

General Terms and Conditions of KO & CO BENELUX NV ('KO&CO')

1. Except explicitly agreed upon to the contrary and in writing, the present General Terms and Conditions apply to their full force of the Law. The present Terms and Conditions exclude the application of any possible General and Particular Conditions from the customer.

2. The prices and offers from KO&CO only have an informative value and for a period of 15 days and do by no means entail any obligation on the part of KO&CO. An order accepted by KO&CO, be it or not in conformity with an offer, replaces any possible prior agreements. The obligations on the part of KO&CO can by all means only be considered as an obligation of means.

3. The prices by KO&CO are always quoted VAT and other taxes excluded, but also exclusive of transport, shipment, packing insurance or any similar costs.

4. The prices by KO&CO are subject to change without prior notice as the consequence of an increase of the prices of raw materials, (labour) costs, etc. The goods will be invoiced based on the prices valid at the moment of the delivery date.

5.a. In case the agreement does not mention anything in particular in this respect, it is irrefutably suspected that the customer will pick up the goods. Upon notice by KO&CO, the goods will be picked up from KO&CO, or, as the case may be, from the supplier or even the manufacturer.

In case of pick-up, the goods have to be picked-up by the customer at the moment indicated by KO&CO or at the most 15 days after KO&CO informed the customer that the goods are ready for pick-up. By lack of compliance KO&CO is entitled without prior notice, at its own choice, claim the full execution of the agreement in kind or consider the agreement annulled ipso jure. Should KO&CO claim the execution in kind, the customer will be held accountable for the payment as of the 16th day after having been informed that the goods are ready for pick-up to storage fees of 25 EUR/week per small goods not picked up or to a storage fee of 10 EUR/day and per unit for a big goods (including a group of small goods), unless KO&CO can demonstrate a larger damage. As big goods/unit have to be understood a good/goods with an intake of 0.5 m³ (as such 1 m³ comprises 2 units, etc). Should KO&CO consider the agreement as annulled by right, the purchaser will be liable a fixed indemnification equalling 25% of the value of the order for standard products and 100% of the value of the order for custom-made products, be it in both cases with a minimum of 125.00 EUR and with all rights pertaining to KO&CO to demonstrate a higher effective damage.

b. All deliveries by KO&CO always take place on the risk of the customer (even in the case of carriage paid deliveries). The goods are always considered as being sold at the registered office of KO&CO. In case of delivery by KO&CO, KO&CO transports the goods to the agreed place and at the foot of the truck. If KO&CO for whatever reason cannot deliver the goods at the agreed place, the customer is in charge of the additional transport cost for the transport to KO&CO and the new delivery. Additionally the customer is liable to a storage allowance as of the date of the delivery to and including the date of the renewed delivery, cfr. a. For the new delivery, the customer will have to conform to the planning and possibilities of KO&CO, without this leading to diminishment of the allowances due on behalf of the customer. The risk will be incurred at all times by the customer.

c. The terms of delivery given are merely by approximation and by no means are binding for KO&CO. Delays for whatever reason can by no account give rise to a breach of contract/winding-up/cancellation without costs or to any form of redress for damages indemnification to the customer.

6. Orders for regular goods can be cancelled by the customer until 15 days before delivery, be it 15 days before the notice of pick-up. In such cases, the customer is liable to the payment of an allowance equal to 25% of the value (inclusive of VAT and other costs) of the order, yet be it with a minimum of 125,00 EUR. Orders of goods made to measure and/or off-sets cannot be cancelled.

7. Except derogation, the customer must pay an advance of 1/3 of the order at the moment of placing the order. The balance must be paid upon complete delivery. All invoices are payable in cash on the invoicing date and this at the registered office of KO&CO. All invoices that remained unpaid on their expiry date, entitle KO&CO ipso jure and without formal notice to an interest on arrears of 10% per annum as of the date of the invoice, on top of a conventional indemnity, fixed on a flat rate basis of 10% of the amount of the invoice, yet with a minimum of 125.00 EUR. By not paying an invoice on its maturity, all other invoices, even those that have not yet expired, are immediately payable on demand and this regardless of previously agreed payment modalities. Possible late intermediate payments do not result in limiting the flat rate redress. Late payments are first calculated on the costs, then on the interests, then on the damage stipulations and then on the main sum, and this even should the customer have indicated so otherwise. Possible complaints, protests and the like by the customer, do not free him/her from his/her payment obligations.

