

CDB TRADING LTD

international trading and consultancy
forest and natural products

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CDB Trading Ltd's General Conditions of Sale (CDB Trading Ltd's International Trading Terms of Sale)

1. Delivery and Passing of risk: The provisions of the sales contract and the Incoterms applicable when the contract is concluded shall apply with regard to delivery and the passing of risk. The risk does not pass to the Buyer until the goods are clearly identified to the contract whether by marking on the goods or by inspection of the goods by the Buyer or its representative before loading or by shipping documents. If goods are not inspected by the Buyer before shipment, the goods are presumed to be seen and inspected by the Buyer. If during inspection time, some goods are loading in vessel due to port practice without having been inspected by the Buyer, these goods will be considered as inspected by the Buyer. Any added mention on any documents made by the Buyer or its representative during the inspection time will be taken into account only if it is in the wording of the contract language and subject to its acceptance by the Seller.

2. Shipment: If a period of time is agreed for shipment, the Seller may ship the goods at any time within that period. Such period shall start to run on the date when the Seller receives the Buyer's fully workable letter of credit. The postponement of opening of letter of credit and the time for the Seller to receive the Buyer's fully workable letter of credit will automatically postpone the shipment date according to production and shipping availabilities and subject to Seller's agreement. Goods for prompt shipment must be shipped within 45 days of the date of receipt by the Seller of the Buyer's fully workable letter of credit. Shipment is subject to vessel and freight space being available. Shipment on deck is allowed. The loading time is subject to port practice and also to force majeure.

3. Retention of title: The Seller remains the owner of the goods referred to in the contract until all its claims against the Buyer have been fully satisfied.

4. Quantity: If the words "about", "circa", etc. are used, they entitle the Seller to deliver ten per cent more or less than the contractual quantity unless minimum/maximum quantities indicated. If the goods are inspected by the Buyer, the Seller is entitled to deliver ten per cent more or less than the inspected goods quantity. If short shipment and if the goods are not lost and if the goods are still available, the Seller will at his discretion supply the Buyer with a corresponding lot on next available vessel. In case of short shipment, the Buyer shall have no claims whatever is the cause for compensation against the Seller. Unless otherwise specified, cross measurement performed at country of origin is final, except in case of a proven gross error proved by an official measurement done, with the measurement method in force in the country of origin, by an official, independent and recognized organization, i.e. for a parcel of up to 150 CBM a difference of quantity of more than 3 percent and for a parcel of 151 CBM and up a difference of quantity of more than 2 percent.

5. Prices: If, after the conclusion of the sales contract, freight, customs duties, taxes or other cost are increased, such increases shall be borne entirely by the Buyer. The Buyer shall also bear any price increases decided by a public monopoly (such as S.N.B.G., Société Nationale des Bois du Gabon) or private monopoly or price increases caused by subsequent changes in a parcel of the qualities distribution of goods allocated by a monopoly or by a supplier of the Seller.

Value Added Tax (VAT): The goods delivered to Swiss companies or entities or Swiss individuals or foreign residents in Switzerland are subject to 8 % VAT. The goods delivered to non-Swiss individual with no residence in Switzerland and to non-Swiss companies or entities, i.e. to companies or entities domiciled abroad are exempted from Swiss VAT (8%), but only – and at the Seller's option – if the company or entity domiciled abroad does not have a branch or an establishment or an entity registered in Switzerland; if the company or entity domiciled abroad has a branch or an establishment or an entity in Switzerland, the invoicing can – at the Seller's option – be subject to 8 % VAT and the invoice for the services rendered can be issued to this branch or this establishment or this entity in Switzerland for payment facilitation.

6. Fees and cost: The Buyer shall bear all freight, customs duties, port, storage and other costs as well as all fees and levies created or increased after the conclusion of the sales contract. The Buyer shall be liable for expenses of fumigation including also all costs for crews' accommodation, transfer and food and also all costs for discharging and reloading of parcels if necessary and all cost for deck cleaning.

