

**GENERAL TERMS AND CONDITIONS  
OF SALE AND DELIVERY**

**SOFABED EUROPE NV**

## 1. LANGUAGE

**Nederlands:** Deze Algemene Voorwaarden zijn op eenvoudig verzoek beschikbaar in het Nederlands en Frans. De Nederlandstalige versie van deze Algemene Voorwaarden is de enige authentieke.

**Français:** Ces conditions générales de vente et livraison sont disponibles sur simple demande en néerlandais et français. La version en néerlandais de ces conditions générales de vente et livraison est la seule version authentique.

**English:** These General Terms and Conditions of Sale and Delivery are available on request in the Dutch, French and English language. The Dutch version of these general terms and conditions of sale and delivery is the only authentic version.

## 2. DEFINITIONS

**2.1 “Sofabed Europe NV”:** the public limited company “Sofabed Europe NV” with registered office in B-3600 Genk, Melbergstraat 6, registered in the register of legal entities in Antwerp, Division Genk under number <sub>ber</sub> 0725.426.871 and known at the VAT administration under number <sub>BE</sub> BE0725.426.871, judicial district of Limburg.

**2.2 “General Terms and Conditions”:** these General Terms and Conditions of Sale and Delivery.

**2.3 “Customer”:** any (legal) person who buys a product and/or service from Sofabed Europe NV places an order with Sofabed Europe NV and/or sends a request for a quotation to Sofabed Europe NV as well as anyone who buys a product and/or service from Sofabed Europe NV places an order with Sofabed Europe NV and/or sends a request for a quotation to Sofabed Europe NV on behalf of or for the account of another (legal) person.

**2.4 “Registered Letter of Complaint”:** letter sent by registered mail stating the invoice number, all reference numbers (where applicable) appearing in the written agreement between Sofabed Europe NV and the Customer, the order confirmation issued by Sofabed Europe NV the delivery note issued by Sofabed Europe NV and/or the invoice issued by Sofabed Europe NV together with an accurate identification of the products and/or services and a detailed statement of the nonconformity or deficiency.

**2.5 “Conformity of Delivery” (exhaustive definition):** delivery of the correct (types of) products and/or services without visible defects at the correct location in compliance with the written agreement between Sofabed Europe NV and the Customer or, failing this, in conformity with the order confirmation issued by Sofabed Europe NV In the absence of both a written agreement between Sofabed Europe NV and the Customer and an order confirmation issued by Sofabed Europe NV the accuracy of the (types of) products and/or services and the location will be evaluated against the order of the Customer.

## 3. APPLICABILITY

**3.1** Notwithstanding any different communication in the past or the future, the Customer accepts, by sending a request for a quotation and/or an order and/or concluding an agreement with Sofabed Europe NV that only the following rules apply to all contractual, pre-contractual and extra-contractual present or future legal relationships between Sofabed Europe NV and the Customer (in hierarchically descending order, the next one in the absence or silence of the preceding one): (1) the written agreement between Sofabed Europe NV and the Customer; (2) the written and/or electronic order confirmation issued by Sofabed Europe NV (3) these General Terms and Conditions of Sale and Delivery; (4) Article 4-88 of the Vienna Convention on the Sale of Goods; (5) the Unidroit Principles; (6) the Belgian Law with the exception of the Articles 1-3 and 89-101 of the Vienna Convention on the Sale of Goods.

Other conditions and/or provisions including for instance the Customer’s general and/or special conditions are applicable and are explicitly rejected by Sofabed Europe NV Other (derogating) conditions are applicable only if Sofabed Europe NV explicitly signs these (derogating) conditions for acceptance. These derogating conditions expressly signed for acceptance apply only to the agreement to which they relate and cannot be invoked for any other agreements, even if similar in nature.

**3.2** These General Terms and Conditions shall not affect the legal rights granted in a binding manner to the Customer under the applicable national legislation relevant for Consumer Protection.

**3.3** The possible nullity of one of the provisions or part of a provision of these General Terms and Conditions does not affect the applicability of the other provisions and/or the remainder of the provision. In the event of nullity of one of the provisions or part of a provision, Sofabed Europe NV and Customer shall, to the extent possible and in fairness and conviction, negotiate to replace the void provision by an equivalent provision that is in accordance with the general spirit of these General Terms and Conditions of Sale and Delivery.

**3.4** Sofabed Europe NV reserves the right to adapt and/or amend these General Terms and Conditions of Sale and Delivery at any time.

## 4. OFFER, ORDER AND ORDER CONFIRMATION

**4.1** Sofabed Europe NV reserves the right to correct any errors in the price lists and may at any time withdraw all proposals (such as – but not limited to – those in the price list) and quotations. In any case, all offers and quotations of Sofabed Europe NV are non-binding and must to be regarded as only an invitation to the Customer to place an order.

