

# International Terms of Purchase for Accessories and Garment Orders of the Gerry Weber International GmbH (hereinafter called "Client")

## I. Scope of the Terms

1. The Client accepts all supplies subject to the following terms only. The Client will not be bound by any terms and conditions of business of the Manufacturer that differ from or conflict with these present Terms of Purchase even if the Client does not explicitly repudiate them. The Client's silence to Manufacturer's terms shall not be deemed acceptance of such Manufacturer's terms.
2. By executing the order, the Manufacturer accepts these present Terms of Purchase even if he uses deviating terms.
3. All information, declarations, notices etc. must be in writing, in German or English. The written form required in these present Terms of Purchase shall also be satisfied by e-mails and fax letters.

## II. Conclusion of the Contract

1. The Client's written orders or order confirmations shall determine the content of the contract. This applies even if they differ substantially from the Manufacturer's offer. The Manufacturer has the right to oppose immediately in writing to the order or order confirmation, the contract is then regarded as not concluded, unless changes are confirmed by Client in writing. Oral or telephone agreements require the Client's confirmation in writing.
2. Manufacturer's offers are binding for 14 days.

## III. Delivery, Delivery Times, Quantities

1. All deliveries must be made according to Incoterms 2010 FOB.
2. Because of the Client's duty to pay damages to his customers in case of not keeping the delivery dates, the Manufacturer's compliance with the delivery periods is indispensable. If the Manufacturer is culpably in default with delivery, the Client may terminate the contract and claim damages without previously granting a grace period. Alternatively, the Client can first require performance from the Manufacturer and grant an additional period for delivery. The Manufacturer is entitled to remedy any failure to perform after the date of delivery only if this is agreed by the Client in writing.
3. If the Manufacturer expects that he will not be able to meet the agreed delivery dates or deadlines, he must inform the Client in writing immediately, stating the reasons and the expected duration of the delay. He shall then not be in default if the Client agrees in writing to an extension of the concerned delivery date or deadline. Partial deliveries or deliveries ahead of time require the Client's consent.
4. Additional or reduced quantities may be delivered only within a limit of +2% / -2% if the quantities are in proportion with the sizes and colors of the order. Decision for acceptance or rejection of further surplus production must be obtained from the Client in writing within 14 days.
5. If the Manufacturer culpably does not keep to an agreed delivery date or deadline, the Client is entitled to claim compensation of 10% to 25% on the FOB price according to the delay period. If the manufacturer does not deliver at all, the client will claim compensation of minimum 50% on the FOB price.

## IV. Quality of goods

1. The Client accepts only the shipment of goods in 1<sup>st</sup> choice quality. In case of defective or rejected goods, the client reserves the right of buying at reduction of 5% to 20% on the FOB price according to the defect after inspection prior to a sale to third parties.
2. The goods and the packaging must comply with the statutory requirements of the Federal Republic of Germany and the European Union. The Manufacturer guarantees that the goods do not contain any hazardous and/or prohibited parts or substances and accords, including packaging and all accessories, with the German statute regarding the quality of articles of daily use (Bedarfsgegenstandesgesetz) and other relevant laws or guidelines. Upon the Manufacturer's request the Client will send him a list of the relevant statutes.
3. The Manufacturer must not deliver to the Client any products the import or export of which falls within the scope of the Washington Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) or the European Union Wildlife Trade Regulation (EC No. 338/97).
4. The Client will spot-check the goods within reasonable time upon receipt regarding typical defects using the customary inspection methods (e.g. AQL-method 2.0, 2.5, 3.0, 4.0 or 5.0). The Client is not obliged to carry out any further inspection. If an additional respite period for the remedy of defects is unreasonable, e.g. for time reasons, the Client may remedy the defects himself and charge the costs to the Manufacturer. Any claims for damages as well as the right to terminate the contract for fundamental breach of the contract remain unaffected.
5. The lack of consistency of the goods with the Client's "Special Terms for Fabrics and Accessories" or other quality characteristics shall be regarded as fundamental breach of the contract.

## V. Inspections

1. The Manufacturer will grant the Client or his agents the right to inspect his manufacturing plants and to obtain information regarding the products during the usual plant working time, even without any prior announcement.
2. The Manufacturer is obliged to carry out self-inspection of the goods prior to any additional inspection done by the Client or his agents.
3. If the Client sees any defects in the course of a preliminary inspection of goods in the Manufacturer's plant, the Manufacturer is obliged to rework the goods and to present them once again for a re-inspection. The delivery times shall not be extended in such a case.

## VI. Payment and Place of Performance

1. Invoices shall be sent to the Client's address in Halle/Westphalia (Germany) upon dispatch of the goods. Place of payment is Halle/Westphalia (Germany). Place of performance for deliveries is the place indicated in the order.
2. If the delivery is made as per agreement and the invoicing is in time, payment will be made by considering the payment agreement between the Parties.
3. In case of payment by collection, the Manufacturer shall pay any fees of the foreign bank as well as the fees for exemptions of any kind. The costs for the opening of letters of credit accrued in Germany and the additional costs for the registration of documents shall be paid by the Client. All alteration costs shall be borne by the responsible party. The Client will issue letters of credit at 90 calendar days usance at the most.
4. The Client is entitled to counterbalance Manufacturer's claims against own claims. The Manufacturer may counterbalance against similar claims only if these claims are undisputed or res judicata.
5. If the Manufacturer suspends payments or his assets are made subject to bankruptcy proceedings, the Client is entitled to terminate those parts of all contracts which have not been yet performed in full.