7. Acceptance of the goods by the Buyer: The Buyer undertakes to accept goods delivered in accordance with the contract. If the Buyer delays in accepting the goods, the sales price shall immediately fall due. The Seller may also immediately withdraw from the contract and claim damages from the Buyer. The Seller also has the right to store goods which are not accepted by the Buyer at the latter's expense and risk. In such cases, the stored goods shall be deemed to have been delivered in accordance with the contract and are at buyer's risks. No claim made by the Buyer at destination concerning blue-stain or other wormhole for wood with low or medium natural durability will be taken in consideration by the Seller.

8. The Buyer's default in payment: The Buyer has defaulted in payment if the contractually agreed sum has not been credited to the Seller's bank account within the period fixed in the contract. Any existing amount due by the Buyer or due by an entity or a company owned or in majority owned by the Buyer to the Seller – both under this contract between the Seller and the Buyer as well as through another contract between the Seller and the Buyer or through another contract between the Seller and an entity or a company owned or in majority owned by the Buyer – is to be settled, at the Seller's convenience, before the Seller starts any preparation of goods on the present contract, through the present contract, i.e. for instance by deduction by the Seller on any payment, payment on account or down payment by the Buyer for the present contract by compensation – and consequently after such above mentioned deduction is deducted, any balance still remaining due on the payment of the total initial price of the present contract having to be settled in due course by the Buyer to the Seller.

If the Buyer defaults in payment, the Buyer shall owe the Seller interest on defaulted payment as follows: **Delays:** Any delay in payment of the Seller's invoice by the Buyer shall entail, by rights and without formal demand, penalties of delay which will be applied to the sum due at the interest rate of 1.25 % per month of delay or pro rata, increased by 75 % without prejudice of the Seller's rights of collection, all expenses and all (extra-) judicial collection costs remaining for the Buyer's account. In case of judicial collection, the Buyer will owe to the Seller in addition to the principal and the late-payment interest a lump sum allowance equal to 20 % of the amount of the debt.

9. Force majeure: If the Seller, or a third party instructed to fulfil the contract by the Seller, or a supplier of the Seller, is prevented from prompt fulfilment of the contract by reason of force majeure, the Seller may postpone delivery for the duration of that impediment.

Force majeure for the purpose of the foregoing paragraph is, in particular, acts of God or the elements, acts of authorities or governments, monopolies (such as S.N.B.G., Société Nationale des Bois du Gabon), riots, civil war, war whether declared or not, hostilities, mobilisation, confiscation, requisition, embargo, fire, labour dispute, strikes, lock-out, lack of transport facilities, materials or energy, accidents, breakdown or destruction of production units, equipment, machines and plant facilities or any other event beyond reasonable control of the Seller which prevent or impedes the performance of the contract. It is also considered force majeure any events resulting from natural causes such as flooding, landslide or any other event which impedes the conveying of the goods to the loading port.

The Seller shall immediately inform the Buyer by e-mail, fax, telex or any other appropriate means of the reasons, impeding performance of the contract and shall also advise the Buyer as quickly as possible of the termination of the impediment.

If the cause impeding performance of the contract lasts for more than sixty successive days, the Seller shall be released from its obligation to supply.

The Seller shall have no liability for prejudice caused by inability to deliver resulting from force majeure as defined in this clause.

10. Warranty and claims for compensation: The Seller does not guarantee that the goods are suitable for a specific purpose even if the Seller is aware of that purpose. Colour deviations must be accepted by the Buyer and do not entitle the Buyer to refuse the goods or make complaint. Claim can only be taken in consideration after Buyer's acceptance of the documents. The Buyer must notify defects to the Seller in writing by registered express mail with acknowledgement of receipt no later than 7 days after the arrival of the goods at the port of destination with the following indication per log presenting defect: log number, kind of defect (defect of quality, defect of freshness, measurement discrepancies, species identification), precise description of the defect and size of the defect and an indication of any amount claimed if the case arises. The same similar procedure applies for other goods than logs. The Buyer may neither dispose of nor process the

goods until the Buyer's complaint has been settled. By not respecting the above process, the Buyer is losing his right to claim. If the Buyer does not notify the Seller of a defect within the time-limit and process set forth in this clause, the Buyer shall lose his right to have the defect compensated.

