



Terms of Sale and Delivery

M. Kaindl OG, Kaindl Flooring GmbH

Clause 1: Scope

1. Our Conditions of Sale and Delivery apply exclusively. Purchaser's terms, which may be contrary to or deviate from our terms and conditions, will not be recognised. Conditions of Purchase stipulated by the purchaser, similarly any notes which the purchaser may append to our Conditions of Sale and Delivery will not be binding for us, even if we do not expressly reject them. In the event of a copy of our Conditions of Sale and Delivery not having been sent to the purchaser along with our offer, or not having been given to him on some other occasion, they will nevertheless apply if they were already known to him – or should have been known to him – from earlier business dealings with us.
2. Our Conditions of Sale and Delivery apply to our delivery transactions. Only written orders and agreements are legally binding. Agreements reached verbally or over the telephone become valid only after they have been confirmed in writing.

Clause 2: Offer and Closing of Contract

1. Our offers are subject to change without notice and are non-binding with regard to prices and delivery dates. Technical drawings, sketches, dimensions, weights, or other performance data are (with the exception of prices and delivery dates) only binding if this is expressly agreed in writing.
2. An order placed by the purchaser has the status of an offer, which is binding for the purchaser. We shall be entitled to accept this offer at our discretion within 14 days by sending written confirmation of order.
3. A sales contract is first entered into with the sending of our written confirmation of order; this also applies in cases where the order was placed with one of our representatives.
4. Without our permission none of the documents relating to either the offer or the project may be copied or made available to third parties; we are entitled to demand the return of all such documents at any time whereby they must automatically be returned to us immediately in the event of the order being placed elsewhere.
5. Subsequent alterations or additions to the contract will be legally binding only if confirmed in writing.

Clause 3: Prices and Payment

1. Our prices are understood to be ex-works, freight, customs duty, import duty, fiscal charges, and the value added tax prescribed by law.
 2. If the prices have not been agreed beforehand, the sales contract will first be entered into when the prices, which we are obliged to indicate in our confirmation of acceptance of the order, have been confirmed by us in writing.
 3. If between the time of the closing of the sales contract and the delivery of the good ordered, the
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costs of the raw materials, auxiliary materials, labour, currency changes or any other factors which have an influence on the price of our products change, we shall be entitled to adjust our prices to the purchaser in keeping with these changes. Price increases are applicable to deliveries as of the date specified by Kaindl.

4. Kaindl only supplies goods in the following events: Payment in advance; Delivery within an insured line of credit (insurance provided by Kaindl); Delivery because of a banking guarantee covering full amount of claims provided by Buyer. Unless special payment terms to the contrary have been agreed, the total sum invoiced is payable net and falls due as from the date of invoice. All payments to us are to be tendered exclusively in EURO.
5. In the event of the purchaser failing to meet his payment obligations on time, Kaindl shall be entitled, without necessarily sending a reminder, to charge default interest at a rate of 0.05 % per day, but in any case not less than 6 % per annum in those cases where we are unable to show justification for a higher rate of interest. In cases of delayed payment the purchaser automatically forfeits any promised rebates, turnover bonuses, freight refunds, or any similar price concessions. Furthermore, in all such cases we are also entitled to demand immediate payment of all accounts otherwise not yet due plus all collection costs so far incurred, the costs of reminders and solicitors' fees in particular, and to cancel any pending deliveries to the purchaser in question.
6. The acceptance of bills in payment is subject to special agreement. If the bill is not negotiated within 14 days of the agreed period we can demand immediate payment in cash. Bills and cheques are only accepted with a view to performance and the debt is redeemed only after we have received payment in full. We accept no responsibility whatever for the correct and timely presentation or the given discount rate. Discount charges (2 % above the bank rate of our principal bank stated on the invoice, but a minimum of EURO 10) and associated costs of draft amounts and chasing cheques are to be borne by the purchaser. In the event of the purchaser failing to comply with our conditions of payment, or in that of our learning of circumstances detrimental to the purchaser's creditworthiness, all our claims on the purchaser will become payable immediately, regardless of the period to maturity of any bills conditionally credited to the purchaser's account.
7. If, after the closing of the sales contract, circumstances arise which give us reason to doubt either the solvency or the creditworthiness of the purchaser, alternatively, if the purchaser's solvency or creditworthiness were in doubt at the time of the closing of the sales contract, but we only became aware of this later, we shall be entitled full payment in cash or the giving of suitable security by the customer prior to delivery. Failing this, we shall be entitled to withdraw from contract and to demand commensurate compensation for all expenses incurred, furthermore, to revoke any deferred payment terms already allowed, and to demand the immediate payment of all open accounts. In case of inadequate insurance cover, any delivery obligations and fixed prices will not apply.
8. Despite any instructions, which the purchaser might give to the contrary, we are entitled to offset all payments received from the purchaser against outstanding accounts of earlier date. If collection and interest costs have already been incurred in connection with the outstanding accounts, we shall be entitled to utilise payments received first to pay the costs of collection, then the interest costs, and only then to reduce or settle the original debt.
9. Even in the event of the purchaser having raised a complaint or having forwarded counterclaims, he will only be entitled to offset, withhold, or reduce payment if his counterclaims have been upheld in court or are indisputable. By contrast, we, or companies associated with us, are entitled to offset all our claims.

