

GENERAL TERMS AND CONDITIONS, DELIVERY AND PAYMENT CONDITIONS OF KM CONCEPT GMBH

1. Scope of application and validity

- 1.1 The business relationships of KM Concept GmbH, Graben 19/4 in 1010 Vienna, FN 188229 h (hereinafter referred to as "KM Concept") and a customer are subject to the present general terms and conditions and delivery conditions as applicable at the time of placing an order.
- 1.2 A Customer of KM Concept is a natural or legal person under private or public law who requests a service/product and has entered into a legal relationship with KM Concept or who intends to enter into any such in terms of section 2.
- 1.3 An Entrepreneur is a Customer of KM Concept in regard to whom the contractual relationship with KM Concept is part of his company's operation in terms of section 1 Austrian Consumer Protection Act [Konsumentenschutzgesetz (KSchG)].
- 1.4 A Consumer is a Customer of KM Concept in regard to whom the contractual relationship with KM Concept is not part of his company's operation and to whom the provisions of the Austrian Consumer Protection Act apply.
- 1.5 A consumer transaction in terms of the general terms and conditions is a legal transaction with a Customer in regard to whom the transaction is not part of his company's operation and who acquires products and services for his own private use (*consumer*).
- 1.6 If the transaction is not a consumer transaction, any covenants or conditions deviating from the content of the contract shall only be deemed accepted by KM Concept if they were accepted in writing.
- 1.7 If these general terms and conditions are contradicted by any general terms and conditions of the Customer, the contract shall still be concluded exclusively subject to the general terms and conditions of KM Concept. This shall also apply if KM Concept did not expressly object to the application of the general terms and conditions of the Customer or if it provides services for the Customer without reservation despite being aware of contradictory general terms and conditions. KM Concept shall not be bound to general terms and conditions of the Customer by simple reference to these.

2. Placing an order and conclusion of contract

- 2.1 Only natural persons with unlimited legal capacity or, in case of legal persons, only named authorized representatives may order goods or services.
- 2.2 The information requested when placing an order must be provided in full and must be accurate. If the information provided changes after the order was placed, the Customer is obliged to correct the information as soon as possible by written notification to KM Concept.
- 2.3 When placing an order, the Customer transmits a binding offer for conclusion of a contract regarding the purchase and/or delivery of goods to KM Concept. After receipt of the offer transmitted by the Customer, KM Concept shall send the Customer an e-mail confirming receipt of the order or listing particulars of the order (*order confirmation*).
- 2.4 Order confirmations do not constitute acceptance of the offer, but are the information that the order was received by KM Concept. The purchase contract is only concluded once KM Concept dispatches the ordered product to the Customer and confirms dispatch in a second e-mail to the Customer (*dispatch confirmation*) or if it informs the Customer of acceptance of the contract in writing. No contract is concluded for products from the same order that are not listed in the dispatch confirmation. The Customer agrees to the receipt of electronic invoices as part of the dispatch confirmation.

3. Right of withdrawal and revocation

- 3.1** Consumers can withdraw from the contract within 14 working days, with Saturday not being considered a working day, without statement of reasons, either in writing or by return of the goods. In regard to contracts on the delivery of goods, this period starts on the day of receipt of goods by Consumer, in case of contract on the provision of services on the day the contract is concluded. In case of repeated delivery of the same type of goods, the period shall commence upon receipt of the first partial delivery. In order to comply with the withdrawal period, it is sufficient to post the notice of exercising the right of withdrawal before expiry of the withdrawal period.
- 3.2** The Consumer agrees that KM Concept commences fulfilment of the contract during the withdrawal period, so that in case of revocation pro rata remuneration has to be paid to KM Concept on its request for any service provided.
- 3.3** If the contract is cancelled, KM Concept shall return any and all payments the Consumer made for the acquired product without deduction of costs and free of charge within 14 days after receipt of the returned products. Unless agreed otherwise, the same payment method shall be used for the repayment as was used in the original transaction.
- 3.4** Goods that can be sent by parcel must be returned. The Customer shall bear the costs of returns if the supplied goods are the goods that were ordered. If that is not the case, returns are free of charge for the Customer.
- 3.5** No right of withdrawal applies in regard to products that were manufactured according to specific Customer specifications, which are not suitable for returns or whose best before date or expiration date was exceeded. The Consumer shall bear the costs of the return.
- 3.6** If a Customer for whom the underlying business transaction is not a consumer transaction or a Consumer wants to withdraw from the contract outside the right of withdrawal, this shall only be possible subject to written consent of KM Concept and in return for reimbursement for the costs incurred in connection with withdrawal.
- 3.7** Withdrawal from the contract by written notification or by return of the goods has to be addressed to KM Concept GmbH, Graben 19/4, 1010 Vienna or KM Concept Sulmtalstraße 1, 8451 Heimschuh, phone 0043(0)1 93087 3016 or 0043(0)3452 8 28 64, e-mail office@kmconcept.com, fax 0043(0)1 93087 3016 (Vienna) or 0043(0)3452 8 28 64 (Styria).

