

# General Sales Terms of Spandauer Velours GmbH & Co. KG

## § 1 General terms, scope

(1) These General Terms and Conditions of Sales (GST) shall apply to all business connections with our clients (in the following referred to as "Customer"). The GST shall apply only to relations with merchants (§ 14 BGB), legal persons under public law and special funds under public law.

(2) These GST are particularly applicable to contracts concerning the sales and/or the delivery of movables (in the following referred to as "product"), without taking into consideration whether the product is manufactured by ourselves or purchased from a supplier (§§ 433, 651 BGB). These GST shall as well apply in their current version as framework agreements to future contracts and/or the delivery of movables with the same Customer without requiring further explicit note; the Customer shall be informed about any changes in these GST immediately.

(3) Our GST are exclusively valid. Other contrasting, contradicting or supplementing general terms and conditions by the Customer are not an integral part of the contract unless explicitly approved by us. This requirement of consent shall apply in any event, for examples even if we, being aware of the Customer's general terms and conditions, execute delivery to it without reservation.

(4) Individual agreements with the Customer made on a case by case basis (including side agreements, supplements and modifications) always have precedence over these GST. A written contract or our written confirmation shall be decisive for the content of such agreements.

(5) Legally relevant declarations and notifications to be submitted to us by the Buyer after contract conclusion (setting of deadlines, notice of defects, declaration of withdrawal or reduction, etc.), must be submitted in writing, meaning, for example, by letter, email, or fax, in order to be valid. Any formal requirements stipulated by law and other forms of proof, especially in the case of doubt regarding the legitimacy of the declarant, shall remain unaffected.

(6) Notes on the validity of statutory regulations shall only be for the purpose of clarification.

## § 2 Conclusion of the contract

(1) Our offers are noncommittal and subject to change without notice. This also applies if we have given the Customer catalogues, technical documents, product specifications or other documents, including in electronic form, to which we reserve the right of property and copyright.

(2) The order by the Customer is considered to be binding. Unless otherwise stated in the order, we shall be entitled to accept this offer within 14 days after its receipt by us.

(3) The manufacturing and placing of the product at the disposal of the Customer shall take place in customary piece lengths. The average piece length is determined by the offered article and is part of our offer. By dispatch of its order the Customers accepts any quantitative variation of the ordered volume due to manufacturing tolerances.

(4) If the inquiry or our offer contains any payable refinement of material provided by the Customer itself, the Customer agrees by dispatching the order that untreated or later processed cuttings of reasonable quantity handed over by the Customer for finishing can be taken for the purpose of inspection, documentation and quality check. Furthermore, by its order the Customer guarantees that the products sent to us for refining are in accordance with the quality characteristics such as material composition, structure of the product, nature and extent of pre-treatments, fastness, grey width etc. which had been determined by us in former material tests and initial treatment prior to the preparation of the offer.

(5) Acceptance will be confirmed in writing by order confirmation.

## § 3 Delivery Period and Default in Delivery

(1) The delivery period is individually stipulated or indicated by us when accepting the order.

(2) Insofar we cannot observe binding delivery deadlines for reasons which we are not responsible for (non-availability of the service) we shall inform the Customer hereof immediately and at the same time inform it of the expected, new delivery deadline. If performance remains unavailable within the new delivery period, we are entitled to withdraw from the contract in whole or in part, we shall immediately reimburse the Customer for any counter-performance already realised. Deemed as case of non-availability of the service within this meaning in particular is the late self-delivery by our suppliers if we have concluded a congruent hedging transaction, neither us nor our supplier was at fault or we have no obligation to procurement in individual case.

(3) The occurrence of our delay in delivery is determined according to the statutory regulations. In any event a reminder from the Customer is required. Should we be late with delivery the Customer shall be entitled to demand flat compensatory damages for any completed week equivalent to 0.5% of the net value (delivery value) up to the maximum of 5% of delivery value of the delayed delivered product. We reserve the right to prove that the Customer has suffered no loss at all or only a significantly smaller loss than the above flat sum.

(4) The Customer's right according to § 8 of these GST and our legal rights in particular upon exclusion of the obligation to perform (e.g. performance and/or subsequent performance become(s) impossible or unreasonable) shall remain unaffected.

## § 4 Delivery, Transfer of Risk, Acceptance and Default of Acceptance

(1) The delivery is carried out ex warehouse where the place of performance is also located. At the request and expense of the Customer, the product will be delivered to another place of destination (sales by delivery). Inasmuch as no other agreement has been finalised we are entitled to determine the type of shipment (in particular haulage contractors, transport route, packaging) ourselves. Partial and premature deliveries are permissible after reasonable advance notice to our Customer.

