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KARL MAYER STOLL Textilmaschinenfabrik GmbH

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# GENERAL TERMS AND CONDITIONS

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As of 01.10.2017

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## **1. General / Scope of Application**

- 1.1. The following terms and conditions (hereinafter "Terms & Conditions") apply exclusively to the sales, deliveries and services of KARL MAYER STOLL Textilmaschinenfabrik GmbH ("Services" of KARL MAYER STOLL Textilmaschinenfabrik GmbH and the companies that are affiliated with the headquarters in Germany ("KARL MAYER"), which are arranged through the online shop of KARL MAYER STOLL Textilmaschinenfabrik GmbH ("Online Shop") with a customer ("Customer")
- 1.2. Consumers are expressly excluded from the use of the online shop, no contracts shall be concluded with them. A consumer is any natural person who enters into a legal transaction for purposes that can be primarily attributed neither to their commercial nor to their independent professional activity. An entrepreneur is any natural or legal person or a legal partnership who/that, on conclusion of a legal transaction, does so in their commercial or professional capacity
- 1.3. Objections will be entered to any terms & conditions of a customer that differ from these terms & conditions for delivery or payment or the legal provisions. Said terms & conditions shall not become part of any contract even in cases where KARL MAYER accepts or processes orders in full knowledge of these contradictory or differing terms & conditions of a customer.
- 1.4. By submitting an order, the customer accepts the delivery and payment terms as being legally binding.

## **2. Offers, Conclusion of a Contract, Subject and Scope of Performance**

- 2.1. The presentation of products in our online shop does not constitute a legally binding offer; it is a non-binding online catalogue of products only. The Customer can place these products in the shopping cart without being under any obligation to buy and he can also correct his entries at any time prior to sending the final binding order by utilizing the tools provided, for which an explanation on how to use them is also provided. By clicking on the order button, the Customer is placing a legally binding order for the goods contained in the shopping cart. Confirmation of receipt of the order follows immediately after placing the order by email and does not constitute acceptance of the contract.
- 2.2. KARL MAYER can accept the order by sending an order confirmation in a separate email or by delivering the goods within two days. If credit card payment is selected, the contract is entered into at the time the credit card is debited. KARL MAYER shall in principle not be obliged to check whether the details or specifications provided by a customer that serve as a basis for KARL MAYER's offers or order confirmations infringe any third party property rights. Any risks detected by KARL MAYER shall be reported to the customer.
- 2.3. Information and data contained in data sheets, brochures or other advertising and information material supplied by KARL MAYER shall merely serve as guidelines and will only become binding content for the contract if expressly agreed by KARL MAYER. The documents belonging to the online shop offers such as illustrations, drawings and measurements are also without obligation and non-binding, unless they are expressly designated as binding.
- 2.4. Structure and durability details do not represent a guarantee unless expressly stated as such. The same shall apply to the assumption of procurement risk.
- 2.5. Unless otherwise agreed in writing, KARL MAYER delivers within the tolerances admissible in accordance with the relevant German or European Industrial Standards, in particular as per DIN, VDE, EN ISO etc.

- 2.6. Technical changes caused by manufacturing processes or legislative changes or changes resulting from normal product maintenance shall be admissible, provided they are deemed acceptable to the customer.
- 2.7. The languages available for the conclusion of the contract are German and English.
- 2.8. KARL MAYER will store the contract information and send the Customer the order data as well as these general terms and conditions via email. The terms and conditions can be viewed at any time - here on these websites, too. Previous orders can be viewed in our Customer login area under the Customer's account.

### **3. Scope of delivery**

- 3.1. The nature and extent of the services shall be determined by the acceptance declaration of KARL MAYER.
- 3.2. If none, or not all, of the selected products are available at the time the Customer places a binding order, then KARL MAYER will inform the Customer of this immediately by email. Payments already made will be refunded. If the product as a whole or in the selected number is not available, KARL MAYER can dispense with acceptance declaration or alternatively is entitled to partial deliveries.

