

SALES AND SHIPMENT TERMS AND CONDITIONS

1. General

1.1. The terms and conditions of sale and shipment as detailed below are valid for all business relationships (such as purchasing agreements, contracts of work and labour, fitting agreements, etc.) between VOGLAUER MOBELWERK Gschwandtner & Zwilling GmbH & Co KG, hereinafter referred to as VOGLAUER, and its customers. Customers accept these terms as binding upon them by placing an order or closing a contract with VOGLAUER. Deviating, conflicting or amending General Terms, whether known to VOGLAUER or not, cannot become part of any contract with VOGLAUER except by express written acceptance. Inasmuch as conditions deviating from these terms and conditions of sale and shipment are agreed to in writing as part of a contract, the stipulations of the contract have priority.

1.2. VOGLAUER closes contracts strictly only with registered companies. Should in exceptional cases a customer be a consumer in the sense of consumer protection laws, such customers have the obligation to notify VOGLAUER of that fact. Otherwise, such customers will be held liable. These terms and conditions of sale and shipment will be valid for business with consumers only as far as they are in compliance with imperative stipulations of consumer protection laws.

2. Proposal, Prices

2.1. All prices quoted by VOGLAUER in proposals and price lists are non-binding and net prices except if and where it is clearly indicated that VAT is included. Prices quoted by VOGLAUER are free buyer's address, fitting excluded. VAT will be calculated separately on the basis of the legal provisions valid on the day of delivery or performance of services. VOGLAUER reserves the right to perform technical and other changes within reason. Purchase orders without prices will be processed using the applicable list prices valid the day of arrival of the order.

2.2. If goods or services are delivered later than the agreed date for reasons other than late delivery culpably caused by VOGLAUER, VOGLAUER has the right to raise the prices accordingly. Such price correction will take into account changes of labour costs according to collective treaties and actual costs for performance such as costs of material, energy, transport, financing of external services, etc. between agreed and actual delivery dates.

2.3. Export deliveries will always be charged and payable in Euros. In cases where payment is expressly agreed in a different currency, invoicing will be on the basis of the exchange rate valid on the date of order acknowledgement by VOGLAUER. For this calculation, only exchange rates calculated by Austrian banks will be relevant.

3. Order Acceptance, Subject Matter of Orders

3.1. Purchase orders issued to VOGLAUER will result in a contractual relationship only by written order acknowledgement or delivery of goods or of an invoice by VOGLAUER. Customers have the obligation to provide comprehensive and correct documentation required for the production of the goods (measurements, blueprints, etc.) with the purchase order. Additional costs possibly inflicted by deviation of the actual situation from the documents or blueprints provided by customers as well as additional costs resulting from late provision of such documents will be carried by the customer. Changes to accepted orders will only be possible by written consent.

3.2. If at the time of order placement the ordered goods are not fully specified in all detail (especially technically), a preliminary order acknowledgement will be issued. Customers have the obligation to deliver further detail (actual measurements, etc.) in such time as to allow delivery on time. Upon delivery of the details, a final order acknowledgement will be issued which determines the subject matter of the contract in a binding fashion unless customers send their dissent in writing immediately. If so, the delivery contract will remain valid as by the preliminary order acknowledgement. In case of changes to an order communicated after a preliminary order acknowledgement has been issued, the prices will be adapted to a possibly precursory estimate.

4. Shipment, Delivery

4.1. Unless agreed otherwise, delivery will be free customer's address. Transport insurance will be closed only if expressly requested by the customer. Costs arising from this will be carried by the customer. Unless agreed otherwise in writing, peril of price will be transferred to the customer at the time of shipment of the goods, or in case of late acceptance by the customer, at the time of readiness for shipment by VOGLAUER.

4.2. Unless agreed otherwise in writing, the choice of the place of shipment and the way and means of transport is in VOGLAUER's best discretion, without acceptance of any liability for cheapest or fastest transport. Delivery dates will in any event be non-binding unless expressly agreed to the contrary.

4.3. As a matter of principle, the agreed delivery periods are counted from the date of order acknowledgement. If VOGLAUER is at that time (start of lead time) not in possession of the documentation required for production such as especially actual room measurements, lead time starts at the date of receipt by VOGLAUER of the last document required. Customers have the obligation to provide such documentation in a timely manner. Delivery dates (lead times) will be extended by fitting delays not caused by VOGLAUER. In case a down payment is to be made by the customer, the lead-time will not be counted before the day of its receipt by VOGLAUER.

