

## **General Conditions of Sale and Payment (GCSP) for wood sales of Mercer Holz GmbH (Mercer Holz)**

### **I. Scope**

#### **Section 1 Scope**

- (1) These GCSP apply to all wood sales of Mercer Holz (hereinafter referred to as the seller). Every buyer of wood recognises the seller's GCSP as binding for all types of sales and varieties of wood (round timber and wood chips) upon submission of the respective buyer's contractual declaration.
- (2) Additional or deviating conditions shall be disclosed to the buyer during the sales negotiations and shall be recorded in writing in the contract.

### **II. General Conditions of Sale**

#### **Section 2 Purchase contract**

- (1) The contract shall come into force by means of a written agreement concerning the type of wood, variety, quality and strength class, quantity, method of measurement, place of delivery as well as the price of the wood. The purchase contract shall be signed by the seller and buyer.
- (2) The purchase price shall be determined for the unit of measure of the respective wood, the variety, quality and strength class. The quantity shall be agreed upon with a tolerance of +/- 10% in the sales contract. If factory measurement has been agreed upon, the measurement determined in the customer's factory pursuant to the condition of Section 3 shall apply.

#### **Section 3 Measurement, classification, labelling, designation of the wood**

- (1) Unless otherwise agreed (e.g. factory measurement), the measurement, classification and labelling of the wood shall be performed according to the statutory provisions and the additional regulations of the seller.
- (2) In the case of factory measurement, the measurement of the wood shall be determined by means of a calibrated and graded-tested factory measuring system or by weight (dry).



(3) The seller shall be entitled at any time to verify compliance with the prescribed or agreed upon measurement procedures at the premises of the buyer themselves or to have said compliance checked by a representative.

(4) As a standard for the factory measurement, the following recognised standards/rules shall in particular apply as a prerequisite for recognised measurements:

- the "Rahmenvereinbarung für die Werksvermessung von Stammholz" [Framework Agreement for the Measurement of Trunk Wood] of the Deutschen Säge- und Holzindustrie e.V. (VDS) [Association of the German Sawmill and Wood Industry] as well as of the Deutschen Forstwirtschaftsrates e.V. (DFWR) [German Forestry Council]

As a standard for the dry weight measurement of forest timber, the following recognised standards/rules shall in particular apply as a prerequisite for recognised measurements:

- - the "Vereinbarung zum Waldindustrieholzkauf nach Gewicht zwischen dem Gesamtverband Holzhandel e.V. und dem Verband der Deutschen Holzwerkstoffindustrie e. V." [agreement concerning forestry timber purchase by weight between the General Association for Wood Trade and the Association Of The German Wood Material Industry].

As a standard for the dry weight measurement of industrial wood chips, the following recognised standards/rules shall in particular apply as a prerequisite for recognised measurements:

- the "Stichprobenverfahren zur Ermittlung des Atro-Gewichts von Industriehackgut" [random sampling method for the determination of the dry weight of industrial wood chips] of the Deutschen Säge- und Holzindustrie e.V. (VDS) [Association of the German Sawmill and Wood Industry] as well as of the Verbandes Deutscher Papierfabriken e. V. [Association of German Paper Manufacturers]

as amended.

#### **Section 4 Contesting the purchase contract**

- (1) The buyer expressly may not contest the purchase contract due to errors concerning the nature, type, properties, quantity, dimensions or storage location of the wood.

#### **Section 5 Security and power of attorney**

- (1) The seller can make the delivery of the wood dependent on a security in the form of a guarantee or advance payment.



- (2) Anyone who wishes to purchase wood for a third party shall, upon request, identify himself by means of a written power of attorney from his client. In this case, the name of the authorised representative also has to be indicated in the sales note.

### **III. Obligations of the seller and buyer**

#### **Section 6 Exhibition and provision**

- (1) The seller shall hand over the wood to the buyer at the terms defined in the contract. With the delivery of the wood, the buyer accepts the delivered goods in terms of quality and quantity as contractually compliant. If the buyer wants to object to the quality and quantity, it has to do so within two working days following the delivery. The complained goods have to be kept separately and may not be processed or mixed with other wood.
- (2) The presentation of the wood shall be performed by the seller or its authorised representative at the place of fulfilment and according to tree species, variety, dimensions, quantity, as well as quality and strength class (this may occur either at the logging location or the seller's warehouse).
- (3) If the buyer or its representative does not appear at the exhibition meeting or if it waives the exhibition, it shall thereby acknowledge the information pursuant to paragraph 2. The wood shall be considered to be free of any objections.
- (4) With the agreement on the occasion of the exhibition of the wood and with the waiving pursuant to paragraph 3, the wood shall be considered to have been handed over.

