

# **General Terms and Conditions of Kurhausgastronomie Gerd Käfer and Roland Kuffler GmbH & Co KG**

## **1 Scope**

### 1.1

Our contract partners are hereinafter called customers, and Kurhausgastronomie Gerd Käfer & Roland Kuffler GmbH & Co KG is called KHG.

### 1.2

The following terms and conditions are a component part of all contracts that are concluded between the customer and KHG without the express objection on the part of KHG being required to any deviating contractual terms or restrictions from the customer.

### 1.3

General terms and conditions from the customer, changes to these terms and conditions and ancillary agreements and invalidation of this requirement for the contract to be in writing are valid only if KHG has expressly agreed to the same in writing.

## **2 Offer / Formation of the Contract / Prices**

### 2.1

Offers made by KHG to the customer are without obligation insofar as nothing to the contrary has been expressly agreed in writing.

### 2.2

Acceptance on the part of the customer, except in the event of a binding offer, must be confirmed by KHG in writing (order confirmation) in order for the contract to be legally effective.

### 2.3

Contractual changes and/or amendments shall be confirmed by KHG in order to become effective.

### 2.4

Employees of KHG are not authorised to make ancillary agreements or provide verbal confirmation that go above and beyond the content of the written contract.

### 2.5

Prices quoted by KHG are without respective legal VAT.

### 2.6

If KHG is to provide the service due as set down in the contract more than 4 months after conclusion of the contract, KHG reserves the right to adjust prices accordingly, if cost reductions or increases, in particular due to collective wage agreements or increases in the cost of material, occur 4 months after conclusion of the contract at the earliest. KHG shall provide proof of this to the customer upon request. If the adjusted prices exceed those first agreed by more than 5%, the customer has the right to withdraw from the contract.

## **3 Scope of Services and Supply**

### 3.1

Written confirmation by KHG as per paragraphs 2.2 and 2.3 is authoritative for the scope of delivery to be provided by KHG. The offer is authoritative in the case of a binding offer by KHG with time obligation and acceptance within the time limit.

### 3.2

Special guarantees for procurement, quality and durability are not assumed by KHG on principle, unless these are expressly named in the written confirmation by KHG in accordance with paragraphs 2.2 and 2.3 or in the case of a binding offer from KHG and acceptance within the time limit and included in the offer.

### 3.3

KHG is entitled to engage third parties to perform the contractually agreed services.

### 3.4

All of the objects and materials provided by KHG for the execution of the contract with the exception of the food and drinks already paid for by the customer are and remain the property of KHG. They shall be returned to KHG without delay after the end of the event which is the subject matter of the contract. Short quantities and damaged objects and materials shall be charged to the customer at the replacement price.

### 3.5

Drinks provided on a commission basis shall only be reaccepted if the containers/packaging is neither open nor damaged.

## **4 Breach of Duty**

### **4.1 Default**

#### **4.1.1**

The dates of delivery and service included in the confirmation as per paragraphs 2.2 and 2.3 or in an offer designated as legally binding and which is accepted within the time limit are binding as a matter of principle.

#### **4.1.2**

Observance of binding delivery and service dates on the part of KHG requires the punctual and correct fulfilment of contractual obligations by the customer. These include, in particular, the punctual receipt or provision by the customer of documents, required permits, compliance with the agreed terms of payment and performing of possible acts of cooperation. If these conditions are not fulfilled by the customer in time, the dates of delivery and service shall be appropriately deferred; this does not apply if KHG is responsible for the delay. This does not imply a change in the burden of proof to the disadvantage of the customer. If an appropriate deferral of the generally binding date of delivery and service is not possible because the continuance of the customer's interest in the contractual performance is inseparably connected to the date of delivery and service (fixed deal), paragraph 4.2.3 applies accordingly.

#### **4.1.3**

If the non-observance of a generally binding date of delivery and service is attributable to force majeure or unforeseeable, extraordinary circumstances such as strike, lockout, regulatory actions, political events in particular, etc., which KHG was unable to avert in spite of reasonable care taken in accordance with the circumstances of the individual case, the date of supply and delivery is deferred appropriately. This also applies if these circumstances occur at KHG suppliers or their sub-contractors. If an appropriate deferral of the generally binding date of delivery and service is not possible because the continuance of the customer's interest in the contractual performance is inseparably connected with the date of delivery and service (fixed deal), paragraph 4.2 applies accordingly.

