

HAMILTON CONTE

GENERAL SALES CONDITIONS (UPDATED FEBRUARY 2024)

1. GENERAL

These terms and conditions apply, unless otherwise expressly agreed, any offer and sale of goods, new or used, or services, and this for all our European customers, and possibly customers outside the EU subject to compliance with mandatory laws abroad.

These terms apply to clients purchasing from HCP Lda in Portugal. Clients purchasing from the French company Hamilton Conte SAS (our partner) should refer to the General Sales Conditions of Hamilton Conte SAS.

Any order and therefore any receipt of deposit payment implies full acceptance by the Buyer of these terms.

If any provision of the General Sales Conditions becomes void or annulled in court, other clauses will still remain in effect.

The fact that HCP, Lda may not apply, at a given moment, certain terms of these conditions shall not be interpreted as a renouncement to apply at a later date any and all of these terms.

2. PRECONDITIONS - PRODUCTS

The information expressed in the catalogues, records, and schedules are only indicative and are not binding to HCP, Lda. The photographs, text, and product illustrations presented are not contractual.

It is strictly prohibited to copy, reproduce, modify, sell, distribute, process, reprint, or any other form of exploitation and utilization of content, text, photos, images and / or graphics contained in catalogues, brochures and price lists for any means without the express permission of HCP, Lda.

Our products are made using artisanal methods with natural materials and manual processes. We approach our production with great care and quality finishing. However, due to this deliberate choice of manufacturing type, certain imperfections may occur. Slight differences in the stains / colours are inevitable due to the various structures, woods and wood stains used and do not constitute any reason for claims.

For example, wood is a natural and not a synthetic material. Each tree is different from another in colour and structure. Slight differences may be noticed in the shades of the various solid wood parts and veneers of our products. Cast metals will vary as well. Upholstery quality is affected by choice of fabric purchased from external suppliers or provided by clients. Fabric difference may occur depending on the specific batch. HCP, Lda. will ask for client's own material samples to ensure the fabric's compatibility with our furniture's structures. As well, different batches of identical fabrics may have slight differences.

Furthermore, in case of products purchased at different times, time lapse and climatic environmental factors may also give way to variations in colour, shade and/or shine. This applies particularly to products purchased as sets or composed of various components.

Subtle differences often occur between production batches.

The non-exhaustive differences indicated above, including variations in products due to natural factors, shall not be a valid reason for claims and/or return of goods.

Likewise, all samples are made at a given time and can evolve with age. Differences between our samples and the goods supplied do not constitute a reason for claims.

Customer materials that have not been validated by HCP, Lda or are not part of the HCP, Lda collection may not always provide the desired results in terms of upholstery. The client must take this into consideration and receive validation from Hamilton Conte to ensure the desired outcome. If this condition is not fulfilled, Hamilton Conte will use the supplied materials but cannot guarantee the final result, nor accept any customer claims on the finished product. Any claims related to Customer's own material that has not been pre-approved by HCP, Lda will be considered void.

3. ORDERS

All orders, including those placed by telephone, fax or through the website www.hamiltonconte.com, must be confirmed in writing by HCP, Lda.

The order must include the following information: quantity, brand, type, references, the agreed price, payment conditions, location and approximate date of expedition/delivery or collection if other than billing location.

The client must communicate any and all particular technical specifications required by the law of the home country or place of delivery, and therefore HCP, Lda. is not liable if a Buyer places an order without communicating its specific needs. Furthermore, the technical specifications will require us to reassess our standard price, given that it would therefore be considered a non-standard product.

Once the client has placed and confirmed his order, he is deemed to have knowingly accepted the General Sales Conditions without reserve prices, volumes and quantities made available for sale and to the present general sales conditions.

Any addition or modification of the order shall be binding only if HCP, Lda. has agreed in writing. Any change requested by the Buyer must be notified by e-mail or fax within one week following the confirmation of the order and at least 4 weeks before the date of expedition indicated via e-mail with the order confirmation. After this period, the deposit will not be refunded.

If during a previous order, the Buyer has withdrawn from any of its obligations, default or late payment, for example, a refusal to sell may be made or a new order cancelled within for at least 8 days from receipt thereof, unless the Buyer provides satisfactory guarantees or cash. No discount for cash payment or advance payment will be granted.

Any cancellation, deferral or modification of an order must be explicitly accepted by HCP, Lda in order to take effect.

Any order requesting "custom" products in terms of aspect, materials, couleurs, sizes, fabrics or any other specialised request that is outside of HCP, Lda standard range, must be accepted in writing prior to the launch of a production order. Each customisation order must be individually negotiated and accepted by both parties in writing before considering an order valid and contractually binding.

