

**General terms and conditions of trade (sales and delivery)**  
of  
**Klausner Trading International GmbH, FN 256404 s,**  
**Bahnhofstraße 13, 6372 Oberndorf in Tirol**  
**(hereinafter the "General Conditions")**

**Preamble**

Klausner Trading International GmbH (hereinafter "KTI" or "we") is a distribution company trading in sawn and timber products, including roundwood and residual timber of different types, sizes and materials. KTI intends to base all present and future contracts on these General Conditions.

**1. General remarks**

1.1. The General Conditions are part of all our offers and contracts with regard to the delivery of products and the performance of services to our respective contracting party (hereinafter the "Buyer") in present or future business relation.

1.2. Our deliveries and services are provided solely based on these General Conditions. Contradicting or contrasting terms and conditions of the Buyer do not become part of the contractual agreement. The General Conditions also apply if we unconditionally deliver our products to the Buyer although we have knowledge of the existence of contradicting or contrasting terms and conditions of the Buyer.

1.3. Our General Conditions apply primarily with regard to undertakings within the meaning of the Austrian Commercial Code ("*Unternehmensgesetzbuch*"), legal persons governed by public law and special funds governed by public law.

**2. Offer, offer documents, conclusion of contract**

2.1. Our offers are subject to change without notice and are not binding. The most recent offer supersedes all previous offers.

2.2. To order any goods or services, the Buyer has to submit to us a binding purchase offer. We are entitled to accept such offer within 2 weeks by way of submitting a binding order confirmation to the Buyer (hereinafter the "Order Confirmation") or by dispatching the products ordered to the Buyer within this 2 weeks' period. The dispatch of the Order Confirmation or the ordered products within the 2 weeks' period is sufficient to meet the deadline. A binding contract shall enter into force upon the Buyer having received a written and binding Order Confirmation or the products having been delivered to the Buyer pursuant to this clause 2.2.

2.3. Technical and other references contained in our offer documents only serve as performance description and shall not be construed or interpreted as guarantee or representation of any kind of certain characteristics of our products, in particular not with regard to quality structure or durability. Patterns and models shall only serve as a basis to assess an average quality. Recommendations provided how our products may be used (if any) are only given to our best knowledge. Due to the fact that our products may be used in many different and specific ways and the requirements and individual conditions with respect to the use of our products may vary extraordinarily, KTI shall not be liable that the products are suitable to be used in certain situations, unless the suitability of a certain product has been expressly assured in writing. In any case, the Buyer is obliged to check itself if the product ordered is suitable for the planned use.

**3. Prices**

3.1. In case the parties have agreed on a fixed price, this fixed price is applicable until delivery of the products.

3.2. KTI is entitled to increase the price agreed upon the expiry of a six weeks period from the conclusion of the contract if certain price factors of our products have been increased (in particular due to tax increases or increases in the costs of wages, custom duties, carriage, storage, materials or raw materials) after the contract enters into force, unless a fixed price has been agreed. This right is not applicable in case we are culpably in default with the delivery of the products in accordance with clause 5.5.

3.3. Unless stated otherwise in the Order Confirmation, our prices are to be understood as ex works (EXW – EX Works) or ex warehouse plus the statutory value added tax applicable ("VAT") and exclusive of any packaging, carriage, custom, transportation or other additional charges.

3.4. The Buyer has to inform KTI on its VAT identification number (VATIN) in case of delivery within the European Union. Should the delivery be exempted from VAT (VAT-free), the Buyer has to indicate such fact to KTI in time and provide KTI with evidence required about such fact.

**4. Terms of payment**

4.1. The purchase price (the same applies to any partial delivery) is due and payable within 60 days<sup>1</sup> from the date of the invoice (without any deduction), unless stated otherwise in the Order Confirmation. The date on which the products ordered have been dispatched to the Buyer constitutes the date of invoice within the meaning of this clause.

