

General Terms and Conditions of Business of Nitrobrands GmbH, of Switzerland

1. Generally and applicability

- (1) The following conditions apply to all of the seller's delivery transactions. They apply as having been recognized by the buyer as legally binding when the order is placed.
- (2) The clothing industry's standard provisions apply to the following conditions additionally.
- (3) The buyer's conflicting General Terms and Conditions of Business shall only be incorporated into the contract whenever the seller has recognized or recognizes them in writing (i.e., not tacitly).

2. Conclusion of the contract

- (1) All quotations are given without engagement: they are open for acceptance and subject to change without notice.
- (2) All prices are net prices and subject to the statutory turnover tax. The prices are understood to be ex-works from the seller's factory: they exclude the packing charges, freight charges and other forwarding expenses. Special surcharges shall be charged for individual orders and bulk orders.
- (3) All verbally given information and verbally made agreements, especially those concerning the seller's sales force, need the seller's written confirmation in order to be binding on him.
- (4) Rearrangements that are made within the scope of the placed order shall only be permissible whenever there is agreement on both sides.

3. Delivery and the period of delivery

- (1) The seller is entitled to make partial deliveries. The buyer declares his agreement to unsorted partial deliveries, subject to the prerequisite that the subsequent delivery is made within the agreed period of delivery after the partial delivery has been received.
- (2) No fixed-date purchases shall be concluded in any case. The stated periods of delivery concern approximate details that only expresses an approximate period of delivery. If a time of delivery is agreed in writing for an individual case, then this shall be deemed to have been complied with whenever the goods to be delivered are ready for despatch when the time expires or whenever the buyer has been advised about the readiness for despatch, insofar as he has to collect.
- (3) Force majeure and other extraordinary events that are beyond the seller's influence and which substantially impede the delivery within the agreed period of delivery or make it impossible (e.g., a strike, illness or disruption in the upstream supplier's business establishment) shall extend the time of delivery by the duration of the hindrance. The seller is entitled to withdraw from the sale, insofar as it has not been fulfilled yet. The seller shall advise the buyer immediately about the onset of such events, as soon as he establishes that they effect the time or delivery. The seller shall simultaneously advise the buyer about the probable duration of the time of delivery's extension, which is needed for this purpose.
- (4) If the seller is in default of delivery, then 18 days shall start to run as the time of subsequent delivery without the seller's declaration. The buyer can only withdraw from the contract after this time of subsequent delivery has expired unsuccessfully and namely, the part of the delivery commitment which has not been fulfilled yet and whenever he advises the seller after the onset of the default of delivery that he shall refuse fulfillment of the contract after a period of grace of at least 18 days has expired fruitlessly. The buyer can only demand compensatory damages because of non-fulfilment in this case (instead of exercising the right of withdrawal) if the seller or his sub-contractor has contributed to the default of delivery deliberately or grossly negligently. The buyer shall be exceptionally entitled to withdraw from the entire contract or to demand compensatory damages because of non-fulfilment of the entire delivery commitment in the case that the seller is in partial default of delivery, if the partial fulfillment of the contract does not have any interest for him after applying a strict measure of judgement and subject to the aforementioned prerequisite.

4. Despatch and the passage of risk

- (1) The goods shall be delivered from the seller's warehouse. The place of performance for all services arising from this contract is the place where the seller's warehouse is situated.
- (2) The buyer shall pay the forwarding expenses.
- (3) The risk shall pass to the buyer when the goods are passed to the buyer, forwarding agent or carrier, or to another person or establishment that is specified for carrying out the despatch; although not later than the time when the goods leave the warehouse. The seller shall only be liable for defects that occur when packing the goods, during their despatch, when choosing the means of transport and the route for transport, whenever he or his sub-contractor is culpable for (criminal) intent or gross negligence.
- (4) The seller is only obligated to arrange transport insurance on the buyer's express demand. The buyer shall pay the costs.
- (5) If the despatch of the goods is delayed for a reason that is not the seller's responsibility, then the risk shall have passed to the buyer already when he was advised about the readiness for despatch. The seller is entitled in this case to store the delivery item at the buyer's cost and risk at his discretion and to demand immediate payment of the price.
- (6) If the buyer does not accept the goods that are despatched to him or if he does not accept them promptly, then the buyer shall have to pay the further cost of transport that arises additionally from this action, as well as the arising cost of storage. These costs shall be charged to him separately.

