

General Terms and Conditions of Business (T&Cs) of Theurl Timber Structures GmbH (THEURL)

§ 1 SCOPE OF VALIDITY

1.1 These General Terms and Conditions of Business (T&CS) apply to all sales transactions and services between THEURL and its customers. THEURL does not acknowledge any provisions on the part of the customer conflicting with or deviating from these T&CS, unless THEURL has expressly confirmed their validity in writing.

1.2 These T&CS are also valid until the issue of new T&CS by THEURL, including for all future transactions, even where these make no reference to the T&CS. The version valid at the time of the signing of the contract takes precedence at all times.

§ 2 PROPOSALS AND AGREEMENT OF THE CONTRACT

2.1 If THEURL submits a proposal to the customer, THEURL is bound by this proposal for three days following its receipt by the customer. Acceptance of the proposal by the customer is confirmed by signature of the proposal on the part of the customer. Offers can be accepted via the digital ordering process in TIM, the online platform used by THEURL. This is subject to prior sale by THEURL.

2.2 If the customer places an order with THEURL, the customer is bound by the order for one week of receipt of the order by THEURL. Contracts for customer orders come into effect only when THEURL sends a written confirmation of the order or completes supply of the goods. Order confirmations are sent to the address specified by the customer in his order or, in the event of an ongoing business relationship, to the most recent address provided. Order confirmations can also be transmitted via the online platform TIM if the client has consented to this in advance. If the order confirmation does not match the customer's order, the customer must raise this in writing immediately, and at the latest within one week of receipt of the order confirmation. The contract will otherwise be issued under the terms specified in the order confirmation.

2.3 Obvious mistakes, printing, calculation, written and calculation errors are not binding for THEURL, and do not entitle the customer to compensation.

2.4 Dimensions, weights, drawings, colours, grains, descriptions and such like as shown in catalogues, brochures or in other documentation from THEURL are approximations only. Changes in the goods ordered by the customer which are due to improved technology, package size or legal provisions (statutes and case law in particular) are permitted during the delivery period provided these changes are acceptable to the customer.

2.5 Any subsequent change to the order is permitted only with the consent of THEURL. If THEURL has already produced the goods, no change to the order is permitted. Subsequent changes to the order release THEURL from binding delivery dates and deadlines.

2.6 If an agreed transaction or agreed service is not completed, THEURL is still entitled to receive the agreed fee if THEURL was prepared to fulfil the agreement but was prevented from doing so due to circumstances caused by the customer (§ 1168 of the Austrian Civil Code (ABGB)); in this event, THEURL does not have to charge the amount that would have been earned or failed to be earned by deploying its staff elsewhere.

2.7 Where THEURL prepares or develops work plans, the customer must have the plans checked by an expert at his/ her own cost. THEURL accepts no liability for work plans based on incorrect information provided by the customer. In particular, THEURL will not carry out any checks on the statistics in relation to work commissioned. Otherwise, the warranty and liability provisions of §§ 5 and 6 apply.

§ 3 DELIVERY AND TRANSFER OF RISK

3.1 With respect to delivery and the transfer of risk, THEURL will expressly agree an Incoterms 2020 clause. Generally, this will be the “Carriage paid to” (CPT). In the absence of an express agreement, the goods are deemed to be sold “free carrier” (FCA). THEURL can choose to provide the goods to the head office in A-9754 Steinfeld or to associated companies or supplied them from the locations specified.

3.2 Unless agreed otherwise, THEURL will determine the means of transport and the route. Partial deliveries by THEURL are permitted.

3.3 Delivery deadlines and dates provided by THEURL are non-binding, and will be adhered to if possible.

3.4 If THEURL has expressly agreed upon a binding delivery period or delivery date for the delivery, which cannot be met, a delay commences after a reminder has been sent and a reasonable grace period has lapsed without success. The Customer is entitled to withdraw from the contract or to claim damages only after a reasonable grace period granted to THEURL has lapsed without success. If compliance with the delivery period or delivery date expressly agreed upon as binding is not possible due to circumstances beyond THEURL's control (e.g., force majeure, traffic jams, traffic obstructions, supply shortages, especially of raw materials or building materials, natural disasters, war, riots, in the event of an official public order, energy shortage or industrial action at THEURL or its suppliers), the delivery period will be paused for the duration of this circumstance and the remedy of the resulting operational consequences or the delivery date will be postponed for the period of the said circumstance. THEURL and the Customer are each entitled to withdraw from the contract by written notice if the delivery period or delivery date is extended or delayed by at least two months due to circumstances beyond THEURL's control. In case of such a withdrawal, there will be no claims for damages from either contracting party.

