

## STANDARD TERMS AND CONDITIONS FOR OUTDOOR KITCHENS

These General Standard Terms and Conditions of Business (hereinafter also referred to as Terms and Conditions) are an essential and integral part of every offer and every agreement made with us (VILLA WESCO S.L.U., represented by the managing director Egbert Neuhaus, of Bahnhofstr. 205, 59759 Arnsberg; hereinafter also referred to as "Seller"). Specific terms and conditions which apply only in business to business transactions are identified as such. Any general standard terms and conditions of purchase of buyer that contradict these Terms and Conditions are not binding upon us unless they have been accepted by us in advance in writing. Verbal collateral agreements, additions or amendments to these General Standard Terms and Conditions are not valid unless confirmed by us in writing. Our offers are without obligation.

In business to business transactions (with enterprises, legal entities under public law or special funds under public law within the meaning of section 310(1) of the German Civil Code [BGB]) the present Terms and Conditions apply including in those cases where we make an unconditional delivery to buyer in the knowledge of the existence of buyer's conflicting terms or terms that differ from our own Terms and Conditions. All understandings entered into between us and buyer for the purpose of executing the contract must be laid down in writing in the contract. Our Terms and Conditions will also govern all and any future transactions with the buyer in business to business transactions as far as they are legal transactions of a related nature.

### Section 1 – Definitions

Buyer is a consumer within the meaning of the law, if and insofar as buyer concludes the legal transaction for purposes predominantly outside buyer's trade or activities as an independent contractor. On the other hand, an 'entrepreneur' is deemed to be an individual or legal entity or a partnership having legal personality acting in the exercise of its commercial or self-employed professional activity when concluding the contract.

### Section 2 – Conclusion of contract

- (1) The contract is entered into in the respective store of Seller. The substance of the contract results from the purchase order form to be signed by the buyer.
- (2) In the case of goods not in stock Buyer shall be bound by the purchase order (contractual offer) for three weeks.
- (3) On expiry of that time the contract shall be formed unless Seller has previously declined the contractual offer in writing.
- (4) Section 2 notwithstanding, the contract shall be formed before the time of three weeks has elapsed if
  - the contract has been signed by both parties, or
  - Seller has accepted the purchase order (contractual offer) in writing, or
  - Seller accepts advance payments of the purchase price.

- (5) Seller retains all title to and copyright in all documents made available to the buyer in connection with the purchase order, such as illustrations, drawings, calculations and other documents. This also applies to any written documents that are designated “confidential”. Any disclosure of such confidential documents to third parties requires the Seller’s the express written consent.

### Section 3 – Prices

- (1) The prices indicated by Seller in connection with the purchase order form are final prices.
- (2) Special additionally agreed works not included in the purchase price, e.g. work going beyond mere assembly, will be charged separately and will be due for payment not later than upon delivery and/or acceptance. Among other things, this includes any filler panel work requested by buyer.

### Section 4 – Prices and terms of payment in business to business transactions

- (1) Unless otherwise provided in the order confirmation, prices are “ex works”.
- (2) Value-added tax at the legal rate is not included in the prices; it is shown as a separate line item on the invoice at the effective rate on the date of invoicing. Any discount may be deducted only if a special written agreement has been made.
- (3) Unless otherwise provided in the order confirmation, the purchase price is due and payable net (without deduction) within 30 days from the date of the invoice. The statutory provisions concerning consequences of default in payment shall apply.
- (4) Buyer shall not be entitled to set off any amount unless buyer’s counterclaims have been judicially determined, are undisputed, or have been acknowledged by Seller. Moreover, buyer has a right of retention insofar as buyer’s counterclaim is based on the same contract.

