

TRÆKON

Version 2017

Terms and conditions of sale adopted by the Danish Timber Trade Federation.

1. Application

- 1.1. These terms and conditions of sale (TRÆKON [version 2017]) apply to all deliveries of products from the seller to all professional purchaser, unless derogated from by written agreement between the parties.
- 1.2. If TRÆKON [Version 2017] applies to a delivery, any derogations must be agreed in writing between the parties. TRÆKON [Version 2017] applies notwithstanding the purchaser's reference to its own terms of purchase which are not considered accepted by the seller without prior written acceptance.

2. Packaging

- 2.1. The prices stated in offers, order confirmations and agreements are considered to cover the seller's/shipper's standard packaging, unless otherwise indicated.

3. Quantity

- 3.1. The seller is entitled to make deliveries using the seller's/shipper's standard packaging which may imply that +/- 5 % will be delivered, unless otherwise agreed in writing between the parties.

4. Information

- 4.1. Any oral or written guidelines from the seller to the purchaser are solely for guidance, and the seller is not responsible for the content.
The seller undertakes no liability for the content of catalogues, brochures and other information from the seller's suppliers.
The purchaser is fully responsible for the purchased product being suited for the contemplated purpose, and the purchaser must keep informed about updated product information.

5. Prices

- 5.1. The price is stated in the order confirmation or is fixed on the basis of the seller's current price list at the time of the order. The seller is entitled to make regular price adjustments in price lists and offers without notice, unless otherwise agreed in writing.
- 5.2. An exchange rate reservation must be agreed specifically between the parties in connection with the individual order. The seller must state in the order confirmation if an exchange rate reservation has been agreed.

6. Delivery

- 6.1. If the parties have agreed on a delivery clause, this should be construed in accordance with current Incoterms agreed at the time of the conclusion of the agreement. If the parties have not agreed on a delivery clause, delivery is subject to FCA (Incoterms).

7. Time of delivery and delay

- 7.1. If delay of delivery is due to circumstances which are subject to exemption of liability or the purchaser's act or omission, the date of delivery will be extended to the extent this is considered reasonable in the circumstances. The date of delivery must be extended even if the reason for the delay occurs after the expiry of the original date of delivery.
- 7.2. If the seller does not deliver the product in time, the purchaser may by written notice to the seller determine a final, reasonable time limit for delivery, stating that the purchaser intends to terminate the agreement if delivery does not take place within that time limit. If delivery does not take place within the final time limit, the purchaser may terminate the agreement by written notice to the seller.
- 7.3. If the delay is of essential importance to the purchaser, or if it is clear that such delay may occur, the purchaser may terminate the agreement immediately by written notice to the seller.
- 7.4. If the purchaser terminates the agreement in accordance with clauses 7.2 or 7.3, the purchaser will be entitled to claim compensation from the seller for any additional costs in connection with the purchaser's purchase of the same products from another supplier. In this connection, the purchaser is obligated to limit its loss to the widest possible extent and to make covering purchase in an appropriate manner within a reasonable time. Compensation may, however, not exceed the invoice value of the delayed delivery.
- 7.5. In addition to compensation mentioned in clause 7.4, the purchaser will not be entitled to compensation in connection with the seller's delay. This applies, irrespective of whether the purchaser terminates or maintains the purchase.

8. Payment

- 8.1. All payments are to be made on the agreed due date, however, no later than eight days from the date of delivery, unless otherwise agreed.
- 8.2. If the purchaser does not accept delivery on the agreed date, payment must nevertheless be made as if the delivery had taken place as agreed.
- 8.3. If the purchaser does not pay in time, the seller will be entitled to default interest in accordance with the interest act applicable from time to time, unless another interest rate is provided by usage of trade, custom or agreement.
- 8.4. In the event of failure to pay on the due date, the seller may cancel the purchase and/or suspend all additional deliveries to the purchaser, irrespective of whether these are related to the breach, until payment has been made. In addition, the seller may demand cash payment or other adequate security for future deliveries.

9. Ownership reservation

- 9.1. In so far as legally possible, the seller reserves and retains ownership with regard to the products sold and is entitled to take back the products sold, until the seller has received full payment of the purchase price, interest, etc.

