

# General Terms & Conditions

## I. General

1. The following Terms & Conditions apply in the respective version for all offers, sales, deliveries and services of osmo Holz und Color GmbH & Co. KG both for consumers and also for businesspeople (hereinafter also referred to together or individually as the "Purchaser"), insofar as there is no deviating agreement or no express individual provisions only for consumers or businesspeople are contained in the following Terms & Conditions. A consumer (§ 13 of the German Civil Code (BGB)) is any natural person who enters into a legal transaction for a purpose which cannot be attributed to either his/her commercial or his/her independent professional activity. A businessperson (§ 14 of the BGB) is a natural person who or a legal entity or a partnership with legal capacity which acts in exercise of its commercial or independent professional activity when entering into a legal transaction

2. They are also applicable for all future business relationships, even if they are not expressly agreed once more.

3. **If the Purchaser is a businessperson, the following applies:**

Contrary, deviating or supplementary terms & conditions of the Purchaser are not recognised by us, unless we have expressly consented in writing to their application. Our Terms & Conditions also apply even if we perform the delivery to the Purchaser without reservation, in knowledge of contrary conditions of the Purchaser or conditions of the Purchaser which deviate from our Terms & Conditions.

4. The usual sort provisions and the provisions of the German Timber Trade General Association (BD Holz-VdH e.V.), and insofar as these do not prescribe anything to the contrary, the classification rules of the foreign unloading and/or production areas, shall apply with regard to the quality for the delivery of foreign wood types and other commercial goods.

## II. Offer/Entry into Contract

1. Our offers and cost estimates remain subject to change unless we expressly state in writing that these are binding.

2. Contracts come into existence through our written order confirmation or through order fulfillment.

3. In the case of custom-made products, the Purchaser's technical drawing confirmed by us is the contract basis.

## III. Creditworthiness

1. When offers are accepted, the Purchaser is assumed to be creditworthy.

2. **If the Purchaser is a businessperson, the following applies:**

If after entry into contract, information is received about a significant deterioration in the Purchaser's financial status which no longer justifies the granting of credit, then we are entitled to demand advance payments or securities before delivery is performed. If the Purchaser does not comply with this demand within a reasonable period, then we can rescind the contract or demand compensation instead of performance. Delivery obligations can be refused until advance payment or the rendering of security. A significant deterioration in the Purchaser's financial status is to be assumed in particular in the case of bad cheques, bill protests, fruitless levy of execution, judicially-enforced receivership, the initiation of insolvency proceedings or if the Purchaser is downgraded by one full point by a recognised financial information body such as Euler Hermes.

## IV. Prices

1. The statutory VAT is not included in the price given. It will be shown separately in the invoice in the statutory amount on the date of invoicing.

2. Our prices are in Euros "free carrier" (Incoterms 2010) from the agreed handover location to the first carrier, unless something to the contrary is stipulated in writing in the offer. If after entry into contract, taxes, customs duties, freight charges, fees or other dues are increased, reduced or newly-introduced, then these are to the benefit or to the detriment of the Purchaser.

## V. Delivery

1. All consignments are for the Purchaser's account.

2. All consignments are at the Purchaser's risk. The Purchaser bears the transportation risk after loading has occurred. This does not apply if the Purchaser is a consumer in the sense of § 13 of the BGB.

3. Ancillary shipping costs and the materials necessary for shipping will be charged to the Purchaser separately.

4. Insofar as delivery periods are not expressly agreed as binding, these are only to be understood as approximate delivery-period information and are not binding. Delivery periods commence upon order confirmation. If uncertainties attributable to the Purchaser arise after the order confirmation, particularly with regard to the production, then the delivery periods shall be postponed accordingly.

5. Unforeseeable events such as industrial disputes, war, fire, government measures as well as natural disasters and other cases of force majeure release us from our performance obligation for the duration of their effect. We will inform the Purchaser about such events. If we become permanently unable to deliver due to such events, then both parties are entitled to rescind the contract with regard to the performance scope affected. Compensation claims of the Purchaser are excluded in the abovementioned cases of force majeure.

6. In the case of on-call purchases without a precise date stipulation, the goods are to be accepted by the Purchaser upon our written request at the latest 2 months after entry into contract. If our written acceptance request remains wholly or partially fruitless for 8 days, we are entitled, as we choose, to rescind the contract or to demand payment on the basis of an invoice. Storage costs, warehouse rent and fire insurance costs can be charged to the Purchaser in addition, from the fruitless expiry of the 8-day period set in writing onwards.

7. If despite agreed free-house delivery the Purchaser or a third party collects the goods itself at the Purchaser's latest request, then the Purchaser is not entitled to a transport deduction.

8. If the Purchaser is in default in acceptance (*mora accipiendi*), then we are entitled to demand compensation of the loss suffered and any additional expenditure. The risk of accidental deterioration and accidental loss is transferred to the Purchaser upon occurrence of *mora accipiendi*.

9. We are entitled to make partial deliveries and to render part-performance at any time, insofar as this is reasonable for the Purchaser.

