

# General Terms & Conditions

## 1. Conclusion of contract

Our offers are non-binding. Agreements shall only become binding following our written confirmation, which is the determining factor for the content of the agreement. Any arrangements made verbally or by telephone shall be ineffective without written confirmation.

The Buyer's Purchasing Terms and Conditions shall only apply if they have been expressly accepted by us in writing. Our silence shall not be construed as consent. Acceptance of a delivery shall constitute acceptance of our terms and conditions. Any modification to the agreement made shall require written confirmation, otherwise it shall be invalid.

Our Terms and Conditions of Delivery apply for all transactions, even if reference is not made to this every time.

If subsequent information causes doubts about this or if the customer fails to pay an earlier purchase price claim despite being due, then we shall be entitled to subject performance of the supply contract to an advance payment or the provision of security, or to withdraw from the contract. The same applies if enforcement measures are initiated against the debtor.

If the Buyer withdraws from the contract for any reason, then he shall pay 25 per cent of the total purchase price to the Seller for expenses, loss of earnings, and so on. The same applies if we justifiably withdraw from the contract.

Drawings and sketches shall remain our property; they may not be duplicated or exploited.

Our Terms and Conditions of Sale shall be applicable only vis-à-vis companies within the meaning of § 310 (1) of the German Civil Code (BGB).

## 2. Deliveries

Deliveries are executed at our discretion by truck, forwarding agency, rail or post at the recipient's expense and risk. No liability is assumed for breakage or damage of any kind to the transported goods. Also in the case of having agreed upon a freight delivery, dispatch ex works shall be deemed to be at the recipient's risk without the assumption of liability for damage in transit. A surcharge shall be deemed to have been agreed upon for packaging expenses in the event of express delivery and dispatch by mail.

Delivery dates are non-binding and shall be regarded as approximate only. We expressly reserve the right to make use of delivery options. Any force majeure events, and in particular shortages of raw materials and operating materials, strikes, operating trouble, and so on, shall release us from all obligations undertaken. Partial deliveries shall be permissible. Each partial delivery shall constitute a separate business transaction.

## 3. Conditions of payment

Invoices shall be made out in euro. It is open to us to provide the invoices via ordinary mail or electronic means (e.g. e-mail).

The invoice is payable without any deduction eight days after billing. The payment period shall commence on the invoice date. The Buyer shall be in default without further notice by the Seller if he fails to pay before the expiry of the payment period. The receipt of the money on the Seller's account shall be the determining factor.

Payments may not be offset against non-legally binding counterclaims; the right of retention, for example, due to deficiencies, may not be exercised. In the event of a default, default interest at five per cent above the base lending rate set by the European Central Bank (ECB) shall be charged. Interest is payable immediately after the calculation. Further claims for compensation for damages resulting from delay shall remain unaffected. All sales are effected against cash payment, transfer or direct debit.

If the Buyer is more than ten days in default and/or if the Buyer is at risk of insolvency, the Seller is entitled to fix a due date with immediate effect for claims which have not yet fallen due.

If values deviating from the ground rule (eight days) have been agreed upon or if matured claims are deferred, then the Seller is entitled to terminate the contract without notice under the aforementioned conditions. The Buyer acknowledges that, in the event of being more than ten days in default, encountering payment difficulties and/or imminent insolvency, then good cause as provided for in § 626 BGB shall exist.

In such cases, the Seller is also entitled to demand settlement in cash. Payments to commercial agents who have a contractual relationship with the Seller and to agents of the Seller shall not have the effect of fully satisfying debt.

## 4. Warranty

Goods shall be examined immediately upon receipt to ensure that they are in perfect condition. Any quality and quantity deficiencies must be reported to us (not to an agent) in writing within ten days of the delivery. The day on which the Seller receives the notice of defect, and not the date on which it was sent, shall be the determining factor for the timely notice of defect. There is also no waiver to the objection of a belated notice of defect even if we initially follow up the defect complaint and examine the goods.

Defective goods shall be repaired or replaced by faultless goods at our discretion. No claims for rescission, reduction or compensation for damages may be asserted. The Buyer has no right of retention for any warranty claims, particularly not against payments owed by him.

Differences in wood grain or minor deviations in the design, colours and dimensions do not entitle the Buyer to make a complaint. Goods returned to us for reasons other than defects and taken back by us without any legal obligation to do so may only be refunded up to a maximum of 75 per cent of the net invoice amount. If the rework or replacement is in turn defective and if the deficiencies are not remedied within a period of grace of at least two months to be stipulated in writing, then the Buyer may withdraw from the contract. The notification of the grace period shall contain the remark that the Buyer intends to withdraw from the contract if the grace period expires to no avail. In other respects, the statutory provisions apply.

## 5. Gestures of goodwill

If the company KH-System Möbel GmbH delivers spare and replacement parts after the expiry of the limitation period for claims arising from a defect (§ 438 (1) (3) BGB) for reasons of goodwill, this shall be a gesture of goodwill and shall not substantiate any new warranty claims; in particular, the delivery executed as a gesture of goodwill shall not initiate a new limitation period due to claims arising from a defect.

