

GERRY WEBER International AG

CONTRACT AND DELIVERY TERMS AND CONDITIONS

1. General Principles

The Seller shall only sell on the following terms and conditions:

The Buyer accepts these terms for this and subsequent deliveries even if his own general terms and conditions are different.

Variations from our terms must be agreed in writing and are only effective if they are signed by the management or by the competent sales manager.

Lack of comment about standard conditions or other conditions submitted by the Buyer which are at variance with the Seller's terms of contract and delivery does not constitute acceptance of the Buyer's conditions.

In particular, lack of comment about a contradictory confirmation of order does not constitute agreement.

Every variation from our conditions contained in the buyer's confirmation of order will be deemed a rejection of the order.

The customer's acceptance of our delivery constitutes irrefutable proof that our terms of delivery and payment are accepted and that only those terms form part of the contract.

The standard conditions of the clothing industry in their current edition, form part of this contract insofar as they do not differ from our terms of contract and delivery.

2. Data Protection

All data are recorded electronically and manually according to the Data Protection Act and other legal requirements. If it is necessary and appropriate under other laws, or in the course of business, we may also transfer the data to a third party in compliance with the Data Protection Regulations. Data in full or part may be transferred in particular in so far as it is necessary or appropriate, to independent and dependent subsidiaries, trade agencies, sales representatives, branch offices, administrative offices, chartered accountants and tax inspectors, DP centres and banking institutions.

3. Validity Clause

If a provision of the general terms and conditions becomes ineffective for any reason, the validity of the other terms and conditions remain unaffected.

4. Nature of the Product

Our products are industrially manufactured.

Minor deviations in size, shape, quality of material and colour from the collection of samples, brochures or other illustrations of our products do not constitute a defect in quality.

We are not liable for advertising statements concerning the nature of the products made by the Buyer or his agents.

5. Delivery

Delivery shall be from our factory.

Risk and transport costs are borne by the Buyer.

Packaging costs will only be charged if the Seller requires special packaging for the delivery.

6. Delay in Purchase

If the Buyer delays purchase, the Seller has the right after allowing an additional period of ten days either to issue an invoice for the arrears or to withdraw from the contract and claim damages.

7. Delay by the Seller

After expiry of the agreed period for delivery an additional period of no more than 12 days applies automatically.

After the expiry of this additional period the Seller is deemed automatically to have withdrawn from the contract, unless the Buyer requires within a further period of 14 days that the contract be performed.

Compensation claims by the Buyer against the Seller for delay are limited to cases of intentional breach of contract and gross negligence with the exception of claims for damages based on injury to life, body and health.

Part deliveries are allowed for and do not constitute a breach of contract.

Each partial delivery will be treated as an independent order to be separately billed.

8. Liability of the Seller in cases of Proven Breach of Duty

The Seller's liability for breach of duty not involving the delivery of faulty goods and/or goods with defective title or the delayed delivery by the Seller or his agents as defined by § 280/281 BGB (German Civil Code) is limited to cases of gross negligence and intent.

In cases of slight negligence the Seller is not liable for breaches of duty by himself or his agent.

The above limitation of liability does not apply to losses arising from injury to life, body and health, caused by the Seller's or his agent's breach of duty.

9. Limitations

The limitation period for claims for breach of duty brought by the Buyer against the Seller or his agent is one year.

The period of limitation shall begin on the date of delivery of the goods.

In cases involving gross negligence and intent or injury to life, body and health and resting on the Seller's or his agent's breach of duty, the limitation period and the calculation of the start of that period are defined by Statutory Law.

10. Faulty Goods and Defective Title: Rights and Duties of the Seller

In accordance with § 377 2 HGB (German Commercial Code) complaints about recognizable faults and defects must be made forthwith and reach the Seller within 12 days of delivery of the goods. In the case of latent faults and defects the period is 12 days from the date they are recognisable.

A Buyer who fails in his duty to make complaint in time shall not be entitled to claim damages and specific performance and shall forfeit his right to claim rescission and reduction of purchase price.

Rejected goods are to be returned to the Seller no later than five days after the complaint is made. The receipt of the rejected goods at the Seller's premises within the time limit is decisive.

If the Seller accepts the defect, the Buyer shall be entitled to demand follow-up performance.

The Seller may choose to make good the defects or to effect a substitute delivery.

The Buyer shall only be entitled to withdraw from the contract or to reduce the purchase price if after having made complaints and having waited a reasonable period of time, two attempts at making good or substitute delivery have failed.

If the Buyer chooses to withdraw from the contract then any claims for damages attributable to the defect shall be excluded.

The Buyer is not entitled to make any additional claim on grounds of faulty goods or defects in title in the bought goods unless the Seller has acted fraudulently or has given guarantees.

11. Burden of Proof

The Buyer bears the full burden of proof that he has satisfied the pre-conditions necessary before a claim may be made, in particular those relating to the fault itself, the time limits for recognition of the fault or defect and for the making of a complaint.

12. Statutory Limitation

Claims of the Buyer based on defects in quality or of title shall be statute-barred within one year.

The limitation period shall begin on the day of delivery of the bought goods.

The above limitations shall not apply to compensation claims arising from injury to life, body or health.

