

# STANDARD TERMS AND CONDITIONS OF BUSINESS (T&CS)

Mercer Torgau GmbH & Co. KG



## I. AREA OF APPLICABILITY

1. These Standard Terms and Conditions of Business of Mercer Torgau GmbH & Co. KG (referred to in the following as "Mercer Torgau") apply to contractual relationships with entrepreneurs and legal persons under public law, including special funds under public law within the meaning of section 310 para. 1 of the German Civil Code (*Bundesgesetzbuch – BGB*).
2. All offers, contracts, deliveries and other services provided by Mercer Torgau are undertaken in all current and future business relationships exclusively on the basis of these Standard Terms and Conditions of Business. In addition, the Standard Terms and Conditions of Purchase apply to the purchase of wood, together with the Special Conditions for the Purchase of Wood of Mercer Torgau.
3. Any conflicting or deviating terms and conditions, in particular purchasing terms of the purchaser, do not form part of the contract unless otherwise expressly agreed by Mercer Torgau in writing under German law. Any deviating terms and conditions are hereby rejected. If Mercer Torgau makes a delivery, despite its knowledge of conflicting terms and conditions, this does not constitute acceptance of any conflicting or deviating terms and conditions of the purchaser.

## II. QUOTATION

1. All quotations of Mercer Torgau, including in price lists, sale documents or, where applicable, on the internet are non-binding, unless expressly stated to be binding. These are merely invitations to tender. Orders are binding offers by the purchaser. The binding offer will expire within 14 days from receipt by Mercer Torgau, if Mercer Torgau has not accepted the order in accordance with the following provisions.
2. Orders will be deemed to be accepted if they are either confirmed by Mercer Torgau in writing, or fulfilled without delay following receipt of the order or when due. In this case, the invoice will be deemed as a confirmation of the order. The right to prior sale is reserved.

3. If two confirmation letters overlap and are contradictory, that of Mercer Torgau will apply.
4. If Mercer Torgau becomes aware of factors following the conclusion of the contract, in particular delayed payment in respect of earlier deliveries, which in its reasonable commercial opinion would lead it to conclude that the payment claim may be endangered by the purchaser's lack of ability to pay, Mercer Torgau is entitled, upon stipulation of an appropriate deadline, to require prepayment or other appropriate securities from the purchaser and, in the case of refusal to provide this, to withdraw from the contract. In the case of withdrawal, invoices for part deliveries already made will immediately become due for payment.
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## III. DELIVERY AND TRANSFER OF RISK

1. The place of performance is the registered seat of Mercer Torgau.
2. For delivery, risk is transferred with transfer of the goods to the shipping agent, carrier or person otherwise entrusted with their carriage. This also applies in the event that Mercer Torgau has accepted the transportation costs. In the event of transport with its own vehicles, Mercer Torgau does not accept any liability for damage in transit, except for gross negligence or wilful intent. In respect of transport, where Mercer Torgau provides transportation with its own vehicles, it is entitled to reimbursement of expenditure which it may consider necessary for properly carrying out the transport.
3. Where delivery free construction site or free warehouse is agreed, this means delivery without unloading. It is a condition that access is available via a road accessible to a heavy goods vehicle. Unloading must be carried out immediately and appropriately by suitably qualified personnel of the purchaser. If the delivery vehicle leaves the accessible access road at the purchaser's instruction, the purchaser will be liable for any losses arising. The purchaser will be charged for any waiting time for which it is responsible.
4. Partial deliveries are permitted, if they are acceptable to the purchaser.

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5. Delivery deadlines will only start to run following agreement of all implementation details and if Mercer Torgau has expressly agreed to the binding delivery deadline in writing under German law.
6. If an event of force majeure or a delay for which Mercer Torgau is not responsible following the conclusion of the contract (in particular, including business interruption, strike including its own staff, lock-outs and transport disruption), the delivery deadline will be extended appropriately, in so far as it can be shown that such disruption had a substantial impact on delivery of the goods sold. This also applies where these circumstances affect suppliers of Mercer Torgau and/or their subcontractors. Mercer Torgau must notify the purchaser of the start and finish of such delays as soon as possible. The purchaser is entitled to require Mercer Torgau to stipulate whether it wishes to withdraw or deliver within an appropriate deadline. If Mercer Torgau does not respond promptly, the purchaser is entitled to withdraw. In this event, claims for damages are excluded.
7. If Mercer Torgau fails to meet delivery dates and deadlines, the purchaser will be entitled to enforce its rights only where it has imposed a further appropriate deadline of at least eight days on Mercer Torgau.
8. In the event of a delay in delivery the purchaser must, at the request of Mercer Torgau, stipulate within an appropriate deadline whether it still requires the delivery, or whether it is withdrawing from the contract due to the delay and/or seeks damages in place of performance.
9. In respect of timely delivery, Mercer Torgau is only liable for its own default and that of its agents. Mercer Torgau is not responsible for the default of its pre-suppliers as these are not its agents. Mercer Torgau must, however, assign to the purchaser any claims it may have against its suppliers upon request.
10. The purchaser must provide its VAT

number for deliveries within the EU. Where no VAT is due on a delivery the purchaser must provide notification of this promptly, together with the relevant proof.

