



# **General Terms and Conditions of Sale for national and international business of UTT Technische Textilien GmbH & Co. KG**

*(As per November 2010)*

## **1 Place of fulfilment; delivery and acceptance**

- 1.1 The place of the selling party's commercial establishment shall be the place of fulfilment for all goods and services under the delivery contract.
- 1.2 The place of delivery shall be determined by the delivery clauses stipulated between the customer and UTT which are to be construed according to the Incoterms 2010. Unless a special delivery clause has been agreed upon, delivery shall always be ex works (EXW), regardless of who bears the transport costs. UTT will choose the dispatch type and dispatch route - unless otherwise agreed - at its own discretion but the cheapest and/or fastest dispatch cannot be guaranteed.
- 1.3 If delivery is made ex an external warehouse, a flat-rate warehouse surcharge may be invoiced.
- 1.4 The buying party shall bear the packaging costs for special packing.
- 1.5 Part-deliveries that are sorted and combined to be suitable for sale have to be made in a timely manner and are to be announced beforehand. Unsorted consignments are only permitted with the consent of the buying party.



- 1.6 If due to the fault of the buying party acceptance is not made within the agreed period, the selling party shall be entitled, after setting a grace period of 12 days, to choose between issuing an invoice for the amount due or withdrawing from the contract or claiming damages.

## **2 Place of jurisdiction**

The claimant can choose whether the place of jurisdiction (also for actions due to cheques and bills of exchange) is the place of the commercial establishment of one of the parties or the domicile of the relevant professional or cartel organisation (place) which is responsible for the supplier. The court which is appealed to first shall be responsible.

## **3 Subject matter of the contract**

- 3.1 The respective contract or master contract concluded with the customer or our binding offer, if this was accepted in due time, shall be relevant for the scope of delivery. If the master contract and/or our binding offer contain no information about the scope of delivery, the scope of delivery shall be determined by the customer's written call-off orders provided that we do not contradict these within one week.
- 3.2 The goods are delivered on specific dates (working day or a specific calendar week). All sales are only concluded with specific quantities, articles, qualities and fixed prices. Both parties are bound to these arrangements. Transactions on a commission basis will not be made.
- 3.3 Block-orders are permitted and the terms have to be fixed upon concluding the contract. The acceptance period must not exceed 12 months.
- 3.4 Our delivery commitment is subject to the timely and duly delivery to ourselves.

#### **4 Delivery period, interruption of the delivery, customer's inability to pay, default of acceptance, grace period for subsequent delivery**

- 4.1 The respective master supply contract concluded with the customer or our binding offer, if it was accepted in due time, shall be relevant for the delivery dates and delivery periods. If the master supply contract and/or our binding offer contain no information about the delivery dates and periods, the delivery dates and periods shall be determined by the customer's written call-off orders provided that we do not contradict these within one week.
- 4.2 Agreed delivery periods shall commence upon conclusion of the contract, but not before the details specified by the customer regarding the required processing have been clarified in full and not before the customer has answered all technical questions. The delivery period shall not include the period in which the customer is in arrears with an agreed payment, i.e. the delivery period is extended by the period in which the arrears existed. Adherence to the delivery period requires at all times that the customer meets its contractual obligations in a timely and duly manner. If the customer induces a change of the contract, as a result of which the adherence to the original delivery period is not possible, the delivery period shall be extended accordingly.
- 4.3 The delivery period shall be considered to be adhered to when within the period the circumstances causing a transfer of the risks according to paragraph 4.1 have occurred.
- 4.4 In cases of force majeure, industrial actions or other unculpable operational disturbances, which have lasted longer or are expected to last longer than one week, the delivery period resp. the acceptance period will be extended without hesitation by the period of the disturbance, but no longer than 5 weeks plus the grace period for subsequent delivery. An extension shall only set in if the other party is informed immediately of the reason for the disturbance as soon as it is clear that the stipulated deadline cannot be adhered to.



