

GENERAL TERMS AND CONDITIONS OF BUSINESS in business transactions with companies

K+W Polstermöbel GmbH + Co. KG, Mitwitz
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1. General Scope of Application

1.1 The following terms and conditions of business apply to all present and future business relationships with our Customers, even if reference is not explicitly made thereto. No differing or supplementary general terms and conditions of business of Customers will form an integral part of the agreement, unless we have explicitly approved the same in writing.

1.2 Our offers, in particular the offers in our catalogues and price lists, order confirmations, sales and deliveries will always be based exclusively on our General Terms and Conditions of Business, unless we have explicitly approved in writing the validity of any differing terms and conditions of business. No changes, amendments and/or deletions will be effective unless such were explicitly approved in writing. The same will apply to any verbal collateral agreements.

1.3 Our goods will be delivered exclusively in the designs specified in our prevailing catalogues, leaflets and price lists. We reserve the right to make technical changes in keeping with technical progress. We reserve the right to make changes in form, colour and weight, where reasonable.

2. Prices

2.1 The price details shown in the prevailing price lists and/or in the written order confirmations, plus value added tax at the relevant statutory rate, will apply to the prices quoted in our offer. Unless otherwise agreed, they apply carriage-free.

2.2 Unless explicitly otherwise provided for in our catalogues, leaflets and price lists, the prices relate to the relevant illustrated articles as described, but not to contents, accessories or decorations.

2.3 The prices shown in our catalogues, leaflets and price lists relate to the time of issue of the respective sales document. We reserve the right to change prices after this date.

2.4 The prices quoted in our catalogues, leaflets and price lists are shown in Euro.

3. Delivery

3.1 Unless otherwise agreed, delivery will be made ex works of our plant or warehouse, within the delivery period specified in the order confirmation, without this being a fixed date. We reserve the right to make partial deliveries, the same being permissible, insofar as they are reasonable for Customer. Any higher costs incurred by partial deliveries will be borne by us.

3.2 If the delivery date is exceeded, Customer will initially only be entitled to set a reasonable supplementary period. If we still fail to deliver within this supplementary period, Customer will be entitled to withdraw from the agreement, however only if the delay is attributable to us. Customer will be entitled neither to any claims for damages for delay in delivery, nor to compensation in lieu of performance. The foregoing will not apply in the event of mandatory liability in cases of deliberate intent or gross negligence, or in cases involving danger to life, limb or health. Rights of recourse under Art. 478 of the *BGB* [German Civil Code] will not be affected thereby. Customer is, however, required to state, upon our request, within a reasonable time, whether they will withdraw from the agreement on account of the delay in delivery or if they will insist on delivery. No change in the burden of proof to the detriment of Customer shall be associated with these provisions.

3.3 The risk of destruction, loss or deterioration of the goods as well as the price risk will pass to Customer upon delivery of the goods to the specified persons entrusted with their dispatch. The same will apply to the risk of a delay in delivery.

3.4 Our deliveries as well as partial deliveries are accompanied by a bill of delivery. Customer is obliged to confirm the goods' date of despatch by signature. The bill of delivery can either be submitted in hardcopy or electronic form, according to our own choice. We shall be permitted to use electronic means to prove the despatch. Customer acknowledges that the reproduction of the receptor's signature, registered and saved by the electronic proof of despatch, shall be accepted and be sufficient as legal proof of despatch.

4. Right of Withdrawal of Vendor

In the event that it is not possible for us to make the delivery even within a reasonable supplementary period due to circumstances not attributable to us, such as, for example due to incorrect and/or unpunctual supply to ourselves, in cases of force majeure, official measures, business disruptions, strike and the like, we will be entitled to withdraw from the agreement, in whole or in part, and we will inform Customer of such circumstances forthwith and immediately refund any considerations already paid by Customer.

5. Retention of Title

5.1 The goods will remain our property until full payment of any and all claims including accessory claims, claims for damages and redemption of cheques and bills of exchange.

5.2 The retention of title will continue to apply even when some of our claims are included in a current invoice and the balance is drawn and recognised.

5.3 Customer will only be entitled to resell the goods subject to retention of title by taking account of the following provision and only under the condition that our claims under this provision will actually remain in effect.

5.4 The powers of Customer to sell the goods subject to retention of title in the course of proper business transactions will end upon revocation by us as a result of a sustainable deterioration in the financial position of Customer, but no later than on suspension of payments or on filing and/or opening of insolvency proceedings against their assets.

