

Version as of April 02, 2004

## UNIFIED TERMS FOR TEXTILE FINISHING ORDERS

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Registered in the Cartel Register <sup>(\*)</sup> according to the Announcement 28/65 and 67/65, 82/70, 36/73 and 63/73 of the Federal Cartel Authority (Federal Gazette No. 88/65 of May 12, 1965 and No. 196/65 of October 16, 1965, No. 4/71 of January 8, 1971 and No. 153 of August 17, 1973 and No. 228 of December 6, 1973) and No. 218 of November 23, 1985 and No. 31 of February 14, 1986 and No. 36 of April 6, 2004)

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### § 1 Scope of Application

- (1) For all textile finishing orders the "Unified Terms for Textile Finishing Orders" and the Supplementary Provisions shall apply. A confirmation for each order with reference to these conditions shall not be necessary.
- (2) The following provisions shall apply to the storage of goods for which a final classification does not yet exist: §§ 7 (1), (3), (5); 8; 12 (1), (2); 13; 14 (1) - (4); 15 (1) - (4); 16 (2); 18 - 24 of the Unified Terms for Textile Finishing Orders, and § 9 of the Supplementary Provisions concerning the Finishing of Fabrics and Knit Goods, § 10 for Printing, § 8 for the Finishing of Yarns and § 10 for Coating.
- (3) For the individual finishing order, the prices, conditions and supplementary provisions valid at the time of the acceptance of the order shall be applicable.
- (4) The unified terms apply only between business people.

### § 2 Acceptance of Order

A finishing order shall be deemed to be accepted, provided the finisher has not refused acceptance, as of the day on which the goods arrived at the finisher's and have been finally classified by the customer and released for finishing.

### § 3 Designation of Order; Covering Note

- (1) For every order the finishing process shall be clearly described in writing.
- (2) When the goods are forwarded, a covering note giving precise information on the quantity and kind of goods shall be furnished to the finisher.

### § 4 Information on the Quality of the Goods and Purpose of Use

- (1) When the order is placed, the finisher shall be informed explicitly in writing of the exact description of the yarn, the construction of the goods, the type and extent of the preliminary treatment, the sizing agents used and the genuineness and purpose of use. The type and the quality of the yarn used in the goods and, in the case of blended yarns and cloth made from blended yarns, the blending percentage shall also be exactly indicated.
- (2) The customer guarantees to the finisher the correctness and completeness of the information provided pursuant to para. 1 above as well as pursuant to the supplementary provisions. He also guarantees that his goods are free from foreign objects.

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(\*) of the German Federal Republic

**§ 5****Declaration of Ownership of the Grey Goods**

- (1) If the finisher so requests, he shall be given the relevant information upon the placing of the order and without delay if the goods delivered for finishing are not owned by the customer, but by a third party or are subject to the rights of a third party, and in particular if they were delivered under reservation of ownership, if ownership to them was transferred as collateral, or if they were sold or pledged.
- (2) If ownership of the goods changes after the foregoing information has been given and while the goods are still with the finisher, the finisher shall be notified of such change of ownership without delay.
- (3) Failure to declare ownership or to do so inadequately will give rise to appropriate claims for damages against the customer.
- (4) The finisher shall have the right temporarily to impound the goods if a third party makes claims for delivery instead of the customer and shows reasonable grounds for such claims. In the case of temporary impounding, the customer cannot make any claims for damages against the finisher.

**§ 6****Postponement of Finishing**

The finisher shall not be obliged to accept goods or put them into process or to continue processing as long as the information required by §§ 3 - 5 is not provided.

**§ 7****Guarantees**

- (1) With the delivery of the goods to be finished the customer grants the finisher a lien securing all present and future claims of the latter resulting from the existing transaction. The finisher's statutory lien and right of seizure remain unaffected.
- (2) The customer simultaneously transfers to the finisher the reversion rights for the acquisition or re-acquisition of the goods to be finished to which he is entitled. When the finished goods are delivered, these rights shall remain until the guaranteed claims are settled.
- (3) The customer shall take care of, on behalf of the finisher, the goods returned to him and shall deliver them to him upon request, in particular should one of the provisions for the curtailment of the credit

period pursuant to § 18 para.3, sentence 1 of these Unified Terms pertain. The customer shall have the right to sell the goods in the normal course of business. The finisher shall thus remain the indirect owner of the goods to enable him to claim for expenses he has incurred against the customer's suppliers, or against the holders of liens should these persons request delivery of the goods.

