

# General Conditions of Sale



## 1. General

- 1.1 The following General Conditions of Sale ("the Conditions") apply to any contract ("a Contract") between Oeseder Möbel-Industrie Mathias Wiemann GmbH & Co KG ("Seller") and any other party (the "Buyer") for the supply of goods and provider of services. The Conditions apply to and are incorporated in all future contracts, even if they are not expressly incorporated into the individual contract.
- 1.2 Any variation of the Conditions must be confirmed by us in writing.
- 1.3 The conditions of sale of any other party to a Contract which differ from the Conditions, or which derive from a third party, shall not become part of the Contract and shall not affect the scope, operation and validity of the Conditions at any time.

## 2. Quotations

- 2.1 All quotations given are subject to the Buyer's confirmation within 14 working days.
- 2.2 Documents provided by Seller, such as diagrams, drawings, and including any indications of Seller's rights and measures, are only approximate, except if Seller expressly declared that such documents are final.
- 2.3 Seller retains ownership and/or copyright and/or any other intellectual property over any cost estimates, drawings, and other documents provided.
- 2.4 It is an express term of a Contract that the documents described above at 2.2 – 2.3 must not be disclosed to a third party.
- 2.5 Seller will not disclose to a third party the Buyer's drawings indicated by them to be confidential without the Buyer's express permission.

## 3. Prices

- 3.1 Prices are subject to Seller's confirmation.
- 3.2 All prices are exclusive of VAT.
- 3.3 Except where expressly agreed, all prices are ex-warehouse, and exclude packaging, freight, and insurance.
- 3.4 Where a delivery date is agreed more than 4 months in advance, Seller is entitled to invoice the Buyer for any increase in the cost of materials, manufacture, construction, personnel, delivery, and/or any other charges or services applicable to the goods and/or services being supplied.

## 4. Payment, set-off, and retention

- 4.1 Any payment shall be due immediately upon receipt of the invoice.
- 4.2 Late payment accrues interest on the sum invoiced and unpaid at the rate of 5% above European Central Bank Base Rate (LIBOR).
- 4.3 Should any payment from the Buyer be in arrears all outstanding payments will become due immediately.
- 4.4 Should the financial circumstances of the Buyer deteriorate such that payment for goods and services supplied by Seller under the Contract could be jeopardised Seller reserves the right to demand payment in advance of delivery, or suitable security. The Seller will decide in its own discretion whether such a situation has arisen.
- 4.5 Clause 4.4 applies even if those adverse financial circumstances in clause 4.4 become known to the Seller after completion of a contract.
- 4.6 If prepayment or provision of security is not made after a reminder and/or after Seller agreed a further reasonable deadline for payment, Seller is entitled to cancel the Contract or to demand damages for non-performance of the Contract. In all circumstances provided herein the advance payment or provision of security cannot be made dependent on the return of a bill of exchange. In any event the Seller shall decide in his own and absolute discretion which type of security he is prepared to accept.
- 4.7 Bills of exchange or cheques are only accepted for payment at the Seller's sole discretion. Bill discount charges, note charges and costs of any the foregoing types of payment are to be met by the Buyer.
- 4.8 The Buyer shall under no circumstances be entitled to set-off any potential or existing claim against the Seller's claim. The Buyer shall not be entitled to enforce a right of retention, unless such right is based on the same contractual relationship or on counter-claims that are either uncontested or legally binding. Equally, the Buyer may not retain goods supplied by us until all applicable payments have been made.
- 4.9 Clause 4.8 is without prejudice and in addition to clause 6.

