

International Terms of Purchase of the Gerry Weber AG

Version 2004

I.

Scope of the Terms

1. We accept all supplies and services subject to the following terms only. By executing the order the supplier accepts these terms even if he uses deviating terms of delivery. Deviations from these terms of purchase have to be agreed upon in writing in order to be valid. Our silence to supplier's terms of delivery or so called common terms notified to us shall not be deemed acceptance of such terms. Furthermore, our silence to conflicting order confirmations cannot be regarded as consent.
2. If the supplier deviates from our order in his order confirmation, this shall be regarded as a rejection of our order. If the goods are nevertheless supplied, this shall be considered as the irrevocable approval of our terms of purchase.

II.

Conclusion of the Contract

1. Our written orders are authoritative. Any oral orders or orders by telephone and other oral agreements varying or supplementing an order shall become effective only if confirmed by us in writing. The supplier is bound to his offer and may not revoke it for 14 days starting from tendering.
2. We are entitled to object to performance by third parties.

III.

Delivery Period

1. Since we manufacture and sell seasonal goods, we are subject to certain time limits vis-à-vis our customers. If we exceed the time limits, we may be held liable for damages. The supplier herewith recognizes these particular circumstances and therefore accepts the subsequent terms.
2. If the goods have to be delivered at a fixed date or within a set period, we may terminate the contract and claim damages for non-performance if the goods are not delivered in time. Alternatively, we may require performance from the supplier and fix an additional period of time for delivery.
3. If the supplier has reasons to expect that he cannot meet the agreed deadlines, he has to inform us in writing immediately, stating the reasons for and the probable duration of the delay. The supplier shall then not be in default if we agree to an extension of the deadline in writing. In this case the newly agreed deadlines shall be decisive, they are valid as firm delivery dates without an additional period of time for delivery. In addition, the legal consequences stated in these terms of purchase shall apply.
4. We reserve the right to extend delivery periods and postpone delivery dates by respective unilateral declarations to the supplier.

IV.

Delivery, Passing of Risk

1. All supplies shall be made free of charges and transport costs to the receiving address specified by us.
2. The supplier bears the transport risk.
3. The risk of accidental loss of or damage to the goods shall pass to us upon receipt of the goods by our duly authorized staff.
4. Delivery shall be made at our option in agreement with the Incoterms 2000 DDU or FCA. Authoritative in this context is our written order.

V.

Warranty and guaranteed Features

1. The supplier guarantees that the quality and packaging of the goods complies with the German Laws and standards customary in the textile trade. The goods may in particular not contain any forbidden components and/or substances which are dangerous to health and which are stated in the respective valid version of the "Ordinance on Commodities" (Bedarfsgegenständeverordnung) of the Federal Republic of Germany. The non-compliance with the aforesaid shall be regarded a fundamental breach of contract. The same shall apply if the goods do not comply with the sample or model submitted by the supplier or by us. In addition our "Special Terms" for shell fabric- and accessory quality are valid for the delivery, the non-compliance of which means a fundamental breach of contract. Deviations because of the quality must be agreed in writing before conclusion of the contract.
2. We will spot-check the goods within 10 working days of receipt in order to detect typical defects applying the common method of inspection. We are not obliged to any further examinations. Lacks of conformity with the contract will be notified to the supplier within 10 working days after we have received the final result of the inspection. Lacks of conformity with the contract which may not be detected by the inspection have to be notified to the supplier within reasonable time after the non-conformity has been finally established.
3. If we forward the goods to another destination, the goods will be inspected upon their arrival at their final destination. The result of the inspection will then be notified to the supplier within 10 working days.
4. The warranty period is one year.
5. For purchase of ready-made garments the supplier is liable that the ready textiles correspond with our presentation and quality standards as well as our detail instructions.

VI.

Title, Assignment of Claims

1. The reservation of title in the favour of third parties is excluded. The supplier may not assign his claims against us without our consent.
2. The materials given to the supplier in the course of a sales contract remain our property. Any combination, mixing or procession with other materials shall be made on our behalf, in which case we shall become co-owners of the new product in proportion to our ownership of its constituent parts.
3. A combination with other movable goods which are to be considered principle things shall be made with our explicit consent only. The supplier shall be liable for loss or damage of our property.

VII.

Payment and Place of Performance

1. Invoices shall be issued upon dispatch of the goods and sent to our address in Halle/Westphalia. Collective invoices covering one month's deliveries shall be submitted not later than the fourth working day of the subsequent month.
2. We will settle payments by cheque or bank transfer unless our order states differently. If delivery is effected according to the contract and the invoicing is in time, we pay within 10 days upon receipt of the invoice with a 4 per cent discount, within 30 days with a 2 ¼ per cent discount and within 60 days after receipt of the invoice without deduction.
3. We are entitled to set off counterclaims against the supplier's claims.
4. In case of payment by bill of exchange three months bills shall be subject to maximum discount charges of one per cent above the European Central Bank's discount rate prevailing at the time the bill is handed over. Deviating agreements are admissible in exceptional cases only and require the express consent of our accounting department.
5. Place of performance for payments is Halle/Westphalia. Place of performance for deliveries and other services by the supplier shall be the receiving address specified in the order.

VIII.

Industrial Property Rights, Obligation of Secrecy

1. We reserve title and copyright to all documents made available to the supplier, in particular drawings and pictures. These documents may neither be disclosed to third parties nor be used for competitive purposes.
2. The supplier is obliged to keep all operational and business secrets and all other information about us, which he has gained in the course of the contractual relation with us confidential and to impose this obligation to secrecy on his employees. This obligation continues to exist after termination of the contract.
3. The supplier may not present the products manufactured according to our documents and drawings to competitors. The supplier undertakes to manufacture all such products exclusively for us. If the supplier intends to manufacture products having the same or a similar design for other customers, he must inform us accordingly before conclusion of the contract. The obligation of exclusivity remains valid for a period of ten months starting from delivery of the products to us.

IX.

Miscellaneous

1. Notwithstanding further statutory rights we may terminate the contract in whole or in part if the supplier objects to the application of these International Terms of Purchase, if an application for adjudication in insolvency is made against him or his assets are subjected to an insolvency proceedings or if we cannot reasonably be expected to perform the contract for other reasons.
2. Instead of other legal remedies we are always free to claim damages.
3. Running periods of time, to be observed by us, shall be suspended while we have not concluded the negotiations with the supplier.
4. The supplier is only entitled to enforcement of any rights of retention, as far as his claims are legally determined or allowed from our side.
5. All notifications, declarations etc. have to be written and to be made in German or English exclusively. Notifications by fax letter shall meet the requirement of writing.

X.

Venue and applicable Law

1. Venue for all disputes resulting from the contract shall be Halle/Westphalia.
2. The contractual relations shall be governed by the United Nations Convention on Contracts for the International Sale of Goods of April 11. 1980 (UN Convention). Any matters not regulated by the UN Convention merely vary the said UN Convention but do not exclude its applicability. Any matters not regulated by the UN Convention shall be governed by German Law.