



## GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY

**Klausner Trading USA Inc.  
1297 Professional Drive  
Myrtle Beach  
SC 29577**

These General Terms and Conditions of Sale and Delivery (these "Terms") are applicable to all customers (the "Customers" and each, individually, a "Customer") of Klausner Trading USA Inc., a Virginia corporation (hereafter "KTU"). KTU is a distributor of wood products, including but not limited to lumber, logs and wood residues of different types, sizes and materials.

### **1. Terms and Conditions of Sale:**

1.1. KTU shall sell and deliver to Customer, and Customer shall purchase and accept from KTU, the products (herein, the "Products") described in any confirmed order or agreement or any combination thereof (the "Order"), pursuant to the terms and conditions of the Order and those specified below, which taken together shall constitute the entire agreement between KTU and Customer regarding the Products (herein, this "Agreement").

1.2. No other terms or conditions shall be of any effect unless otherwise specifically agreed to by KTU in a separate written agreement duly signed by an officer of KTU. Customer will be deemed to have assented to all Terms if any part of the Products is accepted by the Customer. Any additional or different terms or conditions contained in Customer's order or response hereto shall be deemed objected to by KTU and shall be of no effect. No general terms and conditions of a Customer shall at any time form a part of the content of any contract or agreement between the Customer and KTU, even if they are not further expressly rejected by KTU.

1.3. Unless otherwise agreed in writing, all quotations for Products are non-binding and may change from time to time. All wood products offered from inventory are subject to prior sale. Subsequent modifications in quantity or quality, if such are requested by Customer, may cause a modification of the quoted price or other delivery conditions. All drawings and samples enclosed with any quotation remain the property of KTU and shall be treated confidentially by Customer and must be returned to KTU after usage.

1.4. Any Order is binding upon Customer. Until the earlier of acceptance of the Order in writing or the delivery of the Products to the Customer within two (2) weeks an order is not binding upon KTU. Writing shall include transmission by telefax or electronic means. KTU shall have no obligation to fulfill an Order, if the Customer is in breach of any of its obligations hereunder, or any other agreement between the Customer and KTU, at the time KTU's performance was due, notwithstanding any prior acceptance of an Order by KTU,

1.5. All verbal agreements concerning the terms of any Order, including agreements made by telephone, shall have no force and effect unless and until acknowledged by KTU in writing.

1.6. Customer shall bear all costs associated with any cancellation or modification of the Order or parts of the Order. KTU shall have the right to cancel any order because of Customer's failure to comply with contract terms in respect to any prior shipment, or on account of any transfer or change in Customer's business, its insolvency, suit by other creditors, failure to meet financial obligations to KTU, impairment of the Customer's credit, or for unfavorable credit reports made to KTU through the usual channels of credit



information, unless Customer shall promptly furnish to the KTU's satisfaction, assurance of full payment for any shipment made or to be made.

## **2. Prices:**

2.1. Unless otherwise stated in KTU's Order confirmation, all price quotations are per delivery terms stated on the invoice or as notified by KTU to Customer from time to time, and does not include costs for standard packaging, postage or other freight charges, customs duties, insurance or taxes, if any.

2.2. The price of the Products shall be KTU's current prices in effect from time to time.

2.3. KTU may, without notice to Customer, increase the price of the Products by the amount of any new or increased tax or duty (with the exception of franchise, net income and excess profits taxes) which KTU may be required to pay on the manufacture, sale, transportation, delivery, export, import or use of the Products or the materials required for their manufacture or which affects the cost of such materials.

## **3. Terms of Payment:**

3.1. Unless otherwise stated in the KTU's Order confirmation, the amount invoiced shall be due and payable 10 days after the date of the invoice. Customer shall make payments by check or wire transfer to the lockbox address or account as indicated on the invoice without a cash discount or offset and KTU shall not be required to incur any expense to receive timely payment in full as required by this Agreement.

3.2. If at any time the Customer's credit worthiness shall become impaired or unsatisfactory, proof satisfactory to KTU of the Customer's credit worthiness shall be furnished forthwith or satisfactory security shall be given by the Customer on demand by KTU. Failing this, payment shall be made in advance; otherwise KTU shall have the right to decline to make further shipments or deliveries. If the Customer fails to make payments in accordance with "Terms of Payment" contained in the contract, KTU may forthwith cancel all further orders and terminate the contract.

3.3. If the Customer fails to make payment on or before the date required, Customer shall pay interest to KTU at the rate of one point five percent (1.5%) per month or such lesser amount permitted by law. The specification or charging of interest shall not be deemed an agreement to extend credit.