In the case of defective delivery, the Seller will at its discretion either supply the Buyer with a corresponding lot or grant a price reduction. Any further warranty is expressly excluded. The Buyer shall have no claims for compensation against the Seller and especially no claims for consequential damage irrespective of the legal ground therefore.

The Seller will not be responsible for the unfitness of parcel resulting of postponement of shipment whatever the cause is, resulting of the late arrival of the vessel scheduled for loading the parcel, or to whatever cause due to the Buyer (as late opening of fully workable letter of credit).

11. Liability: Any liability, regardless of any legal grounds, and especially for indirect and consequential losses, or for any other reasons shall expressly be excluded. The Buyer waives the right to bring a claim for whatever reason, and in particular direct or indirect liability against professional(s) and staff of the Seller or against the Seller or against any professional hired by the Seller or any third party (with whom the Seller have subcontracted partially or entirely).

12. Arbitration: Failing an amicable settlement, all disputes arising out of this contract shall be finally settled under arbitration. Any party is free at any time to proceed to arbitration by giving notification to the opposing party. Each party has to appoint immediately its arbitrator in 7 days. The arbitrators would appoint a third arbitrator in 7 days in the A.T.I.B.T. (Association Technique Internationale des Bois Tropicaux, Campus du Jardin d'Agronomie Tropicale de Paris, 45 bis, avenue de la Belle Gabrielle F-94736 Nogent-sur-Marne CEDEX) expert list, who would become chairman of the Arbitral tribunal. If one party omits to appoint its arbitrator in time or if the arbitrators cannot agree upon a chairman of the Arbitral tribunal, the arbitrator and/or the chairman of the Arbitral tribunal will be appointed by the chairman of the Arbitration Chamber of the A.T.I.B.T. The arbitrage will take place in Paris, France and the award will be done in the language of the contract or in French at Seller's option. The arbitrators shall act in equity and will give a decision to the Arbitral tribunal within 30 days from its constitution. They will state the reason of their decision. No later than 8 days after, the chairman of the Arbitral tribunal will notify the award which must state the reasons upon which it is based to each party by sending them a copy of the said award, signed by the arbitrators, and he will deposit the original with the register of the Tribunal of Baar, Switzerland for its implementation. The award of the arbitrators is final and binding on all parties under this contract and shall be immediately enforceable. The arbitrators will state on arbitrage fees and expenses and their allocation, and will mention it in the award.

13. Place of debt enforcement: If an order is given by a non-Swiss company or entity, i.e. by a company or an entity domiciled abroad and if this company or entity domiciled abroad has a branch or a firm or an office or a business or an establishment or an entity in Switzerland, this order can also be understood as given by this establishment or entity in Switzerland. Consequently, the invoice for the goods under this order can also be issued by the Seller to this establishment or entity in Switzerland. Any invoice of the Seller unpaid by this establishment or entity in Switzerland shall entail pursuit of the above-mentioned company or entity domiciled abroad, as debtor domiciled abroad who possesses an establishment or an entity in Switzerland and who can be sued for the debts of this establishment or of this entity through the competent cantonal enforced debt collection Office in Switzerland. Consequently, in case of such unpaid goods and invoice, the place of debt enforcement for such companies or entities domiciled abroad can – at Seller's convenience – be in Switzerland in the city where the above-mentioned establishment or entity will have its address (pursuant to Article 50, paragraph 1, Swiss Federal Debt Enforcement and Bankruptcy Act (SchKG)).