11. If the purchaser delays acceptance, Mercer Torgau is entitled, after providing an appropriate deadline together with a threat of refusal, to claim damages in the amount of 25% of the purchase price amount stated on the order form, in addition to the purchase price. If Mercer Torgau demonstrates a higher loss, or the purchaser demonstrates a lower loss, the damages amount will be increased or reduced accordingly.

## IV. PRICES AND PAYMENT

1. All prices are subject to statutory value added tax and apply "ex works". If no agreement to fixed prices is made, the right is reserved to adjust prices due to altered wage, material and operating costs for deliveries which occur four or more months after the conclusion of the contract.

The purchaser has the right to withdraw from the contract if the price increase is 20% or more above the agreed price.

2. Invoices will be issued separately for each consignment under the date of dispatch of the goods. This also applies to agreed partial deliveries. Agreed payment deadlines start to run from this date.

3. Unless otherwise agreed, advance payments made for contracts will be offset against the individual partial deliveries on a pro-rata basis.

4. Mercer Torgau is entitled to request interim payments or advance payments in the following circumstances: if the purchaser orders for the first time; the customer is based abroad or the delivery is to take place abroad; the customer is in payment default, or where there are reasons to believe that the customer will not make timely or full payment.

5. Starting from the due date, Mercer Torgau is entitled to charge the purchaser interest in the amount of the credit costs payable by Mercer Torgau itself, but at no less than 9 percentage points above the prime rate (section 247 German Civil Code) and reserves all of its rights

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in respect of further losses including collection of the lump sum pursuant to section 288 para. 5.

6. Payment deadlines must also be adhered to in the event of a defects claim.

7. If the purchaser is in payment default, Mercer Torgau is entitled on provision of prior warning to take back the goods or, where applicable, to enter the purchaser's premises and retrieve the goods. Mercer Torgau may also prohibit the removal of the delivered goods and is hereby granted a right of lien in this regard.

8. If a defect or other reason for objection is known to the purchaser at the conclusion of the contract, there is no right to refuse or withhold payment. This also applies if the defect has remained unknown to the purchaser due to its gross negligence, unless Mercer Torgau has maliciously remained silent or has provided a warranty as to the quality of the item. Otherwise, payment may only be withheld due to defects or other objections to the extent appropriate.

9. Offsetting is only possible for claims recognised by Mercer Torgau which are undisputed or legally established as well as synthetically linked to the main claim.

## V. CHARACTERISTICS OF WOOD

## VI. DEFECTS, WARRANTY AND LIABILITY

1. Mercer Torgau will only be liable for defects within the meaning of section 434 German Civil Code as follows: The purchaser must check the goods received immediately for quantity and condition; where necessary, through sample checks. Any obvious defects must be notified immediately to Mercer Torgau in writing. Any hidden defects, including those discovered during or after processing, must be reported promptly and at the latest within 10 days after their discovery.

2. If the purchaser establishes defects in the goods and notifies Mercer Torgau accordingly, it must not use them, meaning that the goods must not be split, sold on or further processed until an agreement is reached to resolve the complaint.

3. If, despite all care being taken, the delivered goods contain a defect which existed at the point of transfer of risk, Mercer Torgau will be entitled, if the defect has been reported within the deadline, to determine the type of subsequent performance (replacement delivery, rectification), taking into account the type of defect and the purchaser's legitimate interests.

4. The purchaser's right to reduce the purchase price if the defect is not remedied will expire 12 months following delivery of the item. If the law stipulates a longer limitation period the above will not apply.

## VII. GENERAL LIABILITY LIMITATION

1. Mercer Torgau rejects all liability for negligence to the extent legally possible. This also applies to the liability of employees and agents of Mercer Torgau.

2. To the extent legally possible, liability claims in each case are restricted to the foreseeable damage that is typical for the contract. The limitations on liability do not apply if Mercer Torgau is liable for injury to life, health or the body.

