

# General Terms and Conditions of Business and Delivery of the Mayr-Melnhof Holz Group

last amended 01/05/2016

## I. General information

1. These General Terms and Conditions of Business and Delivery (hereinafter shortened to 'GTCBD') are an integral part of all the offers, deliveries and other contracts concluded by any of the contracting parties from the Mayr-Melnhof Holz Group (hereinafter briefly referred to as 'Mayr-Melnhof'). However, they shall only apply if the contracting partner is a business, a legal entity or a special fund under public law. Deliveries shall only be carried out in accordance with these GTCBD, which shall be interpreted according to prevailing practices in the trade, with which the customer is familiar and which can be furnished by Mayr-Melnhof at any time following a written request by the customer and are also available at [www.mm-holz.com](http://www.mm-holz.com). Provisions that differ from these GTCBD shall only be binding for Mayr-Melnhof if they have been explicitly acknowledged by the latter in writing. This shall also apply if the ordering party refers to its own terms and conditions of trade ('battle-of-forms') or if such provisions are contained in invoices, order forms or delivery notes. Any individual agreements concluded with the contracting party in individual cases (including collateral agreements, supplements and amendments) shall take priority over these GTCBD in every case. The content of such agreements must be set forth in writing in the form of a contract or confirmation provided by Mayr-Melnhof.
2. These GTCBD shall also apply if Mayr-Melnhof unreservedly accepts the contracting party's order while being aware of the existence of deviating written or oral provisions drafted by the contracting party.
3. Documents, in particular drawings and descriptions of the products and technical details or models belonging to Mayr-Melnhof, merely constitute samples and are neither definitive as regards the nature and properties nor binding, unless such information is designated as binding beforehand, separately, explicitly and in writing. Any information, technical advice and other data of any nature whatsoever furnished by Mayr-Melnhof is only provided on the basis of empirical values. However, said information, technical advice and data are also non-binding and are provided without any liability or guarantee to the extent permitted under applicable law. This also applies, mutatis mutandis, to contract negotiations during the pre-contract phase.
4. If no written contract is made (for example, a contract concluded by word of mouth), these GTCBD shall apply in each case if the contracting party was already aware – or could have been aware – of them from preceding, regular business relations.
5. The contract is concluded on the condition that the contract will not be performed or will only be partially performed if, for reasons beyond the control of Mayr-Melnhof, Mayr-Melnhof's own suppliers do not carry out deliveries properly or only do so in part (this refers to the supply of advance services and raw materials to be supplied to Mayr-Melnhof). If the contractual goods are not available or only partially available,

the contracting party shall be immediately informed. Any consideration already paid shall be reimbursed without delay. Any further claims asserted by the contracting party, in particular claims for compensation, are excluded provided this is legally admissible.

6. The dispatch of goods always takes place following receipt of the properly countersigned reply letter sent by the contracting party (e.g. returned and undersigned order confirmation). If the goods are sent in the absence of a countersigned reply letter and accepted by the contracting party without any reservations, the GTCBD shall be deemed to have been accepted by the contracting party.

## II. Offer and order confirmation

1. Any offers or estimates prepared by Mayr-Melnhof are subject to confirmation and are not binding. If an order is placed following an offer made by Mayr-Melnhof, then the contract is formed only after the order has been confirmed by Mayr-Melnhof in writing.
2. Provided the intended purpose set down in writing is not altered, Mayr-Melnhof reserves the right to make minor changes to the scope of delivery described in the order. If production-related reasons should force Mayr-Melnhof to carry out more extensive changes, the contracting party shall agree to such changes provided they are not to the contracting party's commercial disadvantage: the contracting party bears the burden of proof regarding whether the changes are commercially disadvantageous.
3. Mayr-Melnhof reserves the right to pass on the order to another company within the Mayr-Melnhof Holz Group at any time and to have the order executed by said company.

## III. Prices

1. All prices shall be understood to refer to net prices. Statutory value-added tax is shown separately in the invoice.
2. When calculating prices, reference shall be made to the information in the order confirmation. The unit prices shall apply to the agreed delivery schedule. However, in certain cases, price adjustments may be agreed if the costs incurred by Mayr-Melnhof within the period leading up to the delivery shall vary. Invoicing shall be based on the actual dimensions supplied.

