

# STOOKER BRANDS

## FASHION SYSTEMS

### GENERAL CONDITIONS OF SALE, DELIVERY AND PAYMENT

#### I. General Provisions

The following General Conditions of Sale, Delivery and Payment (hereafter referred to as "Terms and Conditions") shall apply to all contracts concerning the delivery of goods concluded between Buyer and Stoker Brands GmbH, Syke, Germany (hereinafter referred to as "Seller"). These Terms and Conditions shall only apply to business enterprises (§ 14 German Civil Code --- BGB ). They shall automatically become part of Seller's offers and also govern other services including advisory services and services concerning the provision of know-how. They shall also apply to all future business relationships, even when they are not expressly agreed. Deviating conditions applied by Buyer which Seller does not expressly recognize shall remain nonbinding for Seller even if Seller does not expressly object to same.

Deviating agreements have to be made in writing. This requirement of form can only be waived in writing.

#### II. Offer and Conclusion of Contract

All offers are subject to change without notice. They are also subject to timely supply by third suppliers.

The order shall be deemed to be accepted unless expressly refused by Seller within 8 weeks. Whenever goods on stock are ordered, a delivery period of 10 days shall apply. The documents and illustrations forming part of the offer (drawings, declarations of weight and dimensions) are only approximate. Where sales personnel or commercial agents make oral agreements or give undertakings which go beyond the written purchase contract, these always require written confirmation by Seller.

Where Buyer cancels an order, Seller reserves the right to charge cancellation charges to the amount of 20% of each contract value as standard damages for loss of profit, notwithstanding the right of Buyer to prove that Seller has incurred in a loss of less value.

#### III. Delivery, Delivery periods, Delayed Performance and Nondelivery

Delivery periods and deadlines which have not been expressly agreed as being binding are merely nonbinding information. Force majeure events as well as corresponding, unforeseeable impediments shall entitle Seller to extend or postpone delivery periods or deadlines for the duration of the hindrance, but not for more than a period of 3 weeks. This shall also apply whenever such circumstances have occurred to Seller's upstream suppliers. Seller shall not be responsible for delayed performance and non-delivery in so far as Seller, Seller's agents or upstream suppliers are not at fault. Otherwise Seller shall be liable in accordance with the applicable statutory regulations.

Delivery shall be carried out at Buyer's risk. Place of performance is Seller's place of loading. Deliveries shall be made to the agreed place, Buyer bearing the cost of any modified instructions. Industrial disputes, plant interruptions, traffic hold-ups and similar events for which neither Seller nor Seller's upstream suppliers are responsible shall release Seller for the duration of their impact or, in the case of impossibility, entirely release Seller from his obligation to deliver. All purchase contracts with Seller presuppose for delivery the producer's unhindered course of production. Where production becomes impossible for reasons within the sphere of the producer, Seller shall be free from his obligation to deliver.

Where Seller is in default of delivery as a result of violating a substantial contractual obligation – any fault on the part of Seller's representatives or agents being imputed to Seller –, Seller shall be liable in accordance with the legal provisions provided that, in this case, the liability for damages is limited to the foreseeable, typically occurring damage.

All delivery deadlines shall be extended by a period of grace of 18 days.

Delivery "free warehouse", "free marketing outlet", "free shop" means delivery without unloading. Immediate and proper unloading shall be the responsibility of Buyer. Waiting periods as well as unloading by Seller's employees or at Seller's expense shall be charged to Buyer.

#### IV. Prices and Payment

The prices applicable on the day of the confirmation of order shall apply plus the statutory amount of German Value Added Tax.

All delivery invoices shall be paid without deduction immediately upon receipt of the goods unless a different mode of payment has been agreed. Where delivery against invoice has been agreed, the invoice shall become due for payment, without deduction of discount, immediately after the invoice has been received. Settling an invoice by cheque or bill of exchange shall only take place on account of payment and requires Seller's prior consent. Buyer shall cover expenses incurred as a result of the mode of payment (for example transfer charges, bill charges, etc.). Where the period of payment is exceeded, Buyer shall be deemed to be in default on payment without request for payment. Seller shall be entitled to charge interest according to established banking practice, however at least to the amount of 4 percentage points above the base interest rate of the Deutsche Bundesbank, starting from the due date; the assertion of further claims for damages remains unaffected.