3.5 Unless expressly agreed otherwise in writing, the delivery deadline is at the latest:

- a) The order confirmation date;
- b) The date of fulfilment of all technical, corporate and financial conditions to which the customer is obliged.

3.6 In the event of collection, the customer authorises the carrier to sign confirmations on his/ her behalf pursuant to § 45a of the Customs Code (DVO) 2018/1912 (EU).

3.7 The supply of goods to customers and/or delivery locations outside of the European Union is subject to special prior written agreement.

3.8 In the event of default of acceptance, the goods shall be deemed to have been delivered.

3.9 The loading sequence is determined by the specifications of the load securing and production order. THEURL does not assume any liability for a loading sequence deviating from that specified in the order.

§ 4 PRICES AND PAYMENT

4.1 Prices quoted are nett and are non-binding until the day that the contract is signed pursuant to § 2. Prices are exclusive of customs duties and insurance, which are charged separately. The costs of carriage are in accordance with the agreed Incoterms 2020 (see § 3.1). The transportation prices stated are based on the costs at the time of quotation and are deemed to be subject to change unless otherwise agreed in writing. Should these costs increase by the time of delivery, these changes shall be borne by the buyer.

4.2 The customer must check invoices submitted by THEURL immediately, and at the latest within one week of receipt. If the customer fails to raise any objections within this period, the amount and subject of the invoice will be deemed to be approved.

4.3 Should import or export duties be payable during the course of despatch, these are payable by the customer. Transport insurance can be arranged on request, which is payable by the customer.

4.4 Payments from the customer are valid only from the time of receipt to the business account of THEURL. THEURL charges the purchase price in full or in instalments, and may require advance payments.

4.5 Unless agreed otherwise in writing, invoices submitted by THEURL are payable within 30 calendar days. On-time payments must be made in cash to THEURL by the deadline or on the final day of the term, or transferred permanently to its account.

4.6 At the end of the payment deadline, the customer falls automatically into arrears without warning. Even if the customer is in arrears with just one payment, THEURL is entitled,

- a) to charge reminder fees of EUR 40.00 net for each reminder (which it sends itself),
- b) to charge all costs incurred for operational steps taken by third parties (legal costs or debt recovery agency costs) in accordance with the legal regulations,
- c) take payments first to cover costs incurred, then to cover late payment interest incurred and then to offset the oldest debt (any particular liability against which the customer makes payment is thus deemed to be irrelevant),
- d) without prejudice to the right to claim further late payment interest at the statutory rate (this may be charged at a higher rate if THEURL provides evidence of being charged a higher rate of interest),
- e) to apply an appropriate extension of the delivery period, whereby the late payment period serves as an appropriate extension,
- f) to withhold further deliveries or make these subject to payments on account or securities,
- g) in the event of agreed payment in multiple instalments, to demand full payment of the outstanding purchase price (immediate payment due),
- h) to withdraw from contract in the event of failure to comply with an appropriate extended deadline and to claim compensation in accordance with § 2.6.

4.7 THEURL is entitled to charge the customer for all costs incurred in respect of the outstanding liability.

4.8 The customer can offset claims against THEURL only if these are established by law or acknowledged by THEURL in writing.

§ 5 WARRANTY

5.1 The warranty period is three months from the time of the transfer of risk in accordance with § 3. The customer must submit legal claims under the terms of the warranty within this period.

5.2 The customer may make a claim under the warranty only if he inspects the goods immediately and reports any defects directly to THEURL in writing within one week of receipt (not just to a sales representative). Defects which cannot be detected even after careful examination, or which become apparent only later, must be notified to THEURL immediately in writing, and at the latest within one week of discovering them. The customer bears the risk of submitting this notification of defects. If the customer fails to comply on time with the obligation to report inspect the goods and report defects pursuant to this clause, the goods shall be considered to be accepted and the customer will no longer be able to submit a claim for defects (in particular not under the terms of the warranty, for compensation or for error). § 377(5) of the Austrian Commercial Code (UGB).

