

General terms and conditions of Yomei GmbH (revised: 01.11.2018)

I. Scope of Application

1. All business transactions done between ourselves and our contractual partners (Customers) are based exclusively on the following Terms, unless different arrangements are agreed individually in writing. This also applies to all future transactions with the Customer, even if this is not expressly agreed anew.
2. On receiving the confirmation of order, or at the latest on accepting the delivery, the Customer fully recognises our Terms of Business & Delivery; the Customer's conflicting terms of purchase, if any, shall not apply even if we are aware of them.
3. The features and quality of the contractual object are exclusively described in our quotations, confirmations of order and related documents, without this constituting a guarantee within the meaning of German Civil Code [BGB] sect. 443.

II. Risk of Credit Standing / Default in Payment / Credit Insurance

1. On placing an order, which is binding on the Customer, the Customer expressly gives an assurance of its credit standing. If any doubts arise afterwards about its credit standing, then – at our option – we may rescind the contract, or make the delivery contingent upon advance payments or the provision of security. In addition, we are entitled in any such case to declare all the Yomei GmbH outstanding receivables from the Customer due for immediate payment.
2. We are also entitled to the aforementioned rights in the event of the Customer defaulting in payment.
3. If the Yomei GmbH receivables exceed the liability assumed by the credit insurer, then the Customer is under obligation to immediately cover the amount exceeding the insured liability by making payment or providing security.

III. Price Increases

If the basis on which costs are calculated alters – in particular increases in costs for purchasing materials, increases in production or staff costs, increases in turnover tax – then we are entitled to alter the agreed prices, but only if the delivery period or our possibility of making delivery or the contractual term is longer than 4 months.

IV. Payment / Consignment Costs / Setoff / Right of Retention

1. Our prices are net prices and are always "ex works".
2. Unless otherwise agreed, invoiced amounts are payable within 20 days without deduction. The Customer defaults in payment on expiry of the 20-day period.
3. The agreed rate of default interest is that laid down in German Civil Code [BGB] sect. 288 and German Commercial Code [HGB] sect. 352, whereby we reserve the right to claim greater default damages on furnishing evidence.
4. If the goods ordered are worth less than EUR 300, then we are entitled to charge a flat-rate fee of EUR 25 towards general administrative and freight costs for each order.

V. Passing of Risk / Freight Routes / Transport Damage

1. The risk of accidental destruction or accidental deterioration of the goods passes to the Customer when the goods leave the manufacturer's works, irrespective of whether this is inside or outside Germany. This arrangement also applies to free deliveries to the Customer that we make using our own lorry. Transport insurance is only effected by the Customer if it so wishes.
2. Deliveries in chain-of-delivery business are always made free destination.
3. We determine the freight route and the type of freight at our own discretion, unless some special provision has been agreed.
4. All packaging is transport packaging that can not be returned in accordance with the packaging regulations. The customer is obliged to arrange for the disposal of the transport packaging.
5. For legal reasons, the driver cannot and may not help with unloading. Any obvious defects, and in particular any short quantities and transport damage must be plainly and clearly noted on the delivery documents. If deliveries are made by rail truck, the Customer must submit the factual report to the railway company.

VI. Delivery Date / Default in Delivery / Limitation / Exclusion of Liability

1. Confirmed delivery dates are always approximate. In the event of operational breakdowns, problems in procuring materials, force majeure, etc., we are entitled to alter agreed delivery periods or to rescind the contract without this creating any claims on the Customer's part. This also applies if performance of the contract is disrupted as a result of measures taken in labour disputes.
2. We shall comply with delivery periods insofar as we are able to; however, if delivery periods are briefly exceeded the Customer may not derive any rights from this. If agreed delivery dates are not kept to, the Customer must declare that we are in default and consent to a subsequent delivery period of 14 days. This declaration must be sent to us. Once this period has expired to no avail, the Customer is entitled to rescind the contract.
3. Compensation claims for late delivery are excluded, unless they are based on intent or gross negligence on our part or on the part of those assisting us to perform our obligations. The same also applies to claims based on impossibility. All compensation claims resulting from late delivery are limited to 25% of the value of the goods.
4. We shall in no event be liable for compensation for indirect damage or consequential damage; in particular, claims for lost profits are excluded. This does not apply as long as claims under product liability law are involved, or if we have insured the damage caused to the Customer.
5. If the goods cannot be procured, then we are entitled to offer comparable goods.

VII. Complaints / Guarantee / Exclusion of Compensation Claims

1. The Customer is under obligation to immediately inspect the goods delivered, and to claim any defects. Complaints shall only be taken into account if they are filed in writing. The Customer's right to lodge a complaint lapses after one week at the latest. Hidden defects can only be claimed up to two weeks after the goods have been handed over. The Customer bears the full onus of proof in respect of all the requirements for asserting claims, in particular the defect itself, the time at which the defect was established, and whether the complaint was filed in good time.
2. If the Customer requests subsequent delivery on making a justified complaint about defects (German Commercial Code [HGB] sect. 377), we may demand first of all that the defect be remedied if this is also a suitable way of restoring a non-defective state. In the event of justified complaints about wrong quantities, the Customer is entitled to claim subsequent delivery or a credit note. A credit note may not be interpreted as a claim to repayment. Substitute deliveries are only made in return for handing over the goods which the complaint involves. If remedying the defect or making substitute or subsequent delivery are not possible, or are unacceptably delayed, the Customer may demand a reduction in the price or the rescission of the contract. Lodging a complaint about a defect does not entitle the Customer to reduce the invoiced amount. However, in the event of only a slight breach of contract, and in particular in the event of only slight defects, the Customer has no right of rescission.
3. If, after post-performance has failed, the customer demands rescission of the contract due to a legal or material defect, then it shall not have any right to claim compensation for the defect as well. If, after postperformance has failed, the Customer opts for compensation, then the Customer shall retain the goods if it may reasonably be expected to do so. The compensation shall be limited to the difference between the purchase price and the value of the defective object. This does not apply if we have maliciously caused

the breach of contract.