#### **Section 7 Transfer of risk**

- (1) The transfer of the risk of accidental loss, loss of value, deterioration of the wood and hazards for third parties which may originate from the wood to the buyer shall be effected by means of the handover of the wood at the agreed place of performance.
- (2) In the event of any waiver of the exhibition, the buyer shall be sent a list of measurements. The handover of the wood shall take place with the confirmed return of the measurement list with the date and signature of the buyer. If there is no response within one week, the transfer shall be deemed to be accepted as of the 7th day after list of measurements has been sent.

#### **Section 8 Transfer of ownership, reservation of ownership**

- (1) Ownership of the sold wood shall be transferred to the buyer upon payment of the full purchase price and all additional costs.



- (2) Until the full payment of the purchase price and all additional costs, the seller shall reserve the ownership of the sold wood. In the case of a partial payment or the existence of a bank guarantee, the buyer or its authorised representative may be allowed to drive the wood away or to have it sent to him. The payment of the full purchase price without any incurred additional costs shall be equivalent to the performance of a partial payment.
- (3) The buyer shall be obliged to immediately send the documents agreed upon for the calculation of the final purchase price to the seller. The seller shall be entitled at any time to perform inspections of the correct determination of the factory entrance measurements and/or the weight.

### **Section 9 Guarantee**

- (1) The seller shall only be liable for externally recognisable significant deficiencies or significant deviations from the reached agreements regarding the tree species, variety, quantity, quality class, diameter, length or the special characteristics of the wood which have been assured in writing. Liability for faults which cannot be recognised externally (such as foreign objects, ammunition or pest infestations) are excluded unless fraudulent or grossly negligent action is verified.

### **Section 10 Warranty period**

- (1) Complaints can only be made until the time of the exhibition or, if this is not desired, until the time of the hand over.
- (2) Complaints are to be provided to the seller in writing with an indication of the wooden number and defects. The seller shall have 7 days to inspect the wood which is the subject of the complaint.
- (3) In the case of trunk wood containing shivers, subsequent complaint provided to the seller in writing at the latest 6 months as of the date of delivery shall be possible if splinter damage has occurred in the case of cutting wood for which no splinter deduction has been guaranteed upon purchase.
- (4) After expiry of the warranty period, all liability of the seller shall be excluded.

### **Section 11 Performance of the warranty**

- (1) If the warranty claims are justified, the following shall occur according to the option of the seller: either the purchase price shall be reduced, replacement by another wood of the same kind and quality shall occur, or the purchase contract shall be cancelled. In cases of reduction and conversion, payments which have already been made will be reimbursed without interest. Any payments made by the buyer which shall be related to ancillary costs shall be



not reimbursed. Any consequential damage of whatever the nature or extent will expressly not be replaced.

#### **Section 12 Exclusion of liability**

- (1) The seller, its representatives and its vicarious agents shall only be liable for intent and gross negligence. Liability for slight negligence is expressly excluded. Liability for any reason is in any event limited to the seller's respectively concluded liability insurance.

#### **Section 13 Acts of force majeure**

- (1) In cases of force majeure (strike, war, lock-out, suspension of official approvals, weather conditions), the buyer shall not be entitled to any claims against the seller for non-delivery. If necessary, the seller shall be entitled to supply wood of the same type and quality instead of the contractually agreed wood. Compensation for possible additional costs of the buyer is excluded in this regard. In such a case, however, the buyer shall be given the opportunity to rescind the contract without compensation or sanctions.

#### **Section 14 Place of fulfilment of the wood delivery**

- (1) The place of fulfilment shall be the agreed delivery location. In the case of a handover in the forest pursuant to forest measurement, the lorry-transportable logging road nearest to the logging location shall be meant unless otherwise agreed in writing. This shall also apply if the handover occurs in the forest and the billing occurs according to factory measurement. In all other cases, the factory or harbour free on truck shall be considered to be the place of fulfilment.

