

Terms of delivery and payment

§ 1 Validity of terms of delivery

These terms are valid exclusively between merchants. Delivery contracts are made on the basis of the following terms with the exclusion of contrasting terms of purchase stipulated by the buyer. The contents of the acknowledgement of order given by the seller in writing is binding for the buyer.

§ 2 Price and payment

1. If nothing else was stipulated, the prices are to be understood per kilogram of yarn. In addition to the prices agreed upon the buyer pays the legal value-added tax (VAT). The prices are to be understood ex warehouse, if nothing else was explicitly agreed upon.
2. The invoice is made out separately for each delivery and on the day of the provision of the yarn. Any deferment of the date of maturity of the invoice (value date) is inadmissible.
3. Payments are always used to settle the oldest debts due, plus the interest for default having run up for them. It is inadmissible to set off counterclaims denied by the seller or not yet established with legal validity, to keep back payable amounts of invoice as well as to make deductions of any kind.
4. Payment is to be made in cash, by bank, giro or postal check transfer. Checks to places with Central Bank branch are credited upon receipt, negotiable bills with deduction of interest at the respective rate of bank of issue – when discounting is possible at the bank of issue – otherwise at the respective usual current account rate under reserve of receipt. Expenses on discounted bills are at buyer's charge. Bills to places where the Central Bank has no branch are not taken in payment. The seller reserves the decision whether he will take promissory acceptances. If promissory acceptances are taken due to a special agreement, these are not regarded as cash payment and exclude claim to discount.
5. Discounts for postage, courier expenses, transfer and insurance expenses are inadmissible.
6. Before total payment of all due amounts of invoice, inclusive accrued interest for default, the seller is not obliged to any further delivery from any pending contract. If the buyer falls behind with a due payment, or if there is founded doubt about his solvency, the seller can, upon request, demand cash payment for all deliveries still outstanding from all contracts before delivery of the goods and also for all deliveries being on the way. If the cash payment is not effected within 10 calendar days upon dispatch of the request, the seller is entitled to alternatively withdraw from the contracts concluded with the buyer or to demand compensatory damages. In case of notice of protest, non-cashing of checks or suspension of payment of the buyer all amounts of invoices will immediately fall due. All warehousing charges resulting from the delayed payment and so on are for buyer's account.

§ 3 Packing

The packing is charged at cost price and cannot be returned. In case of delivery by container the buyer is responsible for the punctual return and bears all costs resulting from the delayed return. In case of delivery on Euro-pallets the buyer puts at disposal the respective amount of faultless exchange Euro-pallets for immediate return. Missing pallets are charged at the day's price. The forwarding agent pegs the day's price according to the price usual in the line of business.

§ 4 Reservation of ownership

Delivery is effected under reservation of ownership pursuant to §§ 449, 929, 158 BGB [Civil Code] with the following additions:

1. Until complete payment of all claims, also claims arising in future, as well as until the cashing in of all bills and checks given in the framework of the business relations, the goods remain the property of the seller.
2. The buyer's obtaining the ownership of the goods under reservation of ownership pursuant to § 950 BGB is excluded in the case of the processing of the goods under reservation of ownership to a new object. A possible processing is effected by the buyer for the seller, however without any obligations deriving therefrom for him. In case of processing with other goods not belonging to the seller by the buyer, the seller is entitled to co-ownership of the new object in relation of the value of the goods under reservation of ownership to the other goods processed at the time of the processing. Besides, the same stipulations are valid for the new object arising from the processing as set out above for the goods under reservation of ownership. The new object having resulted is regarded as goods under reservation of ownership in the sense of this stipulation. The same is valid as far as the goods delivered by the seller are combined or blended with other goods (§ 948 BGB).
3. The claim of the buyer from the resale of goods under reservation of ownership is already now assigned to the seller with all accessory rights up to the amount of the claim from the delivery of the goods under reservation of ownership, and this regardless whether the goods under reservation of ownership are sold without or after processing and whether they are sold to one or more purchasers. The relinquished claim serves to secure the seller under reservation of ownership only up to the amount of the value of the sale of the respective goods under reservation of ownership. In the case that the goods under reservation of ownership had been blended or combined with other goods not belonging to the seller and then sold, either without or after processing, the transfer of the claim to the purchase price is valid only to the amount of the value of the goods under reservation of ownership which are, together with other goods, the object of this contract of sale or part of the purchased object.
4. The buyer is entitled and authorized to the resale of the goods under reservation of ownership only on the condition that the claim to the purchase price from the resale passes to the seller pursuant to point 3. The buyer is not entitled to other disposals of the goods under reservation of ownership.