3.4. If Customer fails to observe these Terms or the terms of any other agreements between KTU and Customer, if Customer becomes insolvent, or if other circumstances occur which give rise to the concern that the financial situation of Customer has substantially deteriorated, all balances then due and owing to KTU shall become due immediately, notwithstanding any agreed upon payment periods. Any Orders that have been confirmed by KTU, but not yet filled, shall in such cases become cancelable at the sole discretion of KTU. In such case, the Customer shall bear the cost of production stops, interruptions and product already produced but not yet delivered.

3.5. The Customer shall be liable for all expenses (including reasonable legal fees) incurred by KTU in collecting past due amounts from the Customer.

## **4. Delivery Terms:**

4.1. Title to and risk of loss for the Products shall pass to Customer upon delivery thereof to Customer's carrier at Loading facilities or any other place determined by KTU.

4.2. Each shipment under a contract of sale shall be considered as a separate contract and default on one or more shipments shall not invalidate the balance of the contract of sale, except as herein otherwise provided.

4.3. KTU shall have the right to ship the entire Order at one time or any portion or portions thereof from time to time on one or more vehicles or vessels within the time of shipment and/or loading herein provided for. Customer shall not refuse to receive any portion of the Products shipped hereunder for failure of any



other portion to be shipped, or to comply with the contract unless the right to refuse is expressly reserved on the face of the contract.

4.4. KTU reserves the right to determine the method of shipment.

4.5. KTU shall have the option to route the shipments via any carrier or port or origin (dock) not named in the contract or Order. In the case of offshore shipments if the Customer's choice of port is unavailable to KTU, KTU will have the right to choose an alternate port of arrival and notify the Customer of the required change. Any additional transportation costs resulting from a required port change will be the responsibility of the Customer. Any reduction in transportation costs resulting from a required port change will be credited to the Customer.

4.6. For shipments offshore where freight is included in the price, unless otherwise agreed in writing, the Customer undertakes to receive the Products at destination ex-ship's tackle as fast as the vessel can discharge, failing which any demurrage or other charges shall be for the Customer's account. Unless otherwise agreed in writing, all charges at destination, including lighterage, wharfage, landing charges, dues and duties, are for the Customer's account and are not included in KTU's price. Any change of freight rate even if made subsequent to the date of sale but effective retroactively shall be for the account of the Customer.

4.7. When delay in shipment is likely to occur, it shall be the responsibility of KTU to so notify the Customer. Shipping dates are estimates only and are not guaranteed by KTU.

4.8. The Products shall be packaged as stated in KTU's Order confirmation. Customer shall be exclusively responsible for, and shall provide KTU with, any information necessary to comply with special labeling requirements applicable at Customer's place of business.

4.9. KTU shall be entitled to deliver ten percent (10%) more or less of the quantity of the Products as stated in the Order without any adjustment to the purchase price as stated in the Order. For the avoidance of doubt, such a delivery by KTU shall comply with the quantity of the Products as stated in the Order.

4.10. KTU shall use its reasonable efforts to deliver the Products to Customer by the agreed upon date, however, time shall not be of the essence. While in transit, KTU shall not be liable to Customer for delays in delivery or damage to the Products, irrespective of whether KTU or Customer determined the mode of transportation, except in cases of KTU's willful misconduct or gross negligence,

4.11. In cases of deliveries of Products manufactured to Customer's specification ("Special Orders") and unless otherwise agreed to in writing, all tools, models, plans, blueprints or other devices and/or documents used and/or developed by KTU in order to fulfill any Order or Special Order are the property of KTU, even if the cost of development and/or manufacturing of such tools, models, plans, blueprints or other devices and/or documents was wholly or partially borne by the Customer.

## **5. Warranty**

5.1. KTU warrants solely to the original purchaser of the Products that for the Warranty Period (as defined below) the Products will conform to KTU's published specifications of the Products or the applicable industry standards. Notwithstanding the foregoing, KTU retains its right to deviate from its published specifications due to the latest innovations and improvements in function, design and materials of the Products. The foregoing warranty is subject to the proper transportation, storage and use of the Products and does not include defects due to normal wear and tear, deterioration or specific natural attributes and characteristics of the Product including but not limited to variations in color, structure or other such differences between the same types of the Product. Any physical modification of the Product invalidates any warranty.

5.2. Upon delivery, Customer shall immediately inspect the Products for conformity and visible defects. Customer shall give KTU immediate written notice of any non-conformities or defects regarding the



Products. Such notice shall be deemed immediately if the notice is received by KTU within three (3) days of delivery. Failure to provide immediate notice shall void this warranty.