**4.2** Once Sofabed Europe NV issues a new price list, this new price list will supersede all previous price lists. Some offers and/or quotations that are still not accepted in writing by the Customer are automatically deemed to be no longer valid at the issuance of the new price list.

**4.3** The agreement between Sofabed Europe NV and the Customer comes into effect only at the moment a person who is qualified to legally bind Sofabed Europe NV confirms the order of Customer in writing and/or electronically or as soon as Sofabed Europe NV starts the execution of the order. The written and/or electronic acceptance of an order by agents and/or representatives of Sofabed Europe NV are not considered to be an order confirmation as aforementioned and are not sufficient to bind Sofabed Europe NV

**4.4** Any delivery of products and/or any performance of services that were not explicitly provided in the written agreement between Sofabed Europe NV and the Customer or, failing such, in the order confirmation issued by Sofabed Europe NV are deemed to be additional orders and/or supplemental work requested by the Customer and will be charged as such to the Customer.

**4.5** Sofabed Europe NV is free to choose the parties with which it wishes to enter into an agreement and always has the right to insist on a minimum invoice amount.

## **5. PRICE AND COSTS**

**5.1** All prices are exclusive VAT and expressed in euros.

Sofabed Europe NV issues from time to time new price lists which as of the date specified therein (or in the event of lack thereof from the date of publication) revoke the previous price lists. Only the prices listed in the most recent price list are valid. A customized price is calculated for each individual order. This price is only valid for a specific order and does not apply for any other, even similar, orders.

**5.2** In case of delay, Sofabed Europe NV has the right to increase the prices laid down in the written agreement between Sofabed Europe NV and the Customer or, in the absence of such, listed in the order confirmation issued by Sofabed Europe NV. Delay means, among other things, (purely example listing): late payment, non-compliance by Customer with the obligations laid down in the Articles 9 and 14 of these General Terms and Conditions of Sale and Delivery; etc.

**5.3** Changes of supplier(s) independent of Sofabed Europe NV currency fluctuations, increases in material prices, prices of auxiliary and raw materials, wages, salaries, social security contributions, costs imposed by the government, (environmental) fees and taxes, transportation costs, import and export duties or insurance premiums, that occur between the order confirmation and the final delivery of the products and/or services entitle Sofabed Europe NV to increase the agreed price proportionally.

**5.4** Sofabed Europe NV reserves the right to require a deposit, full payment or any other form of security for payment before proceeding to implement its obligations towards the Customer.

## **6. OBLIGATIONS OF Sofabed Europe NV**

**6.1** The obligations incumbent on Sofabed Europe NV are limited to the due and proper performance of its obligations as specified in the written agreement between Sofabed Europe NV and the Customer or, in the absence thereof, in the order confirmation issued by Sofabed Europe NV. If neither a written agreement was drawn up between Sofabed Europe NV and the Customer nor an order confirmation issued by Sofabed Europe NV and the latter has already begun to implement the order, the responsibility of Sofabed Europe NV remains limited to the execution of the written order of the Customer.

**6.2** Sofabed Europe NV only offers the quality guarantees that are expressly mentioned in the written agreement between Sofabed Europe NV and the Customer, in the order confirmation issued by Sofabed Europe NV in the quotation issued by Sofabed Europe NV and/or in the communicated price lists.

**6.3** Sofabed Europe NV guarantees that the delivery takes place in accurate conformity with the sample with express reservation for minor colour and quality variations.

**6.4** Sofabed Europe NV can only provide a guarantee with regard to colour matching upholstery fabrics and leather versions, if the Customer specifically requests so and upon simultaneous order placing taking into account however that slight colour deviations are never covered by such a guarantee.

**6.5** Sofabed Europe NV expressly declares that the sizes and dimensions as specified in the written agreement between Sofabed Europe NV and the Customer, in the order confirmation issued by Sofabed Europe NV in the quotation drafted by Sofabed Europe NV and/or in the communicated price lists only represent an approximation and Sofabed Europe NV reserves the right to deliver products containing small size variations and/or changes in form and view.

**6.6** Sofabed Europe NV is not responsible for the use and possible consequences of the use of materials that were provided by the Customer (or on behalf of and for account of) the Customer or the final customer in order to manufacture and/or treat the concerning products with these materials.

**6.7** Sofabed Europe NV is not responsible for compliance with the respective legal obligations associated with the use of products that apply in the country where the goods will be delivered and/or used including (without being limited to) environmental liabilities, license application, quality requirements, etc.

**6.8** If certain products and/or components of certain products are not in stock, Sofabed Europe NV and the Customer may mutually agree to replace these failing products and/or components by a functional equivalent of a different brand or type. Any possible replacement of failing products and/or components by a functional equivalent does not release the Customer in any way whatsoever from his obligations under the Articles 9 and 14 of these General Terms and Conditions of Sale and Delivery and may not in any circumstances lead to a reduction in price nor to a rescission of the agreement between Sofabed Europe NV and the Customer. Any additional cost of such replacement is not included in the price and will be billed to the Customer.