4.2. KTI grants the following discounts: 3% of the purchase price in case payment is effected within 14 days from the date of invoice, 2% of the purchase price in case payment is effected within 30 days from the date of invoice, 1% of the purchase price in case payment is effected within 45 days from the date of invoice. The invoiced amount of the products as set

forth in the invoice exclusive any packaging, carriage, custom, transportation or other additional charges as well as exclusive of VAT is considered as purchase price. The respective discount is only recognized, if the respective deadline for the discount mentioned above is met.

4.3. Payment by cheque or bill of exchange requires a separate agreement. Payment by bill of exchange and cheque is accepted on account of payment only (but not instead of payment) and subject to the condition that our bank gets the cheque or the bill of exchange discounted by the Austrian National Bank at the current basic rate of interest. Any costs or charges related to the discounting of a cheque or bill of exchange have to be borne by the Buyer. The value date shall be the date on which KTI can dispose of the sum discounted by the bank.

4.4. The rate for default interest is 8 percentage points above the base interest rate p.a. pursuant to § 352 of the Austrian Commercial Code. The assertion of any further damages is hereby not excluded. Any extension of the term of payment subsequently granted does not impair – except as agreed otherwise – KTI's right to charge default interests from the due date.

4.5. KTI is entitled to require from the Buyer payment of the purchase price in advance or provision of any equivalent security prior to the delivery if – after conclusion of the contract – facts arise which are casting doubts on the financial standing of the Buyer or if the fulfillment of KTI's claim with respect to the payment of the purchase price is endangered due to a deterioration of the Buyer's financial circumstances. In case the Buyer does not comply with such request within an appropriate time frame, KTI is entitled to rescind the contract.

4.6. KTI is entitled to rescind the contract in case an application to open an insolvency proceeding over the assets of the Buyer has been filed or such proceeding having been initiated. The right of rescission also applies if an application with respect to the initiation of an insolvency proceeding is rejected due to lack of cost-covering assets. The Buyer is obliged to inform KTI immediately about the fact that an application to open an insolvency proceeding has been filed (irrespective whether such application has been filed by the Buyer itself or by one of its creditors).

4.7. The Buyer is only entitled to set-off its claim against a claim of KTI if the Buyer's claim has been confirmed by a court decision in a legally binding way or if KTI has recognised the Buyer's claim in written form.

**5. Delivery, time of delivery, delay in delivery, rescission**

5.1. Over- or under-deliveries up to 10% of the products ordered are deemed to comply with the terms and provision of the contract. The Buyer has no claims whatsoever due to such over- or under-delivery. However, KTI is invoicing to the Buyer the quantity of products effectively delivered and the Buyer is only obliged to pay the respective quantity.

5.2. The Buyer has to preserve all rights of recourse against the transport manager or any other third party. The Buyer has to report immediately all damages caused by the transportation to the freight carrier (*Frachtführer*) or to the surveyor (*Havariekommisсар*) and to inform KTI accordingly prior to the acceptance of the delivered goods.

5.3. Partial deliveries are permissible.

5.4. Any declarations concerning time and date of delivery are – subject to the provision of clause 5.5 – considered non binding indications only. In general, the time of delivery commences on the date on which the Order Confirmation has been submitted to the Buyer. However, the time of delivery does not commence until the Buyer has duly and timely fulfilled its obligations which have to be performed prior to the delivery (in particular, submission of documents, permissions and approvals required as well as performing any advance payments agreed). The time and date of delivery is complied with in case the products have left the factory or storage facility by no later than the end of the time of delivery or if the Buyer has been notified about readiness for delivery.

5.5. KTI is only in default with regard to the indications of the time or date of delivery if – upon expiry of the indicated time or date of delivery – an additional, reasonable grace period (granted to KTI by the Buyer in writing) of at least 8 days has been expired. This does not apply in case the time or date of delivery has been agreed in the Order Confirmation as "fixed date".

5.6. The stipulated time of delivery is subject to a proper and timely supply of the products and/or substantial building materials and/or raw materials to KTI.