### **4. Period of delivery**

- 4.1. The delivery date stated in the acceptance confirmation applies.
- 4.2. Events such as acts of God, industrial action, unrest, regulatory action and similar circumstances beyond the control of KARL MAYER shall release KARL MAYER for the duration of the disturbance and the extent of repercussions from its duty of fulfilment of contract. This shall also apply when these circumstances come to pass at subcontractors of KARL MAYER or when these events occur at a point in time at which KARL MAYER is already in default. KARL MAYER will inform the customer about the commencement and end of such impediments to performance without delay.
- 4.3. Claims for compensation by the customer due to non-fulfilment or delayed fulfilment on the part of KARL MAYER shall in any case be excluded, with the exception of the restrictions dealt with in clause 6.5. In each instance KARL MAYER will be granted a waiting period of 2 weeks in the case of exceeding the delivery date agreed upon writing.
- 4.4. Price risk, that is, the risk of accidental destruction or accidental degradation will be transferred on provision of goods at KARL MAYER's shipping department to the customer even if KARL MAYER has taken on services such as loading or transportation.
- 4.5. In cases where the service is delayed for reasons that are the responsibility of the customer, the risk will be transferred to him at the point of receiving the note of readiness for operation. KARL MAYER shall in such cases be entitled to charge the customer for the goods as if delivery had taken place, and store them at the customer's expense and risk. Upon the customer's request, KARL MAYER shall insure the goods against theft, breakage, transport and fire and water damage.

### **5. Prices, Payment and Delivery conditions**

- 5.1. The prices are in euros ex works, excluding packaging, freight, transport insurance, installation and other incidental expenses - for delivery within Germany plus statutory applicable VAT, - for delivery outside Germany plus any additional taxes, duties and charges. Details on the amount of incidental costs can be found in the offers in the online store. All pricing is subject to the "International rules for the interpretation of the commercial contract forms - INCOTERMS latest version".
- 5.2. In the online shop, methods for payment in advance or by credit card are available. The credit card of the Customer will be charged once the order has been accepted, but not later than seven days after the order.
- 5.3. The Customer may only offset such claims that have been found to be uncontested or legally valid in writing.
- 5.4. KARL MAYER only provides shipping by dispatch and not to packing stations. KARL MAYER delivers worldwide, but not to those countries in which due to the embargo regulations of Germany or the EU delivery is not possible. Furthermore, no delivery is made to countries where KARL MAYER has no strategic customer support network. The Customer must inform himself whether delivery to the desired country is possible prior to placing an order with KARL MAYER.
- 5.5. The Customer has the option of collection from KARL MAYER STOLL Textilmaschinenfabrik GmbH, Industriestraße 1, 63179 Obertshausen, Germany during the office hours indicated below: Monday to Thursday 08:00–16:00 and Friday 08:00–14:00 except holidays. The Customer must inform KARL MAYER STOLL Textilmaschinenfabrik GmbH at least two working days prior to collection, so that the goods can be made ready.
- 5.6. In connection with the sale of batteries or with the delivery of equipment containing batteries, KARL MAYER is obliged to inform the Customer about the following: Disposal is the responsibility of the Customer, the Customer shall bear the costs of disposal as the defined buyer in line with the German Electric Appliance Law (Elektrogesetz). Packaging is charged at cost price and not taken back.
- 5.7. The Customer, as an entrepreneur, is not granted right of rescission or return. In case of return, therefore, the Customer has to bear the costs.
- 5.8. If a performance that is ready for collection, is not punctually or not collected in its entirety, despite a reasonable period of notice and this is not the fault of KARL MAYER, then KARL MAYER will store the goods at the expense and risk of the customer. KARL MAYER will charge a flat rate of 0.5% of the invoice amount per month of noncollection. Alternatively, KARL MAYER reserves the right to charge for storage according to the number of days and tonnage.