## **7. DELIVERY OF THE PURCHASED PRODUCTS AND/OR SERVICES**

**7.1** Unless otherwise agreed, deliveries within Belgium shall always be made in accordance with Incoterm® (2010) "Delivery Duty Paid" (DDP) at the location indicated in the written agreement between Sofabed Europe NV and the Customer or, in the absence thereof, in the order confirmation issued by Sofabed Europe NV and deliveries outside Belgium shall always be made in accordance with Incoterm® (2010) "Ex Works" (EXW) at the agreed production site.

**7.2** Any given implementation and delivery terms refer to the period within which the products in principle may leave the premises of Sofabed Europe NV and are always indicative. They do not form an essential component of the obligations of Sofabed Europe NV towards the Customer neither in the written agreement between Sofabed Europe NV and the Customer or in the order confirmation issued by Sofabed Europe NV. If the stated delivery term is exceeded, Sofabed Europe NV and the Customer shall agree to a reasonable extension.

No case of exceeding the term, either the original one or the additional term/terms, can give rise to the payment of any compensation nor lead to dissolution of the agreement between Sofabed Europe NV and the Customer.

Any changes in the Customer's request for a quotation and/or in Customer's order, changes in the written agreement between Sofabed Europe NV and the Customer as well as any changes in the order confirmation issued by Sofabed Europe NV automatically have the effect that the predetermined presumed terms of delivery are cancelled.

**7.3** In any case, Sofabed Europe NV is not liable for delays occurring as a result of non-compliance on the part of manufacturers and/or suppliers of Sofabed Europe NV the Customer, his clients and/or any other third party.

**7.4** Sofabed Europe NV has the right to deliver the products purchased and/or carry out the relevant services in several parts. Partial delivery or execution may not give rise to the payment of any compensation or lead to dissolution of the agreement between Sofabed Europe NV and the Customer.

**7.5** In the event the delivery takes place under the contract or in accordance with Article 7.1 of these General Terms and Conditions of Sale and Delivery in accordance with Incoterm® (2010) "Ex Works" (EXW), the Customer has to collect the purchased goods himself at his own cost and risk at the location and time indicated by Sofabed Europe NV or agreed between the parties.

If the products are not collected within five (5) working days, the Customer will have to pay a weekly storage fee equal to 1 % of the full invoice amount. Once the scheduled collection date has been exceeded with two (2) weeks, Sofabed Europe NV is entitled to rescind the agreement between Sofabed Europe NV and the Customer without prior notice of default and without court intervention with effect from the date of sending the dissolution. In such case, a fixed compensation becomes due for the Customer amounting to 35 % of the full invoice amount without prejudice to Belform's right to prove higher damage.

If the parties agree in such case, at the request of the Customer, that Sofabed Europe NV will arrange the transport of the goods to the agreed destination, Sofabed Europe NV will only do so for the account and at the risk of the Customer.

## **8. SUBCONTRACTING**

**8.1** Sofabed Europe NV has the right to subcontract (part of) the agreed work.

**8.2** If Sofabed Europe NV itself acts as subcontractor, it shall have a direct claim on the client for the amount which the latter owes to the co-contractor / prime contractor at the time a direct claim is lodged.

**8.3** If Sofabed Europe NV acts as subcontractor, moreover, Sofabed Europe NV shall have a right of pledge on all claims of the co-contractor / prime contractor arising from the contract under the agreement related to the work for which Sofabed Europe NV has been invoked as subcontractor.

**8.4** The direct claim referred to in Article 8.2 of these General Terms and Conditions of Sale and Delivery as well as the right of pledge provided for in this Article 8.3 of the General Terms and Conditions do not only apply to the respective claims but also to the ancillary sums, including, among other things (purely cited here as examples): the interest on arrears and any possible compensation under a penalty clause.

## **9. INFORMATION, SAMPLES, MODELS AND DESIGNS**

**9.1** The Customer is deemed to be aware of all the characteristics of the products and/or provision of services he has ordered. The Customer cannot derive any rights from the information, samples, models and/or designs which Sofabed Europe NV would provide on its own initiative or at the request of the Customer.

**9.2** The Customer bears exclusive a full responsibility for determining whether the purchased goods and/or services are suitable and meet all the quality requirements in view of the use and/or purposes for which the Customer and/or end customer has purchased the goods and/or services or wishes to use them.

To this end, the Customer shall carry out the necessary tests and retrieve all necessary information (e.g. information with regard to the correct use of the relevant goods and/or components, any risks attached to these products, the applications and quality of these goods and/or components, etc.).

In this regard, the Customer has the explicit obligation to verify the information thus obtained including with regard to the accuracy of the obtained information, the completeness of this information and the applicability of the information with respect to the use and/or the objectives for which the Customer and/or the end user has purchased the goods or wishes to use them.

