

# Standard Conditions of the German Textile Industry

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## 1 Scope of Application

1. The Standard Conditions shall apply solely between merchants.
2. All deliveries and services of the seller shall be subject to the following Standard Conditions of the German Textile Industry. General Terms and Conditions of the purchaser shall not be recognised by the seller, unless the seller has agreed to their validity in writing. This also applies if the seller unconditionally performs the services having knowledge of contrary or deviating conditions to the present Standard Conditions.

## 2 Place of performance, delivery and acceptance

1. The place of performance for all obligations under the delivery agreement shall be the place of the registered place of business of the seller.
2. The goods shall be delivered ex (domestic) works. The shipping costs shall be borne by the purchaser. The purchaser may determine the carrier. The goods shall be sent uninsured. The parties may agree that a shipping notice must be issued.
3. Packing costs for special packaging shall be borne by the purchaser.
4. Sorted partial shipments and in the case of combinations, partial shipments adequate for sale must be processed promptly and advance notice of such deliveries shall be given to purchaser. Unsorted shipments shall only be permitted with the prior consent of the purchaser.
5. If the purchaser is at fault for not accepting the goods in a timely manner, the seller may at his discretion, and after giving notice of a grace period of 12 calendar days, either invoice the goods with payment being due immediately (backorder invoice) or withdraw from the contract or claim damages.

## 3 Place of legal venue

The place of legal venue (also for bills of exchange and check complaints) shall be, at the plaintiff's discretion, at a German registered place of business of one of the parties. The plaintiff may also take legal action at the registered office of the specialist organisation responsible for the seller (Cologne). The court to which recourse is first sought shall have jurisdiction.

## 4 Subject matter of the contract

1. The goods shall be delivered on determined dates (workday or a specific calendar week). All sales shall be concluded for determined quantities, articles, levels of quality and fixed prices. Both parties shall be bound hereto. Commission business shall not be entered into.
2. Block orders are permitted and must be limited in time when the contract is concluded. The acceptance period shall not exceed 12 months.

## 5 Interruption of Delivery

1. In the event of force majeure, labour disputes for which a party is not responsible for, and other operational disruptions that are beyond a party's control and have lasted or are expected to last longer than a week, the delivery or acceptance period shall readily be extended by the duration of the obstruction, but not exceed 5 weeks. The extension shall only be granted if the other party is immediately given notice of the reason for the obstruction, as soon as it is clear that the delivery or acceptance deadline cannot be met.
2. If in the cases referred to in clause 1 hereinabove, the delivery or acceptance does not take place within the extended delivery or acceptance period the other party may withdraw from the contract, after giving notice of a grace period of 12 calendar days.
3. Claims for damages shall be excluded in the cases referred to in clause 1, if the relevant party has satisfied its obligation in accordance with clause 1.

## 6 Grace period for delivery

1. After expiry of the delivery period, a grace period of 12 calendar days shall start without any declaration being required. After the grace period, the purchaser may withdraw the contract by giving notice in writing. If the purchaser wishes to claim damages instead of delivery, it must give written notice to the seller of a 4-week delivery period after expiry of the agreed delivery date. The statutory regulations according to which setting an additional period for performance is not required (sections 281 para. 2 and 323 para. 2 of the German Civil Code) shall remain unaffected by this.
2. The grace period for goods in stock that are ready for dispatch, and NOS goods—"Never-out-of-stock"—is of 5 working days. The purchaser must be informed immediately in the event of non-delivery. Furthermore, the provisions of clause 1 shall apply.
3. Before the end of the grace period for delivery, claims of the purchaser for late delivery shall be excluded, inasmuch as section 8 clauses 2 and 3 do not apply.

