

# General terms and conditions of sale, delivery and payment

The General Terms and Conditions of Sale and Delivery of Villas Austria GmbH, prices for whole packaging units (pallet), not unloaded, shall apply. If the quantities ordered fall below the packaging unit, a handling surcharge of 2 % of the value of the goods shall be billed. **Pallets:** The products shall be delivered on pallets. For pallets not returned, we shall charge € 10.- per pallet (excluding VAT). No provision is made for the returning of pallets at a later date. Our standard packaging can be disposed of free of charge via the collection system of EVA, no. 99657, or, subject to separate notification, at an equivalent waste disposal firm. **Minimum order quantity:** From 6 pallets or more, or from a net goods value of € 2,000.-, delivery shall be free to the buyer's warehouse or to an easily accessible building site, not unloaded. The ordering party shall be liable for the suitability of the unloading point. An appropriate freight surcharge shall be invoiced for mountain routes and for quantities below the minimum quantity. **Cutting costs:** € 0.15/running metre of strip (excluding VAT) **Unloading, delivery:** If the goods are unloaded by our carrier, a flat-rate unloading charge of € 25.- (excluding VAT) per unloading point shall be billed. Delivery and unloading by means of a mobile crane shall be subject to separate agreement and be invoiced on the basis of actual expenditure. Thermal insulation generally not unloaded. **CE marking:** Since 01/09/2006, all Villas bituminous sheeting bears a CE marking in accordance with EN 13707, EN 13970 and EN 13859. All information on CE marking can be downloaded from our homepage at [www.villas.at](http://www.villas.at) for all types of sheeting.

## 1. General:

By placing an order, the buyer accepts our General Terms and Conditions of Business. These shall apply to all deliveries and services, including other supplementary services, even if not separately referred to again in individual cases. We shall not be placed under any obligation as a result of the buyer's terms and conditions of sale, delivery, business or purchase of any kind whatsoever. Terms and conditions of the buyer of any kind whatsoever are hereby expressly objected to. It is hereby expressly laid down that neither party shall regard this as a violation of moral principles. Deviations, supplementations, special assurances and other individual agreements shall, without exception, only be effective in writing. By unreservedly taking receipt of the delivery or service, the buyer accepts that these Terms and Conditions shall be valid in any event. It is hereby agreed that our General Terms and Conditions shall apply throughout the whole duration of the business relationship, in particular also for follow-up orders. This shall apply even if our General Terms and Conditions are not expressly referred to in the event of future purchase orders, or if the buyer places orders on different terms and conditions without any express objection on our part; in this respect, reference is made to the foregoing regarding violation of moral principles.

## 2. Sale:

Our offers shall be subject to change without notice and shall not place us under any obligation to deliver. Illustrations, drawings and trademark information of any kind whatsoever shall be non-binding. Orders shall be binding upon us only if we have accepted them by means of a written order acknowledgement. If written terms in such order acknowledgement deviate from the printed terms, the written terms shall apply. Subsequent changes shall become binding only by means of our written confirmation. Any direct or indirect on-selling of the goods abroad shall be subject to our prior consent. In this respect, the prices and the terms and conditions of delivery shall be agreed upon separately. Unless otherwise agreed upon, the prices fixed in our price list valid on the day of delivery shall apply.

## 3. Delivery:

In principle, delivery periods stated shall be non-binding and shall always be regarded as approximate, unless we have expressly undertaken in writing to deliver within a specific period or by a specific date. Damage claims in this connection shall be enforceable against us only in cases of wrongful intent or gross negligence. The transport risk shall always be borne by the consignee or the ordering party or the buyer. Our obligation shall end when the goods are handed over to the carrier, even in cases where the prices issued are based on carriage-paid to the destination. All contracts and agreements shall, even if brought about or concluded by our in-field employees, be binding upon us only as a result of our written confirmation. The same shall apply to verbal collateral agreements and subsequent contract amendments. If we nevertheless deliver on the basis of purchase orders placed verbally or over the telephone, the buyer shall not be entitled to invoke such purchase order, as all contracts, agreements etc. concluded by us shall be binding only as a result of our written acknowledgement. In the case of deliveries based on purchase orders placed over the telephone, the consequences of any deliveries brought about as a result of something misheard, or misunderstandings, shall not be borne by us.

## 4. Payment:

Our invoices shall be paid to us promptly without any deduction. Any cash discount granted shall apply only if all other invoices have been fully settled, and no claims based on a bill of exchange exist. Payment by bill of exchange shall be possible only with our express consent. Discount charges, interest and bill of exchange taxes shall be borne by the buyer. Cheques and bills of exchange shall be deemed payment only upon their being honoured.

