

## **Payment and Delivery Terms of Gebr. Munzert GmbH & Co. KG – Version of 01/01/2021**

(based on the payment and delivery terms of the Convention of the German Home Textile Association Heimtextilien-Industrie e.V. In the version of 01/01/2020)

### **§ 1 Scope**

1. The uniform terms shall apply exclusively between professional merchants.  
2. All products and services of the Seller shall be exclusively governed by the following uniform terms of the German Textile Industry. General terms and conditions of the Buyer shall not be accepted by the Seller, unless the Seller has expressly agreed to their applicability in writing. This shall also apply if the Seller, knowing of contradicting or deviating terms from these uniform terms, executes the services without raising objections.

### **§ 2 Place of Fulfillment, Delivery and Acceptance**

1. The place of fulfillment for all services arising from the delivery contract shall be the venue of Seller's trading office.  
2. Deliveries of goods shall be executed from the domestic plant. The Buyer shall pay the shipping costs. The Buyer shall have the option to designate the freight forwarder. The goods shall be shipped without insurance coverage. A delivery notice may be agreed upon.  
3. The Buyer shall pay the costs of special packaging.  
4. Sorted and partial shipments shipped in combination that are ready for sale shall be effected promptly and shall be announced beforehand. Unsorted shipments shall be permitted only subject to Buyer's consent.  
5. If the acceptance should not occur in a timely manner due to situations the Buyer is responsible for, the Seller shall have the right to determine to either bill the goods immediately upon setting a remedial period of 12 calendar days (arrear invoice) or to rescind from the contract or to demand damage compensation.

### **§ 3 Place of Jurisdiction**

The place of jurisdiction shall be the venue of plaintiff's German trading branch at plaintiff's discretion. The plaintiff shall also have the right to file suit at the domicile of the professional or anti-trust organization in charge at Seller's end (Wuppertal).  
The court that has been contacted first shall have jurisdiction.

### **§ 4 Contents of the Contract**

1. The goods shall be delivered on specific dates (business day or a certain calendar week). All sales shall be executed only for certain quantities, items, qualities and fixed prices. Both parties shall be bound by this condition. No consignment transactions shall be made.  
2. Block orders shall be permitted and shall be restricted when the contract is made. The acceptance period shall not exceed a maximum of 12 months.

### **§ 5 Delivery Interruptions**

1. In the event of force majeure or labor dispute measures a contracting party is not responsible for and other operational problems the party is not responsible for that exceed one week or will likely exceed one week, the delivery and acceptance period shall be immediately extended by the duration of the hindrance and by no more than 5 weeks. The extension shall materialize only if the other party is promptly notified of the reason for the hindrance, as soon as it is foreseeable that the delivery or acceptance period cannot be complied with.  
2. If the delivery or acceptance in the cases stipulated in Sect. 1 should not have been made within the extended delivery or acceptance period, the other contracting party shall have the option to rescind from the contract upon expiration of a remedial period to be set, which shall span 12 calendar days.  
3. In the instances of Sect. 1 damage compensation claims shall not be possible if the respective contracting party has met its obligations pursuant to Sect. 1.

### **§ 6 Remedial Delivery Period**

1. Upon expiration of the delivery due date, a remedial delivery period of 12 calendar days shall automatically be implemented without notice. Upon expiration of this deadline, the Buyer shall have the option to rescind from the contract by way of a written declaration. If the Buyer should intend to demand damage compensation in lieu of services, Buyer shall undertake to give the Seller a 4-week remedial period in writing after the agreed upon delivery date. This shall be without prejudice to the statutory provisions concerning the redundancy of setting a due date (§ 281 Sect. 2, § 323 Sect. 2 BGB [German Civil Code]).  
2. The remedial delivery time shall be 5 business days for shipment ready ex-stock goods and NOS (never out of stock) goods. The Buyer shall be promptly notified in the event of non-delivery. Incidentally, the provisions of Sect. 1 shall apply.  
3. Prior to the expiration of the remedial delivery time, claims of the Buyer based on late delivery shall not be possible, if § 8 Sect. 2 and 3 do not apply.

