

TERMS AND CONDITIONS OF SLEEPWELL KAUFFMANN GMBH

- 1. Scope of Application**

The seller's terms and conditions set out below are applicable to all contracts executed between buyer and seller on the supply of goods and are valid also for all future business relationships, even if not expressly agreed again.
- 2. Quotes, Confirmations of Orders**

Seller's products are displayed in brochures, catalogues and prospectuses without engagement and on a non-binding basis. Legally binding contracts are executed exclusively if seller issues a confirmation of order. Should the buyer not receive a separate confirmation of order, seller's delivery note shall constitute such confirmation.
- 3. Default in Delivery and Performance / Unilateral Changes in Services**
 - 3.1 Delivery dates shall be binding only if these were agreed in writing between seller and buyer. The agreed time for delivery is reasonably extended if seller's suppliers do not timely and completely provide seller with all materials that are necessary to produce the ordered products or if seller cannot observe the time limit due to force majeure etc. Buyer must certainly accept minor delays in delivery without a right to damages or cancellation of the contract.
 - 3.2 Buyer shall tolerate objectively justified and reasonable changes in seller's service obligations.
 - 3.3 Seller may make partial deliveries and issue the respective partial invoices.
- 4. Transfer of Risk, Shipment**
 - 4.1 Seller's sales prices do not include costs of delivery and supply.
 - 4.2 Unless expressly agreed otherwise, in case of deliveries transport costs and transport risk shall be the buyer's responsibility.
 - 4.3 The goods will be insured only at the buyer's express written request.
- 5. Seller's Reservation of Title**

Seller will retain title to the goods pending full payment. Any reservation of title shall be regarded as withdrawal from the contract only if an express notice of withdrawal is issued.
- 6. Buyer's Payments / No Set-off**
 - 6.1 All payments shall be made directly by the buyer. Seller's invoices are due for payment within 30 days after delivery of the goods. A cash discount is acceptable only in connection and on the basis of a corresponding agreement. Even in case of default in payment for which the buyer is not responsible, the seller may charge default interest at a rate 10% above the basic interest rate. In case of default, buyer shall also reimburse dunning and collection charges that will arise.
 - 6.2 The buyer may not retain payments if the goods are flawed, unless the entire delivery is obviously flawed.
 - 6.3 The buyer may not set off in any manner whatsoever his own claims against the seller's claims.
- 7. Buyer's Warranty Rights and Complaints**
 - 7.1 **The seller has the right to independently determine the form of warranty (improvement, exchange, price reduction or cancellation of the contract).**
 - 7.2 The buyer shall prove that a flaw has already existed upon delivery of the goods. Section 924 of the Austrian Civil Code does not apply.
 - 7.3 The buyer shall inspect the goods immediately after these were delivered, and he shall notify any discovered flaws no later than within 14 days after delivery of the goods by written notice to the seller, indicating form and scope of a flaw. Hidden flaws shall be notified immediately after these were discovered.
 - 7.4 If the buyer does not or does not timely issue a complaint, the goods shall be deemed approved. In those cases, the buyer cannot assert warranty claims or damages, including consequential damage and the right to avoid the contract on the grounds of error.
 - 7.5 The warranty period is generally six months from delivery. The buyer may not retain payments or any other contractual performance due to warranty claims.
 - 7.6 Down tightness:

Down comforters and pillows are high quality natural products and are so tested. For natural materials some scattered down outlets are normal. Down proof according IDFL Test-Method 20-1
Rotating box (version: April 2014)
- 8. Damages**
 - 8.1 The buyer may not assert damages in case of slight negligence, except in cases of personal injuries. Damage claims towards the seller will become statute barred six months after the damage and the damaging party were identified, and in any event within two years after provision of the supplies or services.
 - 8.2 The claimant cannot assert recourse claims based on "product liability" pursuant to the Product Liability Act, unless he can prove that the flaw was caused in the seller's sphere or was at least due to the seller's gross negligence.
- 9. Place of Performance, Choice of Law, Jurisdiction, Severability**
 - 9.1 Place of performance for both parties in respect of all obligations arising from the contractual relationship shall be the seller's registered offices. The contract shall exclusively be governed by and construed in accordance with Austrian law, to the exclusion of the UN Sales Convention and all conflict of law rules.
 - 9.2 All disputes arising from this contract, including disputes on its existence or non-existence and its prior and subsequent effects, shall be subject to the jurisdiction of the courts having subject-matter jurisdiction at the seller's registered offices. If those disputes involve parties with branch offices in a member state of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (= UNCITRAL), these shall finally be decided according to the rules of arbitration of the International Arbitral Centre of the Austrian Chamber of Commerce (Vienna rules) by three arbitrators appointed in accordance with those rules, subject to the application of the UN Sales Convention. The language to be used in the arbitral proceedings shall be English. The seller may also sue the buyer at buyer's general venue according to the laws applicable at that venue.
 - 9.3 Should any term hereof be invalid in whole or in part for any reason whatsoever, the remaining terms hereof shall thereby not be affected.
 - 9.4 All agreements, subsequent changes, amendments and side agreements shall be made in writing to be effective.