

# **General Terms of Business KAPO Möbelwerkstätten GmbH**

**(Version January 2015)**

1) The following General Terms of Business (hereinafter referred to as GTB) shall apply to all business relations between our company and the customer as far as there are no other terms agreed. Verbal agreements are invalid without written confirmation.

We shall not accept orders from customers which do not comply with these General Terms of Business. We do not accept General Terms of Business issued by the customer, even when we do not reject them explicitly.

2) Is the business on the part of the customer to judge as a consumer business under the Consumer Protection Act and it came into existence either on our initiative or a representative outside our premises, you are hereby instructed expressly that you may withdraw from the contract for any reason.

If our company can bind commitments of staff to the Consumer Protection Act, it is pointed out in the interest of uncomplaining business transactions that are prohibited employees of our company to make promises which differ from these conditions. The same applies to the granting of rebates, discounts and other commitments of any kind.

3) The order form to be signed by the customer shall constitute a binding proposal to our company. A contract which obligates us shall not be formed until we provide written confirmation or until the ordered merchandise is delivered.

We reserve the right to undertake part deliveries, whereby each part delivery shall be deemed to be a separate transaction and shall not affect that part of the order which has not yet been performed.

If delivery is proven to be impossible, we shall be released from the contract.

4) We shall prepare cost estimates to the best of our specialist knowledge; we are unable to take account of order-specific circumstances of which our staff cannot be aware. Should further work be required in the event of an order, which results in cost increases of more than 20%, we shall notify you immediately.

5) Cost estimates shall be proposals, which shall not oblige us to accept the order nor to undertake the work listed in the cost estimate. Planning

work, samples and trips to the customer which are requested shall be charged on the basis of master scheduled work rates plus any material costs and other expenses, if the order is not placed with us.

The expense for subsequent changes of the order will be charged by us on directing cost base.

6) All drawings, drafts, plans or documents of a similar nature produced by ourselves shall remain our intellectual property. If these are used without our consent, we shall be entitled to claim compensation in the amount of 25% of the quotation amount.

If the customer provides plans or specifies dimensions, then it shall be liable for their accuracy, unless acceptance based on actual dimensions has been agreed in writing.

Deviations and minor amendments from the agreed work (e.g. in the case of colours, wood and veneer appearance, grain and structure and in the case of dimensions etc.) must be tolerated by the customer, if they are due to the material and are minor. Dimensional variations of up to 10%, provided they do not prejudice proper use, shall in particular be deemed to be minor.

7) All prices quoted by ourselves, unless explicitly indicated otherwise, shall be exclusive of value added tax (net prices). All prices shall be in accordance with the current calculation and shall be valid for three months from their quotation (except in the event of a separate price increase agreement).

Should the wage and material costs, together with other costs necessary for provision of the work change, without us having any influence thereon, our prices shall be adjusted, too.

8) Our company shall not be obliged to execute the work until the customer has met all its obligations which are necessary for execution. Our company shall not be obliged to undertake work which falls within the sphere of other trades (e.g. if gas, water and electricity connections are to be undertaken by the tradesmen entitled to undertake such work), unless this was agreed in writing when the order was placed.

9) As far as there are no other agreements we deliver all items EXW (ex works) Pöllau (according to Incoterms 2010).

The delivery times which we specify shall only be approximate. The additional costs incurred as a result of delays shall be borne by the customer, if it was legally responsible for the circumstances which gave rise to the delay.

10) The delivery date, which we shall notify at the latest 14 days in advance, shall be deemed to be agreed if the customer has not objected to this date in writing within eight days of notification by us. If the customer is not present on this date or if it has failed to complete the requisite measures resp. preparatory work for completion of delivery, then the customer shall be deemed to have taken delivery of resp. accepted the performance resp. the work. At this point all risks and costs, e.g. bank charges, storage costs at reasonable prices (carrier's tariff) shall become the responsibility of the customer.

11) The customer must inform the contractor immediately of any change of address. If it fails to do so, then its last known address shall apply for all service. The customer shall bear all expenses related to the ascertaining of its address.

12) Retention of Title: All merchandise delivered by us shall remain our property until payment in full of the purchase price including all extra charges have been received by us. In the event of default in payment by the customer, we shall be entitled to collect items which are subject to our reservation of ownership, resp. to retain parts not yet delivered, until such time as the customer has met its payment obligations, whereby this shall not equate to withdrawal from the contract.