5.3 Wood is a natural material. Slight differences in the grain or colour do not constitute a defect, and are not grounds for complaint. The criteria for surface quality issued by the Brettsperrholzverband for cross laminated timber, which can be downloaded from https://www.brettsperrholz.org/brettsperrholz-bsp-x-lam/eigenschaften-allgemein/mn_45177.

5.4 Normal wear and tear and usual depreciation are not legitimate justifications to make a claim under warranty.

5.5 The burden of proof for all justifiable claims under warranty lies fully with the customer, in particular the existence of a defect, timely complaint and timely legal claims.

5.6 If a defect is established, THEURL has the option to rectify the situation by repairing the defect or by supplying a part that is free from defects (supply of a replacement), insofar as THEURL is not entitled to reject the warranty (cf. e.g. § 932(4) of the Austrian Civil Code (ABGB)).

5.7 The customer is entitled to cancel the contract (rescission) – where the defect is not minor – or to claim a reduction in the purchase price if fulfilment fails, in particular if fulfilment is impossible or THEURL does not successfully reach fulfilment within an appropriate period of time or if THEURL refuses or culpably delays fulfilment. The customer is required to allow THEURL the required time and opportunity to complete repairs or provide replacement parts.

5.8 A defect with respect to one part of the delivery is not cause for complaint with respect to the remainder of the delivery.

5.9 THEURL may, at its discretion and at the cost of THEURL, require the customer to send the defective part/the goods to an address specified by THEURL, or to retain it for repair of the defect or exchange at the customer's site by THEURL or by a third party it has appointed.

5.10 THEURL is entitled to refuse repair or replacement if the customer has failed to meet his payment obligations to the extent of the defective part or delivery completed (e.g. in the event of independent usability).

5.11 In assessing a complaint about a defect, THEURL acknowledges no obligation to rectify the defect. Should THEURL incur costs as the result of an unsubstantiated complaint about a defect (travel costs, fitting and removal of the good supplied etc), the customer is required to reimburse these costs.

§ 6 LIABILITY, COMPENSATION

6.1 Notwithstanding the mandatory provisions of the Austrian Product Liability Act (PHG), THEURL has a liability to the customer only for damage caused by THEURL or its fulfilment assistants due to gross or wilful negligence. Liability for slight negligence, compensation for consequential damages, other indirect damages and losses, savings not achieved loss of profit and damages from third-party claims are excluded.

6.2 Claims for compensation expire six months from notification of the damage and the damaging party. The customer must provide evidence of eligibility to claim for damage, in particular for damage or harm caused by or that is the fault of THEURL.

6.3 THEURL accepts no liability for natural wear and tear, improper use or incorrect handling or processing of the products by the customer (cf. § 5.4). The customer must personally ensure correct storage of the goods.

6.4 Where liability on the part of THEURL is excluded or limited, this applies equally to personal liability on the part of employees, representatives and assistants of THEURL.

§ 7 RETENTION OF TITLE

7.1 Goods remain the property of THEURL until full payment is made. The retention of title applies equally to the carrier to whom the goods are passed at the customer's request or on the instruction of THEURL.

7.2 To safeguard the goods supplied, they must be stored separately by the customer and sufficiently insured against damage by the customer. In the event of the goods being destroyed, the customer herewith irrevocably assigns his insurance payments in respect of a claim to THEURL.

7.3 The customer must actively announce the retention of title over the goods in accordance with relevant stipulations.

7.4 In the event of treatment or processing of the goods, THEURL acquires joint ownership of the new items in relation to the value of the goods from THEURL. This applies equally if the goods are processed or mixed with other items.

7.5 The customer is entitled to sell on the goods prior to making payment in full only having obtained, and to the extent of, written consent from THEURL. The customer must inform THEURL of the name or company and the (business) address of the third-party buyer. If THEURL consents to the goods being sold on, the purchase price claim to the third party is deemed to be assigned to THEURL. The customer must make an assignment of claim note in his records and on his invoices, and immediately make the third party aware of the assignment of claim. The consent to sell on the goods expires automatically if the customer is in payment arrears or has ceased payments.