Clause 4: Delivery

1. The dispatch of goods is affected at the purchaser's expense.
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2. Whilst we make every effort to comply with foreseen delivery deadlines, these deadlines will be appropriately extended in the event of unforeseen circumstances, in particular but not exclusively, in the event of operational breakdowns, strikes, fire, natural catastrophes, or a force majeure. If, through no fault of our own, one of our raw material suppliers is unable to deliver, the purchaser and we shall be entitled to withdraw from contract. Under such circumstances the purchaser will have no claim to compensation.
3. In the event of our failing to meet a delivery deadline, even after two weeks have elapsed since that delivery deadline, the purchaser will have to file a complaint and has to set a reasonable time limit within which delivery must be completed. In the event of our failure to comply with this reasonable time limit the customer will be entitled to withdraw from contract within two weeks of the expiration of the extended deadline. Notification of withdrawal from contract must be made in writing. However, this right to withdraw from contract will not apply if we, through no fault of our own, are unable to comply with the extended time limit, particularly so in the event of the purchaser having failed to perform his obligations to us on time and correctly.
4. In the event of our failing to meet an agreed delivery deadline being attributable to a shortcoming on our part, the purchaser will be entitled to demand compensation for the delay. However, such compensation will be limited to a maximum of ½ % of the net invoiced value for each week of delay of the delivery in question up to a total not exceeding 5 % of the net invoiced value of that delivery. Beyond this the purchaser has no claim to compensation unless it can be proven that the delay is attributable to criminal or gross negligence on our part.
5. Risk of delivery shall be governed according to agreed terms and the regulation of CMR. In case of doubt the transfer of risk takes place immediately the shipment is handed over to the carrier or immediately upon leaving our storage depot for the purpose of dispatch.
6. The purchaser is under obligation to accept delivery of the goods at the confirmed time. That applies also to partial deliveries. If the purchaser delays in accepting a delivery, we shall be entitled to compensation for all losses we may incur as a result; following refusal to accept delivery the risk of possible deterioration or destruction of the goods is transferred to the customer and our delivery commitment will be regarded as having been fulfilled. The agreed payment terms will remain unaffected by this arrangement.
7. If, through no fault of purchaser, dispatch of the goods is not possible, the transfer of risk to the purchaser takes place as soon as the purchaser has received notification that the goods are ready for dispatch.
8. In the case of a call-off of purchase agreements, the purchaser undertakes to accept delivery within 14 days of manufacture. Otherwise the goods will automatically be dispatched and, in the event of the purchaser refusing to accept delivery, the goods will be stored in a public warehouse at the purchaser's expense and delivery will be regarded as having been effected. The agreed payment terms will remain unaffected by this arrangement.
9. Any authorised rebates, turnover bonuses or freight refunds will be revoked in the event of the purchaser being the subject of in or out of court composition proceedings, bankruptcy proceedings, similarly if the purchaser delays payment by more than 2 months, or if payment has to be enforced by court order. Rebates and any other concessions granted apply only for the duration of the period for which they were agreed.