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5. In spite of the assignment, the buyer is entitled to collect the claim from the resale. However, the collection authority of the seller remains untouched by the collection power of the buyer. But the seller will not collect the claim himself as long as the buyer properly meets his obligations to pay. Upon request of the seller, the buyer has to give him the names of the debtors of the relinquished claims and to give him the information necessary for the enforcement of his rights, as well as to hand over the respective records and also notify the debtor of the assignment. The buyer has to separate the amounts coming in for such transferred claims from his other proceeds and to pay to the seller up to his satisfaction.
6. In case of current account the ownership reserved is regarded as safeguard for the balance claim of the seller.
7. The buyer is obliged to insure the goods delivered and the objects resulting therefrom by processing, blending or combination against all usual risks, especially against fire, water, storm and danger of theft, and to prove that the insurance was taken out by presenting the policies to the seller upon request, and to prove that the payment of the premiums was effected by presenting the payment receipts.
8. The reservation of ownership of the seller is limited in that manner that the ownership of the goods under reservation of ownership is passed to the buyer forthwith when all claims of the seller from the business relations are fully paid and the buyer is entitled to the transferred claims. The seller obligates himself to release the safeguard he is entitled to according to the above provisions in so far – at his choice – as its realizable value exceeds the claim to be secured by 10%, however on the condition that with exception of the delivery in true current account relation a release is to be effected only for such deliveries or their surrogate values which on their part are fully paid.
9. In case of distraint of the goods under reservation of ownership the buyer is obliged to inform the seller without delay as well as to put at disposal all necessary records for the assertion of the title to and right of possession and the transfer of claim without delay. The same is valid when an application for opening the insolvency proceedings is made concerning the property of the buyer.

§ 5 Delivery

Delivery is effected for account and risk of the buyer, without insurance ex place of dispatch or by making available at warehouse or at a neutral carrier whereby in any case the buyer bears the freight charges. In case of ordinary raw yarns the seller reserves the right to overshipment or short shipment up to 5%, in case of dyed or bleached yarns as well as special spun yarns up to 10%. Delivery obstructions occurring at seller's or pre-supplier's, either by act of God, administrative measures, breakdowns, prevention of raw material supply or for other reasons through no fault of his, entitle the seller to claim an appropriate extension of the delivery period, which corresponds at least to the duration of the obstruction of delivery but no more than eight weeks. Upon expiration of this term, seller and buyer are justified to withdraw from the contract. In these cases claims of the buyer to replacement delivery or compensatory damages, or because of failure of performance at the right time, are excluded. This is not valid in case of malicious or grossly negligent behaviour of the seller.

§ 6 Complaints regarding defects

Objections to weights and damages in transport have to be asserted within three calendar days upon arrival of the goods at the place of destination. Other evident defects or insignificant deviations of properties assured can be complained of only within 12 calendar days upon the arrival of the goods at the place of destination, and that only then when the treatment or processing of the yarns have not yet begun. Latent defects have to be announced to the seller immediately upon establishment, at the latest within eight weeks upon arrival of the yarns at the place of destination, otherwise the goods are regarded as approved in view of these defects. For already processed yarns exceeding the quantity for the quality appraisal at the start of the batch any right to complaint expires. In case of justified complaints regarding defects the seller is entitled to retouching or delivery of goods free from defects at his choice within 12 days upon receipt of the goods. In this case the seller bears the freight charges. In case that the renewed performance will have failed, the buyer is only entitled to reduce the purchase price or to withdraw from the contract. The period of warranty is 1 year as from delivery of the goods, in which the aforementioned time limits for objections remain untouched. Any liability of the seller is excluded when the buyer processes the yarn to goods for which the yarn is not suitable according to the respective state of art. There is also no liability for defects which would have been avoided in case of proper further processing. Before the question is settled whether they are justified, returns in case of objections may be effected only in accord with the seller. Deviations of quality, colour and numbers as well as approach of foreign fibres and also deviations as to the delivery quantity remaining within usual limits cannot be objected to. Trial deliveries are always excluded from any complaint regarding defects and complaint. Provided that, in spite of the above provisions, there should exist claims of the buyer to compensation which were to be attributed to the defectiveness of the goods delivered, the claim to compensation will be limited to the double amount of the value of the yarn of the respective delivery or partial shipment in cases of minor negligence. In cases of minor negligence compensation is excluded when it is a matter of damages which are not typical to the terms of the contract or not foreseeable on the part of the seller at the conclusion of the contract. In cases of intent, gross negligence or injury to life, body or health, the legal rulings are valid. The product liability act is valid without limitation.

