

GENERAL CONDITIONS OF SALE AND DELIVERY OF KARELIA-UPOFLOOR OY 2019

1. Scope

These General Conditions of Sale and Delivery shall be applied to commercial transactions between Karelia-Upofloor Oy (hereinafter referred to also as “Seller”) and its Clients (hereinafter referred to also as “Buyer”) regarding flooring materials or other related goods (hereinafter referred to as “Goods”) unless otherwise specified in writing.

2. Offer

2.1. The offer shall be binding for 1 (one) month, calculated from the end of the period reserved for the submission of the offers, unless no other period of validity has been specified in the call for tender or in the offer. Deliveries shall be made within 12 months after the validity of the offer.

2.2. Tender documents must not be duplicated nor made available to third parties without the permission of Seller.

3. Order of Priority

Contract documents shall be compatible. If Contract documents are found to be conflicting in their content, the order of authoritative priority for documentation shall be as follows unless otherwise specified in the Contract:

- the accepted offer and its appendices
- the Contract, its appendices, and minutes of Contract negotiation meetings, or in their absence, a written order, or in its absence, an order confirmation
- these General Conditions of Sale and Delivery
- the call for tender and additional written explanations prior submission of tender.

4. Formation of Contract

4.1 A sales agreement shall be concluded and the Contract shall be binding upon the Seller only after Seller’s written Confirmation of Order. In the event where no written Confirmation Order is issued, Buyer’s delivery of Goods order together with Seller’s invoice and shipping documents pertaining such delivery order together shall constitute the Confirmation of Order.

4.2 A Contract which does not accurately specify the delivery time, or other specifications needed for delivering the Goods (such as information on products, amounts or sizes), shall not become binding upon Seller until the missing delivery times or specifications have been agreed upon and confirmed by Seller’s written Confirmation of Order.

4.3 No order for Goods placed by the Buyer and accepted by the Seller may be cancelled or deferred without the prior written consent in writing by the Seller.

5. Prices

5.1 The price shall be a fixed price unless otherwise specified. All prices are net prices including standard packaging but excluding the cost of transport. The price refers to the price excluding value-added tax (VAT). The value-added tax is calculated from each delivery’s price as an actual payable tax.

5.2 Prices listed in price lists or catalogues are subject to alteration without notice, unless they are expressly designated as firm for a specific period. Prices given in quotations are in force during the validity time mentioned in the quotation and not binding for repeat orders.

5.3 Price changes caused by legislative actions of state authorities (law, ordinance, cabinet or ministry decision),

- which have originated following submission of the offer, or in other cases subsequent to the signing of the Contract,
- which cannot have been taken into account, either in the preparation of the offer, or equivalently in the preparation of the Contract
- which have significant and immediate effect on the performance specified in the Contract

shall be taken into account in the price as an additive factor if their combined effect is at least 0,5 % of the price and if such claim is presented to the Buyer within one (1) month of the delivery.

5.4 The Seller shall have the right to interrupt deliveries and require negotiations to check the prices due to a remarkable increase of material costs.

5.5 The Buyer shall be liable for any and all charges, taxes or other duties levied in respect of transport of the Goods unless otherwise agreed.

6. Payment

6.1 The price shall be paid against invoicing according to the Contract and agreed time schedule.

6.2 The Seller is entitled to demand a guarantee from the Buyer to secure correct payment.

6.3 If the Buyer does not pay the agreed price within the agreed time limit, the Seller is entitled to charge delay interest at a rate of 10% p.a. for the unpaid amount between the due date and the actual date of payment, unless otherwise specified in the Contract.

6.4 If the Buyer is delayed in making an agreed payment, the Seller is entitled to postpone further fulfilment of its contractual obligations until agreed payment is made by the Buyer.

7. Transfer of Ownership Rights

7.1 Ownership rights shall be transferred to the Buyer when the Contract price, together with any possible interest thereto, has been paid in full. The Buyer shall assist Seller in taking any measures required to protect Seller's right of property or such other right.

7.2 If the payment has not been performed according to the agreed payment schedule despite Seller's written request, or if there are justifiable ground to doubt the Buyer's ability to pay, or if the Buyer is unable, despite written request, to deposit a security, the Seller may refuse from delivery of Goods and may, at the Buyer's expense, repossess Goods already supplied to the Buyer.

8. Transfer of Risk

8.1 Risk shall be transferred to the Buyer when the Goods have been turned over to the Buyer according to the Contract, or when they have been assigned to an independent carrier for delivery unless otherwise specified between the Parties.