**9.3** Any information that Sofabed Europe NV hands over to the Customer at its own initiative or at the request of the Customer has a purely informative value and does under no circumstances release the Customer from his responsibilities under Article 9.2 of these General Terms and Conditions.

The responsibility of Sofabed Europe NV remains in this regard always limited to the responsibility which is incumbent on Sofabed Europe NV under Belgian Law with the same degree of mandatory character.

## **10. ACCEPTANCE, DELIVERY AND COMPLAINTS**

**10.1** Immediately upon receiving the products and/or services, the Customer must carry out an initial verification including with regard to the Conformity Of The Delivery.

Complaints regarding the Conformity of the Delivery must be made by formulating a reservation on the delivery note and must be confirmed to Sofabed Europe NV by means of Registered Letter of Complaint within a period of forty-eight (48) hours upon delivery, failing which the Customer shall be deemed to have accepted the products and services delivered as agreed.

**10.2** Taking into use, processing, repacking and/or resale of the products delivered by Sofabed Europe NV shall be considered as approval and acceptance and shall apply as final delivery of the concerning products and/or services and releases Sofabed Europe NV from its responsibilities and liability in accordance with Article 12 of the General Terms and Conditions.

**10.3** Complaints with regard to hidden defects must be reported to Sofabed Europe NV with Registered Letter of Complaint no later than six (6) months upon delivery.

**10.4** The Customer shall in any case lose the right to invoke any defect if he does not inform Sofabed Europe NV thereof with Registered Letter of Complaint within a period of three (3) working days as soon as he discovered or should have discovered this non-conformity Of The Delivery or this deficiency.

**10.5** In response to complaints regarding non-Conformity Of The Delivery that have been reported to Sofabed Europe NV in due time and correctly, Sofabed Europe NV may at its option and discretion: (1) (partially) replace or repair the products, components and/or services that are not in conformity and/or are deficient; or (2) credit the deficient part at the price shown in the written agreement between Sofabed Europe NV and the Customer or, in the absence thereof, at the price shown in the order confirmation issued by Sofabed Europe NV or (3) in case of visible defects which are not substantial for the use of the purchased goods, to credit an amount that corresponds reasonably with the nature and scope of the relevant defect.

The Customer acknowledges that each of these measures separately constitute full and adequate compensation for any possible damage arising from the non-Conformity Of The Delivery and he accepts that the implementation of these measures cannot be considered as acceptance of liability by Sofabed Europe NV

**10.6** For complaints with regard to hidden defects that are reported to Sofabed Europe NV promptly and correctly, Sofabed Europe NV shall at its own option and discretion: (1) replace or repair (in part) the deficient products, components and/or services; (2) repair the deficient products and/or components; or (3) credit an amount equalling in all fairness to the nature and extent of the relevant deficiency.

The Customer acknowledges that each of these measures separately constitute full and adequate compensation for any possible damage arising from hidden defects and accepts that the implementation of these measures cannot be considered as acceptance of liability by Sofabed Europe NV

**10.7** Any (partial) replacement or repair of products, components and/or services may neither give rise to payment of any compensation nor to termination of the agreement between Sofabed Europe NV and the Customer.

**10.8** In no case does the Customer have the right to return products or to have work carried out thereupon without the explicit written consent of Sofabed Europe NV

**10.9** Sofabed Europe NV reserves the right to establish itself the non-Conformity Of The Delivery and/or other deficiencies and to examine the cause. When Sofabed Europe NV requests so, the Customer will have the concerning products delivered at his own cost and risk to Sofabed Europe NV at the location communicated by Sofabed Europe NV within a period of five (5) workdays upon receipt of such request by Sofabed Europe NV

**10.10** In no case do complaints and/or any (partial) replace or repair of products and/or services release the Customer from his obligation to pay within the term(s) laid down in the written agreement between Sofabed Europe NV and the Customer, the order confirmation issued by Sofabed Europe NV these General Terms and Conditions and/or the relevant invoice.

**10.11** The Customer is obliged to reimburse the costs incurred as a result of unjustified complaints.

## **11. WARRANTY**

**11.1** The Customer acknowledges and accepts that Sofabed Europe NV grants a limited and conditional guarantee to the end customer – first owner of the purchased goods and confirms to know the content thereof. The Customer commits to submit the warranty claim to Sofabed Europe NV within five (5) workdays from the notification thereof by the end customer – first owner, failing which the Customer will be responsible himself for the warranty obligations without the possibility of any recourse against Sofabed Europe NV The Customer agrees to give Sofabed Europe NV the fullest possible assistance to facilitate the examination of the warranty claim including (but not limited to) putting the concerning products at the disposal of Sofabed Europe NV in accordance with the Articles 10.8 and 10.9 of these General Terms and Conditions of Sale and Delivery. Sofabed Europe NV reserves the right to have the work performed in sub-contract by Customer within the scope of its warranty obligations towards the end customer – first owner.

