

Terms and Conditions of Sale and Delivery of Arula GmbH

§1 Scope of Application

- (1) The following terms and conditions shall govern all sales and deliveries of Arula GmbH (Arula). These terms shall govern also any future transactions, even if they do not expressly form part of the contract in a particular case.
- (2) Any inconsistent terms and conditions, especially customer's terms and conditions of purchase, shall fully be invalid without a need to object to these terms. These Terms and Conditions of Sale and Delivery may be amended only by a written instrument. Any order or acceptance of a delivery shall in any case be deemed to acknowledge these Terms and Conditions of Sale and Delivery.

§2 Quotes

Arula's quotes are without engagement and shall be deemed an invitation to the customer to place an order.

§3 Acceptance, Acknowledgement of Order

- (1) Arula will accept orders by written acknowledgement. If Arula's acknowledgment varies from the terms and conditions of an order, the transaction will be closed at Arula's terms and conditions, unless the buyer immediately objects by giving written notice after receipt of an acknowledgment.
- (2) Arula is entitled to accept only parts of an order.

§4 Purchase Price

- (1) Unless otherwise agreed, the prices valid on the delivery date shall apply.
- (2) If prices were agreed and there is any change in the costs underlying such prices, Arula will be entitled to adjust the prices to these price changes accordingly.
- (3) All prices are net prices in euros ex works or distributing warehouse, including customary packaging. If a customer requests special packaging (e.g. individually packed, packed for ocean shipment), he shall pay for the additional costs for such packaging.
- (4) If delivery is made at a later point in time for reasons within the customer's control, Arula is entitled to set correspondingly higher prices to compensate higher costs resulting from such delay. This shall not affect Arula's right to replacement of damage we may otherwise incur.
- (5) Any taxes, customs duties and other levies the customer may have to pay for the acceptance of the items shall be borne by him, unless Arula has undertaken to pay by an express written agreement.

§5 Payment and Default

- (1) Place of performance for payment shall be Götzis.
- (2) Bills of exchange and checks are accepted only on account of payment and only if agreed in writing.
- (3) Payment of the purchase price shall be made free and clear of any costs and charges.
- (4) If the purchase price is not paid when due, Arula may
 - defer the fulfilment of our obligations pending payment of these arrears,
 - assert a reasonable prolongation of the delivery period,
 - accelerate the payment of the entire outstanding purchase price,
 - charge all dunning and collection fees and statutory default interest, or
 - rescind the contract in case of non-compliance with a reasonable grace period.
- (5) If foreclosure proceedings are conducted with respect to the customer's assets or if his ability to pay is doubtful, Arula may
 - immediately accelerate all claims notwithstanding their maturity,
 - retain all deliveries and any performance under not yet performed contracts and perform only against advance payment. If the customer refuses to make advance payments, Arula may rescind the contract and assert damages also for lost profit.
- (6) If case of the customer's delay in acceptance, the purchase price shall be immediately due and payable.
- (7) Payments will also be credited towards the oldest debt and resulting interest, even if earmarked otherwise.

§6 Place of Performance, Delivery

- (1) Place of performance is Götzis.
- (2) Shipment and transport is for the account and at the risk of the customer. Any risk shall pass to the customer as soon as the items hereunder are offered to him at the place of performance. Should the customer not accept the items, this shall constitute a default in acceptance. In this event, Arula shall be deemed to have provided his services and is entitled to store the goods at the customer's cost and expense. Arula shall promptly be reimbursed for the resulting storage costs.
- (3) Arula may carry out partial deliveries; these shall be subject to all terms and conditions
- (4) If Arula is unable to deliver on the agreed date due to unforeseeable circumstances Arula is unable to control (force majeure, delays in delivery by sub-suppliers etc), Arula shall be entitled to deliver on the next possible date, provided that the customer can be reasonably expected to accept the items on that date. Otherwise, Arula shall be entitled to rescind the contract. Arula shall be liable for any other default only in case of his own gross negligence and intent.
- (5) The customer shall not be released from performance in the event customer is not able to obtain an import license.
- (6) Variations of +/- 10 % in the number of the agreed delivery volume are permitted.

§7 Warranty and Liability

- (1) Arula warrants and accepts liability only for the proper and professional production of the subject-matter hereof and its compliance with the fabric sampled by the customer. Arula does particularly not warrant and disclaims any liability for a certain fitness of the subject-matter hereof or for the fitness of the subject-matter hereof for the customer's intended purpose.