For "custom" production, HCP, Lda may adapt a product from its range as per its standard definition. Any modification or adaptation requested by a client may provoke other modifications when compared to the standard definition, which may not be indicated in writing. Any correlative differences occurring due to the change of one element of the standard product definition are considered to be accepted by the client, unless a complete specification is sent to and accepted prior to production by HCP, Lda. No claims will be accepted if the specifier is not clear on the overall specification.

No returns are accepted, especially with regard to "custom" production, unless a hidden defect is legally proven.

4. PRICE – PAYMENTS

Prices are provided in the HCP, Lda Price List.

HCP, Lda communicates a recommended public price excluding taxes and eventual transportation and insurance. All prices may be considered to be quoted in ex-works Portugal unless otherwise indicated. These prices are still considered exclusive of VAT, include packaging, and do not include transport & insurance costs. They may be required to include VAT and/or any other similar tax, which will be invoiced at the applicable rate at the time they are due.

The price list takes effect at the date of issue for the entire range and cancels all previous rates. Prices may be modified without notice to the Buyers, except if the client has already ordered and paid their deposit.

The prices charged are those set at the date of order on the basis of prevailing economic conditions. They are valid, unless expressly stated otherwise for a maximum period of 15 days.

Our prices are expressed in net without additional discount including cash payments, and can be modified in case of deferred payment.

Prices corresponding to orders and charges are payable before shipment of the goods, 40% deposit to confirm an order and the remaining 60% upon shipment, unless otherwise expressly agreed, and this will be mentioned on invoices along with the terms and conditions of payment.

Compensation of debts and reciprocal claims of the parties shall be only in respect of related debt and reciprocal claims.

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5. DELIVERY

Delivery is made in accordance with the provisions contained in the order, subject to compliance with the terms of payment.

Delivery of goods means either:

- Shipment to the Buyer from the warehouse of the HCP, Lda
- Making them available in the warehouse of HCP, Lda or any other intermediary specified by HCP, Lda.

HCP, Lda is authorized to make partial deliveries if circumstances require.

Specific conditions corresponding to each available delivery type are communicated by the sales team at the moment of the proforma and / or the order confirmation.

6. DELIVERY TIME

Delivery times are always communicated based on supply possibilities at the time of the offer and are only an indication of actual timeline.

Any delay in delivery due to circumstances beyond the control of HCP, Lda will not invalidate the order. HCP, Lda cannot be held liable for any damages resulting from such delays.

However, if the issue of property is not reached two months after the stated delivery date for any reason other than Force Majeure, the sale may be cancelled at the request of either party after sending a registered letter with return receipt. The Buyer can only claim the refund of advance payments and cannot claim any additional compensation.

HCP, Lda is released from liability in cases of Force Majeure or events such as lockouts, strikes, epidemics, war, requisition, fire, flood, tool equipment accidents, transportation delays or other causes leading to partial or total unemployment for HCP, Lda or its suppliers.

In the case of any event listed above, HCP, Lda will inform the Buyer of such facts.

Any delay in delivery caused by Force Majeure will lead to, at HCP, Lda's choice, either the full resolution of the sale or an extension of the delivery time, without any of the parties being entitled to further compensation.

In any event, on time delivery can only take place if the Buyer has fulfilled all its obligations to the HCP, Lda.

When goods are made available to the Buyer, and not delivered by HCP, Lda, HCP, Lda agrees to notify the Buyer in writing of the date of availability. The Buyer agrees to accept delivery of goods within 7 days of receipt of the notice of availability. After this time, storage costs will be charged at the cost price, according to our price list for storage in addition to a 50 € fee (per order for administrative costs) to the purchaser, without engaging any action that could penalize HCP, Lda.

All orders that have been produced should be paid in full by the time they are made ready for pick up by the client. Beyond storage fees according to the rates in force per week and per pallet, that may be accrued, late payment fees can be invoiced at the legal interest rate applicable between professionals, as appropriate, based on the value of the order until the final settlement of the debt.

7. TRANSPORT – TRANSPORT INSURANCE

The goods travel at the Buyer's risk always being sold in ex-works (EXW) with delivery made by the carrier recommended by HCP, Lda or another if specifically requested by the Buyer.

Any special needs regarding transportation (need for secondary carrier, truck with elevator platform, etc.) must be communicated in advance to HCP, Lda by the Buyer before shipping, otherwise the seller cannot be held responsible for any reason whatsoever.

