

# Terms and Conditions of Sale

## § 1 Application

- These Terms and Conditions shall apply exclusively. The customer's Terms and Conditions if contradictory or differing from these Terms are excluded hereby unless prior written consent is given by us. These Terms and Conditions shall apply even if goods are supplied in accordance with the customer's contradictory or differing Terms and Conditions.
- These Terms and Conditions shall apply on this and any subsequent contract even if the contracts are not related to each other and any subsequent contracts are concluded without using one of our appropriate order forms (for example order form for stockroom sales).

## § 2 Offer and Acceptance, Sample Supplies

- Completion of the order form by the Purchaser constitutes a binding offer. A contract shall be deemed concluded if the offer is accepted by us by written confirmation unless subsection 2 applies. Our commercial agents and employees who receive the orders are not entitled to accept any offer.
- An offer shall be deemed accepted, if we neither accept nor reject the offer in writing within 8 weeks from the order date. In that case no further written confirmation is required.
- Verbal or other terms of contract other than agreed herein are not binding unless confirmed by us in writing. **Our commercial agents and sales representatives are not entitled to provide such written consent.**
- In the event that our suppliers fail to supply us with certain fabrics and designs or production of certain products would be unreasonable as a result of low order volume, we are entitled to reduce the order volume to a deliverable volume. The Purchaser shall have no claims in respect of reduction of order volume.
- Orders in respect of sample supplies are accepted only provided the Purchaser agrees to pay a minimum of 50 % of the invoice value. Any Samples which have not been returned to us within 14 days from despatch shall be deemed accepted by the Purchaser. We will not accept any samples reaching us after the said 14 day period.

## § 3 Payment

- Our sales prices apply ex works Aschaffenburg and are exclusive of applicable value added tax. Goods will be insured by us only upon express request by, and at the expense of, the Purchaser.
- Subject to subsection 5 below, invoices are payable
  - within 10 days of the date of issue of the invoice with 4 % prompt payment discount-
  - between 11 and 30 days from the date of issue of the invoice with 2.25 % discount
  - between thirty and sixty days from the date of issue of the invoice in full.
 All payments must be made by Bank or Giro Transfer free of charges to the recipient to his registered office or the office of the Factoring-Company. Effective date of payment will be when the bank transfer is credited to the account of either the recipient or the Factoring-Company.
- Bills of exchange and cheques are accepted only where this has previously been agreed and fulfilment will be effective upon clearance. In case of payment by cheque the effective date will be the date of unreserved clearance, i.e. at the earliest 14 days after submission of the cheque to the bank. The maximum period of validity of a bill of exchange shall be 90 days. The Purchaser will be responsible for all associated Bank, discounting and collection charges.
- In the event of payment after the due date, i.e. after the 61st day after the date of invoice, we shall be entitled to claim interest at the rate of 3 % above base rate of the German Bundesbank from time to time. The Purchaser shall be entitled to adduce evidence that we have suffered a lower loss of interest or none at all. In the event of delay of payment we reserve our position regarding further damages caused as a result of late payment.
- We shall be entitled to demand payment in advance, collect on delivery (COD) or bank guarantee before supplying the goods, if
  - our Factoring-Company or credit insurance company does not grant a credit range for the purchase of goods or freeze an existing line of credit.
  - one of the Purchaser's banks terminates this credit or freezes an existing line of credit.
  - there is a protest of a bill of exchange or cheque
  - the customer becomes insolvent
  - insolvency proceedings are commenced against the Purchaser

## § 4 Delivery

- Delivery shall be ex works store Aschaffenburg. Delivery costs to be the responsibility of the customer.
- We reserve the right to deliver by instalments.
- Our goods are manufactured abroad. As is common in the textile industry it may therefore not always be possible to deliver all ordered goods. The Purchaser shall have no claims in this respect.
- Unless otherwise agreed dispatch takes place without insurance.
- Unless otherwise agreed goods are transported either on hanging racks or packed flat, by road transport, mail or parcel delivery services, depending on our choice. The Purchaser will be responsible for any costs if any other form of packaging or transportation is required.
- After expiry of the date of delivery as set out in the order a subsequent period for delivery of 18 days („the subsequent period“) follows. The expiry of this subsequent period shall be regarded as withdrawal from contract excluding claims for damages and compensation.
- Withdrawal following subsection 4.6 does not apply in the event of written notification by the Purchaser within the subsequent period that delivery is required.
- Punctuality of delivery will be determined exclusively by the day upon which we hand over the goods to the carrier engaged by us with the transport to the Purchaser.
- We do not enter into contracts where time is of the essence. **Our commercial agents and sales representatives are not authorised to enter into such contracts.**
- The Purchaser's right to claim damages in respect of breach of contract shall be dependent upon the Purchaser having given four weeks' prior notification that acceptance of delivery will be refused and provided further that this notification reaches us within the subsequent period as set out in paragraph 6 above.
- Risk in the goods shall pass to the Purchaser on our handing over the goods to the carrier and in particular the Purchaser shall bear the risk during transportation pursuant to paragraph 477 BGB (German Civil Code).