## 5. Delivery

- 5.1 Delivery dates and/or periods of delivery are approximate.
- 5.2 The delivery period starts subject to Clause 5.3 on the date Seller confirms the Buyer's order.
- 5.3 For the avoidance of doubt the delivery period does not start before the Buyer has complied with all his obligations under the Contract.
- 5.4 An agreed delivery period has been complied with if at the time of its expiry the goods to be delivered have left the Seller's premises or if the Seller at his own discretion uses an agent the goods have left the agent's premises.
- 5.5 If delivery dates and/or periods cannot be kept the Seller will inform the Buyer immediately about the delay and the possible extent of such delay. The Seller is not liable for any direct or indirect loss caused by the late delivery unless the Seller has caused the delay deliberately.
- 5.6 Delays in delivery to the Buyer due to acts of God, public disorder, strike, lock-out, depletion of raw materials or manufacturing problems not of our making, including of our suppliers, insofar as the delay has an effect on the manufacture or delivery of the product, have the effect that the time of performance of the delivery period is extended until such time as the delay has been remedied. Seller will inform the Buyer at the earliest opportunity as to the start and likely end of any such operational delay. Seller is entitled, without incurring any claim for indemnification, to rescind a contract in part or whole should delivery be delayed indefinitely due to any of the above cited causes of delay.
- 5.7 Part deliveries are at the Seller's discretion permitted in appropriate circumstances.
- 5.8 The Buyer bears any and all risks as soon as the goods have left the Seller's or the agent's premises.
- 5.9 Seller will obtain insurance for carriage only at the Buyer's request and at his expense.
- 5.10 Unless expressly provided by the Buyer, choice of carriage is at the Seller's discretion.

## 6. Retention of title

- 6.1 Seller retains title to all goods delivered in any sale where the goods have not been paid in advance ("the Conditional Sale Goods") until such time as any and all of the Seller's claims arising from the Contract have been met. For the avoidance of doubt such claims include those arising from any subsequent and related contract, and all contingent liabilities arising from payment by cheque or bill of exchange. During this period Buyer shall hold possession of the goods on behalf of Seller and shall not sell or assign or dispose of it in any other way or grant a third party any rights over the Goods.
- 6.2 The Buyer has the right to process and alter the conditional sale goods in the ordinary course of business provided that he has performed all contractual obligations to us.
- 6.3 Seller shall acquire title automatically in the goods ("New Goods") which are created processing or altering or using in any way the Conditional Sale Goods and the Buyer shall not be entitled to process or alter or use in any way the Conditional Sale Goods in any way if such title for the Seller in the new goods cannot be achieved and Buyer shall indemnify the Seller for any damages arising from the infringement of this provision. If title

has changed against this provision the Buyer shall undertake all steps necessary to transfer title to the Seller and already agrees now to take these steps and if he does not perform these steps forthwith it grants authorisation to the Seller to perform such actions necessary.