5.5 Customer herewith assigns to us all claims with all ancillary rights arising from the resale of the goods subject to retention of title – including any outstanding balance claims. If Customer has sold the claim within the scope of genuine factoring, our claim will fall due immediately and Customer will immediately assign to us the claim against the factoring company taking its place and will immediately pass on its sales proceeds to us. We will accept the said assignment.

5.6 Customer shall be authorised to collect the assigned claims, provided they meet their payment commitments. This authorisation of collection will expire on revocation, however in the event of default of payment by Customer and/or in case of a substantial deterioration of Customer's financial circumstances, at the latest. In such case, we may threaten Customer with collection of the claim either by ourselves or by third parties engaged by us setting an appropriate deadline. Once this deadline has expired to no avail, we will be authorised by Customer to disclose the collection authorisation, to notify purchasers of the assignment and to collect the claims ourselves. Customer will be required to provide us, upon request, with a complete and accurate list of the claims accruing to us with full names and addresses of the purchasers for service. Such list shall also contain the amount of the individual claims, as well as all principal invoice data. Customer shall, moreover, give us all information required for asserting the assigned claims and shall allow us to verify such information. We will be entitled to commission members of the legal and tax-adviser professions to conduct such verifications.

5.7 If the value of the collateral existing for us exceeds our claims by more than 20 % in total, then we will, at our discretion, either release an appropriate part of the collateral rights at the written request of Customer or of a third party affected by our excess collateral.

5.8 No pledge or lien of the goods subject to retention of title and/or of the assigned claims shall be permitted. Customer shall be obliged to immediately inform us of any and all enforcement measures, in particular restraints upon the goods subject to retention of title, by stating the holder of the lien as well as any and all enforcement data.

5.9 In case of breach of duty on the part of Customer pursuant to Clause 5.), in particular in case of default of payment, we shall be entitled to withdraw from the agreement and to redemption after expiry of a reasonable deadline granted to Customer. The statutory provisions on the dispensability of setting a deadline will remain unaffected. If we take back the items being

supplied on account of the retention of title, this will not constitute withdrawal from the agreement. Any taking back of goods is done only to secure our claims. The same shall apply if instalments have subsequently been permitted.

5.10 The assertion of our rights under the agreed retention of title and the extended reservation of title does not require that we withdraw from the purchase agreement, unless the customer is a consumer.

5.11 Customer will keep the goods subject to retention of title for us at no charge. They shall insure them, at their own expense, against the customary risks, e.g. fire, theft and water, to a usual and reasonable extent. Customer herewith assigns to us their claims for compensation to which they are entitled against insurance companies or other parties obliged to pay compensation as a result of damage of the nature specified above, up to the amount of the invoiced value of the goods. We accept such assignment.

5.12 Customer shall be obliged to immediately notify us of any change in its registered place of business as well as any change in the name of its company or in the legal status of its company, provided any claims relating to supplied goods are still outstanding.

6. Payment

6.1 Our invoices shall be payable without any deduction within 30 days after the date of issue of the invoice.

6.2 If the term of payment is exceeded, and on commencement of default, at the latest, interest shall be payable by Customer at least at the statutory rate (consumers five percent above the base interest rate, merchants nine percent above the base interest rate). We reserve the right to prove and claim higher default damage. Customer shall be entitled to prove that we have incurred no or less damage as a result of the default. However, in case of default, interest will in any case be payable by Customer at the statutory rate.

6.3 If Customer is in default to the extent of at least two invoiced amounts, suspends its payments, institutes out-of-court composition negotiations or if a petition is filed to institute insolvency proceedings against the assets of Customer, all our invoices will immediately become due and payable. In such cases, we will furthermore be entitled, notwithstanding any prior agreements, to demand advance payments or the provision of securities. Moreover, we will be entitled in such cases to withdraw, in whole or in part, from all current agreements concluded with Customer without giving further reasons, and to demand damages in addition.

6.4 Customer can only set off with counterclaims as are validly established, undisputed or recognised by us.

6.5 Customer may only assert a right of retention based on counterclaims, which are based on the same contractual relationship.

6.6 We are entitled to assign our claims, including all security interests provided under Art. 5 and all other securing agreements or other security rights existing in the claims, to Eurofactor AG. In that case, our invoices will contain a clearly readable note that the invoice sum is assigned to the factor and that payments can only be made with full discharge of the debt to the factor on the account notified by the latter. In such event, customer's payment will only be deemed to be made with full discharge of the debt if factor receives the payment.

