

## General Terms and Conditions of Delivery and Payment in Sri Lanka

07.2016

### 1. Scope

These General Terms and Conditions apply to all our offers, contracts, deliveries and other services (hereinafter "delivery"), including all future business relations, even if not explicitly and separately stipulated. The Terms and Conditions shall be considered as accepted at order placement or receipt of goods at the latest. Conditions to the contrary set by our customer shall not be accepted. These may only be applicable with our express written consent. If any clause of these Terms and Conditions becomes invalid the validity of the remaining stipulations shall not be affected. If there is any conflict between the main contract or spare order otherwise agreed by both parties, the otherwise agreed content shall prevail.

### 2. Completion of contract, documents, industrial property rights

- 2.1. Providing that there are no other written agreement between both parties, Our invitation to offers are not binding. A contract shall only be completed upon our written order confirmation. Only our written order confirmation is relevant for the date and scope of delivery. If the order is not confirmed by us in writing the contract shall be completed upon order execution at the latest. Statements made by our representatives orally or by phone shall be legally binding only if confirmed in writing.
- 2.2. We are not obligated to fulfill the contract if national or international rules and regulations regarding foreign trade or embargos (and/or other sanctions) or environmental law prohibit its execution.
- 2.3. We reserve all proprietary rights and copyrights of estimates, designs, drawings and other documents; these may be made available to third parties only with our express approval. Drawings and other documents provided as part of an offer must be returned to us on request at any time; this is mandatory when the order is not placed with us. In case of our delivery of items according to drawings, models, samples or other documents provided by the customer, the latter shall ensure that industrial property rights of third parties are not infringed upon. If a third party, referring to proprietary rights prohibits in particular the manufacturing and delivery of such items we shall be entitled to suspend all relevant activities and to claim damages without being obliged to analyze legal responsibilities. In addition, the customer shall undertake to indemnify us immediately from third-party claims related to documents made available to us.
- 2.4. We don't accept any oral order. After we confirmed the order in written, we shall be entitled to procure materials for the entire order and to manufacture the total order quantity immediately. Any customer requests for changes after order placement can, therefore, not be taken into consideration, unless explicitly agreed upon otherwise in written.

### 3. Performance description

- 3.1. The quality of the delivery item shall be finally described by explicitly agreed features (e.g. specifications, labels, approvals, other information). Warranty for a special purpose or particular suitability shall be given only in case of explicit written agreement; otherwise the risk of suitability and use shall be assumed by the customer. Features or other qualities of deliveries and services, other than the ones expressly stipulated, shall not be warranted. We shall reserve any customary or technically unavoidable deviations from physical and chemical quantities, including colours, formula, recipes, processes and the use of raw materials as well as order sizes, as far as this may not be accepted as unreasonable by the customer.
- 3.2. Details of the delivery item (e.g. provided in catalogues, product information, electronic media or on labels) are based on our general experience and knowledge and are thus reference values or markings only. These product details as well as expressly stipulated features/purposes shall not relieve the customer of the need to test the product for the intended purpose.
- 3.3. Details on quality and possible uses of our products do not include any warranties, unless these are explicitly specified as such in writing.

### 4. Delivery and delivery time

- 4.1. Delivery date shall be subjected to the written contract or order confirmation by us. Delivery deadlines shall be considered as met if prior to deadline expiry the delivery item has left our factory or if we have informed the customer that the order is ready for shipment. Delivery deadlines shall remain ineffective as long as the customer has not properly fulfilled his obligations, such as furnishing technical data and documents, approvals as well as making a down payment or providing a payment guarantee.
- 4.2. Unless it is clearly confirmed in written by both parties regarding the installments of delivery, we shall be entitled to deliver by installments.
- 4.3. Force majeure or other events beyond our control that render the timely execution of accepted orders impossible shall relieve us of our delivery commitment as long as these events prevail.
- 4.4. It is generally not possible to return sold and non-defective goods.
- 4.5. In case that customer becomes insolvent or subject to bankruptcy proceedings, reorganization proceedings, or comparable proceedings, shortages of liquid funds or a significant deterioration of financial circumstances we shall be entitled to suspend deliveries immediately and to refuse the fulfillment of current contracts unless the customer executes counter-performance or, on our

request, provides appropriate securities.

