

# GENERAL TERMS AND CONDITIONS

4.03.2014

## §1 Scope of validity

- (1) The following general terms of sale apply to all business relationships between 13&9 Design GmbH, Grazbachgasse 65a, 8010 Graz, Austria, Commercial Register Graz FN (Register No.) 391340 a, (hereinafter called "Vendor") and its customers. The version valid at the time of the conclusion of the contract is applicable.
- (2) Customers are:
  - Consumers as defined by the Consumer Protection Law (either an individual or a single entity) not entrepreneurs or
  - Entrepreneurs (Contractors), whether natural persons or entities having legal personality, legally responsible private companies, operating within the framework of their activities. An enterprise is defined as every organisation of independent economic activity designed for continued operation, even if it is not for profit. Hereafter, if necessary, consumers and entrepreneurs will be referred separately, otherwise the following provisions apply to all customers.
- (3) Even if acknowledged, variant, opposing or supplementary general business conditions will not become an integral part of the contract, unless their validity is expressly agreed to.

## §2 Conclusion of Contract

- (1) All vendor's offers are without obligation and subject to confirmation.
- (2) A contract is then concluded when the vendor issues a confirmation of order or makes a delivery after receiving a written order from the client which represents a binding offer. In case the consumer orders the goods or services via the electronic media of the vendor, the receipt of such order shall be acknowledged immediately. The confirmation of receipt does not however constitute a binding acceptance of the order.
- (3) For consumers the vendor reserves the right to accept the order within one week; for companies the vendor reserves the right to accept the order within a suitable acceptance period. Should orders of goods or services be placed via the electronic media, the vendor reserves the right to accept the order within 3 working days. The Vendor reserves the right to decline an order, for example upon evaluation of the customer's credit-worthiness.
- (4) Specific client's instructions, i.e. with regard to meetings, discounts or the like, in the context of the order confirmation shall not be binding until explicitly agreed by the Vendor.
- (5) Offers made on the Internet apply only to orders placed on-line. The Vendor is entitled to create catalogues on- and offline, to publish any other sales documents, lists and drawings, as well as weights and measurements with the utmost care, but reserves the right to subsequently correct any obvious errors.
- (6) The Vendor shall expressly agree with any changes or additions to the order made by the customer after the conclusion of the contract and reserves the right to indemnification.
- (7) We reserve the right to partial or non-per-

formance of a contract with entrepreneurs in case of incorrect or improper deliveries by our suppliers. In this case, the Vendor undertakes to inform the Contractor without delay and any compensation will be reimbursed immediately.

- (8) For orders placed by consumers on the Vendor's Web Shop, the textual content of the contract shall be saved and returned to the Customer by e-mail together with the General Terms and Conditions which shall form part of the agreement.

## §3 Reservation of title

- (1) The Vendor shall retain title to all objects delivered by him until complete payment of the purchase price plus any interest or charges arising.
- (2) The Customer must treat the supplied products with due care for the duration of the retention of title and must perform necessary maintenance and inspection at his own expense. The customer is obliged to notify the Vendor immediately on any seizure of the goods by a third party, such as levy of execution and any damage or loss of the goods. The same applies to any change in ownership of the goods or any change of the customer's address. The customer is liable to pay compensation for any damage or costs caused by a breach of the above obligations or by not intervening adequately against access to the goods by third parties.
- (3) In order to inspect the goods which are delivered under the retention of title the Customer shall provide the Vendor with the access to his premises. If the customer violates the contract, in particular by delays in payment, the Vendor is hereby entitled to withdraw from the contract and to reclaim the goods. This shall also apply if the Customer breaches obligations according to par. 2 to such an extent that the adherence to the contract becomes unacceptable for the Vendor.
- (4) The Contractor is entitled to resell to third parties the goods which are delivered under the retention of title as part of its normal business activity. Upon conclusion of a contract the Customer shall assign to the Vendor any receivables arising from the sale of the goods to third parties. The Contractor must endorse the assignment in his own account books and invoices. After the transfer the Contractor is authorized for the collection of the demands. The Vendor reserves the right to collect the receivables himself in case the Contractor does not meet his payment obligations and is in default of payment. In this case the Contractor undertakes to provide the Vendor with all documents and data necessary to collect receivables.
- (5) In cases where the purchased goods are processed, combined or mixed by the Contractor with other items that are his own property or the property of a third party, he must act in the name and on behalf of the Vendor. The Vendor acquires a co-ownership share corresponding to the ratio of the value

of his goods to the value of the goods supplied by the Vendor himself. If co-ownership can not be established, paragraph 4 shall apply mutatis mutandis.

