

General Terms and Conditions of Sale and Delivery (GTC) of filotex Garnvertrieb GmbH in Albstadt

Status: June 14, 2011

§ 1

Scope of Terms and Conditions, Exclusion of Conflicting Terms and Conditions

- (1) All our offers, deliveries and services shall be based on General Terms and Conditions. The following Terms and Conditions shall only apply to entrepreneurs according to Section 14 German Civil Code, legal entities under public law or an asset under public law (hereinafter referred to as the "**Customer**").
- (2) Our GTC shall apply exclusively. We shall not accept different general terms and conditions of the Customer unless they have been confirmed by us in writing.
- (3) Our GTC shall also apply if we effect delivery without reservation while being aware of conflicting or different general terms and conditions of the Customer.
- (4) Within a permanent business relationship, our GTC shall also apply to all our future offers, deliveries and performances relating to the Customer without requiring any further reference or agreement.

§ 2

Conclusion of Contract, Scope of the Delivery, Tolerances, Prohibition of Assignment

- (1) Unless agreed upon otherwise in writing, our offers are subject to change and are non-binding. In order to become binding, any orders or agreements require our written order confirmation or our delivery of the goods. The same shall apply to any amendments, changes or side agreements.

- (2) Our written order confirmation or, in the event of lack of such order confirmation, our offer shall be relevant determining the scope of delivery and/or the service to be rendered.
- (3) Unless agreed upon otherwise, the conclusion of a contract is subject to the condition of correct and timely self-supply by our suppliers. The Customer shall immediately be informed about the non-availability of the goods and services. Any goods and service already rendered shall be refunded.
- (4) Any numerical deviations of 5 % more or less are permitted, at least a deviation of 2 yarn counts. With respect to twisted yarn, the deviation shall be calculated on the number of the single thread. Any deviations which undercut these tolerances shall be compensated by a remuneration per weight. Any exceeding of these tolerances must be proven by the Customer in the yarn itself – thus before any processing. With respect to any dyed yarns and bleached yarns as well as any fancy and special yarns we reserve the right to deliver 10 % more or less. Any deviations within the aforementioned tolerances do not entitle the Customer to demand any compensation.
- (5) Unless agreed upon otherwise, the relevant German and European standards shall apply to the determination of the commercial weight. With respect to yarns and twisted yarns, the moistures for the relevant type of yarn as set out in the “Textilkennzeichnungsgesetz” (TKG) shall apply in the version as applicable at the time of the conclusion of a contract.
- (6) All deviations in weight, number- and cube can only be determined by means of conditioning proceeding before a public office of commodity testing. The conditioning can be initiated by either Party.
- (7) Different spinning and dying lots shall be worked off separately. In case of different spinning and dying lots, we will issue separate delivery notes. The yarns shall be worked off in the order of their delivery by the Customer or the Customer's toll manufacturer. Yarns which are delivered in longer time periods shall also be worked off separately, even if no change of a spinning or dying lot is indicated by us.
- (8) The Customer shall not be entitled to assign or to transfer any claims or rights resulting from the business relationship with us without our prior consent. The same applies to any of the Customer's claims against us which have directly arisen by operation of law.

§ 3

Delivery Time

- (1) If a term of delivery is agreed, such term shall begin with the date of our order confirmation, however, not before delivery of all necessary documents, information and data to be provided by the Customer and/or receipt of any advance payments that may have been agreed upon. A term of delivery shall be deemed complied with if the item to be delivered has been handed over to a person in charge of the transport or, if we should be unable to make a delivery due to reasons caused by the Customer, if the item to be delivered has been notified to the Customer as ready for dispatch before such term of delivery has expired.
- (2) The observation of the delivery time is subject to the condition of correct and timely self-supply.
- (3) A term of delivery shall be extended appropriately in the event of Force Majeure or any unforeseen obstacles which affect us or our suppliers. Such an unforeseen and extraordinary obstacle shall be particularly given in the event of unrest, strike, lock-out, fire, confiscation, embargo, statutory or official orders and constraints and (with respect to imported goods) restrictions on exports and imports or incorrect and/or delayed self-supply, if and to the extent such obstacles have not been caused by us and such obstacles have influence on our ability to timely fulfil our obligations under the contract. If due to such circumstances the term of delivery shall be extended for a commensurate period of time, the Customer shall be entitled to withdraw from the contract after expiry of such extended term of delivery. If the Customer is interested in partial performance of the contract, he may withdraw from such part of the contract that is yet unfulfilled. If we have already performed in part, the Customer may only withdraw from the entire contract if the Customer can evidence that he has no interest in partial delivery and/or service by us. Further claims of the Customer for damages are subject to § 8.
- (4) If we should be in delay of delivery and after a reasonable grace period defined by the Customer has expired unsuccessfully, the Customer shall be entitled to withdraw from the entire contract or, if the Customer is interested in partial performance of the contract, withdraw from such part of the contract that is yet unfulfilled. Further claims of any kind, in particular claims for

damages based on bad performance or damage caused by delay, are excluded, unless permitted according to § 8 below.