5.7. In case of subsequent amendments to the contract which potentially affect the time of delivery, the time of delivery agreed upon is prolonged accordingly (unless the parties have agreed otherwise).

5.8. If an event of force majeure, another unforeseeable, extraordinary event or any event which is not attributable to a default of KTI or any of KTI's suppliers (e.g. interruption of operations, strike, lockout, intervention of public authorities, difficulties of energy supply or delayed supply of any raw materials) occurs, the delivery time agreed upon is prolonged by the duration of such an event plus a reasonable start-up time. In case a delivery or performance of any services becomes impossible or unreasonable due to the occurrence of any event mentioned above, KTI is not obliged to deliver the products (or perform other services) ordered by the Buyer and the Buyer is thereby not entitled to claim any damages or rescission of the contract.

5.9. The Buyer is only entitled to claim damages based on a delayed delivery, damages in lieu of delivery or performance or any reimbursement of expenses exclusively in accordance with clause 9, even in case of a default by KTI.

5.10. Except for the cases as stipulated in clause 8.7, the Buyer is only entitled to rescind the contract in accordance with the provisions of statutory law and if a breach is attributable to KTI.

<sup>1</sup> In der Auftragsbestätigung ist ein Zahlungsziel von 60 Tagen angeführt. Wir gehen davon aus, dass dieses Zahlungsziel – um im Einklang mit den Skontosätzen zu stehen – bei jeder Bestellung gilt.

## 6. Default of acceptance

In case the Buyer is in default of acceptance or breaches any other of its contractual duties to cooperate, such as the inspection, specification, acceptance or call of the goods to be delivered or the submission of a shipping instruction, the Buyer is obliged to compensate KTI for all damages as well as all additional expenditures caused by such default or breach. Further claims and rights by KTI shall explicitly remain reserved.

## 7. Passing of risk, delivery

7.1. Unless stated otherwise in the Order Confirmation, delivery is ex works (EXW – EX Works) or ex warehouse. Risk passes to the Buyer as soon as the products to be delivered have been handed over to the carrier or haulier (or any other company or person carrying out the transportation) or as soon as the goods have left our production site or the respective warehouse. This also applies in case it has been agreed on a freight-paid delivery (CPT – Carriage Paid To). The transportation of the goods is always carried out on behalf of the Buyer. If the delivery is delayed for reasons attributable to the Buyer, the risk passes to the Buyer as soon as the goods are ready for delivery.

7.2. Any return delivery of products to KTI occurs at risk and on the costs of the Buyer, unless the return was caused by circumstances attributable to KTI. Our insurance policy does not cover a return delivery of our products.

## 8. Defects and guarantee (warranty)

Timber is a natural material having specific natural attributes and characteristics. These factors always have to be considered. In particular when purchasing and using timber products, the Buyer has to take into account its organic, chemical and physical characteristics. If required, please consult an expert in order to assess these characteristics. Variations of color, structure or other differences between the same timber species are due to the specific natural characteristics of timber and cannot be considered as a defect of the delivered goods.

8.1. In general, the quality of our products is defined in the respective product description and this description is deemed to be agreed. Any public statements, commercials or advertisements made by KTI do not constitute a warranty, guarantee or representation of any nature whatsoever with respect to the quality of our products. Minor deviations of our timber products which are attributable to the natural characteristics (e.g. color, grain), are no defects.

8.2. Any warranty claim of the Buyer shall only be admitted if the Buyer inspects the products immediately upon receipt and any defects are notified to us in writing; such notice of defects shall be considered to be made in time if we receive it within 3 calendar days from the receipt of the products or in case of a hidden defect within 3 days upon the appearance of such a defect. In any event, such notice of defects has to be served prior to commencement of any manufacturing or treatment process by the Buyer. Failure to notify defects in due time releases KTI also from any liability for consequential damages. The statutory obligation of entrepreneurs to inspect the products supplied and notify any defects pursuant to §§ 377f of the Austrian Commercial Code remains unaffected.

