

# General Terms of Business and Delivery (as of September 2016)

## The Oak Factory Ltd.

### **1. Scope**

- 1.1** Solely the present General Terms of Business (GTB) apply to all deliveries and services of The Oak Factory Ltd. (called "TOF" hereinafter ) to their Buyers and to all resulting rights and duties.
- 1.2** Conflicting or differing terms of the Buyer only apply if TOF explicitly submits to them in writing. Accordingly, TOF's GTB still apply if TOF renders deliveries and services without reservation in awareness of conflicting or differing terms of the Buyer.
- 1.3** These GTB also apply to future transactions between the contracting parties, even if they are not referred to again in these transactions.

### **2. Offer and conclusion of contract**

- 2.1** Offers prepared by TOF are not binding with respect to the Buyer unless a contract is subsequently concluded.
- 2.2** A contractual relationship comes into being when TOF issues a written confirmation of an order after receipt of an order from the Buyer and when the Buyer has met any requirements that may have been imposed in the offer (rendering of advance or down payments, provision of suitable means of security or proof of creditworthiness). Only after fulfilment of these or additional requirements agreed upon in writing (such as e.g. customs declarations, export permits) is TOF obligated to deliver.
- 2.3** Only the written offer and, if need be, the written order confirmation and written agreements between the Parties pertaining to it are material to the content and scope of the order. TOF does not owe characteristics of the objects of the contract that go beyond this. Information in prospectuses, catalogues, and other sales material are only binding upon TOF if explicit reference is made to them in writing in the order confirmation.
- 2.4** TOF is entitled to minor deviations in the models, the material, the execution, and the dimensions. Quantities may also differ +/- 10%.
- 2.5** Amendments and additions to the contract by the Buyer are only valid if TOF grants its explicit written consent to such. If such amendments or if circumstances that were not known to TOF at the time of placement of the order result in additional costs, the Buyer will be billed separately for these.
- 2.6** All communications from the Buyer to TOF must be in written form.
- 2.7** The Buyer must notify TOF of changes to the Buyer's name or address immediately and in writing. If no notice of change takes place, documents will be considered received by the Buyer if they were sent to the Buyer's last communicated address. Requests for changes to bills cannot postpone the due date thereof.

### **3. Price and payments:**

- 3.1** Unless agreed otherwise, the agreed price are considered to be net, ex warehouse of TOF. If charges are levied in connection with the delivery, the Buyer will pay these. If delivery with shipment is agreed upon, this and any transport insurance desired by the Buyer will be billed separately.
- 3.2** A prerequisite for adherence to the agreed prices is that the items on which the agreement is based remain unchanged and can be rendered without hindrances for which the Buyer is responsible. Subsequent expansions or changes that lead to additional expense must be additionally compensated by the Buyer.
- 3.3** If raw materials, energy, and labour costs or other external costs that are included in the price increase in the time between conclusion of contract and performance, TOF has the right to demand an adjustment of the agreed price commensurate with this increase. TOF also has the right to adjust prices if the exchange rate of USD to EUR varies by more than 5 per cent between placement of the order and delivery.
- 3.4** By placing the order, the Buyer confirms ability to pay and creditworthiness. If justified concerns or doubts arise against this - including at a later point in time - TOF can make performance of all contracts contingent upon an advance payment or adequate provision of security. TOF can withdraw from the contract if neither an advance payment nor adequate provision of security takes place within 2 weeks of a corresponding request.
- 3.5** Costs or fees of payment processing are to be paid by the Buyer.
- 3.6** If payment is late, TOF has the right to charge all costs necessary for appropriate prosecution as well as interest for late payment of 12% p.a. In addition, all active claims of TOF against the Buyer will fall due for immediate payment.
- 3.7** Objections against the claims billed are to be raised by the Buyer within 30 days of the billing date, otherwise the claim is considered recognised.
- 3.8** The Buyer does not have the right to offset outstanding claims on TOF, unless TOF becomes unable to pay or the counter-claim is recognised or established by a court.
- 3.9** The Buyer does not have the right to withhold or reduce payments on the basis of claims alleged against TOF.

