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 are 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. Acknowledgment 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 acknowledgment of order.

2.4 If there are signs of deterioration of the customer’s assets as defined in § 322 BGB (German Civil Code), K+N reserves the right to require 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 obligatorily accepted by K+N, K+N may request compensation for the cost of transport, assembly and similar services previously undertaken. 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 (sample use), 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 evacuation 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. The goods must be returned in their original condition. Non-approval is only possible in accordance with the following terms of supply and payment. Customer’s conditions not acknowledged by K+N shall not be binding upon K+N, unless the purchaser can prove that depreciation is lower.

3.5 Samples of customised furniture shall be excluded from the right to rescind the contract by non-approval. Customised goods are non-standardised products and/or products not included in our price lists. Special colouring based on colour samples submitted by the customer shall also be regarded as customised unless otherwise agreed.

4. Delivery

4.1 By placing an order, the purchaser acknowledges these terms of delivery. In particular, if K+N’s trucks are not used for transport, price for transport and forwarding shall be based on our separate pricelist unless otherwise agreed.

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 of loss or damage of the goods during transit, i.e. the risk of loss or damage of the goods caused by 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 war damage).

5.3 Regarding sale on approval, non-approval shall terminate the sales contract. If the goods have been used by the customer (sample use), 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 evacuation 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.

5.4 Non-approval must be given immediately after delivery. The goods must be returned in their original condition. Non-approval is only possible in accordance with the following terms of supply and payment. Customer’s conditions not acknowledged by K+N shall not be binding upon K+N, unless the purchaser can prove that depreciation is lower.

5.5 If goods are collected by the purchaser or a person authorised 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 The time of delivery shall be reasonably extended, if K+N is prevented from the timely performance of its obligations due to unforeseeable circumstances and events which neither K+N nor its suppliers could have avoided in exercising reasonable diligence in each individual case. In the event that K+N is prevented from the supply or performance by any such events or events of a similar nature, both K+N and the purchaser shall be released from their performance obligation.

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. If payment is made within 10 days from the date of invoice, the purchaser may deduct a discount at the rate of 2%. Cheques may only be used for outstanding claims.

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 rate 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. 2001/24/EC. 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 of payments for 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 sale 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 war 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 shall be 24 months. As regards our seating furniture, the special provisions under item 5 below shall apply.

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. The duty to inspect includes 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.

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

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 delayed for a single defined performance obligation.

10.2 The purchaser may sell the reserved goods only by way of a proper business transaction. As security, the buyer 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 resale in his own name. Revocation shall only be made, if the purchaser does not fulfil his payment obligations of this 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 and similar rights. The customer is to immediately return 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.
15. Period of Guarantee

15.1 The period of guarantee shall be 5 years for K + N seating furniture. This is with the exception of pneumatic systems, to which the statutory 2-year warranty period shall apply.

The guarantee shall not include:
- any natural wear and tear, especially regarding wheel casters and fabrics for upholstery,
- any damage caused by the inappropriate use or non-observance of the instruction manual,
- any negative effects caused by extreme environmental influences, such as the climate, moisture, or acids,
- any material provided by the customer and processed by K + N, such as cover upholstery and other solutions requested by the customer which deviate from the standard version.

15.2 The period of guarantee shall commence on the date of delivery ex works and is granted on condition that the seating furniture is used in a standard 1 shift operation, i.e. an 8-hour working day consisting of 6 hours. If there are twice as many working hours in a 2 shift operation, then the period of guarantee shall be halved accordingly to 30 months. If the seating furniture is in continuous use, the period of guarantee shall be reduced accordingly, down to the statutory warranty period of 24 months. Spare parts, freight and travel expenses and assembly costs shall not be charged for during the statutory warranty period. Once the statutory warranty has expired, K+N reserves the right to charge a flat rate of 64 € / hour for repair work. Travel rates are based on defined postcodes, areas. Parts and shipping are still free of charge.

15.3 The guarantee period shall be neither interrupted nor suspended, if a service is rendered under the guarantee. This shall not apply to services rendered under the guarantee during the statutory warranty period of 24 months.

