

# Terms and conditions of delivery and payment

König + Neurath AG · Office Furniture Systems · 61184 Karben

Valid from: 01 January 2023

## I. General terms

### 1. General

- 1.1 All quotations submitted by K+N and all agreements concluded with K+N shall be governed by the following terms of supply and payment. Customer's conditions not acknowledged by K+N shall not be binding upon K+N.
- 1.2 Our quotations shall be non-binding. Written quotations for customised furniture submitted by K+N shall be binding for a period of two months and then be non-binding unless otherwise agreed.

### 2. Acknowledgement of order

- 2.1 By placing an order, the purchaser acknowledges these terms of delivery.
- 2.2 All agreements must be confirmed in writing by K+N in order to be valid. Order acknowledgements need not be signed and can be issued electronically.
- 2.3 If K+N fails to confirm an order in writing, the invoice shall be regarded as a written acknowledgement of order.
- 2.4 If there are signs of deterioration of the customer's assets as defined in § 321 BGB (German Civil Code), K+N shall be entitled to retain delivery until the purchase price is paid or a security is given for it or to withdraw from the contract.

### 3. Cancellation, rescission, taking back the goods

- 3.1 In the event that a contract is terminated at the purchaser's request and termination is obligingly accepted by K+N, K+N may request compensation for the cost of transport, assembly and similar cost under the contract. K+N may demand a lump sum of at least 10 % of the order value as compensation unless the purchaser can prove that the damage is lower.
- 3.2 A voluntary rescission of contract shall generally be excluded when customised furniture is supplied (cf. section 3.5 below).
- 3.3 Regarding sale on approval, non-approval shall terminate the sales contract. If the goods have been used by the customer (samples), a depreciation of up to 50 % may be unilaterally claimed by K+N unless the purchaser can prove that depreciation is lower. Termination of contract and return of the goods shall not be accepted after a period of 12 months or if the goods have been damaged and can no longer be used for their intended purpose without special repair.
- 3.4 Non-approval must be given immediately after delivery unless otherwise agreed.
- 3.5 Samples of customised furniture shall be excluded from the right to rescind the contract by non-approval. Customised goods are non-serialised products and/or products not included in our pricelists. Special colouring based on colour samples submitted by the customer shall also be regarded as customised unless otherwise agreed.

### 4. Delivery

Within Germany, delivery of the goods shall be free (behind the first door) including necessary packaging. In the absence of any agreements to the contrary, shipping terms and prices for deliveries to a specific address or a special delivery type (particularly using vehicles other than from the K+N fleet) are subject to the conditions of service and logistics, which are published separately.

### 5. Transport risk

- 5.1 If K+N's trucks or forwarding agent are used for transport, risk in the goods ordered shall pass to the purchaser upon delivery of the goods.
- 5.2 K+N shall bear the risk in transit, i.e. the risk of loss or damage of the goods during transit, if neither K+N nor the consignee is to blame for the damage or loss and expressly on condition that the consignee immediately submits to K+N a certificate from the forwarder (on the delivery note, freight documents or similar), stating the kind and scope of the transport damage identified and, if possible, details on how it has occurred, which has been recognised and countersigned by the carrier.
- 5.3 If goods are collected by the purchaser or a person authorized by the purchaser, risk in the goods shall pass to them when they take over the goods.