**11.2** The Customer acknowledges and accepts that the aforementioned limited and conditional warranty towards the end customer does not apply with respect to products that have served as showroom model. The Customer acknowledges and accepts that for such products he assumes responsibility for the legal warranty obligations towards the end customer without any right of redress against Sofabed Europe NV

**11.3** Sofabed Europe NV will take a sovereign decision as to whether or not a warranty claim meets the conditions of the limited and conditional guarantee of the end customer – first owner. In no way is Sofabed Europe NV bound by any statement to this effect made by the Customer to end customer.

## **12. LIABILITY**

**12.1** The liability of Sofabed Europe NV with regard to the products purchased is limited to its legal responsibilities as producer and/or retailer depending on the circumstances.

**12.2** Sofabed Europe NV cannot be held liable for any damage to or any damage caused by or any damage related to use of materials being delivered by (or on behalf of and for account of) the Customer or end customer with the goal to produce and/or treat the purchased products with these materials.

**12.3** If the agreement concerns products which are not manufactured by Sofabed Europe NV and merely are resold by the latter, Sofabed Europe NV cannot be addressed regarding any damage other than damage relating to the Conformity Of The Delivery and all complaints and/or damage other than those relating to the Conformity Of The Delivery are exclusively the responsibility of the producer(s) and/or supplier(s) from whom Sofabed Europe NV has purchased the concerning goods. The Customer may invoke such complaints and/or damage at the most during either of the following periods, whichever is the shorter:

- the warranty period offered to Sofabed Europe NV by the respective manufacturer or supplier;
- an absolute maximum period of one year upon delivery of the respective products and/or services.

If the Customer informs Sofabed Europe NV correctly and in time in compliance with these General Terms and Conditions of any complaint and/or damage other than those relating to the Conformity Of The Delivery, Sofabed Europe NV shall directly forward the complaint to the producer or supplier concerned. During the further processing of these complaint and damage procedures, Sofabed Europe NV shall solely serve as an intermediary between the Customer and the respective producer or supplier. The responsibility of Sofabed Europe NV in this regard remains limited to forwarding information between the producer or supplier concerned on the one hand and the Customer on the other and Sofabed Europe NV can in no way be held liable with regard to the complaint and/or damage in question.

**12.4** The liability on the part of Sofabed Europe NV is at all times limited to the liability that is mandatorily imposed by law in these factual circumstances and in any case limited to whichever is the lowest of the following two amounts: (1) the amount of the invoice in question, or (2) the amount of the payment of insurance policies concluded by Sofabed Europe NV

**12.5** Sofabed Europe NV is in no case liable for: (i) indirect damages (including loss of turnover), (ii) the damage caused by the Customer, end customer and/or third parties, (iii) damage resulting from the wrong or inappropriate use of the purchased products, (iv) damage to purchased goods which the Customer or end customer has tried to change or when the Customer or end customer has used materials that do not meet the parameters as provided by Sofabed Europe NV and/or (v) damage resulting from non-compliance by the Customer, its staff or employees and/or the end customer of legal and/or other obligations including the manual that comes with the products.

**12.6** In accordance with the articles 9 and 14 of these General Terms and Conditions, Sofabed Europe NV is in no case liable neither for any damage resulting from the failure of Customer and/or end customer to retrieve/request and verify all necessary and useful information nor for any damage resulting from incorrect and/or incomplete information transmitted to the Customer and/or end customer by the Customer, supplier(s) and/or producer(s) of the purchased products and/or any other third party.

**12.7** The Customer shall be solely responsible for the resale of the purchased products and in this regards guarantees that he will comply with all the (statutory and other) obligations.

**12.8** In accordance with the articles 6.2 up to 6.5 of these General Terms and Conditions, Sofabed Europe NV will be in no way liable for:

- any quality guarantees with regard to the supplied products and/or services that are not specifically included in the written agreement between Sofabed Europe NV and the Customer, the order confirmation issued by Sofabed Europe NV the quotation made by Sofabed Europe NV and/or the communicated price lists;
- slight colour and quality deviations notwithstanding any possible guarantee provided by Sofabed Europe NV in accordance with article 6.4 of these General Terms and Conditions regarding colour match of the upholstery fabrics and/or leather;
- colour match of upholstery fabrics and leather if the Customer did not explicitly request from Sofabed Europe NV such a guarantee and/or ordered the products and/or services in question simultaneously;
- small dimensional deviations and shape and appearance of a model with respect to the size, shape and appearance included in the written agreement between Sofabed Europe NV and the Customer, the order confirmation issued by Sofabed Europe NV the quotation made by Sofabed Europe NV and/or the communicated price lists.

## **13. INDEMNIFICATION**

**13.1** The Customer shall fully safeguard Sofabed Europe NV and defend it against all claims and proceedings including the claims and proceedings of third parties that may arise from or be the result of any action or failure to act on the part of the Customer in conflict with the written agreement between Sofabed Europe NV and the Customer, the order confirmation issued by Sofabed Europe NV these General Terms and Conditions of Sale and Delivery and/or other (statutory) obligations incumbent on the Customer.