- (6) If the Vendor and the Customer agreed on foreign law according to which the reservation of title is no longer effective, so the existing securities deriving from the other law shall be deemed as agreed upon. To the extent the cooperation of the customer shall be required, he must take all necessary measures that are required for substantiating and upholding such rights.

## §4 Prices and Terms of Payment

- (1) The prices and the delivery terms stated in our order confirmation shall apply. The Vendor adds to all prices quoted including all extra expenses the legally-applicable value added tax. The Customer agrees to receiving the invoice electronically. The gross price will be reported on the invoice. Should costs increase by the time of delivery, they can be recalculated on a pro rata basis. Unless otherwise agreed, for the Contractor the prices stated for supplies shall apply net ex works. The supplying countries, where national and international shipment to Consumers is possible, are provided in "List of shipment flat rates for consumers" along with the corresponding shipping flat rates.
- (2) The Customer is committed to paying the invoice amount within 14 days with no deductions after the date of the invoice. Payments shall be made free of charge to the Vendor's payment office in the agreed upon currency (EURO unless otherwise stated). Differing terms and conditions of payment have to be agreed to in writing by the Vendor. In case of delays in payment by the Customer we shall be entitled to charge an annual rate of interest of 5% for Consumer and 8% for Contractor above the base interest rate for the duration of the delay, in case the Contractor is in default on a debt an annual rate of 9,2% above the base interest rate will be charged. The Vendor reserves to verify and apply a higher default interest claim from Contractors. Furthermore, the Contractor undertakes to reimburse any amount paid or expenditure arising from the collection of receivable, e.g. the dunning fees and collection charges incurred for any necessary legal measures, reference is made to the provisions under §459 of the Austrian Business Enterprise Code (UGB). The Consumer undertakes to pay a flat rate of EUR 15,- for the collection of receivables.
- (3) Cash-On-Delivery Orders are allowed only within Austria. If payment is a cash on delivery a fee of 3,50€ will be charged in addition to the delivery charges to be paid in cash directly to the carriers. For payment by credit card (Mastercard, VISA) calculations are to be settled immediately before the time for delivery begins. The Vendor may accept bills of exchange as well; however, he is not obliged to. If paying by cheque or bill of exchange payment shall only be deemed

- effected after the account has been credited. After the debt has become due discounting and collection charges are to be paid immediately by the person on whom the letter of credit is drawn.
- (4) The Contractor shall only be entitled to a right of set-off or retention provided that his counter claims have been judicially determined, or are uncontested or acknowledged by the Vendor. The retention of payments by the Contractor for counter claims shall be excluded.
  - (5) All and any claims shall become due immediately, should the Customer default payment or if the Vendor becomes aware of circumstances suitable to reduce the Customer's creditworthiness or of any information suggesting that granting a credit to the Customer may not be totally free of risk. In this case the Vendor shall be entitled to make/render any outstanding deliveries/ services only against advance payment or to withdraw from the contract after setting a reasonable extension period. For the purposes of this provision, the aforementioned circumstances include substantial degradation of financial situations by the Customer, suspension of payments, delay in payments or even liquidation whereas information include news and information transmission about these or similar circumstances.
  - (6) Should the time of payment be dependent on the completion of the assembly or due before the commissioning and should this deadline be delayed without the Vendor being at fault, payment shall be made, notwithstanding that, no later than 6 weeks after notification of delivery readiness or after delivery.
  - (7) If delivery is made into a non-EU country, the Vendor explicitly reserves the right to additionally charge the legally applicable VAT in case the Customer fails to provide the proof of export in proper form.
  - (8) Unless otherwise explicitly stated, all Vendor's credit notes are valid for 36 months after date.