If the buyer defaults on payment, it shall pay default interest at the rate of 5 % above the base interest rate of the European Central Bank. The right to assert a claim for default-related loss beyond the foregoing shall remain unaffected hereby. If our terms and conditions of payment are not adhered to, or if circumstances that call into question the buyer's credit-worthiness occur, our entire claims shall, regardless of any deferments granted, become immediately due. In this case, we shall be entitled to rescind the contract or demand compensation for non-performance. The statutory rights to refuse to perform and statutory rights of retention under §§ 471, 1052 ABGB [Austrian Civil Code] and §§ 369, 372 HGB [Austrian Commercial Code] shall be excluded in respect of the buyer's contractual obligations. This shall not apply in cases of gross breach of contract (by wrongful intent or gross negligence) on our part, or if we have performed defectively, and the buyer has already paid the fee portion equivalent to the value of the goods. Set-off with any counter-claims against our claims shall be excluded, unless the counter-claims concerned are undisputed or have been determined by a final and non-appealable court judgement.

## 5. Retention of title:

Goods, samples or items delivered by us shall remain our property until all Goods, samples or items delivered by us shall remain our property until all outstanding claims of any kind whatsoever from the business relationship as a whole have been fully paid; time limitation in this respect is hereby expressly excluded. This shall apply even if payments are made towards specified claims. In the case of a running account, retained ownership shall be deemed to be security for our balance claim. The goods processed shall serve to provide us with security in the sum of the invoiced value of the goods under retention of title (including VAT at the statutory rate). If the buyer processes the goods with other goods not owned by us, we shall be entitled to co-ownership of the new item, namely in the ratio of the value of the goods under retention of title to the value of the other processed goods at the time of processing. The new item arising as result of processing shall, in all other respects, be governed by the same terms as those applicable to goods under retention of title within the meaning of these Terms and Conditions. The goods under retention of title may be sold by the buyer only in the ordinary course of business and on its normal terms and conditions of business, and only as long as the buyer is not in default. The buyer shall be entitled and authorised to on-sell the goods that are under retention of title only on condition that the claims arising from on-selling pass to us. The buyer shall not be entitled to make any other dispositions in respect of the goods under retention of title. The buyer's claims arising from on-selling of the goods under retention of title are hereby assigned to us in advance, regardless of whether the goods under retention of title are sold without having been processed or after having been processed, and regardless of whether they are sold to one or multiple customers. If the goods under retention of title are sold by the buyer together with other items not owned by us, the purchase price claim arising from on-selling shall be deemed assigned only in a sum equal to the value of the goods under retention of title at the time of delivery. If the goods under retention of title are on-sold after having been processed, in particular after having been processed with other goods not owned by us, the assignment shall apply only in a sum equal to the value of the goods under retention of title at the time of processing. If the goods under retention of title are used by the buyer for the performance of a contract for work or for the performance of a contract for the supply of labour and materials, the claim arising from the contract for work or from the contract for the supply of labour and materials shall be assigned to us in advance to the same extent. However, the buyer shall, as long as it meets its its payment obligations, be authorised to collect the claims from on-selling that have been assigned to us. The buyer shall not dispose of such claims by means of assignment. At our request, the buyer shall inform its customer that these claims have been assigned to us and shall provide

us with the information and documents necessary for collecting the claims. For better differentiation, the deliveries shall be passed on under a separate invoice. However, failure to heed this provision shall not cause the retention of title to be nullified. At our request, the buyer shall permit us to access its warehouse and other premises for the purpose of assessing the goods under retention of title. Furthermore, the buyer shall separately store, label and, at our request, surrender the goods under retention of title. Equally, the buyer shall allow us to view its books of account and written records for the purpose of ascertaining our claims and rights and shall inform its customers of the assignment, provide us with all information necessary for the assertion of our rights against these customers and surrender the relevant documents. If the value of the security existing in our favour exceeds our claims by more than 20 % in total, we shall, at the buyer's request, release to this extent security of our choosing. As long as our goods have not been paid for, the buyer shall not be entitled to pledge them or assign them as security. If a third party asserts claims to the items owned by us or takes attachment steps, the buyer shall, furthermore, assert our right of title in relation to third parties and promptly inform us in writing.

