

Wilkhahn Limited Terms and Conditions of Sale

1. Definitions and Interpretation

- 1.1. "**Business Day**" means a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
- 1.2. "**Conditions**" means these terms and conditions as amended from time to time.
- 1.3. "**Confidential Information**" means all confidential information (however recorded or preserved) disclosed by a party or its Representatives (as defined below) to the other party and that party's Representatives whether before or after the date of this Contract, including but not limited to any information that would be regarded as confidential by a reasonable business person and any information developed by the parties in the course of carrying out this Contract.
- 1.4. "**Contract**" means the contract between Wilkhahn and the Customer for the supply of Goods and/or Services in accordance with these Conditions.
- 1.5. "**Customer**" means the person or entity purchasing or offering to purchase Goods or Services from Wilkhahn.
- 1.6. "**Goods**" mean the goods (or any part of them) delivered to or to be delivered by Wilkhahn to the Customer under this Contract.
- 1.7. "**Order**" means the Customer's order for the supply of Goods and/or Services, as set out in a completed customer purchase order.
- 1.8. "**Representatives**" means, in relation to a party, its employees, officers, contractors, subcontractors, representatives and advisers.
- 1.9. "**Services**" means all design, installation, commissioning, and related services provided by Wilkhahn to the Customer from time to time.
- 1.10. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.11. A reference to a party includes its personal representatives, successors and permitted assigns.
- 1.12. A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.
- 1.13. Any words following the terms including, include, in particular, for example or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.
- 1.14. A reference to writing or written excludes fax but not email.
- 1.15. If we use terms such as DAP, FOB, FCA, CFR or CIF for the respective order, they shall have the meaning assigned to them in the ICC INCOTERMS 2020.

2. Basis of contract

- 2.1. This Contract covers the business relations between us, Wilkhahn Limited (company number 02400468), 45 Great Sutton Street, London, EC1V 0DE (referred to as "**Wilkhahn**" or "**us**") and you (referred to as the "**Customer**" or "**you**").
- 2.2. An Order will not come into effect until Wilkhahn has accepted it in writing (whether by email, or provision of a customer purchase order or a countersigned quote proposal) and upon doing so, Wilkhahn will be entitled to assume acceptance by the Customer of (a) these Conditions and (b) any additional terms and conditions stated in Wilkhahn's quote proposal and/or order confirmation email.
- 2.3. Any Order placed by the Customer shall be subject to the Conditions in the current version valid at the time that the Order is accepted, unless otherwise agreed in writing.

3. Goods

- 3.1. The presentation of goods whether in our stores or online does not constitute a legally binding offer in relation to price, but a non-binding invitation to treat.
- 3.2. The Goods are as described in Wilkhahn's catalogue. Wilkhahn reserves the right to amend the Goods specification if required by any applicable statutory or regulatory requirement, and Wilkhahn shall notify the Customer in any such event.
- 3.3. It is the Customer's responsibility to ensure the correct Wilkhahn products, including the correct number of products, is ordered. Wilkhahn cannot accept responsibility for errors, due to incorrect "take off", interpretation from drawings prepared by others or otherwise.