(2) The risk of accidental loss or accidental deterioration of the product shall pass to the Customer at latest by handing over of the object of the delivery to the Customer. In the event of sale to destination, however, the risk of accidental loss and accidental deterioration of goods as well as the risk of delay is already transferred when the products are handed to the carrier, forwarder or the person or organisation charged with the carriage of the product. If an acceptance procedure has been agreed on, it is decisive for the transfer of risk. As for the rest, the legal regulations of the law applicable to works and services shall as well apply accordingly. It is deemed equivalent to the handover or acceptance if the Customer is in default with the acceptance.

(3) Should the Customer be in default of acceptance or negligently violate any other cooperation obligation or should our delivery be delayed for any reason caused by the Customer we are entitled to demand reimbursement of the damage including any additional expenses (e.g. storage costs). For this purpose we will charge a flat sum compensation amounting 0.5% of the net value per week up to 5% in case of final non-acceptance starting with the delivery period or, in case of a non-existence of a delivery period, when notice is given that shipment is ready for delivery.

(4) The proof of a higher damage and our legal rights (in particular reimbursement for any additional expenses, appropriate compensation, termination) remain untouched; however, the flat sum compensation shall be added to any further monetary claims. The Customer is at liberty to prove that a damage or depreciation either has not taken place at all or is substantially lower than the flat sum claimed.

## § 5 Prices and Terms of Payment

(1) Insofar as not otherwise agreed on in an individual case our actual prices ex warehouse, plus VAT which respectively apply at the time of the contract settlement shall apply. Payment is expected non-cash via bank transfer. Receipt of payment is regarded as that day, upon which the value is on our account.

(2) The Customer pays for the cost of carriage ex stock and if required by the Customer the cost of insurance. Any customs, charges, taxes or other public levies are borne by the Customer. Transport packaging as well as any other packaging required according to Packaging Ordinance will not be taken back by us, they become property of the Customer; excluded are reusable pallets (e.g.: euro pallets and stack pallets).

(3) The sales price is due for payment within 14 days of the date of the invoice and delivery or acceptance of the product. However, we reserve the right at all times, even in the context of an ongoing business relationship, to carry out a delivery, in part or in whole, only after advance payment has been made. The reservation of this right shall be declared at the latest in our order confirmation.

(4) With the expiry of the above-mentioned term of payment the Customer will be in default. Interest is to be paid on the purchase price at the respective applicable interest rate for default during the default. We reserve the raising of an advanced claim. Our claim for the commercial maturity interest (§ 353 HGB) against merchants remains unaffected.

(5) The Customer is only entitled to rights to offset or retention to the extent that its entitlement has been determined final and binding and is undisputed. In case of defects to the delivery the Customer's counter-rights in particular according to § 7 Par. 6 sentence 2 of these GST remain unaffected.

(6) If there are indications after contract conclusion that our entitlement to the purchase price is at risk through insufficient ability of the Buyer to pay (e. g. filing for insolvency proceedings), then according to the statutory provisions we are entitled to refuse service and—if applicable after setting a deadline—to cancel the contract (§ 321 German Civil Code). In the case of one-off production, we may declare our withdrawal immediately. The statutory provisions regarding the lack of necessity to set a deadline remain unaffected.

## § 6 Retention of Title

(1) Until the complete payment for the whole current as well as for any future accounts receivable arising from the purchase contract and an existing business relationship (secured claims) has been received we shall retain the ownership of the product sold.

(2) The goods subject to retention of title may not be pledged to third parties or assigned as collateral before full payment of the secured claims. The Buyer must inform us immediately in writing if and insofar as insolvency proceedings have been filed and/or third parties have access to the goods belonging to us. If such access by a third party should occur, the Buyer must label the goods belonging to us accordingly and physically separate them from the other goods in his warehouse and make them ready to be picked up.

(3) In the event that the Customer should act contrary to the contract – in particular in the case of non-payment of the purchase price due – we are entitled to withdraw from the contract according to statutory law or/and demand that the product be returned on the basis of the reservation of title. Any demand for the return of the product shall not be deemed to include a simultaneous declaration of withdrawal; on the contrary, we shall be entitled to demand solely the return of the products and reserve the right to withdraw from the contract. If the Customer does not pay the purchase price due, we may assert these rights only if we have first set the Customer an appropriate time limit for payment without result or if setting a time limit may be dispensed with according to the provisions of law.

