

General terms and conditions (GTC) Mayr - Schulmöbel Gesellschaft m.b.H.

1. General

The following general terms and conditions (GTC) are the legal binding conditions of the company, valid as of January 2020, and replace all previous terms and conditions completely.

Mayr - Schulmöbel Gesellschaft m.b.H. (MSG)

FN 101563h
Mühldorf 2
4644 Scharnstein
Österreich

It is well noted, that electronical transmission (email), as well as transmission via fax are deemed to fulfill the written form, and will be accepted by MSG as requirement of a valid written form. All writs have to be submitted to the above-mentioned post address only.

Electronical writs have to be sent to office@mayrschulmoebel.at, incoming invoice and / or credit notes from suppliers have to be sent to rechnung@mayrschulmoebel.at only, and are deemed to be legally submitted. If any other email address shall apply, it will be stated expressly in written form, and will be considered as official mailing address / address for service.

2. Scope of application

Offers, orders, sales, shipments, and respectively the whole contractual relation between the parties has to be stated expressly in written form, by mandatory use of the GTCs of MSG.

Any amendments of what so ever, have to be stated expressly in written form between the parties to become legally binding and enforceable. Oral agreements are not legally binding, and have to be done in written form, to become so.

The GTC pertain in full with duly submitted order, independently if the order has been done on our own or any third party order form.

Our complete GTC in their current legal version, can be downloaded at any time from the homepage of MSG, or by following the link www.mayrschulmoebel.at including the following pages which can be saved and printed in a reproducible format.

It is certain that we expressly object any terms and conditions of the purchaser and at no event such terms and conditions will be legally binding. Insofar only for an individual case deviating terms and conditions have to be stated expressly in written form. If any conflict occurs, the GTC of MSG shall prevail, and have to be the only legal binding version.

It is certain, that the GTCs will apply for public tenders only and insofar they comply with the general terms and conditions of contracting authority.

3. Offers

All our offers are subject to any change of what so ever without notice, unless they have been designated as binding for a defined period of time.

All information on our products and / or services included but not limited to, catalogues, brochures, circulars, illustrations, descriptions, price lists, information of any kind about weight, size, price, service etc. is only approximate in terms of its details and is non binding with regard to possible deviations and amendments to be deemed reasonable. The information will become legally binding only in reference to a signed agreement between the parties.

All our prices are subject to alteration, and are net ex works. Any other terms have to be stated expressly in written form.

MSG is entitled to adjust the prices to changed circumstances even following the conclusion of the contract, in case of extraordinary events, included but not limited to increased wages and / or material costs, currency fluctuations, changed legal position, changed import and / or export conditions, changed conditions of suppliers, wars, war-like disputes, natural disasters, delivery blocks, strikes etc... This also applies if the prices were agreed as fixed prices.

Obvious errors, or errors that occurred in our offers, entitles MSG free of choice either to correct and fulfill the contract under the correct terms and conditions, or to cancel the contract.

If prices are denominated in a foreign currency, the offer will be based on a calculation exchange rate, the validity of which is stated in the offer. Any additional costs arising up to the date of the order fulfillment and / or the actual delivery as a result of exchange rate differences outside the validity of the calculation rate will be borne by the purchaser in full.

4. Order

Upon reconciliation and clarity of the order, MSG will send a full and complete order confirmation, including the delivery dates. Orders are legally binding upon submission of written order confirmation by MSG only.

MSG will reserve the right to reject orders without giving reasons. This also applies if a non obligatory offer by MSG has been made.

If the delivery is performed in partial for a certain project, even if it is cleared in different periods, it will be deemed at any time as an aggregated order.

5. Delivery

Delivery with reference to the date specified in the order confirmation shall be affected upon our delivery drive. Partial delivery is expressly allowed. MSG can grant only delivery on time dependent on our suppliers and if no delays of what so ever occur in the supply chain.

Therefore a delivery on time can not be granted. Cost and risk, has to be borne by the purchaser at delivery ex works. If the purchaser collects the order, risk has to be borne by the purchaser of any kind, from the time of deployment.