8.3. The application of the legal fiction of defectiveness as provided in § 924 Austrian Civil Code is explicitly excluded.

8.4. If the products are purchased upon examination and the products have been accepted by the purchaser or its representatives subsequently at any warehouse of KTI, subsequent complaints are precluded even if the defect has not been detected.

8.5. In case of insignificant differences to the contractually agreed quality or insignificant impairments of the usability of the products, any warranty claim of the Buyer is excluded.

8.6. In case of a defect (provided that the defect has been notified in time pursuant to clause 8.2), we are only obliged to either remedy the defect or – at our discretion – provide replacement. KTI is entitled to refuse the satisfaction of any warranty claim of the Buyer as long as the Buyer has not paid such part of the purchase price corresponding to the respective part of the delivered goods or services which does not have a defect.

8.7. If the remedy of a defect or the replacement fails two times, the Buyer may demand a reduction of the price or – at its discretion – rescind the contract in the event the defect is not a minor defect (*geringfügiger Mangel*). Any damages can only be claimed pursuant to clause 9 hereof.

8.8. We shall have the right to replace or improve our products without having an obligation to inform the Buyer to the extent neither the shape nor the function of the products is permanently impaired.

8.9. There is no recourse in sense of § 933b of the Austrian Civil Code.

## 9. Claims for damages and expenditures

9.1. KTI is only liable towards the Buyer for the following damages:

a) damages resulting from grossly negligent or willful behavior of our employees, representatives, assistants or performing agents (but not for damages resulting from lightly negligent behavior).

b) in cases of a mandatory liability under the Austrian Product Liability Code ("*Produkthaftungsgesetz*")

c) damages resulting from death or injuries of a person.

9.2. Any claims of the Buyer for damages (including claims for damages due to the violation of pre-contractual obligations (*culpa in contrahendo*)) or expenditures on any other legal grounds which are not set forth under clause 9.1 are excluded.

9.3. Any possible claim for damages pursuant to clause 9.1 – except in case of willful behavior – is limited to a compensation for damages which are typical and foreseeable for this kind of contract and is limited to the amount covered by KTI's business liability insurance.

9.4. In the event that our liability is excluded or limited, such exemption or limitation also applies to the personal liability of employees, representatives, assistants and performing agents of KTI and to any company affiliated with KTI (including the personal liability of their employees, representatives, assistants and performing agents) if and to the extent such company performs any services related to the contract between KTI and the Buyer.

9.5. We are not liable for damages of or caused by our products (including consequential damages) not used as intended.

9.6. As regards claims for damages due to and/or resulting from the defectiveness of our products, the provisions on the duty to inspect the products and to give notification of any defects provided by clause 8.2 apply. The same applies to claims for compensation resulting from tort or *culpa in contrahendo* if the damaging behavior is reflected in a damage of the product. The liability of KTI by no means applies to damages due to defective goods or services provided if the defect could have been detected by the Buyer through proper examination prior to the initiation of a manufacturing or treatment process.

## 10. Limitation of claims

Warranty claims, claims for damages and any other claims of the Buyer related to or in connection with the delivery of products or the performance of services in the business relation with the Buyer expire with limitation after 12 months upon the transfer of the risk to the Buyer or, with regard to any warranty claim (or other claims based on a defect of the delivered goods or services), upon delivery of the products to the Buyer, irrespective of whether the Buyer is aware or negligently unaware of the factual grounds the respective claim might be based on. Longer mandatory legal limits prevail.

## 11. Reservation of ownership; securities

11.1. Until the Buyer has fully paid all of KTI's claims resulting from the relevant contract, the delivered products remain in the property of KTI (hereinafter "Reserved Good"). A claim is paid as soon as KTI has effectively received the money or the money has been credited to our account. The Buyer is liable for any damages resulting from a re-sale of products returned to KTI below its original price and for any costs resulting from the transport back to KTI or further transport to a third party. In case the price is paid by bill of exchange and any liability of KTI is created thereby, the reservation of ownership does only cease to exist if the amount stipulated in the bill of exchange has been paid by the acceptor.