### **4. Delivery, shipment, transfer of risk:**

- 4.1** Delivery periods that were not explicitly agreed upon as binding are non-binding.
- 4.2** If TOF has confirmed a delivery period as binding, then in case of doubt it will begin running on the date of the written order confirmation, but not before receipt of any potentially agreed upon down payment into the account of TOF. If performance is contingent upon cooperation of the Buyer, the period will not begin before the Buyer has fulfilled the duties to cooperate.
- 4.3** The delivery period is suspended as long as the Buyer is in default of payment obligations to TOF from this or another contractual relationship.
- 4.4** TOF is only in default if a reasonable extension period set by the Buyer has passed without result. Extension periods must be set for TOF in writing. They are only reasonable if they amount to at least six weeks after TOF's receipt of the setting of the extension period.
- 4.5** The place of performance for TOF deliveries is TOF's registered office.

**4.6** In case of force majeure, the contractual obligations of both contracting parties will be suspended. Cases of force majeure are especially unforeseeable, extraordinary, and no-fault circumstances that temporarily make it entirely or partially impossible or considerably more difficult for TOF to render the agreed performance, such as war, war-like conditions, mobilisation, bans on imports and exports, blockades, industrial actions in own and third-party operations, transportation delays, machinery breakdowns, product-related failures for which TOF is not responsible, interruptions of operations, delays in the delivery of raw materials, acts of sovereignty, and other circumstances for which none of the parties is responsible. The agreed delivery period will be extended by the duration of the obstacle to performance. TOF will notify the Buyer of the start and end of such obstacles.

**4.7** Goods reported to be ready for dispatch are to be taken over by the Buyer immediately, otherwise TOF has the right to store them at the expense and risk of the Buyer or – after a corresponding agreement with the Buyer – dispatch them at the expense and risk of the Buyer. In the absence of a special agreement, TOF will choose the means and route of transportation.

**4.8** Risk is transferred to the Buyer from the time when the goods are reported ready for dispatch, therefore from hand-over to the means of transportation or to storage.

**4.9** Delivered objects are to be taken by the Buyer, even if they possibly display minor shortcomings; partial deliveries are permissible.

**4.10** If objects of the contract are to be exported, the Buyer will bear responsibility for adherence to the relevant statutory import and export regulations and, in particular, must obtain any export permits at own expense.

## **5. Intangible property rights:**

**5.1** All records, papers, compositions, and other documents that were transmitted to the other contract partner in any form whatsoever remain the sole property of the transmitting party. The receiving party is to treat them as confidential, use them exclusively for the work during the contract term, and return them to the other party immediately upon request. The duty of secrecy ends five years after the end of the respective business relationship.

**5.2** If a performance of TOF is based on information, documents, or plans of the Buyer or of third parties connected to the Buyer, the Buyer is obligated to see to the granting of all copyrights necessary to use the work.

**5.3** The Buyer is obligated not to remove, edit, change, or make illegible references to title, trademarks, distinguishing marks, and the like that are applied to or enclosed with the delivered objects of the contract.

**5.4** If a claim is raised against the Buyer because of infringement of third-party proprietary rights in a case of normal use of the object of the contract, the Buyer must notify TOF thereof in writing immediately (within two working days). The Buyer will refrain from making any statements, acknowledgements, or even settlement suggestions to the claimant.

## **6. Data privacy provisions:**

**6.1** The data privacy provisions of the applicable version of the *Datenschutzgesetz* (Data Privacy Act) will be adhered to and the necessary security measures as defined by § DSG 2000 implemented.

The Buyer consents to TOF storing and processing the Buyer's disclosed data. The Buyer can revoke this consent at any time in writing.

**6.2** The Buyer consents to be cited as a reference on the Internet site of TOF with company name and logo. The Buyer can revoke consent at any time in writing.

## **7. Warranty:**

**7.1** TOF warrants that the object of the contract in question is in operational condition on the day of delivery and possesses the characteristics explicitly stipulated in the contract or otherwise customarily assumed.

**7.2** The Buyer is obligated to inspect the object of the contract for defects without delay after receipt and to report any defects in writing and with details to TOF within 14 working days. Hidden defects that are discovered later are to be reported without delay. If the duty to inspect and report is not fulfilled, the Buyer's warranty claims, claims to compensation because of the defect, and claims based on mistake about the item being free of defects are forfeit.

