option. As a matter of principle, offsetting first against costs or expenses, then against interest and only lastly the capital shall be deemed agreed.

The invoking of defects shall expressly not relieve the Buyer from his obligation to observe the terms of payment. Pabst accepts no obligation to rectify defects by way of possible negotiations concerning notices of defects. A right of retention on the part of the Buyer is also excluded, as well as any offsetting of counter-claims of the Buyers against claims of Pabst. If the Buyer suffers a deterioration of his financial circumstances or if Pabst finds out only after conclusion of the contract that the Buyer's financial circumstances were so bad at the time of contract conclusion already that fulfilment of the Buyer's contractual obligations was at risk, Pabst may refuse performance until execution or guaranteeing of the counter-performance – regardless of a contractual arrangement to the contrary. At any rate, proof of such financial circumstances of the Buyer in this regard shall be deemed furnished by way of particulars provided by an associated credit agency or bank in this respect.

The goods delivered shall remain the property of Pabst until completion of payment (retention of title). For the safeguarding of the goods delivered subject to retention of title, these shall be stored separately and insured against fire and theft at the Buyer's expense. The resale of the goods subject to retention of title shall only be allowed with the express written consent of Pabst.

In case of a resale of goods subject to retention of title, the Buyer assigns his claim from this purchase agreement to Pabst at the time of contract conclusion already. This assignment for security shall be noted in the Buyer's account books on each page of the outstanding

items list, indicating the date of the assignment agreement (= contract conclusion), and the complete name of the company of Pabst, and also be included in the list of outstanding receivables. Pabst shall be responsible for informing the customers of the Buyer about the assignment of claims in addition. Payments received by the Buyer from his customers shall be passed on to Pabst without delay.

If the goods subject to retention of title are worked on or processed by the Buyer, the retention of title shall also cover the new item created as a result of that. In case of treatment or processing, mixing or incorporation of the goods, Pabst shall acquire joint property in the new items created as a result of that. In that case, the Buyer shall be deemed the custodian. The Buyer undertakes to notify Pabst of a compulsory seizure of or other third-party access to the goods delivered subject to retention of title without delay, and to inform that third party about the property of Pabst in the goods.

Securities pursuant to § 1170 b ABGB have to be requested by the Buyer in good time and to be pledged to Pabst by way of a separate declaration (for security).

## 7. WARRANTY

Pabst shall principally warrant freedom of defects of the objects of purchase for the period of 1 year as follows:

Warranty shall be provided at Pabst's option by way of repair, replacement of the defective parts, exchange or price reduction. The Buyer's right to rescind is waived by mutual agreement. The replaced parts shall pass into the ownership of Pabst. Wages paid, and costs incurred for installation and removal shall be borne by the Buyer. That shall apply in the same way to all guarantee agreements. For himself and his legal successors, the Buyer expressly waives the assertion of direct or indirect damage caused through the defect of the object of purchase resulting from plain or simple gross negligence (damage caused by the defect and secondary damage caused by the defect) and lost profit. The rectification of defects shall result in no extension of the warranty period. In general, it has to be noted that timber is a natural material so that natural, biological, chemical and physical characteristics have to be considered for purchase and use.

The Buyer is obliged to inspect the goods delivered without delay. Warranty claims shall only be granted if he gives notice of the defects found in writing without delay – within 5 days at the most. Oral or telephone communications shall not suffice for the fulfilment of the obligation to give notice of defects. In case of notice of defects not given in good time, the claim for recovery of secondary damage caused by the defect shall be forfeited as well. § 377, Section 5 UGB shall not be applicable in case of slight or only simple gross negligence. In that case, the Buyer waives a right to object in this regard. If an immediate inspection is not possible upon acceptance of the goods in the scope of the ordinary course of business of the Buyer, Pabst shall be notified of these circumstances without delay, and a defect possibly detected during a subsequent inspection shall be reported in writing within another 5 days. That shall also apply to incorrect deliveries and deliveries of the wrong goods, failing which the goods shall be deemed accepted regarding these defects as well. By way of negotiations regarding notices of defects, Pabst will not waive the objection that the notice of defects was sent too late or was not specified in sufficient detail. Any treatment and processing of the goods shall result in exclusion of the warranty. Return

deliveries of goods shall require the express and written consent of Pabst and be carried out at the cost and the risk of the Buyer.

Special recourse pursuant to § 933 b ABGB shall only be possible within the statutory warranty periods of § 933 ABGB. The requirement for recourse pursuant to § 933 b ABGB is the fulfilment of the obligation to give notice of defects of § 377 UGB.

## 8. LIABILITY

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Pabst shall only be liable in the scope of the statutory provisions for damage outside the scope of the Product Liability Act insofar as proof of intent or gross negligence can be shown. Liability for slight and simple gross negligence, compensation for consequential damages, savings not realised, loss of interest, third-party claims for compensation is expressly excluded. Pabst assumes no liability whatsoever for damage caused by an improper treatment of the goods delivered. The application of § 934 ABGB is excluded (§ 351 UGB).

## 9. TRANSFER OF COMPANY/OBJECTION

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In case of the transfer of the Buyer's firm, Pabst objects in advance to an (automatic) takeover of the contractual relationships by the acquirer; such a takeover shall require a separate agreement (written form requirement).

## 10. CHOICE OF LAW AND JURISDICTION

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The court having subject matter jurisdiction in each case at the principal office of Pabst is agreed as place of jurisdiction for all disputes directly or indirectly resulting from this agreement.

All contractual relationships shall be subject to Austrian law – excluding the standardised UN Convention on Contracts for the International Sale of Goods (UNCITRAL) and international private law.

## 11. MISCELLANEOUS PROVISIONS

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The other provisions shall remain unaffected by the invalidity of individual provisions of these GTC. In case of interpretation problems, the Austrian timber trade usages shall serve as standard for interpretation.

It is once again stipulated expressly that solely written agreements shall be valid between the contracting parties; that shall also be valid for a waiver of the written form requirement. Oral agreements shall not be legally binding. The Buyer acknowledges that staff employed by Pabst or third parties do not have the right to make assurances which depart from the contractually agreed main obligations to perform (e.g. terms of delivery, quality assurances, payment arrangements).