Compensation and netting of invoices are only valid and allowed after explicit and written consent by KO&CO. In case of the non-payment of one or several invoices, KO&CO is entitled to – as it deems fit – to suspend all open orders or even to cancel them, and this without claim whatsoever for damage allowance by the customer.

8.a. In derogation of art. 1583 Civil Code, all goods sold remain the property of KO&CO until the payment in full (including all costs, interests and allowances). The risk, however, passes at the moment of the consent of the parties. Till the payment in full, the customer is held to store all of the KO&CO delivered goods separated from other products and to clearly label them. The customer explicitly confirms that - in the case of confirmation to/within/etc. to waive the movable or immovable property the will to bind permanently and the right of accession. The goods will have to be delivered back to KO&CO at their first request and costs and risk remain the customer's.

b. As long as the goods will not have been transferred, the customer will not be able to sell/ rent out or encumber in any way the products to third parties.

c. KO&CO has a retention right to the goods as long as its invoices have not been paid in full. This retention right also applies for the goods that are not the subject of an unpaid invoice.

9. Complaints with regard to the goods delivered, respectively invoices, have to reach KO&CO, under penalty of inadmissibility, within 5 days after the date of pick-up/delivery, respectively invoicing by means of a motivated and detailed registered letter. KO&CO is not held liable for the safeguarding against latent defects.

10.a. KO&CO grants to its professional customers (in the broadest meaning of the word) a warranty of 1 year for new goods, to be counted from the pick-up/delivery.

b. The warranty under 10.a. is limited to the replacement of new parts that show a defect in their material as recognised by KO&CO. By no means can KO&CO be held liable to whatever form of compensations for damages. The liabilities on the part of KO&CO are limited to the replacement of the defective part, with the restriction that all costs of labour, transport, etc. remain borne by the customer.

c. The warranty under 10.a. becomes void and inexistent if the customer does not maintain the goods properly, i.e. following the instructions and in the approved manner, or if the customer or any third party modified the good in whatever way, or if the goods have not been used/installed in the approved manner and the generally applicable standards.

11.a. KO&CO is only liable in the case of a gross mistake and deceit. KO&CO is not liable for mistakes, including gross mistake and deceit of its agents, including subcontractors and representatives.

b. KO&CO is not liable in the case of acts of God, which include but are not limited to war, fire, coincidence, strikes, company lock-outs at KO&CO and any other company from which it depends, delays at companies from which KO&CO depends, illness of personnel, working operational disturbances (electricity, internet, telecommunication, etc.), shortage of raw materials/half-finished goods/materials/ auxiliary agents, import and/or export limitations, the bad execution of the agreement by suppliers/subcontractors, measures by governments, or any other circumstances in the broadest meaning of the term, including each and every circumstance that renders the reasonable execution of the agreement impossible and/or disproportionately expensive so that the execution cannot reasonably be asked from KO&CO. Should a situation of act of God take place, KO&CO has the choice – without ever possibly being addressed for indemnities – to consider the agreement as terminated or to extend the delivery period with a reasonable delay.

c. The full responsibility of KO&CO, both contractual and extra-contractual, remains in any case limited to the amount covered by its insurance. In case of no coverage or no insurance for whatever reason, the above responsibility is anyways limited to the amount of the agreement (VAT not included), with a maximum of 5.000,00 EUR.

12. The agreement is ruled by the Belgian Laws, with the exclusion of the UN Convention on Contracts for the International Sale of Goods. The Courts in Antwerp, more specifically the justice of the peace court competent for the official offices of KO&CO, are exclusively authorised for the settlement of all disputes resulting from the present agreement.

13. The applicable terms and conditions are also available in Dutch, French and English, but the Dutch text prevails in discussions.