8.2 If, through the fault of the Buyer, the Goods have not been delivered by the agreed time, risk will be transferred to the Buyer, when the Seller has performed those duties, required of him by the Contract, that enable the handing over of the Goods. In that case, the Buyer shall be responsible for insuring the Goods.

8.3 Storage of the Buyer's Goods on the Seller's premises shall be agreed upon in writing, and their separation shall be announced to the Buyer.

9. Condition of Supplied Goods

- 9.1 The Goods shall, in their genre, quantity, quality, other properties, as well as in their packaging and product code identification, correspond to what can be considered to have been agreed upon.
- 9.2 The Seller shall submit necessary instructions for use, installing and assembly of the Goods that have been drafted by the Seller on a general level (“General Instructions for Use and Assembly”). In spite of these instructions, all technical advice or assistance or instructions in reference to use or installation of the Goods shall be given and accepted at Buyer’s risk. The Buyer is solely responsible for the adherence of all local rules for the installation, use or assembly of Goods established in the Buyer’s country of origin or other country where the Goods are being placed.

10. Delivery

Delivery terms in the Contract shall be specified using established supply clauses such as, for example, the supply clauses used in Incoterms 2010.

11. Patents and other Industrial Rights

The Seller shall be responsible for any requirements and obligations connected with patent or other industrial rights of the delivered Goods so that these shall not result in any expense or inconvenience for the Buyer.

12. Seller’s Responsibility for Defects and Omissions

- 12.1 The Seller shall be responsible for defects in Goods that have been present in Goods at the time of transfer of risk to the Buyer.
- 12.2 The Buyer loses his right to claim, if the Buyer has not notified the Seller of the defect within 14 days following the detection of the defect, or following an inspection of the Goods in which the defect should reasonably have been detected. Such Buyer’s notification includes the Seller’s product identification code.
- 12.3 The Seller is not liable towards the Buyer, if the amount of the Goods specially produced in the order of the Buyer exceeds or falls short of the agreed amount by 10 %.
- 12.4 The Seller shall, upon receipt of the Buyer’s claim, either repair the defect or carry out a replacement delivery. The Buyer may only return Goods to the Seller for credit if a prior written approval or return has been obtained by the Seller.
- 12.5 The Seller shall not be held responsible for defects resulting from (i) improper or incorrect installation or assembly of the Goods by the Buyer, (ii) failure to follow Seller’s instructions and advise in assemble or maintenance, (iii) modification or alteration of the Goods by the Buyer that have not been authorized by the Seller, (iv) transport of Goods under responsibility of the Buyer, (v) the Goods have been subjected to forces in excess of maximum forces for which the Seller has specified the Goods, (vi) the Goods have been subjected to sharp object or abrasive surfaces or substances, or (vii) the Goods have been subjected to abuse, misuse, use for a purpose other than their intended purpose, or (viii) improper or incorrect maintenance, negligence or accident or (viii) other similar reasons.
- 12.6 The Seller shall be liable for personal injury only if it is proved that such injury was caused by negligence in Seller’s conduct.
- 12.7 The Seller shall not be liable for damage to property occurring while the Goods are in possession of the Buyer. Nor shall the Seller be liable for damage to products manufactured by the Buyer, or to other products or which the Seller’s products form a part.

12.8 The Seller shall not be responsible for consequential damages, such as but not limited to consequential loss, any loss of use, loss of profit or loss of contract or any other direct or indirect damage for any economical loss.

12.9 In any event, the Seller's liability shall not exceed the total value of the Seller's delivery.

13. Buyer's Obligations

13.1 The Buyer is obliged to provide assistance so that the Goods may be manufactured and delivered as agreed according to the time schedule.

13.2 The Buyer is obliged to perform an adequate inspection of the Goods immediately after the delivery. The Buyer shall within 14 days after receiving the Goods, notify the Seller in writing of defects and/or delivery shortfall, which he has noticed or should have noticed at an adequate arrival examination of the Goods. All other warranties or conditions except those stated herein as to the Goods or their fitness for any purpose are excluded except where expressly agreed in writing.

13.3 The Goods suspected to be defected shall not be used. The Buyer agrees to store and return any defected Goods for Seller's investigations at Seller's cost, should the Seller so request.

13.4 The Buyer may not base a claim on a defect in the Goods, if the Buyer has not notified to the Seller of the defect within a reasonable period of time following the detection of the defect, or following an inspection of the Goods in which the defect should reasonably have been detected.