- (4) The customer hereby assigns the right to a further sale of the finished goods to the finisher insofar as the goods have been finished. The assignment is limited to the amount of the payment for finishing of the sold goods. The finisher shall not demand the assigned claim so long as the customer honors his payment obligations. The customer is, however, obligated to inform the finisher of any demand of a third party and to show such third party the transfer. The customer is obligated, in the case of a cessation of payment, to forward to the finisher a statement regarding the existing finished goods and also, insofar as agreed, to forward a statement of claims to third party debtors.
- (5) If the value of the guaranteed rights exceeds the claims of the finisher against the customer by more than 10 %, the finisher shall be obligated to release goods of his choice to that extent.

**§ 8****Samples**

- (1) The finisher shall have the right to take from the goods delivered to him for finishing, untreated or fully finished cuttings as evidence to be treated confidentially. This provision does not apply to finished clothing articles (stockings, gloves etc.) and custom goods.
- (2) Notwithstanding the finisher's above duty of care during finishing, the finisher is not obligated to examine the delivered goods.

**§ 9****Delivery Date**

An obligation to meet specific delivery dates is made valid only by an explicit written agreement by the finisher, given upon the acceptance of the order. Tacit acceptance of orders with a stated delivery date shall not be deemed to be a confirmation thereof.

### **§ 10 Extended Delivery**

- (1) If the finisher exceeds a delivery period specified in accordance with § 9, or if he does not deliver after expiration of an adequate period in spite of a reminder by the customer, the customer shall grant him an additional period of delivery of 12 days in the case of an agreed delivery date, otherwise of 25 days. The additional period for delivery can be established only after expiration of the delivery period and shall be computed from the day on which the customer's notice by registered letter or by telex is received by the finisher.
- (2) Before the expiration of the additional period for delivery, any claim by the customer for delayed delivery shall not be considered until expiration of the extension.

### **§ 11 Interrupted Delivery**

- (1) Upon force majeure, labor disputes, unjustified acts of the governmental authorities as well as non-negligent factory interruptions that have lasted longer than one week or foreseeably will last longer than one week, the delivery time or, as the case may be, the time for acceptance will automatically be extended by the duration of the problem but only up to 5 weeks with respect to the delivery time. This extension does not arise if the other party is not promptly notified of the reason for the delay as soon as it is known that the above mentioned periods cannot be met.
- (2) If the delivery or acceptance is not promptly made, the other contractual party may rescind the contract. This party must, however, at least two weeks before exercising the right to rescind, notify the other party by registered mail or telex.
- (3) If the obstacle has lasted longer than 5 weeks and upon request the other contractual party is not promptly notified that the goods will be promptly delivered or accepted, then the other contractual party can rescind the contract immediately.
- (4) A claim for damages is excluded in the above cases.

### **§ 12 Exemption from liability**

- (1) The finisher shall not be liable
  - a) for losses and damages covered by the "Unified Insurance for

Textile Finishing Goods" (\*) approved by the Federal Supervisory Authority for Insurance Matters, insofar as such losses and damages are not the result of malice aforethought or gross negligence by the finisher, or are damages arising from death, physical injury, and damage to health caused by a negligent violation of duty by the user or a deliberate or negligent violation of duty by a legal representative of the user or person assisting in the fulfillment of the user's contract;

- b) for the direct and indirect consequences of any other event (e.g. work stoppages, accidents, war, government measures, economic disputes and interruptions of work caused by them and consequences of the latter, riot, pillage, riotous assembly of masses of persons and defense measures against them, sabotage, damage by animals, mildew stains), provided it can be proved that the finisher took the adequate measures to avoid the damages and losses.
- (2) The warranty and liability is furthermore excluded for defects and damages that
- a) notwithstanding the information to be given under § 4 are caused by the quality of the goods;
  - b) are caused by foreign objects in the goods of the customer insofar as these were present upon arrival of the goods in the finisher's factory;
  - c) are caused by incorrect or incomplete information of the customer in the sense of § 4 para. 1 or result from following handling provisions contained in customer supplied documents where the finisher could not recognize that such provisions would cause damages.
- (3) The finisher is not liable
- a) for defects, notwithstanding the information to be given under § 4, caused directly or indirectly by the customer's or a third party's pre-treatment of the goods;
  - b) in the case of special finishing and redyeing orders;
  - c) for defects that, notwithstanding the information to be given under § 4, are caused directly or

indirectly by the application of an inappropriate size in the finishing of the goods that were delivered.

- (4) The finisher cannot rely on the exclusion of liability in para. 2 and 3 if the defects and damages claimed by the customer are the fault of the finisher occurring during the finishing process notwithstanding the conditions for the exclusion of liability.

- (5) The finisher is not responsible for the usual

deviations or small technical, non-avoidable deteriorations and deviations (e.g. in quality, color, gauge, weight, equipment or design).