## 6. Items manufactured to order

Confirmed items manufactured to order may not be cancelled; items manufactured to order that have been delivered shall not be taken back.

## 7. Reservation of proprietary rights

We shall retain ownership of the goods until all existing or future claims, also from contracts concluded simultaneously or at a later date, against the Buyer arising from the business relationship are settled in full. If the Buyer is a merchant, then this shall also apply if individual claims, or all claims, against the Buyer have been included in an ongoing invoice and the balance has been struck and approved. The Buyer is entitled to sell the goods purchased in the ordinary course of business. He shall assign to us all claims which accrue to him against the purchaser or against third parties as a result of the onward sale. If goods subject to retention of title are sold after having been processed or blended with items belonging exclusively to the Buyer, then he shall assign all claims resulting from the sale to us in full. If the goods subject to retention of title are sold by the Buyer – after processing/blending – together with items that do not belong to us, then the Buyer shall assign claims resulting from the sale amounting to the value of the goods subject to retention of title along with all other rights and ranked before all others.

We hereby accept all assignments.

The Buyer shall remain authorised to collect this debt even after assignment.

Our authority to collect claims ourselves shall remain unaffected by this; however, we undertake not to collect these claims as long as the Buyer duly meets his payment and other obligations. We may request the Buyer to notify us of the claims assigned to him and his debtors, plus all information necessary for collection, and to surrender to us all associated documents and to notify his debtors of the said assignment.

The processing or transformation of goods subject to retention of title shall always be executed for us by the Buyer. If the goods subject to retention of title are processed with items over which the Buyer has sole ownership or with items where there is no extended retention of title, then we shall have sole ownership of the new item. If the goods subject to retention of title are processed with other items that do not belong to us, then we shall be entitled to co-ownership of the new item in proportion to the value of the goods subject to retention of title to the other processed goods at the time of processing. In the event that the Buyer becomes the owner of the goods we supplied, it is hereby agreed in advance that he shall reassign to us the ownership of these items as security for all our current and future claims. The Buyer is in possession of the goods for us on the basis of a lending relationship. Thus the transfer is replaced.

In the event that the goods subject to retention of title are seized by third parties, then the Buyer is obliged to notify us of the same within three days by sending us a copy of the sheriff's return and any other documents required by us in order to intervene. The costs incurred by an intervention on our part shall be borne in any case by the Buyer. In the event of a breach of this obligation and in the case of a default in payment, we are entitled to immediately secure the goods delivered and to store them at our premises or that of a third party or to utilise them without any liability on our part at the Buyer's expense until the Buyer has fully settled all of his obligations.

If in connection with the payment of the purchase price by the Buyer an obligation for us to accept a bill of exchange is established, then the reservation of title and the underlying claim resulting from the delivery of goods shall not expire before the bill of exchange has been collected by the Buyer as the drawee.

If the value of existing security exceeds the value of claims to be secured by more than 20 per cent, then we shall be obliged to release the goods at the Buyer's request.

## 8. Place of performance and jurisdictional venue

This contract and all contracts concluded during the current business relationship, their implementation and the claims arising from them shall be governed solely by the law of the Federal Republic of Germany.

The place of performance and the sole jurisdictional venue for disputes arising from this contract and all contracts concluded during the current business relationship is the company headquarters of KH System Möbel GmbH.

## 9. Deliveries abroad

All transactions and sales abroad are concluded on the basis of these Terms and Conditions of Sale, Delivery and Payment. All rights arising from this contractual relationship shall be governed solely by the law of the Federal Republic of Germany.

In the event that recourse to legal proceedings abroad is necessary to assert the fulfilment of our contractual claims, the Buyer undertakes to bear and pay all judicial and extrajudicial costs as well as attorney's fees. The customer abroad accepts these conditions upon placing an order; they shall be deemed to have been agreed. Application of the Uniform Law on the International Sale of Goods ('Bundesanzeiger' [Federal Gazette] 1973 page 856) and the conclusion of international purchase agreements concerning movable goods ('Bundesanzeiger' [Federal Gazette] 1973 page 868) is ruled out.

## 10. Legal validity

If the nullity or legal invalidity of individual provisions of the contract is determined by a court, then the legal validity of the remaining provisions shall remain unaffected.

## 11. Amendments

The Buyer shall notify the Seller within three days of any change in business location or of any change in the legal form of his company. In such a case, the Seller is entitled to request immediate payment of outstanding claims or to withdraw from the contract. The Buyer may only contribute the delivered goods to a transformed or newly established company with the Seller's consent.

## 12. Exclusive sale

The right of exclusive sale granted by the Seller to a Buyer shall only be effective if it is agreed upon in writing, and shall apply no longer than up to three months after the order last placed by the Buyer. If no repeat order is placed within this time limit, then the exclusive sale agreement is deemed to have expired for both parties.

**Only the German version of the General Terms & Conditions is legally binding.**