4. Delivery

- 4.1** Unless agreed otherwise, deliveries shall be made to the delivery address indicated by the Customer within 30 days of sending of the dispatch confirmation.
- 4.2** The place of performance is, irrespective of the place of delivery or place of service, the place of business of KM Concept.
- 4.3** KM Concept expressly points out that any and all information about availability, shipping or delivery of a product or service is an approximation and rough guideline. Any information provided in this respect is non-binding, unless it was guaranteed in writing in exceptional cases.
- 4.4** If KM Concept is not able to provide a delivery or service through no fault of its own, for example due to force majeure, traffic interruptions, industrial action or because a supplier of KM Concept fails to comply with its contractual obligations and because material is not available, delivery or service times shall be extended by the time the impediment lasts. Statutory claims shall remain unaffected.
- 4.5** If delivery to the Customer is not possible, for example because the delivered goods cannot be accepted by the Customer due to their dimensions or weight or because the recipient cannot be located at the indicated delivery address, even though specifications of the goods and time of delivery were advised towards the Customer within an appropriate period, the Customer shall bear the costs of unsuccessful delivery.

- 4.6** If the underlying transaction is not a consumer transaction and unless agreed otherwise, quotes are provided in writing and are limited, non-binding and issued in return for a fee. Cost estimates are nonbinding and free.
- 4.7** Any and all plans, drawings, drafts, measurement and weight details as well as technical descriptions, but also brochures, catalogues, samples and the like shall remain the material and intellectual property of KM Concept. The information therein, unless marked or indicated otherwise, is a rough guideline and by no means refers to guaranteed characteristics. Every use of any of the aforementioned documents without the consent of KM Concept shall entitle KM Concept to assert damage claims and/or to obtain a restraining order.
- 4.8** KM Concept shall only be obliged to deliver or provide a service if the Customer fulfilled all its obligations under the contractual relationship.

5. Prices and price adjustments

- 5.1** The listed sales prices of the products are given in euro and shall be the final price for the product excluding value added tax.
- 5.2** The sales price does not include delivery and shipping costs. The delivery and shipping costs are calculated depending on the shipping agent who can be selected by the Customer and agreed with KM Concept on a case-by-case basis.

6. Payment, maturity and default

- 6.1** The Customer can pay the purchase price in cash, on invoice, by credit card or advance payment. Unless agreed otherwise, the purchase price must be paid within 7 days after receipt of the invoice.
- 6.2** KM Concept reserves the right to specify certain payment methods in individual cases or to not offer certain payment methods.
- 6.3** In each case of the Customer delaying payment, KM Concept shall have the right to delay delivery or service and shall only be obliged to deliver or to provide a service after the price was paid in full.
- 6.4** Payments without specified purpose shall first be used for payment of interest on cost and then for payment of costs, interest on capital and capital claims.
- 6.5** It is expressly agreed that the claim and any secondary claims or the agreed price for assembly-disassembly or for the full service agreement retain their value. Value retention shall be calculated based on the monthly consumer price index 2015 as published by Statistik Austria (base year 2015) or based on any index replacing it. The reference value for this agreement is the index value calculated when the contract was awarded/the order was placed. Deviations of the index value by up to, but not including, 3% in either direction shall be disregarded. This margin is to be calculated anew after every time it was exceeded in either direction, with the first index value outside the applicable margin being the basis for both re-calculation of the outstanding amount and the new margin. Any changes are to be calculated to one decimal place.

7. Right of retention

- 7.1** After delivery of the goods and handover to the Customer, the ordered goods shall remain the property of KM Concept until payment of the purchase price in full, including any and all associated price components such as costs, any remuneration for assembly; the price risk shall be transferred to the Customer upon handover. Before payment of the purchase price in full, the Customer must not pledge or assign the goods as security or grant any other rights thereto to third parties. Foreclosure and any other thirdparty actions limiting the legal position of KM Concept in regard to the item subject to right of retention must be reported to KM Concept immediately and in writing by the Customer. The Customer must object to any such measures immediately under reference to the right of retention of KM Concept.