- (5) Deliveries before the delivery date and partial deliveries are permitted to a reasonable extent.
- (6) If the delivery is delayed due to the Customer's fault or if the Customer violated other cooperation duties, we are entitled to claim for damages including any additional expenditures. Further claims and rights remain unaffected hereby.
- (7) In the event of orders on call we are entitled to demand from the Customer in writing to notify us within a commensurate time of the desired allocation of the orders on call. Upon the unsuccessful expiry of the set time we are entitled to allocate the orders on call ourselves; our allocation shall be deemed accepted by the Customer, unless the Customer replaces our allocation by an own allocation in writing within 2 weeks following the receipt of our allocation notification; the deadline shall only be deemed to have met upon our timely receipt of such an allocation notification.
- (8) In addition to subsection (6) above, we are entitled to withdraw from the contract after a reasonable grace period defined by us has expired, and to dispose of the delivery item elsewhere and to demand compensation for the damages suffered by the non-fulfilment, if the Customer should be in delay with the fulfilment of his contractual duties. There's no need for setting a grace period if the Customer seriously and definitively refuses the acceptance or if he is obviously unable to pay the purchase price or to accept the delivery item within such extended time. 20 % of the contract amount shall be deemed to be the amount of damages. The amount of damages shall be set off against the advance payment. The Parties are free to demonstrate that the damage suffered is actually higher or lower than this amount.

§ 4

Prices, Payments, Partial Payments

- (1) Unless agreed upon otherwise, our prices refer to 1 kg commercial weight of yarn and are net prices plus VAT at the rate applicable at a time.

- (2) Unless agreed upon otherwise, our prices shall be on an Ex Works basis, Incoterms 2010. Costs for packaging, freight, assembly, postal charges, insurance costs, customs duties, any costs for bank or payment transactions as well as any other additional costs will have to be paid in addition.
- (3) Unless agreed upon otherwise, our invoices are immediately due for payment without any deduction.
- (4) At the latest 30 days after the receipt of the invoice, the Customer shall be deemed in delay unless circumstances exist (e.g. reminder or a different payment term or a payment term determinable by calendar) that cause the Customer to be deemed in delay. When the Customer is in delay of payment, the Customer shall pay interest at a rate of annually 8 percentage points above the base interest rate.
- (5) In the event of delay of payment we are entitled to make any further deliveries dependant on the complete settlement of such outstanding payments.
- (6) Upon delay of payment of our Customer, suspension of payment or the opening of an insolvency proceeding with respect to the Customer's assets, all our claims become immediately due for payment. This applies also in the event of agreed terms of credit or if the claim is not yet due for payment for some other reason. Furthermore, this shall apply irrespective of the term of a draft which we have accepted.
- (7) Unless agreed upon otherwise in writing, we are entitled to unilaterally raise the prices and/or charges for freight in the event of substantial increases of salaries, prices of raw materials and supplies, energy costs, costs for freight and customs duties or other materials. The same shall apply to contracts for the performance of a continuing obligation.

- (8) If payment terms are not complied with or circumstances become known or visible which give reason to doubt the credit worthiness of the Customer including facts which already existed at the time of the conclusion of the contract, but which were not known by us or which of which we didn't have to be aware of, we are entitled to refuse our performance and to demand advance payments or the provision of adequate securities for outstanding deliveries and to withdraw from the contract after a reasonable grace period to provide such securities has expired; further statutory rights remain unaffected hereby. The Customer shall be liable for all damages incurred by us by the non-fulfilment of the contract.
- (9) The Customer may only offset receivables due to us with counter claims, if such counter claims are undisputed or have been established by a court of law in an unappealable manner.
- (10) Cheques and drafts will only be accepted as means of payment after previous agreement in writing. Any costs incurred by us resulting from such a payment shall be borne by the Customer.

§ 5

Passing of Risk, Dispatch, Packaging, Obligation to Return

- (1) Unless agreed upon otherwise in writing, our deliveries are carried out on an Ex Works basis, Incoterms 2010.
- (2) The risk of accidental loss passes to the Customer no later than when the delivery item is handed over to the person in charge of the transport ("**Passing of Risk**"). This shall also apply if we are in charge of the transport even if we bear the costs for packaging and shipment.
- (3) If the delivery is delayed due to reasons caused by the Customer, e.g. in the event of delays with respect to the allocation of orders on call, the risk of accidental loss already passes to the Customer on the day we have informed the Customer that the delivery item is ready for dispatch.