## § 5 Exclusivity

Unless otherwise agreed in writing, we do not grant any exclusivity concerning location, forms, design or colours. **Our commercial agents and sales representatives are not authorised to enter into any such agreements.**

## § 6 Guarantee Claims, Complaints, Liability

- The Purchaser shall examine the goods immediately after delivery. Any defects must be notified to us immediately in writing and in any event no later than 10 days following receipt of the goods, in case of latent defects within 10 days of discovery of defects. **Our commercial agents and sales representatives are not entitled to accept such complaints.**
- We are not obliged to accept returned goods for examination regarding alleged defects, unless the Purchaser has notified us in writing of his intended return of the goods, stating invoice number and invoice date. Acceptance of returned goods shall in no case be deemed to constitute acceptance of complaints.
- In the event of a defect, we reserve the right to deal with this by either remedying the defect or sending a replacement within 3 weeks of receipt of the defective product.
- In the event that we are either not prepared, or not able, to remedy the defect or supply a replacement or fail to meet the time limit set out in paragraph 3 due to reasons beyond our control or in the event of there being no satisfactory remedy or replacement due to reasons beyond our control, the Purchaser shall be entitled to cancel the relevant part of the contract or request reduction of the purchase price.
- Damages claims of any type against us, including claims in tort, breaches of contract leading to termination and positive breaches of contract are limited to gross negligence or wilful misconduct on the part of our legal representatives or operatives. This applies also to any claims brought by the Purchaser directly against our legal representatives or operatives. Any claim shall be limited to the amount of any typically foreseeable loss. We shall therefore not be liable for any loss not directly attributable to the subject-matter of the delivery, in particular, for loss of profits or other financial loss of the Purchaser. The same applies to any claims brought directly against our legal repre-

sentatives or operatives.

- Paragraph 5 above shall not apply in the event of the Purchaser bringing a claim for damages in respect of breach of warranties pursuant to paragraphs 463, 480 subsection 2 of the German Civil Code (BGB).
- Minor variations regarding quality, colour, measures, weights, fittings and or designs and which are either common in the trade or technically unavoidable shall in no case constitute the subject-matter of a complaint.
- All guarantee claims of the Purchaser including claims for consequential losses shall be subject to a limitation period of 6 months from dispatch of goods. All other damages claims of the Purchaser, particularly those set out in sub-section 5 above, shall be subject to a limitation period of 2 years from dispatch of goods.

## § 7 Temporary stop of supply, Withdrawal

- In the event of acts of god, Governmental orders or operational interruptions for which we are not responsible lasting longer than one week or which are assumed will last longer than one week the contractual times for delivery and acceptance will be extended automatically by the period of interruption to a maximum extension of 5 weeks plus subsequent period. Such extension shall apply only if we inform the Purchaser promptly of the reason for and projected length of the delay, once it is foreseeable that we will be unable to meet a delivery date.
- If the delay has lasted longer than five weeks and if the other party to the contract has not, following written request, been informed immediately that delivery or acceptance will take place on time, the other party shall be entitled to withdraw from the contract immediately.
- If delivery or acceptance do not take place on time, the other party shall be entitled to withdraw from the contract. In that case the withdrawing party shall, in writing and by recorded delivery, notify its intention to do so two weeks prior to withdrawal.
- Claims for damages in respect of the above-mentioned events are hereby excluded, unless due to gross negligence or wilful misconduct. In this case Paragraph 6 sub-section 5 applies.
- In the event that delivery becomes impossible due to reasons within our control the Purchaser shall be entitled to withdraw from the contract. This excludes a claim for damages unless the impossibility is due to gross negligence or wilful misconduct. In this case paragraph 6 sub-section 5 applies.
- In the event of delayed payment of an invoice and where payment is still due despite an extension of time and notification that any payment made after this period has expired will be refused, we shall be entitled to sell the goods not yet delivered to another party and to claim damages to the extent of 30 % of the purchase price (excluding VAT). The Purchaser shall be entitled to produce evidence that the loss suffered by us was less or non-existent. The same applies, if the Purchaser refuses acceptance of goods without any justification.
- If the Purchaser refuses to fulfil the contract or withdraws from the contract without justification or fulfilment does not take place for reasons within the Purchaser's control, we shall be entitled to claim damages to the extent of 30% of the purchase price (excluding VAT). The Purchaser shall be entitled to produce evidence that the loss suffered by us was less or non-existent.
- We reserve the right to claim higher damages, insofar appropriate, in case of the events set out in subsections 6 and 7 above.

