Lumberg shall be liable in accordance with legal regulations insofar as the delayed delivery for which Lumberg is responsible results in the Purchaser being entitled to enforce that his interest in the further fulfillment of the contract turned out in discontinuance.

5. Lumberg shall also be liable in accordance with legal regulations if the delayed delivery for which Lumberg is responsible is due to the culpable violation of a major contractual obligation. In this case, however, the liability for damages shall be limited to the foreseeable damage that typically occurs.

6. Where Lumberg defaults, Lumberg shall be liable for each full week of delay to effect a lump-sum compensation amounting to 0.5% of the delivery value, yet not exceeding 5% of the delivery value.

7. In the case of call orders without agreement on specific delivery deadlines, Lumberg shall be entitled to demand a mandatory definition of such dates up to three months after the confirmation of order. If the Purchaser fails to comply with this request within three weeks, Lumberg shall be entitled to impose a second deadline of two weeks and withdraw from the contract after this period has expired or reject any delivery, and claim compensation.

8. If the Purchaser is in default of acceptance, he culpably breaches his duty to co-operate, or if at the request of the Purchaser the dispatch or delivery are delayed by more than one month after readiness for shipping has been indicated, storage charges amounting to 0.5% of the price of the objects of delivery may be imposed on the Purchaser for every month commencing (up to a maximum of 5%). The contracting parties are at liberty to furnish evidence of higher or lower storage charges. The right to assert further claims or rights remains reserved.

9. Insofar as the requirements as set forth under no. (8) apply, the risk of accidental loss or accidental deterioration of the delivery passes to the Purchaser at such moment when the latter comes into default of acceptance.

10. If the contract entered into obliges Lumberg to deliver in advance, Lumberg may refuse to fulfill the performance owed if it becomes apparent after entering into the contract that Lumberg's right to consideration is jeopardized as a result of the Purchaser's lack of performance capability. This applies in particular if the consideration to which Lumberg is entitled, due to a substantial deterioration in the Purchaser's financial situation, is jeopardized.

III. Dispatch, Transfer of Risk, Return of Packaging

1. The risk shall be transferred to the Purchaser even in the case of a prepaid delivery as soon as the goods have left Lumberg's manufacturing location. Lumberg may choose the means of transport at its discretion unless a specific type of transport has been agreed with the Purchaser. A transport insurance shall only be taken out following a separate agreement.

2. If the contract entered into obliges Lumberg to deliver in advance, Lumberg may refuse to fulfill the performance owed if it becomes apparent after entering into the contract that Lumberg's right to consideration is jeopardized as a result of the Purchaser's lack of performance capability. This applies in particular if the consideration to which Lumberg is entitled, due to a substantial deterioration in the Purchaser's financial situation, is jeopardized.

IV. Pricing, Terms of Payment, Default

1. Unless otherwise indicated in the order confirmation, prices shall apply ex works, excluding packaging, which will be invoiced separately.

2. If the agreed delivery period exceeds four (4) months, Lumberg shall have the right at the expiry of that time to consider alterations of cost factors having occurred in the meantime (especially due to changes in the price of materials or due to collective agreements) by adapting its prices or by a recalculation.
V. Liability for Material Defects

Lumberg shall be liable for material defects as follows:

1. Claims for defects of the Purchaser require that the Purchaser properly complied with his owed duties of inspection and notification of defects pursuant to Section 377 BGB (German Civil Code).

2. Notice must be given in writing of material defects, incorrect deliveries and deliveries of a quantity less than contracted as well as defects that are visible, without delay and at the latest within 10 days of receipt of the goods at the point of destination. Where concealed defects are ascertained, these must be notified in writing within three (3) working days of discovery.

3. All parts or services found to be defective within the period of limitation – irrespective of the time of operation – must be, at the discretion of the Purchaser, reworked free of charge, supplied anew or rendered anew, provided that the cause of the material defect already existed at the time risk was transferred.

4. Delivery quality and/or quality agreements that differ from those defined by Lumberg must be agreed in writing upon award of contract at the latest. A guarantee as to the attributes or durability that results in strict liability shall only apply where Lumberg has expressly guaranteed details of attributes or durability in writing.

5. Goods which were claimed to be defective shall not be subjected to further treatment. If claims for defects are justified, Lumberg shall be liable for the expenses for dispatch and packaging of the goods returned and the new delivery. Rework performed without authorization by Lumberg and the improper treatment shall result in the loss of justified claims for warranty.

6. In all cases, Lumberg shall be granted the opportunity for subsequent compliance within a reasonable period. Compensation claims under the terms of art. VI may only be asserted by the Purchaser where subsequent compliance was not rendered.

7. If the supplementary performance fails, the Purchaser may – irrespective of potential claims for compensation as specified in art. VI – withdraw from the contract or reduce payment.