## 7 Notice of defect

1. Notices for open defects shall be sent to the seller no later than 12 calendar days after receipt of the goods. Hidden defects must be notified by the seller without delay as soon as they are discovered.
2. Any claim for open defects shall be excluded after the supplied goods have been cut or processed in any other way.
3. Minor, technically unavoidable deviations in quality, colour, width, weight, finish or design shall not be considered as defects. This also applies for standard deviations, unless the seller has declared in writing that the delivered goods must strictly match a given sample.
4. In case of justified notice of defects, the purchaser may claim repair of the goods or delivery of replacement goods at the seller's discretion within 12 calendar days after receipt of the returned goods by seller. In this case, the seller shall pay the freight costs. If subsequent repair or replacement delivery fails, the purchaser may only proportionally reduce the purchase price or withdraw from the contract, inasmuch as section 8 clauses 2 and 3 do not apply.
5. If the notice of defect is not given in a timely manner, the goods shall be deemed as approved.

## 8 Compensation for damages

1. Claims for damages made by the purchaser shall be excluded unless otherwise agreed in these conditions.
2. The exclusion in clause 1 shall not apply in case of a liability under the German Product Liability Act, in case of intent or gross negligence by the business owners, legal representatives and leadership, malice, failure to comply with a provided guarantee, in the event of intentional or negligent injury to life, body or health or in the event of the culpable breach of a material contract obligation; a material contractual obligation is one that shapes the contract and in the performance of which the purchaser may trust. The claim for damages because of a material breach shall be limited to foreseeable damage typical for a contract of this kind, unless another case referred to in sentence 1 applies.
3. A change of the burden of proof to the detriment of the purchaser is not linked to the above regulations.

## 9 Payment

1. The invoice shall be issued on the date of delivery or the date of provision of the goods. Postponement of the due date (value date) is fundamentally excluded.
2. Invoices are payable:
  1. within 10 days of invoicing and dispatch of goods with 4% express discount payment
  2. from 11 to 30 days after invoicing and dispatch of goods with 2.25% discount
  3. from 31 to 60 days after invoicing and dispatch of goods net.

From the 61st day the purchaser shall be in default in accordance with section 286 para. 2 No. 1 of the German Civil Code.

3. If a bill of exchange is accepted by the seller in lieu of cash, cheques or wire transfer then a surcharge of 1% of the value of the bill is to be charged as of the 61st day from the date of invoice and dispatch of goods.

4. Instead of the above clauses, payment may be regulated as follows, provided that the purchaser is bound to this for at least 12 months:

Invoices from	to be settled with 4% discount on	to be settled with 2.25% discount on	to be settled net on
1st–10th of a month	15th of the same month	5th of the next month	5th of the following month
11th–20th of a month	25th of the same month	15th of the next month	15th of the following month
21st–end of a month	5th of the next month	25th of the next month	25th of the following month

Clauses 1–3 shall apply accordingly to the above payment schedule.

5. Changes to chosen payment schedule shall be announced three months in advance.
6. Payments shall be applied to the oldest debt which is due plus the accrued interest on arrears.
7. The timeliness of payments is determined by the date the payment is credited to the account of the seller.

## 10 Payment after the due date

1. For payments made after the due date interest of 9 percentage points above the base rate shall be charged in accordance with section 247 of the German Civil Code. In other respects, section 288 of the German Civil Code shall apply.
2. Until complete payment of invoice amounts that are due including default interest, the seller is not obliged to make any further deliveries in accordance with ongoing delivery contracts. The right to claim further damages remains.
3. In the event of a substantial deterioration in the financial circumstances of the purchaser, such as imminent insolvency or payment default, the seller may suspend his performance regarding all supply contracts that are based on the same legal relationship or withdraw from this delivery agreement after giving a notice period of 12 calendar days. Apart from this, section 321 of the German Civil Code shall apply. Section 119 of the German Insolvency Statute shall remain unaffected.

## 11 Right to off-set and to retain payments

The right to off-set and retain payments on due invoice amounts is only permitted with undisputed or legally binding claims, unless a claim for damages directly linked to the purchaser's claim for faultless delivery is concerned.