### 6. Delivery times and impediment to delivery

- 6.1 K+N reserves the right to fix the date of delivery within the delivery week agreed with the customer.
- 6.2 1. "Force Majeure" means the occurrence of an event or circumstance that prevents or impedes a party from performing one or more of its contractual obligations under the contract, if and to the extent that that party proves: [a] that such impediment is beyond its reasonable control; and [b] that it could not reasonably have been foreseen at the time of the conclusion of the contract; and [c] that the effects of the impediment could not reasonably have been avoided or overcome by the affected party.  
2. In the absence of proof to the contrary, the following events affecting a party shall be presumed to fulfil conditions (a) and (b) under paragraph 1 of this Clause: (i) war (whether declared or not), hostilities, invasion, act of foreign enemies, extensive military mobilisation; (ii) civil war, riot, rebellion and revolution, military or usurped power, insurrection, act of terrorism, sabotage or piracy; (iii) currency and trade restriction, embargo, sanction; (iv) act of authority whether lawful or unlawful, compliance with any law or governmental order, expropriation, seizure of works, requisition, nationalisation; (v) plague, epidemic, natural disaster or extreme natural event; (vi) explosion, fire, destruction of equipment, prolonged break-down of transport, telecommunication, information system or energy; (vii) general labour disturbance such as boycott, strike and lock-out, go-slow, occupation of factories and premises.  
3. A party successfully invoking this Clause is relieved from its duty to perform its obligations under the contract and from any liability in damages or from any other contractual remedy for breach of contract, from the time at which the impediment causes inability to perform, provided that the notice thereof is given without delay. If notice thereof is not given without delay, the relief is effective from the time at which notice thereof reaches the other party. Where the effect of the impediment or event invoked is temporary, the above consequences shall apply only as long as the impediment invoked impedes performance by the affected party. Where the duration of the impediment invoked has the effect of substantially depriving the contracting parties of what they were reasonably entitled to expect under the contract, either party has the right to terminate the contract by notification within a reasonable period to the other party. Unless otherwise agreed, the parties expressly agree that the contract may be terminated by either party if the duration of the impediment exceeds 120 days
- 6.3 Orders for which a fixed time of delivery cannot be given (i.e. call orders), shall have a minimum call period of 30 days unless otherwise agreed.
- 6.4 If the purchaser fails to take delivery within the time limit, including delivery under skeleton contracts and call orders, K+N may invoice the additional costs incurred (e.g. storage costs) and demand compensation. Section 3.1 above shall apply accordingly as to the amount invoiced. In the event that the purchaser refuses to take a scheduled delivery and demands delivery to be postponed, he shall be liable to pay the increase in the price of the goods caused by the delay in manufacture.

### 7. Prices and payments and delay in payment

- 7.1 Unless otherwise agreed, prices shall be ex works including loading, whereas special packaging shall be charged extra. Prices are exclusive of statutory value added tax.

- 7.2 Unless otherwise agreed, payment shall be free K+N's paying office. The amount invoiced shall be due 30 days from the date of invoice at the latest. The date of the credit entry at our paying office shall count as to whether payment is punctual or not.
- 7.3 If payment is delayed according to section 7.2 above or allowed to be deferred, then interest on arrears shall be payable at the amount of 9 percentage points above the base lending rate of the European Central Bank for which no reminder shall be required, based on EU Directive No. 2011/7. Claims for damages at the lump sum amount of EUR 40.00 shall be asserted under this directive for each delayed payment.
- 7.4 Withholding due payments of a purchase price due to any purchaser claims from other transactions and, similarly, setting off such claims shall be excluded, unless they have been recognized by K+N or have been finally determined by a court.
- 7.5 If K+N has the purchaser's consent or is otherwise entitled to carry out partial deliveries, then at least the corresponding part of the sales price invoiced shall be due and payable.

### 8. Warranty

- 8.1 The warranty shall include all defects caused by the material used, by the workmanship or by the design of the goods.
- 8.2 No warranty is given in case of:
  - faulty design occurring on customised goods built to customer specification;
  - damage caused through natural wear and tear or the inappropriate use of the goods (such as putting them up in wet or moist rooms, lack of protection from massive heat sources, faulty cleaning methods or operation, or wanton damage);
  - deviations from the dimensions and shapes, if such deviations are common to the trade or technically required and if unavoidable deviations occur in the colour depending, for instance, on the kind of wood that is used and deviations from colour samples and the lack of uniformity in the veneering of different pieces of furniture.
- 8.3 The warranty period for office furniture and seating is 24 months. Any additional voluntary warranty services can be found in the separate warranty conditions.
- 8.4 If a complaint is justified, K+N shall have the right of subsequent performance, either in the form of a remedy of the defect or a replacement of the goods. The purchaser shall only be entitled to reduce the price or rescind the sale, if K+N fails to accomplish such subsequent performance within a reasonable period of time or if this does not lead to a removal of the defect.