**13.2** The Customer shall indemnify Sofabed Europe NV for any damage including judicial and other costs arising as a result of its defence regarding the claims and/or procedures referred to in Article 13.1 of these General Terms and Conditions of Sale and Delivery.

## **14. OBLIGATIONS OF THE CUSTOMER**

**14.1** The Customer bears full and exclusive responsibility:

- to transmit all information to Sofabed Europe NV in due time, including information of which Sofabed Europe NV indicates that it is necessary or useful for carrying out its obligations towards the Customer and information of which the Customer ought to reasonably understand that it is necessary or useful for Sofabed Europe NV to carry out its obligations vis-à-vis the Customer;
- to inform Sofabed Europe NV prior to the delivery of the purchased products and/or services of possible standard and statutory conditions which these products must meet;

- to inform Sofabed Europe NV in writing and in due time of the specific requirements which the purchased products and/or services should meet;
- to comply with the special obligations associated with the use of the products that apply in the country where the goods will be delivered and/or used as stipulated in article 6.2. of the General Terms and Conditions of Sale and Delivery, regardless of whether these obligations are imposed on Sofabed Europe NV under the law of the country where the products are delivered and/or used;
- in case of “Delivery Duty Paid”, (i) to inform Sofabed Europe NV in due time about the times when he is available to receive the delivery, (ii) to inform Sofabed Europe NV promptly and without delay about any concerns regarding the time of delivery proposed by Sofabed Europe NV and (iii) to provide sufficient storing and delivery area in order to facilitate the delivery;
- to thoroughly inspect the products and/or services within 48 hours of delivery and the Customer is in any case obliged to adequately test the products and/or services before using, processing and/or reselling them;
- to treat and use the products at any time in accordance with the instructions supplied with the products;
- to duly and properly inform his customers about the safety instructions and the instructions for use (as communicated in the manual of which de Customer acknowledges to know the content);
- to take out the necessary insurance policies including with regard to the retention of title provided for in Article 18 of these General Terms and Conditions of Sale and Delivery. The Customer grants Sofabed Europe NV permission to inspect the policies and proofs of payment for the aforementioned insurances at the first request.

**14.2** If the Customer fails to meet his obligations as laid down in the written agreement between Sofabed Europe NV and the Customer, the order confirmation issued by Sofabed Europe NV these General Terms and Conditions of Sale and Delivery and/or if the Customer fails to meet all his other (statutory) obligations, Sofabed Europe NV has the right to (temporarily) suspend its obligations. Any costs connected with such suspension shall be borne in full by the Customer. These costs concern among other things (cited here purely as examples): additional hours of work performed, storage fees, etc.

## 15. FORCE MAJEURE AND HARDSHIP

**15.1** Sofabed Europe NV is not liable for any shortcomings in complying with its obligations caused by force majeure or hardship.

**15.2** In case of force majeure or hardship, Sofabed Europe NV may, as it prefers and at its own discretion, without any prior notice of default or court intervention being required and without any right of recourse against Belform: (1) propose to the Customer to replace the missing products and/or services by a functional equivalent; (2) temporarily suspend the performance of its obligations; (3) terminate the agreement between Sofabed Europe NV and the Customer without the need for court proceedings, and/or (4) invite the Customer to renegotiate the agreement between Sofabed Europe NV and the Customer.

If the Customer does not take part in these negotiations in good faith, Sofabed Europe NV may, in accordance with Article 24 of the General Terms and Conditions, ask the court to determine new contractual conditions and/or to order the Customer to pay compensation.

**15.3** Force majeure and hardship include the following (listed purely as examples): non-availability and/or scarcity of particular materials; scarcity of raw materials; exchange rate fluctuations, increases in prices of materials, prices of auxiliary materials and raw materials, wages, salaries, social security charges, costs, levies and taxes imposed by the public authorities, transport costs, import and export duties or insurance premiums, problems occurring in the time between the order confirmation and the final acceptance; icy conditions; special weather conditions; strike; mobilisation; war; sickness; accidents; disruptions of communication and computer systems; measures by the public authorities; export ban; delay in supply; transport and/or travel impediments including lack of or withdrawal of transport possibilities; export impediments; import impediments; breakdown; traffic jam; etc.

## 16. INVOICE AND PAYMENT

**16.1** Sofabed Europe NV reserves the right to invoice the products and/or services immediately upon delivery, even in case of partial deliveries.

**16.2** The Customer shall submit his complaints regarding invoices to Sofabed Europe NV with Registered Letter of Complaint within eight (8) calendar days upon receipt of the invoice.

**16.3** Unless explicitly agreed otherwise, all invoices must be paid within thirty (30) calendar days upon invoice date.