13) Extended retention of title: The customer may sell on the conditional delivery during its normal business operations. In this case it hereby assigns to us the payment claims against its customers arising from any resale of the conditional merchandise, whereby we accept this assignment.

14) All packed items have to be controlled within 3 days concerning defects or damages. Delayed reclamations will not be accepted.

In case of justified reclamations the customer is not entitled to withhold payment of the total amount of the invoice; he is just allowed to withhold appropriate the worth of the defect.

15) As far as there are no other conditions of payment agreed the customer shall undertake to pay an advance payment in the amount of 50% when the order is placed, whereby any promised delivery period shall not commence until the date the deposit is paid. A further 40% of the order amount shall be payable on delivery or commencement of assembly.

If the customer fails to meet this obligation, then the contractor shall be entitled to withhold delivery. The remainder shall fall due within 14 days of rendering of an invoice.

16) All payments shall be net in cash without deductions plus value added tax which is to be shown separately; unless other terms of payment are agreed (discounts or rebates shall apply only by separate agreement).

In the event of payment by bill of exchange, cheque etc., our receivable shall not be deemed to have been paid until these have been collected. The customer shall bear any discount resp. collection charges.

17) In the event of default in payment, even if this has been caused through delay in taking delivery for which the customer is responsible, an interest rate of 8 % above the discount rate of the Österreichische Nationalbank valid at the time shall be charged as indemnity for any credit charges which we incur.

We shall moreover be entitled to charge an amount of EUR 40,00 for every formal reminder which we send.

In the event that we are forced to commission a collection office to collect outstanding receivables, the customer has to bear all the associated costs and charges.

18) If deterioration in the credit worthiness occurs after coming to an agreement we shall be entitled to withhold delivery until the customer has paid the invoice completely or until he has given a guarantee for the payment.

19) In the case of defects which can be eliminated the guarantee shall be respected by the contractor via free repair of the proven defects within a reasonable period. If no complaint was lodged in relation to obvious defects when delivery was taken, or if the parts suffering from defects were altered by someone other than the contractor, then the customer's warranty claims shall be cancelled.

Parts subject to wear and tear shall only have a lifespan in accordance with the state of the art.

Claims for damages are only possible to be made by the customer if the contractor is delayed for fulfilling his warranty obligations.

20) If the business is not a consumer transaction it is hereby agreed that the delivered items only provide the safety that due to ÖNORMen, manuals, instructions for the use of the delivered item (operational and /or maintenance instructions) and required maintenance, in particular with regard to the required inspections, can be expected.

Wear parts (such as belts, drives, etc.) have only those corresponding to the current state of the art life. Generally for electric motors is considered a limited warranty of 6 months.

Customers who intend to rectify the defect claims for damages can only be asserted when we are in default with the fulfilment of warranty claims.

21) Dates concerning the replacement or improvement shall be agreed in individual cases. If the customer at this date is not present or he complicates by unilateral action the replacement or improvement or he makes this impossible, it is to afford a reasonable fee for each additional attempt to improve the customer.

22) If it appears only in the course of carrying out a repair and although this was not our company because of its expertise in contracting apparent that the matter is unsuitable for repair, so our company is to inform the customer immediately. The customer has to pay in this case the costs accrued to date.

We also point out that in renovation or repair work a reduced warranty of one year as agreed. Deviations of the surface to a new product which only have a visual impairment are technically unavoidable and therefore do not entitle to complaints.

23) We are only liable if our intent or gross negligence can be proven, within the framework of the statutory provisions for damages outside the scope of the Product Liability Act. The liability for ordinary negligence is excluded, as compensation for consequential damages and financial loss, lost savings, loss of interest and damages from any third party claims against the customer.

To consumer sales this limitation of liability does not apply to personal injury and damage to an item that has been accepted for processing. Product liability claims that could be derived from provisions other than the product liability law are excluded.

24) In both contract cancellation by the customer and in case of cancellation by the contractor for breach of contract by the customer the entrepreneur is entitled to charge - without prejudice to the assertion of any further higher damages - for standard products a cancellation fee of 15% and for special products of 30% of the contract price.

Has the production already started the contractor is entitled to charge all claims according to § 1168 Austrian Civil Code.

25) Place of performance is the seat of our company; place of jurisdiction is the court competent for our headquarters. All disputes exclusively apply Austrian law. The applicability of the UNCITRAL (United Nations Commission on International Trade Law) is expressly excluded. The contract language is German.

26) In case of invalidity of individual provisions of these "Terms and Conditions" retain all others valid.

Pöllau, January 2015