7. Warranty

7.1 Customer shall be obliged to immediately examine and inspect the consignment for any material defects and their compliance with the agreement. Any material defects discovered within the scope of this inspection shall be notified to us forthwith. Should Customer fail to conduct the inspection or to notify any defects in good time, the supplied goods shall be deemed to be approved, unless the defect was not discernible at the time of the inspection. The notification of a defect shall be made in writing, precisely stating the reasons and exact description of the alleged defect. It must be possible for one of our authorised agents to inspect and check the complained goods at any time. If a defect was not discernible during the inspection, Customer shall also immediately inform us, in writing, about any defect discovered at a later time. Should Customer fail to make such notification, the consignment will be deemed to be approved also in respect of such defects. In all other respects, the provisions of Articles 377 et seq. of the HGB (German Commercial Code) will apply *mutatis mutandis*. Any obvious defects shall be notified to us within a period of 2 weeks after the receipt of the goods; otherwise the filing of any warranty claim shall be excluded. Timely dispatch shall suffice to comply with the deadline. Customer will carry the burden of proof in such case.

7.2 Any deviations customary in the industry from the dimensions, designs, fabric / leather patterns and colours, in particular in repeat orders, shall not constitute grounds for complaint. Any claims based on defects will not apply in the event of merely insignificant variations in the agreed nature/condition and/or usability, in the event of natural wear and tear or as a consequence of damage arising after transfer of risk as a result of faulty or negligent treatment, excessive strain or special external factors going beyond the scope of the agreement.

7.3 In case of processing of materials supplied by Customer, warranty claims and claims for damages shall be excluded, if a defect results from the nature and condition of the materials supplied by Customer. Where inappropriate changes or repairs are carried out by Customer or third parties, no claims may be made for such defects and the resulting consequences.

7.4 In case of justified complaints, we will fulfil the warranty for any defects in the goods within the limitation period either by repair or replacement, at our discretion, provided the cause already existed at the time of transfer of risk. Customer shall provide us with such necessary and reasonable time and opportunity as will, at our own discretion, be required for taking all such measures required for a subsequent performance. Any replaced parts will remain our property.

7.5 In the case of non-performance, we shall not be responsible for the payment of any and all costs, cost increases and other expenses, such as for example working, material, transportation, handling and incidental costs, which are incurred as a result of the fact that the goods to be repaired or replaced need to be brought back from a place other than the original place of delivery and that the repaired or replaced goods need to be delivered to a place other than the original place of delivery.

7.6 Claims for material defects become statute-barred 24 months after delivery of the goods. This will not apply if longer periods are prescribed by law under Articles 438 I No. 2, 479 I and 634a I No. 2 of the BGB, and in cases involving the injury of life, limb or health, deliberate or grossly negligent breach of duty on our part and in the event of fraudulent concealment of a defect. The statutory provisions on interruption, suspension and recommencement of the limitation periods will remain unaffected.

7.7 The manufacturer's guarantee envisaged for the end customer (consumer) will apply to the models in our main collection and will only become effective if the guarantee certificate is completed in full by the consumer and stamped by Customer (dealer) within 14 days of the date of delivery to the consumer. In all other cases of guarantees granted by us, e.g. for covering material, fabric and leather, the specified guarantee conditions will apply. Rights of recourse on the part of Customer against us under Art. 478 of the BGB exist only subject to the proviso that Customer has not reached any agreements with its purchaser exceeding the scope of the statutory claims to defects. Rights of recourse on the part of Customer against us under Art. 478 of the BGB shall be excluded, if Customer claims in its product description and its advertising messages to end customers (consumers) that our products have characteristics, which are not consistent with our product description and our advertising messages and, where applicable, exceed the scope of the same. This applies in particular to the material contents of our product description and user manual "Die Wohlfühlinfo" (Feel-Good Information). The provisions of Clause 7.5 shall apply *mutatis mutandis* to the scope of the right of recourse of Customer against us under Art. 478 II of the BGB.

7.8 If the subsequent performance proves unsuccessful, Customer may – notwithstanding any compensation claims under Clause 9.) – withdraw from the agreement or reduce the remuneration.

7.9 In the case of notification of any defects, payments by Customer may be retained only to the extent that they are in reasonable proportion to the material defects involved. Customer may only retain payments, if they have complained about a defect, about which there can be no doubt regarding its justification. If Customer has wrongly complained a defect, we shall be entitled

to demand reimbursement of the expenses incurred by us from the Customer.