Clause 5: Defects Liability Guarantee

1. The guarantee period is 6 months except in cases where special warranty periods have been agreed to for individual delivery items. This applies also in the case of goods and services that are permanently fixed to a building or to the floor or ground. The guarantee period commences with the transfer of risk as per Clause 4 Subsection 4. Any obvious defects as well as any other effects, which become apparent following a proper inspection of the goods, are to be reported to us in writing by the purchaser immediately upon receipt of the goods. Any defects of a type not
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apparent, even after an orderly inspection of the goods, must be reported to us immediately following their discovery. The same applies with regard to complaints of incorrect deliveries and shortfalls in delivered quantities. Failure to comply with this reporting procedure will result in the lapsing of the guarantee or other claims.

2. In the event of defects in goods delivered by us our defects liability guarantee is restricted to either replacing the delivery or reducing the purchase price, whichever we consider the most expedient. Other claims on the part of the purchaser – in particular claims for compensation – on the grounds of defects in the delivery are ruled out. Claims under warranty are not transferable and will only be accepted from purchasers who have bought directly from us.
3. Insignificant deviations, for example in the dimensions or finishes, do not entitle the purchaser to any claims on the grounds of defects. Tolerable deviations as known to the purchaser from the Quality Guidelines are all in conformity with the terms of the sales contract and do not entitle the purchaser to claim on the grounds of defects. In the case of orders for fixed dimension panels the purchaser agrees to accept dimensional deviations of up to 10 %.
4. Before starting with the processing of delivered goods, the purchaser is required to check their suitability for his application purposes, even in cases where test samples have been delivered in advance. Complaints can only be accepted in the case of materials, which are available for inspection or return shipment.
5. Our defects liability guarantee automatically lapses if the delivered goods have meanwhile been modified, processed, or incorrectly handled. We can only be required to perform our obligations under the warranty if the purchaser has fulfilled all his contractual obligations to us, and in particular that he has complied with the agreed terms of payment. Goods may not be returned to us without our prior agreement.
6. Except in cases where we have been given advance written details concerning the intended application and the country, and for our part have given written confirmation of the suitability of the material, we cannot accept liability for any deterioration of our melamine-resin-coated products where they are used outside Europe.
7. Claims on the grounds of defective deliveries can only be upheld if the value of these claims amounts to more than 4 % of the invoiced value of the delivery.
8. The above paragraphs conclusively regulate the defects liability guarantee for products and services supplied by us and exclude entirely all other warranty/guarantee or other liability claims of any nature whatever.