7.2 If the goods are to be pledged or seized, the Customer agrees to inform KM Concept within 5 days and to provide it with any and all information and support required for asserting property rights.

7.3 It is deemed agreed that the right of retention of KM Concept remains intact in case of combination or processing of the delivered goods.

8. Set-off

8.1 A Consumer shall only be entitled to offset claims legally related to an obligation of the Customer towards KM Concept as well as claims legally determined claims or claims acknowledged by KM Concept as well as in case of insolvency of the contractual partner of the Customer against claims of KM Concept. An Entrepreneur shall not have the right to set-off against claims of KM Concept.

8.2 A Consumer shall only be entitled to exercise a right of retention in regard to claims against KM Concept that are legally associated with claims of KM Concept. An Entrepreneur shall not be entitled to exercise a right of retention.

9. Defects, liability and warranty

9.1 If the underlying transaction is a consumer transaction, statutory claims shall remain unaffected.

9.2 If the underlying transaction is not a consumer transaction, the following deviations from statutory warranty provisions apply:

- a.) Determinable or determined defects must be reported to KM Concept within 14 days after handover or discovery, otherwise the Customer can no longer assert warranty, damage or error claims in accordance with section 377 clauses 2 and 3 Austrian Business Code [*Unternehmensgesetzbuch (UGB)*].
- b.) If the parts affected by the damage were modified by anyone other than KM Concept, the warranty claims of the Customer expire.
- c.) The warranty period is 6 months after delivery of the goods; after expiry of this period, any other damage claims are excluded as well.
- d.) Presence of a defect upon handover shall, in contrary to the presumption rule pursuant to section 924 Austrian Civil Code [*Allgemeines bürgerliches Gesetzbuch (ABGB)*], be proven by the Customer.
- e.) If warranty claims are asserted, KM Concept shall have the right to choose between improvement and replacement of the item.
- f.) Contestation of an order accepted by KM Concept on the grounds of error is excluded.
- g.) Dates regarding warranty claims of the Customer shall be agreed on a case-by-case basis.
- h.) KM Concept shall assume unlimited liability if damage was caused by intent or gross negligence.
- i.) Moreover, KM Concept shall assume liability for grossly negligent breaches of material duties the violation of which threatens achievement of the purpose of the contract or for the violation of duties the proper fulfilment of which is required to make implementation of the contract possible in the first place and fulfilment of which may typically be assumed. In this respect, however, KM Concept shall only assume liability for damage that can be typically expected for this type of contract. KM Concept shall not assume liability for minor negligent breaches of obligations other than those set out above.
- j.) The above limitation of liability shall not apply in case of injury to life, limb or health, to a defect after a warranty was provided, for the characteristics of the product and defects concealed with fraudulent intent. Liability under product liability provisions shall remain unaffected.

- k.) A warranty of KM Concept shall only be deemed given if and to the extent that such warranty was expressly identified as such in a written offer or a written confirmation and if the obligations under such warranty are listed in detail in such documents.
- l.) Liability in the relationship with companies is also excluded in cases of force majeure, consequential damage and loss of profit.
- m.) In regard to Entrepreneurs, assertion of lesion beyond moiety towards KM Concept is excluded.
- n.) Any liability for consequential and indirect damage is excluded.

10. Data protection

The information required for handling of the order will be stored. All personal information will be treated as confidential. Reference is made to the data protection declaration of KM Concept.

11. Assembly

Power connections must be provided at the installation site, KM Concept does not carry out electrotechnical works. Unless agreed otherwise in writing, KM Concept will organise the assembly cranes and invoice these separately. If a crane is provided by the Customer, the crane has to be fully functional and completely charged at the time of installation, otherwise KM Concept will invoice the waiting time of employees. Additional fixing material and additional small parts as well additional working time shall be invoiced at cost.

12. Identification

- 12.1 KM Concept shall have the right to identify KM Concept and, where applicable, the author in all concepts and projects without the Customer being entitled to remuneration.
- 12.2. KM Concept has the unlimited and irrevocable right to include the business relationship with the Customer in KM Concept's advertisements, especially by including the name, company logo and the type of documents prepared for the Customer on its website.