### **§ 7 Deficiency Complaints**

1. For obvious deficiencies, claims must be sent to the Seller within no more than 12 calendar days after receipt of the goods. The Buyer shall notify the Seller of any concealed deficiencies as soon as they are discovered.  
2. After having been cut to size or any other processing of delivered goods, claims for obvious deficiencies shall not be possible.  
3. Minor, technically unavoidable deviations in quality, color, width, weight, finishing or design shall not be considered material defects. This shall also apply to standard trade deviations, unless the Seller has made a true-to-sample commitment in writing.  
4. In the event of legitimate deficiency claims, the Buyer shall, at Seller's discretion, have the right to remedial action or delivery of defect-free replacement goods within 12 calendar days after the return receipt of the goods. In such cases, the Seller shall absorb the freight costs. If remedial action should fail, the Buyer shall only have the option to reduce the purchase price or to rescind from the contract, unless § 8 Sections 2 and 3 apply.  
5. If the deficiency claim is not made in a timely manner, the goods shall be deemed approved.

### **§ 8 Damage Compensation**

1. Damage compensation claims of the Buyer shall not be possible unless these terms state otherwise.  
2. The exclusion in Sect. 1 shall not apply if liability according to the product liability act applies; in the event of deliberate intention, gross neglect of the owners, statutory representatives and executives; in the event of maliciousness, non-compliance with an assumed warranty, in the event of culpable injury to life, the body or health or in the event of culpable violations of cardinal contractual duties. Cardinal contractual duties shall be such that characterize the fulfillment of the contract and in the fulfillment of which the Buyer may trust. However, damage compensation claims based on the violation of cardinal contractual duties shall be limited to the contract typical and foreseeable damages, unless another case stipulated in Sentence 1 has materialized.  
3. The aforementioned provisions are not affiliated with a change of the burden of proof that would be disadvantageous for the Buyer.

### **§ 9 Payment**

1. The invoice shall be issued on the date of delivery or provision of the goods. Principally, a deferral of the due date (value date) shall not be possible.  
2. Invoices shall be payable:  
1. Within 10 days after the invoice and shipment date subject to a 2 % cash discount.  
2. As of the 11<sup>th</sup> through the 30<sup>th</sup> day after the invoice and shipment data, strictly net.  
Default shall materialize as of day 31 pursuant to § 286 Sect. 2 No.1 BGB.

3. Modifications of the settlement type shall be announced 3 months in advance.  
4. Payments shall always be applied to settle the oldest debt plus any late payment interest based on them.  
5. The timeliness of the payment shall be determined by the final credit date to the Seller's account.

### **§ 10 Post Due Date Payment**

1. Payments received after the due date shall be subject to interest charge of 9 percent above the respective prime rate as defined in § 247 BGB. Incidentally, § 288 BGB shall apply.  
2. Prior to the full payment of due invoice amounts including interest, the Seller shall not be required to make further deliveries under current delivery contracts. The Seller reserves the right to claim compensation for delays.  
3. In the event of a significant decline of the asset situation, such as imminent insolvency or payment delay, the Seller may refuse servicing all delivery contracts that are based on the same legal relationship or, upon setting a remedial period of 12 calendar days, may rescind such delivery contracts. Incidentally, § 321 BGB shall apply. This shall be without prejudice to § 119 InsO.

### **§ 11 Offsetting and Retention**

Any offsetting and retention of due invoice amounts shall be permitted only against undisputed accounts receivable and those that have been found final by a court of law, provided the claims are not damage compensation claims that are closely affiliated with the Buyer's entitlement to defect-free fulfillment of the contract.