### **6. Warranty, Customer's Duties for Claims for Defects, Liability and Claims for Compensation**

- 6.1. The term of warranty for parts delivered by KARL MAYER is 12 months, from the date of delivery ex works. This warranty shall not apply to parts subject to natural wear and tear. All defects and flaws detected during the above stated period of time where the cause is demonstrably traceable to faulty material or improper execution will be remedied by KARL MAYER. The supply of replacement parts is determined on the basis of "ex works 63179 Obertshausen Germany". Any charges associated with provision are the responsibility of the Customer. Replaced parts shall pass into the ownership of KARL MAYER.

- 6.2. In cases where faulty parts are sent for repair to the delivering factory, the cost of transport both ways shall be borne by the customer. Cost of transport shall be borne by KARL MAYER merely in cases where defects have to be remedied that are definitely the responsibility of KARL MAYER. Damages arising from excessive strain, the use of unsuitable materials, faulty operating conditions, insufficient maintenance, faulty operation, chemical, electromechanical or electric impacts or any other use than the intended shall not be covered by warranty. KARL MAYER explicitly declines any liability for other indirect and direct damages.
- 6.3. Faulty assembly or commissioning by the customer or third parties or, modifications or inappropriate repairs carried out by the customer or third parties will result in loss of warranties and/or granted guarantees. The warranty obligation of KARL MAYER applies only to the customer. It will expire when the goods are sold by the customer to third parties.
- 6.4. Minor variations from the agreed or common condition do not constitute a defective product or service. The general operating instructions or examples of application contained in the KARL MAYER product brochures or other advertising media do not release the customer from his duty of examining whether the products are suitable for the exact purpose intended. Special wishes of application by the customer shall only be binding if KARL MAYER has confirmed to the customer in writing that the products delivered will be suitable for the use intended by the customer.
- 6.5. The customer shall only be entitled to reduction or withdrawal if KARL MAYER fails to carry out supplementary performance within a reasonable period or when this does not remedy the defect despite several attempts (a minimum of 3). KARL MAYER shall be liable without limitation if assuming explicit guarantee or procurement risk, for culpable injury to life, body or health, for claims resulting from the product liability law as well as other deliberate or grossly negligent violations of duty. Any other warranty claims shall be excluded. This applies above all to claims for damages including those resulting from missed profits or other financial losses suffered by the customer.
- In the case of violation of essential contractual duties by KARL MAYER without the fulfilment of which due performance of the contract would be impossible and the due fulfilment of which the customer may rely upon to a special degree, KARL MAYER's liability shall be limited to the damage typical for the contract and predictable on completion of contract. In the event of default, KARL MAYER shall be liable at 0.5% of the value of delayed service for each full week, however, limited to a maximum of 5% of this value. Any liability going beyond the liability for damages shall be excluded irrespective of the legal nature of the claim being asserted.
- 6.6. The reasons and amounts for the aforementioned liability limits will also apply to the benefit of legal representatives, employees and other proxies and/or vicarious agents of KARL MAYER.