13.5 The Buyer shall be responsible for inspecting the Goods before installation. Seller shall not be liable for damages that are caused by installation of defective Goods in case such defect was noticed or should have been noticed prior to its installation.

13.6 Where the sale of Goods is so-called "seconds" and/or "duo" quality, no claims pertaining to the quality of Goods are accepted by the Seller.

13.7 The Buyer shall take care of the packaging waste of the Goods.

14. Delivery Terms, Time Schedule and Delays

14.1 Where no indication is given in the contract, the delivery term shall be Ex Works at the warehouse of Karelia-Upofloor Oy according to Incoterms 2010.

14.2 Delivery in instalments and delivery afterwards shall be admissible. When the Goods are delivered in instalments, each instalment shall be considered as a separate contract.

14.3 The Buyer is not entitled to cancel the contract regarding remaining deliveries due to delay, defect or other failure in the delivery of an earlier instalment.

14.4 Quoted delivery times are only approximate. The Seller shall not be liable for any delay caused by reasons outside the Seller's control. If the Seller is unable to ship the Goods for reasons outside his control, he shall store the Goods at the risk and cost of the Buyer.

14.5 If the delivery cannot be completed either partially or in its entirety, or if Goods cannot be received according to the agreed time schedule, or if it appears likely that this kind of delay will occur, the contracting party shall immediately inform the other party.

14.6 Either contracting party, upon receiving knowledge of any delay, shall immediately provide written notification explaining the reason for the delay as well as a new delivery date.

14.7 The Seller shall not be liable for either direct or indirect damages resulted due to the delay in the delivery of Goods.

14.8 Should the Buyer fail to take the Goods over at the agreed time, the Seller shall be entitled to receive from the Buyer compensation for storage, transportation, insurance and other costs and damages that are caused to the Seller.

15. Force majeure

15.1 Either contracting party shall have the right to receive a reasonable extension for the time required to perform their contractual duties if their performance is prevented or impeded to an unreasonable degree by acts of war, insurrection, export or import prohibitions, natural catastrophes or exceptional weather conditions, interruptions in public transport or energy distribution fire, labour dispute, or other equally significant conditions.

15.2 If the procurement of raw materials, products, or machinery necessary for the manufacture of the Goods is hindered or delayed for any one of the aforementioned obstacles that lie beyond the control of the Seller, and it is not possible for the Seller to perform these procurements elsewhere without unreasonable loss of time or expenditure, the Seller shall be granted a necessary and sufficient extension to his delivery date. If either contracting party has not informed the other party in writing immediately following the detection of an insurmountable obstacle, it cannot be used as basis for exemption.

16. Termination of contract

16.1 If either contracting party is found to be guilty of gross negligence in the performance of their contractual duties, the other contracting party shall have the right to terminate the contract, after having first provided written notification, if the negligence has not been corrected within a reasonable time.

16.2 If either contracting party is in such a financial condition that there exist justifiable reasons to doubt the contracting party's ability to perform its contractual duties, the other party shall have the right to terminate the contract.

16.3 If the Buyer has failed to perform his payment obligations, the Seller has the right, as an alternative to termination of the contract, to interrupt deliveries until the overdue invoice has been paid or its payment terms have been agreed. In that case the agreed delivery date shall be moved forward by an equivalent period of time.

16.4 When the contract is terminated according to Sections 16.1 or 16.2, the other contracting party shall have the right to receive, along with any penalty fees for delays, compensations for expenses and damages resulting from unperformed contractual duties. The total amount of compensation shall not exceed the quantity of the afflicted damage.

16.5 Either contracting part shall have the right, without liability to compensation, to terminate the contract if it is necessary to suspend the procurement or delivery for a longer period in the event of war, troop mobilisations, or any other similar unavoidable event. Either contracting party shall be obliged to immediately inform the other contracting party in writing regarding the presence of an insurmountable obstacle.

17. General

17.1 Even if individual provisions of the contract are or become ineffective, the remaining parts of the Contract shall remain unaffected.

17.2 Neither contracting party shall have the right to transfer the Contract to a third party unless otherwise specified.

18. Disputes and Applicable Law

- 18.1 All disputes arising out of or in connection with the present contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce (ICC) by one or more arbitrators appointed in accordance with the said Rules. Venue of the arbitration is Helsinki, Finland, and language of the proceedings is English.
- 18.2 However, the Seller is also entitled to start legal action at the court of jurisdiction at the legal business domicile of the Buyer.
- 18.3 The Contract is subject to Finnish law excluding the referral rules.