## IV. Dispatch and transport

1. The Incoterms shall apply in the version indicated in the order confirmation sent by Mayr-Melnhof.
2. The place of delivery must be flat and sufficiently stable so as to allow a heavy goods vehicle with a 10 t axle load to pull up and drive away without any difficulties. Unloading shall be carried out promptly and correctly; the use of a crane requires a prior, written, separate agreement. Any waiting times and idle times will be invoiced separately by Mayr-Melnhof unless they are due to gross negligence on the part of Mayr-Melnhof. The same applies to any required expenses

for warehousing goods, if unloading at the planned location should not be possible.

## **V. Delivery and warehousing**

1. Partial deliveries are expressly declared to be admissible.
2. The time of delivery of the goods remains unchanged regardless of whether the contracting party delays the acceptance of the delivered goods. Any warehousing costs incurred due to a delay in accepting the goods shall be borne by the contracting party.
3. In the case of a 'call-off agreement', if any call-off request by the contracting party is not received by Mayr-Melnhof in time, Mayr-Melnhof shall be free to insist on the delivery and invoice the delivery at the end of the delivery period or to completely or partially withdraw from the contract as it deems fit. Any warehousing costs incurred shall be borne by the contracting party.
4. If the goods cannot be delivered following manufacture due to unforeseeable circumstances at the time the contract is concluded and Mayr-Melnhof is not responsible for such circumstances, the contracting party shall bear the risks from this moment onwards. Any warehousing costs incurred shall be borne by the contracting party.
5. Insignificant deviations in quantities customary in the trade (of up to 10 percent) upwards or downwards upon delivery are expressly permitted by Mayr-Melnhof.
6. If the delivery deadline cannot be met, Mayr-Melnhof reserves the right to deliver the goods at another acceptable alternative delivery date. This new delivery date will be set in consultation with the contracting party. If Mayr-Melnhof fails to adhere to this new delivery date, the contracting party shall be entitled to demand the delivery be carried out after setting a reasonable period of grace or, or otherwise to withdraw from the contract. Any further claims asserted by the contracting party in this respect are excluded provided this is legally admissible. Mayr-Melnhof is only bound by its delivery deadlines if the contracting party fulfils its contractual obligations (e.g. timely release of schedule, down payments, etc.).
7. In case of force majeure or if important changes to parts of the contract are or become necessary and such instances are beyond the control of Mayr-Melnhof or whenever circumstances arise that do not merely complicate deliveries on a temporary basis or render deliveries partially or completely impossible, Mayr-Melnhof shall be entitled to withdraw from the contract without any additional claims becoming available to the contracting party.

## **VI. Warranty and notifications of defects**

1. The contracting party must examine the goods delivered immediately, in any case within 7 calendar days following receipt of the goods, for any defects and promptly notify Mayr-Melnhof in writing about any defects. If defects that already existed upon handover of the goods, and which could not have been discovered in the course of a proper examination following receipt of the goods (see VI. 1. 1. sentence 1), only emerge during the warranty period, Mayr-Melnhof must be notified in writing about such defects forthwith within the warranty period as soon as they are discovered, in any case before the goods are processed, transformed or resold. The warranty period generally lasts one year. The burden of proof in case of all circumstances justifying claims, in particular for

the presence of a defect at the time the goods are handed over, the time the defect is detected and for notifying the defect in good time always lies with the contracting party. In case of defects, the contracting party is obliged to accept the delivery in any case and to handle the goods with the usual degree of due care. Notifications of defects shall always be made in writing and include sufficient documentation in accordance with prevailing practices in industry and commerce (in particular, e.g. photographic documentation), and the receipt of this documentation must be confirmed by Mayr-Melnhof in writing. The defect shall be identified according to its nature and scope in a way that allows Mayr-Melnhof to clearly recognize the basis for the complaint. If these provisions are not adhered to, any claims (warranty, damages, error etc.) are considered invalid.