The mode of transport chosen by HCP, Lda is contractually regarded as best suited to the delivery of the ordered goods. Any divergence of opinion on this subject should be communicated by the Buyer.

All goods are delivered by truck and unloaded at the address specified by the Buyer. The Buyer takes full responsibility for handling the goods after offloading from the transport. Any breakage or accident occurring after goods delivery by the carrier is the responsibility of the Buyer and will not be supported by HCP, Lda.

Unless otherwise specified, transport operations are the responsibility and expense, risk and peril of the Buyer. It is the Buyer's responsibility to verify receipt of the delivery with the quantity and condition of the goods supplied.

In case of damage, the Buyer must emit its reserves on the delivery receipt and inform the carrier within 48 hours of receipt of merchandise, by registered letter with return receipt.

Unless otherwise specified, shipping, packaging, and insurance of the products are always the Buyer's expense.

Exact conditions corresponding to individual deliveries are communicated at with the shipment notice sent at the same time as the final invoice.

8. RECEPTION – CONTROL

A complete verification of goods supplied must be held upon receipt or within 48 hours after delivery provided that the mention "Control of goods within 48 hours" is indicated on the delivery receipt. If this is not indicated, all eventual claims for transport damage will be considered null and void.

Regardless of the dispositions that must be made vis-à-vis the carrier, the Buyer must also notify HCP, Lda by registered letter with return receipt, within the fixed time stated above (48h), of any defects, loss, missing pieces, or lack of conformity of goods delivered.

After the period specified above, any claim of any nature whatsoever shall be deemed inadmissible.

If the Buyer expressly or tacitly waives such reception procedures, the goods shall be deemed delivered accordingly and as ordered. The non-conformity of part of the delivery does not relieve the Buyer of his obligation to pay for goods for which there is no dispute.

Any non-conformity or damage found after examining the products only requires that HCP, Lda replace, free of charge, said goods. HCP, Lda cannot be held responsible for any operational loss or complimentary damage to the Buyer.

In the case of a claim, pictures of damaged goods or packaging must be sent to HCP, Lda. Similarly, it is requested that the Buyer keeps the product with its original packaging in case of analysis.

All other claims must be sent in writing to HCP, Lda within 8 days after receipt of the goods by registered letter, fax or e-mail with pictures detailing the reasons for the claim.

Claims related to transport damage are covered by the insurance contracted with the transport service, whether contracted by the buyer or HCP, Lda. Reception procedures as detailed above must be respected to make a successful claim.

Transport damage is easily identified and differentiated from damage linked to on-site unpacking and handling. Damage such as stains and box cutter slices are linked to on-site damage and thus do not fall within the scope of transport insurance claims. Proper unpacking and handling on-site is the responsibility of the client or client's representative, especially when sensitive or fragile goods, especially fabrics, are involved. All claims are fully analysed and are subject to refusal if there is a chance of buyer liability.

Returns are never accepted unless HCP Lda accepts them in writing, or judicial proceedings decide otherwise.

Any product that is custom-made for the Buyer and is not part of our standard HCP Lda range (special colours, dimensions or fabrics, as well as custom made furniture) may not be returned except in cases of defect or non-conformity relative to the product definition or its usual quality.

No return will be accepted without meeting these conditions and the supposed motive of returning goods does not exonerate the client from his or her payment obligations.

Return transport is at the expense of the Buyer, unless otherwise agreed prior to return. The return transport must be carried out under the same conditions as those utilised by HCP Lda when first sending the goods, preferably using the same transporter and mode of transport (ex. if goods were transported on a palette and space was booked per linear meter, the return should be made in the same way.)

Returned goods must be correctly packaged in order to avoid any damage during transport and must arrive in their initial state (new goods) to HCP Lda. Otherwise, a refusal of return may be emitted by HCP Lda and the Buyer's financial obligations would be maintained and include additional expenses.

A refusal to accept returned product or, by his choice, an annulment of the sale may be claimed by HCP Lda towards the Buyer if a return is made without previous agreement and if the aforementioned conditions are not respected.

9. SANCTIONS ON DEFAULT OR LATE PAYMENT

Unless special conditions are granted by HCP Lda, invoices are payable to HCP Lda's headquarters via bank transfer before the shipment of the goods and with no additional discount.

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Whatever the method of payment agreed upon between the parties shall only be deemed valid and effective after actual receipt of the full price.

In case of non-payment or only partial-payment at the due date, HCP, Lda reserves the right to terminate or suspend orders and deliveries in process.

LATE PAYMENT:

If an invoice reaches its due date and is completely or even partially unpaid, HCP, Lda may apply the penalties of the present conditions without damage of injury or interest, without any formal or attempted notice.

