

General Terms and Conditions

of Kaiser GmbH, Hanzing 1, 94107 Untergriesbach
As of April, 2009



1. Area/Scope of applicability

The Supplier's (= Seller's) deliverables, services and offers shall be provided exclusively on the basis of the present Terms and Conditions. Their stipulations shall therefore also apply to all future business relationships, even if they are not again explicitly agreed upon. Any deviating or supplementing conditions formulated by the Customer (= Purchaser) are hereby excluded. Such conditions shall apply only if confirmed in writing by the Seller.

2. Applicable law

German law shall apply under exclusion of the United Nations Convention on the International Sale of Goods. For all construction services (carpentry and joinery, interior outfitting work) including assembly, the "Contractual Regulations for Construction Services" [Vertragsordnung für Bauleistungen] (VOB Part B) in their version in effect at the time of execution of the Contract shall apply if the contract is awarded by a contractual partner doing business in the construction industry.

3. Other construction services and deliverables

For all services in which VOB Part B is not stipulated, the provisions of Clauses 4 and 5 shall additionally apply.

4. Order acceptance

4.1. All offers are without obligation until the order is accepted. In the event that the Customer's order should differ from the Supplier's offer, the Contract shall only be concluded following the Supplier's confirmation.

4.2 Orders shall only be considered to have been accepted if confirmed in writing or delivered by the Seller. Only oral, telephone or faxed orders fundamentally require written confirmation to become effective.

4.3 In the event that the performance due by the Supplier should be delayed by causes of force majeure or acts of God, lawful strikes, incapacity on the part of the Supplier or of one of its sub-suppliers, without fault of its own, as well as unfavourable weather conditions, the agreed upon delivery deadline shall be extended by the period of such delay.

5. Warranties

5.1. Obvious defects must be reported within two weeks following delivery of the goods or upon acceptance of the service or deliverable. Claims in respect to defects arising out of obvious defects can no longer be asserted after this deadline. Any defects that cannot be detected even upon careful inspection within the abovementioned period must be reported to the Seller without delay immediately upon discovery. §§ 377, 378 HGB [German Commercial Code] apply to trade business relationships.

5.2 In the event of justified defect complaints, the Supplier shall be entitled to choosing between either reworking the defective deliverables or providing a replacement to the Customer against return of the items constituting the subject of the complaint. As long as the Supplier meets its obligations in regard to curing the defects, the Customer shall not be entitled to reduce remuneration or to rescind the Contract unless rework measures fail. If rework or replacement should be impossible, if either measure should fail twice, or be refused, the Customer may at its discretion request either an appropriate price reduction or rescission of the Contract. Sentence 1 shall not apply to consumer contracts concerning the purchase of movable property.

5.3. The Purchaser's guarantee claims shall become time barred one year from the statutory start of the guarantee period.

6. Payment

6.1. In the event that no individual payment plan has been agreed upon, progress payments may be requested for partial deliveries in the amount of the increase in value. Fundamental defects give rise only to entitlement to an appropriate retention of remuneration, as a rule in the amount of twice the amount of the expected cost of removal of the defects.

6.2. Drafts are permissible only subject to special arrangements. Bills of exchange and cheques are accepted only as means of payment but not as actual payment. Any expenses and taxes related to bills of exchange shall be for the account of the Customer.

6.3. Setoff, retention or deduction in respect to other claims that are undisputed or have been legally established is hereby excluded.

7. Compensation / Due dates

In the event that the Supplier's contractual performance has been provided and delivered and/or accepted, compensation shall be immediately due upon direct billing and without discount deductions unless otherwise agreed upon. Prices quoted are net, subject to addition of the appropriate statutory value added tax.

8. Formal acceptance

If formal acceptance is contractually stipulated, acceptance becomes effective also if the Customer has twice requested in vain and in a reasonable manner to proceed to performing the pertinent acceptance procedures. Acceptance shall be effective 12 working days following receipt of the second request in this regard.

9. Flat rate damage compensation

In the event that the Customer should cancel the work contract before construction is carried out, 10% of the total contractual sum shall be required as compensation. Customer shall be explicitly entitled to prove lesser losses or damages.