7.6 THEURL is entitled to demand the immediate surrender of goods supplied but not yet paid for in full if the customer fails to comply punctually and in full with his payment obligations, or an insolvency process is applied for or instigated against the customer's assets or if the instigation of an insolvency process is rejected due to lack of assets or if the customer effectively ceases payments or approaches his creditors with an out-of-court settlement. Recovery of the goods by THEURL is not deemed to be a withdrawal from the contract unless THEURL states this separately in writing. Even where goods sold under retention of title are recovered, THEURL retains the right to claim compensation on the basis of non-fulfilment.

7.7 The customer must defend THEURL against any interference by third parties with THEURL's property and any seizure of the goods under retention. The customer must make reference to THEURL's ownership and inform THEURL immediately in writing.

§ 8 DATA PROTECTION

8.1 The customer agrees that his provided data, in particular the personal data of the contact person, may be processed regularly, also electronically, for the purposes of the business relationship and internal representation. In the event of an advance performance, we reserve the right to conduct a credit check based on mathematical and statistical procedures in order to safeguard our legitimate interests. We transfer the personal data required for a credit check to the following service providers: Fachverband der Holzindustrie Österreichs - Schwarzenbergplatz 4 - 1037 Vienna and KSV1870 Information GmbH - Wagenseilgasse 7 - A-1120 Vienna

If there is a legal dispute during a transaction, the data necessary for appropriate pursuit of legal proceedings are transmitted to legal representatives and courts. If the goods are transported by a logistics partner, we will pass on the name of the recipient and the delivery address to our logistics partner in the course of the contract. In certain cases, if you wish, we will also pass on the telephone number for further enquiries to our logistics partner. When selling PEFC-certified goods, we do not disclose your data, and only the region from which the wood originates. We reserve the right to adapt this privacy policy to technical and legal requirements at any time.

8.2 If the customer is a natural person, he is entitled at any time to request details of the data that THEURL has obtained about him. If the data recorded are, or become, incorrect, the customer may request correction of the data. Under the legal provisions, the customer is also entitled to have his data deleted (Art 17 GDPR), restrict its processing (Art 18 f GDPR) and to data portability (Art 20 GDPR). Customers can find a German version of the GDPR for their information under the following link: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0679&from=EN>
Customers can address any questions regarding the processing of their data to: datenschutz@theurl-holz.at or call +43 4855 8411-0. Customers can also get more detailed information from the THEURL data protection statement which can be downloaded from <http://www.theurl-holz.at/service/datenschutz/>.

8.3 If the customer is of the opinion that THEURL is in breach of legal provisions in the processing of his personal data, he may submit a complaint to the Austrian Data Protection Authority or to the national supervisory authority in his country of residence.

§ 9 CONSUMERS

9.1 Legal transactions concluded between THEURL and consumers as defined by the Austrian Consumer Protection Act (KSchG) are subject to these Terms and Conditions of Business only to the extent that they do not infringe mandatory statutory provisions.

9.2 If the customer is a consumer, the conciliation body for consumer transactions (www.verbraucherschlichtung.or.at) acts as the out-of-court conciliation body. The customer can call this conciliation body in the event of disputes. The consumer should be aware that THEURL is not obliged to engage or to subject itself to this body to settle disputes, and that in the event of a dispute, THEURL will first decide whether an out-of-court resolution is agreed or not.

§ 10 APPLICABLE LAW AND PLACE OF JURISDICTION

10.1 The contractual relationship between THEURL and the customer is subject to the laws of the Republic of Austria, with the exception of all bilateral and/or multilateral agreements regarding the purchase of moveable goods, and in particular with the exception of the United Nations Convention on Contracts for the International Sale of Goods (CISG) and the conflict-of-law rules of the Internationalen Private Law Act (IPRG) and Rome I. The contractual language is German.

10.2 All disputes arising from this contractual relationship are handled exclusively by the competent court for A-9911 Thal-Assling, Austria. THEURL is, however, entitled to elect any other legally permitted place of jurisdiction, in particular the customer's place of jurisdiction.

§ 11 FINAL PROVISIONS

11.1 Changes, additions and ancillary agreements to these T&CS, along with assurances of any type and declarations to THEURL are valid only if they are in writing. This applies equally to any agreement to deviation from this formal agreement.

11.2 Should any individual provisions of these T&CS be invalid in whole or in part, the validity of the remaining provisions is unaffected. In this event, the invalid provisions will be replaced by a new ruling that corresponds to or most closely meets the economic purpose of the invalid provision or the presumed intention of THEURL.

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