#### **4.1.4**

Should KHG be in default with deliveries and/or services, their liability for damages shall be limited to 10% of the total contractual figure depending on the amount in the event of slight negligence. Further claims for damages exist according in paragraph Ziff. 5.

#### **4.1.5**

Should the customer be in default with acceptance, KHG is entitled to demand compensation for damages incurred; the risk of a possible deterioration in the quality and possible loss of objects supplied is passed over to the customer at the point in time when the acceptance default arises.

### **4.2 Impossibility**

#### **4.2.1**

If it is not possible for KHG to provide the delivery and/or service, the customer is entitled to demand compensation for damages subject to paragraph 5, unless the impossibility is not the fault of KHG. This does not imply a change in the burden of proof to the disadvantage of the customer. The right of the customer to withdraw from the contract shall remain unaffected.

#### **4.2.2**

If unforeseeable events in the context of paragraph 4.1.3 considerably change the commercial importance or the content of the delivery and/or service or have considerable effects on the business of KHG, the contract shall be adapted appropriately observing good faith. Insofar as this is not commercially justifiable, KHG has the right to withdraw from the contract. Should KHG wish to avail of this right of withdrawal, they shall inform the customer after gaining knowledge of the extent of the event without delay and refund already received payments to the customer, including cases in which an extended delivery period or an appropriate deferral of the date of delivery and supply was initially agreed with the customer.

#### **4.2.3**

If it is not possible for KHG to provide the delivery and/or service due to circumstances for which the customer is solely or mainly responsible, KHG reserves the right to consideration. KHG shall however, allow for that which was saved through being released from providing the service or earned from alternative use of manpower or malevolently refuses to earn. Paragraph 9 applies in this case accordingly.

### **4.3 Material defects**

#### **4.3.1**

When goods are delivered, the customer shall check same after delivery by KHG without delay.

#### **4.3.2**

Visual defects of the delivered goods shall be communicated to the executing business or event manager immediately. The same applies to complaints about services provided by KHG.

#### **4.3.3**

Hidden defects of delivered goods and services provided by KHG shall be communicated by the customer verbally or by telephone to the event manager or KHG as soon as they are detected without delay, however within 2 days after detection at the latest in writing.

#### **4.3.4**

If goods supplied by KHG are defective, KHG shall first decide whether to cure by subsequent improvement/amendment, or the provision of newly made goods. In the case of subsequent improvement/amendment or provision of newly made goods, KHG is obliged to bear all of the required cost in this context provided that the cost does not increase as a result of being transported to a different location from the place of delivery.

#### **4.3.5**

If KHG seriously and finally refuses to cure, refuses to cure due to excessive cost, the cure fails or is unreasonable for KHG, the customer can only choose between reduction of the remuneration or rescission of the contract (withdrawal) and compensation for damages instead of the service within the framework of limited liability as per paragraph 5. In the case of a minor infringement of the contract, and minor defects in particular, the customer shall have no right to withdraw from the contract.

#### **4.3.6**

If the customer does not comply with their duty to notify within the time limit as per paragraph 4.3.2 or 4.3.3, and if defects cannot be rectified in time during or until the end of the event due to the customer's behaviour, no customer claims can be derived from these defects. This does not apply if KHG has concealed the defect maliciously or the defect is covered by a quality guarantee made by KHG.

### **4.4 Other breach of duty**

In the event of any other breach of duty on the part of KHG that is not included in a breach of duty as per paragraph 4.1 to 4.3, the customer is entitled to demand compensation for damages as per paragraph 5, if the delivery of goods and services can no longer be reasonably expected of KHG, unless the breach of duty is due to no fault of KHG. This does not imply a change in the burden of proof to the disadvantage of the customer. The right of the customer to withdraw from the contract shall remain unchanged insofar as binding them to the contract due to the other breach of duty is no longer reasonable.

### **5 Liability / Liability for Agents and/or Vicarious Agents**

#### **5.1**

KHG bears unlimited liability for damages for whatever legal reason, in particular for breach of duty from the debt obligation and from unlawful acts in the case of deliberately or gross negligently causing damage. The same applies to the liability of KHG in accordance with the German Product Liability Act, for damages occurring from injury to life and limb or health as well as due to assuming a guarantee for the existence of a feature.