### 9. Notice of defects and indemnity against liability

- 9.1 Besides any obvious damage to the goods due to transport as defined in section 5 above, the purchaser shall be bound to inspect the goods for apparent defects immediately after delivery and promptly notify K+N of such defects in writing. This duty to inspect shall include deviations from contract such as the supply of wrong articles or quantities unless the deviation is so substantial that K+N has to consider acceptance by the customer impossible.
- 9.2 Defects appearing at a later stage must also be reported immediately after their discovery. If notice of defect is not given at once, the goods shall be deemed approved and the warranty obligation for such defects shall expire.
- 9.3 Customer claims exceeding the warranty rights granted in section 8 above shall be excluded. This applies, in particular, to claims for damages including lost profit or other damage to the purchaser's property. This shall not apply to damages based on intent or gross negligence on K+N's side. Exclusion of liability shall not apply to cases of personal injury.
- 9.4 All purchaser claims shall become statute-barred three years after the signing of the contract at the latest, unless they are subject to a 2-year limitation period according to § 438 BGB.

### 10. Retention of ownership

- Retention of ownership as defined in § 449 BGB shall apply to the goods supplied and is extended as follows:
- 10.1 Ownership of all goods shall remain with K+N until payment of the total claim, present and future, from the entire business relationship with the purchaser. This shall also apply if payment has been made for a single delivery.
  - 10.2 The purchaser may sell the reserved goods only by way of a proper business transaction. As security, he agrees to assign to K+N any claim he may have against the customer for the sale of the reserved goods or for any other legal reasons, including all ancillary rights, to the full amount, i.e. including extra profit.
  - 10.3 In the event that the value of the goods reserved as security (calculated on the basis of K+N's sales prices) or the sum of the alternatively assigned claim exceeds K+N's total claim by more than 10 %, K+N shall, upon the purchaser's request and with regard to the excess part, either assign goods or retransfer any assigned accounts receivable.
  - 10.4 Until this provision is revoked, the purchaser may collect the assigned accounts receivable from the re-sale in his own name. Revocation shall only be made, if the purchaser does not fulfil his payment obligations or if his assets are deteriorating.
  - 10.5 The reserved goods shall be sufficiently insured against fire and theft and shall be labelled as reserved goods.
  - 10.6 If goods are transferred to a third party, the purchaser shall inform the third party of K+N's retention of ownership and the prolonged or extended reservation of title and shall assign to the third party all obligations resulting from this.

### 11. Samples and drawings

K+N reserves the right of property, copyright and use of all and any illustrations, designs, drafts, samples and other documents. They must be immediately returned to K+N upon request and must not be passed on to any third party without the consent of K+N.

### 12. Place of performance and venue and applicable law

- 12.1 Place of performance for the delivery and payment shall be Karben.
- 12.2 The Regional Court of Frankfurt/Main shall be the exclusive court of jurisdiction for all legal disputes arising from the contractual relationship with merchants or legal entities under public law.
- 12.3 The legal relationship between the parties shall be exclusively governed by German law.

### 13. Provision on data protection

Pursuant to § 28 Federal Data Protection Act, K+N shall record the data gained under the contractual relationship for the purpose of data processing and store the data. K+N can make use of the data to the extent this is necessary for fulfilling the contract. The customer consents to this.

### 14. Final remarks

In the event that any provision contained in these General Terms and Conditions shall be or become invalid, this shall not affect the validity of the remaining provisions or the contract as a whole.

## II. Special terms and conditions for the delivery and assembly of room systems and partition walls

### 15. Quotation

- 15.1 All documents belonging to a quotation, such as illustrations, drawings, dimensions, weights or other performance data, are only approximate unless their binding nature is expressly confirmed in writing. We reserve the right to make technical modifications and changes to the information given in our brochures. Reference to DIN regulations is a description of performance only, but not an agreement on the characteristics.
- 15.2 VOB/B ("Contract Procedure of the German Construction Industry") in its current valid version shall form a part of all quotations and contracts pertaining to the delivery and assembly of room systems and partition walls

### 16. Delivery and performance times

- 16.1 All dates and periods of delivery and assembly must be agreed in writing. The time for delivery or assembly shall commence only after receipt of all documents which are to be provided by the customer, such as specifications, drawings, permits, releases of drawings, etc. Deferring the date of the clarification of order (release of the working drawing) will affect all subsequent deadlines.
- 16.2 K+N shall not be held responsible for any delays in the delivery and assembly caused by force majeure and events unforeseeable to K+N or the onset and end of which were outside K+N's influence, such as strike, lockout, orders from the authorities, operational breakdown etc. The same shall apply if similar events occur at K+N's suppliers. K+N shall, in such a case, be entitled to postpone delivery or performance by the length of time of the impediment plus a reasonable start-up period.
- 16.3 K+N shall be entitled to make partial deliveries and partial performance.
- 16.4 Upon the occurrence of default of acceptance, the risk of coincidental deterioration or accidental loss shall pass to the ordering party.