## VII. Retention of Title, Industrial Property Rights

1. The materials given to the Manufacturer shall remain the Client's property. Upon the Client's request the Manufacturer must insure these materials. Any combination, mixing or manufacturing with other materials shall be made on the Client's behalf, so that he becomes complete or proportionate co-owner of the new product. The reservation of title in favor of third parties is excluded.
2. The Client reserves exclusive title and copyright to all documents made available to the Manufacturer, in particular drawings, pictures and patterns. These documents must be handled strictly confidential.
3. The Client's drawings, models, etc. may not be copied or disclosed to third parties. They shall remain the Client's property and must be returned on demand free of charge at any time. The Manufacturer does not have any retention rights. He is liable for any loss and damage of such documents.
4. The Manufacturer is not entitled to make any use of the Client's trademarks. If garments bearing the Client's trademark are made available to third parties without the Client's consent, due to deliberate or negligent conduct or omission of the Manufacturer, the Manufacturer shall be held liable to pay damages. The damages will be calculated on a basis of 50% of the Client's usual net sales price. The minimum penalty will be € 10,000.00 (ten thousand).
5. The Manufacturer guarantees that the Client will not violate the rights of third parties, especially entitlement, interest and lien, by using the goods as per agreement. The same applies to trademark rights or any claims for property rights in case the goods are offered to the Client upon the Manufacturers' initiative. The foregoing does not apply if the infringement of a property right is only due to the Client's specifications and to the Manufacturer's compliance with these specifications. However, if the Manufacturer becomes aware that the Client's specifications may violate any property rights, he must give a respective written warning to the Client.
6. Goods manufactured according to the Client's specifications or patterns may not be offered or made available to third parties.
7. Defective or in surplus produced goods with all labels removed may be sold to third parties no earlier than 8 months after the last shipment date. In case of contravention the manufacturer shall pay a contractual penalty of € 200 per piece.

## VIII. Further Obligations of the Manufacturer

1. The Manufacturer is obliged to issue and fill in 'article passports' for the goods and to furnish 'eco-infos'. These documents must be returned to the Client within 14 days upon receipt of the relevant forms by the Manufacturer. The non-compliance constitutes a fundamental breach of contract which entitles the Client to terminate the contract and claim damages.
2. If required, the Manufacturer will secure the necessary export quota. The export license must be presented seven days before the goods reach the place of destination. The Client will classify the export category within reasonable time.
3. The Manufacturer guarantees that the certificate of origin is correct. He will ensure that also this certificate arrives at the place of destination seven days before delivery.
4. If the Client's customers are made liable for defects by any end-consumers, the Client is under a statutory liability pursuant to § 478 BGB (German Civil Code) for a period up to five years. Therefore, the Client has the right to recourse to the Manufacturer for any defects. The right ends not earlier than two months after the date on which the Client has fulfilled the demands of the Customer.

## IX. Social and Compliance Standards

1. The Client's Code of Conduct shall apply accordingly. The Code of Conduct is made available to the Manufacturer by request.
2. The Manufacturer must comply with the Clients Social Standards. The Client or third parties appointed by it may audit the Manufacturers compliance with the Client's Social Standards. The Manufacturer must ensure that its suppliers also adhere to the aforementioned standards.
3. The Manufacturer guarantees that he will not offer, give or promise to give to the Client's employees or third parties (e.g. business partners or civil servants, clerks or other officials in a position

of trust), any financial or other advantage (e.g. money, gifts, benefits etc.) in exchange for acting improperly in relation to a decision, function or activity connected with its business relationship with the Client. A person acts improperly where he does not act in good faith or performs a function in a manner other than legally allowed. If the Manufacturer grants or attempts to grant any such advantages, the Client may immediately terminate the business relationship. The Client will also be entitled to claim damages resulting from the termination as well as the violation of this section; if the contractual relationship continues, the Client may claim damages for 100% of the loss that results from the violation of this section.

#### **X. Confidentiality**

The Manufacturer shall keep strictly confidential any business secrets or other information he may have obtained in connection with the order. He shall impose this obligation on his employees and suppliers. The obligation to confidentiality continues also after termination of the contractual relationship.

#### **XI. Further Conditions**

1. In addition to the present Terms of Purchase the following conditions and guidelines of the Client shall be applicable and binding: (1) Special Terms for Fabrics and Accessories (2) Quality Protection Directions, (3) Shipping and Packing Guidelines.
2. Orders may not be fulfilled by third parties or subcontractors with the Client's prior written consent.

#### **XII. Venue and Applicable Law**

1. Venue is Halle/Westphalia (Germany).
2. The Client can choose whether a dispute arising out of or in connection with the present contract shall be either finally settled by arbitration or by state courts. This settlement procedure shall be applicable regardless of whether the Client is claimant or respondent. In case arbitration is chosen all disputes arising out of or in connection with the present contract shall be finally settled under the Rules of Arbitration of the German Institute of Arbitration (DIS) by one or more arbitrators appointed in accordance with the said rules. Place of arbitration shall be Halle/Westphalia. Language of the proceedings shall be English. If state courts are competent to judge the matter, the chosen place of jurisdiction is Halle/Westphalia (Germany).
3. All direct or indirect obligations entered by the Client and the Manufacturer, irrespective of their legal basis, shall be governed exclusively by German Law.

#### **XIII. Miscellaneous**

1. Notwithstanding further statutory rights, the Client may terminate the contract in whole or in part if the Manufacturer opposes to the application of these present Terms of Purchase, if a bankruptcy petition has been filed against him or if his assets are subjected to bankruptcy or if the Client cannot be expected to perform the contract for other objectively justified reasons.
2. Instead of other legal remedies the Client is always free to claim damages.
3. Any running periods of time, which must be observed by the Client, shall be suspended as long as he has not concluded any pending negotiations with the Manufacturer.
4. The Manufacturer is entitled to exercise rights of retention only as far as his claims are undisputed or have become res judicata.

01.03.2020