## VI. Complaints about Defects/Rights in the Event of Defects

**If the Purchaser is a consumer, the statutory provisions of the German Civil Code (BGB) apply.**

**In contrast, if the Purchaser is a businessperson, the following applies:**

1. Upon arrival at their destination, the goods are to be inspected for any recognisable damage, for example transport or storage damage, and in the event that such damage is identified, a written complaint is to be sent to us. The damage must be determined at the destination without transporting the goods away from there. Otherwise, the goods are deemed to have been accepted in this regard.

2. In addition, the Purchaser's defect claims only exist if the Purchaser has duly complied with its inspection and complaint obligations owed pursuant to § 377 of the German Commercial Code (HGB). The goods are deemed to have been accepted if we do not receive a written defect complaint with regard to the defects which were recognisable during a careful inspection of the goods, within five working days after the goods arrived at their destination or otherwise within five days after discovery of the defect or after any earlier time when the defect was recognisable for the Purchaser during normal use without closer inspection.

3. Insofar as there is a defect which is attributable to us, we are entitled, as we choose, to rectify the defect or to deliver a flawless item.

4. If we are not prepared or are unable to rectify the defect or effect replacement delivery, or if this is delayed beyond reasonable periods for reasons attributable to us, or if the defect rectification/replacement delivery fails in another way, then the Purchaser - as the Purchaser chooses - is entitled to rescind the contract or to demand a corresponding reduction of the purchase price.

5. Insofar as nothing to the contrary arises from these Terms & Conditions, more extensive claims of the Purchaser - regardless of the legal reasons - are hereby excluded. For this reason, we are not liable for damage which does not occur to the delivered item itself. In particular, we are not liable for lost profit or for other pecuniary losses suffered by the Purchaser. Otherwise, the amount of our liability is limited to the purchase price of the consumed quantity of the delivery complained about.

6. The foregoing liability disclaimer does not apply insofar as the cause of the damage or loss is due to intentional behaviour or gross negligence or insofar as the damage or loss involves loss of life, personal injury or damage to health. Moreover, it does not apply if the Purchaser makes compensation claims because a defect in the purchase object was maliciously concealed or a guarantee has been breached.

7. If we negligently breach a material contractual obligation, our liability is limited to the foreseeable damage or loss, insofar as it does not involve loss of life, personal injury or damage to health.

8. The period of limitations for defect claims amounts to 1 year, calculated from the transfer of risk, unless items are involved which have been used for a structure in accordance with their usual manner of use, and whose defectiveness we have caused. In addition, this provision does not apply for liability in connection with loss of life, personal injury or damage to health, in the case of defects maliciously concealed by us or in the case of guarantee claims.

## VII. Joint and Several Liability

**If the Purchaser is a businessperson, the following applies:**

1. Insofar as our liability for compensation is excluded or limited pursuant to VI, numbers 5 - 7 hereof, this applies also for all claims arising out of producer liability pursuant to § 823 of the BGB.

2. The provision pursuant to number 1 above does not apply for claims pursuant to § 1 and § 4 of the Product Liability Act.

3. Insofar as our liability is excluded or limited, this also applies for the personal liability of our employees, workers, representatives and vicarious agents.

4. The time-barriage of claims arising out of producer liability pursuant to § 823 of the BGB is determined in accordance with VI, number 8 hereof, regardless of against whom these claims are asserted.

## VIII. Payment/Invoice

1. Insofar as nothing to the contrary is agreed upon in writing, invoices are payable within 14 days from the invoice date minus 2% discount, or within 30 days from the invoice date without discount. Payment is to be made in cash or by means of cashless payment transaction. Discount deductions are only recognised if the payment is made within the discount period and there are no overdue claims arising out of other sales.

2. Bill-of-exchange payments are only permissible pursuant to special agreement. The presentation of discountable bills of exchange is done in payment pending full discharge of the debt, and has to occur within 8 days after the invoice date. The term of the bills of exchange may not exceed 90 days, calculated from the invoice date onwards. Standard bank discount charges are borne by the Purchaser. Discount deductions are not recognised in the case of payment by bills of exchange.

3.

**If the Purchaser is a businessperson, the following applies:**

We are entitled, from the due date onwards, to demand default interest in the amount of 8 percentage points above the respective basic interest rate of the European Central Bank. The right to claim other compensation shall remain unaffected thereby.

**If the Purchaser is a consumer, the following applies:**

We are entitled, from the due date onwards, to demand default interest in the amount of 5 percentage points above the respective basic interest rate of the European Central Bank. The right to claim other compensation shall remain unaffected thereby.

4. **If the Purchaser is a businessperson, the following applies:**

The Purchaser cannot assert a right of retention or effect set-off against the purchase price or other payment claims existing against it, unless the claim used for set-off is undisputed or has been determined in a final and legally-binding manner.

5. If the Purchaser is obliged to make payment to us due to several sales, and if one payment is made which is insufficient to settle the entire debt, then that payment will first be credited towards the costs, then towards the interest, and then towards the main claims. The payment is to be credited towards the main claims due, beginning with the oldest, only after the settlement of costs and interest.

6. We are entitled to send invoices exclusively by email in the framework of what is legally possible, unless the Purchaser objects.