7.10 In all other respects, the settlement of Customer's claims for damages under Clause 9.) shall be final. Any more far-reaching claims on account of material defects by Customer against us and our vicarious agents as well as claims other than those covered by Clause 7.) shall be excluded.

7.11 Customer shall ensure that all product presentations (product descriptions, operating instructions, guarantee passes, etc.) provided with our goods will not be removed and Customer explicitly undertakes to hand over such product presentations in their entirety to the end customer (consumer) upon delivery of the goods. The product presentations contain safety-related information pursuant to the *Geräte- und Produktsicherheitsgesetz* [German Equipment and Product Safety Act]. In the event that claims are filed against us by the consumer by virtue of the relevant statutory provisions and if we are unable to absolve ourselves from liability by referring to the safety-related information in the product presentations, because the same were not or not in their entirety forwarded to the consumer by Customer, then we will be entitled to claim reimbursement of the damage incurred by us from Customer, in which case we shall provide supporting documentation proving the amount of damage incurred.

8. Transport Damage

If, on receipt of the goods, Customer detects damage to the packaging, they shall be required to have the damage confirmed in writing by the haulage company on receipt of the goods. Any transport damage not established until after removal of the packaging must be notified to us, in writing, within 5 days of receipt. Timely dispatch shall suffice to comply with the deadline. Customer will carry the burden of proof in such case.

9. Claims for Damages

9.1 Should it prove impossible for us to perform the delivery, Customer will be entitled to demand damages, unless such impossibility is not attributable to us. Customer's claim will be limited to 10 % of the value of the part of the delivery, which we were unable to effect. This limitation will not apply in the event of mandatory liability in cases of deliberate intent or gross negligence or in cases involving danger to life, limb or health. No change in the burden of proof to the detriment of Customer shall be associated herewith. The right of Customer to withdraw from the agreement will remain unaffected.

9.2 In the event of any unforeseeable events as provided in Clause 4.) having impact on our operations or if any substantial change occurs in the commercial significance or the contents of performance as incumbent on us, the agreement shall be adjusted appropriately to such changes in circumstances observing the principle of good faith. If this is commercially unreasonable, we will be entitled to withdraw from the agreement. In such case we will, however, be obliged to fully notify Customer immediately after the implications of the event have come to our attention. This obligation will apply to us even if an extension of the delivery period was initially agreed with Customer.

9.3 In all other respects, any claims for damages and claims for the reimbursement of expenses of Customer, on whatever legal grounds, in particular due to breaches of contractual obligations and to unlawful acts, shall be excluded.

The foregoing will not apply, unless liability can be waived, e.g. under the *Produkthaftungsgesetz* [German Product Liability Act], in cases of deliberate intent and gross negligence or in cases involving danger to life, limb or health, and in the event of any violation of material contractual obligations. Customer's claims for damages arising from the breach of material contractual obligations will, however, be restricted to foreseeable damage typical of such agreements, provided that no deliberate intent or gross negligence is involved or in the event of liability in cases involving danger to life, limb or health. No change in the burden of proof to the detriment of Customer shall be associated with these provisions.

9.4 Where Customer is entitled to claims for damages under Clause 9.), such claims will become statute-barred on expiry of the limitation period applicable to material damage claims as per Clause 7.6. In the case of claims for damages under the German Product Liability Act, the statutory provisions governing the statute of limitations will apply.

10. Storage of Data

Our company uses an IT system, which stores the business transactions with our Customers. Where this involves personal data being stored for the first time, Customer will take note hereof as provided in Art. 33 I of the *Bundesdatenschutzgesetz* [German Federal Data Protection Act]. Customer data will be saved separately as user data and accounting data within the scope of the applicable data-protection provisions.

11. Final Provisions

11.1 All business transactions shall be governed by the substantive law of the Federal Republic of Germany. The UN Convention on Contracts for the International Sale of Goods will not apply.

11.2 Where permitted by law, Taufkirchen shall be agreed as the place of jurisdiction and performance for all reciprocal claims arising from a business relationship. This will apply in particular if Customer is a general merchant, legal entity under public law or a special fund under public law. The same shall apply if Customer has no general place of jurisdiction within the Federal Republic of Germany. We are, however, also entitled to institute legal action at the registered office of Customer.

11.3 If any individual provisions of the agreement between us and Customer, including these General Terms and Conditions of Business, should be or become invalid, in whole or in part, or if a gap in the provisions is found, the validity of the other provisions hereof shall remain unaffected. In such case, Vendor and Customer explicitly undertake to agree on a provision, which approximates the commercial intent as closely as possible.