The amount will be calculated by applying the amounts due at the statutory interest rate in force at the time of expiry of the period provided for in the preceding paragraph, that is, the statutory interest rate applicable between traders.

Any default in payment, complete or partial, of a bill by the due date may justify the HCP, Lda's rejection of a new order.

The Buyer must also pay a flat fee of 40 euros per unpaid invoice, to cover administrative costs incurred by the processing of the unpaid invoice.

PENALTY CLAUSE:

In case of cancellation of the sale for defaulting on the payment, the sums paid by the Buyer will be acquired the HCP, Lda as compensation.

In addition, in case of default and therefore triggering a recovery / collection procedure, the Buyer will be indebted in excess of original amount due, a penalty of 20% of the invoiced amount, as well as the judicial and extrajudicial expenses he has caused and attorney fees.

10. FOREFITURE CLAUSE

In case of non-payment or partial payment when an invoice is due, the amounts due under this order or any other orders being delivered will be payable immediately.

11. CANCELLATION OF SALE

All orders are accepted in consideration of the legal, financial and economic situation of the Buyer at time of order. It follows that if the financial and economic situation of the Buyer were to deteriorate, particularly in case of insolvency or diminution of his/her assets, between the date of the order and the date of delivery, HCP, Lda would be granted the right to cancel the sale, without any notice.

In case of failure of any of these conditions, HCP, Lda shall send the debtor a notice by registered letter with return receipt. The Buyer must within one month of receipt of such letter, proceed to settlement of outstanding amounts, the sale will be automatically cancelled per discretion of HCP, Lda.

12.1. WARRANTIES - EXTENT

Goods sold are contractually guaranteed by the manufacturer for the duration of 3 (three) years commencing from the date of shipment of the goods.

This contractual warranty covers all hidden or apparent defects from the date of delivery.

HCP, Lda's only obligation while under the warranty is, at his option, free replacement or restoration of property found to be defective by the manufacturer without any other benefit or compensation.

Eventual operations carried out under warranty will not prolong the duration of the warranty, except in situations legally provided for, under the terms of DL 84/2021, of October 18, and respective updates.

The Buyer may not claim any compensation or damages in the case of immobilization of the property due to the implementation of the warranty.

In case of personal injury, property damage, or loss of profits arising from a separate cause of the present sales contract, no compensation can be due to the Buyer or Final Client.

In case of an unjustified return of a non-defective product, the Buyer will be charged at current rates for labour and equipment necessary for the verification and eventual reconditioning, as the will for the cost of return transport.

It is expressly agreed that HCP, Lda does not incur any liability for indirect damages suffered by the Buyer.

No compensation for lost profits can be required from HCP, Lda.

12.2. APPLICATION OF CONSUMER RIGHTS LEGISLATION

The DL n° 84/2021, of October 18, and its updates are applicable to these general conditions.

13. WARRANTIES - EXCLUSIONS

The Buyer loses the benefit of legal and conventional warranties in the case of:

- abnormal use or misuse of property;
- repairs or procedures performed by persons other than HCP, Lda, persons approved by HCP, Lda, or the manufacturer, or if these interventions do not follow the instructions;

HCP, Lda holds the right to suspend the legal and conventional guarantees in cases of late payment, non-payment, or partial payment of the goods.

14. WARRANTIES - LIMITATIONS

The HCP, Lda's liability is limited to the repair or replacement of defective goods with a manufacturing defect, labelling, or packaging flaw. HCP, Lda, or persons and services appointed by the Seller, will have the right to inspect the alleged defects. All other warranties expressed or implied are excluded. HCP, Lda accepts no responsibility for the loss or damage of goods, direct or indirect, whatever the cause. In no case whatsoever can the Buyer claim, in any capacity, to make a deduction from the amount of the invoice for an incomplete delivery or for defective goods.

HCP, Lda reserves the right to make any changes deemed necessary for its product range, be it technical or design, without prior notice. For this reason, all images published or posted by HCP, Lda through catalogue, Internet, or any other form of communication or disclosure must be considered as for the purposes of example or presentation only.

15. RESPONSIBILITIES

The technical specifications of the products of HCP, Lda will not necessarily correspond to any and all specific regulations of global markets given their diversity.

Any special requirements for compliance with a national market or industry regulations must be

communicated in advance and in writing by the Buyer, with confirmation of technical feasibility by HCP, Lda.

Without written request, the goods will be manufactured according to specifications set by HCP, Lda.

HCP, Lda will not take responsibility for any discrepancies in its standard range if specific requirements are not provided by the Buyer.

