

I. Conclusion of contract

1. The following General Terms of Delivery and payment apply to entrepreneurs, legal entities under public law or special funds under public law. An entrepreneur is a natural or juristic person or a partnership possessing legal personality, acting in the conclusion of the legal transaction as a self-employed trader, businessman or professional person. These Terms also apply to future transactions, even if not referred to in a particular case. These General Terms of Delivery and Payment do not apply to transactions concluded with consumers. Such transactions are regulated by law.

2. Our quotations are subject to confirmation and noncommittal. Orders as well as verbal agreements shall become binding for us only by our written confirmation. The Customer is obliged to check the content of the order confirmation and immediately inform us, if any type of mistake or inconsistency has occurred. Otherwise, the content of the order confirmation is considered to have been approved by the customer.

3. Customer's divergent terms of business not expressly acknowledged by us in writing are not binding upon us, even if we do not expressly reject them. Our Terms of Delivery and Payment are deemed acknowledged at acceptance of our performances at the latest.

II. Pricing

1. Our prices are quoted net ex factory/Hallenberg station and are inclusive of packaging but exclusive of freight, postage, insurance and the value-added tax applicable at the time of conclusion of the contract.

2. The prices quoted in our order acknowledgement are binding provided that the goods are delivered within 4 months after contract conclusion. When the delivery period exceeds the aforementioned four months, we are entitled to increase our prices when our costs have risen after the contract conclusion, in particular with regard to a price increase in raw materials, labour and freight costs. In this case, a price increase is only allowed on these grounds and to offset the aforementioned price and cost increases.

III. Delivery and freight charges

1. Delivery dates and delivery periods are always approximate as far as we are concerned and are not binding unless expressly confirmed by us as binding.

- 2.
- Up to a nett value of € 3,000,-, we have to surcharge a percentage of 5% for all truck deliveries to dealers, however the minimum surcharge amounts to € 75,-. For truck deliveries to a nett value of € 3,000,- and more, all deliveries are free of carriage charges within the Federal Republic of Germany behind the first lockable door.
 - For end customers, a truck delivery is possible for orders to a nett value of € 10,000,- and more, free of carriage charges. The costs to deliver the goods free site as well as the disposal of the packaging materials have to be requested separately
 - International shipping (i.e. outside the Federal Republic of Germany) is carried out at the customer's expense, i.e. ex works.
 - Express delivery or delivery of smaller volumes via package delivery companies are at the customer's expense.
 - The conditions stipulated from 2.a to 2.d apply, unless the parties involved have agreed upon other conditions.

3. In case the scheduled delivery is delayed upon the customer's request, we will charge for the storage on our premises, provided that storage is possible. For storage, we charge 0.5% of the nett order value per month or part thereof, with a minimum charge of € 150,-.

The enforceability of further rights resulting from the delay shall remain unaffected. In addition, we are entitled, after having set a commensurate subsequent delivery term and after expiration of this term to dispose of the goods for other purposes and to supply the goods to the customer within a new commensurate delivery term or to rescind the contract and/or to claim damages.

4. The customer is under the duty to inspect the condition of the goods immediately upon delivery. We are entitled to partial deliveries. Each delivery is to be regarded as a concluded transaction and is subject as such to the present terms. We will take out the freight insurance which is invoiced and passed on to the customer with 0.2% of the contract value, even when the freight insurance is not explicitly stated in the order acknowledgement. In case the customer abandons the option of freight insurance, he forfeits his claims for damages caused during transport. The freight insurance is also invoiced when the delivery is free of carriage charges. Freight charges have to be paid upon delivery. The nett charges have to be settled.

5. In the case of force majeure and other unforeseeable extraordinary circumstances arising through no fault of ours, such as material procurement problems, plant interruptions, strike, lockout, lack of means of transport, official intervention, energy supply problems, etc, if we are prevented from duly performing our contractual obligations, the delivery period is extended appropriately. If delivery or performance is impossible or unreasonable due to the abovementioned circumstances, we are entitled to release ourselves from the obligation of performance of contract if we advise the other party of the non-availability without delay and immediately refund any payments already made by the other party. The customer is not entitled to make any damage claims regarding the extended delivery period for any of the abovementioned reasons or if we are released from the delivery obligations for such reasons.

6. If inability to deliver in time is due to default in delivery by our suppliers through no fault of ours, then both parties are entitled to rescind the contract if the stipulated delivery date is overrun by two months. The exercise of this right by us depends, however, on our advising the customer of the delay in delivery as soon as possible and immediately refunding any payments already made in the event of rescission.