- (2) The following variations shall not constitute a defect of the subject-matter hereof:
 - up to +/- 5 percentage points from the agreed composition
 - up to +/- 10 % from the agreed weight/m²
 - up to +/- 3 percentage points from the values for wash/dry shrinking indicated by Arula in the quality data sheet
 - up to +/- 5 % from the agreed width
- (3) The customer shall carefully inspect an item upon delivery and shall report defects, if any, within eight days from delivery of the items by giving written notice accompanied by a sample of the incriminated goods; any other notice of complaint shall be excluded. If a defect is notified in time, Arula may either rectify that defect, exchange the incriminated goods, or take these back against granting of a credit. The customer shall not be entitled to assert any other claims.
- (4) The customer may not withhold payments due to warranty claims or any other claims whatsoever.
- (5) Arula shall not be liable for damage in case of slight and simply gross negligence.
- (6) Incriminated goods may be returned only with Arula's prior express consent at the customer's cost and risk. If these goods are returned without Arula's prior consent, Arula may refuse to accept the returned goods and return these to the customer at his cost and expense.
- (7) If Arula produces the subject-matter hereof according to a design or sample prescribed or made available by the customer, the customer shall warrant and be liable to Arula that the design or sample is free and clear of any rights of third parties and that the customer may freely dispose of the design or sample. The customer shall hold harmless and indemnify Arula for and against all claims third parties may assert against Arula for an infringement of the rights pertaining to the designs or samples.

§8 Retention of Title

- (1) Arula shall retain title to the items (conditional goods) pending satisfaction by the customer of all his obligations, particularly until complete payment of the purchase price.
- (2) The customer may resell the conditional goods. This right will expire if the customer is in default with payment or must have concerns that he may not be able to fully pay our claims upon maturity. Disputes not falling within that scope of application shall be referred to the International Arbitral Center of the Austrian Federal Economic Chamber in Vienna. However, Arula may bring claims against the customer before any other court having jurisdiction for the customer.
- (3) Should the customer resell the conditional goods, the customer is assigning to Arula already now any claims he may have from such resale or any other realization up to the amount of the purchase price payable to Arula. He undertakes to make a note of this assignment in his books and records. The customer may collect the assigned claims for Arula's account on his own behalf. The customer shall be obliged to retain for himself title to the conditional goods in the event conditional goods are resold on loan.
- (4) The customer assigns to Arula any insurance benefits or damages to which he may be entitled by virtue of the destruction of or damage to the conditional goods.
- (5) The conditional goods may not be subject to a lien or transfer of ownership rights for security purposes.

§9 Place of Jurisdiction and Applicable Law

- (1) All legal relationships between Arula and the customer shall be governed by and construed in accordance with Austrian substantive law, to the exclusion of the UN Sales Convention.
- (2) Within the geographical scope of application of the Lugano Convention or the Brussels I Convention, all disputes shall exclusively be referred to the courts in Feldkirch. Disputes not falling within that scope of application shall be referred to the International Arbitral Center of the Austrian Federal Economic Chamber in Vienna. However, Arula may bring claims against the customer before any other court having jurisdiction for the customer.
- (3) For purposes of the construction of this Contract and these Terms and Conditions, the German version shall prevail.

§10 Final Provisions

- (1) The customer may not set off claims he may have against Arula against the purchase price payable to Arula.
- (2) The customer may not assign to others his claim to delivery of the items.
- (3) A contractual agreement may not be challenged on the grounds of error on the part of the customer.
- (4) Any documents or information about Arula, his products, samples, promotional material, distributors or other customers that are made available to the customer or of which customer becomes otherwise aware shall not be disclosed or otherwise made available to third parties, or especially to competitors.
- (5) If any term hereof is or becomes invalid or unenforceable, this shall not affect the remaining terms hereof. These invalid or unenforceable terms shall be replaced by valid and enforceable terms which closest reflect the intended economic purpose (severability).

Wir liefern Ihnen ausschließlich zu unseren unter <http://www.arula-textile.com> angeführten Allgemeinen Verkaufs- und Lieferbedingungen, die eine Gerichtsstandsvereinbarung und eine Schiedsklausel enthalten.

We will make deliveries solely on the basis of our Terms and Conditions of Sale and Delivery set forth in <http://www.arula-textile.com>, which contain a venue clause and an arbitration clause.