- (6) The gray widths of the goods to be finished

shall be in agreement with the finisher, such that the required finished widths can be achieved without risk of damage to the goods. If inadequate gray widths are delivered, the finisher shall be exempt from liability for damages and losses resulting therefrom.

(\*) e.g. fire, lightning, explosion, floods, breakage of water pipes, weather conditions, collision of or fire in a transport vehicle, theft, burglary, loss, robbery, fraud, embezzlement

### **§ 13 Insurance**

The goods given to the finisher for processing are not insured by the finisher against any risks, in particular not against fire damage.

### **§ 14 Notification of a Fault**

- (1) If the customer wants to make a claim, the processing of the goods shall be interrupted or stopped immediately and the finisher shall be notified.

- (2) Claims shall be made in writing to the finisher by the customer after delivery of the goods to the customer or to the address specified by him, namely

- a) in the case of obvious defects, promptly and not later than within 14 days;
- b) in the case of latent defects, promptly after discovery, not later than within 12 months.

- (3) No claim may be made in respect of goods

which have been further processed or handled, except in the case of latent defects that are caused by the finisher.

- (4) Goods that have become the subject of a claim shall be submitted to the finisher.

- (5) If the customer stores the finished goods with the finisher, the above periods shall

run from the date of receipt of the invoice relating to the goods which the finisher issues to the customer. The finisher is obligated to give the customer the opportunity to examine the goods kept in storage.

### **§ 15 Defects and Damages**

- (1) To the extent the finisher's liability has not been excluded, he must be given, at his option in the case of finishing that is not within customary commercial tolerances or other justified objections, at the earliest possible convenience an opportunity to correct the defect. In all cases, the finisher is also authorized within a reasonable time to deliver replacements. Correction includes color alterations that are not covered by § 12 para. (3) c) as well as dyeing a marketable color after consulting with the customer if an article is involved that is saleable in another color. In the case of replacement deliveries or by special urgency, the customer shall at the finisher's request make the required raw materials available at his cost (i.e. cost at which materials can be manufactured or bought) to the extent possible and reasonable.

- (2) If the finisher does not make any use of his rights to correct, re-dye, correct or make a replacement delivery, or does so unsatisfactorily or if these are not possible, then the customer can demand exchange, reduction or, insofar as the finisher is responsible for the defect, damages, or make use of his right to rescind the contract. For defects in the handling as a result of obvious or latent defects that are discovered before the further processing of the goods, the liability of the finisher for damages is at most payment of the proved sale price for the correspondingly finished goods of the customer on the day of the receipt of the complaint taking into consideration a salvage value of affected goods.

- (3) The finisher is liable as provided by statute for other damage claims of the customer (e.g. because of latent defects where the defect is discovered only after further processing).

- (4) In all cases, claims for damages are precluded when only a collateral duty is breached through slight negligence and for consequential damages that are not typical under the circumstances and that were not foreseeable to the finisher. This does not apply to damages arising from death,

physical injury and damage to health caused by a negligent violation of duty by the user or a deliberate or negligent violation of duty by a legal representative of the user or person assisting in the fulfillment of the user's contract.

### **§ 16**

#### **Finishing Prices in the Case of Cancellation or Damages**

- (1) If the customer or the finisher rescind the contract pursuant to § 11 or if damages are incurred which cannot be proved to have been caused by the finisher's fault and which render impossible the performance of the contract, the finisher has a claim for a remuneration for the finishing work done or started before the declaration of rescission or before the occurrence of the damage.
- (2) If the delivered goods are returned as delivered at the customer's request without the finisher having given approval, then the finisher has a claim to reimbursement of storage and transportation costs.

### **§ 17**

#### **Invoicing**

- (1) Invoicing of the finishing is effected either after delivery of the goods to be finished or after the finishing of the goods is completed.
- (2) In the case of invoicing after delivery, the invoice is issued for the goods accepted for finishing within a month as on the last day of that month, irrespective of the actual re-delivery date of such goods.
- (3) In the case of invoicing after completed finishing, the invoice will be issued:
  - a) for the goods finished during the period from the 1st to the 15th day of a month as on the 15th of that month;
  - b) for the goods finished during the period from the 16th to the last day of the month as on the last day of that month.

### **§ 18**

#### **Terms of Payment**

- (1) Invoices are payable within 30 days, calculated from the day of the invoice, net and without any deductions.
- (2) Day of payment shall be deemed to be the date of the post mark in the case of payments through the mail, the day preceding the day on which the payment credited by the finisher's bank in the case

of payment through a bank, and the day on which an acknowledgement of payment is issued by the finisher in the case of payment by messenger.

