

Standard Terms and Conditions for Use in Business Transactions with Entrepreneurs – valid from 01.03.2018

1. Scope of application, general

These Standard Terms and Conditions are only valid vis-à-vis entrepreneurs, public law legal entities or public law special assets within the meaning of § 310 section 1 of the German Civil Code. The Customer's conditions that are contrary to or differ from our Standard Terms and Conditions will only be recognised provided that we have expressly consented in writing to their application. Any reference or mention by Koinor of the Customer's or a third party's standard terms and conditions in a letter, does not imply acceptance of these terms and conditions.

The present Standard Terms and Conditions will also apply to all future transactions with the Customer in so far as they relate to legal transactions of a similar nature. The Customer assumes a guarantee vis-à-vis the tax authorities that the information and documentation he provides are correct. He bears the sole risk should Koinor lose the right to VAT-exempt deliveries or any other benefit as a result of incorrect information or proof provided by the Customer, or becomes liable to VAT due to an invalid VAT identification number.

2. Scope of services provided

The quality of our service is definitively determined by the characteristics of the goods displayed in our catalogues and price lists at the time the contract is concluded. Any other public statements will not constitute any description of the goods delivered supplementary to or differing from that shown in the catalogue.

3. Payment conditions; invoice dispatch

Unless any other payment terms have been expressly agreed between the parties, the price of the goods must be paid for in full at the time of delivery.

The Customer will be in arrears without any further notice from Koinor should payment not be made within 30 days of the due date referred to above. In this case, interest on the arrears will be charged at the rate of 9-percentage points p.a. above the relevant base rate. Koinor reserves the right to claim higher damages as a consequence of arrears. Invoicing shall take place on paper. Koinor shall, however, offer the Customer the option of receiving invoices in an electronic form. For this, the Customer must send Koinor its written consent to the sending of invoices in an electronic form. The establishment and maintenance of the legal conditions for the receipt and the processing/storage of an invoice transmitted electronically shall be solely the responsibility of the Customer.

4. Offsetting of claims and right to withhold payment

The Customer is only entitled to offset claims provided that the counter-claims he wishes to offset have been established as valid in law or are not disputed by Koinor at the time the offset takes place. Any rights of the Customer with regard to defects shall not be restricted by this. The Customer is only entitled to exercise a right to withhold payment provided that his counterclaim is based on the same contractual relationship. The Customer will not be entitled to withhold payment in the event of defects unless the delivery is obviously defective or the Customer is obviously entitled to refuse to accept the delivery; in such a case, the Customer is only entitled to withhold payment to the extent that the amount withheld is reasonable in comparison with the defects and the probable costs of subsequent fulfilment (especially the elimination of the defect). The Customer is not entitled to assert claims and rights on account of defects should he have failed to make payments that are due and the amount due is reasonable relative to the value of the defective goods delivered.

5. Delivery date

The start of the delivery period indicated by Koinor is subject to the punctual and due fulfilment of all the obligations of the Buyer arising from the contractual relationship. Koinor reserves the defence that the Contract has not been fulfilled.

As a matter of principle, the delivery periods and dates of deliveries and services forecast by Koinor are only approximate. This will only not apply should Koinor and the Customer have expressly agreed upon a fixed period of time or a fixed date.

Should delivery have been agreed, the delivery period and dates refer to the time the goods are handed over to the transport company, freight forwarder or third party otherwise entrusted with the delivery.

Should the Customer be in arrears with acceptance or should he culpably contravene other obligations to cooperate, Koinor is entitled to demand reimbursement of any damages incurred thereby, including any additional expenses. The right to pursue other claims is reserved. Should the above conditions be fulfilled, the risk of accidental destruction or accidental deterioration of the goods purchased will pass to the Customer at the time he is in arrears in accepting the goods or he is culpably in arrears with his obligations. Irrespective of its rights in the event of arrears, Koinor is entitled to demand an extension of the date of delivery and/or provision of service by the length of time during which the Customer has failed to fulfil his contractual obligations to Koinor.

6. Transfer of risk and dispatch

Should the goods be sent to the Customer, the risk of accidental destruction or accidental deterioration passes to the Customer, at the latest, when the goods are handed over to the freight forwarder, transport company or any other third party entrusted with carrying out the delivery. This will apply irrespective of whether the goods are delivered from the

place of fulfilment or who pays the freight costs. Unless anything else has been agreed, the delivery will be made packed ex factory and, in the case of a cross-border transaction, customs duties and taxes unpaid. Freight costs will be invoiced on smaller deliveries should the value of the goods be less than € 500.00. Koinor will determine the type of delivery and packaging.