Where Buyer has a temporary shortage of liquid funds, especially in the case of default in payment or the non-payment of a cheque or bill, Seller is entitled to demand prepayment for further deliveries, to fix a date for the immediate payment of all outstanding – including hitherto deferred – invoice amounts and to demand cash payment or security against the return of bills discounted on account of payment. The same shall apply whenever, to the best of seller's judgment as merchants in duty bound, doubt is cast on Buyer's creditworthiness. In this case seller shall also be entitled – without prejudice to other rights – to demand appropriate security or to withdraw from the contract or to demand compensation on account of non-performance.

Seller's invoices shall be deemed to have been accepted unless Buyer objects against them within 10 days of the date of invoice.

Payments shall only be made directly to Seller or to persons whom Seller has authorized to collect in writing.

Buyer shall only be entitled to set off, even in the case of claims for defects or other counterclaims, in so far as the counterclaims are legally enforceable, have been recognized by Seller in writing or are uncontested. Buyer is only entitled to the right of retention if his counterclaim stems from the same contractual relationship.

Seller is entitled to credit Buyer's payments in the following order: against his oldest debts, in fact first against the costs and interest incurred as a result of his oldest debts and then against the primary debt in each case. In the case of goods delivered under retention of title of ownership those goods are in principle considered paid which have already been re-used or processed by Buyer and/or whose prolonged reservation of ownership has come to an end.

A handling fee of 3 Euro shall be charged for orders with a contract value of below 100 Euro.

#### V. Retention of Title to Ownership

Seller shall retain title of ownership of the goods delivered until all our accounts with Buyer in connection with the business relationship, including claims arising in future out of contracts entered into at the same time or subsequently, have been settled. This shall also apply if outstanding money in a current account has been suspended and the balance has been drawn and confirmed. The retention of ownership and the securities to which Seller is entitled shall apply until Seller will be completely indemnified against contingent liabilities (e.g. liability as drawer of a bill in the case of payment by means of the cheque-bill procedure) which Seller has assumed in Buyer's interest.

The retention of ownership also applies to receivables of companies associated with Seller or of companies in which Seller's shareholders likewise possess an interest. The suspension of individual demands to a current account or the drawing of a balance and its confirmation do not annul the retention

of ownership, i.e. the orderer hereby releases his/her claims from resale of the reserved goods to us, to secure all claims arising from the business relationship.

All deliveries shall be carried out with prolonged reservation of ownership.

Where goods delivered under retention of ownership will be processed by Buyer into new movables, the processing shall be deemed to be undertaken on behalf of Seller, without Seller assuming any obligations as a consequence; the new movables become Seller's property. In the case of processing together with goods that do not belong to Seller, Seller shall acquire co-ownership of the new movables proportionately to the value of the goods delivered under retention of ownership and the value of the other goods at the time of the processing. If goods delivered under retention of ownership will be mixed and blended with goods that do not belong to Seller in accordance with §§ 947, 948 of the German Civil Code (BGB), Seller shall become co-owner in accordance with the legal provisions. If Buyer acquires sole ownership through joining, mixing or blending, he shall already now assign co-ownership to Seller proportionately to the value of the goods delivered under retention of ownership and the value of the other goods at the time of the joining, mixing or blending. In such cases Buyer has to hold in safe custody the movables that Seller owns or jointly owns, and which are also considered as goods under retention of ownership according to the following provisions, free of charge.

Buyer is only entitled to resell or use the goods delivered under retention of title in the normal course of business and only on the precondition that the resulting purchase money claim is actually transferred to Seller. Buyer is not entitled to have further disposal of those goods, in particular attachment or transfer of ownership by way of security. Where third parties take hold of those goods, especially in the case of attachments, Buyer shall point to Seller's ownership and notify the latter immediately so that Seller can enforce his rights of ownership.

Seller empowers Buyer to collect the assigned account subject to revocation. Seller shall not avail himself of his own collection powers as long as Buyer honours his payment commitments, also vis-à-vis third parties. Upon Seller's request Buyer has to name the debtors of the assigned account and to give them notice of the assignment; Seller is also entitled to give notice of the assignment to the debtors.

The right to resell, the right to forward the goods delivered under retention of ownership and the power to collect the assigned account expire whenever payment is suspended, the commencement of bankruptcy proceedings is applied for or bankruptcy proceedings are commenced or court or out-of-court composition proceedings are instigated; the power to collect also expires in the event of a cheque or bill protest.