16. Quotation

16.1 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 contractual.

16.2 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 wall units and partition walls.

17. Delivery and performance times

17.1 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 drawings) will affect all subsequent deadlines.

17.2 K+N shall not be held responsible for any delays in the delivery and assembly caused by force majeure and unforeseeable events 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.

17.3 K+N shall be entitled to make partial deliveries and partial performance.

17.4 Upon the occurrence of default of acceptance, the risk of incidental deterioration or accidental loss shall pass to the ordering party.

18. Assembly

18.1 Unless otherwise expressly agreed, the cost of assembly is not included in the net price.

18.2 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 the passages 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 sufficiently dimensioned freight lift
- designated areas
- free cable or access shafts
- use of elevators

18.3 The ordering party shall provide suitable spaces and rooms large enough for the intermediate storage of the delivered materials. 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 for the purpose of avoiding damage to the materials and accessories, even for longer periods of storage.

18.4 Load limits of ceilings and floors must be stated by the customer/ordering party in their invitation to tender.

18.5 The customer must provide lockable rooms for the storage of small parts, tools, etc.

18.6 If necessary, the rooms used for storage are sufficiently lighted, evenly heated and clean.

18.7 Any variation in the order shall ensure that an adequate site mains power supply is available on time for the rooms must be taken into consideration.

19. Dimensions

19.1 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 18021 and 18022 regarding the geometrical characteristics for the room are guaranteed by the person responsible for the total construction on a related site. The employment of a designer is recommended for the entire ordering party.

19.2 Paragraph 19.1 does not apply if or 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 immediately every 2m. If the floor is unfurnished and there is only a raw ceiling, a measuring mark line shall be mandatory. Furthermore, the customer has to identify all necessary connecting points 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.

20. Adjacent building parts

20.1 As 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 elements for the connection (corners, connections and connecting parts) must be level and unstructured, and free from fissures etc.

20.2 The adjacent building parts must guarantee the term acceptance and function of the fixing system. Alternating stresses due to constant changes in the use of the building and the load to be taken into consideration must be taken into account and connected.

20.3 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 18022 Table 3 are agreed between the parties.

20.4 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.

20.5 All sound insulation values agreed or offered shall refer to the latest version of DIN 4102. 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, connections, installations, renovation work etc. suffering damage.

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.

21. Payment

21.1 Unless agreed otherwise, the following payment plan shall apply to orders with a volume exceeding EUR 25,000 for the delivery and assembly of wall units and partition walls:

- 1. A payment of 40 % of the total order value on placement of order.
- 2. An instalment of 30 % of the total order value when the goods ordered under a contract are certified as ready for shipment.
- 3. Another instalment of 25 % of the total order value after completion of assembly
- 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 Installments due.

The provisions set forth in section 7.2 shall apply to all other invoices.

21.2 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.

21.3 K+N shall be entitled to set off payments against any other 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. Any interest and interest received 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.

21.4 If the ordering party defaults 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.

21.5 In the event that K+N becomes aware of 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 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.

21.6 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 may thus not exceed the corresponding amount of the claim.

21.7 The ordering party shall be entitled to sell the reserved goods in the ordinary course of business unless the ordering party defaults in payment.

21.8 Any surety deposited must be immediately returned to K+N according to the progress of payment read.

22. Accounting

22.1 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 and its total height, including floor and ceiling connections and connecting parts.

22.2 The following parts shall be subject to separate payment unless otherwise agreed:

- fitting parts
- floor connections
- connections to fixed building parts
- corner construction
- wall connections
- heels
- devices for electrical and sanitary parts
- cut outs and external grooves and special stiffening
- 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.

22.3 The ordering party shall be charged extra for drawings, calculations and other documents requested which K+N need not provide under the contract.

23. Acceptance

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

24. Warranty

24.1 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.

24.2 The ordering party shall notify K+N in writing of any complaints or defects within 8 days from the day of discovery. The provisions of § 377 HGB shall not be affected.

25. Retention of title

25.1 The processing or transformation shall always be performed for K+N, but without any obligation being imposed on K+N.

25.2 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.

25.3 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.

25.4 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.