Delayed delivery constitutes a right to withdraw from the contract or potential compensation for a damage only, if the delay was caused by MSG grossly negligent.

The purchaser has to grant a driveway for the delivery as well as the right to use it for heavy trucks. Furthermore the purchaser has to grant and guarantee that the respective rooms at the time of delivery are ready for delivery and assembly.

Special delivery can be offered if possible by MSG. The purchaser has to bear all cost, as well as extra costs for the execution.

6. Delay

If the delivery or the assembly is refused without prior notice in written form, at least 10 days before the arranged date of delivery, all costs of transport will be charged to the purchaser.

If the delivery fails, for example due to a lack of driveway, lack of driveway within the rooms, unfinished (work in progress) rooms, the purchaser is obliged to allocate a lockable storage room free of charge, to grant that the delivery can be stored securely.

It is deemed expressly that when the delivery has to be stored in the storage room, the order is from that moment legally taken over. If the purchaser is not capable to provide a suitable storage room, a storage room will be placed at the disposal of the purchaser at his own risk and cost. The cost of the storage will be charged to the purchaser in full. From the moment of storageing the order, it is legally taken over by the purchaser.

If the purchaser fails to take over the order as agreed, defaults in acceptance, fails to cooperate or delays the delivery for any other reason, MSG is entitled to store the order in a storage room, after posting a grace period. If the order is stored in a storage room not made available by the purchaser, the purchaser has to bear all costs and charges incurred, as well as the internal costs of MSG per day.

7. Default of performance

MSG declares expressly that minor and / or other reasonable changes or variations are legally and expressly accepted and confirmed by the purchaser. With the submission of the order confirmation the GTC are legally confirmed and accepted with full awareness by the purchaser.

As a variation / deviation from performance examples included but not limited to conditional deviation in substance, like measures, colors, wood and veneer, texture, structure etc. apply.

The presence of variations, deviations, and / or minor obvious defects do not entitle the purchaser to deny the acceptance of the delivery. The delivery has to be accepted and taken over by the purchaser.

The presence of variations, deviations, and / or minor obvious defects do not entitle the purchaser for compensation of what so ever. It is expressly declared that claims for compensation in relation to this title are null and void. MSG will be indemnified and held harmless accordingly.

8. Warranty

Insofar no further claims have been agreed in writing, MSG warrants for its performance with respect to this GTC and according to the mandatory law.

The purchaser can only call upon this warranty if he can prove that the defect was present at the time of delivery / hand over, and if MSG has been notified immediately in written form, and the defect has been documented with pictures. The deadline of this notice is not longer than 3 workdays after hand over of the delivery. Delayed submission effects in loss of warranty, claims, any error or damage compensation (including a damage compensation claim for consequential damages).

Unless otherwise specified by law, the warranty period is 12 months only, and shall commence upon delivery ex works, or upon take over by the purchaser.

The presence of obvious defects does not entitle the purchaser to deny the take over of the delivery. The delivery has to be taken over, and any potential defect shall be dealt with by basic complaint procedures.

Initially the purchaser may request prior remedial work or replace of defect items only. If the repair or the replacement is not possible or is associated with disproportionate financial or actual costs, the purchaser may request a reduction in the price or rescission.

Rescission will not be considered if it is a minor defect. The rectification of any defects will not extend the warranty period and / or any agreed written guarantee periods. The warranty does not cover compensation for any frustrated costs of what so ever.

The warranty expires if the delivery item has been subject to modification, repair or any other interference without the prior written consent by MSG.

The purchaser is not entitled to fully or partially retain the purchase price in the event of any defects either.

For parts that have not been manufactured by MSG the warranty is restricted to the claims that MSG has towards the supplier, even if the parts had been installed or otherwise been used in the products of MSG.

Recourse claims in accordance with § 933b ABGB are excluded.