#### §5 Delivery and Transfer of Risk

- (1) As far as the scope of delivery is concerned, the Vendor reserves the right to change the design and equipment of the goods delivered according to the technical progress or in compliance with legal or official requirements. Series-produced furniture will be sold by sample or illustration. There is no legal claim to the delivery of display items, unless not otherwise agreed to in the contract. Any minor and reasonable deviations in colour, shape, design and grain are not a reason for rejection. The same applies to used textiles.
- (2) Unless otherwise agreed in writing with the Vendor, the terms and dates of delivery are provided to the Customer as an example only and are not binding. The delivery terms and dates will begin from the date of the order confirmation, however not before a total clarification of all details of the contract and the procurement of required technical information, e.g. plans, drawings, and not before the fulfilment of all other requirements of the customer or before the receiving of a deposit payment or a guarantee that the customer will be required to pay. Delivery dates are understood to mean the time of dispatch from our production unit. If the goods fail to be delivered or despatched at the agreed time for reasons not attributable to the Vendor, the agreed delivery time shall be considered to have been met at the day on which the goods are notified to be ready for dispatch. In the case of self-collection by the customer, the Vendor will inform the customer about the time when the goods are ready for collection and about the pick-up period.
- (3) The Vendor shall have the right to make partial or advance deliveries and to settle payments.
- (4) Should the Customer not request imme-

diately delivery of those goods which have been notified to him as ready for dispatch or should he not take receipt of the goods ready for collection in due time, within four weeks have elapsed after the notification that the goods are ready for transportation or after the pick-up deadline has expired, the Vendor is entitled to either store the goods at the expenses and at the risk of the buyer, whereby a storage fee of 3% of the gross invoiced amount will be charged per month (plus the legally applicable VAT) and to insist on the fulfilment of the contract, or to withdraw from the contract and sell the goods on the open market without further communication to the Customer. In this case the Customer shall be obliged to pay a conventional penalty amounting to 30 % of the net price plus value-added taxes due to the increased costs which may arise as well as for possible minimum proceeds. The conventional penalty falls due for payment upon cancellation of the agreement where- as the paid deposit amounts will be credited against the contract penalty. The right of the Vendor to assert further damages shall remain unaffected.

- (5) Failing express agreement, the Vendor's warehouse shall be the place of performance for the delivery. In case of a delivery ex works or if the customer is in default of acceptance the risk of accidental loss or deterioration of the delivery items shall pass to the customer. When handing over the goods to the forwarding agent or the carrier, or any other person or company charged with transporting the goods, however, the risk is transferred to the buyer.
- (6) Visible damage or defects caused during transport must be notified immediately upon receipt by the Customer to the forwarding agent or the carrier or any other person or company charged with transporting the goods and acknowledged by the latter. Damage or defects caused during transport not visible from the outside must be notified within 7 days after receipt to the forwarding agent or the carrier or any other person or company charged with transporting the goods. In case the Vendor has, contrary to par. 5, in its order confirmation explicitly confirmed a place of performance other than the Vendor's factory or warehouse, any transport damage must also be notified to the Vendor within 4 days after receipt. If the Customer fails to do so, no damage or defect caused during transport can be claimed with the Vendor.
- (7) The Customer is entitled to return all transport, sales and outer packages in accordance with prevailing packaging regulations that apply only to those goods and to packaging of the same type, shape and size as the ones belonging to the Vendor's product range. Insofar as the Customer decides not to avail himself of the faculty of returning back the packaging, it has been agreed that he will put it to the use prescribed in the Packaging Regulations at his own risk and on his own account.

#### §6 Further Delivery Conditions

- (1) If the Vendor is responsible for the non-fulfilment of the agreed delivery date to which it is bound or is delayed in delivery, as far as the Customer satisfactorily proves that he has suffered damage therefrom, he shall be entitled to claim compensation for delayed delivery at 0,5% of the purchase price up to a total of 5% of the contract value of the deliveries or services affected by the delay.
- (2) If the Vendor's performance is delayed in case of an agreed penalty and due to a delay in delivering purchased parts of the sub-suppliers despite his binding confirmation of delivery date, the penalty shall come into effect at any later date by the period by which the delivery is delayed. Furthermore, a penalty shall become invalid, if

deposits are not paid in due time or if a performance is delayed because of the Customer's behaviour.

- (3) In case of circumstances which are unforeseeable or not dependent on a party's will, as for events of force majeure on the part of the Vendor or of his Sub-supplier, the Vendor is entitled to postpone the delivery and/ or service around the duration to an adequate initial period. These circumstances include primarily, but are not limited to armed conflicts, shortage of labour, energy or raw materials, orders by public authorities, operating difficulties, riot, transport and customs delay, transport damages, looting and similar events.
- (4) On an expressly written demand by the Customer and at the discretion of the Vendor, product samples from the Vendor's product range may be made available to the Customer four weeks free of charge. When sample goods are delivered, invoicing shall be made on the terms which are laid down in these general terms and conditions. If the goods are returned in the original packaging in due time, a credit note shall be issued against the invoice. If the return is not carried out in due time, the goods are deemed to be accepted. This also applies in case the returned goods bear traces of use and montage or show any changes or signs of damage.