Any opposite or different clause or condition written down on any document issued by the Buyer (e-mail, or mail, letter per registered mail, or letter per courier or express services, or fax, or order of goods, or draft, or procedure, or protocol, or note, or notice, or cheque, or bill of exchange, or any other payment instrument, etc.) will not result in any dispensation or any novation to the present Place of debt enforcement as above mentioned – which is at Seller's convenience – and the explicit and exclusive Seller's Applicable Law and Jurisdiction which will be the only one to govern the legal relationship between the Seller and its Buyer as defined in the clause number 20 hereunder of the present General Conditions of Sale.

14. Place of performance of the contract: The place of performance of the contract is exclusively Switzerland at the address of the Seller, independently to any other place. The place of payment is exclusively Switzerland, at the headquarters of the Seller or its notified Bank.

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15. Application of General Conditions of sale: All documents issued by the Seller (e-mail, or mail, or letter per registered mail, or letter per courier or express services, or fax, or offer of goods, or confirmation of order of goods, or contract, or invoice, or draft, or procedure, or protocol, or notice, or note, or cheque, or bill of exchange, or any other payment instrument, etc.) are established on the basis of the present General Conditions of Sale; all documents of the Buyer or its representative (e-mail, or mail, or letter per registered mail, or letter per courier or express services, or fax, or order of goods, or draft, or procedure, or protocol, or notice, or note, or cheque, or bill of exchange, or any other payment instrument, etc.) will be accepted by the Seller only on the basis of the present General Conditions of Sale. Any phone call, or visit, or meeting, or contact of the Seller to/with a Buyer or its representative or any Buyer's or its representative's phone call, or visit, or meeting, or contact to/with the Seller are understood on the basis of the present General Conditions of Sale.

16. Primacy of General Conditions of sale: The present General Conditions of Sale prevail and cancel any previously passed verbal or written agreements. Any agreement dispensatory or any dispensation to the General Conditions of Sale, unless it suits the Seller, shall be subject to an agreement signed by the parties.

Any allowance and/or acceptance of the Seller does not at all constitute any waiver of the implementation of the present clauses of the present General Conditions of Sale: in such cases, acceptance of the Seller to provide goods means that all rights and means of the Seller are reserved and this without prejudice to any claims for any payment due to the Seller and to any claims for damages and interests from the Seller.

17. General Conditions of Sale: The "Incoterms" valid at the date of the contract and the Commercial Usages of the "Association Technique Internationale des Bois Tropicaux", Nogent-sur-Marne France, also apply unless they differ from the contract or from the General Conditions of Sale.

18. Specific agreements: The rights of the Client of this contract are not transferable.

19. Suspension/termination: The seller will have the right to terminate or suspend the present contract if it appears that the delivery of the ordered goods cannot be carried out under the conditions stated in this contract, or in the case of force majeure or in the case of non-obtainment of a possible license of export and/or of a possible export ban, governmental or other, or amendment to the export, or in the case of non-obtainment of necessary license, authorization, permission, visa or other specific reason, and/or of a possible ban, governmental or other, or situation of insecurity/default of security or change occurring in the exporting country and not allowing the purchase by the Seller of the goods ordered from the exporting country.

20. Application Law and Jurisdiction: This Sales Contract is governed by **Swiss Law**, unless the latter differs from the contract or from CDB Trading Ltd's General Conditions of Sale, excluding the UN Convention on Contracts for the International Sale of Goods. **Exclusive place of jurisdiction is Baar, Switzerland.** CDB Trading Ltd does, however, also have the right to bring action against the Buyer before any other competent court at the domicile of the Buyer or any other court having jurisdiction.

21. Copyright notice: These General Conditions of Sale are the intellectual property of CDB Trading Ltd, Baar, Switzerland. Any unauthorized reprint or use of this material is prohibited. No part of these General Conditions of Sale must be reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopying, recording, or by any information storage and retrieval system without express written permission from the author. ©2014 CDB Trading Ltd, Baar, Switzerland.

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