- (3) If there is a delay on the part of the customer with respect to a due payment, or if he stops his payments, or if insolvency proceedings are opened with respect to his assets, or if a substantial deterioration of his financial condition occurs, credit terms are cancelled. In these cases the finisher may request payment in cash before any further deliveries are made.
- (4) Payments are always used for the settlement of the earliest unpaid invoices plus interest for delay accrued thereon.
- (5) All invoices covering cash expenses such as freight, postage, customs duties etc. are payable immediately.

### **§ 19**

#### **Method of Payment**

- (1) Payments shall be made in Euro. If payments are made in a foreign currency, the value received in Euro will be credited in accordance with the bank statement.
- (2) The payment shall be made in cash, by cheque or bank transfer. Payments in cash or by cheque or bank transfer which are made against a bill of exchange which was accepted by the customer, shall be deemed to be payment only if the bill is paid by the customer and the finisher is thus relieved from the liability under the bill of exchange.
- (3) Bills of exchange which are accepted as payment shall be deemed to be offers of payment only and not as payment. Their terms must not be less than 10 days and more than 3 months. The tax due under the relevant legislation must be paid on them. Bank, discount and collection charges shall be refunded to the finisher.

### **§ 20**

#### **Interest**

- (1) In cases where credit periods are exceeded, interest for delay will be charged at a rate of 8% above the base interest rate of the German Federal Bank current at the time.
- (2) For pre-payments, a discount will be provided corresponding to the amount of the interest charged when payments are delayed. Pre-payments are permissible only following issuance of an invoice and then only to the extent of the amount of the invoice.

## **§ 21 Counter Claims**

- (1) Deductions through counter claims are allowed only with undisputed or legally enforceable determined claims. The withholding of payable amounts based on invoices is not allowed, unless undisputed or legally determined counterclaims exist. This does not apply in the case of the cessation of payments of the finisher. Other deductions (e.g. postage, direct transfer or insurance fees) are not allowed.
- (2) Claims for incorrect invoicing must be made within 4 months from the invoice date.

## **§ 22 Place of Settlement and Legal Recourse**

Place of settlement for both parties for claims resulting from business transactions which are subject to these conditions, in particular for delivery and payment, shall be the establishment of the finisher. According to the finisher's choice, recourse shall be at the court for the district of his establishment or at that of offices of Treuhandgesellschaft Textilveredlung GmbH, namely Frankfurt am Main, Germany.

## **§ 23 Competence**

All disputes arising from business transactions which are subject to these conditions, shall be decided either by the ordinary court or by the arbitration tribunal provided for in § 24. If a dispute has been brought to one of the two courts, objection to competence shall not be allowed.

## **§ 24 Arbitration Tribunal**

### a) Membership

- (1) The arbitration tribunal consists of two arbitrators and a chairman. The parties may agree that a dispute shall be decided by one arbitrator only.
- (2) The chairman of the arbitration tribunal, or the arbitrator deciding alone, must be qualified to hold the office of a judge.
- (3) The complaining party shall inform the other party by registered letter, briefly

describing the matter in dispute, of the arbitrator appointed by it and requesting the other party to do the same within one week. The other party shall comply with his request even if it refuses to accept the arbitrator nominated. If it fails to comply within the set period, the second arbitrator shall be appointed at the request of the complaining party by the President of the District Court having jurisdiction for the finisher pursuant to § 22.

- (4) If an arbitrator refuses to accept the office or is not available for any other reason, the party who appointed him shall, upon the request of the other party, appoint a new arbitrator within a week. If it fails to do so, the appointment shall again be made by the President of the District Court having jurisdiction for the finisher pursuant to § 22. If the arbitrator has already been appointed by the President of the District Court, the latter shall appoint a new arbitrator upon the motion of the complaining party.
- (5) The chairman is elected by the arbitrators. If they cannot reach an agreement within two weeks after the appointment of the arbitrators, either of the two parties may request the appointment of the chairman from the President of the District Court having jurisdiction for the finisher pursuant to § 22.
- (6) Likewise, either party may request the appointment of the arbitrator from the President of the District Court, should the parties not agree on a person within two weeks.

### (b) Procedure

- (7) The proceeding of the arbitration tribunal shall be governed by the provision of the tenth book of the German Code of Civil Procedure. Its decision shall be final.
- (8) The arbitration tribunal shall also decide on the costs of the proceeding, applying the provisions of the German Code of Civil Procedure.
- (9) The District Court having jurisdiction for the finisher pursuant to § 22 is the court that has jurisdiction within the meaning of § 1045 of the German Code of Civil Procedure regardless of the amount involved in the dispute.