8. Claims for defects shall not be deemed justified in case of inconsiderable deviations from the properties stipulated or in the case of inconsiderable impairment of usability only. In addition claims for defects shall not apply in case of natural wear or damage which – after the transfer of risk – may arise from improper or negligent handling, excessive use, inappropriate working materials or due to special external influences not provided for under the contract. If the Purchaser or any third party perform improp-
6. Further liability on the part of Lumberg shall be excluded without consideration of the legal nature of the asserted claim. This shall apply in particular to tortious claims or claims for compensation of frustrated expenses in lieu of performance. This does not affect the liability of Lumberg under art. II no. 5. Where the liability of Lumberg is excluded or limited, this shall also apply to the personal liability of its salaried employees, wage-earning employees, co-workers, representatives and vicarious agents.

7. Claims for reimbursement of expenses shall not be excluded in cases of non-fulfillment, but shall be limited as described in art. V no. 9.

8. The limitation period in the event of a delivery recourse pursuant to Sections 478, 479 BGB (German Civil Code) are not affected; the period is five (5) years as of delivery of the defective item.

9. For such claims that are not subject to the limitation period of a defect, an 18-month time limit applies. It commences as of knowledge of the damage and the damaging party.

VII. Impossibility; Adaptation of the Contract

1. Where a delivery proves impossible, the Purchaser shall be entitled to claim compensation unless Lumberg is not responsible for such impossibility. However, such a claim for compensation by the Purchaser shall be limited to 10% of the value of that part of the delivery which cannot be put in operation as intended for reasons of impossibility. This limitation shall not apply where Lumberg is subject to unlimited liability in accordance with art. VI no. 2. This does not provide for an amendment to the burden of proof to the disadvantage of the Purchaser. The right of the Purchaser to withdraw from the contract is unaffected.

2. Should unpredictable events within the meaning of art. II no. 1 considerably modify the economic significance or the contents of the delivery or have a considerable effect on Lumberg's business, the contract shall be adapted accordingly with the principle of bona fide being observed. Should this be economically inappropriate, Lumberg shall be entitled to withdraw from the contract. If Lumberg wants to exercise its right to withdraw, Lumberg shall immediately advise the Purchaser accordingly after having recognized the extent of the event; this shall also apply if earlier agreements with the Purchaser included an extension of the delivery period.

IX. Industrial Protective Rights and Copyrights; Defects in Title

1. Unless otherwise agreed, Lumberg shall undertake to supply goods free of industrial protective rights and copyrights held by third parties (hereinafter referred to as Protective Rights) in the country of the place of delivery only. Should a third party submit justified claims against the Purchaser which are based on the violation of protective rights by Lumberg in the course of the deliveries used as stipulated, Lumberg shall be liable to the Purchaser within the period defined in art. V no. 6 as follows:
   a) At its own discretion and own expense, Lumberg shall either obtain a right of usage for the deliveries in question, amend the deliveries in such a way that a property right is not infringed, or replace them. If this is not possible under reasonable conditions, the legal rights of termination or reduction shall be open to the Purchaser. The Purchaser cannot claim compensation for frustrated expenses.
   b) The obligation on behalf of Lumberg to pay compensation shall be regulated by article VI. c) The above-named obligations of Lumberg shall only be effective where the Purchaser notifies Lumberg immediately in writing about claims asserted by third parties, does not admit any infringement and reserves to Lumberg all precautionary measures and settlement negotiations. If the Purchaser discontinues usage of the deliveries for reasons of damage, reduction or for other important cause, such party shall undertake to indicate to the third party that the discontinuation of usage implies no admission of an infringement of property rights.
2. Claims by the Purchaser shall be excluded if any violation of protective rights is his responsibility.

3. Claims by the Purchaser shall be excluded insofar as the violation of the protective rights was caused by the Purchaser's specifications, by an application which could not be foreseen by Lumberg or by the fact that the deliveries were modified by the Purchaser or used in combination with products not supplied by Lumberg.

4. In case of a violation of Protective Rights the Purchaser’s claims governed by no. 1a) apply and for the rest, the provisions of art. V nos. 4, 5 and 9 shall apply accordingly.

5. Should further defects in title occur, the provisions of art. V shall apply accordingly.

6. Further claims by the Purchaser or claims that differ to those governed by this art. IX against Lumberg and its vicarious agents based on a defect in title shall be excluded

X. Intra-community Deliveries, Value Added Tax Liability

If Lumberg is made liable for value added tax on deliveries to EU member countries simply because the Purchaser’s information furnished to Lumberg on the requirements of VAT exemption acc. to Sec. 4 no. 1b, Sec. 6a of the German Value Added Tax Act do not apply or the Purchaser or his end customer did not meet an obligation within the scope of income taxation (proper communication to the central tax office, payment of income tax or others), the Purchaser shall be obliged to compensate Lumberg for the amount of value added tax without regard to fault.

XI. Jurisdiction and Applicable Law

1. If the Purchaser is a business, then the courts at the domicile of Lumberg in Schalksmühle (venue: Hagen) shall have exclusive jurisdiction for all disputes arising directly or indirectly from the contractual relationship. However, Lumberg is equally entitled to sue at the Purchaser’s domicile.


XII. Mandatory Character of the Agreement

Even in case of a potential legal ineffectiveness of some provisions the contract’s remaining provisions shall remain binding. This does not apply if adhering to the contract would create unreasonable hardship for either party.

Schalksmühle, June 2013