## § 8 Late Payment

- We shall not be obliged to deliver any further orders which we have contracted to supply before payment in full in respect of all outstanding invoices and interest for late payment has been received. In the event of payment not being made within 60 days from invoice date, the delivery period for all outstanding orders will, without prior notification to the Purchaser, be automatically extended by the period from the 61st day from invoice date to the date of payment in full being received. In the event of payments being overdue we shall, irrespective of existing contractual credit periods, be entitled to demand payment on account or the provision of a bank guarantee before delivery of goods in respect of outstanding orders.
- In the event of late payment the Purchaser shall be liable for any costs incurred by us in connection with collection of the debt. This applies also to unjustified withholding of sums which are due for payment and to any insolvency proceedings which we may commence against the Purchaser.
- In the event of late payment the Purchaser shall also be liable for any costs incurred by us in instructing a German or foreign lawyer (including agency lawyers).
- In the event of late payment contractual credit periods in respect of already supplied goods shall not apply. Invoices in respect of such deliveries become due immediately in full without prompt payment discounts.

## § 9 Set-off and Retention

- The Purchaser may not raise any set-off or counterclaim unless this is undisputed or the result of a Judgment of a Court of the applicable law.
- The same applies for any right of retention to the extent that the Purchaser is a qualified businessman. If this is not the case, he shall have no right to claim retention unless his Counterclaim arises out of the same contract.

## § 10 Reservation of Title

- The goods delivered shall remain our property until we have received payment in full of all outstanding sums owed to us by the Purchaser. Insofar as we have agreed to payment of sale price by cheque or bill of exchange, then our title in the goods shall continue to be reserved until any bill of exchange or cheque accepted by us has been cleared. In the event of breach of contract by the Purchaser, in particular late payment, we reserve the right to recover the goods. Such recovery of goods shall not constitute withdrawal from contract, unless expressly confirmed in writing. In the event of recovery of goods we shall be entitled to dispose of them as we think fit. Any profits realised as a result of disposal (less appropriate disposal costs) will be applied in reduction of any outstanding payments by the Purchaser.
- The Purchaser shall notify us forthwith in the event of distraint or any other interference by third parties with the goods, to enable us to claim our rights in the goods. The Purchaser may only sell the goods in the ordinary course of his business. The Purchaser is prohibited from pledging the goods or giving them by way of security to third parties, unless we have provided our written authorisation to do so.
- We undertake to release our security on request by the Purchaser provided that the value of our security exceeds the claims secured by more than 20%. We reserve the right to choose the goods to be released from our security.

## § 11 Jurisdiction and Place of Performance

- All present or future disputes arising out of the parties' contractual relations shall be subject to the jurisdiction of the court at our discretion in Aschaffenburg. We reserve the right however to issue proceedings against the Purchaser in its court of jurisdiction.
- Place of performance for all contractual obligations of both parties shall be Aschaffenburg, if the Purchaser is a qualified businessman.

## § 12 Applicable Law

German law and German commercial customs and technical practice shall govern exclusively on all transactions, including those made by cheque and bills of exchange.

## § 13

If any one or more of these Terms and Conditions of Sale shall be or become invalid, this shall not affect the validity of the contract and the remaining Terms and Conditions of Sale. Invalid or impracticable terms shall be replaced by valid and practicable terms in accordance with the context and meaning of the former.