**7.3** The Buyer may not re-sell, install, or otherwise use goods that have been complained of or are observably defective. If the Buyer violates this obligation, the Buyer will indemnify and hold TOF entirely harmless with respect to damages that arise because of the processing or other use.

**7.4** In case of complaints, the Buyer must give TOF the opportunity to inspect the goods complained of without delay. The goods complained of are to be turned over at TOF's expense upon request. In case of unjustified complaints, the Buyer is obligated to reimburse TOF at TOF's request for the costs associated with the inspection of the goods (transportation, inspection costs).

**7.5** If there is a defect for which TOF is responsible, TOF will rectify it by correction or substitution. Rescission and price reduction are excluded.

**7.6** The period of limitation is twelve months from delivery

**7.7** The proof that the defect existed at the time of delivery of the goods is incumbent upon the Buyer (including during the first 6 months after delivery). The reversal of burden of proof pursuant to § 924 clause 2 ABGB (Civil Code of Austria) is therefore excluded.

**7.8** Warranty claims of the Buyer that go beyond this regulation are excluded, especially claims to compensation for damages not suffered by the object of the contract itself. This does not apply in cases of compulsory liability in cases of intent, gross negligence, or the absence of guaranteed characteristics.

## **8. Compensation for damages:**

**8.1** TOF is only liable for damages to the delivered goods themselves and in cases of intent, gross negligence, or culpable breach of essential contract duties, but not for damages that are attributable to ordinary negligent conduct of TOF or its assistants. Other and further claims of the Buyer, especially because of lost profits, lost savings, consequential damages, financial loss, loss of interest, and damages due to third-party claims as well as the title of product liability against TOF are excluded in every case.

**8.2** The amount of compensation for damages is limited to twice the order value. The order value is the fee for delivery of the object of the contract.

**8.3** Liability for personal injuries and statutory product liability remain unaffected by the liability clause above.

**8.4** In particular, TOF is not liable for damages due to force majeure (for the definition hereof, see Point 4.6).

**8.5** Insofar as liability is limited, this also applies to the personal liability of workers, employees, representatives, and agents of TOF.

**8.6** The claims for damages expiry in the time given in 7.6. In cases of intentional breach or grossly negligent breach of duty and malicious non-disclosure of defects as well as claims for damages pursuant to the PHG (Product Liability Act), statutory limitation provisions apply.

## **11. Retention of title;**

**11.1** The delivered goods remain the property of TOF as goods subject to retention of title until full payment of the purchase price and clearance of all claims existing under the business connection and claims yet to arise in connection with the object of the contract.

**11.2** The Buyer is obligated to take all legal precautions to secure and protect TOF's title.

The Buyer must adequately insure the goods subject to retention of title against fire, burglary, water damage, and force majeure. The claims for compensation from insurance are considered assigned to TOF as payment in the amount of TOF's claims as of now.

**11.3** If the Buyer sells goods subject to retention of title either alone or together with goods not belonging to TOF, the Buyer assigns as payment and effective as of now the claims arising from the resale in the amount of the value of the goods subject to retention of title, with all ancillary rights and with priority over the rest.

**11.4** If the Buyer installs goods subject to retention of title as an essential component into the plot of land of a third party, the Buyer assigns to TOF as payment and effective as of now the claims to payment arising against the third party or the party concerned in the amount of the value of the goods subject to retention of title, with all ancillary rights, including such a right to granting of a collateral mortgage, with priority over the rest.

**11.5** If the Buyer installs goods subject to retention of title as an essential component into the plot of land of the Buyer, the Buyer assigns to TOF as payment and effective as of now the claims arising from sale of the plot of land or of interests in land in the amount of the value of the goods subject to retention of title, with all ancillary rights and with priority over the rest.

**11.6** The Buyer is only entitled and authorised to resell, use, or install the goods subject to retention of title in the usual, due course of business and only with the proviso that the claims as defined by paragraphs 2, 3, and 4 are actually transferred to TOF. The Buyer is not entitled to other acts of disposal over the goods subject to retention of title, especially pledging or transfer as security.