#### §7 Guarantee

- (1) In the case of material defects, the Consumer has the right to choose between the rectification of such defects and replacement delivery. The Vendor may refuse to offer such remedy, if it is impossible or if, in relation to other remedies, it would require a disproportionate effort. If changes are not possible or feasible, the Consumer has the right to choose whether to reduce payments or, provided that defects are not minor, to rescind the contract. For consumers the legal requirements for warranty cover a period of 2 years from delivery of the goods.
- (2) Vendor's warranty obligation towards Customers shall only apply to defects that appear when observing the applicable operating conditions and putting the item to normal use. In particular, this does not apply to defects resulting from any circumstances for which the client or third parties are responsible, including any non-observance of maintenance instructions. Limited warranty is granted by the Vendor for wear and tear or minor defects of the paintwork as well as for those goods which have been subject to repairs without prior consultation with the Vendor. Any warranty obligation of the Vendor shall come into effect only if a required installation was carried out by a duly skilled professional. For parts that the Vendor purchased from its sub-suppliers upon the instructions of the company or its representatives and contrary to the Vendor's recommendation, the Vendor is liable only to the extent that he is entitled to bring forward guarantee claims against the sub-supplier. If an order or a service is carried out by the Vendor according to design specifications, drawings or models, that were made available by the company, the vendor's liability does not extend to the correctness of design and only to the conformity of the design to the customer's specifications. The Vendor is here-in not obliged to examine the information provided by the company. Light devices and parts subject to wear as well as used products shall not be covered by the warranty. Similarly, the Vendor shall not accept any warranty, when accepting repair jobs or reworking or modifying old as well as third-party goods.
- (3) If the Customer is an entrepreneur, he is obliged to examine the delivered goods with regards to defects within a reasonable time and shall report obvious defects to the Vendor in writing within a week of receiving the goods; otherwise the assertion of warranty is excluded. Hidden faults must be reported within a

week of discovery. However, the entrepreneur bears the full burden of proof that all the conditions for a claim are met, especially for the defect itself, for the point in time when the defect is established and that the defect is reported in time. In the event of faulty goods, the Vendor shall initially redeem the guarantee towards enterprises for those defects covered by the Vendor's warrant obligations and by choosing to offer either to rectify the fault or provide a replacement. The Vendor shall be given the time necessary to examine and remedy the defects or supply replacement parts or equipment, as applicable. The costs and risks of transporting the tool to and from the repair centre, must be borne by the enterprise. For the correction of defects on the customer's premises, any travel costs is borne by the entrepreneur. Any removal of a defect or other warranty remedy shall not result in a renewal of the warranty period. Vendor shall only refund costs for remedying a defect, undertaken by the entrepreneur himself or by a third party, if the Vendor has given his written consent. For entrepreneurs the period of warranty is 1 year as of the delivery of the goods.

#### §8 Liability

- (1) Outside of the scope of product liability law, Vendor's liability is limited to malicious intent or gross negligence.
- (2) Liability for slight negligence, compensation for consequential and financial losses, savings not achieved, loss of profits, lost data, losses of interest, and for damages resulting from claims made by third parties against the entrepreneur are ruled out.