- 4.5 After expiry of the delivery period a grace period for subsequent delivery of 12 days commences without the need for notification. To the exclusion of any claims for damages withdrawal from the contract is considered to be effected after the expiry of the grace period for subsequent delivery. The withdrawal from the contract shall not apply if the buying party declares to the selling party during the grace period for subsequent delivery that it insists on performance of the contract. However, the selling party will be released from the delivery commitment if the buying party upon the selling party's request does not declare within the grace period for subsequent delivery whether it insists on performance of the contract.
- 4.6 If the customer is in arrears with the acceptance of the delivery items or the payment of the purchase price, UTT is entitled to withdraw from the contract and/or claim damages instead of performance after futile expiration of an appropriate grace period required by law and set by UTT. If a claim for damages instead of performance is raised, UTT is entitled to claim without proof a compensation of
- 20% of the purchase price to compensate for lost profit, provided the delivery item is a mass series or standard part or
  - 100% of the purchase price, provided that the delivery item is a specially made item according to the customer's requirements and that UTT incurred expenditures due to the establishment of the readiness to deliver.
- 4.7 The contractual parties are at liberty to prove that a higher resp. substantially lower actual loss has incurred. Irrespective of this the regulations stipulated by law shall also remain unaffected for the calculation of the damages if the contract has already been completely fulfilled by UTT. In the event of default of acceptance by the customer, UTT is moreover entitled to charge the expenditures incurred, especially storage costs. If the goods are stored on UTT's own premises, the customary local storage costs are charged.
- 4.8 In case of a failure to deliver resp. accept the goods in due time, the other contractual party may withdraw from the contract. However, such party has to



announce this in writing at least two weeks before exercising the right of withdrawal.

- 4.9 If the other contractual party upon request was not informed immediately that delivery or acceptance would be delayed and if the disturbance has lasted longer than 5 weeks, the other party is entitled to withdraw from the contract immediately.
- 4.10 Claims for damages shall be excluded if the respective contractual party has fulfilled its obligations according to paragraphs 4.4 to 4.8.
- 4.11 Transaction fulfilment at definite dates will not be made. However, if the parties explicitly agree on a case-by-case basis that the goods are intended for a specific campaign, a definite delivery date without extension can be agreed upon. If the delivery date is exceeded, the buying party may claim compensation of special expenditure for the ordered goods, but only up to an amount of the purchase price of the ordered goods. Any other claims are excluded. If the campaign goods are faulty, the buying party can only reduce the purchase price or withdraw from the contract.
- 4.12 If the buying party wants to claim for damages instead of performance, it must give the selling party a 4-week deadline with the warning that it will refuse the performance after expiry of the deadline. In the case of clause 4.5 this provision shall only apply instead of the there-mentioned withdrawal if this deadline of the buying party has reached the selling party within the grace period for subsequent delivery.
- 4.13 Ready to dispatch in-stock products and NOS-goods - "Never-out-of-stock"-goods - shall have a grace period for subsequent delivery of 5 working days. The buying party shall be informed immediately in case of non-delivery. As for the rest the provisions of clauses 4.5 and 4.12 shall apply.
- 4.14 The buying party's claims due to delayed delivery shall be excluded before the expiry of the grace period for subsequent delivery.

## 5 Notices of defects

- 5.1 Notices of defects shall be sent to the selling party no later than 12 days after receipt of the goods.
- 5.2 Any complaint regarding obvious defects shall be excluded after cutting or other processing work on the supplied goods has begun.
- 5.3 Minor deviations in quality, colour, width, weight, finishing or design, which are technically unavoidable, shall not be subject to complaints. The same applies to deviations customary in the trade unless the selling party has guaranteed in writing to deliver the goods according to the sample.
- 5.4 In case of justified notices of defects the selling party shall have the right to rework or deliver free of fault replacement goods within 12 days after receipt of the returned goods. In this case the selling party shall bear the freight costs. If the supplementary performance has been unsuccessful, the buying party shall only be entitled to reduce the purchase price or withdraw from the contract.
- 5.5 After expiry of the deadline mentioned in clause 5.4. the buying party shall only be entitled to reduce the purchase price or withdraw from the contract.
- 5.6 The buying party has to notify the selling party of hidden defects immediately after they have been discovered. The buying party is only entitled to reduce the purchase price or to withdraw from the contract if it notifies the defect in due time.
- 5.7 The period of limitation for defects shall be one year - subject to sentence 2. In the event of any injury to life, body or health attributable to UTT, and in cases of intent and gross negligence, the period of limitation shall be two years.