### Section 5 – Reservation of changes

- (1) Series production furniture is sold as per sample or illustration. Items made to order in accordance with Section 21 are sold according to the relevant contractual agreement.
- (2) Unless otherwise agreed at conclusion of contract, there is no entitlement to delivery of any display pieces purchased.
- (3) Quality claims in respect of the goods ordered may be made only to the extent that they can be made equitably or in accordance with ordinary trade usage in respect of goods in the same price range as the goods ordered. This shall apply especially with regard to protection of changes in the goods caused by weather conditions.
- (4) Customary and reasonable variations of colour and grain in wood surfaces, wooden components, aluminium surfaces, stone materials – including without limitation ceramic surfaces, compact boards and lacquered surfaces – are reserved. Buyer acknowledges and agrees that such surfaces are natural products and as such are subject to natural variations in colour and surface structure which do not constitute a defect of the goods.

- (5) Leather and textiles (e.g. upholstery fabrics and decorative fabrics) as well as polyester and other artificially produced fabrics are also subject to reasonable variations in accordance with ordinary trade usage and acceptable to the customer with regard to minor variations in the finish compared with leather and fabric samples and/or patterns of artificially produced fabrics, in particular concerning the shade of colour. Buyer insofar acknowledges and agrees that such products are products that are subject to variations in colour and surface structure which do not constitute a defect of the goods.
- (6) Measurements are also subject to deviations in accordance with ordinary trade usage and acceptable to buyer.

#### Section 6 – Assembly

- (1) Provision of assembly services means the workmanlike, precisely fitting and proper assembly of the outdoor kitchen. Gas and electric appliances as well as water and wastewater devices are prepared for connection by Seller to the extent such appliances and devices are part of the goods. In addition, the electrical systems of the outdoor kitchen are prepared by Seller for connection to earth. Seller's employees are not allowed to carry out the connections of the kitchen and/or to connect the kitchen, including the frame, to earth. Buyer shall engage a local expert to carry out such works.
- (2) It is the responsibility of buyer to prepare the site for the proper assembly and/or erection of all elements of the outdoor kitchen. Unless otherwise agreed, assembly requires a horizontal floor. Where structural components require a solid wall for attaching or hanging such components, buyer shall have a reasonable obligation to obtain information prior to the beginning of the works about the type and layout of supply lines, the load carrying capacity of the walls and the floor, and any particularities (e.g. by making inquiries with third parties such as the property manager, the caretaker etc.). Buyer shall inform Seller thereof without request prior to the beginning of the assembly works.
- (3) If Seller has concerns about the suitability of the installation site chosen by buyer, Seller shall inform buyer before assembly. However, Seller does not warrant the suitability of the installation site.
- (4) Seller's staff are not authorised to carry out work beyond the scope of Seller's obligations to perform under the contract. If such work is nevertheless carried out by Seller's staff at buyer's request, this shall not affect the contractual relationship between Seller and buyer. In such a case, Seller reserves the right to claim an adequate additional compensation for any additionally performed work.

#### Section 7 – Delivery and shipping costs

If delivery/dispatch of the goods by Seller or by the appointed carrier of Seller has been agreed, such delivery/dispatch shall include any necessary packaging. Lorry access and unloading of lorry must be guaranteed by buyer. If buyer requests special packing or a special shipping method, the extra expenses arising will be invoiced separately. Notwithstanding the above, the costs of delivery/shipping are agreed with buyer depending on the particular scope of the goods ordered by buyer and the place of delivery.

#### Section 8 – Delivery period

- (1) The delivery period is agreed separately between the parties in the purchase order and/or laid down in the relevant offer. If a down payment has been agreed, such period begins at the earliest once Seller has received the down payment.
- (2) If Seller is unable to meet the agreed delivery period, buyer shall grant Seller an appropriate extension of the delivery period, beginning on the date of receipt of buyer's written default notice or, in the event of a specific date set for delivery, upon expiry of that date. Buyer is entitled to cancel the contract, if Seller has not delivered by expiry of the extended delivery period.
- (3) The delivery period is extended accordingly in case of disruptions to Seller's or its suppliers' operations for which Seller is not responsible, including but not limited to strikes and lockouts and instances of force majeure based on an unforeseeable event for which the affected party is not responsible. Buyer shall be entitled to rescind the contract only if in such cases buyer sends a written delivery reminder after expiry of the agreed delivery period and delivery then does not take place within an appropriate extension of time to be set from receipt of buyer's written reminder by Seller. In the event delivery by a certain calendar day has been agreed, the extension period to be set shall commence upon expiry of that calendar day.
- (4) This does not affect the statutory provisions concerning compensation in lieu of performance.