IV. Default of payment

1. The customer is in default of payment at the latest upon a reminder from us sent after the due date has expired. Even without a reminder, default in payment applies if the time for performance is or can be determined by calendar. In the event of default of payment, we are entitled to demand an 8% interest above the topical base interest rate. Our right to demand higher interests on other legal grounds or based on specific proof shall remain unaffected.

2. If the customer is in default by more than 30 days with a payment in respect of an existing contract or if the customer has suspended payments or the customer's financial status has deteriorated significantly, then our claims in respect of all existing contracts with that customer are immediately payable. Any additional time granted for payment or other deferral, such as acceptance of bills, end immediately.

We can demand furnishing of security in respect of deliveries and services not yet affected.

V. Offsetting/Retention

The customer shall only be entitled to offsetting and retention rights if his counterclaims are established by court proceedings, are beyond controversy or recognised by us. The customer's right of defence of non-performance of the contract remains unaffected.

VI. Passing of risk and haulage

1. In the absence of a special agreement, the type of packaging and the mode and means of haulage shall be decided by us.

2. The risk passes to the customer when the consignment is handed over to the person responsible for transport or leaves our Dispatch department, irrespective of which party is paying the freight charges. This also applies if partial deliveries are made or if we have agreed to perform other additional services. If the goods are ready for dispatch and haulage or acceptance is delayed for reasons for which we are not answerable, the risk passes to the customer upon receipt of notification of readiness for dispatch.

VII. Liability for damages due to defects

1. For the passing of risk for defects and deficiencies that exist, we apply the following warranty conditions:

- a) The customer is under the duty to inspect the goods, to notify the seller timely about any defects and to reject the delivery as stipulated by German law § 377 HGB (German commercial code). The customer has to notify us with dispatch and in writing of obvious and detected defects and cease all further processing. When the customer fails to carry out an incoming goods inspections and notify us of any defect, he waives his right for damage claims.
- b) When the customer has notified us of any defect, we propose the following options as subsequent performance: the decision to either remedy the defect or to replace the goods rests with us. Should any of these options incur disproportionate costs acc. to § 439 art. 3 BGB (German Civil Code) resp. § 635 art 3 BGB (German civil code), we are entitled to refuse the subsequent performance. We will reject any claim by the customer for expenses incurred to fulfil the subsequent performance (in particular freight charges, road charges, labour and material costs), should this incur higher expenses because the goods delivered by us have to be transported to a location other than the customer's place of business, unless, the transport is conform to the normal procedures.
- c) In case we fail to cure the defects by subsequent performance or legitimately reject any such claim, the customer is entitled to demand either the contract's rescission or a lowered payment. In case of a minor breach of contract, especially in case of a minor defect, the customer is not entitled to rescind the contract.

2. When the customer asserts his damage claim, he may withhold payments in due proportion to the objected defects. If the damage claim proves to be unfounded, we can demand compensation for the incurred expenses.

3. The colouring of our wood stains is determined by the beech stain samples of our standard collection or colour samples. We reserve the right of minor colour deviations due to the diversity of woods and veneers and texture.

Deviations in dimensions and finishes, in particular in case of subsequent orders, are no grounds for complaint, unless an exact match of the dimensions and colour stain was expressly agreed. We reserve the right to deviate from illustrated and described models. Changes due to improvements to production technology and technical progress do not give cause for complaints. The above-mentioned provisions shall not constitute a reversal of the burden of proof.

4. The right of recourse against us acc. to § 478 BGB (German Civil Code) only apply in that the customer hasn't made specific arrangements with his buyer beyond the legal claim for damages. Apart from § 478 art. 2 BGB (German Civil Code), the proportion of the customer's right of recourse against us is determined by No. 1 b) second sentence.

5. The customer is only entitled to indemnity claims due to defects according to the provisions of no. IX of these general terms of delivery and payment.

6. The statute of limitation on the customer's indemnity and damage claims due to defects runs out a year after the delivery of the goods. The limitation period doesn't expire, when we maliciously withheld information about known defects or when it concerns a construction or goods that when used appropriately and correctly provoked the deficiency or when the defect is due to a deliberate act or culpable negligence or non-compliance with warranty regulations as well as in the event of damages attributable to us arising from death and injury to body and health. In case of product liability claims or delivery recourse acc. §§ 478, 479 BGB (German Civil Code), the legal provisions remain unaffected.

7. The statutory limitation remains unaffected when the parties are conducting negotiations acc. to § 203 BGB (German Civil Code).

VIII. Title defect

In case of title defect, the provisions on material defect acc. to no. VI shall apply.