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§ 7 Sectioning and acceptance

The buyer is obliged to accept the amount of yarn stipulated in the contract within the period of validity of the contract. The sectioning of ordered yarns has to be effected in good time. In case of sectioning not effected in time, the seller is entitled to the rights of § 375 II HGB [code of commercial law]. Sectioned amounts have to be accepted within the confirmed delivery period and are correspondingly charged. The obligation to deliver of the seller is regarded as fulfilled when he puts the yarn at disposal of the buyer at latest on the last day of the delivery period ex warehouse. In case that there exist several deals simultaneously, the seller may at first totally deliver the oldest one. Pursuant to § 323 BGB in case of falling behind with his obligation to deliver, an adequate extension, however at least such an extension of four weeks, has to be fixed for the seller. Delay of the buyer in sectioning entitles the seller to defer the whole deal correspondingly or to section and deliver according to his own fair judgement, or, pursuant to § 323 BGB, to demand, after having fixed a time limit, compensatory damages or else withdraw from the contract. In the case that the seller himself effects the sectioning, he has to advise the buyer of the arrangement made by him and at the same time fix an appropriate time limit for the buyer to make another arrangement. In any case this other arrangement must remain within the framework of the sectionings usual for this contract. If such an arrangement is not made within the time limit, the arrangement made by the seller is decisive. If the buyer falls behind with the call or the acceptance and lets fruitlessly elapse a time limit to be fixed for him, then the seller is entitled to demand compensatory damages or to withdraw from the contract.

§ 8 Place of fulfilment and place of jurisdiction

Place of fulfilment of payment is the principal place of business of the seller, place of fulfilment of delivery is the place of dispatch of the goods. Place of jurisdiction: For all claims resulting from contracts with buyers who have their principal place of business within the Federal Republic of Germany, the place of jurisdiction is the principal place of business of the seller. For all claims resulting from contracts with buyers who have their principal place of business outside the Federal Republic of Germany, the seller is free to appeal to the court of the principal place of business of the seller or to the legal place of jurisdiction of the buyer.

§ 9 Settlement of disputes

All disputes resulting from the contract are settled either by the court of law or by a court of arbitration. Precondition for the appeal to a court of arbitration is that both parties agree to proceedings of the court of arbitration to be carried out. As to the court of arbitration, the provisions of the order of the courts of arbitration of the 'Deutscher Garnkontrakt' [- German contract concerning yarns] in the respective latest wording are valid. A change between court of arbitration and court of law is excluded after institution of the respective proceedings.

§ 10 Exclusion

Based on German law. The application of the provisions of the 'Haager Kaufrechtsübereinkommen' [- agreement on right on sales/law on sales of The Hague] (uniform law on the international purchase of movables and conclusion of international contracts of sale on movables) as well as the application of the agreement of the United Nations of 11 April 1980 on contracts concerning the international purchase of goods are explicitly excluded.

§ 11 Final clauses

1. If not otherwise stipulated, the conditions of the 'Deutscher Garnkontrakt' in the respective latest wording are valid for the technical fundamental principles.
2. If individual clauses of the above conditions were or became totally or partly invalid, this does not affect the effectiveness of the remaining clauses or the remaining parts of such clauses.
3. Effectiveness of the general terms of business: If within three calendar days upon receipt of this acknowledgement of order a written objection is not filed with regard to the invalidity of the general terms of business of the seller, silence is regarded as approval of the above conditions of sale.