9. Complaint

The purchaser is obliged to record any defect with regard to this GTC. Furthermore the purchaser is obliged to give a written notice immediately, at latest within 3 days to MSG. The written notice has to contain the nature, as well as the extent of defect, accompanied with a full picture documented report of the defect. In accordance MSG can deal with the complaint accordingly.

Replacement and return shipments are only possible on prior written acceptance by the general management of MSG. Extra costs, charges, and daily expenses will be charged at full to the purchaser.

Reimbursement of costs is limited within the cost of goods and / or services, exceeding costs are not accepted at all.

Custom build as well as custom orders are excluded from replacement and or return shipments.

In case of an unravelling of the contract the purchaser has to pay a processing fee of 10 % of the order total. Furthermore all expenses that incurred are invoiced to the purchaser. If services have already been used by the purchaser, these cannot be unravelled any more.

10. Damage compensation

It is deemed expressly, that damage compensation for damages are only legally effective, if it can be proven that MSG acted with intent or grossly negligently. In the event of any personal injuries, MSG is liable for slightly negligent behavior.

The purchaser is obliged to take all reasonable measures to prevent damage occurring and to keep any damage as low as possible. MSG is not liable for consequential damages.

The deadline for compensation claims are restricted to 3 years only, from the time of take over.

Potential claims under the law of PHG (liability for a defective product) are restricted to the obliged norms. The right of recourse under § 12 PHG is expressly excluded.

All terms of the GTC, as well as any additional agreements are valid if warranty is claimed together or instead.

11. Title retention

The delivered goods will remain our property without limitations until full payment, including all ancillary fees, like occurred interest, charges and any additional costs. The purchaser accepts and approves of this title retention, and it is enforceable with submission of the order confirmation. MSG is entitled to ask the purchaser to render the title retention visible on the delivered goods.

The purchaser is not entitled to sell or pledge or otherwise cede them to any third parties without the prior written consent of MSG.

All claims of the purchaser against any third party in connection with sold or processed goods, are assigned in full to MSG until MSG received full payment as mentioned above. The purchaser is obliged to inform any third party of the assignment and to instruct them to pay to MSG. Any cede has to be noted in the business records of the purchaser, as well as delivery documents, and / or invoices. If the purchaser is delayed in payments and receives payments of third parties, he is obliged to sequester these payments to MSG.

The purchaser is liable in full of all goods subject to retention of title, like risk of damage or loss.

The ownership of MSG maintains, if the delivered goods are mixed, combined, processed or otherwise converted with other items of the purchaser or any third party, the clause of § 415 ABGB is fully legally binding and enforceable.

12. Invoice

MSG is entitled to submit all invoices via electronic means, to the latest contact address of the purchaser. The purchaser is obliged to give immediately written notice of any changes in connection to the contact address.

The purchaser is obliged to provide all technical and organisational measures to assure perfect function and security for the submission of all communications via electronic means. Submission of the invoice is deemed as received, potential out of office messages are not considered.

13. Payment

Place of fulfillment for all payments is Scharnstein, Österreich. All prices are net ex works in the lawful currency EURO, plus the applicable rate of VAT. All payments have to be done to a beknown account of MSG. Cash payments to any employees of MSG are permitted and do not have the effect of discharging the debt, this only applies to transfers to the beknown accounts of MSG.

All payments have to be made, unless otherwise agreed, without any deduction and free of charges upon receiving the invoice.

Billing will take place, if possible, immediately after delivery. Any cash discount has to be agreed in written form. If only one partial payment has not been done on time, the right for cash discount is lost in total. This means for all done payments, and all open payments. Payments are deemed as fulfilled as soon as they are booked and cleared on the accounts of MSG.

In any case of delayed payment MSG is entitled to charge interest for default in payment, even if the purchaser caused it through no fault of his own. The interest rate is at the percentage of the law of UGB, plus all costs and charges. The interest rate is at minimum 6 % above the base interest rate.

In case of payment difficulties by the purchaser, it is in any case deemed as default payment, with the effect that the full payment is due immediately, this also applies to possible issued financial instruments including but not limited to letter of credit, etc.