5. Warranty

- (1) The buyer undertakes to inspect the goods carefully, immediately after receipt. He has to advise the seller in writing about all defects and complaints within 10 days at the latest after receipt, as well as to substantiate and prove the defects and complaints by means of a photograph.
- (2) No rights under the warranty shall exist whenever the buyer modifies the goods unauthorized or arranges for this to be done.
- (3) Divergences from the version or design in terms of quality, colour, weight and size which are customary in trade or commerce, or are slight or technically unavoidable shall not entitle the buyer to make complaints or to issue notices of defects, nor shall they lead to claims being made against the warranty unless it has been agreed expressly that the sizes and colour tones have to be complied with.
- (4) The seller shall be entitled to make repairs or deliver flawless goods as substitutes within 10 days after the goods have been returned, in the event of any redhibitory defects. (It is only permissible to return the goods whenever the seller has agreed to that). If the seller chooses to make a repair or to deliver goods as substitutes and this is unsuccessful, then the buyer shall have the discretion to demand a reduction of the purchase price or to withdraw from the contract.
- (5) The buyer shall only be allowed to assert a right of retention to the purchase price that is he indebted to pay because of any redhibitory defects or incompleteness, in accordance with the partial amount which he would have been indebted to pay if the defective or lacking parts had been delivered properly. Any further retention of the payments vis-à-vis the seller shall entitle him to refuse fulfillment of his duty under the warranty, until these payments are received.
- (6) The expiry period for defect claims is equivalent to one year as from the transfer of risk in the case of new performance goods. On the other hand, the statutory periods based on Section 478 of the German Civil Code (BGB) shall remain unaffected.
- (7) If a defect complaint by the Buyer proves to be unjustified, the Buyer shall bear the despatch costs for the returned goods. The Buyer shall also bear a handling flat rate of EUR 5 per item which will be charged by the Seller when the goods are returned unless the Buyer is able to prove that a lower cost was incurred than the flat rate charged.

6. Liability

- (1) The buyer's claims and especially to compensatory damages or lost profit are excluded unless they are based on a deliberate or grossly negligent infringement by the seller or his legal representative or vicarious agents.
- (2) If the seller is also liable for compensatory damages in the event of ordinary negligence on account of special agreements or compulsory legal provisions, then the compensatory damages which the seller has to pay shall be limited to 100% of the delivery's value at the most and to the damages that the seller would have had to envisage definitively when concluding the contract, after considering all

of the circumstances which were known to him at this point in time as a possible consequence of the contractual infringement or of the other actions obligating him to pay compensatory damages. Apart from that, the compensatory damages are limited to 0.5 % of the delivery's value at the most for every completed week of the delayed performance of default in the case of a delay.

7. Terms of payment and the prohibition of setoff

- (1) The invoice shall be made out on the day of delivery or when the goods are provided. It is excluded to postpone the invoice's expiry date (i.e., due date for payment), insofar as nothing else has been agreed.
- (2) An amount of 30% of the invoice is due for payment before production begins, insofar as the acceptance of order does not contain any diverging terms of payment that are binding on the buyer in any case; the remainder is due for payment on delivery in the form of cash or a cheque that is confirmed by a bank.
- (3) It is impermissible for the seller to give a cash discount.
- (4) All of the costs that are incurred by accepting bills of exchange or cheques and especially the expenses of discount and interest shall be charged to the buyer.
- (5) The seller shall be entitled to charge penalty interest on the arrears amounting to 8% percentage points above the respective basic rate but at least 12% p.a., without making any special announcement or setting a deadline in the event that there is a default of payment. The seller shall have a claim to a reminder fee of € 5 for every reminder.
- (6) Furthermore, all of the debt claims – even those arising from bills of exchange – which are still outstanding in the event that there is a default of payment, shall become due for payment immediately irrespective of their maturity date. Furthermore, the seller shall be entitled to withdraw from all continuing contracts, suspend deliveries or make them dependent on the provision of securities, or only to make deliveries against cash on delivery.
- (7) The seller shall be entitled to remove all of the goods that are subject to the reservation of ownership in the event that there is a default of payment, even without withdrawing from the contract and even if partial payment has been made. All of the costs that are incurred from the seizure shall be charged to the buyer. The goods that are taken back shall be set off against the remaining debt claim: whereby a substantially less depreciation must be provided by the buyer subject to proof. The minimum rate of depreciation for goods without textile or leather shall be 35% of the order value. This percentage rate shall increase by a further 10% per further half-year, up to the maximum of 95% for all goods.