**16.4** All invoices are payable in cash at the registered office of Sofabed Europe NV or by transfer to the bank account number indicated on the invoice. The Customer is not allowed to make payments to intermediaries.

**16.5** No reduction is granted for cash payments. Only receipts signed by persons authorized to bind Sofabed Europe NV legally are valid.

**16.6** In the event of failure to pay or incomplete payment on the due date of one of the invoices:

- (1) the Customer shall automatically and without any prior formal notice have to pay an interest of 1% per month which is capitalised annually on the outstanding balance without prejudice to the issue of any bill of exchange by and on the Customer;
- (2) the Customer shall have to pay automatically and without any prior formal notice a lump sum as compensation equal to 10% of the amount of the invoice with a minimum of five hundred Euro (€ 500.00) without prejudice to the right of Sofabed Europe NV to prove higher damage;
- (3) the Customer shall have to pay automatically and without any prior formal notice all judicial and extra-judicial collection costs;
- (4) all of Belform’s other invoices, even those not yet due, shall become automatically and without any prior formal notice immediately payable by Customer; and

- (5) Sofabed Europe NV automatically and without any prior formal notice has the right to claim back from Customer the supplied products, to suspend the (further) execution of the relevant and/or one or more other agreements with the Customer and/or to terminate them without any prior notice of default or judicial intervention being required.

Points (4) and (5) also apply in the event of (imminent) bankruptcy, judicial or contractual termination, application of the Belgian Act of 31 January 2009 on the continuity of companies, payment arrears or any other fact as a result of which Sofabed Europe NV reasonably loses its trust in the creditworthiness of Customer.

**16.7** Acceptance of partial payment is subject to all reservation and is charged in the following order: (1) collection costs, (2) compensation, (3) interests; (4) principals.

**16.8** Entry of the outgoing invoice in the outgoing invoice book of Sofabed Europe NV constitutes presumption of dispatch and receipt of the relevant invoice.

## **17. CANCELLATION**

**17.1** Sofabed Europe NV reserves the right wholly or partially cancel the agreement between Sofabed Europe NV and the Customer and/or the Customer's order without any form of compensation and without any right of recourse against Sofabed Europe NV if particular products and/or components of particular products are not in stock.

**17.2** Subject to the explicit and written consent of Sofabed Europe NV the Customer is not permitted to cancel his order or the agreement between Sofabed Europe NV and the Customer.

If the agreement between Sofabed Europe NV and the Customer is cancelled by or on the instruction of the Customer, even with the express written consent of Sofabed Europe NV the Customer shall pay lump-sum compensation equal to 25% of the total amount of the invoice or equal to 50 % of the total amount of the invoice if the cancelled agreement relates to tailor-made seating furniture without prejudice the explicit right of Sofabed Europe NV to claim higher compensation if proof of entitlement thereto is provided.

## **18. RETENTION OF TITLE**

**18.1** The rights of ownership to the products delivered only transfer to the Customer at the moment when the price, the costs, the interests and all associated sums have been paid in full. The Customer bears the risk for the products delivered from the delivery in accordance with Article 7.1 of these General Terms and Conditions.

**18.2** The retention of title shall also apply to products being held in storage or being deposited with the goal of a resale on behalf of Sofabed Europe NV

**18.3** The Customer must always do everything what may reasonably be expected of him to safeguard the property rights on the unpaid products. If third parties seize the goods or intend to establish or claim rights to them, the Customer is obliged to inform Sofabed Europe NV thereof without delay.

**18.4** The Customer furthermore commits to insure the unpaid products insured against fire, explosion, water damage and theft. Sofabed Europe NV is entitled to any sums paid out under such insurances.

**18.5** If the Customer fails to meet his obligations or if Sofabed Europe NV suspects that the Customer will fail to meet his obligations, the Customer shall at the first and simple request of Sofabed Europe NV return the relevant products to Sofabed Europe NV within 24 hours at his own costs and risk.

The exercise of this right entails immediate and automatic termination of the agreement between Sofabed Europe NV and the Customer. Consequently, the following amount shall become due for Customer automatically and without prior formal notice of default: (1) the loss of profit estimated on a flat-rate basis of 15% of the total amount of the invoice; and (2) lump-sum compensation of 5% of the total amount of the invoice for (additional) management and administration costs. All this without prejudice to the right of Sofabed Europe NV to prove higher damage.

Upon receiving back the products and as far as these products are found to be still in good condition, the amounts already paid shall be refunded to the Customer after deduction of the aforementioned amounts owed.

**18.6** If the retention of title is infringed, Sofabed Europe NV shall automatically acquire a right of pledge on the price obtained for the sale of the relevant products and the Customer shall owe Sofabed Europe NV lump-sum compensation of 35% of the total amount of the invoice.

## **19. FORFEITURE OF RIGHTS**

Any non-exercise (even repeatedly) by Sofabed Europe NV of any right may only be regarded as tolerating a particular situation and does not lead to a forfeiture of rights.