## **5. Securities, export control requirements**

5.1. We shall reserve the ownership of all and any goods delivered until all existing claims, including conditional and subsidiary claims, maintained by us towards the customer from our business relation have been satisfied; all deliveries shall be considered as one inclusive delivery transaction. The reserved ownership shall be security for our current account claims. All aforementioned stipulations shall also apply to future claims.

5.2. The customer shall be entitled to resell or process the purchased item or mix or combine it with other goods in the scope of his ordinary business only; however, he will thus now assign to us all claims resulting from resale, processing, mixing, combining or other causes in law related to the purchased item (in particular from insurance contracts or unlawful acts) in the amount of the mutually agreed final invoice total (incl. VAT). The same applies if an item is not sold but subject to a contract for work and materials or a contract for work and services.

5.3. Reservation of ownership shall also apply to such new products resulting from the processing, mixing or combining of the purchased items with other goods in their full amount. These processes shall be performed on our part so that we shall be deemed to be the manufacturer. If third-party ownership rights extinguish after processing, mixing or combining with goods from those parties, we shall acquire joint ownership at a ratio of the objective value of those goods. If our ownership ceases as a result of combining or mixing, the customer shall transfer to us now his ownership and/or expectant rights of the new stock or item to the extent of the invoice value of goods delivered by us, and shall hold them in custody on our behalf at no charge.

5.4. The customer shall be authorized to collect debt claims from the resale despite the assignment, as long as we have not revoked this authority. We will not collect debt claims ourselves, as long as the customer meets his payments with us in due course. Upon our first written request the customer shall be obliged to inform us about the debtors of assigned claims as well as to notify debtors of the assignment.

5.5. We shall have the right to revoke the customer's authority for resale according to point 5.2 and collection of assigned claims with immediate effect if the customer is in arrears with payments to us, experiences a shortage of liquid funds due to a significant deterioration of financial circumstances or does not carry out mutually agreed contractual obligations properly. In case that customer becomes insolvent or subject to bankruptcy proceedings, reorganization proceedings, or comparable proceedings, discontinues payments, or if due to a shortage of liquid funds a change of ownership occurs in the customer's business, the authority for resale and collection of assigned claims will cease automatically.

5.6. The customer shall hold our (jointly) owned materials in custody on our behalf at no charge with due care

and diligence as a prudent businessman and shall insure them against fire, burglary and other usual risks.

5.7. Any pledge or assignment as security by the customer of goods delivered under reservation of ownership is forbidden. Prior to any pledge or any other infringement of our ownership rights by third parties the customer shall notify us immediately and confirm the right of ownership in writing both to us and the third parties. Any residual costs arising from resulting legal action despite our winning a case shall be covered by the customer.

5.8. If the customer violates the contract, in particular by delays in payment, we shall be entitled to recover the goods; the customer hereby gives his advance consent to this recovery in such a case. The recovery shall be considered as a termination of contract only if explicitly stated by us. All costs incurred by the recovery (in particular transport costs) shall be charged to the customer. The customer may demand the delivery of goods recovered without an express notice of withdrawal only once the purchase price and all costs have been fully paid.

5.9. The buyer undertakes to refrain from the following transactions under all circumstances:

- Illegal transactions .

- Transactions subject to permits, in particular export permits however not having been granted such permits.

## **6. Prices and payment**

6.1. Provided that there are no otherwise specific agreement in the order confirmation, our price are in MRP excluding taxes for delivery to the agreed venue within normal delivery time by road transportation. For the special delivery term or special delivery venue, it shall be agreed in the order.

6.2. Unforeseen changes in costs for raw materials, wages, energy and others beyond our control shall entitle us to adjust prices accordingly. For deliveries by installments each delivery may be invoiced separately. If no prices have been agreed at the completion of contract, our delivery day prices shall be applicable. 6.3. Unless otherwise agreed, Our invoices are due immediately and payable without discount.

6.4. We shall not be obliged to accept bills, cheques and other promises to pay.

6.5. The receipt of payment date shall be the day on which the amount is in our possession or has been credited to our bank account. In case of delays in payment by the customer we shall be entitled to charge penalty for the delay payment for the duration of the delay. This shall not restrict the right to claim additional damages.

6.6. In case of the customer's payment delay we may additionally choose to call outstanding purchase price installments or other existing claims against the customer due as well as to make future deliveries under this or other contracts dependent on an advance security or a contemporaneous payment against

delivery.