## 6. Advice:

Liability of any kind whatsoever for processing-related, information provided or for advice given (or the like) shall be taken on by us only if, at the buyer's written request, we provide such information or advice on a binding basis, in writing and relating to a specific building project known to us, and we are informed of the technical functional requirements arising from invitations for tenders, and the like. In any event, the buyer shall remain obliged to check the information provided by us with regard to the product specifications and features of our goods and the specific purpose of use and, in cases of doubt, call in an expert if necessary. If it has been agreed upon in any individual case that a master installer is to be dispatched to the building site, such master installer shall only undertake general instruction within the scope of our processing guidelines and installation instructions relating to our products. Master installers and in-field employees shall not be authorised to carry out technical acceptance inspections, monitor processing operations or give advice on detailed technical solutions at the building site.

## 7. Sprinkling material:

Natural products are used as a sprinkling material for the surface finish. For this reason, and owing to effects of the weather, deviations in colour cannot be ruled out. This shall not cause the quality of the product or, therefore, the stipulated use to be impaired. We are unable to give any warranty regarding exact continuity from one production batch to another.

## 8. Securing of loads:

It is hereby expressly pointed out that, if the goods are collected from the works, the carrier and, on its behalf, the driver shall, in accordance with the statutory provisions, in particular §§ 101 et seqq. KFG [Motor Vehicle Act], be solely responsible for proper loading and for proper securing of the load, as no person at the works is authorised to give directives regarding loading. The driver's duties regarding loading shall include, in particular, adherence to the axle loads and total weights, as well as to the loading height, width and length and ensuring that the load as well as individual parts thereof are stowed away, or are secured by suitable means, in such a way that the load and these parts withstand the forces arising under normal driving conditions, the secure operation of the vehicle is not impaired, and nobody is endangered. Goods secured for transportation must also withstand driving around bends and emergency braking.

## 9. Storage:

The cold self-adhesive membranes shall be stored in an upright position in buildings and be protected against sunlight.

## 10. Returned goods:

Returns of non-defective goods already delivered (returned goods) shall be accepted only in exceptional cases according to agreement, and only if these are in faultless condition. The cost of return shipment shall be borne by the buyer. Handling surcharges at the rate of 15 % of the gross list price at the time of delivery shall be invoiced to the buyer. Returned goods damaged in any way by the buyer or carrier shall not normally be accepted.

## 11. Complaints, warranty and compensation:

Upon receipt of the goods, the buyer shall promptly inspect them, also visually, for possible defects. Any complaint regarding missing quantities shall be subject to the submission of a certificate from the transport company (carrier). On-selling, reworking or processing of defective goods shall be refrained from and shall lead to recourse claims against any party involved. Complaints of any kind whatsoever must be lodged in writing or by telefax promptly upon receipt of the goods, in the case of visible defects in any event prior to their processing, in the case of hidden defects promptly upon becoming aware of these defects. To enable us to process any complaint that may be lodged, it is essential that a copy of the delivery note or the invoice, a sample of the goods complained of, as well as the production date evident on each individual package be enclosed with the complaint. The goods complained of shall be kept at our disposal. In the case of justified complaints, § 932 ABGB (initially rectification of defects or exchange of the goods) shall apply in respect of the rights arising from the warranty. Insofar as we take measures to minimise loss or enter into negotiations on account of a defect complained of, this shall not be deemed to be an acknowledgement of the defect concerned or a waiver of the plea of late notification of a defect. Damage or loss caused by effects of the weather or by improper storage shall be excluded from the warranty. Regardless of the type and legal basis of any damage claims asserted, we shall be obliged to satisfy such damage claims only in cases of gross fault (wrongful intent or gross negligence) or in cases where contractually guaranteed features are missing. Liability for defect-related consequential loss shall be excluded. Any reduction or extension of the warranty period (three years for movable items) shall require separate agreement.

## 12. Data processing:

The buyer hereby expressly grants its consent to the processing of its data within our company. This data shall be used by us within the scope of the statutory provisions. The buyer shall have the right to revoke its consent in this connection at any time.

## 13. Applicable law, place of performance, place of jurisdiction, severability:

Austrian law, excluding uniform UN sales law, shall apply to all business relations of any kind whatsoever with us. For both parties, Fürtitz in Austria shall be deemed to be the place of performance for all rights and duties arising from the transactions with us. Villach (district court) or Klagenfurt (regional court), depending upon substantive jurisdiction, shall be the place of jurisdiction for legal disputes for all present and future claims arising from the business relationship. Notwithstanding the foregoing, we shall be entitled to also bring matters before another court that has jurisdiction for the buyer (ordering party, customer). If any individual provisions in these Terms and Conditions of Business are or become wholly or partly ineffective, the remaining terms and conditions shall remain fully effective. Any ineffective provisions shall be replaced with provisions that most closely reflect the purpose of the ineffective provisions in a permissible manner.

**As of July 2017. The right to make changes owing to printing errors shall remain reserved!**