#### Section 4 – Delivery period in business to business transactions

- (1) The delivery period specified by us begins only once any technical issues have been clarified.
- (2) Furthermore, the fulfilment of our obligation to deliver requires timely and proper performance of all obligations buyer may have. Seller reserves the defence of non-performance of the contract.
- (3) If buyer defaults on acceptance or through its fault breaches other obligations to co-operate, Seller is entitled to demand compensation for any damage or loss incurred by Seller, including for any extra expenses. Seller reserves the right to assert further claims.
- (4) If the conditions under paragraph (3) herein above are in place, the risk of accidental loss or damage of the goods passes to the buyer at the time when such default in acceptance or other debtor's default occurs.
- (5) Seller shall be liable in accordance with the legal provisions if the underlying contract for sale constitutes a firm deal within the meaning of section 286(2) no. 4 of the BGB or section 376 of the German Commercial Code (HGB). Seller shall also be liable in accordance with the legal provisions if buyer, as a result of a default in delivery for which Seller is responsible, is entitled to claim that its interest in further performance of the contract has lapsed.
- (6) Seller shall also be liable in accordance with the legal provisions if the default in delivery is based on intentional or grossly negligent breach of contract for which Seller is responsible; any fault on the part of Seller's legal representatives or vicarious agents is attributable to Seller. If the default in delivery is based on a grossly negligent breach of contract for which Seller is responsible, Seller's liability for damages is limited to the foreseeable, typically occurring damage or loss.
- (7) Seller shall also be liable in accordance with the legal provisions to the extent that a default in delivery for which Seller is responsible has been caused by a culpable breach of a material contractual obligation; however, in such case, Seller's liability for damages shall be limited to the foreseeable, typically occurring damage or loss.
- (8) Notwithstanding the above, in case of default in delivery, Seller shall be liable for a lump sum compensation in the amount of 0.5% of the delivery value for each complete week of default in

delivery, however not more than an aggregate amount equal to 5% of the delivery value; the foregoing shall not apply if it is evident from the respective circumstances that buyer has not incurred any damage.

#### Section 10 – Retention of title

- (1) The goods remain Seller's property until full discharge of all obligations arising from this contractual relationship. Buyer shall safeguard Seller's title accordingly even if the goods delivered are not destined directly for buyer but for a third party and buyer shall expressly draw the consignee's attention to such retention of title.
- (2) Any change of location and any intervention by a third party, in particular any attachment, shall be notified to Seller in writing without delay, enclosing the bailiff's record in the case of attachment.
- (3) In the event that buyer fails to meet its obligations Seller shall have the right to cancel the contract and reclaim the goods.