## IX. Retention of Title

1. The goods remain our property until full payment of all of the claims which have arisen out of the business relationship with the Purchaser. The Purchaser is obliged to provide us at all times without undue delay with all desired information about the products subject to retention of title or about claims which have been assigned to us in accordance with the following provisions.

2. The Purchaser's purchase price claims or wage claims arising out of the onward sale, the installation or other further processing of the goods supplied by us are hereby assigned in advance to us with all ancillary rights now, regardless of whether these are sold on to one or more customers. We hereby accept this assignment.

3. In the event of processing with other goods which are not our property, we acquire co-ownership in accordance with the ratio of the goods supplied by us to the total value.

4. The Purchaser is entitled to sell on or to process the goods supplied by us only in the ordinary course of business and with the proviso that the purchase price claim or wage claim arising out of the onward sale is assigned to us pursuant to clause IX, 2 hereof. The Purchaser is not entitled to make other disposals of the goods supplied by us. The Purchaser may not pledge or transfer as security to third parties any of the goods supplied by us before payment of all of the claims which have arisen out of the business relationship is made.

5. The Purchaser is empowered to collect the claims arising out of the onward sale or the processing despite the assignment. Our collection power remains unaffected by the Purchaser's collection authority. However, we will not collect the assigned claims ourselves as long as the Purchaser complies with its payment obligations. If this does not occur, then after prior written notification to the Purchaser, we are entitled to assert the assigned claims directly against the third party. The Purchaser is then obliged to refrain from collecting the assigned claims, as instructed by us. The Purchaser is obliged upon our request to make the assignment known to the third party and to hand the necessary documents over to us so that we can assert our rights against the third party.

6. Our retention of title is limited in such a way that upon full payment of all of our claims arising out of the business relationship, ownership of the goods supplied by us and subject to retention of title is automatically transferred to the Purchaser and the Purchaser is entitled to the assigned claims. We undertake to release the securities to which we are entitled pursuant to the foregoing provisions to the extent that their value exceeds the claims to be secured by more than 10%; the choice of the securities to be released is ours.

7. In the event of the onward sale of the goods supplied by us subject to retention of title, the Purchaser is obliged to agree on a retention of title for its part too. It is obliged to inform us without undue delay of third-party access to the goods owned by us. It is also obliged to inform these third parties which access our goods that these goods are our property.

8. We are entitled to inspect the goods supplied subject to retention of title at any time at the place where they are located, in order to label, repossess or sell the goods without further ado, if there is a justified doubt about the Purchaser's financial solvency or willingness to pay. The Purchaser is obliged to bear the costs of the implementation of the right of retention, particularly the costs of transportation.

9. The Purchaser is obliged to insure our goods sufficiently against fire and theft, and to provide evidence to us upon request that it has taken the insurance out. The goods are always to be stored in such a way that the retention of title remains effective.

## X. Intellectual Property

1. We as the seller have or the producer of the goods has exclusive rights in all names, trademarks, patents and inventions pertaining to the goods, regardless of whether registered or not.

2. We hereby reserve ownership rights, copyright as well as other proprietary rights in illustrations, calculations, drawings as well as other documents. Passing these on to a third party requires our written consent. This does not apply to illustrations, calculations, drawings as well as other documents which come from the Purchaser.

3. The storage obligation for tools which serve in the manufacture of merchandise expires at the latest two years after delivery to the Purchaser.

4. The Purchaser guarantees that the manufacture and delivery of objects which are produced in accordance with its information do not infringe third-party proprietary rights. Moulds, shapes, templates, stencils and other equipment remain solely our property, even if the party placing the order is charged a fee for this.

5. Drawings and other documents may not be made accessible to third parties, and are to be returned without undue delay upon our request or if the order is not placed with us.

6. Illustrations, drawings, models, templates and samples sent in are to be returned upon request by the Purchaser. If an order does not come into existence, then we can destroy these 3 months after making the offer; in all other cases, 6 months after invoicing.

## XI. Legal Venue/Place of Performance/Applicable Law

1. German law shall apply, excluding the application of the UN Convention on Contracts for the International Sale of Goods (CISG).

2. Should individual provisions of these Terms & Conditions be or become invalid or unfeasible, then the validity of the other Terms & Conditions shall remain unaffected thereby. The unfeasible or invalid provision is to be replaced by such a valid or feasible provision whose effects come closest to the financial objective which the contract parties were pursuing by means of the invalid or unfeasible provision. The foregoing provision also applies correspondingly in the event that these Terms & Conditions transpire to have unintended lacunae in certain regulatory areas.

3. These Terms & Conditions are made available in German and in English. In the event of any contradictions or discrepancies between the linguistic versions, the German version prevails.

4. **If the Purchaser is a businessperson, the following applies:**

The place of performance and the exclusive legal venue for all of the disputes arising out of the contract relationship shall be determined by the suppliers Location upon dispute. However, we are entitled to sue the Purchaser at its headquarters as well.

## XII. Data Processing

The Purchaser is aware that we store and process personal data in connection with the business relationship. No separate notification will be issued in this respect.

**General Terms & Conditions of OSO Holz und Color GmbH & Co. KG, as of March 2012**