4. Delivery of Goods

- 4.1. The Customer acknowledges that our main production facility is in Germany and the normal lead time required for the fulfilment of Orders is 12 weeks from receipt of a complete customer purchase order (i.e. confirmation of complete customer requirements). Any changes to this period will only be effective if agreed in writing by Wilkhahn prior to confirmation of the Order.
- 4.2. Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. Wilkhahn shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide Wilkhahn with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.3. Delivery and installation costs are not included in the cost of the Order unless otherwise specified. All costs for delivery and installation will be shown separately on the quote and prices quoted apply to deliveries carried out during normal business hours (Monday to Friday 9am to 5pm UK time) unless otherwise agreed in writing. For deliveries outside of these hours, additional fees may need to be agreed in advance in writing.
- 4.4. Delivery and installations costs will be charged on the basis that delivery (and, where relevant, installation) shall be completed at the agreed address in one visit, unless otherwise advised by Wilkhahn. Unless expressly agreed otherwise, delivery shall be made FCA Warehouse UK (Incoterms 2020). At the request and expense of the Customer, the goods may be shipped to another destination, whereby Wilkhahn shall be entitled to determine the type of shipment. Wilkhahn shall insure the goods in the Order against the risks to be specified by the Customer by taking out transport insurance at the Customer's request and expense. If it is expressly agreed that delivery shall be made 'free domicile', the goods shall be delivered to the first 'locked' door at ground level. If the Customer requests express delivery, the Customer shall bear the corresponding costs.
- 4.5. Should the Customer fail to accept Goods on delivery by Wilkhahn on the delivery date stated in the Order acknowledgement or as otherwise agreed in writing, Wilkhahn will allow for the relevant Goods to be stored at its UK warehouse for up to two weeks free of charge. Thereafter Wilkhahn shall be entitled to charge the Customer for the Goods as well as storage costs, plus a handling and administration charge.
- 4.6. Unless agreed beforehand in writing Goods will be delivered wrapped in cardboard, bubble wrap or similar protective material.
- 4.7. The Customer must diligently examine the delivered Goods and must notify Wilkhahn of any non-conformance with any of the specifications without delay and at the latest within one (1) business day of Customer's receipt of the Goods.

5. Quality of Goods

- 5.1. In addition to your statutory rights, Wilkhahn offers an enhanced customer guarantee, as set out in further details [here](#) (the **Wilkhahn Guarantee**) and subject to the limitations and exclusions therein and at clause 5.2. The Wilkhahn Guarantee includes that Wilkhahn shall repair or replace (at Wilkhahn's sole discretion) with comparable materials/components, any product or component which fails under normal use as a result of a defect in the materials and/or workmanship during the relevant period set out in the Wilkhahn Guarantee. Replacement products or components shall not amend or extend the Guarantee Period provided under this clause 5.1.
- 5.2. Wilkhahn does not offer any guarantee in respect of:
 - 5.2.1. non-standard components or specifications requested by the Customer, including without limitation, in respect of the durability of third party fabric or leather provided by the Customer;
 - 5.2.2. changes to wood or fabric arising from environmental conditions including humidity and sunlight;
 - 5.2.3. changes to wood or fabric arising from the application of polish or cleaning agents. Wilkhahn recommends that its products be cleaned according to the Wilkhahn information and recommendations. Please note that many types of polish and cleaning agents contain chemicals harmful to the surface materials of our furniture and can accelerate deterioration of the surface finish; and
 - 5.2.4. shading differences in furniture supplied with a natural wood or fabric finish. Whilst Wilkhahn always tries to manufacture in batches from the same stock holding in an attempt to prevent distinctive shade variations, late amendments to specification or replacement items may result in a difference in shading to products manufactured at an earlier time. Wood is a natural product which cannot be fully controlled in colour and figuring. It is therefore important that our customers appreciate the implications of a phased manufacture and plan accordingly.
- 5.3. The Wilkhahn Guarantee shall be void and shall end with immediate effect in the event of product misuse or wilful or reckless damage.
- 5.4. Any faults or defects which occur and are covered by the Wilkhahn Guarantee should be reported to Wilkhahn immediately on discovery.
- 5.5. Where the Wilkhahn Guarantee applies and a repair is to be made, if the relevant goods are not at the place of delivery, the customer shall bear all additional costs incurred by Wilkhahn in remedying defects, unless the transfer to another location had been notified and agreed to by Wilkhahn at the time of the placement/acceptance of the Order.

6. Title and Risk

- 6.1. The Goods are entirely at the risk of the Customer when the Goods leave Wilkhahn's UK warehouse for delivery to you.
- 6.2. Title to the Goods shall not pass to the Customer until the earlier of:
 - 6.2.1. Wilkhahn receiving payment in full for the Goods and any other goods that Wilkhahn has supplied to the Customer, in which case title to the Goods shall pass at the time of payment of all such sums; or