10. Technical information

10.1. The Customer is hereby informed that it must, for its part, carry out service and maintenance work, in particular as follows:

– Fittings and standard construction components must be inspected and, if applicable, oiled or greased

– Sealing joints must be regularly inspected

– External paintwork (e.g. windows) must be maintained and restored depending on paint or varnish type and weathering.

Such work is included in the scope of the Contract only if explicitly so stated. Any omitted maintenance work can impair the life and functionality of the components, without giving rise to defect claims against the Supplier.

10.2 Immaterial, reasonable deviations in dimensions and execution (colour and structure), in particular in connection with follow-up orders, shall not give rise to prejudice insofar as they are normal and inherent to the nature of the materials used (solid wood, veneers).

11. Retention of ownership

11.1. Any items already delivered shall remain the property of the Supplier until such time as the full compensation due therefore is settled.

11.2. The Customer shall be under the obligation to report any lien being placed on the items subject to ownership retention to the Supplier without delay, and to inform any lienor of the pertinent ownership retention. The Customer shall not be entitled to sell, assign, pledge or give as security the items supplied to it and subject to ownership retention.

11.3. In the event that delivery should take place for a business maintained by the Customer, the items may be onward sold within the scope of the ordinary course of business. In such cases, any claims of the Customer against the client to whom the items are sold shall automatically be assigned to the Supplier in the amount of the accounting value of the item supplied and subject to ownership retention. In the event of onward credit sale of the items, the Customer shall exercise retention of ownership in regard to its own client. The Customer hereby assigns the rights and claims arising out of the present retention of ownership in regard to its own client to the Supplier.

11.4. In the event that any items subject to retention of ownership should be incorporated into the Customer's real property as essential components, the Customer hereby automatically assigns any claims arising out of the sale of the real property or of other real property rights to the Supplier in the amount of the accounting value of the items subject to retention of ownership, together with any ancillary rights, to the Supplier.

11.5. In the event that the items subject to retention of ownership should be incorporated by the Customer and/or in its behalf as essential components into real property belonging to a third party, the Customer hereby automatically assigns to the Supplier any potential claims for compensation in the amount of the accounting value of the items subject to retention of ownership together with all ancillary rights that may be raised against such third party or whom it may concern. In the event of processing, combination or mixing of the item subject to retention of ownership with other items on the part of the Customer, the Supplier shall be entitled to co-ownership of the new item in the proportion of the accounting value of the items subject to retention of ownership to the value of the remaining items.

11.6. The Supplier retains its copyright and right of ownership on any cost estimates, designs, drawings and calculations. Such works may not be used, reproduced or made available to third parties without the Supplier's consent. All such documents must be immediately returned in the event that the Contract should not be awarded.

12. Liability

12.1. Any claims for damage compensation shall be excluded, independently from the type of breach of duty, including unlawful acts, except in the event of intentional or grossly negligent acts.

12.2. In the event of a breach of essential contractual obligations, the Seller shall be liable for any and all negligence, but only up to the amount of foreseeable losses. Any claims to loss of earnings, saved expenses resulting from damage compensation claims of third parties as well as to other direct and consequential damages may only be raised if a characteristic of state guaranteed by the Seller should specifically be intended to ensure that the Purchaser does not suffer any such losses or damages.

12.3. The limitations and exclusions of liability in Clauses 12.1 and 12.2 shall not apply to claims pursuant to the Product Liability Act or for losses or damages resulting from injury to life, limb or health.

12.4. Insofar as the Seller's liability is excluded or limited, this shall also apply to the Seller's employees, workers, representatives and agents.

13. Jurisdiction

If both contractual parties are businesses, the exclusive jurisdiction shall be determined by the location of the Supplier's head office.

14. Severability clause / Entire Agreement

In the event that one or more provisions in the present Terms and Conditions or within the scope of any other agreements should be or become ineffective, the validity of the remainder of such provisions or agreements shall not be affected thereby. The invalid provision shall be replaced by another that shall, in its economic effects, correspond to the greatest possible extent to the intent of the ineffective stipulation.