4.4. If acceptance of the delivered goods by the customer is delayed, whether culpably or otherwise, VOGLAUER has the right to ask a storage charge to an amount customary in the place; Furthermore, VOGLAUER has the right to withdraw from the delivery contract, upon which the customer has to pay the difference between the agreed price and the expectable revenue from realisation of the deliverable goods. In case of included fitting, customers have the obligation to accept the contractual items immediately after completion in a visit. If acceptance is denied, the purchased goods are deemed accepted.

4.5. In case that VOGLAUER fails to meet delivery dates by more than 3 weeks, customers have the right to withdraw from the contract after a reasonable period of grace. If such delay is due to operational reasons VOGLAUER cannot prevent with due diligence of a scrupulous merchant (especially strike, disruption, raw material shortage, etc.), customers will be entitled to withdraw from the contract after a two-month delay after a reasonable period of grace.

5. Withdrawal from Contract

5.1. If a customer fails to fulfil contractual obligations in full or in part, VOGLAUER has the right to withdraw from the contract. The right to withdraw from the contract can be declared for only part(s) of the goods to be delivered. In such cases, VOGLAUER has the obligation to deliver the part of the shipment which is not affected by the withdrawal and customer has the obligation to make payment for that part.

5.2. If VOGLAUER withdraws from a contract for reasons for which the customer is answerable without necessarily being culpable, or if customer withdraws from a contract without being entitled to do so, customer has the obligation to cover the costs of preparatory efforts by VOGLAUER (material purchased, special services, labour expenditure, etc.). VOGLAUER has the choice between the right to charge a lump sum of 25 % of the total amount of the contract without provision of specific evidence for individual efforts. Custom designs already produced by VOGLAUER must be paid for in full minus fitting and shipment costs.

6. Fitting

6.1. In cases where fitting is part of the agreement, customer has the obligation to provide for orderly vehicle access all the way to the rooms to be furnished. Where means of transportation such as cranes and lifts exist, these will be provided for use by VOGLAUER or its subcontractors free of charge.

6.2. Customer accepts liability for storage of the delivered goods on the construction site. This specifically includes theft-protected and dry storage on the construction site.

6.3. Customer will make all necessary provisions so that fitting can be performed without delay; specifically that assembly fitters not be hampered by other craftspeople. Also, the fitting areas of the rooms to be furnished must be heated, clean and sufficiently lighted where required and electric power is to be provided. Costs for electricity and water will be carried by the customer. Carpeted floors must be made slippery-proof and sufficiently covered to prevent soiling and damage by the customer.

6.4. If fitting includes connections with objects owned by the customer or third parties (e.g. Fastening to walls by drilling or chiselling), customer will warn VOGLAUER of perilous locations prior to the commencement of such work, specifically the exact location of electric cables, gas and water pipes and other supply systems will be communicated.

6.5. VOGLAUER has no obligation to inspect the properties of walls or objects to which VOGLAUER parts will be connected. Customer, on the other hand, has the obligation to notify VOGLAUER of properties of walls or objects possibly impairing simple and problem-free fitting. Any additional work and expense resulting from unpredicted properties of walls and objects will be charged to the customer.

6.6. Additional costs for overtime authorized and fitting delays caused by the customer as well as work not included in the order acknowledgement or work caused by inadequate environment will be charged separately. This will also be the case if VOGLAUER has offered fitting for a lump sum or for free as a discount.

6.7. Customer will at their own costs take care of cleaning of the rooms after fitting. Lack of contractual stipulations to the contrary, fitting services offered by VOGLAUER do not include fitting and connecting of electric equipment of any kind and lighting appliances. Unless agreed otherwise, such work is to be performed by authorized craftsmen at customer's own expense. Packaging material will be disposed of by the customer at his or her own expense.

7. Notification of Defects

Upon delivery, customers must immediately inspect the goods for possible defects. Incomplete or wrong shipments as well as complaints for recognisable defects will be directed to VOGLAUER in writing immediately upon receipt of the goods, non-recognisable defects immediately upon their discovery. The notification must indicate clearly the kind and extent of the alleged defect. In case of late notification of defects and errors, the shipment will be considered approved, in which case warranty claims are ruled out.