- 6.2.2. the Customer resells the Goods, in which case title to the Goods shall pass to the Customer at the time specified in clause 6.4.2.
- 6.3. Until title to the Goods has passed to the Customer, the Customer shall:
 - 6.3.1. store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as Wilkhahn's property;
 - 6.3.2. not remove, deface or obscure any identifying mark or packing on or relating to the Goods;
 - 6.3.3. maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date that the Goods leave Wilkhahn's UK warehouse for delivery to you; and
 - 6.3.4. notify Wilkhahn immediately if it becomes subject to any of the events listed at 10.2.2.
- 6.4. The Customer may, subject to clause 6.5, resell or use the Goods in the ordinary course of its business (but not otherwise) before Wilkhahn receives payment of the Goods but where it does so:
 - 6.4.1. it does so as principal and not as Wilkhahn's agent; and
 - 6.4.2. title to the Goods shall pass from Wilkhahn to the Customer immediately before such resale or use of the Goods by the Customer.
- 6.5. At any time before title to the Goods passes to the Customer, Wilkhahn may:
 - 6.5.1. terminate the Customer's right under clause 6.4 to resell or use the Goods in the ordinary course of its business; and
 - 6.5.2. require the Customer to deliver up all Goods in its possession that have not been, paid for in full, resold, or irrevocable incorporated into another product and if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

7. Charges and Payment

- 7.1. Prices are based on the current price list and are exclusive of VAT, which will be charged at the relevant rate at the time that the Order is delivered (if the rate of VAT changes between invoicing and delivery, a further invoice or credit may be sent to reflect the change in VAT).
- 7.2. Quotations provided to the Customer shall be valid for one month from the date that the quotation is issued unless otherwise stated.
- 7.3. Payment for account holders is due within 30 days from the date of invoice. Payment for non-account holders is due either with the Order or in "cleared funds" in full before delivery. Interest will be charged on overdue amounts at 4% above Barclays Bank base rates.
- 7.4. All prices quoted are excluding VAT. VAT will be added at the rate prevailing at the time which is currently 20%.

8. Data Protection

- 8.1. We collect, process and use personal data only within the framework of data protection regulations. Details can be found in our data protection and privacy policy which is available at <https://www.wilkhahn.com/en/about/contact/privacy-statement-wilkhahn-wilkening-hahne-gmbh-cokg> and can also be requested from us at any time.

9. Limitation of Liability

- 9.1. The limits and exclusions in this clause reflect the insurance cover Wilkhahn has in place and the Customer is responsible for making its own arrangements for the insurance of any excess liability.
- 9.2. References to liability in this Clause 9 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 9.3. Nothing in the Contract limits any liability for (a) death or personal injury caused by negligence; (b) fraud or fraudulent misrepresentation; (c) breach of the terms implied by section 12 of the Sales of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); (d) defective products under the Consumer Protection Act 1987; or (e) any liability that legally cannot be limited.
- 9.4. Subject to clause 9.3, Wilkhahn's total liability to the Customer shall not exceed the value of the Order.
- 9.5. The cap on Wilkhahn's liability under Clause 9.4 shall be reduced by:
- 9.5.1. amounts agreed to be paid under the Wilkhahn Guarantee; or
 - 9.5.2. amounts awarded by a court or arbitrator, using their procedural or statutory powers in respect of costs of proceedings or interest for late payment.
- 9.6. This Clause 9.6 sets out specific heads of excluded loss and exceptions from them:
- 9.6.1. loss of profits;
 - 9.6.2. loss of sales or business;
 - 9.6.3. loss of agreements or contracts;
 - 9.6.4. loss of anticipated savings;
 - 9.6.5. loss of use or corruption of software, data or information;
 - 9.6.6. loss of or damage to goodwill; and
 - 9.6.7. indirect or consequential loss.
- 9.7. Wilkhahn has given commitments as to compliance under the Wilkhahn Guarantee. In view of these commitments, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 9.8. This Clause 9 shall survive termination of the Contract.

10. Termination

- 10.1. No Order, once accepted by Wilkhahn, may be cancelled by the Customer without Wilkhahn's written consent. Wilkhahn reserves the right to claim all losses and expenses that may be incurred as a result of any Order cancellation agreed with the Customer.