## **7. Ownership Reservation**

- 7.1. KARL MAYER shall remain the owner of all delivered products until settlement in full of all claims arising from the business relationship with the customer. This shall also apply if payments are received for specially marked accounts payable. This shall also include claims from cheques and bills of exchange as well as claims from open bills or current account.
- 7.2. The customer must not attach or assign as security any products that are subject to such reservation of ownership.
- 7.3. Potential machining or processing or mixing by the customer shall take place on behalf of KARL MAYER. Insofar as the property of KARL MAYER should get lost in the process, the customer herewith assigns his rights of ownership in the new product to KARL MAYER. The product henceforth will be deemed on loan to the customer. In the case of resale of delivered products subject to retention of title, the customer shall herewith assign to KARL MAYER all receivables and other claims against the purchaser, including all ancillary rights resulting from this resale as security to the full amount, that is, also with respect to a surplus, until the settlement of all claims of KARL MAYER against the customer. KARL MAYER hereby accepts the assignment. The customer shall store the property originating from processing or moderation of goods subject to retention of title free of charge for KARL MAYER.
- 7.4. The customer shall ensure that the goods subject to retention of title are insured appropriately against all usual risks, in particular against fire, burglary and water damage risks at his own expense and that they are handled with care and properly stored.
- 7.5. Any attachments or captures by third parties of goods subject to reservation of title that were delivered by KARL MAYER must be reported to KARL MAYER without delay. Any costs of intervention that may arise shall in any case be borne by the customer.
- 7.6. In the case of a transfer of his business to a third party, the customer shall be obliged to inform the third party about the reserved property of KARL MAYER and the extended and expanded retention of title and has to transfer the duties arising hereof to the third party.
- 7.7. In cases where the total value of the securities existing for KARL MAYER exceeds the claims of KARL MAYER by more than 10% and upon the customer's request, KARL MAYER shall release those securities at its own choice.
- 7.8. In cases where the customer is in default of payment, KARL MAYER shall be entitled to take back goods subject to retention of title after the successful expiration of a period of grace set by KARL MAYER, even if KARL MAYER has not rescinded the contract.

## **8. Transfer of Risk**

- 8.1. Shipping shall always be at the customer's risk ex works in accordance with the latest version of INCOTERMS even in cases where free delivery has been agreed. The customer shall be fully responsible for proper storage of goods arriving at the destination. The arrangement of insurance against fire, theft etc. shall be the responsibility of the customer.
- 8.2. In cases where shipping or delivery is delayed by the customer, the risk will, in both cases, be transferred to the customer on the day of readiness for shipment; however, upon request by and at the expense of the customer, KARL MAYER shall be obliged to take out insurance as instructed by the customer.

## **9. Liability**

As far as legally permissible, claims not expressly conceded in these conditions shall be ruled out. Other than that, they shall be restricted to compensation for damage to the delivery item and in total to the damage that typically arises in business of the type in question based on the value of the delivery item, unless caused by deliberate or by grossly negligent violation of contract by KARL

MAYER. All claims made against KARL MAYER arising from the aforesaid legal grounds shall come under the statute of limitation after no more than 12 months after the transfer of risk to the customer.

#### **10. Place of jurisdiction**

- 10.1. Place of jurisdiction for all disputes arising from the contractual relationship with merchants and corporate bodies under public law shall be solely the Amts- and Landgericht Frankfurt am Main. Apart from that, the place of jurisdiction shall comply with the law.
- 10.2. The content and interpretation of offers, order confirmations and any other correspondence with KARL MAYER shall be governed by the law of the Federal Republic of Germany as well as the German text of the Terms & Conditions for Delivery and Payment dated 10 June 2016.

#### **11. Final remarks**

- 11.1. KARL MAYER reserves all intellectual property and copyrights to its quotes, drawings and other documentation relating to its offers. They may not be made accessible to third parties or given access to in any other way. The reproduction of such items shall only be permitted within the scope of operational requirements and copyright regulations. The same shall apply to products manufactured with the help of these means of production. Upon request, or when no order is placed, all offer documentation must be returned without delay to KARL MAYER.
- 11.2. Amendments and additions to this contract have to be made in writing. The requirement stipulating written form cannot be waived verbally.
- 11.3. If individual provisions of these terms & conditions for delivery and payment or further agreements should be or become ineffective, this shall not affect the validity of the remaining provisions of the contract. The contracting parties shall strive to replace such an ineffective provision by a provision the economic result of which comes as close as possible to that of the ineffective provision. The same shall apply to any contractual loopholes.
- 11.4. The law of the Federal Republic of Germany shall apply to the exclusion of the United Nations Treaty governing contracts for the international sale of goods dated 11 April 1980 (CISG) as well as the German conflict of laws.
- 11.5. Upon issue of these terms & conditions for delivery and payment any previous provisions expressed in other words shall cease to be valid.