2. The contracting party shall submit any complaints concerning damage during transportation to the carrier promptly and in writing, in any case before the goods are processed, transformed or resold. In this case, the contracting party also bears the entire burden of proof in respect of any circumstances justifying claims, in particular for the defect or damage in question, the time the defect or damage is detected and for notifying the defects or damage in good time. In addition, clause VI. 1. shall apply accordingly.
3. Defects have no bearing on the agreed dates of payment.
4. Mayr-Melnhof is free to choose whether to rectify the defects by repairing them or making a new delivery after transporting the goods 'carriage paid' for the contracting party to the place of delivery. Mayr-Melnhof is entitled to make several rectifications. If even these rectifications should not satisfy both parties, the contracting party shall be entitled either to reduce the consideration payable provided the statutory preconditions are satisfied or to rescind the contract.
5. Any goods returned by the contracting party shall become the property of Mayr-Melnhof. Further claims such as reimbursement for work, materials, loss of earnings, compensation for non-performance etc. are excluded if this is legally admissible and occurs to the extent permitted under the law.
6. In any case, warranty claims are excluded in case of natural wear and tear and improper handling, excessive use and negligence on the part of the contracting party.

## **VII. Limitations and waivers of liability**

1. Mayr-Melnhof shall only be liable for damages in case of premeditation and excessive, gross negligence. In case of slight negligence, Mayr-Melnhof shall only be liable for personal injury. The liability shall lapse 6 months after identification of the damage and the damaging party. The amount of liability shall be limited according to the liability insurance taken out by Mayr-Melnhof.

## **VIII. Delays and withdrawal**

1. If the contracting party delays payment, Mayr-Melnhof shall be entitled to withdraw from the contract after granting a period of grace of at least one week. In case of delays in payment, Mayr-Melnhof shall be entitled to charge the contracting party – without prejudice to any further claims for compensation it may assert – the legal interest rate according to section 456 UGB (Austrian Commercial Code).
2. In case of a delay in accepting the goods on the part of the contracting party, Mayr-Melnhof shall be entitled to either:

a. insist upon performance of the contract and to delay fulfilment of its own obligations until the outstanding payments have been made by the contracting party, or

b. accept a reasonable extension of the delivery period or to notify its withdrawal from the contract after granting a reasonable period of grace.

In case of delayed acceptance on the part of the contracting party, Mayr-Melnhof shall also be entitled to insist on fulfilment of the contract or to withdraw from the contract after having granted a reasonable period of grace and to use the relevant goods otherwise.

In any case of delayed acceptance, the contracting party shall be entitled to pay a contract penalty in the amount of ten percent of the relevant net purchase price, without prejudice to any higher claims for damages.

3. If the contracting party terminates the contract before it has been fully performed for whatever reason, Mayr-Melnhof reserves the right to assert claims against the contracting party for reimbursement of any expenses already incurred and any damage.
4. If the contracting party's financial circumstances deteriorate significantly or its creditworthiness is found to be wanting after the contract has been concluded or the insurance limit from the contracting party's current orders has been exhausted, Mayr-Melnhof shall be entitled to demand immediate payment of all outstanding payments and of any invoices not yet due and to completely or partially withdraw from any agreements in force and orders already placed.
5. If there exists a judicial right to mitigate claims and this right may be lawfully excluded, then this right is herewith excluded. The right to assert further claims for compensation, in particular in relation to warehousing, remains unaffected.

## **IX. Payment and prohibition of setoff**

1. Unless otherwise stipulated in the order confirmation, the purchase price indicated in section III of these GTCBD is payable without deductions within the fourteen calendar days following the invoice date and, in the absence of any differing agreement, shall be effected by bank transfer.
2. In addition, Mayr-Melnhof shall be entitled to charge the contracting party any expenses incurred through non-performance of its contractual obligations and this includes, in particular, the costs of taking appropriate legal action (collection agency or legal representation).  
Transfer fees and expenses (in particular from abroad) shall be borne exclusively by the contracting party. Incoming payments will be used first to cover any expenses and default interests, any claims asserted under this section, section X, and thereafter to pay off the purchase price.
3. The contracting party is not entitled to set off its own claims against the claim for payment of the purchase price unless setting off its own claims was agreed upon separately in writing with Mayr-Melnhof and said claims have either been acknowledged in writing by Mayr-Melnhof or legally established in a judgement. The contracting party may not exercise any rights of retention.