- 10.2. Without affecting any other right or remedy available to it, Wilkhahn may (at its sole discretion) either terminate the Contract with immediate effect by giving written notice to the Customer or suspend all further deliveries of Goods under the Contract or any other contract between the Customer and Wilkhahn if:
- 10.2.1. the Customer fails to pay any amount due under the Contract on the due date for payment; or
 - 10.2.2. the Customer, or any other party, takes (or threatens to take) any step or action in connection with the Customer entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing or threatening to suspend carrying on all or a substantial part of its business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction.

11. Consequences of Termination

- 11.1. On termination of the Contract:
- 11.1.1. the Customer shall immediately pay to Wilkhahn all of Wilkhahn's outstanding unpaid invoices and interest and, in respect of Goods and Services supplied but for which no invoice has been submitted, Wilkhahn shall submit an invoice, which shall be payable by the Customer immediately on receipt;
 - 11.1.2. the Customer shall return all of the Goods which have not been fully paid for. If the Customer fails to do so, then Wilkhahn may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
 - 11.1.3. termination of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination; and
 - 11.1.4. Any provision of the Contract that expressly or by implication is intended to have effect after termination shall continue in full force and effect.

12. Confidentiality

- 12.1. The provisions of this clause shall not apply to any Confidential Information that:
- 12.1.1. is or becomes generally available to the public (other than as a result of its disclosure by the receiving party or its Representatives in breach of this clause);
 - 12.1.2. was available to the receiving party on a non-confidential basis before disclosure by the disclosing party;
 - 12.1.3. was, is or becomes available to the receiving party on a non-confidential basis from a person who, to the receiving party's knowledge, is not bound by a confidentiality agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving party; or
 - 12.1.4. is developed by or for the receiving party independently of the information disclosed by the disclosing party.
- 12.2. Each party shall keep the other party's Confidential Information secret and confidential and shall not:

- 12.2.1. use such Confidential Information except for the purpose of exercising or performing its rights and obligations under or in connection with this Contract (**Permitted Purpose**); or
 - 12.2.2. disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this clause 12.
- 12.3. A party may disclose the other party's Confidential Information to those of its Representatives who need to know such Confidential Information for the Permitted Purpose, provided that:
- 12.3.1. it informs such Representatives of the confidential nature of the Confidential Information before disclosure; and
 - 12.3.2. at all times, it is responsible for such Representatives' compliance with the confidentiality obligations set out in this clause.
- 12.4. A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of the disclosure as possible.
- 12.5. The provisions of this clause 12 shall survive for a period of five years from termination or expiry of this Contract.

13. Force Majeure

- 13.1. Wilkhahn shall not be in breach of the Contract or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from events, circumstances or causes beyond its reasonable control (including, without limitation: war, terrorist attacks, import and export restrictions, and industrial action impacting Wilkhahn or its suppliers (a **Force Majeure Event**). The time for performance of such obligations (including, for example, delivery of any Orders) shall be extended accordingly. If the period of delay or non-performance continues for 3 months, either party may terminate the Contract by giving 14 days' written notice to the other party.

14. General

- 14.1. **Assignments and other dealings.** Wilkhahn may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract. The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract.
- 14.2. **Notices.** Any notice given to a party under or in connection with the Contract shall be in writing and shall be:
- 14.2.1. delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
 - 14.2.2. sent by email to the following addresses (or an address substituted in writing by the party to be served):

Wilkhahn: info@wilkhahn.co.uk.
Customer: the email address provided at the time of placing your Order.
 - 14.2.3. Any notice shall be deemed to have been received:

- 14.2.3.1. if delivered by hand, at the time the notice is left at the proper address;
- 14.2.3.2. if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
- 14.2.3.3. if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.

14.2.4. This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

- 14.3. **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision or part provision of the Contract is deemed deleted under this Clause 14.3 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the commercial result of the original provision.
- 14.4. **Entire agreement.** The Contract constitutes the entire agreement between the parties. Each party acknowledges that in entering into the Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.
- 14.5. **Third party rights.** The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 14.6. **Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).
- 14.7. **Governing law.** This Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England.
- 14.8. **Jurisdiction.** Each party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.