## 6 Payment

- 6.1 The invoice is issued on the date of delivery resp. the provision of the goods.
- 6.2 The invoices are payable according to the relevant agreements.
- 6.3 Any postponement of maturity (fixing the value date) shall be excluded in general.
- 6.4 Bills of exchange and cheques are only accepted for processing purposes and are not considered as payment until having been credited without any reservation. All costs arising out of this, especially bank, discount, bill of exchange and other charges plus value added tax shall be borne by the customer and are due immediately.
- 6.5 Bank discount shall never be granted.
- 6.6 Payments are always used for the settlement of the earliest-date invoices due and the applicable accumulated default interest.
- 6.7 The date as postmarked shall be relevant for the settlement of the payment. In the case of bank transfer, the day before credit to the selling party's bank account is made is considered to be the day of the payment transaction.
- 6.8 For contracts with an agreed delivery period of more than three months UTT may demand a change of the agreed price to the extent to which factors which are not avertible but significant to pricing, like cost reductions or increases due to labour agreements or changes of material prices, have incurred. The change of prices shall be restricted to the extent required for the balancing out of the cost reduction or increase incurred. Each contractual party shall have a corresponding entitlement to adjust the prices if, due to delays within the responsibility of the other party, the actual delivery period is longer than three months.

## **7 Payment after maturity**

- 7.1 An interest of 8% above the respective base interest rate of the Deutsche Bundesbank [*German Central Bank*] is charged for payments made after the due date.
- 7.2 The selling party shall not be obliged to make any further delivery from any current contract until full payment of the outstanding invoice amounts including interest has been made. The right to claim damages caused by the delay is reserved.
- 7.3 If the buying party is in arrears with its payments or in case of imminent insolvency or other substantial deterioration of the buying party's financial situation, the selling party may, after setting a grace period of 12 days for deliveries still outstanding and arising from any current contract, cancel the term of payment and demand cash before delivery or may withdraw from the contract or claim for damages.

## **8 Method of payment**

- 8.1 Only in case of claims that have not been contested or claims recognized by declaratory judgement, an offsetting with and the retention of invoice amounts due shall be permitted. The same shall apply if the selling party stops its payments. Other deductions (e.g. postal charges) are not permitted.
- 8.2 Bills of exchange, if they are accepted as payment, will only be accepted against reimbursement of the charges. Bills of exchange and accepted bills of exchange with a term of more than three months are not accepted.



## 9 Retention of title

- 9.1 The goods shall remain the selling party's property until full payment of all accounts receivable from the delivery of goods of the complete business relationship has been made. This also applies to all secondary claims, claims for damages and the encashment of cheques and bills of exchange. Retention of title shall also remain in force if individual receivables of the selling party are included in an open invoice and if it is balanced and accepted.
- 9.2 If the goods subject to retention of title are combined, mixed or processed by the buying party to become a new, movable item, this takes place for the selling party, but without the selling party being obliged out of it. Through the combination, mixture or processing of the goods the buying party does not gain ownership of the new item pursuant to §§ 947 ff BGB [*German Civil Code*]. If the goods are combined, mixed or processed with items which are not the selling party's property, the selling party shall gain co-ownership of the new item. The value of the co-ownership shall be the invoice value of the goods subject to retention of title in relation to the total value of the item.
- 9.3 If a centralised settlement office is involved and is taking over the del credere of the business transactions between the selling and the buying parties, the selling party transfers the ownership of the goods to this centralised settlement office at the time of dispatch and subject to the condition precedent that payment is made by the centralised settlement office. The buying party shall be released once payment has been received from the centralised settlement office.
- 9.4 The buying party shall only be entitled to resell or to further process the goods if the following conditions are taken into consideration.
- 9.5 The selling party is only allowed to sell or process the goods subject to retention of title within the scope of proper business operation and if its financial situation does not deteriorate sustainably.