## **X. Reservation of title**

1. Mayr-Melnhof shall reserve the title to the goods supplied until all the payments deriving from the existing current account relationship between the contracting parties including any

interests and costs, reminder charges and default interests and the associated claims have been received in full. Until full payment has been received for all claims the contracting party shall be liable for any breakage, theft, fire or other acts of God from the moment of transfer of risk. The contracting party undertakes to abstain from pledging the goods or otherwise assigning them by way of security. Their resale as part of an ordinary business transaction is permitted.

2. If Mayr-Melnhof's title to the goods is threatened by third parties, Mayr-Melnhof shall be immediately notified about this.
3. If the goods are seized while the reservation of title is still in force, Mayr-Melnhof shall be notified immediately in writing; the contracting party shall bear the legal costs and costs of representation during any action required to recover the seized goods. If the goods already delivered are seized, Mayr-Melnhof shall be entitled to withdraw from the contract. In such cases Mayr-Melnhof shall be entitled to realize the purchase items after they have been recovered. The proceeds from realization shall be set off against the contracting party's debts after deducting a reasonable amount for the realization of the goods.
4. If an agreement has been reached with the contracting party regarding the payment of the purchase price owing by means of a check or a bill of exchange, the reservation of title shall extend until the moment the bill of exchange accepted by Mayr-Melnhof from the contracting party has actually been redeemed and does not expire when the bill of exchange or check is credited to Mayr-Melnhof.
5. The contracting party undertakes to handle the goods with care and to warehouse them until the entire purchase price indicated in section X.1. has been received by Mayr-Melnhof. In so doing, the contracting party shall exercise the due care of a prudent businessperson.
6. If the contracting party sells the goods subject to reservation of title, it shall assign all claims amounting to the final invoice amount (including value-added tax) to Mayr-Melnhof with immediate effect and regardless of whether the goods supplied have been processed or not before their resale. The contracting party remains entitled to collect this claim even after it has been assigned. The right of Mayr-Melnhof to collect this claim itself shall remain unaffected. However, Mayr-Melnhof undertakes not to collect the claim if the contracting party complies with its payment obligations from the proceeds collected, is not in default of payment and, in particular, has not lodged an application to initiate insolvency or reorganization proceedings and no cessation of payments exists. Nevertheless, if this is the case, Mayr-Melnhof, provided this is lawful, may ask the contracting party to disclose the identities of the claims assigned and their debtors, provide any information required and useful for collecting the claim, hand over any associated documentation and properly notify the debtor (third party) about the assignment of the claim.
7. If the goods are processed or mixed with other items not belonging to Mayr-Melnhof, Mayr-Melnhof shall acquire co-ownership rights to the new object in the proportion represented by the value of the goods with respect to the processed or mixed item at the time it is processed or mixed. The contracting party shall safeguard the resulting solely or jointly owned object on behalf of Mayr-Melnhof with the due care of a prudent businessperson.
8. Mayr-Melnhof, upon request, shall release the goods and the

objects or claims taking their place as it sees fit if their value exceeds 50% of the secured claims and if this is mandatory under the law.

## **XI. Delivery schedules**

1. The delivery schedule shall be deemed to have been observed if the goods are ready for delivery at the factory and – if collection by the customer or the dispatch of the goods has been agreed upon – readiness for dispatch has been advised.
2. The delivery schedule set by Mayr-Melnhof (including fixed schedules, schedules for rectified or replaced goods etc.) will be suspended in case of events not attributable to Mayr-Melnhof, in particular force majeure, unforeseeable disruptions to operations, supply problems affecting its own suppliers or circumstances beyond the control of Mayr-Melnhof, in particular during carriage or dispatch of the goods. The delivery schedule shall be resumed once these events are no more.
3. Mayr-Melnhof is only obliged to adhere to delivery schedules if the contracting party complies with its contractual duties. In particular, this is conditional on compliance with payment conditions, the timely receipt of all documents to be furnished by the contracting party, any authorizations or approvals, the timely clarification and approval of plans and the provision of any other necessary cooperation. If the contracting party fails to fulfil its obligations on time, the legal consequences of a delay in accepting the goods shall take effect.
4. The foregoing provisions shall apply to any other performance schedules adopted by Mayr-Melnhof mutatis mutandis.