11.2. If the Buyer processes the Reserved Good forming a new moveable good, the newly created good is exclusively owned by KTI without creating any obligation of KTI due to any reason whatsoever.

11.3. If the Reserved Good is processed with goods which are not owned by KTI, KTI becomes co-owner of the combined or mixed good in proportion of the value of the Reserved Good to the value of the other materials processed in the moment of processing.

11.4. If the Reserved Good is combined with or mixed with goods which are not owned by KTI, KTI becomes co-owner of such good according to the statutory provisions. In case that the Buyer acquires exclusive ownership in the newly created good by combination or mixture, the Buyer herewith transfers co-ownership in such good to KTI in proportion of the value of the Reserved Good to the overall value of the combined goods in the moment of unification. The Buyer is obliged to hold any good exclusively owned or co-owned by KTI – each of them is also referred herein as Reserved Good – in safe custody free of charge.

11.5. If the Reserved Good is sold solely or in connection with goods not owned by KTI, the Buyer assigns any receivable arising out of such resale in the amount of the value of the Reserved Good, together with all additional rights and having priority over any other rights, to KTI upon the contract with KTI having been concluded; KTI accepts the assignment. The Buyer is obliged to indicate the assignment of the respective receivable for security purposes in its account books (*Buchvermerk*) or, in the event that no such books are kept, immediately notify the respective debtor about the assignment of the receivable due to security purposes. Value of the Reserved Good shall mean the amount as stated in the invoice of the relevant order plus VAT and plus a safety premium of 10%. In case that the Reserved Good which is resold is our joint property, the receivable is assigned in an amount corresponding to KTI's co-ownership share. Any charges and costs related to the assignment have to be borne by the Buyer.

11.6. If the Reserved Good is incorporated in a plot of land owned by a third party, the Buyer assigns, at the time the contract with KTI having been concluded, any (assignable) claim for consideration arising towards the third party or towards any person whom it may concern, amounting to the value of the Reserved Good as well as all additional rights (including the right of mortgage for security purposes) and having priority over any other third party rights' to KTI; KTI accepts the assignment. The provisions of clause 11.5 sentence 2 to 5 apply accordingly.

11.7. If the Reserved Good is incorporated in a plot of land which is owned by the Buyer, the Buyer assigns, at the time the contract with KTI having been concluded, any receivable arising out of a disposal of the relevant plot of land or a sale of any rights with respect to the relevant plot of land in the value of the Reserved Good as well as all additional rights and having priority over any other receivables to KTI; KTI accepts the assignment. The provisions of clause 11.5 sentence 2 to 5 apply accordingly.

11.8. The Buyer is only entitled to sell, use (processing and unification) or incorporate the Reserved Good in the ordinary course of business and subject to the condition that the Buyer's receivables arising thereby are effectively assigned and transferred to KTI pursuant to clauses 11.5., 11.6.

and 11.7.. Any other disposition with regard to the Reserved Good (in particular, to pledge the Reserved Good or assign it as security) is not permissible.

11.9. Subject to KTI's withdrawal at any time, the Buyer is entitled to collect any receivable assigned to KTI pursuant to clauses 11.5., 11.6. and 11.7. As long as the Buyer fulfills its liabilities towards KTI and any other third party, we will not exercise our right to collect the receivables assigned to us. The Buyer is obliged to – at our request – name all debtors (name, address etc) of the assigned receivables and notify the assignment to the respective debtor; in addition, we are also entitled to notify the respective debtor about the assignment ourselves. Furthermore, the Buyer is obliged – at our request – to provide us with any information necessary in order to assert the assigned receivables.

11.10. The Buyer has to inform us immediately in case a Reserved Good or an assigned receivable is seized or is impaired by any other third party rights' and hand over all documents necessary for any intervention (in particular to intervene in case of execution). The Buyer is obliged to bear all costs related to our intervention, unless somebody else is obliged to compensate such costs.