#### Section 11 – Retention of title in business to business transactions

- (1) Seller retains title in the goods until receipt of all payments from the business relationship with buyer. In the event of breach of contract on the part of buyer, in particular in the event of default in payment, Seller is entitled to take back the goods. Seller's taking back the goods constitutes rescission of contract. Seller is entitled to turn into cash any goods taken back by Seller; the proceeds of realization, less appropriate realization expenses, are offset against buyer's liabilities.
- (2) Buyer shall handle the goods with due care and shall, without limitation, insure the goods against fire and water damage and theft at its own expense, with the insured sum being adequate to cover the replacement value. If necessary, buyer shall carry out all maintenance work and servicing in a timely manner and at buyer's own expense.
- (3) In the event of seizure or other interventions by third parties, buyer shall inform Seller immediately in writing so that Seller may bring an action in acc. with Section 771 of the ZPO (German Code of Civil Proceedings). If such third party is not able to reimburse Seller for reasonable judicial and extra-judicial costs resulting from an action brought under section 771 of the ZPO, buyer shall be liable for any loss incurred by Seller.
- (4) Buyer is entitled to resell the goods in the ordinary course of business; provided, however, buyer hereby assigns to Seller all claims, up to the amount of the total amount of Seller's invoice (including VAT), buyer may have against its customers or third parties which accrue to the buyer from the resale of the goods, regardless of whether such goods have been resold without or after further processing. Buyer retains its right to collect its above-mentioned claims notwithstanding the assignment thereof. This does not affect Seller's own right to collect the claims itself. Seller agrees that Seller shall not collect such claims; provided, however, that buyer meets its payment obligations from any consideration collected and provided further that buyer does not default on payment and that no petition in bankruptcy has been filed against buyer and/or that buyer does not suspend payment. If any of the above does occur, Seller is entitled to demand that buyer notifies Seller of the claims assigned and of the identity of the relevant debtors, that buyer provides Seller with all details necessary for collection, that buyer hands over the relevant documents and informs the debtors (third parties) of such assignment.

- (5) Any processing or transformation of the goods by buyer is always undertaken for Seller. If the goods are processed together with other items not owned by Seller, Seller shall acquire co-ownership in the resulting new item in proportion with the relation between the value of the goods (total amount of the invoice including VAT) and the value of such other items processed at the time of the processing. The item resulting from such processing is subject to the same provisions as the goods supplied subject to reservation.
- (6) If the goods are inextricably mixed with other items not owned by Seller, Seller shall acquire co-ownership of the resulting new item in proportion with the relation between the value of the goods (total amount of the invoice including VAT) and the value of such other mixed items at the time of the mixing. If mixing occurs in such a way that buyer's item is to be considered the major component, it is agreed that the buyer shall grant Seller proportional co-ownership thereof. Buyer shall hold the resulting exclusively owned goods or jointly owned goods in custody for Seller.
- (7) To secure Seller's claims against buyer, buyer shall also assign to Seller any claims which may arise against a third party as a result of any connection of the goods with any real property.
- (8) At buyer's request, Seller shall release any security due to Seller to the extent that the realisable value of Seller's security exceeds the claims to be secured by more than 20%; provided, however, that Seller is entitled to select the security to be released.

#### Section 12 – Passage of risk to consumers

- (1) In case of delivery and/or dispatch of the goods by Seller or the carrier engaged by Seller as per Section 7 herein above, the risk of having to pay the purchase price despite loss or damage passes to buyer upon delivery of the goods to buyer, if buyer is a consumer. In all other cases the risk passes upon transfer of the goods by Seller to the carrier.
- (2) In the case of collection of the goods using buyer's own vehicles or by a carrier engaged by buyer the risk passes to buyer upon handover of the goods at Seller's business premises.

#### Section 13 – Passage of risk in business to business transactions

- (1) Unless otherwise provided in the order confirmation, delivery shall be "ex works".
- (2) If the goods are shipped to buyer at buyer's request, the risk of accidental loss or damage of the goods shall pass to buyer upon dispatch and in any event not later than at the time when the goods leave the plant/warehouse. This shall apply regardless of whether the shipment of the goods is effected at the place of performance, and regardless of which party bears the freight charges.

#### Section 14 – Default in taking delivery

- (1) Seller shall be liable in accordance with the legal provisions in the event of damages arising from default in acceptance.
- (2) If, upon expiry of an appropriate extension of time to be set in writing with the threat of rescinding the contract or demanding compensation in lieu of performance upon expiry without result, buyer remains silent or expressly refuses to pay and/or take delivery without legal grounds, Seller's claim to performance of the contract shall subsist. Instead of demanding performance, Seller can cancel the contract and/or demand compensation in lieu of performance.