(4) The Customer is entitled to sell and/or process the products under reservation of title within accepted business practices. In this case the following provisions shall apply in addition.

(a) The retention of title extends on products at their full value which are created as a result of the processing, mixing or combination of our products, whereby we are considered as to be the manufacturer of such products. If the ownership rights of third parties remain in existence during the processing, mixing or combination with their products, we shall acquire co-ownership in relation to the objective value of these goods. Furthermore the same applies for the resulting product as to the goods which are subject to retention of title.

(b) The Customer hereby assigns the claims against third parties, which are established from the resale of the product in total or in the amount of our possible co-ownership share, to us as collateral according to the aforementioned paragraph. We herewith accept such assignment. The obligations of the Customer stated in Par. 2 shall also apply in view of the assigned claims.

(c) The Customer shall remain authorised to collect the claim in addition to us. We undertake not to collect the claim as long as the Customer meets its payment obligations towards us, is not in default of payment, no application has been filed for the opening of insolvency proceedings and there is no other deficiency to its ability to pay. However, if this is the case we can request that the Customer informs us of the assigned claims and their debtors, provides all information which is necessary for the collection, hands over the relevant documents and informs the debtors (third parties) of the assignment. In addition, we shall be entitled, in this case, to revoke the authorization of the Buyer to resell or process the goods subject to retention of title by us.

(d) If the realisable value of the collateral items exceeds our claims by more than ten per cent we shall upon request of the Customer release collateral items at our choice.

#### **§ 7 Claims for defects of the Customer**

(1) The statutory regulations shall apply to the rights of the Customer in case of defects of quality and title (including false and shortfall in delivery as well as improper assembly or faulty assembly instructions) insofar as not otherwise determined below. The special legal provisions in the case of ultimate delivery of the products to a consumer (suppliers' recourse according to Sections 478, 479 BGB) shall be unaffected in all cases.

(2) The primary basis of our liability for defects shall be the agreement made concerning the quality of the product. All product descriptions serve as an agreement about the quality structure of the products which are the object of the individual contracts, while there is no difference whether the respective product description originates from the Customer or from the manufacturer or from us.

(3) If the contract involves processing against payment of material provided by the Customer itself all product descriptions which are subject of the individual contract as well as of the offer preparation serve as an agreement about the quality structure of the product; the same applies for the reaching of the pre-determined DIN standards agreed on by the two parties involved.

(4) As far as quality has not been agreed upon it has to be evaluated according to the legal provision if a defect is present or not (§ 434 subsection 1 sentence 2 and 3 BGB). We shall not be held liable, however, for any public statements by the manufacturer or other third parties (e.g. advertising messages).

(5) The Customer's claims for defects presume that it has satisfied its statutory obligations for inspection and reporting of complaints (§§ 377, 381 HGB). If a defect is determined during the inspection or subsequently then this is to be reported to us immediately in writing. The report is deemed as immediately if it is made within two weeks whereby the timely despatch of the report is sufficient in order to safeguard the deadline. Irrespective of this obligation for inspection and reporting of complaints the Customer must report obvious defects (including false and shortfall in delivery) within two weeks from delivery in writing whereby the timely despatch of the report is also sufficient here in order to safeguard the deadline. If the Customer fails to carry out the proper inspection and/or report of defects our liability for the defect which was not reported is excluded.

(6) If the delivered object is faulty we can initially choose whether we shall provide subsequent performance by remedying the defect (subsequent improvement) or by delivery of a faultless object (substitute delivery). Our right to refuse the chosen type of subsequent performance under the statutory pre-requisites remains unaffected.

(7) If the contract involves processing against payment of material provided by the Customer itself and if the grey cloth left for processing is defective, that is the delivered products for processing are not according to the quality parameters agreed on in the preparation of the offer, such as material composition, structure of the product, nature and scope of pre-treatments, fastness, grey widths etc., deficiency claims shall be excluded. Insignificant variations of the performed finishing shall not be deemed to be defects.

(8) Reasonable deviations from the delivery quantity of the ordered product attributable to production shall not be deemed to be defects. Despite adherence to the specifications for manufacture and production, minimal deviations in the texture and colour of our products may occur. These do not negatively affect the functionality or lifetime of our products. Warranty claims based on such minimal deviations in texture and colour are therefore excluded. The warranty shall also not apply if we have made the Buyer aware of our hesitations regarding the suitability of our product regarding the specifications provided by the Buyer for the further use, the substances and materials supplied or for the preliminary work done by other businesses.