#### **5.2**

Liability is excluded in the case of mere negligent breach of duty on the part of KHG or their agents. This does not apply to the liability of KHG in accordance with the German Product Liability Act, for damages from the injury to life and limb or health as well as due to assuming a guarantee for the existence of a feature or the breach of fundamental contractual obligations. The liability is limited to the typically foreseeable damages as per the contract in the case of mere negligent breach of contractual obligations on the part of KHG or their agents.

#### **5.3**

The aforementioned provisions do not imply a change in the burden of proof to the disadvantage of the customer.

## **6 Payment / Deposit / Offset**

### **6.1**

Insofar as nothing to the contrary has been agreed, the invoices of KHG are due in full immediately after their issue. KHG is, in spite of deviating repayment provisions on the part of the customer, entitled to offset payments against their older debts. In this case, KHG will inform the customer about the type of offsetting applied. If cost and interest have already been incurred, KHG is entitled to offset the payment against the cost, then the interest and lastly the main obligation.

### **6.2**

If a deposit has been agreed in writing without a specific due date for the deposit or if the event date has not been set yet, the agreed deposit shall be due at the latest 7 days before the date of the event. Paragraph 6.3 also applies for deposits accordingly. The deposit is an act of cooperation by the customer in accordance with paragraph 4.1.2

### **6.3**

A payment shall be deemed paid if the amount is freely disposable to KHG. Payments made by cheque shall be deemed paid if the amount on the cheque has been unconditionally credited to the bank account of KHG.

### **6.4**

If KHG becomes aware of circumstances that question the customer's creditworthiness, the customer in particular discontinues payment or a cheque issued by them cannot be cashed, KHG is entitled to call in all open receivables even if they have already accepted cheques. In cases such as this, KHG is also entitled to demand prepayments or a security (collateral) prior to providing further deliveries and services.

### **6.5**

The customer is only entitled to offsetting or retention, even in the case of material defects or counter-claims, if the counter-claims have been legally established or are indisputable. However, the customer is also only entitled to retention in this case due to counter-claims from the same contractual relationship.

### **6.6**

If the customer engages a third party (e.g. event agency), this third party shall expressly not be recognised as a third party by KHG as per §§ 362 II, 185 and 123 II German Civil Code (BGB). Services provided by the customer to third parties have no effect of discharging debt in the relationship to KHG.

## **7 Deliveries and Services to Foreign Customs Territory and to Extra-territorial Missions**

### **7.1**

If goods are delivered and/or services provided to foreign customs territory and/or extra-territorial missions, the customer shall bear all of the cost and fees incurred in this connection, in particular for customs declarations and customs clearance, air freight, maritime carriage and overland transport, import papers, veterinary certificates, pro-forma invoices, plant protection certificates, personnel costs and hotel costs, expenses, potential hourly pay, visa fees and local transfers.

### **7.2**

The customer shall provide customs clearance of the goods. Customs clearance in these cases is an act of cooperation on the part of the customer as per 4.1.2

## **8 Reservation of Title**

### **8.1**

Until the fulfilment of all obligations (including all current account balance claims) that are due to KHG now and in the future for whatever legal reason from the customer and the companies associated with them, the following security is granted to KHG, which they will release to the customer on request insofar as its value sustainably exceeds the obligation by more than 20%.

### **8.2**

Provided goods shall remain the property of KHG (goods subject to retention of title). The customer is entitled to utilize (to sell, use, rent, etc.) the goods subject to retention of title in orderly business operations, as long as they are not in default of payment. Lien or reservation of ownership of the goods subject to retention of title on the part of the customer is not allowed. The customer shall assign all of the receivables arising from the resale or other legal reason (rental, leasing, insurance, unlawful act) regarding the goods subject to retention of title (including all current account balance claims) as security to KHG now, who shall accept the assignment. KHG shall authorize the customer to revocably collect the assigned receivables for account of KHG under their own name. This direct debit authorization can be revoked if the customer does not meet their obligations to pay properly.

### 8.3

Where third parties have access to the goods subject to retention of title, in particular with enforcement by writ, the customer shall allude to KHG's property and inform the same without delay, so that KHG can protect their property rights. Insofar as the third party is unable to reimburse KHG the judicial or extra-judicial cost incurred in this connection, the customer is liable.

### 8.4

In the case of behaviour in breach of the contract on the part of the customer – in particular default in payment – KHG is entitled, after withdrawal from the contract, to seize goods subject to retention of title or to demand assignment of the customer's claim for surrender to third parties.