## VIII. RETENTION OF TITLE

1. Mercer Torgau retains title in the goods until the purchase price has been paid in full. For goods which the purchaser obtains in the course of an on-going business relationship, Mercer Torgau retains title until all claims against the purchaser arising from the business relationship, including contracts entered into at the same time or later, are completed.

2. If the conditional goods are processed to create a new movable item, the processing will be made on behalf of Mercer Torgau without imposing any obligation upon Mercer Torgau, and the new item will become the property of Mercer Torgau. If conditional goods are processed together with goods not belonging to Mercer Torgau, Mercer Torgau will acquire joint ownership in the new items, proportionate to the value of the conditional goods relative to the other goods at the time of processing. If conditional goods are combined, mixed or intermingled with goods not belonging to Mercer Torgau, within the meaning of sections

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947, 948 German Civil Code, Mercer Torgau will be a joint owner in accordance with the statutory provisions. If the purchaser acquires sole ownership through combination, intermixing or mingling, it hereby transfers joint ownership to Mercer Torgau in proportion to the value of the conditional goods relative to the other goods at the time of combination, intermixing or mingling. In these cases, the purchaser must protect without charge goods which are solely or jointly owned by Mercer Torgau and which are also considered to be conditional goods, within the meaning of the above conditions.

3. If conditional goods are sold either alone or jointly with goods not belonging to Mercer Torgau, the purchaser hereby assigns all claims arising from the onward sale up to the value of the conditional goods, together with all ancillary rights and priority ranking over other debts. Mercer Torgau accepts the assignment. The value of the conditional goods is the invoice total of Mercer Torgau, which will not be applied if third party rights are enforceable against it. If conditional goods which have been sold on are in the joint ownership of Mercer Torgau, the assignment of claims extends to the proportionate value of Mercer Torgau's share of the joint ownership.

4. If the value of the collateral provided exceeds the claims (where applicable reduced by advance or part payments) by more than 20%, Mercer Torgau must either re-transfer or release the collateral at its option. When all claims of Mercer Torgau arising from the business relationship are satisfied, title in the conditional goods and the assigned claims will be transferred to the purchaser.

5. If conditional goods are used by the purchaser as an essential component for real property, ships, ship construction or aircraft of a third party, the purchaser hereby assigns all existing, assignable claims against the third party or relevant party to the value of the conditional goods, together with all ancillary rights, including any right to grant a legal

mortgage, and with priority ranking over other debts. Mercer Torgau accepts the assignment.

6. The purchaser is only entitled and authorised to sell on, use or construct the conditional goods in its normal proper course of business and only with the requirement that the claims within the meaning of paragraphs 3 and 5 actually transfer to Mercer Torgau. The purchaser must not make any other dispositions regarding the conditional goods and must not, in particular, pledge or grant security over them.

7. Mercer Torgau authorises the purchaser, subject to revocation, to collect the claims assigned in accordance with paragraphs 3 and 5. If the purchaser complies with its payment obligations, including in respect of third parties, Mercer Torgau will not exercise its own right to collection. At the request of Mercer Torgau the purchaser must name the debtors of the assigned claims and notify them of the assignment. Mercer Torgau is also authorised to notify the debtors of the assignment itself.

8. The purchaser must notify Mercer Torgau of any enforcement measures by third parties relating to the conditional goods or the assigned claims immediately and provide the necessary documentation for an objection.

## IX. PLACE OF PERFORMANCE AND JURISDICTION

The place of performance and jurisdiction is the registered office of Mercer Torgau.

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## X. DATA PROTECTION

If we process any personal data within the scope of the contractual relationship or during the formation of the contract, this will be done exclusively in accordance with the statutory provisions. In particular, the provisions of the General Data Protection Regulation and the German Data Protection and Implementation Act will be strictly complied with in using the data.

## XI. APPLICABILITY OF FURTHER CONDITIONS

In addition to these T&Cs the Standard Terms and Conditions of Purchase of Mercer Torgau apply to general purchases and the Special Conditions for the Purchase of Wood of

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Mercer Torgau apply to the purchase of wood. In the event of contradiction and/or uncertainties, the Special Conditions for the Purchase of Wood take priority over the Standard Terms and Conditions of Purchase as special rules. This also applies to the relationship between the General Terms and Conditions of Business and the Standard Terms and Conditions of Purchase of Mercer Torgau. Insofar as applicable and if no provisions are contained in the more specific regulations, the general provisions will also apply accordingly in each case.

## **XII. SEVERABILITY CLAUSE**

If one or more of these terms and conditions is ineffective in whole or in part, this does not affect the validity of the remaining terms and conditions. Where an ineffective clause contains an effective, appropriate part, this will continue to be valid.