### **§ 12 Title Retention**

1. Until all accounts payable have been paid in full, including ancillary payables, damage compensation claims, the goods shall remain the property of the Seller. This title retention shall also remain in effect if individual accounts receivable of the Seller have been included in a current invoice, offset and accepted.  
2. If the title retention goods are connected, mixed or processed to make a new mobile object by the Buyer, such action shall occur on behalf of the Seller, without the latter entering into any obligations. The connection, mixing or processing shall not entitle the Buyer to ownership of the new subject matter pursuant to §§ 947 et seq. BGB. In the event of the connection, mixing or processing with subject matters that are not the property of the Seller, the Seller shall acquire co-ownership of the new subject matter at the ratio of the invoice value of Seller's title retention goods vis-à-vis the total value.  
3. If a centrally regulating entity should be involved in the business process between Seller and Buyer, which assumes the credit risk, the Seller shall assign ownership title to the centrally regulating entity upon shipment of the goods, subject to the deferring condition of payment of the purchase price by the central regulator. The Buyer shall not be relieved until the central regulator has made the payment.  
4. The Buyer shall have the right to resell or further process the goods taking into account the following terms:

- The Buyer shall be permitted to sell or process the title retention goods only in proper business proceedings if Buyer's asset situation does not significantly decline.
  - The Buyer herewith assigns the account receivable with all ancillary rights arising from the resale of title retention goods – including any balance receivables – to the Seller. The Seller accepts this assignment.
  - If the goods were connected, mixed or processed and the Seller has acquired co-ownership in the amount of the invoice value, the Seller shall be entitled to the purchase price receivable at the percentage right of Seller's rights.
  - If the Seller has sold the account receivable in conjunction with true factoring, the Buyer shall assign the receivable due from the factoring company that replaces the former to the Seller and shall pass on the sales revenues at the percentage rate of Seller's rights inherent in the goods. The Buyer shall undertake to disclose the assignment to the factoring company, if Buyer is more than 10 days in the arrears of payment or if Buyer's asset situation has significantly declined. The Seller accepts this assignment.
  - The Buyer shall be authorized to collect the assigned accounts receivable as long as Buyer meets Buyer's payment obligations. The right to collect shall be rendered void if the Buyer is in default of payment or Buyer's asset situation declines considerably. In this event, the Seller shall be authorized to notify the buyers of the assignment and to directly collect the accounts receivable. The Buyer shall provide the necessary information for the collection of the assigned accounts receivable and shall permit the verification of this information. In particular, the Buyer shall, upon request, provide a concise list of the accounts receivable with the names and addresses of the buyers, the amount of the individual accounts, the invoice dates, etc.
5. If the value of the collateral in favor of the Seller should exceed all of the Seller's demands by more than 10 %, the Seller shall undertake to release collateral of Seller's choice upon Buyer's request.  
6. The attachment or assignment as collateral of the title retention goods shall be prohibited. The Seller shall be promptly notified of any liens along with the name of the lienholder.  
7. If the Seller, in exercising the right to title retention, should seize the delivered item, this shall not include an automatic rescission from the contract. The Seller shall have the option to satisfy Seller's demands from the seized title retention goods through their sale.  
8. The Buyer shall store the title retention goods free of charge for the Seller. Buyer shall obtain standard insurance coverage against the risks of fire, theft and water. The Buyer herewith assigns all entitlements to compensation arising from damages of the aforementioned nature against insurance agencies and other parties liable for compensation in the amount of Seller's invoice value. The Seller accepts this assignment.  
9. All accounts receivable and rights arising from the title retention in all special formats defined in these terms shall remain in effect until the possible liabilities the Seller has entered into on behalf of the Buyer have been released. However, the Buyer shall principally be permitted to engage in factoring for Buyer's accounts receivable. However, prior to entering into potential liabilities, Buyer shall notify the Seller.

### **§ 13 Governing Law**

The laws of the Federal Republic of Germany shall apply. The Convention of the United Nations on International Goods Purchasing Contracts of April 11, 1980 shall not apply.

*Please note that the contractual language is German. This translation is the mere reading version provided only for your reference.*