6.7. Advance or part payments are non-interest bearing.

6.8. The customer may set off or withhold payments only if his counterclaim is undisputed or res judicata.

## **7. Claims for defects**

7.1. We shall be liable for defects of goods delivered by us only according to the following stipulations:

7.2. The customer shall properly fulfill his duties regarding inspection and lodging complaints according to Product Liability Law and Contract Law of Sri Lanka.

7.3. If defective goods are delivered we shall be given the opportunity, prior to manufacturing (processing or installing), to sort out such goods and rectify the defect or to make an additional delivery, unless this cannot reasonably be expected from the customer. In case we are unable to accomplish this or fail to conform with it in due course the customer may rescind the contract to this extent and return the goods at our risk.

7.4. If the defect comes to light only after the start of manufacturing, despite the fulfillment of duties according to point 7.2, the customer may demand subsequent performance (rework or substitute delivery by our choice).

7.5. In case of substitute delivery the customer is obliged to return the defective material on request.

7.6. Claims for rescission of contract or reduction of purchase price shall be granted only if the defect cannot be remedied within an appropriate period, if subsequent performance will incur unreasonable expenses, is unacceptable or must be considered as failed for other reasons. The customer shall, however, has no right to rescind the contract in case of minor defects.

7.7. The customer shall allow us to promptly inspect any rejected goods, in particular these shall be made available to us on request and at our cost. If complaints are unfounded we shall reserve the right to charge transport costs and inspection expenses to the customer.

7.8. No claims for defects may be lodged if the defect can be put down to a violation of operating, maintenance and installation instructions, improper use or storage, faulty or negligent handling or assembly, natural wear and tear or tampering with the delivery item by the customer or a third party.

7.9. Damages, compensation and reimbursement of expenses may only be claimed according to Article 8.

7.10. For products other than new goods, delivered as mutually agreed upon, the customer may not make the aforementioned claims.

## **8. Liability**

8.1. We shall be liable for any damages, in particular resulting from culpa in contrahendo, breach of duty and unlawful acts, insofar as we, our employees or assistants are charged with intent or gross negligence.

8.2. For damages resulting from injury to life, body or

health, guarantees or violation of material contractual duties, we shall also be liable for ordinary negligence. In case of a violation of contractually relevant duties our liability shall be limited to the direct average damage, predictable and typical according to the type of goods, and such total liability shall be capped no more than the total sales value of our goods. Aforementioned stipulation shall also apply to breach of duty by our employees and assistants.

8.3. We shall be liable for the infringement of third parties' industrial property rights in connection with the sale of our goods only if such third parties' industrial property rights are valid in the People's Republic of China and have been published at the time of delivery and only to the extent that such third parties' proprietary rights are infringed upon when using the products as agreed. This shall not apply if we have manufactured the delivery items according to drawings, models, descriptions or other documents or data provided by the customer and if we thus do not or need not have knowledge of any infringement of industrial property rights in connection with products developed by us. In this case our customer undertakes to warrant that there has been and will be no infringement of third parties' industrial property rights, to inform us without delay of any potential and alleged cases of infringement of third parties' industrial property rights which may become known to him, to indemnify us from third parties' claims and, to bear all costs and expenses incurred.

8.4. Claims for defects of delivered products shall lapse 1 year after delivery of the products.

8.5. Claims for price reduction and rights to rescind the contract shall be rejected so far as the claim for subsequent performance has lapsed.

8.6. Our liability pursuant to the provisions of the Product Liability Law of Sri Lanka shall remain unaffected by the aforementioned stipulations.

8.7. Otherwise we shall be exempt from liability.

## **9. Place of performance and jurisdiction, other provisions**

9.1. The customer may assign his claims from the contractual relationship only with our prior consent.

9.2. For all claims from business relations, in particular our deliveries, the place from which performance/delivery is made shall be the place of performance.

9.3. For all claims from business relations, in particular our deliveries, the place of jurisdiction shall be Sri Lanka. This shall also apply to disputes as to the creation and validity of a contractual relationship. The dispute shall be solved in Sri Lanka. The arbitration proceedings shall be conducted in the English language. The award rendered by the arbitrators shall be final and binding upon the parties concerned.

9.4. The business relations with our customers shall be exclusively governed by the laws of Sri Lanka to the exclusion of its private international law as far as it refers to the applicability of another legal system. The UN-Convention on the International Sale of Goods

(C.I.S.G.) and other international conventions on uniform law on the sale of goods shall not be applicable.

Hansel Textil Lanka (PVT) Ltd.