IX. Liability in case of delay and impossibility of performance

1. In the event of a delivery delay on our part, the customer is entitled to his legal rights. However, the customer can only assert his indemnity claim under the provisions stipulated in no. X. In case of slight negligence, the indemnity related to the delay is limited to 0,5% for each entire week of delay with the maximum indemnity fixed at 5% of the total contract value, unless the customer can establish conclusively that he sustained a higher damage due to our impossibility to deliver.

2. The customer is obliged, upon our request, to state within a reasonable time whether, as a result of the delayed delivery, he shall rescind the contract or insist on the completion of the delivery.

3. The customer is entitled to his legal rights in the event that we are unable to deliver or fail to keep other service provisions. However, the customer can only assert his indemnity claim under the provisions stipulated in no. X. In case of slight negligence, the indemnity is limited to 10% of the value of the part in question, which couldn't be put in operation due to our impossibility to deliver, unless the customer can establish conclusively that he sustained a higher damage due to our impossibility to deliver.

X. Indemnity claims

In so far as no other provisions have been stipulated in these general terms of delivery and payment, the customer is not entitled to indemnity claims. This limitation does not apply when we, our legal representatives or helpers have acted with malicious intent or with gross negligence or acc. to the product liability legislation, or in the event of damages attributable to us arising from death and injury to body and health or in the event of a breach of the main contractual obligations. The indemnity claim regarding the breach of main contractual obligations is limited to the foreseeable damages typical of this type of contract, in so far as we are not liable due to malicious intent or gross negligence or due to losses attributable to us arising from death and injury to body and health.

XI. Specials, processing of customer's own material

When we process customer's own material, such as leather, artificial leather or other fabrics, we cannot accept liability for any defects or damages resulting from the customer's own material. Special finishes are only produced after a corresponding quote was submitted. We cannot accept any complaints regarding the special finishes, when the design, shapes, materials and colours were commissioned by the client and the defects result herefrom.

XII. Retention of title

1. We retain title to goods delivered by us until full settlement of all claims arising from the business relationship, including all incidental claims (including all current account balance claims) and until bills and cheques offered in payment have been paid.
2. The customer shall insure goods subject to retention of title against fire, burglary, theft and water damage.
3. Retention of title also extends to the products resulting from processing. The customer is entitled to process and dispose of the goods in the ordinary course of business, provided the claim arising from further processing and disposal is transferred to us. There is no obligation on our part arising from processing on our behalf. In case of processing, combining or mixing of our goods with other materials, we acquire joint ownership of the resulting product in proportion to the value of our goods. In lieu of transfer of possession, the customer shall keep the products in safe custody on our behalf without payment with the due diligence of a prudent businessman. The same provisions apply to new products resulting from working up and processing as to products subject to retention of title. They are deemed to be reserved products under these provisions.
4. All claims arising from the sale of goods to which we have title are here and now assigned by the customer, if necessary in the amount of our proportional ownership of the goods sold, as security for all claims arising from the business relation with us, irrespective of the fact whether the product subject to retention of title is disposed of without or after processing and to one or more buyers.
5. If the customer is in default of due performance (in particular payment of outstanding debts), after setting a reasonable period for performance which has elapsed without result, we can rescind the contract or demand that the customer surrenders the delivered goods.

6. We are obliged to release securities held by us on request from the customer, subject to selection, if the realisable value exceeds 20% of our claims to be secured.

7. The customer is not entitled to pledge the delivered goods or assign it as security. The customer must notify us of any such pledge or claims by a third party (enclosing a photocopy of the pawnbroker's record). The expenses of our intervention are at the customer's expense.

XIII. Transferability of rights

The customer shall not transfer rights arising from this contract in full or in part to third parties without our prior written consent. This does not apply to pecuniary claims.

XIV. Place of performance and jurisdiction

1. The place of performance for both parties is Hallenberg.
2. The place of jurisdiction for all claims arising between the parties based on the contractual relationship, including bill and cheque claims, is Hallenberg.
3. The Law of the Federal Republic of Germany applies. Application of the uniform law on the sale of goods and the United Nations Convention on Contracts for the International Sale of Goods is excluded. Contractual language is German.

XV. Severability clause

If a provision of these Terms of Delivery and Payment is or becomes illegal, invalid or unenforceable, that shall not affect the validity or any other provision. The invalid provision shall be substituted for a legally valid provisions that is as close as possible to the original intent of the invalid provisions.

Kusch+Co GmbH
Gundringhausen 5
59969 Hallenberg
Germany

T +49 2984 300-0
welcome@kusch.com
kusch.com