HCP, Lda will not be liable for any damage or non-conformity if the buyer does not comply with the previous prior notice.

The Buyer would thus be obliged to pay for any ordered merchandise if it is manufactured but not delivered. Similarly, HCP, Lda will not refund the goods if it has already been delivered and the buyer or a third party detects a non-compliance, because the buyer has not fulfilled the previous obligation.

16. GOODS FOR RESALE

The Buyer may resell the goods under the normal operation of its business. However, it will lose that option in case of default or non-payment of invoices at maturity.

17. RETENTION OF PROPERTY - TRANSFER OF RISKS

The goods remain the property of HCP, Lda until payment of the full price, principal and any secondary costs, in legal terms.

The non-payment, even partial, of any goods may result in reclamation of property and cancellation of pending orders. The right to reclaim merchandise may be exercised even in the case of safeguarding, recovery, or liquidation proceedings of the Buyer.

The delivery of goods operates the transfer of risk to the buyer, both for damage to the goods and those caused by third parties, pursuant to Article 796 of the Civil Code.

In case of default, in addition to the restitution of all goods, all payments made shall be kept by HCP, Lda in compensation for damages, interest and judiciary and extra-judiciary costs, or others that may be pertinent

Any restitution of goods will be made at the expense and risk of the Buyer.

18. DISCRETION OF OWNERSHIP - RESALE OR MODIFICATION - SEIZURE

The goods remain the property of HCP, Lda until full payment of their price plus any additional costs, pursuant to Article 409 of the Portuguese Civil Code.

It is forbidden of the Buyer to arrange the sale or modification of goods and in case of default HCP, Lda may repossess the goods according to the conditions of Article 17 without prior formalities and independently of any legal proceedings.

However, as a mere tolerance, which will automatically stop if the buyer is involved in any third-party claims, arrest, insolvency, or any other judicial or extra-judicial proceedings, and for the sole purpose of its business, HCP, Lda may allow the Buyer to resell or modify the disputed property with the condition that the Buyer repays the remainder or his/her debt. The corresponding sums are now pledged to HCP, Lda, the buyer constituting a mere custodian of the price.

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In case of seizure of the products by third parties, the Buyer must notify HCP, Lda immediately so that it can exercise its rights, if it so wishes, the buyer is also required to inform the purchaser of the limitations provided for in the previous clauses..

20. NON EXCLUSIVITE

These general sales conditions exclude any type of exclusivity in sales or distribution of HCP, Lda Brand products. Any sort of territorial exclusivity and any other special form of distributing HCP, Lda products can only be permitted through a specific contract to this end. No eventual reclamations will be accepted and no indemnities may be claimed without having expressly defined these contractual terms and conditions.

21. FORCE MAJEURE

HCP, Lda reserves the right to automatically suspend all or part of a sale in case of force majeure or unforeseeable circumstances such as a shortage of raw materials, regulatory changes applicable to the present general conditions of sale, or goods likely to stop or reduce production and transportation of other goods.

Upon the occurrence of such events, HCP, Lda will notify the customer by whatever means possible within 8 days after the occurrence of such event.

Any unforeseeable circumstances or force majeure release HCP, Lda from his obligation to deliver. Any event beyond the control of the parties, which wholly or partially prevents the manufacture or delivery of products such as raw material shortages, strikes, lockouts, fire, epidemic, flood, frost, blocking passageways, machinery breakdown, etc. is considered force majeure.

22. CONFIDENTIALITY – RIGHT TO RETRACT – RIGHT TO A MEDIATOR

In case of distance selling, the Internet user may have information concerning him rectified, completed or deleted when errors were detected, or the presence of data whose processing is prohibited.

All our Buyers, in case of distance selling, are entitled to a legal period of termination of 14 days to exercise the right of termination without having to justify, under the applicable law.

23. COPYRIGHT AND INDUSTRIAL / INTELLECTUAL PROPERTY

The Buyer is strictly forbidden from copying, replicating or otherwise permitting unauthorized use of any merchandise/design/model of the seller HCP, Lda.

In case of non-compliance on the part of the Buyer with the above paragraph, the Buyer will be obliged to indemnify HCP, Lda in accordance with general laws, in particular for all damages and interest including loss of earnings that has been suffered as well as any judicial or extrajudicial fees engaged by HCP, Lda with regards to the Buyer in such a case.

24. GOVERNING LAW AND JURISDICTION

This contract is subject to Portuguese law.

For all disputes relating to the implementation or interpretation of these conditions, the only court to have exclusive jurisdiction is the District Court of Porto-Este shall have jurisdiction to the exclusion of any other.