- (3) Buyer shall compensate Seller for any damage incurred by Seller as a result of default caused by buyer. This includes, without limitation, reasonable and necessary storage and forwarding costs.
- (4) Seller can demand 25% of the purchase price without any deduction by way of compensation in lieu of performance in the event of buyer's default under para. 2 hereof, if buyer is an entrepreneur or cannot prove that no loss or a smaller loss than that has occurred. Seller is entitled to prove and claim that a higher damage has been incurred.

#### Section 15 – No right of revocation

- (1) If buyer is a consumer, the statutory right of cancellation does not apply to distance contracts for the delivery of non-prefabricated goods which were made on the basis of an individual selection or decision made by buyer or which are clearly tailored to buyer's requirements.
- (2) If buyer is an entrepreneur, the right of cancellation is expressly excluded.

#### Section 16 – Cancellation of duty to deliver

- (1) Seller does not need to deliver if the manufacturer has ceased production of the goods ordered or in cases of force majeure insofar as such circumstances arose only after conclusion of contract, were not foreseeable at the time of concluding the contract, and/or Seller is not responsible for the failure to deliver and, furthermore, if Seller can prove that it has endeavoured in vain to obtain goods of the same kind. Seller shall immediately notify buyer of the above-mentioned circumstances and shall reimburse any consideration already paid without undue delay.
- (2) Seller has a right of rescission if buyer has provided inaccurate information concerning facts material to its creditworthiness that are justifiably likely to jeopardise Seller's claim for performance. The same applies if because of objective insolvency buyer suspends payments or insolvency proceedings are commenced in respect of its assets.

#### Section 17 – Taking back goods

- (1) In the event of rescission of contract in accordance with the law and where Seller voluntarily takes back goods delivered Seller is entitled to compensation for expenses, transfer for use and depreciation in accordance with the applicable legal provisions.
- (2) For depreciation and transfer for use of the goods delivered, in the absence of a consumer credit transaction the following flat rates shall apply:
 

during the 1st six month period	35% of the purchase price without deduction
during the 2nd six month period	45% of the purchase price without deduction
during the 3rd six month period	55% of the purchase price without deduction
during the 4th six month period	65% of the purchase price without deduction
during the 3rd year	80% of the purchase price without deduction
during the 4th year	90% of the purchase price without deduction
during the 5th year	100% of the purchase price without deduction
during the 6th year	100% of the purchase price without deduction
- (3) The above provisions do not apply to unwinding of the contract as a result of the buyer exercising its rights of cancellation and/or revocation.

## Section 18 – Warranty

- (1) The goods offered for sale by Seller are subject to the statutory warranties (cf. sections 434 et seq. of the German Civil Code [BGB]). The warranty period for goods delivered by Seller is 12 months, if buyer is an entrepreneur.
- (2) The warranty does not cover damage for which buyer is responsible, for example damage sustained on buyer's premises due to natural, including without limitation weather-caused, wear and tear, damp, high temperature, intensive exposure to sunlight or artificial light, other temperature or weather factors or improper treatment.
- (3) Save as provided herein, any warranties given herein are not affected.
- (4) Buyer acknowledges that in order to avoid damage or loss caused by the weather, maintenance works need to be performed by buyer depending on the respective local conditions. Such works may include without being limited to:
  - Checking and if necessary greasing or lubricating and adjusting fittings and moving parts;
  - regularly checking sealing joints;
  - having checked electrical, gas and water connections by a local expert from time to time.

Such works are not part of the purchase order. Maintenance work not performed may affect the service life and functioning of the components without warranty claims against Seller being created as a result.