- 6.4 If the conditional sale goods are processed, mixed, combined or connected with other goods Seller acquires ownership of the new goods according to the proportion therein of the conditional sale goods measured in value proportionate to the value of our invoice for the said conditional sale goods.
- 6.5 The Conditions applicable to the conditional sale goods apply to our proportionate ownership in the new goods as provided at clause 6.4.
- 6.6 The Buyer assigns to us hereby all rights and claims arising from the onward sale or disposal of the Conditional Sale Goods or from any form of amortisation, proportionate to the extent that the conditional sale goods are processed, mixed, combined or connected with other goods in new goods, such that Seller acquires co-ownership of the new goods proportionate to the value of our invoice for the said conditional sale goods represented in the new goods.
- 6.7 Should the Buyer sell on the Conditional Sale Goods with goods not supplied by ourselves, the Buyer hereby assigns to us the proportion therein of the value of the conditional sale goods in the onward sale according to our invoice for the conditional sale goods.
- 6.8 Should the Buyer factor any part of the Conditional Sale Goods or new goods, or value thereof, or legal claim arising therein, he hereby assigns to Seller all rights and claims so arising against the factor.
- 6.9 Where receivables from the said onward sale by the Buyer are received in a particular trading account with his customer, the Buyer hereby assigns to Seller all rights and/or legal claims over the said receivables within the said particular trading account in proportion to the value of the invoice for the conditional sales goods.
- 6.10 Seller hereby accepts the assignments provided above at clauses 6.6 – 6.9.
- 6.11 The Buyer retains the right, until withdrawn by Seller, to collect receivables assigned to Seller pursuant to clause 6.9. Authority to collect will be withdrawn if the Buyer defaults on any payment to Seller. In such circumstances Buyer authorises Seller to advise the customer or any subsequent Buyer of the assignment and to collect any outstanding payment to Seller.
- 6.12 The Buyer agrees to provide to us, on request, a complete list of receivables due to the Buyer, including the name and address of the customer, amounts due, invoice date, and any and all other relevant information, and to provide to us any and all information and documents necessary for the enforcement of the assigned claims, and hereby authorises Seller to verify the said information and documents ourselves.
- 6.13 Amounts of money received by the Buyer arising from any goods or legal claim assigned to us will be kept by him in a separate account in Seller's favour and under fiduciary trust until transferred wholly to us.
- 6.14 The Buyer or his assignee or any subsequent Buyer or assignee, or any agent thereof, is prohibited from pledging or transferring Conditional Sale Goods or assigned goods or legal claims as security.
- 6.15 Should any pledge be operated or is attempted to be operated, the Buyer must immediately inform Seller, and provide us with particulars of the garnisher or the pledger.
- 6.16 Should the market value of the rights, claims and/or other property assigned and due to us exceed the total of all our claims against the Buyer by more than 10%, Seller will on the Buyer's request release the Buyer in the amount of that excess.
- 6.17 The Buyer will store the Conditional Sale Goods for Seller us free of charge.
- 6.18 The Buyer storing Conditional Sale Goods as provided at clause 6.17 will fully insure the said goods against ordinary risks including fire, theft and water damage. The Buyer hereby assigns to Seller all legal claims for damages resulting from the said insured events against the insurance company and/or other parties indemnifying the value of our legal claims.
- 6.19 Seller hereby accepts the assignment provided at clause 6.18.

## 7. Defective goods, cancellation, compensation

- 7.1 On receipt of a complaint about goods that are either not fit for the purpose or not compliant with the specification of the goods ordered ("Defective Goods") and where the Buyer can either prove the defectiveness or such defectiveness is apparent ("valid complaint"), the Seller will at his absolute discretion either deliver replacement goods, repair the damaged goods and deliver them again.
- 7.2 If on receipt of a valid complaint of Defective Goods, Seller does not remedy the defect the Buyer is hereby entitled to terminate the contract. The Buyer shall not be entitled to any direct, indirect or consequential damages.
- 7.3 Claims for compensation by any contractual partner against Seller, Seller's representatives and/or employees and/or agents ("Representatives"), acting in the course of their employment and/or acting for Seller, for any appropriate reason including default by Seller of any condition of the contract, cannot be pursued and any party entitled already now waives the right to pursue such claim, except that the claim for compensation by the contractual partner arises from one of the following circumstances:
  - 7.3.1 Fatal injury, personal injury, or endangerment of health if caused by intentional or negligent breach of duty by Seller and/or its Representatives, or
  - 7.3.2 Intentional or negligent breach of a condition of the contract by Seller and/or its Representatives, or
  - 7.3.3 Any other intentional or negligent breach of a relevant duty by Seller and/or its Representatives, or
  - 7.3.4 Any breach of product liability law.
- 7.4 The limitations in clause 7.3 do not apply where Seller has accepted a relevant risk or provided a guarantee.

## 8. Limitation of claims for material defects

- 8.1 Any claim for compensation based on defective goods by a contractual partner must be made within 1 year of discovery of the defect, unless:
  - 8.1.1 The goods supplied by Seller are goods that are and have been ordinarily used for building construction and have caused or contributed to a defect discovered in a building construction, or
  - 8.1.2 The defect is due to an intentional breach of duty by Seller or its Representatives.

## 9. Applicable law

- 9.1 The applicable law, for all contracts entered into and performed wholly or largely in England and Wales, is that of England and Wales.
- 9.2 The applicable law for any contract entered into and performed wholly or largely in any other jurisdiction is the law of that jurisdiction.