8. Reservation of ownership

- (1) The goods shall be delivered subject to reservation of ownership according to article 455 of the German Civil Code with the following extensions.
- (2) The delivered goods shall remain the seller's property until all of the debt claims and secondary debt claims have been repaid in full: even those which arise from other business transactions that are made with the seller, including those that are made in future (extended reservation on the current account). The buyer shall only be allowed to resell the goods within the scope of his proper business establishment.
- (3) The buyer shall not be entitled to give away, pledge or mortgage the goods that have been delivered to him and are subject to reservation of ownership, nor to assign or transfer them as security.
- (4) If the buyer does not fulfil his obligations vis-à-vis the seller, or if he does not fulfil them punctually, or if he affects the reservation of ownership in an impermissible way, then the seller can demand that the goods are surrendered irrespective of the claims that are vested in him to fulfillment of the contract, insofar as a reasonable time limit which was set for the buyer to fulfil his obligation has expired unsuccessfully. If the buyer has fulfilled the contract, then the seller has to give back the goods. The aforementioned provision does not apply to instalment contracts. No right of retention can be asserted vis-à-vis this claim to surrender. The empowerment to sell the delivered goods can be revoked under the same prerequisites.
- (5) The seller is obligated to release the securities that are vested in him, insofar as these same securities exceed by 20% the value of the seller's debt claims which have to be secured.
- (6) The buyer has to advise the seller immediately whenever a third party seizes the seller's property, joint property, assigned debt claims or rights (by means of a pledge or mortgage, confiscation or attachment, or other (court) order or disposition); he shall incur an obligation to pay compensatory damages otherwise.

9. Contractual penalty

- (1) The buyer undertakes to offer, exhibit, sell, etc., the goods for sale exclusively in the retail shop which he gives as the delivery address when ordering.
- (2) The buyer undertakes to refrain from forwarding or selling the goods that have been sold to him to commercial resellers, or to make them accessible otherwise.
- (3) The buyer undertakes to refrain from offering, selling or otherwise recommending and for example for the goods that he has purchased from the seller on the internet or on other sales platforms outside his retail shop, which he has given [as the delivery address] vis-à-vis the seller when ordering.
- (4) The buyer promises that the information which he gave when ordering is correct concerning his status as a trader. The buyer is aware that the seller can only make a sale to commercial customers and that he cannot make any sale to non-businessmen.
- (5) The buyer undertakes to pay the seller a contractual penalty amounting to € 5,000, insofar as he infringes against the aforementioned promises or obligations or both. The buyer shall not raise an objection in the context of continuation.

10. Other provisions

The buyer's rights arising from this contract for sale are not assignable.

11. Place of jurisdiction

If both parties are businessmen, then the place of jurisdiction (even for lawsuits concerning bills of exchange and cheques) is Cologne, in Germany.

12. Choice of law

The law of the Federal Republic of Germany applies exclusively to the contract, in the case that the buyer is resident outside the Federal Republic of Germany. This law is also decisive for judging the question of whether the buyer who is resident outside the Federal Republic of Germany has declared his agreement to the validity of these general terms and conditions of sale and delivery when concluding the contract or at a later point in time.

13. Legality

Any invalidity and even partially of the aforementioned individual conditions shall not affect the operativeness of the remaining parts, (i.e., the remaining conditions).

14. Exchange

- (1) An exchange of the goods is excluded.
- (2) If the buyer consents to an exchange exceptionally in an individual case, then the buyer shall pay to the seller a handling fee amounting to 10% of the net value of the exchanged goods, plus further postage that is incurred and the further packing charges that are incurred. The seller shall make an inspection of the goods which have to be exchanged after they are returned, in order to ascertain whether they are defective and as good as new. Insofar as this is the case, the seller shall issue a credit note amounting to the net value of the goods in the buyer's favour, which shall be deducted in the buyer's favour from the invoiced sum resulting from his further order or orders. No payment of the credit note's amount shall be made in any case.

15. Exclusivity

- (1) The seller does not make any exclusive promises.
- (2) If a promise of exclusivity is made in an individual case, then this shall apply exclusively and only if it has been confirmed in writing by the seller.