8. Warranty

VOGLAUER provides warranty for the delivered goods for a period of one year from the shipment date. For electric implements and lighting appliances delivered by VOGLAUER, the warranty period will be six months. In cases of justified and timely notification of defects, VOGLAUER will, reasonably taking into account customer's interest, provide warranty by improvement, price reduction or replacement (exchange) or take back the goods refunding the purchase price. The choice of the warranty method is VOGLAUER'S. If VOGLAUER fails to meet warranty obligations within reasonable time, customer has the right to a reasonable price reduction or to withdraw from the contract. Activities started by VOGLAUER due to unjustified notifications of defect are considered purchase orders, and customers have the obligation to pay for the services rendered thereunder.

Excluded from the warranty are specifically:

- Goods provided by the customer;
- Damages resulting from deficiencies of the environment (e.g. faulty walls, construction material moisture, construction deficiencies, etc.);
- Compatibility of material used by VOGLAUER with other parts and properties of the rooms to furnish, such as other furnishing, lighting colours, heating, etc.;
- Deformation and crevices of massive wood used;
- Function of the delivered goods and suitability of the material used if the design has been made by the customer or his agent (e.g. architect);
- Minor deviations of hues and surface or veneer structures of the delivered goods;

9. Exclusions from Liability

9.1. VOGLAUER can be held liable for damages outside of the applicability of the product liability law only in cases of intent or gross negligence. Liability for slight negligence is foreclosed, as is compensation for consequential damage and financial loss, failure to realise savings or profit, losses from interest and damages from third party claims against the customer.

9.2. Within the applicability of the product liability law, VOGLAUER will be liable for personal damage and for material damage suffered by consumers. VOGLAUER will not be liable for material damage suffered by companies. Regress by the customer as defined in § 933b ABGB (Austrian General Law) is excluded. Claims for damages are in any event limited to a three-year period, counted from shipment.

9.3. The parties to a contract also mutually renounce all claims for any damages covered by an insurance held by the damaged party. This renunciation will not extend to damages inflicted by intent or gross negligence or if the insurer would be exempt from indemnification as a consequence of such renunciation.

9.4. Locking mechanisms or safe deposits provided by VOGLAUER will not constitute theft or break-in protection so that claims for damages resulting from these are excluded. A possibly required anti-theft device will therefore be acquired by the customer at his or her own cost and risk; VOGLAUER will not be held liable for locked items.

10. Payment

10.1. Invoices for the delivery of goods will be sent by email and are payable according to the stipulations of the individual contract. Unless stipulated otherwise, the customer will pay one third of the total amount quoted in the order acknowledgement as a down payment promptly upon order placement, one third two weeks prior to readiness for shipment and the remaining amount immediately upon receipt of the final invoice without discount. As far as there is no written agreement between the parties to a contract with regards to terms of payment, the amounts invoiced are payable directly upon receipt of the invoices without discounts. Bills of exchange or cheques will be accepted only on the grounds of separate written agreement and solely as payment. Discount and exchange expenses will be payable immediately by the customer. The customer recognises that VOGLAUER field staff are not entitled to collect payment.

10.2. In case of delayed payment, interest for delay amounting to 8 % above the then current base-lending rate will be charged. Set-off by the customer is ruled out except with receivables accepted in writing by VOGLAUER or ascertained in a legally binding manner.

10.3. If a customer cannot continue orderly business operations or forced sale of collaterals is in progress, if an act of protest is ongoing or delay or stop of payments is prevailing or if the customer has filed in or out of courts for a settlement system or bankruptcy has been declared, whether successful or not, VOGLAUER has the right to declare all outstanding bills from the business relationship due immediately, even if bills of exchange or cheques have been accepted or payment by instalments has been agreed. This also applies if and when the customer is late with payment or other circumstances indicate towards a questionable creditability. Furthermore, VOGLAUER has in the above-mentioned cases the right to demand advance payment or securities, realise securities provided or withdraw from the contract, claiming damages for default of performance.

10.4. Customers do not have the right to withhold payment due to alleged deficiencies, except if such deficiencies and the withholdable amounts have been accepted in writing by VOGLAUER or ascertained by a legal court. Any cession of customer receivables against VOGLAUER to third parties as well as any cession of rights and obligations of the closed contract is prohibited without prior written consent by VOGLAUER.