#### §9 Contract Termination

- (1) Should the Vendor fall behind with deliveries through gross culpability, the Customer is entitled to declare by a registered letter addressed to the Vendor its withdrawal from the contract after expiry of a reasonable period of grace of 30 days set by him in writing.
- (2) The consumer is entitled to withdraw from a Distance Sales Contract within a period of 7 working days with effect from the date of receipt of the goods by the consumer. The notice of termination of the contract shall be given in writing and without an explanation. The punctual dispatch of the notification suffices to comply with the time limit. The right of cancellation does not apply to services, whose implementation counts as the start of the contract according to the agreement within seven working days from the conclusion of a contract, as well as for the supply of goods made according to customer's specifications. If the Consumer exercises his right of withdrawal, he is obliged to return the goods at his own expenses.
- (3) Enterprises and Consumers, provided that for the latter no right of withdrawal applies according to No. 2, are entitled to terminate the contract with the Vendor's explicit consent. In this case the Customer is obliged to pay a compensation of 20% of the cancelled order amount. If a customised special design was manufactured by the Vendor or an item was ordered exclusively for the Customer, the reimbursement costs shall be increased to 50% of the cancelled order amount. The right to assert a claim for actual damage in a larger amount is reserved.
- (4) Without prejudice to the legal rights of rescission in compliance with §3 par. 3, §4 par. 5 e §5 par. 4 laid down in these General Terms and Conditions of Sales, the Vendor shall be entitled to rescind the contract in particular (a) if either, after the conclusion of the contract, some circumstances occur whereby the fulfilment of the contract is no longer cost-effective or even impossible under the terms agreed upon, or (b) in case the delivery, for reasons that are the

responsibility of the Customer, can not be carried out or is further delayed even after a reasonable period of grace set by the Vendor. The Vendor reserves the right to claim further damages.

#### §10 Industrial Property Rights and Copyright

- (1) Whenever goods are supplied by the Vendor according to plans, drawings, models, analytical specifications, or any other customer information and this infringes on third-party rights, especially industrial property rights, Customer undertakes to indemnify and hold harmless the Vendor.
- (2) The Vendor's website design, all documents and sales information made available on- and/or offline, such as catalogues, brochures, documents and drawings as well as offers, projects, and any other technical document, e.g. plans, models remain the property of the Vendor. The Vendor is entitled to ask to return documents. Any processing, copying, circulation and/or public reproduction other than for private use shall be deemed illegal and prohibited.
- (3) The Vendor is not liable for the content of any possible external website which can be reached via links from this website or which refer to this website.

#### §11 Data Protection

- (1) The Customer hereby agrees that the information provided by him in this contract be collected, processed, saved and used only for purposes of accounting, credit assessment and customer records. The data are used by the Vendor to ensure compliance with statutory provisions, for the processing of payment transactions and for advertising purposes. The customer has the right to free information over his stored personal data as well as to access, correction or deletion of inaccurate or illegally stored data.
- (2) Where a particular use of the homepage requires the forwarding or other processing of the user's information, the Customer's consent shall be requested at that time.
- (3) In case of orders placed on the Web Shop of the Vendor, there is no additional collection, processing and/or use of Customer's data unless the Customer has expressly consented before the order process to his data being passed on to third parties. The Customer is entitled to the right to revoke his consent with effect for the future at any time.

#### §12 Final provisions

- (1) Austrian law is applicable. The provisions of UN purchasing law shall not be applicable. This does not apply to a Consumer if it would deprive him of relative protections granted by mandatory legal provisions under the laws of the State where he has his permanent residence.
- (2) For all disputes arising from legal transactions, which are directly or indirectly subject to these General Terms and Conditions, the Austrian court having local and subject-matter jurisdiction is agreed upon. This does not apply if the Customer is a consumer and has residence, usual place of living or place of employment in another area in Austria. However, the Vendor is also entitled to sue the Customer at its general place of jurisdiction. Without prejudice to this provision, Consumers residing in any other State party to the European Area of Jurisdiction and Enforcement Convention (EuGVÜ) have the right to take action before the courts of their State of residence. However, they can be sued only in their own State of residence, if the conclusion of the contract is preceded by a specific invitation or by advertising in the country where the Consumer is domiciled and if the Consumer took the steps necessary for the conclusion of the contract in that country.

- (3) In case individual regulations of this contract with the customer, including these General Terms and Conditions, are or become ineffective, in full or in parts thereof, the effectiveness of the remaining regulations shall not be affected. In this event the parties are obliged to replace a completely or partially invalid provision with one that most closely corresponds to the intended purpose of the original provision.
- (4) Unless expressly stipulated otherwise, the place of performance for the obligations to deliver and/or to perform shall be the shipping address or place of use requested by the Customer. Upon conclusion of the contract the customer must provide the relevant data required in the contract accurately and correctly. Where the information supplied by the Customer is incomplete, unclear or incorrect, the latter shall be liable for any cost and expense incurred to the Vendor and arising therefrom. Moreover, in the event of compensation, the customer undertakes to immediately and fully inform the Vendor in writing of any changes of his name, address or place of residence. If this communication is omitted then declarations are deemed as closed in the event they are sent to the customer's last known address.