## Section 19 – Liability for defects in business to business transactions

- (1) Buyer is entitled to make claims based on defects only if buyer has duly fulfilled its obligation to inspect the goods delivered and to make a complaint in respect of a defect as provided for in section 377 of the German Commercial Code (HGB).
- (2) Insofar as the goods delivered have a defect that existed already at the time of the passing of risk, and provided that a complaint in respect of such defect was made in due time, Seller shall either remedy the defect or deliver a new item free of defects. In the event of a rectification of defects or a replacement delivery, Seller shall bear all expenses necessary for such subsequent performance, including, but not limited to, transport and travel costs, labour costs and material costs, but only to the extent that such costs are not increased due to the fact that the goods were moved to a place other than the place of performance.
- (3) If supplementary performance has failed, buyer may, at its option, demand cancellation of the contract or reduction in the purchase price.
- (4) Seller shall be liable according to the legal provisions if buyer asserts claims for damages based on intent or gross negligence, including intent or gross negligence on the part of Seller's legal representatives or vicarious agents. If Seller is not accused of any intentional or grossly negligent breach of duty, liability for damages shall be limited to the foreseeable, typically occurring damage.
- (5) Seller shall be liable in accordance with the legal provisions in case of a culpable breach of a material contractual obligation committed by Seller; however, even in such case, Seller's liability for damages shall be limited to the foreseeable, typically occurring damage.
- (6) A breach of a material contractual obligation is any breach relating to an obligation the performance of which buyer has relied upon and indeed was entitled to rely upon.



- (7) To the extent that buyer is entitled to compensation of damages in lieu of performance, Seller's liability, including with regard to paragraph (3) herein above, shall be limited to the foreseeable, typically occurring damage or loss.
- (8) Liability for culpable injury to life, bodily injury or injury to health shall be not be affected by the above provisions; this also applies to mandatory liability under the Product Liability Act (Produkthaftungsgesetz).
- (9) Save as otherwise provided herein above, any further liability is excluded.
- (10) Any claims for defects fall under the statute of limitations after the expiry of 12 months from the passage of risk.
- (11) The limitation period in case of delivery recourse pursuant to sections 478, 479 of the BGB remains unaffected; this limitation period is five (5) years from delivery of the defective item.

#### Section 20 – Liability in business to business transactions

- (1) Any liability for damages beyond the scope of liability provided for in Section 19 herein above is excluded regardless of the legal nature of the claim asserted. This shall apply particularly with regard to damage claims arising from a violation of a pre-contractual obligation (culpa in contrahendo) or from other breach of duty or with regard to tortious claims for property damage pursuant to section 823 of the BGB.
- (2) The limitation under paragraph (1) herein above shall also apply to the extent that buyer, instead of claiming damages in lieu of performance, demands reimbursement of expenditure incurred in vain.
- (3) Where Seller's liability for damages is excluded or limited, such exclusion or limitation of liability applies also to personal liability for damages on the part of Seller's employees, staff members, representatives or vicarious agents.

#### Section 21 – Made to order items

- (1) Goods that are not series-produced and/or not shown in price lists are deemed items made to order. Special colours and materials used at buyer's request are likewise deemed items made to order unless otherwise agreed in writing.
- (2) Seller retains all title to and copyright in illustrations, drawings, sketches, other documents and samples for items made to order; they shall be sent back without delay on request and shall not be passed on to a third party without Seller's consent.
- (3) Buyer shall be liable for ensuring that the use of drawings, sketches, samples and other documents supplied by buyer does not infringe any third-party rights.
- (4) Seller assumes no responsibility for defects in items made to order that are based on buyer's information, instructions or design specifications and design documents.

#### Section 22 – Final provisions; duty to inform

- (1) To the extent permitted by the law, any contracts between Seller and buyer are governed by the law of the Federal Republic of Germany to the exclusion of the United Nations Convention on the International Sale of Goods.
- (2) The languages of the contract are German, English and Spanish.
- (3) The place of jurisdiction for all disputes arising from any contract between buyer and Seller shall be Cologne (Germany) if buyer is a merchant, a legal entity under public law, or a public-law

special fund. However, Seller shall be entitled to take legal action against buyer at buyer's domicile.

- (4) In the event that any of the provisions contained in the contract are legally invalid, the remaining provisions shall remain in full force and effect. The invalid provisions shall be replaced by the relevant legal provisions, to the extent they exist. If this would be unreasonable for either party, the entire contract becomes invalid.

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