As examples for default in payments, it includes but is not limited to:

- Exceeded deadline of the second payment reminder incl. interest and charges
- Executory proceedings against the purchaser
- Application of insolvency at the court against or in the name of the purchaser, or if the application has been denied. Active insolvency case at the court
- The purchaser is requesting out-of-court settlement

If any default in payments occurs, all agreements regarding discounts, cash discounts, deferment etc. are null and void (ex tunc).

The purchaser is liable for qualified default in payment, for all interest, charges, and costs of what so ever in connection with the claiming of the payment.

Delayed payments or any breach of payment conditions, as well as justified concern regarding default payment, entitles MSG to withhold open delivery and services. MSG is entitled to demand advanced payment, and / or payment securities, or to withdraw from the contract without grace period.

Already delivered goods have to be sent back in full, under the view of title retention. Any depreciation, as well as frustrated expenses will be borne by the purchaser.

In the case of undelivered goods MSG is entitled to claim a respective part of the value of the order.

To exercise a set-off by the purchaser against claims of MSG is expressly rejected. Any set-off has to be ascertained by court.

14. Withdrawal from the contract

MSG is entitled to withdraw from the contract immediately in accordance with the contract, the GTC and by law, following the full legal consequences.

MSG is entitled in case of errors of calculation, errors in the offer, errors in the order confirmation, to withdraw immediately from the contract, and / or to fulfill the contract under the correct conditions. The purchaser has no claim of what so ever in connection with this clause. MSG has to be indemnified and held harmless in full against any claims based on errors and / or this clause.

15. Data privacy

MSG refers to the GDPR as well as to the privacy statement, which clarifies in detail all data proceedings within the company.

MSG declares that it processes and stores data automated, in connection with its contractual and pre-contractual duties.

The data processing is legitimate by law, in accordance with Art. 6 GDPR ff. Please find our privacy statement at www.mayrschulmoebel.at to your kind attention and convenience.

16. Copyright

The purchaser expressly acknowledges that all submitted information and data, including but not limited to files, documents, drafts, blueprints, samples, quotations, catalogues, brochures, pictures, and any other information, and / or data, and / or objects, and / or IP-rights, are the sole property of MSG.

All rights including but not limited to processing, reproducing, translation, copy, etc. remain in full with MSG at all time.

The purchaser is obliged to keep all information, data, business and company secrets confidential, at all time, and shall not disclose without prior written consent by MSG to any third party. The purchaser has to assure that the confidentiality has to be observed in every manner by his employees, affiliated companies, consultants and / or advisors or any third parties.

This obligation is valid with no restrictions to time and place, and the purchaser has to ensure that sufficient and secure technical and organisational measures are taken.

MSG is entitled to classify any information or data of what so ever on a higher level of secrecy. There is no express requirement to classify information and / or data.

Any wrongful or illegal disclosure is prohibited at all time, any disclosure of what so ever has to be released prior in written form by MSG.

Furthermore misuse is prohibited expressly including but not limited to advertising purposes, right of use, utilization rights etc.

17. Miscellaneous

Any changes of business address has to be declared by written notice. All communications, notes and declarations of what so ever are deemed legally submitted to the last known address.

All agreements and any changes and / or amendments to these GTC have to be done in writing. The communication has to be done if not otherwise agreed via email or fax.

In the event that a provision of these GTC, or parts thereof are found to be invalid or void, it will not affect the validity of the remaining provisions, and the agreement will be reached on such provisions that match most closely the true will and content of the parties.

The purchaser declares expressly that he understood these GTC and the legality thereof, and grants the full legal force, and no reasons of what so ever exclude the legal validity of the agreement. The purchaser has to indemnify and hold MSG harmless in connection with these GTC.

Place of performance, as well as place of jurisdiction, is the domicile of MSG. The responsible court of jurisdiction is Wels.

The contract is governed by and construed in accordance with Austrian law, with the exclusion of the CISG – Vienna Sales Convention.

The only legal binding language for these GTC and / or any disputes has to be German. If any discrepancy between the German and the English version, the occurs, the German version expressly prevails.