**11.7** TOF authorises the Buyer, subject to revocation, to collect the claims assigned pursuant to paragraphs 2, 3, and 4. TOF will not make use of its own authority to collect as long as the Buyer fulfils the Buyer's payment obligations, including to third parties. At TOF's request, the Buyer is to name the debtors of the assigned claims and notify them of the assignment. TOF also has the power to notify the debtors of the assignment itself.

**11.8** If the Buyer passes on the goods in return for cash payment before full payment of the purchase price, the Buyer transfers to the Seller effective as of now the price to be received from the third party in the future by way of constructive possession. The parties consent effective as of now to the Buyer holding the purchase price received from the third party at the time of delivery of possession on behalf of TOF.

**11.9** The Buyer agrees to set aside incoming amounts from assigned claims separately and transfer them to TOF immediately.

**11.10** If goods that are subject to retention of title of TOF are attached, the Buyer will notify the bailiff and judgement creditor hereof without delay. Likewise, the Buyer must inform TOF immediately, first by telephone and subsequently by registered mail, of the attachment and the notification of the bailiff and judgement creditor. The attached goods are to be precisely identified. The Buyer will bear the costs of any interventions in every case.

**11.11** Upon cessation of payment, petition for or opening of bankruptcy proceedings, or judicial or extra-judicial settlement or preliminary proceedings, the right to resale, use, or installation of the goods subject to retention of title and the authorisation to collect assigned claims lapse. The authorisation to collect likewise lapses in case of protest of a cheque or bill.

**11.12** If the Buyer does not fulfil commitments owed to TOF or does not do so punctually or acts on the delivered goods in an impermissible manner, TOF can demand return of the goods delivered subject to retention of title without fixing a time limit and claim the extended title, without prejudice to the right to performance of the contract owed to TOF.

**11.13** In case of restoration of possession, the Buyer is obligated to send the goods back free of costs and carriage paid.

**11.14** As a flat depreciation, TOF can compute 40% (forty) of the agreed net purchase price of the goods within the first half-year after delivery and another 10% (ten) for each additional full quarter of a year. The Buyer is free to prove that no depreciation or only considerably less depreciation actually occurred.

## **12. Electronic billing;**

**12.1** By accepting the order for electronic sending of the bill by TOF by email, the Buyer will receive bills from TOF electronically to the email address provided. The Buyer waives sending of the bill by post. TOF is not obligated to accept an order for electronic sending of the bill by email.

**12.2** On the receiving side, the Buyer must ensure that all electronic dispatches of the bill by TOF by email can be properly sent to the email address provided by the Buyer and adjust technical features like filtering programs or firewalls accordingly. Any automated electronic reply letters to TOF (e.g. notice of absence) cannot be taken into consideration and do not invalidate the sending.

**12.3** The Buyer must report changes to the email address to which bills are to be sent to TOF in writing, without delay, and in a legally valid manner. Sending of bills from TOF to the last reported email address of the Buyer will be considered received by the Buyer if the Buyer has not reported a change in the Buyer's email address to TOF.

**12.4** TOF is not liable for damages that result from any potential increased risk of electronic sending of the bill by email in comparison to sending by post. The Buyer will assume the increased risk of access by unauthorised third parties caused by storage of the electronic bill.

**12.5** The Buyer can revoke participation in electronic sending of the bill by email at any time. After receipt and processing of the written termination by TOF, the Buyer will in future receive bills by post to the postal address last reported to TOF. TOF reserves the right to change from sending of the bill via email to the last postal address reported to TOF independently for an important reason.

## **13. Other provisions;**

- 13.1** All rights and duties from this contract pass to the respective legal successor. If no universal succession is at issue, each contract partner is obligated to impose the rights and duties from this contract onto the legal successor.
- 13.2** Amendments and additions to this contract must be in written form; the same applies to digression from the written form requirement.
- 13.3** The place of performance for both contracting parties is the registered office of TOF.
- 13.4** The place of jurisdiction for all disputes arising from any business relationship with the Buyer is the court with subject matter competence in Graz. TOF also has the right to sue the Buyer at the Buyer's place of general jurisdiction.
- 13.5** Austrian law applies. The UN CISG is excluded.
- 13.6** Should some of the above conditions be or become ineffective, this does not affect the effectiveness of the other conditions. The ineffective conditions should be replaced by such regulations as come as close as possible to the economic purpose of the contract with appropriate protection of the interests of both sides.