Clause 6: Reservation of Ownership

1. All goods delivered by us remain our property until the invoice amount plus interest and other costs have been paid in full.
 2. An acquisition of ownership by the purchaser or a third party in the event of goods, which we have sold subject to reservation being processed or incorporated into a new object, is ruled out. The thus produced object serves – in full value – to secure our claims as per the previous paragraph. If our goods are jointly processed by a further contractor, we acquire at least co-ownership of the new object to an extent, which is in proportion to the value of the other processed objects for which that contractor invoices. In order to assure our claim to the purchase price, the purchaser promises to assign to us his claims arising from resale of the goods, and to make a note to this effect in his accounts or on his invoices. In the event of an attachment or other claims on his property, the purchaser is under obligation to draw attention to our right of ownership and to advise us without delay. Only in cases where one of our suppliers also legally enforces reservation of ownership will the claims relating to the delivery be assigned us to an extent commensurate with our co- ownership of the goods sold.
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3. If the purchaser's claims arising from the resale of goods, which we have sold subject to reservation, or goods of which we are co-owners, are entered in a current account, the purchaser will be required to assign these claims to us.
4. In the event of the purchaser defaulting on payments or suspending payment altogether, similarly if he should become the subject of insolvency proceedings, or if the satisfaction of our claims is jeopardised in any other way, the purchaser shall be obliged to place a notice upon – or mark in some other distinctive way – the goods which we have sold to him subject to reservation in order that the attention of all third parties is drawn to the fact that the goods are our property. The purchaser will also be required to provide us with a detailed list of all goods sold to him by us subject to reservation that are still in his possession, whereby this list must also show the extent to which these goods have already been processed or incorporated, similarly he must provide us with a list of assigned claims as per the preceding paragraph, including also the names of third-party debtors. Apart from this, our authorised agents are entitled at any time to call upon the purchaser with the object of assessing the situation regarding the protection of our interests and to be given access to all necessary documents on such occasions – whereby at our request the goods sold subject to reservation are to be returned to us freight prepaid and free of all charges, and, on the basis of the irrevocable permission which the customer will be required to give, we shall be entitled to remove the goods and will subsequently also be entitled – but not obliged – to sell the goods either by auction or on the open market, whichever we choose, and to offset the proceeds against the net purchase price.
5. The purchaser carries the risk for goods delivered by us. He is required to store the goods properly and insure them against loss, theft, and fire, etc. He will be required to assign any insurance claim to us to the extent of a first-priority part of the insured sum to the value of the purchase price payable for the goods we have delivered subject to reservation. The same applies even in cases where the insurance does not cover the total damage in full, i.e. this procedure is necessary in order to prevent the possibility of our being paid only proportional compensation in such cases.
6. The purchaser is entitled to re-sell our goods by way of a normal business transaction. However, our goods may not be subject to property attachment, nor may they be pledged as security. In the event of an attachment to property or any other restriction of our rights by third parties the purchaser must inform us without delay, and in order to avoid the filing of a claim for compensation must assist us in the securing of our rights. The purchaser will be liable for all costs incurred as result of an intervention whether this be made through the courts or otherwise.
7. Should the purchaser expressly so request, we shall be entitled to transfer the ownership of goods sold by us subject to reservation and property belonging to us and/or to re-assign claims assigned to us following the resale of goods even before all our claims for goods delivered have been paid in full provided that the value of the security given to us exceeds the value of our total claim by at least 20 %. In such cases we shall determine which objects and claims should be redeemed.
8. The purchaser promises to take all possible action, in particular to provide us or a third party with a legally effective declaration in order to assure the effectiveness of the agreed reservation of ownership and the anticipatory assignment also under the laws of the foreign country to which the goods are delivered or where the purchaser is domiciled.

Clause 7: Liability Limitations

1. We are liable in scope of the legal provisions and can only be held liable for damages outside the scope of the Product Liability Law in cases where criminal or gross negligence on our part can be proven within the context of the legal regulations. In every case our liability is limited to the payouts of our applicable Insurance. Liability for minor negligence, compensation for consequential damages and pecuniary losses, non-realised savings, loss of interest earnings, and damages relating to third-party claims against the purchaser is ruled out in every case.
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2. We and the purchaser hereby agree that, for the purposes of our internal relationship, the purchaser – as co-manufacturer – is alone at risk under the Product Liability Law. He will be required to shield us against any claims and if necessary will provide security.

Clause 8: Applicable Law, Legal Venue, Place of Fulfilment, Invalidity in Part

1. Any disputes will be resolved according to Austrian Substantive Law. The application of the standard UN CISG procedure concerning the closing of international contracts of sale involving the sale of moveable goods is ruled out.
2. The legal venue for all disputes arising in connection with the contractual relationship, its origins and its effectiveness, and also with regard to the processing of bills and cheques is the competent court in A-5020 Salzburg. However, we are also entitled to sue the purchaser through the court local to his place of domicile.
3. The place of fulfilment for all contractual obligations in connection with the delivery and transactions is A-5071 Wals.
4. In the event of individual conditions in the contract being or becoming ineffective, this will be without prejudice to the effectiveness of the remaining conditions. The contracting partners will be required to agree to a new condition, which serves the purpose of the meanwhile invalid condition as closely as possible. No verbal agreements have been reached concerning our Conditions of Sale and Delivery. Any alterations must be in written form and signed by both contracting parties. This applies also regarding any proposed deviation from the written form requirement.