11. Reservation of Property Rights

11.1. The goods delivered remain the sole property of VOGLAUER until fulfilment of all obligations of the customer, specifically full payment of the purchase price including all side costs and interest, dues, fees, etc

11.2. Goods delivered for a particular building project, even if ordered, delivered and invoiced in tranches, are considered one coherent order. In such cases the reservation of property rights to all goods delivered will expire only when all payments resulting from the contracts therein have been made in full.

11.3. The customer has the right to sell goods delivered under this reservation of property rights only if they are dedicated goods for resale or after the reservation of property rights has expired or VOGLAUER expressly authorizes such sale. In case of resale of goods, the customer will cede all claims resulting from such sale to VOGLAUER. The customer has the obligation to make such cession recognizable by corresponding entries in his or her books and to disclose to VOGLAUER upon request the names of the debtors as well as to precisely specify the ceased receivables. The cession will be accepted by VOGLAUER. Any dues or taxes related to such cession are to be carried by the customer, who will indemnify VOGLAUER of claims resulting thereof. VOGLAUER retains the right to disclose the cession and to realise the receivables ceased directly.

11.4. The customer has the obligation to sufficiently cover the reserved goods by insurance against common risks such as elementary events and to provide proof of such cover to VOGLAUER upon request. The customer hereby ceases given insurance claims to VOGLAUER. The customer also has the obligation to store the goods according to instructions given by VOGLAUER and to the state of the art. The customer has the obligation to tend to the goods during the reservation of property rights.

11.5. The customer will immediately notify VOGLAUER of access to the goods under reservation of VOGLAUER property rights by third parties (execution or listing for execution, other court orders or enactments). The customer will support and assist VOGLAUER in legal attempts to protect VOGLAUER'S rights to the property and carry all associated costs if the customer has inflicted the threat to reserved VOGLAUER property.

11.6. In case of connection or mingling of reserved VOGLAUER property with other goods, VOGLAUER will gain joint ownership in the resulting goods proportionally to the value of the reserved property with respect to the value of the other goods at the time of connection or mingling. In case of sale of the resulting matter, the customer will cede the aliquot sales price in the sense of the stipulation above to VOGLAUER.

12. Intellectual Property

Trade marks, representations and the associated sketches, plans and descriptions are the intellectual property of VOGLAUER and must not be copied or disclosed to third parties without prior written consent by VOGLAUER.

13. Advertising

It is accepted that objects furnished by VOGLAUER may be used by VOGLAUER for purposes of advertising (reference lists, brochures, press releases, etc.) quoting customer names and using pictures of the furnished objects. The customer grants VOGLAUER the right to take pictures of the furnished objects.

14. Force Majeure

Events of force majeure affecting VOGLAUER or any of VOGLAUER'S suppliers constitute the right for VOGLAUER to suspend deliveries for the duration of the hampering circumstances plus a reasonable lead-time without such suspension constituting a delay or the right for customers to fully or partially withdraw from the contract.

Events of force majeure are, among other things: All effects of the forces of nature such as earthquake, lightning, frost, storm, flood; furthermore, war, legal action, enactments by local authorities, detention, transport disruption, export, import or transit bans, international payment restrictions, raw material shortage and power loss; furthermore, operational disruptions such as explosion, fire, strike, sabotage and all other events which could not be prevented other than by unreasonably high costs or means not economically justifiable.

15. Data Privacy Assent

The customer expressly agrees that collection, processing and use of personal data provided by the customer be used by VOGLAUER for marketing purposes by installation of a customer data base and related activities. This assent specifically includes information transfer for purposes of advertising by fax, letter, email or any other method. This assent can be withdrawn by customers at all times with immediate effect for the future.

16. Final Provisions

16.1. All contracts closed by and with VOGLAUER as well as these terms and conditions are governed exclusively by Austrian law with the exclusion of the relegation norms and the UN convention on contract for the international sale of goods. All disputes arising directly or indirectly from contracts with VOGLAUER will be regulated at the appropriate court in the city of Salzburg, Austria. Place of performance for delivery and payment will be the principal office of VOGLAUER.

16.2. In case one or more of the stipulations herein or in a contract become invalid in full or in part, validity of the remaining stipulations will remain untouched. Fully or partly invalid stipulations will be considered replaced by provisions whose economical success approximates closest the original stipulation(s).

16.3. All changes or amendments of contracts between VOGLAUER and customers must be in writing, including the agreement to waive this stipulation. All declarations by VOGLAUER will only be legally binding if they are issued in writing by staff of the VOGLAUER principal office at Abtenau, Austria.