### 17. Assembly

- 17.1 Unless otherwise expressly agreed, the cost of assembly is not included in the net price.
- 17.2 The ordering party shall be responsible and ensure that the assembly work is not impeded by a third party and can be carried out without interruption. The ordering party shall also ensure that passageways and doors are large enough to allow unimpeded transport of all elements delivered. The kind, means and cost of vertical transport required must be stated in the invitation to tender. Appropriate means are:
- a) a sufficiently dimensioned freight lift
  - b) a sufficiently large staircase
  - c) free cable or access shafts
  - d) appropriate openings in façades
- 17.3 The ordering party shall provide suitable spaces and rooms large enough for the intermediate storage of the inside wall elements. Storage spaces and rooms shall be assigned and co-ordinated with respect to the flow of assembly, the quantities delivered and the frequency of deliveries. The ordering party shall be responsible for providing favourable climatic conditions in the storage spaces and rooms in order to avoid damage to the elements and accessories, even for longer periods of storage.
- 17.4 Load limits of ceilings and floors must be stated by the customer/ordering party in their invitation to tender.
- 17.5 The customer must provide lockable rooms for the storage of small parts, tools, etc.
- 17.6 The customer shall ensure that the rooms used for installation are sufficiently lighted, evenly heated and clean.
- 17.7 The ordering party shall ensure that an adequate site mains power supply is available on time for assembly purposes.

### 18. Dimensions

- 18.1 Taking measurements of the rooms for installation, the supporting structure and other site conditions of the building required for a snug fit of the inner wall dimensioning, design and construction shall not be required on condition that DIN standards 18201 and 18202 regarding the geometrical characteristics for the room are guaranteed by the person responsible for the total construction work. In this case the risk of extra costs due to variations in the dimensions shall lie with the ordering party.
- 18.2 If paragraph 18.1 does not apply or if either the planning documents presented or the current site conditions indicate fitting difficulties, then the true inside width and height sizes must be taken on site, as follows: the width at the floor level, at the ceiling and at the mean room height, the height at the start and end and intermediately every 2m. If the floor is unfinished and there is only a raw ceiling, a meter marking line shall be mandatory. Furthermore, the customer has to identify all necessary connecting and reference points agreed for all trades for determining the dimensions and sizes. If partial dimensions are provided upon placement of order, the tender drawings shall be considered binding.

### 19. Adjacent building parts

- 19.1 All adjacent building parts, in particular their form, position, structure, stability and physical properties, must permit proper connecting to the variable inner walls and comply with the technical physical values agreed between the parties by separate agreement. Supporting and connecting surfaces must meet the requirements of the connecting construction and connecting medium. They must be level and unstructured, and free from fissures etc.
- 19.2 The mechanical properties of the material must guarantee the long-term acceptance and function of the fixing system. Alternating stresses due to constant changes in the use of the building and the rooms must be taken into consideration.
- 19.3 Dimensional deviations of the adjacent building parts must be recorded, if they cannot be avoided even under proper construction work and do not exceed the compensation limits of the inner walls. Conformity to the compensation requirements of DIN 18202 Table 3 are agreed between the parties.
- 19.4 Any variation in the position and form that goes beyond these requirements shall be at the expense of the ordering party and thus entitle K+N to present a supplementary claim.
- 19.5 All sound insulation values agreed or offered shall refer to the latest version of DIN 4109. The requirements, which are denoted in decibel (dB), shall refer to the building sound insulation value measured in a laboratory. K+N shall not be liable for deviations from these certified laboratory values caused by the local room conditions and the adjacent building parts (quality of the material, other fittings, installations or renovation work etc.) after installation.
- The cost of verifying measurements requested by the ordering party to ascertain the influence of the adjacent building parts on the sound insulation values shall be paid for by the ordering party. The duty for testing shall also lie with the purchaser.

