

General Terms and Conditions of Franz Kirnbauer KG for Businesses

1. General stipulations

1.1. These general terms and conditions (GTC) apply to all contractual relations with Franz Kirnbauer KG (hereinafter referred to as Kirnbauer), unless their application was expressly and written excluded in the individual case. Decisive is the version at the time of the contract conclusion.

1.2. These General Terms and Conditions supplement the contracts concluded between Kirnbauer and its business partner. In case of inconsistency with the provisions of the contract or if the contract contains more detailed provisions, the contract shall be priority to the general conditions of sale.

1.3. General or special terms and conditions of contract parties shall apply only if this has been expressly and explicitly confirmed in writing by Kirnbauer at the latest on the occasion of the conclusion of the contract. There are only written agreements between the contractual parties. The modification of the GTC is also required in written form. This also applies to the deviation from the written form. Verbal agreements have no legal commitment. The buyer acknowledges that employees of Kirnbauer are only entitled to make any other commitments from the contractually stipulated main performance obligations (payment agreements, quality commitments, etc.) upon presentation of an act of performance.

2. Offer and contract conclusion

2.1. The buyer acknowledges that employees or third parties employed by Kirnbauer are not entitled to make any other commitments deviating from the contractually agreed main performance obligations (eg payment agreements, quality commitments, delivery terms, etc.).

2.2. Kirnbauer is entitled to correct manifest errors such as writing and / or arithmetic errors in his statements at any time

2.3. All offers placed by Kirnbauer are, unless otherwise expressly agreed in writing, without obligation and do not oblige to deliver. In particular, Kirnbauer reserves the right to change the respective offer according to its scope or contents. Offers will only become binding if they have been confirmed in writing and obligate only to the stated scope. The purchaser can withdraw from the contract after giving the confirmation of order only by agreement.

2.4. Written declarations (including by fax or e-mail) shall be deemed to have been received if they are sent to the address last announced by the buyer. If it should be delivered at a different address, it must be agreed separately. Kirnbauer is entitled to reject the acceptance of the order - for example after checking the creditworthiness of the customer

3. Prices

3.1. All prices are stated in euro. Prices are stated net and do not include taxes, freight charges, accessory charges, insurance or customs duties.

3.2. Kirnbauer expressly reserves the right to recalculate the agreed prices in case of changes which are not in the scope of influence, as well as to conduct new price and volume negotiations.

3.3. Objections to invoices must be made in writing within 3 days of receipt.

4. Delivery, completion of contract, transfer of risk

4.1. The delivery dates and periods are determined in the order confirmation or by separate communication from Kirnbauer. The delivery dates specified by Kirnbauer are without obligation and there is no forward transaction due to such an indication.

4.2. The delivery period starts at the earliest with the date of the written order confirmation, but in no case before the complete clarification of all execution details.

4.3. If the stipulated delivery date is exceeded by Kirnbauer without notice, the purchaser is entitled to withdraw after the expiry of a grace period of at least four weeks; for damages resulting from this Kirnbauer is only liable for gross negligence.

4.4. Kirnbauer is not liable for delays or an inability to deliver due to force majeure (e.g. strike, fire, war, transport disruptions, technical problems with production systems, lack of raw materials, regulatory measures, lockouts etc.) - including such events affecting the suppliers or sub-contractors of Kirnbauer - or for reasons that do not lie in Kirnbauer's scope of influence, for instance delays in the conclusion of necessary preparatory work by the purchaser. Such an incident has to be reported immediately to the purchaser.

Kirnbauer is entitled to cancel promises to deliver in the event of force majeure or for reasons that do not lie in Kirnbauer's scope of influence. Kirnbauer is not liable for any resulting damages of the purchaser.

After notification of such an incident / admission, the buyer is free to withdraw from the contract if the incident causes a delay of the confirmed delivery date of more than 4 weeks. A notice of withdrawal shall be given in writing within 8 days from the date of the notification of the delay.

4.5. If no delivery date has been agreed, the date of delivery timely announced by Kirnbauer obtain to be agreed, if the purchaser has not

objected at the latest by 5 working days prior in writing. If the purchaser is not attendant at this date or if he has not taken appropriate arrangements or preparations, then the performance is nevertheless deemed fulfilled and the risk passes to the purchaser; Any additional costs incurred as a result of the interim storage are at the expense of the purchaser. If the goods should be delivered the risk of accidental perishing and accidental deterioration is transferred to the purchaser when the goods are handed over at the place of delivery. Kirnbauer is therefore not liable for damages or losses caused by the transport. If the purchaser is informed that EXW (ex-works) goods are ready for collection the goods will subsequently be stored at the expense and risk of the purchaser after three days.

4.6. The Purchaser commit to accept partial deliveries or advance deliveries, as far as this is reasonable, and to entitle Kirnbauer to make partial invoices.

5. Warranty

5.1. Wood is a natural material, which means that minor, material-related deviations, in particular color or grain deviations, from illustrations or descriptions in catalogs, samples and showpieces, underlying the order, are reserved. Such deviations are not a defect.