- (4) We may at our discretion determine the method of packaging and, if we are in charge of the transport, the method of shipment, unless agreed upon otherwise in writing.
- (5) Packaging which has to be returned, in particular perforated cardboards, special pirns and other yarn carriers shall be returned to one of our stocks at no charge.

§ 6

Retention of Title

- (1) We retain the title to all goods delivered by us until complete fulfilment of all claims resulting from the business connection with the Customer including claims resulting from cheques and drafts. If payment is agreed upon with the Customer on the basis of cheque-draft-procedure, the retention of title shall last until the danger of recourse has ceased to exist.

- (2) Any processing of the delivered goods by the Customer will be done for us as producer according to § 950 German Civil Code. If the delivered item is processed or inseparably connected with other items not belonging to us, we acquire joint ownership of the new goods. The share of the joint ownership corresponds to the relation of the invoice value of the delivered item to the invoice values of the other used items. The Customer is authorized to process the delivered item in the ordinary course of business, provided that the aforementioned security interests are preserved.
- (3) The Customer is entitled to sell the delivered items in the ordinary course of business provided that the extended retention of title (assignment of claims according to subsection (4)) is ensured. Any other acts of disposal, in particular transfer, transfer by way of security, pledge or the like shall not be permitted.
- (4) The Customer hereby assigns to us all claims resulting from the resale of the delivered goods to third parties. We hereby accept this assignment. If the good subject to retention of title is jointly owned by us, such assignment shall only relate to the amount of our claims against the Customer.
- (5) The Customer is authorized to collect the assigned claims for the account of us in his own name in the ordinary course of business and only revocably. Any revocation may only occur if the Customer has not correctly fulfilled his duties, in particular his payment duties, if he is insolvent or unable to pay, if he has applied for the opening of an insolvency proceeding or the opening of such proceeding has been refused due to lack of sufficient assets. If the permission to collect has been revoked, the Customer shall notify the debtor of the assignment. Furthermore we are entitled to disclose the extended retention of title to the Customer's client.
- (6) The Customer's authorization to dispose of, to process or to collect the assigned claims shall terminate without express revocation in the event an insolvency proceeding is opened or the opening is refused due to lack of sufficient assets, cessation of payments, a filing for insolvency concerning the Customer's assets by the Customer or a third party or in the event of establishment of inability to pay or over-indebtedness. In these events as well as in the events of § 6 sect. (5) we are entitled to withdraw from the contract and to request the return of the good subject to retention of title after reminder and fruitless expiry of an appropriate additional respite. The Customer is obliged to release such goods. The proceeds resulting from the collection of the goods

subject to retention of title minus the collection costs shall be deducted from the obligations vis-à-vis us.

- (7) The Customer shall at all times upon our request as well as in case of a petition of insolvency proceedings mark the delivered item subject to retention of title visibly as "property of filotex Garnvertrieb GmbH".
- (8) In the event the Customer's authorization to collect the assigned claims is revoked, the Customer shall immediately disclose to us in writing the name of the assigned claim's debtor and the amount of the claims and to provide us with all the information necessary for the collection.
- (9) The Customer shall handle the goods subject to retention of title with care; in particular, he shall adequately insure these goods at replacement value against damages caused by fire, water and theft. The Customer already now assigns to us all respective claims resulting from the insurance contracts to us. We hereby accept the assignment.
- (10) The Customer is shall immediately inform us in writing us about any attachments or further or actual impairment or endangering of the goods subject to retention of title and/or of the claims assigned to us and any further claims which third parties might raise against us in this respect. In the event of attachment we shall also be furnished at the same time with a copy of the attachment order and a statutory declaration that the attached goods are still subject to our right to retention of title.
- (11) The Customer shall inform us immediately upon our request about the whereabouts of the goods subject to retention of title as well as about the claims resulting from any sales thereof.

- (12) If the realisable value of the securities allowed according to the above-stated regulations exceeds our claims more than 20 %, we will at our discretion release our securities upon the Customer's request.
- (13) The Customer shall immediately inform us in writing about third parties' access to the goods subject to retention of title, the assigned claims or any other documents and data. Any costs incurred by a legal defense of the goods subject to retention of title including costs vis-à-vis third parties shall be borne by the Customer.

§ 7

Warranty

- (1) We are to be held responsible for material defects and defects of title existing at the time of the passing of risk according to the following provisions.
- (2) Any warranty rights are available to the original purchaser only and may not be assigned to a third party without our consent.
- (3) Certain characteristics are only considered as warranted if expressly confirmed in writing. A guarantee shall only be deemed issued if a characteristic is expressly denominated as "guaranteed" in writing.
- (4) The Customer shall immediately give notice in writing of any kind of obvious material defects, deviations in quantity and false deliveries, at the latest within one week after delivery, in any case before connection, mixture, processing or installation; otherwise, the goods are considered to be approved despite these defects, unless we, our legal agents or our vicarious agents have acted with fraudulent intent. The Customer shall immediately give notice in writing of any hidden material defects, at the latest within 7 days after their discovery. In addition, Sections 377, 378 German Commercial Code shall apply.
- (5) The Customer shall give us the opportunity to jointly assess the notified complaints and to be present at any withdrawal for material examination.
- (6) The limitation period for any warranty claims shall be 12 months after the passing of the risk.