## 12 Retention of title

1. The goods shall remain the property of the seller until full payment of all receivables for the delivery of goods arising from the business relationship with seller, including ancillary claims, damages as well as payment of cheques and bills of exchange. The right of retention of title shall remain even if individual claims of the seller are included in an open account and the balance is drawn and recognised.
2. If the purchaser processes, mixes or combines the goods under retention of title into a new movable good, this shall be done for the seller, without any liability to the seller. By combining, mixing or processing the goods, the purchaser does not acquire ownership of the new item according to sections 947 ff. of the German Civil Code. By combining, mixing or processing the goods under retention of title with items that do not belong to the seller, the seller acquires a joint ownership right in the new item according to the invoice value of his right of retention in proportion to the total value of the new item.
3. If a central settlement agency, which assumes the accounts receivable risk is involved in the business relationship between the seller and purchaser, the seller shall transfer ownership of the claim upon dispatch of the goods to the central settlement agency under the suspensive condition of payment of the invoice by the central settlement agency. The purchaser is only released from his payment obligation upon payment by the central settlement agency.
4. The purchaser may resell or further process the goods only under the following conditions:
  - a) The purchaser may sell or process the goods under retention of title in the ordinary course of business, provided that his financial situation does not subsequently significantly deteriorate.
  - b) The purchaser hereby assigns any claim with all ancillary rights arising from the resale of the goods under retention of title—including any open balance claims—to the seller. The seller accepts this assignment.
  - c) If the goods were combined, mixed or processed and the seller has acquired joint ownership in the amount of the invoiced value, then he shall be entitled to the purchase price in proportion to the value of his invoiced right to the goods.
  - d) If the purchaser has sold the claim to a factor, the purchaser assigns the claim against the factor which replaces the original claim to the seller and transfers the proceeds to the seller in proportion to the value of the seller's right. The purchaser is obliged to disclose the assignment to the factor if it is more than 10 days overdue with an invoice or if his financial situation deteriorates significantly. The seller accepts this assignment.
  - e) As long as the purchaser meets his payment obligations, he is authorized to collect upon the receivables which have been assigned pursuant to the retention of title clause. The right to collect upon these claims expires in case of payment default by the purchaser or in case of a significant deterioration of the financial situation of the purchaser. In this case the seller is authorized by the purchaser to inform the customers of the purchaser of the assignment and the ownership of the seller in the accounts receivable. To enable the seller to collect upon the assigned claims, the purchaser must provide the necessary information and allow verification of the information. More particularly, the purchaser must provide the seller with a detailed list of all outstanding claims which have been assigned by reason of the retention of title right with the names and addresses of the customers, the amount of each claim, invoice date, etc.
5. If the value of the existing security provided to the seller by reason of the extended retention of title claims exceeds the total amount of the seller's claims by more than 10%, the seller must proportionally release securities at his discretion upon the purchaser's request.
6. The assigned claims may not be pledged and a security interest in the claims may not be transferred. In the event of a seizure or an attachment, the purchaser must immediately inform the seller of the name of the creditor who has executed the attachment or seizure.
7. If, in the exercise of his retention of title, the seller demands the delivered items back, this shall not automatically be deemed a withdrawal from the contract. The seller is free to sell the returned goods subject to the retention of title by means of a private sale.
8. The purchaser shall store the goods under retention of title for the seller free of charge. He shall insure them against standard risks, such as fire, theft and water damage within the usual scope. The purchaser hereby assigns his claims for damages against insurance companies or third parties because of the realisation of the afore mentioned risks in the invoiced amount of the retained goods to the seller. The seller accepts the assignment.
9. All claims and rights arising from the retention of title and all its special forms defined in these conditions shall remain in force until there is a complete release from contingent liabilities such as out of checks and bills of exchange that the seller has incurred in the interest of the purchaser. In the case of sentence 1, the purchaser may carry out the factoring of his accounts receivable. However, he must inform the seller before incurring any contingent liabilities.

## 13 Applicable Law

The law of the Federal Republic of Germany shall apply. The United Nations Convention on Contracts for the International Sale of Goods of 11/04/1980 is excluded.