## **XII. Protection of intellectual property, confidentiality**

1. Mayr-Melnhof shall retain property rights, copyright and any other industrial property rights pertaining to the illustrations, drawings, calculations, models and any other documents furnished by Mayr-Melnhof during the course of business; they may not be made available to third parties without the written consent of Mayr-Melnhof or used or exploited beyond the business relationships with Mayr-Melnhof.
2. Any documents of relevance for the foregoing rights shall be returned to Mayr-Melnhof upon request and whenever the contract is not formed or terminated, regardless of the reason, without delay together with any copies that have been made.
3. The contracting party undertakes to treat all the business or trade secrets related to the offer or the initiation or handling of the contract that it learns of with strict confidentiality and not to pass them on to third parties. This duty shall be imposed by the contracting party on all its employees, agents, advisors and any other persons and aids engaged by the contracting party in order to fulfil its obligations.

## **XIII. Concluding provisions**

1. The contracting party undertakes to communicate any change in its address without delay to Mayr-Melnhof in writing. Written declarations may be validly sent to the last address provided by the contracting party.
2. Amendments and supplements to these GTCBD must be drafted in writing in order to be legally valid. The same applies to waiving the requirement of the written form.
3. If one or several provisions are or become invalid or impracticable, this shall not affect the validity of the remaining provisions.

The contracting parties herewith agree to substitute a valid and practicable provision for the invalid or impracticable provision that comes closest to the economic purpose of the invalid or impracticable provision. This shall apply mutatis mutandis if it emerges that the present GTCBD turn out to have gaps.

4. For the purpose of these GTCBD, in addition to a letter sent by post, 'written' shall also be understood by the contracting parties to refer to a fax or an e-mail unless otherwise stipulated in these GTCBD.
5. The law of the country in which the seller company in the Mayr-Melnhof Holz Group has its registered office shall apply exclusively to all the contractual relationships between Mayr-Melnhof and the contracting party, to the exclusion of the provisions on the choice of the proper law for contracts under private international law. The application of the United Nations Convention on Contracts for the International Sale of Goods (UN Sales Convention) is excluded.
6. The exclusive jurisdiction of the materially competent court for A-8700 Leoben is herewith agreed as competent to decide on any and all disputes regarding deliveries and services directly or indirectly resulting from a contractual relationship of the contracting parties referred to herein, including any disputes on existence or non-existence.
7. If these GTCBD are also furnished in a foreign language, reference shall be made exclusively to the German version in case of questions regarding interpretation.
8. The following companies in the Mayr-Melnhof Holz Group are also governed by the provisions of these GTCBD and accordingly, the exclusive validity of these GTCBD in the relationship between the contracting party and following companies shall be deemed to have been agreed upon and confirmed:

Mayr-Melnhof Holz Holding AG, Turmgasse 67,  
8700 Leoben, Austria

Mayr-Melnhof Holz Leoben GmbH, Turmgasse 67,  
8700 Leoben, Austria

Mayr-Melnhof Holz Russland Beteiligung GmbH,  
Turmgasse 67, 8700 Leoben, Austria

Mayr-Melnhof Pellets Paskov s.r.o., Staříč 544,  
CZ-73943, Czech Republic

Mayr-Melnhof Holz Paskov s.r.o., Staříč 544,  
CZ-73943, Czech Republic

Mayr-Melnhof Kaufmann Holding GmbH, Turmgasse 67,  
8700 Leoben, Austria

Mayr-Melnhof Holz Gaishorn GmbH, Gaishorn am See 182,  
8783 Gaishorn am See, Austria

Mayr-Melnhof Holz Reuthe GmbH, HNr. 67,  
6870 Reuthe, Austria

Mayr-Melnhof Holz Richen GmbH, Römerstraße 20,  
75031 Eppingen, Germany

9. If the Mayr-Melnhof Holz Group expands to incorporate further companies in addition to the aforementioned companies, Mayr-Melnhof shall communicate the names of these companies to the contracting party in writing. Thereafter, the application of these GTCBD to the relationship between these companies and the contracting party shall be deemed to have been confirmed and agreed upon.