10. Liability for defects

- 10.1. The purchaser must inspect the product immediately upon delivery to clarify whether the product has any errors or defects. The seller is entitled to reject a complaint concerning the quality or measurement or other errors and defects which ought to have been observed in connection with the inspection, or which are made after the product has been processed, installed or resold.
- 10.2. Complaints concerning defective deliveries must be made in writing and without undue delay after the purchaser has or ought to have observed the defect. Complaints concerning defects covered by clause 10.1 must be made within eight days from the receipt of the product; however, in the event of packaged products, within eight days from the opening of the packaging and no later than 90 days from the receipt of the product. Complaints concerning other defects must be made no later than two years from the date of delivery, but see clause 11.1 (clause concerning construction products). If the purchaser fails to complain, the purchaser forfeits the right to make claims against the seller in this respect.
- 10.3. In the event of complaints made in time concerning defects, see clause 10.2, caused by errors in the construction, production or material, the seller must take remedial action free of charge or make a replacement delivery at its own option.
- 10.4. If the seller does not take remedial action or makes replacement delivery within reasonable time after the purchaser's complaint according to clauses 10.1, 10.2 and 10.3, the purchaser will by written notice to the seller be entitled to cancel the agreement as regards the defective part of the delivery.
- 10.5. If the purchaser cancels the agreement, the purchaser will be entitled to claim compensation from the seller for any additional costs in connection with the purchaser's purchase of replacement products from another supplier.
- 10.6. Irrespective of the above, the seller's liability for defective products is always limited to the invoice value of the defective product(s). If the seller's commercial liability insurance and product liability insurance cover defects, the amount of compensation that may be obtained from the seller's commercial liability insurance and product liability insurance will be added to the seller's maximum liability for defects.
- 10.7. The seller is not liable for defects or for omitting to deliver replacement product(s), except as prescribed in clause 10.3. This applies to any loss as a result of the defect, including but not limited to operating loss, loss of profits and any other financial consequential loss and indirect loss. This limitation of the seller's liability does, however, not apply if the seller has acted with gross negligence.

11. Clause concerning construction products

- 11.1. In the event of sale of construction products covered by the construction products regulation (EU 305/2011), the seller's liability will cease five years from the handing over of the construction, however, maximum six years from the handing over of the materials to the purchaser in case of delivery to warehouse or for the purpose of resale.
- 11.2. If the purchaser is a business operator and the end-customer is consumer, the seller may, however, undertake extended liability for the delivery in question with the effect that the seller's liability ceases ten years after the handing over of the construction. It is a condition, however, that the seller is registered via Danske Byggecentre (Danish Timber and Builders Merchants Federation) as having accepted extended liability.

12. Product liability

- 12.1. If the delivered products are defective thereby causing injury to persons, real and personal property, the seller is only liable for the purchaser's or a third party's injury or loss to the extent such liability is prescribed by mandatory statutory provisions. The seller is not liable for any operating loss, loss of profits and other financial indirect loss and consequential damage.
- 12.2. Unless otherwise provided by mandatory statutory rules, the purchaser must indemnify the seller to the extent the seller is liable vis-à-vis a third party in connection with damage, loss or personal injury caused by the delivered products to a third party and/or to his or her real or personal property.

13. Limitation of liability

- 13.1. In every respect and in addition to the above, it is provided that the seller will not at any time be liable for any operating loss, loss of profits or any other financial consequential loss, indirect loss or consequential damage of any kind, including for instance payment of agreed penalties etc., irrespective of whether such damage or loss is suffered by the purchaser or a third party. This limitation of the seller's liability does, however, not apply if the seller has acted with gross negligence.

14. Exemption from liability

- 14.1. The seller is not liable for non-performance of its obligations due to events which are beyond the seller's control and which prevent the performance of the contract or make the performance of the contract unreasonably burdensome, including but not limited to industrial disputes, fire, war, mobilisation or military call-up of a comparable scope, requisition, seizure, currency restrictions, riots, terror, lack of transportation, general shortage of products, power restrictions, power cuts, IT breakdowns and defects in or delay of deliveries from the seller's suppliers.
- 14.2. The party claiming exemption from liability under clause 14.1 shall inform the other party by written notice without undue delay on the occurrence and on the cessation of such circumstance.
- 14.3. Where any grounds for exemption from liability fail to cease within three months, each party may terminate the agreement by written notice to the other party.

15. Disputes and choice of law

- 15.1. Any dispute arising out of the purchase, including disputes concerning the existence or validity hereof, must be settled under Danish law (however, as the conflict of laws rules under Danish law and The United Nations Convention on Contracts for the International Sale of Goods (CISG) do not apply) by arbitration at the Danish Institute of Arbitration in accordance with the rules of the Institute in force at the time of commencement of the arbitration proceedings, unless the seller decides that the dispute must be settled by the ordinary courts.

16. Commencement

- 16.1. TRÆKON [Version 2017] replaces TRÆKON 2002 and comes into force on 1 March 2017 and applies to all deliveries where an order has been received after that date.
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