5.2. After the receipt of the goods the purchaser is obliged to immediately inspect the goods and to report in writing any defects without delay, but at the latest within 3 days after the arrival of the goods. If the purchaser fails to comply with the obligation of immediate inspection and complaint, any defect that would have been detected during such an inspection is deemed as accepted by the purchaser under the exclusion of claims under warranty.

5.3. If the inspection of packaged goods is not possible then the packaging itself shall be inspected and any external damage to the packaging that may indicate damage to the packaged goods must be reported to Kirnbauer immediately, at the latest within 3 working days after delivery, as claims under warranty will otherwise be excluded.

5.4. Kirnbauer must be informed immediately if normal business routine does not allow the immediate inspection of the goods; any defects detected during a subsequent inspection must be reported in writing within 14 days of delivery, as claims under warranty will otherwise be excluded.

5.5. In the case of an obvious defect or other delivery, the buyer is obligated to notify Kirnbauer immediately, even before takeover. If the purchaser notifies this fact after the takeover, he must pay Kirnbauer for the resulting costs. Returns of goods require the express and written consent of Kirnbauer and - in the absence of justified complaint - are at the expense and at the risk of the buyer.

5.6. Defects that do not become detectable until later must be reported immediately, at the latest within 3 days of detection, as the goods will otherwise be deemed as accepted despite the defect.

5.7. If the goods had been accepted by the purchaser without complaint, then this is deemed to be duly granted and Kirnbauer is not liable for any defects or damages. The purchaser can make claims under warranty for a maximum period of six months after the goods have been handed over.

5.8. In the event of an unfounded complaint necessitating extensive investigations the resulting costs may be charged to the purchaser.

5.9. By negotiating complaints, Kirnbauer does not accept the obligation to remedy defect and, in particular, does not dispense with the objection that the complaint was made late or not sufficiently specified.

5.10. A treatment or processing of the goods leads to the exclusion of the warranty. Moreover, a warranty is explicit excluded for defects which are not verifiable based on incorrect condition or processing before delivery. Furthermore, liability is excluded for the damages which have occurred after the passing of the risk, in particular those due to force majeure, moisture, frost, UV exposure, transport or storage damage, as well as a more extensive guarantee than by these terms and conditions is granted.

6. Exclusion of liability

6.1. Kirnbauer shall only be liable above and beyond the scope of the product liability act for damages suffered by the purchaser to the extent that he or one of his vicarious agents are culpable of intent or gross negligence. Liability for loss of profit, consequential damages or for damages caused by claims of third parties is excluded.

Kirnbauer shall only be liable for an infringement of a duty to warn if he or one of his vicarious agents is at least culpable of gross negligence.

6.2. Kirnbauer accepts no liability whatsoever for damage caused by the improper handling or inappropriate use of the delivered goods. The same applies to work subsequently carried out on the delivered goods by third parties.

7. Payment

7.1. All invoices from Kirnbauer shall be paid free of any deduction upon receipt, unless other payment terms are agreed in writing. Checks are only accepted for payment and only upon express agreement. If a check

General Terms and Conditions of Franz Kirnbauer KG for Businesses

is sent for payment, despite a different agreement, all costs and fees incurred for the use or redemption of this check will be billed to the buyer or his representative.

7.2. In individual cases, however, it may also be agreed that a delivery is only made in cash or against the payment of a security. In the event that the purchaser refuses to provide a security or to pay the goods immediately after delivery, Kirnbauer may withdraw from the contract; the purchaser is liable for the expenses incurred as a result.

7.3. Authorization to cash discount deduction requires written commitment from Kirnbauer. The discounted cash discount deduction is expressly subject to the condition precedent of the timely and complete payment. A payment default will result in the loss of any advantages granted to the purchaser such as discounts, sales or shipping bonuses, etc. Furthermore, all other claims not yet due will then become due with immediate effect.

7.4. In the event of delays in payment a statutory default interest rate in accordance with Clause 352 of the Austrian Corporation Code (UGB) shall apply from the due date until receipt of payment. In the event of delays in payment a dunning fee of 1% of the invoiced amount (12% p.a.) shall apply to each reminder. Kirnbauer is entitled to claim compensation from the purchaser for all collecting expenses arising from the purchaser's delay in payment.

7.5. All payments made by the purchaser will first be offset against open interest and expense payments and only then offset against the goods delivered under retention of title. Moreover, Kirnbauer is entitled to offset payments received from the purchaser against the latter's older debts.

7.6. Claims for deficiencies do not release the purchaser from his obligation to comply with the terms of payment. The buyer's right of retention is excluded. The negotiation of complaints does not constitute the acknowledgement by Kirnbauer of any obligation to remedy defects.

7.7. In the event of a payment default Kirnbauer can withdraw from the contract after granting the purchaser a reasonable period of grace (14 days). If the purchaser is insolvent Kirnbauer can withdraw from the contract without granting a period of grace. Kirnbauer is entitled to reclaim products that have been delivered but not yet paid for. Delivered but not yet paid goods shall be returned immediately to Kirnbauer at the purchaser's expense.