#### **Section 15 Wood removal**

- (1) The buyer and its representative shall only be allowed to remove the wood after payment or with the explicit consent of the seller.
- (2) If the buyer or its representative removes wood without being authorised to do so, the seller may demand the return or immediate fulfilment of all liabilities of the buyer.

#### **Section 16 Removal obligation**

- (1) The removal of the wood has to be completed within a period stipulated by the seller in the contract. If the deadline is not observed due to reasons for which the buyer is responsible,



the seller may charge storage fees and relocate the wood to another storage location at the buyer's expense or protect it from insect infestation at the buyer's expense.

**Section 17**  
**Transport obligation**

- (1) Travelling in the forest occurs at one's own risk. No due diligence or transport obligations on the part of the seller exist. This also applies to marked routes and paths. Intent and gross negligence re excluded.

**Section 18**  
**Due diligence of the buyer**

- (1) The removal of the wood has to be performed in a forest-friendly and path- friendly manner. The seller may demand compensation for intentionally or negligently caused damages.
- (2) Logging roads may only be used in a conservative manner and according to their developmental condition.
- (3) The buyer shall be liable for any damages caused by it or by its representatives during the removal provided that such damages exceed an extent which is unavoidable.
- (4) The buyer and its representatives shall be obliged to comply with the instructions of the seller or its representatives which are issued in the interest of preserving the forest, forestry and hunting protection or other reasons related to forestry.
- (5) The buyer and its representatives shall be responsible for complying with the accident prevention regulations.

**IV. General conditions of payment**

**Section 19**  
**Purchase price**

- (1) The purchase price shall be agreed upon in the purchase contract. It shall be calculated according to the method described in the purchase contract.
- (2) The purchase price shall be determined for the unit of measure of the respective wood according to type of wood, variety as well as quality and strength class.



## **Section 20**

### **Payment methods**

- (1) The purchase price shall generally be in cash (euro) by provision or payment to the account specified by the seller. The corresponding bank data shall be entered in the invoice. Checks will not be accepted.
- (2) The payment shall be made on the basis of an invoice provided by the seller or, if agreed upon in the purchase contract, on the basis of credits from the buyer to the seller.

## **Section 21**

### **Payment period, granting of cash discount**

- (1) When wood is sold, payment has to be made within 14 days with a discount or within 30 days net after the date of the invoice, unless otherwise agreed. The 14th calendar day or the 30th calendar day shall be the last day of the general payment period. In the case of discounting, the buyer shall have to prove that the money has arrived at the seller within 14 days. It shall not be sufficient for the buyer to transfer the money within 14 days.
- (2) Discount contracts which the buyer does not deduct on its own cannot be claimed subsequently.
- (3) If the last day of the payment deadline falls on a Saturday, Sunday or bank holiday, it shall be replaced by the following working day.

## **Section 22**

### **Payment delay**

- (1) The buyer shall be in default of payment if the buyer has not paid the purchase price by the expiration of the 30 days or within the agreed payment period. The delay of payment shall begin upon the following day. A warning will expressly not be required.
- (2) In the event of a delay in payment, default interest of 8% above the base interest rate shall be applied to that portion of the purchase money which is in arrears. The assertion of any possible damage beyond this shall remain unaffected.

## **Section 23**

### **Recovery**

- (1) If the agreed purchase price has not been paid or has not been paid in full (if instalment payment has been agreed upon or similar) upon expiry of the term of payment, the seller shall initiate court proceedings for the recovery of the claim without any further reminders. In this process, the part of the purchase price that has not been paid, interests and other claims of the seller will then be claimed.



## **V. General information**

### **Section 24**

#### **Place of jurisdiction, applicable law**

- (1) The place of jurisdiction shall be Rosenthal am Rennsteig. The seller shall be entitled, however, to sue the buyer at the former's own general court.
- (2) German law shall apply. The application of the CISG United Nations Convention on Contracts for the International Sale of Goods dated 11th April 1980 is excluded. The language of the contract is German.

### **Section 25**

#### **Severability clause**

If individual provisions of the contract are invalid or unenforceable or become invalid or unenforceable after conclusion of the contract, the validity of the contract shall remain unaffected thereby. The ineffective or unenforceable provision shall be replaced by an effective and enforceable provision of which the effects are as close as possible to the economic objective which had been pursued by the contracting parties by means of the ineffective or unenforceable provision. The above provisions shall apply mutatis mutandis in the event that the contract proves to be incomplete. Section 139 BGB [German Civil Code] does not apply.