4. Normal deviations in colour and structure, e.g. due to the natural growth of the wood, do not justify making complaints. This applies in particular to follow-up orders.
5. The guarantee period is 12 months as from the passing of risk. This period is a prescriptive period and also applies to claims for compensation for consequential damage due to defects, provided the claims asserted are not based on tort.
6. If the Customer receives defective assembly instructions, we are only under obligation to supply assembly instructions that are free of defects, but only if the defect in the assembly instructions stands in the way of proper assembly.

VIII. Liability / Limitation of Liability

1. We bear unlimited liability in the event of any liability laid down by law that is irrespective of fault, in particular liability based on a guarantee, or liability under product liability law, or liability for personal injury (injury to life or limb and health hazards).
2. In other cases of breach of duty, we are only liable for intent and gross negligence. This limitation also applies to our statutory representatives, workers, employees, staff, and those assisting us in performing our obligations.
3. If a duty is breached, performance of which is particularly important if the purpose of the contract is to be achieved (cardinal duty), then we shall also be liable for slight negligence. However, even if a cardinal duty is breached, our liability for indirect and unforeseeable damage as well as for consequential damage resulting from defects, lost profits, failure to make economies, pecuniary damage due to third party claims or other consequential damage, is restricted to intent and gross negligence. We shall not be liable beyond this.
4. The Customer's compensation claims for defects become statute-barred one year after delivery of the goods. This does not apply if we may be accused of fraudulent intent.

IX. Retention of Title / Other Security / Assignment

1. In the case of contracts with Customers, we reserve our title in respect of all the goods supplied until such time as all the Customer's liabilities resulting from the business relationship with us have been settled in full.
2. On placing the order, the Customer assigns to us in advance all its claims based on resale.
3. As long as the Customer does not default in its payments to us, and as long as no doubts about its solvency arise, and as long as it is guaranteed that the receivables from its own customers that are based on resale pass to us, the Customer is entitled to sell our reserved goods during the course of normal business, and to collect from its customers the receivables that have been assigned to us in advance. The Customer is under obligation to submit proof of resale to us at any time, and to effect collection of the receivables from its customers on our behalf.
4. If factoring is done, the Customer needs our express permission to resell our reserved property, which permission will be made contingent upon security for payment of our receivables. The same applies if our Customer's own customers prohibit assignment of the receivables demanded from them or want to make such assignment contingent upon their consent.
5. If the Customer acts in breach of contract, in particular if payment of our demands that are due is not effected in compliance with the contract, we shall be entitled to rescind the contract without issuing a warning or setting a deadline, to demand that the goods we have delivered be handed over, and to take all the measures required in order to secure our claims, including in particular labelling our goods accordingly; the Customer is under obligation to submit to us copies of invoices proving the names and addresses of its own customers, so that we can assert the claims that have been assigned to us.
6. At the Customer's request we are obliged to release security, namely reserved property or receivables that have been assigned to us – at our option –, insofar as the realisable value of the security exceeds our collateralised claims by more than 20%.
7. In order to protect the goods subject to reservation of title, the Customer is under obligation to effect appropriate insurance against fire, theft and suchlike, and to prove to us on request that such a policy has been effected. The Customer here and now assigns to us all the rights under such insurance policies ensuing from loss of damage to our goods.
8. The Customer is under obligation to notify us about all and any rights which third parties assert in relation to our reserved property or to the receivables assigned to us, and to ward off third-party interference at its own expense in accordance with our instructions.
9. We are entitled to assign all the Customer's claims to third parties without any specific permission from the Customer being required.

X. Customer's Obligation to Accept Delivery / Compensation

1. If the Customer is more than 2 weeks behind in taking over the goods after being notified that they are ready, or in performing its payment obligations, or in handing over the agreed security, then we shall be entitled – after setting a period of grace of one week – to rescind the contract and demand compensation.
2. Irrespective of the possibility open to us of claiming greater damages on provision of proof, we are entitled when asserting compensation claims to demand 25% of the sales price by way of damages without having to prove our specific losses. The Customer is at liberty to prove that losses are smaller.
3. If we do not exercise the aforementioned rights, then we shall be authorised to dispose freely over the item purchased, irrespective of our other rights.

XI. Place of Performance / Venue / Severability

1. We are entitled to process the data received from our Customer by reason of the business relationship in accordance with the terms of the German Data Protection Act, and in particular we are also entitled to transmit the data required for the credit insurance to the credit insurer.
2. Place of performance for our deliveries is Detmold.
3. Venue for all and any disputes arising from the business relationship, including proceedings based on bills of exchange, cheques and documentary evidence is Detmold.
4. These Terms shall be exclusively governed by German law; CISG does not apply.
5. If any of the above provisions is ineffective, or if there is any gap having to be bridged, this shall not affect the validity of the remaining provisions. On the contrary, the ineffective provision or the gap shall be substituted by a provision suited to attaining the economic and business purpose of the transaction, taking both sides' interests into account.