Unless guilty of intent or gross negligence, Koinor assumes no liability for damage to or loss of the goods during transportation.

Should the dispatch or handover of the goods be delayed as a result of circumstances for which the Customer is to blame, risk will pass to the Customer on the day on which the goods are ready to be dispatched and Koinor has notified the Customer accordingly. The Customer is required to pay the costs of storage incurred by Koinor after risk has been transferred. Should Koinor store the goods, these costs are 0.25% of the invoice value of the goods to be stored, calculated per complete week. The right to charge higher or lower costs is in each case reserved.

As a matter of principle, Koinor will not insure the delivery. Koinor will at the Customer's express request investigate the possibility of insuring the delivery against insurable risks at the Customer's expense, whereby Koinor reserves the right to refuse to insure the delivery concerned.

7. Reservation of title

Koinor reserves title to the goods delivered until all its claims (including balances on current receivables accounts) are completely fulfilled. This also applies to all future shipments, even should Koinor not always invoke this right. Koinor is entitled to recover the goods should the Customer behave contrary to contract.

In the event of infringements of the Customer's obligations, especially arrears of payments, Koinor is entitled – also without setting a deadline – to demand restitution of the goods and/or to rescind the contract; the Customer is required to return the goods. Unless Koinor expressly declares this to be the case, a demand for the return of the goods does not constitute rescission. Until he has received title to the goods, the Customer is required to treat the goods delivered carefully. As long as title has not passed, the Customer is required to notify Koinor immediately in writing should the goods delivered be attached or subject to any other intervention by third parties. Should the third party be unable to refund Koinor the costs of a writ incurred both in court and out-of-court in accordance with § 771 of the German Code of Civil Procedure, the Customer will be liable to Koinor for any loss thereby incurred.

The Customer is entitled to re-sell reserved goods as part of his normal business activity. The Customer assigns to Koinor with immediate effect his claims arising from a re-sale of the reserved goods equal to the invoice amount (including value added tax) agreed with Koinor. This assignment will apply irrespective of whether the goods delivered are re-sold unprocessed or after processing. The Customer is still entitled to collect the receivable after assignment. Koinor's authority to collect the receivable itself is not thereby impaired. Koinor will however not collect the receivable as long as the Customer fulfils his payment obligations out of the proceeds collected, does not fall into payment arrears and, in particular, does not apply for the opening of insolvency proceedings or his assets be subject to forcible foreclosure and the Customer cease to make payments.

The processing or conversion of the goods purchased by the Customer is always carried out in the name of and on behalf of Koinor. In this case, the Customer's reversionary interest in the goods purchased is continued in the unconverted product. Should the goods purchased be processed together with other objects not belonging to Koinor, Koinor will acquire co-ownership of the new product in proportion to the objective value of the goods purchased relative to the other objects processed at the time of processing. The same will apply in the event of mixing. Should mixing take place in such a manner that the Customer's goods are regarded as the principle goods, it is considered as agreed that the Customer transfers a share of co-ownership to Koinor and takes care of the goods solely or co-owned on behalf of Koinor. In order to secure claims against him, the Customer also assigns such claims to Koinor that he has acquired against a third party as a result of the connection of the reserved goods with real estate; Koinor accepts this assignment with immediate effect. Koinor undertakes, at the Customer's request, to release securities to which it is entitled should their value exceed the claims to be secured by more than 20%.

8. Warranty, reporting defects and claims to right of recourse

The Customer's rights to warranty are conditional on the Customer having properly fulfilled his obligations to examine the goods and report defects incumbent on him according to § 377 of the German Civil Code. In order to be valid, defects must be reported in writing to Koinor before possession passes or before delivery to the final customer. Every defect must be reported immediately in writing. The above conditions also apply with respect to rights provided for in § 478 of the German Civil Code. Warranty claims will expire 12 months after Koinor has delivered the goods to the Customer. The above provision will not apply should the law stipulate longer warranty periods. Koinor's consent must be obtained before any return of goods.

Should the goods delivered, in spite of all the care expended, prove to have a defect that was present at the time risk was transferred, and provided that the defect was reported on time, Koinor will at its option either repair the goods or deliver replacements. Koinor must always be given adequate opportunity to provide subsequent fulfilment within a reasonable period of time. Claims to rights of recourse are without qualification not affected by the above provision.