13. Ownership and copyright protection

- 13.1 Some of the designs of KM Concept products are protected under design rights. The presentation of the products in catalogues and brochures, supplied images, drawings, sketches and other documents are the intellectual property of KM Concept and its trading partners. All aforementioned and other documents disclosed as part of business communication must not be used for any other purposes or must not be copied and disclosed to third parties without the written permission of KM Concept. On request, these must be surrendered immediately.
- 13.2 If KM Concept is not awarded an order following the presentation, all services of KM Concept, especially the presentation documents and their content, remain the property of KM Concept. The Customer shall not have the right to continue to use these in whatever way. Rather, documents must be returned to KM Concept immediately. Transfer of presentation documents to third parties as well as their publication, realization, reproduction, dissemination and other use is prohibited unless expressly permitted by KM Concept.
- 13.3 Similarly, the Customer must not continue to use the ideas and concepts suggested as part of the presentation, irrespective of whether the ideas and concepts are granted copyright protection or not.
- 13.4 The consent of KM Concept is required for any use of the KM Concept services that exceed the originally agreed purpose and scope of use, irrespective of whether this service is subject to copyright protection or not. KM Concept and the author shall be entitled to separate appropriate remuneration.
- 13.5 The consent of KM Concept shall also be required for the use of any KM Concept services or concepts for which KM Concepts developed the underlying concept or design after fulfilment of the contract, irrespective of whether this service is subject to copyright protection or not.

13.6 KM Concept has the unlimited and irrevocable right to include the Customer and a description of the services provided to that Customer in their list of references and to use this information as well as photos of Customer light installations and their products for advertisement and presentation purposes in all permissible forms, especially online and in KM Concept's product catalogues. The Customer grants their irrevocable permission for such use.

13.7 Where KM Concept supplies customised products based on drawings, templates or models of the Customer, the Customer shall be responsible for ensuring that no third-party property rights are violated, and the Customer shall indemnify and hold KM Concept harmless in regard to any such property rights.

14. Reminder and collection fees

Any costs necessarily, appropriately and expediently incurred for the involvement of lawyers and collection agencies shall be borne by the Customer. In case of delay regarding its contractual obligations, the Customer agrees to reimburse KM Concept for any reminder and collection fees; in this respect, the Customer shall be obliged, in regard to the commissioning of collection agencies, to only reimburse the remuneration as set out in the regulation of the Austrian Federal Minister for Economic Affairs regarding the maximum rates of remuneration payable to collection agencies, Federal Law Gazette [*Bundesgesetzblatt (BGBl.)*] No. 141/1996 as amended. As regards any lawyer involved, the Customer is obliged to reimburse the maximum remuneration as set out in the Autonomous Fee Guidelines [AHR] 1976 as amended, and in the Austrian Lawyers' Fees Act [*Rechtsanwaltstarifgesetz*] Federal Law Gazette No. 189/1969 as amended. These standards can be accessed online under www.oerak.at.

15. Choice of law and place of jurisdiction

15.1 The contractual relationship between KM Concept and the Customer as well as the general terms and conditions are subject to material Austrian law. Other national laws and the United Nations Convention on Contracts for the International Sale of Goods (CISG) are excluded.

15.2 The place of jurisdiction for all disputes between KM Concept and the Customer under the contractual relationship is Graz. As regards actions against Consumers in terms of the Austrian Consumer Protection Act with permanent or habitual place of residence in Austria or who are employed in Austria, the place of jurisdiction is the place where the Consumer has his permanent or habitual residence or where he is employed.

16. Miscellaneous

16.1 By transmitting its order, the Customer acknowledges application of the general terms and conditions. KM Concept shall have the right to transfer the assumed rights and obligations to third parties. The Customer agrees to a possible transfer.

16.2 All notifications, requests, demands, solicitations or other notices made under this contractual relationship must be made in writing and shall be addressed to the business and delivery address of the respective contractual partner.

16.3 KM Concept reserves the right to amend the general terms and conditions at any time and without statement of reasons.

16.4 If one of the provisions of the general terms and conditions of KM Concept is void, it shall be replaced, in case of the contractual partner being a Consumer, by an effective provision prescribed by law. In case of the contractual partner being an Entrepreneur, the provision that comes closest to the original provision shall be deemed agreed. The remaining provisions of the general terms and conditions shall remain in effect.

16.5 The Client/Customer expressly accepts these general terms and conditions when placing an order or accepting a delivery.