### 20. Payment

- 20.1 Unless agreed otherwise, the following payment plan shall apply to orders with a volume exceeding EUR 25,000 for the delivery and assembly of room systems and partition walls:
- 1.1 A prepayment of 40 % of the total order value on placement of order
  - 1.2 An instalment of 30 % of the total order value when the goods ordered under a contract are certified as ready for shipment
  - 1.3 Another instalment of 25 % of the total order value after completion of assembly
  - 1.4 Final payment of 5 % within 30 days from receipt of the final invoice (date of invoice plus 3 days) according to section 7.2 above.
- K+N shall issue invoices for the instalments due.
- 20.2 The provisions set forth in section 7.2 shall apply to all other invoices.
- 20.3 Payment shall be deemed effected once the respective amount is at K+N's disposal. Cheque payment shall be deemed effected only after the cheque has been fully credited.
- 20.4 K+N shall be entitled to set off payments against any older debts of the ordering party, even if this is contrary to the ordering party's terms. K+N shall notify the ordering party of the offsetting. If costs and interest have accrued, K+N shall be entitled to set off the payment first against the costs, then against the interest and finally against the principal claim.
- 20.5 Should the ordering party default in payment, the supplier shall be entitled to charge interest at the amount of 9 percentage points above the basic lending rate as lump sum damage caused by delay, from the respective date. K+N may furnish proof of higher damage.
- 20.6 In the event that K+N becomes aware that the ordering party's credit standing is in doubt, especially that one of their cheques cannot be cashed or that the ordering party has suspended payments or if K+N becomes aware of any other circumstances raising doubts about the ordering party's credit standing, K+N shall be entitled to accelerate the maturity of the total residual debt. K+N shall, in this case, also be entitled to demand prepayments and to make future supplies only against payment in advance.
- 20.7 The ordering party may not set off, retain or reduce payments unless such counterclaims have been finally determined by a court or are non-controversial. Furthermore, payment may also be retained, if counterclaims exist under the same contractual relationship. The amount of the right of retention shall be based on § 641 para. 3 BGB.
- 20.8 Any surety deposited must be immediately returned to K+N according to the progress of performance made.

### 21. Accounting

- 21.1 The scope of performance shall be determined according to the drawings approved by the ordering party. Tenders and invoices shall refer to elements. An element is defined as the single module at its total height, including floor and ceiling connections and connecting parts.
- 21.2 The following parts shall be subject to separate payment unless otherwise agreed:
- fitting parts
  - floor connections
  - connections to fixed building parts
  - corner construction
  - free wall connections
  - holes
  - devices for electrical and sanitary parts
  - cut outs and external grooves and special stiffening
- 21.3 Prices for services not included in the order documents but mandatory for the ready-to-use manufacture of the object shall be fixed according to the single prices of the contractual performance.
- 21.4 The ordering party shall be charged extra for drawings, calculations and other documents requested which K+N need not provide under the contract.

### 22. Acceptance

A formal acceptance shall be carried out after completion of assembly, according to § 12 para. 4 VOB/B.

### 23. Warranty

- 23.1 Warranty shall be based on VOB/B. Any further claims of the ordering party in case of damage to property, in particular claims for damages, shall be excluded unless K+N is liable for gross negligence or intent.
- 23.2 The ordering party shall notify K+N in writing of any complaints or defects within 8 days from the date of discovery. The provisions of § 377 HGB shall not be affected.

### 24. Retention of title

- 24.1 The processing or transformation shall always be performed for K+N, but without any obligation being imposed on K+N.
- 24.2 The ordering party shall be entitled to process and sell the reserved goods in the ordinary course of business unless the ordering party defaults in payment.
- 24.3 If a third party has access to the reserved goods, the ordering party shall point out ownership of the supplier and immediately notify the supplier. Costs and damages shall be borne by the ordering party.
- 24.4 If the ordering party acts in breach of contract and, in particular, defaults in payment, K+N shall be entitled to take back the reserved goods at the ordering party's expense or demand, if appropriate, that the ordering party's claim for return of the goods against any third party be assigned to K+N. The taking back or seizure of reserved goods by K+N shall not be interpreted as a withdrawal from the contract.