- 9.6 A) The buying party hereby cedes the claim with all ancillary rights arising out of the resale of the goods subject to retention of title - including any balance claims - to the selling party.
- B) If the goods have been combined, mixed or processed and if the selling party has gained a co-ownership in them to the amount of the invoice value, the selling party shall be entitled to claim the purchase price in relation to the value of its rights to the goods.
- C) If the buying party has sold the claim in the scope of a real factoring, the buying party cedes the claim replacing it vis-a-vis against the factor to the selling party and transfers its own sales revenue in relation to the value of the selling party's right to the goods to the selling party. The buying party shall be obliged to disclose the cession to the factor if its payment of an invoice is more than 10 days overdue or if its financial situation deteriorates substantially. The selling party shall accept this cession.
- 9.7 As long as it meets its payment obligations the buying party shall be entitled to collect the ceded claim. The direct debit authorisation ceases to exist if the buying party is in arrears with its payments or if the buying party's financial situation deteriorates substantially. In this case the selling party is authorised by the buying party to inform the customers about the cession and to collect the claim itself. The buying party has to give the necessary information for the enforcement of the ceded claim and has to allow for this information to be checked. In particular the buying party has to provide the selling party upon request with a detailed list specifying the claims it is entitled to, mentioning names and addresses of the customers, the amount of the individual claims, the invoice date, etc.
- 9.8 If the value of the existing security provided to the selling party exceeds its total claims by more than 10%, the selling party shall be obliged to release the securities to this extent at its own choice upon the buying party's request.

- 9.9 Pledging or assignment as security of the goods subject to retention of title resp. the ceded claims is not permitted. In case of pledges the selling party has to be informed immediately and has to be provided with information about the garnisher.
- 9.10 If the selling party accepts the return delivery of the delivered goods in pursuance of its right to reserve title, this only constitutes a withdrawal from the contract if the selling party declares this explicitly. The selling party is entitled to satisfaction by free sale of the returned goods subject to retention of title.
- 9.11 The buying party shall store the goods subject to retention of title free of charge on behalf of the selling party. It has to insure the goods against the usual risks such as fire, theft and water damage to the usual extent. In doing so, the buying party cedes its claims for damages it is entitled to from the above-mentioned types of damages against insurance companies or other parties being obliged to compensate, to the selling party at the amount of the invoice value of the goods. The selling party shall accept the cession.
- 9.12 All claims and rights from the retention of title for all special types set out in these terms shall exist up to full release from contingent liabilities (cheques and bills of exchange) which the selling party has entered into in the interest of the buying party. In case of sentence 1 the buying party is generally allowed to collect its outstanding receivables by factoring. However, it has to inform the selling party about this before entering into a contingent liability.

## **10 Third-party property rights**

If industrial property rights of third parties are infringed during the production of the goods according to customer specifications (e.g. drawings, models, samples), the customer indemnifies UTT against all claims made in this connection.



## 11 Governing law

The law of the Federal Republic of Germany shall apply. The United Nations Convention on contracts regarding the International Sale of Goods dated 11 April 1980 shall only apply to export business.

## 12 Additional conditions

- 12.1 Exclusively our Terms and Conditions of Delivery and Payment which our customer accepts at the time of placing the order shall apply. This also applies to future business, even if they are not particularly referred to, but if the buying party has received them in connection with an order confirmed by UTT. If the order is placed notwithstanding our terms and conditions of delivery and payment, then our terms and conditions of delivery and payment shall apply nevertheless, even if UTT does not raise any objections. Deviations from these shall only apply if they have been expressly accepted by UTT in writing.
- 12.2 UTT is entitled to cede all claims arising from its business relations to third parties.
- 12.3 At UTT's own choice the place of jurisdiction shall either be the registered office of the company or Mainz.
- 12.4 With the effect of discharging the debt all payments shall be made exclusively in the bank account of the **Allgemeine Kredit Coface Finanz GmbH, Isaac-Fulda-Allee 7, 55124 Mainz / Germany**, to which UTT has ceded all current and future claims arising from its business relations. UTT has also transferred its retention of title to this financial organisation.