5.3. In the case of a complaint concerning grade or manufacture, the Products shall be re-inspected by same agency which published the rules under which the Product is graded. A re-inspection by such agency, or any other agency mutually agreed by Customer and KTU, shall determine if the complaint concerning the grade or manufacture is valid. The cost for inspection will be shared according to the rules of the grading agency.

5.4. In the event of a warranty claim, one hundred percent (100%) of the shipment must be available for re-inspection.

5.5. If the Customer claims that the Product is damaged or defect as stated in this section, the Customer shall still be obligated to pay the full amount invoiced for the shipment in accordance with these Terms. For the avoidance of doubt, the Customer shall not be entitled to deduct any amount from the amount invoiced, unless KTU has agreed in writing.

- a. Defective Quality. If the Products delivered are defective pursuant to section 5.3, KTU shall without delay replace the defective Products or issue a credit note to the Customer equal to the value of the defective Products. If the defective quality does not result in rejection of the Products, the Customer shall pay the reduced value of the defective Products and shall not be entitled to any other compensation or damages.
- b. Short delivery. If the quantity delivered is proven to be less than the contracted amount, other than as provided for in section 4.9, the KTU shall without delay make good the shortage unless the shortage is acceptable to the Customer. Payment shall be made only for the exact quantity delivered.

5.6. THE WARRANTY SET FORTH IN SECTION 5.1 IS MADE IN LIEU OF ALL OTHER WARRANTIES (WHETHER EXPRESS OR IMPLIED), RIGHTS OR CONDITIONS, AND CUSTOMER ACKNOWLEDGES THAT EXCEPT FOR SUCH LIMITED WARRANTY, THE PRODUCTS ARE PROVIDED "AS IS." KTU SPECIFICALLY DISCLAIMS, WITHOUT LIMITATION, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, OF ANY KIND, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND THOSE WARRANTIES ARISING FROM A COURSE OF PERFORMANCE, A COURSE OF DEALING OR TRADE USAGE.

5.7. The Customer shall indemnify, defend and hold harmless KTU, its affiliates and their respective directors, officers, employees, representatives and agents, from and against any and all claims, losses, liabilities, costs and expenses (including reasonable legal fees) arising out of or resulting from the use, handling, manufacture, processing, alteration, distribution, sale or marketing of the Products, or any other action or omission with respect to the Products, after delivery thereof to the Customer.

## **6. Security Interest:**

6.1. As security for the timely payment and performance of all Customer's indebtedness to KTU, Customer hereby grants to the KTU a first priority security interest in the Products following delivery thereof to Customer ("Security Interest"). Such Security Interest shall remain in force until payment in full of the entire purchase price for the Products and Services has been received by KTU.

6.2. Customer hereby expressly authorizes KTU to file a UCC Financing Statement to reflect KTU's security interest in the Products. Customer shall cooperate in the respective filings and registrations which are required according to applicable local laws for an effective protection of KTU's claim for payment of the Products, including, without limitation, any required documentation duly filed under the UCC in all jurisdictions as may be necessary to perfect KTU's security interest and lien in the Products.

**7. Limitation of Liability:**

7.1. IN NO EVENT SHALL KTU BE LIABLE FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, REVENUE, GOODWILL OR USE, INCURRED BY CUSTOMER OR ANY THIRD PARTY, WHETHER IN AN ACTION IN CONTRACT, TORT, STRICT LIABILITY, OR IMPOSED BY STATUTE, OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

7.2. NOTWITHSTANDING THE TERMS AND CONDITIONS SET FORTH IN SECTION 6.1., KTU'S LIABILITY – WHETHER BASED UPON CONTRACT, TORT, EQUITY, NEGLIGENCE OR ANY OTHER LEGAL CONCEPT – SHALL IN NO EVENT EXCEED THE VALUE OF CUSTOMER'S ORDER, AS DESCRIBED ON THE ORDER FORM, OR THE ORDER VALUE FOR (1) CALENDER YEAR, WHICHEVER AMOUNT IS LOWER. IT IS AGREED AND ACKNOWLEDGED THAT THE PROVISIONS OF THIS AGREEMENT ALLOCATE THE RISKS BETWEEN KTU AND CUSTOMER, THAT KTU'S PRICING REFLECTS THIS ALLOCATION OF RISK, AND BUT FOR THIS ALLOCATION AND LIMITATION OF LIABILITY, KTU WOULD NOT HAVE ENTERED INTO THIS AGREEMENT.

7.3. IN JURISDICTIONS THAT LIMIT THE SCOPE OF OR PRECLUDE LIMITATIONS OR EXCLUSION OF REMEDIES OR DAMAGES, OR OF LIABILITY, SUCH AS LIABILITY FOR GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OR DO NOT ALLOW IMPLIED WARRANTIES TO BE EXCLUDED, THE LIMITATION OR EXCLUSION OF WARRANTIES, REMEDIES, DAMAGES OR LIABILITY SET FORTH ABOVE ARE INTENDED TO APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. CUSTOMER MAY ALSO HAVE OTHER RIGHTS THAT VARY BY STATE, COUNTRY OR OTHER JURISDICTION.