### 8.5

The relationship between KHG and the customer is fiduciary regarding the goods as long as not all of the obligations under paragraph 1 are settled. KHG has the right to track the sale in the case of resale of the goods. KHG also has this right if the goods have a different use, if this results in payment claims by the customer.

### 8.6

The customer is obliged to treat the goods subject to retention of title with care; in particular the customer is obliged to insure the same adequately against fire, water damage and theft at replacement value.

## **9 Cancellation / Partial Cancellation**

### 9.1

In the event of (partial) cancellation, (partial) withdrawal / (partial) termination of the contract due to no fault of KHG, the customer shall reimburse KHG for the (proportional) expense incurred up to the time of the (partial) cancellation. This does not apply if the (partial) cancellation of the contract is also due to no fault of the customer.

### 9.2

KHG is entitled to claim a fixed reimbursement of expenses.

The fixed reimbursement amounts are:

- for (partial)cancellation up to 100 workdays before the agreed date of the event  
10 % of (proportional) total contractual figure,
- for (partial)cancellation less than 100 workdays before the agreed date of the event  
40 % of (proportional) total contractual figure,
- for (partial)cancellation less than 50 workdays before the agreed date of the event  
50 % of (proportional) total contractual figure,
- for (partial) cancellation less than 40 workdays before the agreed date of the event  
60 % of (proportional) total contractual figure,
- for (partial)cancellation less than 30 workdays before the agreed date of the event  
70 % of the (proportional) total contractual figure,
- for (partial)cancellation less than 20 workdays before the agreed date of the event  
80 % of the (proportional) total contractual figure,
- for (partial)cancellation less than 10 workdays before the agreed date of the event  
90 % of the (proportional) total contractual figure,
- for (partial) cancellation on the agreed date of the event 95 % of the (proportional) total contractual figure,

In the event that KHG claims reimbursement of expenses, the customer shall have the express right to prove that no or little expense was incurred.

### 9.3

KHG is entitled to claim the actual cost incurred instead of the fixed reimbursement of expenses.

### 9.4

The claim to compensation for damages shall remain unaffected.

## **10 Exclusive Use of Rooms / Withdrawal / Cancellation Costs**

### **10.1**

The customer has the possibility of exclusively renting rooms at KHG for an event. This means, rooms are available to them on a specially agreed date (date of event) in accordance with a separate agreement for the exclusive use. If the rooms mentioned in this agreement are usually open to the public as part of a restaurant business operated by KHG, the rooms shall be closed to the public if exclusive use is agreed.

### **10.2**

In the event that rooms are rented exclusively, paragraph 6.2 shall apply provided that a deposit of 30% of the separately agreed fee becomes due upon conclusion of the contract.

### **10.3**

The customer can withdraw from the contract for the exclusive use of rooms in writing to KHG at any time without providing reasons.

### **10.4**

The following cancellation cost is due in the event of withdrawal as per paragraph 10.3, unless the withdrawal is due to KHG:

- up to and including 30 days before the agreed date of the event  
30 % of the separately agreed fee;
- from 29 days before the agreed date of the event 95 % of the separately agreed fee;

The customer is expressly advised that the exclusive renting of rooms as per paragraph 10.1, in which KHG operates a restaurant, is not part of the usual KHG business and therefore a substitute lessee cannot usually be found for the date of the event in the case of withdrawal as per paragraph 10.3. Should a substitute lessee be found for the agreed date of the event in exceptional circumstances, the customer has the right to reimbursement of the cancellation cost already paid to KHG minus a lump sum of €150.

In the event that KHG claims cancellation costs, the customer has the right to demand proof that no or only minor damages were incurred.

## **11 Written Form / Severability Clause**

### **11.1**

Changes and amendments to these terms and conditions must be in writing. The same applies to the requirement of the written form.

### **11.2**

If individual provisions of these terms and conditions are or become ineffective or impracticable, the efficacy of the remaining terms and conditions shall remain unaffected. A substitute provision that is as close to the purpose of the ineffective or impracticable provision shall replace the ineffective and impracticable provision.

## **12 Place of Jurisdiction**

The place of jurisdiction is Wiesbaden if the customer is a business person, corporate body under public law or special fund under public law.

## **13 Applicable Law**

The law of the Federal Republic of Germany applies to these terms and conditions and all legal relations between KHG and the customer. The application of law for the international sale of goods is excluded.

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