11.11. The Buyer's rights to sell the Reserved Good, to incorporate the Reserved Good in a plot of land and to collect a receivable assigned to KTI cease to exist at the moment the Buyer suspends its payment obligations or an application to open an insolvency proceeding with respect to the Buyer's assets has been filed or such proceeding has been initiated or any judicial or extrajudicial settlement proceeding has been initialized; in case of a protest with respect to a bill of exchange or a cheque, the Buyer's right to collect an assigned receivable ceases to exist likewise.

11.12. If the Buyer violates the contract (especially by any default in payment), KTI is entitled to take back the delivered products. The taking back of products does not constitute a rescission from the contract, unless explicitly indicated by KTI in writing. After taking back the products, we are entitled to realize the products; the profits generated by such realization minus the costs related to such realization are set off against the Buyer's liabilities towards KTI.

11.13. We commit ourselves to release – at the Buyer's request – any securities to the extent that the value of the securities exceeds the secured claim by more than 20 %; we may decide – at our sole discretion – which securities are to be released. Ownership of the Reserved Good and the assigned receivable(s) passes over to the Buyer upon full payment of all claims of KTI resulting from the relevant contract.

11.14. The Buyer is obliged to take care of the Reserved Good and insure it against damages due to fire, water and theft on his own account and up to the value of the Reserved Good as new (*Neuwert*).

## **12. Place of performance, legal venue, governing law**

12.1. The place of performance is Oberndorf in Tyrol (Austria), unless explicitly agreed otherwise in writing.

12.2. Place of jurisdiction is the court competent with respect to the place of our registered office in case the Buyer is an entrepreneur, a legal person governed by public law or a special fund governed by public law. In addition, we are entitled to file a claim against the Buyer in any other venue provided by law.

12.3. The material laws of the Republic of Austria under exclusion of the provisions of the international private law and the United Nations Convention for the International Sale of Goods (dated April, 11 1980) shall apply. The same applies to non-contractual legal relationships (including claims based on the Austrian Product Liability Code (*Produkthaftungsgesetz*)) arising of or in connection with a delivery of products to the Buyer.

12.4. The contractual language is German. However, the prospective Buyer may also provide its offer in English.

12.5. These General Conditions are available in German (binding version) and English (non-binding working translation). In case of any inconsistencies or discrepancies between the German and the English version, the German version prevails.

12.6. The Buyer is obliged to keep any technical and business related information (in particular with regard to pricing), any business or company secret of KTI as well as any company related information of KTI and its suppliers and affiliated companies which have been disclosed to the Buyer (verbally and/or in any physical form) prior to or after completion of the contract as well as in connection with the execution of the contract or thereafter, strictly confidential and secret, and shall not disclose such information to third parties and shall make use of such information exclusively to fulfill the contract. In case the contract has been completed or terminated, this confidentiality obligation remains in force. In addition the Buyer is also obliged to keep information as set forth above confidential which have been disclosed to the Buyer – without an obligation to keep them confidential – by a third party or which the Buyer has obtained at random. The obligations set forth in this clause 12.6 apply for an indefinite period of time.

12.7. If at any time a provision of these General Conditions or any other agreement between KTI and the Buyer is or becomes generally or partially illegal, invalid, or unenforceable, the validity of all other provisions or agreements remain unaffected. The same applies to any gap in the contract. The non-applicable provision is to be replaced or any gap is to be filled by provisions that best reflect – as far as legally possible – what the parties intended or would have intended with respect to the meaning and purpose of this contract if they had thought about such point when concluding or amending the contract.

12.8. Any differing or supplementing provision to this General Conditions or to the contract concluded between the Buyer and KTI must be in writing in order to be effective.

12.9. All data of the Buyer are filed and processed – to the extent permissible pursuant to the Austrian Data Protection Act (*Datenschutzgesetz*) – by us using a computer-aided system. KTI commits to comply with the terms and provisions of the Austrian Data Protection Act.