(9) We are entitled to make the owned subsequent performance dependent on the fact that the Customer pays the due purchase price. The Customer is however entitled to retain a part of the purchase price which is reasonable in the ratio to the defect.

(10) The buyer must give us the time and opportunity which are necessary for the owed subsequent performance, in particular to hand over the products for which a complaint was made for purposes of inspection. In the vent of the substitute delivery the Customer must return the faulty object to us according to the statutory regulations.

(11) The expenses which are necessary for the purpose of inspection and subsequent performance, in particular transport, route, work and material costs shall be borne by us if there is actually a defect. However, if it is determined that a request for remedy of a defect by the Customer is unjustified we can request reimbursement of the cost incurred hereby from the Customer.

(12) In urgent cases, e.g. when the operational safety is at risk or to prevent extraordinarily large damage, the Customer reserves the right to rectify the defect itself and to demand that we reimburse it for the necessary expenditure. We shall be advised without delay, if possible beforehand, of self-remedying of defects. The right of self-remedy shall not apply if we would have been entitled to refuse corresponding subsequent performance in accordance with the statutory provisions.

(13) If the subsequent performance has failed or a reasonable deadline which is to be set by the Customer for the subsequent performance has expired unsuccessfully or it is dispensable according to the statutory regulations the Customer can cancel the purchase contract or reduce the purchase price. However, no right to cancellation exists with an insignificant defect.

(14) Claims of the Customer for damages or reimbursement of fruitless expenses shall only exist according to § 8 and are incidentally excluded.

#### **§ 8 Other liability**

(1) Insofar as not otherwise derived from these GST including the following provisions we shall be liable according to the relevant statutory regulations in case of a breach of contractual and non-contractual duties.

(2) We shall be liable for damages – no matter for what legal grounds – in case of wilful intent and gross negligence. With simple negligence we shall only be liable

a) for damages from the injury to life, the body or health,

b) for damages from the breach of an essential contractual duty (obligation, the satisfaction of which only enables the proper execution of the contract at all and with which the contractual partner relies and may as a rule rely on its compliance); in this case our liability is however limited to the reimbursement of the foreseeable, typically occurring damages.

(3) The liability restrictions which can be derived from Par. 2 shall not apply insofar as we have maliciously failed to disclose a defect or have assumed a guarantee for the condition of the goods. The same shall apply to claims of the Customer according to the Product Liability Act.

(4) The Customer can only cancel or terminate the contract owing to the breach of a duty, which does not consist of a defect, if we are responsible for the breach of duty. A free right of termination of the Customer (in particular according to §§ 651, 649 BGB) is excluded. Incidentally the statutory pre-requisites and legal consequences shall apply.

#### **§ 9 Statute-of-limitations**

(1) Notwithstanding § 438 Par. 1 No. 3 BGB the general statute-for-limitations for claims from defects of quality and title is one year from delivery. Insofar as an acceptance has been agreed the statute-of-limitations shall begin with the acceptance.

(2) Statutory special regulations for in rem claims to return of third parties (§ 438 Par. 1 No. 1 BGB), wilful deceit of the vendor (§ 438 Par. 3 BGB) and for claims of recourse against the supplier in final supply to a consumer (§ 479 BGB) shall also be unaffected.

(3) The afore-mentioned statutes-of-limitations of the law governing purchases shall also apply to contractual and non-contractual claims for damages of the Customer which are due to a defect to the products, unless the application of the regular legal statute-of-limitations (§§ 195, 199 BGB) would lead to a shorter statute-of-limitations in an individual case. Otherwise the legal statute-of-limitations shall apply exclusively to claims for damages of the Customer according to § 8.

#### **§ 10 Choice of law and place of jurisdiction**

(1) The law of the Federal Republic of Germany shall apply to these GST and all legal relations between us and the Customer under the exclusion of all international and supranational (contractual) legal regulations, in particular the UN Convention on the International Sale of Goods. The pre-requisites and effects of the reservation of title according to § 6 are on the other hand subject to the law of the respective storage location of the object insofar as accordingly the choice of law which was agreed is inadmissible or invalid for the benefit of German law. The INCOTERMS 2010 shall apply.

(2) If the Customer is a merchant according to German Commercial Code, legal person of public law or special fund under public law, exclusive – also international – place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship is Lichtenstein. We are however also entitled to file an action at the general place of jurisdiction of the Customer.

Lichtenstein, October 2017