Where the value of the securities granted exceeds the outstanding monies by more than 20%, Seller shall re-assign or release according to his discretion. Ownership of goods delivered under retention of title and the assigned accounts are transferred to Buyer upon the redemption of all of Seller's accounts arising from the business relationship including those of companies associated with Seller and of companies in which Seller's shareholders possess an interest.

Where important contractual obligations are violated, especially in the case of default in payment, the entire balance owing shall fall due. Then Seller shall be entitled to take back the goods and shall be permitted to enter Buyer's company buildings for this purpose and take possession of the goods under retention of ownership and realize these at the best possible rate in the open market or at Seller's discretion. The proceeds shall, after the usual trade margin and the costs incurred have been deducted, be credited against Seller's receivables. Any surplus will be paid out. Taking back as well as attaching the goods shall not be deemed Seller's withdrawing from the contract unless expressly declared so in writing.

#### VI. Liability for Defects and Other Liabilities

Buyer shall only be entitled to assert claims for defects and non-conformities where he has fulfilled his obligations to inspection and notification according to § 377 of the German Commercial Code (HGB). Buyer has to give written notification of obvious defects, shortages and wrong deliveries within 5 working days of delivery, but by all means prior to processing. Where delivery is carried out by means of commercial short and long-haul transportation or other modes of transport, the buyer has to comply with the formalities required by the haulage contractor. Customary breakage and shrinkage may not be complained about.

As long as defects or non-conformities have been notified within the agreed time limit and if Seller is liable for the defect or non-conformity, as Buyer's exclusive remedy Seller may replace goods verified as defective or non-conforming unless statutory provisions allow Seller to refuse replacement. In the event of replacement of defective or non-conforming goods, Buyer shall not be entitled to withdraw from the contract nor to reduce the purchase price (abatement). Buyer has to grant Seller a reasonable period of time for the replacement. At Buyer's discretion the replacement may either take the form of the removal of the defect (rectification) or the supply of new merchandise. In the case of the removal of defects Seller shall bear the costs incurred in so far as these are not increased by the contractual goods being at another place than the place of performance.

Seller may not be held liable for defects or non-conformities of those products supplied as "inferior quality", "second quality", "special batch" or second choice. Any warranty in respect of latent defects or signs of wear for products supplied as "inferior quality", "second quality", "special batch" or second choice merchandise is hereby disclaimed.

In accordance with the legal provisions Seller shall be fully liable for damage to life, limb and health which is the result of a negligent or deliberate infringement of duty by Seller, Seller's legal representatives or his agents as well as for damage which comes under product liability law. Seller shall be liable for damage which is not covered by sentence 1 above and which is the result of deliberate or grossly negligent breach of contract as well as intention to deceive by Seller, Seller's legal representatives or his agents in accordance with the legal provisions. But in this case the liability for damage is limited to foreseeable, typically occurring damage in so far as Seller, Seller's legal representatives or his agents have not acted deliberately. To the extent that Seller has given a warranty with regard to the condition and/or durability of the goods, or parts of same, Seller shall also be liable within the scope of this warranty. Seller shall only be liable for damage which is the result of the deficiency of the warranted condition or durability, but which does not occur directly to the goods, if the risk of such damage should obviously be covered by the condition and durability warranty.

Seller is also liable for damage which is caused by simple negligence in so far as the negligence concerns the infringement of cardinal duties, i.e. those whose fulfillment is of particular importance to the achievement of the object of the contract. However, Seller is only liable in so far as the damage is typically connected with the achievement of the object of the contract and is foreseeable.

Any further liability is excluded; this also applies to liability in respect of the infringement of indication or information or other subsidiary duties and claims in tort to the extent of the above mentioned limitation for conflicting contractual liability.

Rejected merchandise shall not be returned without Seller's prior consent. Goods that have been tried on or damaged through misuse will not be taken back.

#### VII. Place of Performance, Place of Jurisdiction, Applicable Law, Escape Clause

Place of performance and place of jurisdiction for deliveries and payments as well as for all disputes arising between the parties shall be Syke, Germany. However, Seller shall also be entitled to file a lawsuit against the Buyer at Buyer's general place of jurisdiction.

All contracts entered into between Seller and Buyer shall be subject to the Laws of the Federal Republic of Germany.

If individual provisions of these conditions of sale, delivery and payment are or become invalid wholly or partly, such invalidity shall not affect the validity and enforceability of the remainder of these Terms and Conditions.