**8. Force Majeure:**

8.1. KTU shall not be liable to Customer or any other person for any failure or delay in the performance of any obligation under this Agreement due to events beyond its reasonable control, including, but not limited to, fire, storm, flood, earthquake, explosion, accident, acts of the public enemy, wars, riots and public disorder, sabotage, strikes, lockouts, labor disputes, labor shortages, work slowdown, stoppages or delays, shortages or failures or delays of energy, materials, supplies or equipment, transportation embargoes or delays, acts of God, breakdown in machinery or equipment, and, except as otherwise set forth in this Agreement, acts or regulations or priorities of the federal, state or local governments.

8.2. Customer shall not be liable to KTU or any other person for any failure or delay in the performance of any obligation under this Agreement due to events beyond its reasonable control, including, but not limited to, fire, storm, flood, earthquake, explosion, accident, acts of the public enemy, wars, riots and public disorder, sabotage, strikes, lockouts, labor disputes, labor shortages, work slowdown, stoppages or delays, shortages or failures or delays of energy, materials, supplies or equipment, transportation embargoes or delays, acts of God, breakdown in machinery or equipment, and, except as otherwise set forth in this Agreement, acts or regulations or priorities of the federal, state or local governments.

8.3. When the event operating to excuse performance by either party shall cease, this Agreement shall continue in full force until all deliveries have been completed.

**9. Miscellaneous Terms:**

9.1. This Agreement and all claims arising out of or related to this Agreement, including tort claims, shall be governed by and construed in accordance with the laws of the state of Georgia without giving effect to any choice or conflict of law provision or rule that would cause the application of the laws of any jurisdiction other than Georgia. The application of the Convention on Contracts for the International Sale of Goods (CISG) is hereby excluded.

9.2. Any controversy or claim arising out of or relating to this Agreement, or the negotiation or breach thereof, shall be exclusively settled by arbitration in accordance with the International Arbitration Rules of



the American Arbitration Association ("AAA"). The award shall be final and binding. Judgment upon the award rendered by the arbitrator or the arbitrators may be entered in any court having jurisdiction thereof. The arbitration shall be held in Atlanta, Georgia, shall be conducted in the English language, and shall be conducted (i) if the amount in dispute is less than two hundred fifty thousand dollars (\$250,000), before a single arbitrator mutually agreeable to KTU and Customer, or if no agreement can be reached, then selected by the AAA, or (ii) if the amount in dispute is two hundred fifty thousand dollars (\$250,000) or more, before three (3) arbitrators. The arbitrator(s) shall make detailed findings of fact and law in writing in support of his, her or their decision, and shall award reimbursement of attorney's fees and other costs of arbitration to the prevailing party, in such manner as the arbitrator shall deem appropriate.

9.3. If any provision contained in this Agreement is held by final judgment of a court of competent jurisdiction to be invalid, illegal or unenforceable, such invalid, illegal or unenforceable provision shall be severed from the remainder of this Agreement, and the remainder of this Agreement shall be enforced. In addition, the invalid, illegal or unenforceable provision shall be deemed to be automatically modified, and, as so modified, to be included in this Agreement, such modification being made to the minimum extent necessary to render the provision valid, legal and enforceable. Notwithstanding the foregoing, however, if the severed or modified provision concerns all or a portion of the essential consideration to be delivered under this Agreement by one party to the other, the remaining provisions of this Agreement shall also be modified to the extent necessary to equitably adjust the parties' respective rights and obligations hereunder.

9.4. In the event of a violation or threatened violation of KTU's proprietary rights, KTU shall have the right, in addition to such other remedies as may be available pursuant to law or this Agreement, to temporary or permanent injunctive relief enjoining such act or threatened act. The parties acknowledge and agree that legal remedies for such violations or threatened violations are inadequate and that KTU would suffer irreparable harm.

9.5. The parties hereto are independent contractors and nothing in this Agreement will be construed as creating a joint venture, employment or agency relationship between the parties.

9.6. This Agreement shall apply to all sales of the Products to Customer.

9.7. This Agreement, including any Order confirmation attached hereto, contains the entire agreement of the parties with respect to the subject matter of this Agreement, and supersedes all prior agreements between them, whether oral or written, of any nature whatsoever with respect to the subject matter hereof. This Agreement is binding upon the parties hereto, their successors and permitted assigns.

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