## **20. NETTING**

**20.1** In accordance with the Act on Financial Securities of 15 December 2004, Sofabed Europe NV and the Customer shall automatically and ipso jure offset and settle all current existing and future debts vis-à-vis one another. This means that in the permanent relationship between Sofabed Europe NV and the Customer only the largest claim will remain as a balance after the above-mentioned automatic settlement.

**20.2** This setoff can in any case be invoked vis-à-vis the receiver and the other concurrent creditors who will therefore not be able to oppose the setoff carried out by the Customer and Sofabed Europe NV

## **21. SUSPENSION AND TERMINATION**



**21.1** In the event of any change in the situation of the Customer such as death, conversion, merger, takeover, transfer, liquidation, suspension of payment, joint or amicable composition, request for deferment of payment, cessation of activity, seizure or any other circumstance that may harm trust in the Customer's creditworthiness, Sofabed Europe NV reserves the right to take the following action purely because of that fact: either suspend the execution of one or more agreements with the Customer until such time when the Customer provides sufficient securities for his payment; or declare one or more agreements with the Customer to be terminated from the date on which the notice of termination is dispatched, without prior notice of default and without judicial intervention, without prejudice to the right of Sofabed Europe NV to claim additional compensation.

**21.2** If the agreement between Sofabed Europe NV and the Customer is ended, with or without the application of the right of termination provided for in Article 21.1 of these General Terms and Conditions, the Customer loses the right of demand from Sofabed Europe NV that it complies with its obligations.

## **22. CONFIDENTIALITY AND INTELLECTUAL PROPERTY**

**22.1** Sofabed Europe NV remains the exclusive holder of all intellectual rights which it owns in the delivered products and/or services. The Customer guarantees Sofabed Europe NV that the information provided by the Customer does not infringe any intellectual property rights of third parties.

**22.2** It is strictly forbidden for the Customer to advertise (have advertised) the products and/or services of Sofabed Europe NV without the prior written consent of Sofabed Europe NV

**22.3** All documents, information, models and/or any kind of designs whatsoever that are provided to the Customer during the negotiations concerning the agreement and/or the execution of the agreement between Sofabed Europe NV and the Customer and/or that are indicated in any possible document emanating from Sofabed Europe NV including the order confirmation and the delivery note issued by Sofabed Europe NV shall be treated as confidential. The above-mentioned documents shall be returned to Sofabed Europe NV at its first request.

**22.4** Deze documenten, informatie, modellen en ontwerpen blijven eigendom van Sofabed Europe NV en mogen niet aan derden worden meegedeeld, noch gekopieerd, noch (in)direct, geheel of gedeeltelijk, worden gebruikt voor andere doeleinden dan waarvoor zij bestemd zijn, tenzij met uitdrukkelijke en schriftelijke toestemming van Sofabed Europe NV

**22.5** The duty of confidentiality remains even after the termination or end of the agreement between Sofabed Europe NV and the Customer, at least until the relevant documents, information, models and/or designs have become publically known through no fault of the Customer's.

## **23. PERSONAL DATA AND VISUAL MATERIAL**

**23.1** The Customer grants permission to Sofabed Europe NV to include all personal data supplied by the Customer in an automated database. These data will be used in the pursuit of its information and promotional campaigns relating to the products and/or services offered by Sofabed Europe NV. The Customer grants Sofabed Europe NV permission to transfer these data to third parties.

**23.2** The Customer may at all time request that his data are communicated or rectified. If the Customer no longer wishes to receive commercial information of Sofabed Europe NV he shall inform Sofabed Europe NV thereof.

**23.3** The Customer grants Sofabed Europe NV permission to use visual material pertaining to the products/services delivered to the Customer for: (cited here purely as examples) general information, advertising, publication on the website of Sofabed Europe NV publication in a folder/folders, etc.

**23.4** The Customer warrants Sofabed Europe NV that the personal data of the end customer provided by him were collected and processed in compliance with the applicable laws on protection of the personal data and that the Customer received the explicit consent to process and use the personal data from the individual to whom the data refer.

**23.5** Sofabed Europe NV undertakes, within the scope of the Data Protection Act, to the best of ability to take appropriate technical and organizational measures necessary for the protection of any personal data processed by her against accidental or unauthorized destruction, accidental loss as well against alteration of or, access to, and against any other unauthorized processing of such personal data.

## **24. DISPUTES**

Sofabed Europe NV and the Customer undertake to apply the CEPANI Mediation Rules to all disputes that might arise from or relate to this agreement or any other agreement between Sofabed Europe NV and the Customer. The seat of the mediation is located in Hasselt and the language of the mediation is the Dutch language. If the mediation fails, the dispute shall be finally settled under the CEPANI Rules of Arbitration by one arbitrator appointed in accordance with these regulations. The seat of the Arbitration is Hasselt and the language of the Arbitration is the Dutch language.