13. Recourse of the Buyer

In the following circumstances, namely when the Buyer has been obliged to take back a sale item from a consumer or the consumer has reduced the purchase price, and the Buyer has fulfilled his duties to complain promptly in accordance with § 377 2 HGB (German Commercial Code) (i.e. prompt checking of the goods on receipt for defects and prompt lodging of a formal complaint at the latest within five working days according to our General Terms of Contract and Delivery), the Buyer's claims against the Seller are limited to the following possible grounds: liability for faulty goods and/or defect of title, liability for breach of contract or liability to reimburse the purchase sums that he has had to pay a consumer on account of breach of contract, or failure to remedy a breach or defect after one has occurred, and the level of damages is limited to 120% of the net purchase price arising from the contractual relationship between Buyer and Seller.

The Buyer's right of recourse against the Seller shall be limited in every case to intent and gross negligence by the Seller or his agents.

This limitation shall not apply to damages arising from injury to life, body and health.

14. Right of Retention, Set Off

The Buyer shall not be entitled to set off claims arising from the contract of sale itself and/or arising from the entire business relationship with the Seller or to exercise a right of retention against the purchase price, unless those claims are unchallenged or have the force of law by settlement out of Court or by Court Judgement.

15. Payments

The invoice will be issued on the day the goods are delivered or are ready for collection. Invoices are payable:

- (a) within ten days from the invoicing date less 4% discount.
- (b) from the 11th to the 30th day less 2.25% discount.
- (c) from the 31st to the 60th day after invoicing – net.

16. Interest on Arrears

Interest on arrears will be charged from the date this becomes due under the invoice, calculated at 8% above the base interest rate.

17. Changed Economic Condition of the Buyer

The Seller shall be under no duty to make any further supplies until the Buyer has satisfied all the Seller's claims arising from any current contract.

Regardless of any other circumstances, failure to satisfy the Seller's claim, particularly default on payment conditions or circumstances which may reasonably be said to reduce the credit worthiness of the Buyer, causes all the Buyer's obligations to become due together with the payment of interest.

The circumstances described in the last paragraph apply particularly, when the Seller intending to enter new contracts has taken out credit insurance and his then insurer, refuses to insure or to continue to insure the risk in whole or in part, or when protests on bills of exchange or cheques become public knowledge.

In such circumstances also those claims of the Seller become due immediately that might be covered by current bills of exchange, or if the claims have previously been allowed extra time for performance or payment.

In these cases the Seller has the right either (i) to refuse deliveries that are due unless they are paid for in advance or are secured, (the choice is his) or (ii) after a reasonable period of time to withdraw from the contract and to demand damages.

The right to take back delivered goods that are subject to reservation of ownership at the cost of the Buyer thereby remains unaffected.

Every formal warning relating to the date when sums to the Seller become due shall have a fixed cost of 6 Euros plus statutory tax (in total not exceeding 20 Euros). The fixed cost is an estimate of compensation for warning costs plus value added tax.

Payments made by the Buyer shall always be applied towards the discharge of the oldest outstanding debt together with interest for late payment and costs, including Court costs.

18. Reservation of Ownership

All goods delivered by the Seller under reservation of ownership remain in his ownership until payment is made in full. The Buyer may however dispose of the goods in the course of normal business.

To cover the situation where goods subject to reservation of ownership are disposed of, the Buyer hereby assigns with immediate effect to the Seller all his rights (including subsidiary rights) in the goods.

The Buyer (i) authorises the Seller (freed from the limitations contained in § 181 BGB(German Civil Code)) to give notice of the assignment to any future purchaser and (ii) he binds himself to give all information necessary to enforce the assigned rights and to hand over relevant documents.

In this respect the following regulations dealing with the relationship of "Kommissionär" and "Kommitent", form part of the agreement, on the assumption that "Kommissionär" means "Käufer" ("Buyer") and "Kommitent" means "Verkäuferin" ("Seller):-

§ 383, 384, 385, 386, 387, 388 section 1 389 insofar as it relates to §§ 373 section, 390, 392, 393 section 1 and 2, § 394 section 11. Alternative and section 2 sentence 1 HGB (German Commercial Code).

Additional rights of disposal of goods subject to reservation of ownership such as pledging, transferring as a security or sale after stoppage of payment are not allowed.

The costs of exercise and enforcement of the assigned rights shall be entirely at the expense of the Buyer.

The Buyer must inform the Seller of any prejudice to the Seller's rights by a third party, including forthcoming or actual seizure of goods by a Court Bailiff.

All costs incurred by the Seller in exercising or enforcing his rights of reservation in property together with related rights are payable by the Buyer.

19. Legal Costs

Notwithstanding the extent of the refund of costs in legal proceedings the Buyer must also pay the legal costs arising from the Seller's engagement of a Lawyer having an office in the same Court jurisdiction as the Seller.

20. Place of Performance and Court Jurisdiction

The place of performance for all the legal relations of the Seller involving contracts of supply and additional supply as well as other related matters is Halle/Westfalen.

The Court jurisdiction for all the legal relations of the Seller involving contracts of supply and additional supply as well as other related matters is – depending on the value of the property in dispute – the local Court or the Regional Court of Bielefeld.

The same Court jurisdiction applies when (i) the Buyer falls under no general Court jurisdiction in Germany or (ii) he changes his domicile or place of residence outside Germany after the contract is made or (iii) his domicile or place of residence is unknown at the time proceedings are instituted.