- (7) Our warranty for defects of quality and defects of title shall be limited to supplementary performance. Within the scope of our supplementary performance obligation, we are entitled, at our discretion, either to remedy the defect (supplementary performance) or to the delivery of faultless material (replacement). If our supplementary performance is delayed beyond a commensurate period of time or if the supplementary performance is unsuccessful despite repeated efforts, the Customer is entitled to reduce the purchase price or to withdraw from the contract. A withdrawal from the contract is excluded if the defect is irrelevant. Furthermore, in the event of faultless partial deliveries, the Customer may only withdraw from the entire contract if he can evidence that he has no interest in the partial performance. Further claims, in particular claims for reimbursement of expenses and claims for damages, are excluded unless provided otherwise in the following § 8. We shall take title to the replaced parts or, as the case may be, they remain our property and they shall be returned to us upon our request.
- (8) The Customer shall return the defective good to us for subsequent improvement or replacement at his own risk, unless a reshipment is not possible because of the kind of delivery. We shall bear the costs for transportation due to supplementary performance, however only from the place where the good has been delivered to according to the terms of contract and limited by the amount of the purchase price.
- (9) The Customer has to give us the necessary time and opportunity for subsequent improvement or replacement. Only in the event of urgent cases of risk to the plant safety, the protection against unreasonably high damages or delay with the removal of defects, the Customer shall be entitled to cure the defect by himself or by a third party after prior notice and to demand from us restitution of the necessary costs.
- (10) The processing of delivered items is always deemed to be a waiver of the notice of defects to the extent the defect was obvious.
- (11) In the event of legitimate notices of defects, payments by the Customer may only be withheld in an adequate proportion to the material defects occurred. In the event of an unjustified notice of defects, we are entitled to demand from the Customer reimbursement of the expenses resulting therefrom.

- (12) Claims based on defects are excluded in the event of minor deviations from the agreed or usual characteristics or utility.
- (13) The recognition of a material defect always requires the written form.
- (14) There shall be no warranty obligation if the intended use of the delivery item by the Customer deviates from the common use, unless agreed upon in writing.
- (15) Fair wear and tear, damage caused by the Customer's or any third party's default, negligence or misuse of the products, including the accidental or deliberate destruction of or damage to the products is not subject to any warranty rights.

§ 8

Liability

- (1) Our liability for damages, out of which legal reasons whatsoever, is limited to
 - a) our acts of intent or gross negligence including acts of our legal agents and vicarious agents
 - b) culpable injury of life, body, health
 - c) culpable material breach of contract
 - d) if we have intentionally misrepresented the defect by silence or if we have guaranteed the absence of defects
 - e) to the extent we are liable for personal and material damages with respect to privately used items under the German Product Liability Act.

Further claims for damages are excluded.

- (2) A material contractual duty shall be any duty which is necessary for reaching the purpose of the contract or for the proper performance of the contract.
- (3) In the event of a culpable material breach of contract, our liability is limited to losses reasonably foreseeable and typical for this kind of contract.

- (4) The foreseeable loss typical for this kind of contract shall generally be the amount of the contract value of the particular performance.

§ 9

Return of the Goods

If we are obliged to take goods back from the Customer according to these GTC, we shall only be obliged to partially or completely take these goods back if and to the extent these goods are not used, unchanged, new and conform to our delivery program as applicable at a time.

§ 10

Place of Performance, Place of Jurisdiction, Applicable Law

- (1) For all claims arising out of the business relationship between the Customer and us, the place of performance shall be Albstadt, Germany.
- (2) The exclusive place of jurisdiction for all claims resulting from the business relationship including claims from cheques and drafts shall be the place of performance if the Customer is a businessman, a legal entity under public law or an asset under public law. We are also authorized, however, to sue our Customer at his general place of jurisdiction.
- (3) All disputes arising from contracts to which these GTC apply and all disputes arising from business relationship between us and our Customer shall exclusively be governed by German law excluding the rules of the United Nations Convention on Contracts for the International Sale of Goods (CISG) and international private law.

§ 11

Final Clauses

Should one or another provision of these General Terms and Conditions be or become fully or partly invalid, the validity of the remaining provisions shall remain unaffected hereby.

filo-tex Garnvertrieb GmbH
Lerchenstraße 48
D-72458 Albstadt

Status: June 14, 2011
Tel. +49 7431 9575 0
Telefax +49 7431 9575 50
info@filo-tex-garne.de
www.filo-tex-garne.de