Irrespective of any claims to compensation, the Customer

may rescind the contract or demand a price reduction should subsequent fulfilment not succeed. Should the Customer demand compensation rather than performance or wish to repair the goods himself, the failure of subsequent fulfilment will not be assumed until after the second attempt at subsequent fulfilment has failed. Rights to warranty will not apply if the deviation from the agreed quality is only minor, should the restriction to the goods' usefulness only be insignificant, in cases of natural use or wear and tear or should the damage have occurred after risk has passed as a result of incorrect or careless treatment, excessive use, inappropriate operating materials or due to particular external influences that were not assumed in the contract. There is also no right to warranty, nor for the resulting consequences, should the customer or a third party carry out inappropriate repair work or changes to the goods.

Koinor is liable in the event of intent or gross negligence in accordance with the provisions of the law. Moreover, Koinor is only liable under the German Product Liability law on account of injury to life, limb or health or on account of a culpable breach of essential contractual obligations. Claims that essential contractual obligations have been infringed are however restricted to foreseeable damage typical for this type of contract. This also applies to all cases of gross negligence. Liability for damage to the Customer's objects of legal protection is excluded. This will not apply in cases of intent or gross negligence or injury to life, limb or health. The exclusion of liability also applies to compensation in addition to and compensation instead of performance of the contract, irrespective of the legal reason, especially on account of defects, the infringement of duties arising from the contractual obligation or from unauthorised acts. Moreover, Koinor's liability on account of delays in payment of compensation in addition to performance of the contract limited to 5% of the value of the goods delivered/service provided and to 10% in the case of compensation instead of performance. Further claims on the part of the Customer are excluded.

Koinor's liability on account of the impossibility of performance as well as the reimbursement of expenses incurred in vain is limited to a total of 10% of the value of the goods delivered/service provided. Further claims by the Customer on account of impossibility are excluded.

The above restrictions do not apply in cases of intent, gross negligence or injury to life, limb or health. The Customer's right to recourse on account of impossibility is not affected. Claims by the Customer on account of expenditure necessitated by subsequent fulfilment, especially costs of transport, travel, labour and materials, are excluded should the expenses be higher due to the goods delivered by Koinor having been subsequently moved to a different place than the Customer's branch office, unless this transfer is consistent with the agreed use of the goods.

The Customer only has rights of recourse against Koinor provided that he has not agreed any warranty rights with his customer in addition to those stipulated by law. The above paragraph will also apply to the extent of the Customer's rights of recourse against the supplier.

Irrespective of their legal basis, claims and rights on account of defects in deliveries of used goods are excluded. This exclusion also includes any claim against Koinor linked to a defect, irrespective of the legal grounds for the possible claim.

The above provisions concerning time-limitation and exclusion will not apply should Koinor have acted intentionally or should Koinor have fraudulently concealed a defect, or to claims for compensation due to the injury of life, limb, health or freedom, as well as to claims based on the Product Liability Law and cases of grossly negligent breaches of duties.

Rights of recourse by the Customer against Koinor in accordance with § 478 of the German Civil Code on account of a discount on the previous purchase price granted by Koinor as part of the relevant purchase list are excluded.

9. Other

This contract and all the parties' legal relationships are subject to the law of the Federal Republic of Germany to the exclusion of UN purchasing law (CISG).

Unless anything to the contrary is stated in the order confirmation, the place of fulfilment (Michelau) and the sole place of jurisdiction (Lichtenfels District Court; Coburg Regional Court) for all disputes arising from this contract is Koinor's registered office. Mandatory provisions of the law with respect to sole places of jurisdiction are not impaired thereby. In the event of a legal dispute before a non-German court, the Customer is required to pay the costs of litigation and to reimburse Koinor its lawyer's fees.

The Customer is aware that his data will be stored by IT. All agreements concluded between the parties for the purpose of implementing this contract are recorded in writing in this contract. Should individual provisions of this contract or the Standard Terms and Conditions be invalid or should they contain an omission, this will not affect the remaining provisions. The parties undertake to agree such a legally permissible clause to replace the invalid provision as most closely corresponds with the commercial aim of the invalid provision or remedies this omission. These Standard Terms and Conditions will come into force on 01.03.2018 and replace from this time any previous standard terms and conditions.

KOINOR Polstermöbel GmbH & Co. KG

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The Company's registered office is Michelau i. Ofr.
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