7.8. Offsetting Kirnbauer's claims against counterclaims raised by the purchaser on account of this contract is excluded. The purchaser is only entitled to withhold payment if his claim has been recognized by declaratory judgment or is uncontested.

8. Retention of title

8.1. All purchased goods remain in the ownership of Kirnbauer until the goods and any accessory charges are paid in full.

8.2. The purchaser is obligated to store goods delivered under retention of title separately and to insure them against fire and theft respectively loss of value by moisture, frost, UV exposure or storage damage at his own expense.

8.3. Payment delay entitles Kirnbauer to make use of this reservation of title and to collect the goods immediately. The enforcement of the right of reclaim shall be deemed to be a withdrawal from the contract and shall not be explained in writing. For returned goods the purchaser shall be liable for any loss, which will result from resale, as well as for any return costs or further transport costs.

8.4. Goods delivered under retention of ownership may only be resold with the express written consent of Kirnbauer.

8.5. In the event of a resale the conditional purchaser hereby transfers his claims arising from the purchase contract to Kirnbauer. This assignment for security must be documented in the conditional purchaser's account books on every page of the open items list together with the date of the assignment agreement (the date of conclusion of this contract) and the exact company name of Kirnbauer (assignee). The remark shall also be noted in the list of open accounts receivable. Moreover, the purchaser undertakes to inform his own customers of the assignment of receivables. Payments received by the purchaser from his customers shall be forwarded without delay to Kirnbauer.

8.6. The purchaser is not entitled to pawn goods subject to retention of title or to use them as security for a third party, or in any other way use them to the advantage of a third party. The purchaser undertakes to inform Kirnbauer immediately of any enforced confiscation or other third party seizure of the goods subject to retention of title.

8.7. Purchaser shall be obliged, at any time, to provide information on the whereabouts of the goods, any possible resale, with the name and address of the acquirer, as well as the amount and maturity of the sales price.

8.8. If the goods subject to retention of title are further processed by the purchaser, the retention of title shall extend to the resulting new product. If said goods are further processed or mixed or combined with other goods then Kirnbauer shall acquire partial ownership of the resulting new goods. In this case the purchaser is deemed as the custodian of these goods.

Shall, nevertheless, the retention of title be extinguished by any actual or legal circumstances, the contracting parties already agree that ownership of the new items shall pass to Kirnbauer at the time of treatment or processing and Kirnbauer accepts the transfer of ownership, whereby the purchaser accepts the non-paid storage of the goods. Should a return of the goods by Kirnbauer be not desired, immaterial or impossible, the buyer undertakes to assign the claim arising from the resale against third parties to the confiscation to Kirnbauer. Should a return of the goods by Kirnbauer be not desired, incongruous or impossible, the buyer undertakes to assign the claim arising from the resale against third parties to the confiscation to Kirnbauer.

9. Applicable law, place of fulfilment, place of jurisdiction

9.1. Unless otherwise expressly agreed in writing, for each contractual relationship with Kirnbauer, i.g. for each order, its implementation as well as the assertion and enforcement of resulting claims, exclusively Austrian law. The Uniform Law on the International Sale of Goods (UN Commercial Law) does not apply to this contractual relationship

9.2. The place of fulfilment for payment of the purchase price and other considerations of the purchaser is always Kirnbauer's registered place of business under corporate law. The competent court at Kirnbauer's place of business is determined as responsible for all disputes arising from this contract.

9.3. For payments and other services of the buyer, the place of fulfilment is the registered office of Kirnbauer in A-2640 Prigglitz.

9.4. These GTC are available in English and German. The parties agree that the German text shall take precedence over the English translation in the event of contradictions, differences in interpretation and terminology.

10. Other stipulations

The invalidity of individual provisions of these GTCs shall not affect the validity of the other provisions. The invalid provision shall be replaced by the relevant statutory provision. The same applies to omissions. In general, the "ÖHU" apply, or if these do not contain regulations, the general statutory provisions apply. This also applies to regulatory gaps in these general terms and conditions

11. Declaration on information obligation (privacy notice)

The protection of your personal data is very important to us. We process your data exclusively based on legal regulations (DSGVO, TKG 2003). In this privacy notice, we inform you about the most important aspects of data processing within our website.

Contacting us

If you contact us on the website or by e-mail, your data will be stored with us for six months in order to process the request and in case of follow-up questions. We will not share this information without your consent.

Your rights

Basically you have the following rights – the right to information, correction, deletion, restriction, data portability, revocation and objection. If you believe that the processing of your data violates data protection law or if your data protection claims have otherwise been violated in a way, you can complain to the surveillance authority. In Austria, this is the data protection authority.

You can contact us:
Franz Kirnbauer KG
+43 2662 / 43514
office@kirnbauer.at

Prigglitz, 25.05.2018