

General Terms and Conditions of Business for the sale of goods through distance selling by Swing Der Laden für Ballet Tanz und Gymnastik (GTC – Distance Selling)

I. Sphere of validity and inclusion

1. Our General Terms and Conditions of Business for the sale of our goods through distance selling (GTC - Distance Selling) shall apply for sales through the internet. Their validity shall be exclusive. No other terms and conditions of business shall apply. The general terms and conditions of business (GTC) used by a customer which are contrary to our own (GTC - Distance Selling) shall only be included into a contract subject to our express written consent. The inclusion of GTC differing from our own after a contract has been concluded can be agreed informally without having to follow a set procedure.

2. Our GTC shall also apply to customers who are businesses within the meaning of § 14, § 310 BGB¹ (BUSINESSES), for future contracts without their incorporation having to be agreed again.

II. Written form, E-mail, Power of representation assigned to employees and suppliers

1. Additional or other agreements, assurances or amendments must be made in written form or sent by e-mail with a specified electronic signature, in so far as they are not made prior to or after the conclusion of the contract.

2. Employees are not authorised to make verbal assurances when the contract is signed or to agree verbal additions or amendments with customers, unless the scope of their authorisation would be required by law. Such assurances, additions or amendments of contracts by employees must be made in writing or sent by E-mail with a specified electronic signature, in so far as they are not made prior to or after the conclusion of a contract. Suppliers or other persons acting for us on the basis of, or on the occasion of, the fulfilment of the contract shall not have any authority to represent us in any way.

III. Commitments to offers, information when concluding a contract, discrepancies in information when concluding a contract, contract documents inter alia.

1. We shall be entitled to revoke our offers prior to acceptance, unless we designate our offer as being binding.

2. If the customer's request or order is to be legally qualified as a contractual offer within the meaning of § 145 BGB, we shall consequently be entitled to accept this within 12 working days by sending out or handing over a written order confirmation or transmitting an e-mail with a simple electronic signature. We shall likewise be committed to binding offers we have made for a period of 12 working days.

3. Information describing products in brochures or similar documentation and public statements made by us or by manufacturers shall not be binding, unless the characteristic named therein was agreed with the customer as a feature of the goods or the customer can expect it on the basis of public statements.

4. Discrepancies from agreed product characteristics shall not affect the fulfilment of contracts, provided

that it would be reasonable for the customer to accept them, and that they do not restrict the use of the goods in accordance with the contract, or only do so to a minor extent, and we furnished no assurance of the existence of the characteristic or we were unable to identify that the agreed characteristic is of particular significance to the customer; in particular, if achieving the contractual objective would be jeopardised as a result of the discrepancy from the agreed characteristic.

IV. Right of revocation and return for consumer contracts.

1. If the customer (hereinafter also known in this section as CONSUMER), concludes the contract with us for a purpose which can not be ascribed to either his business operation or self-employed use (consumer contract), he shall consequently be entitled to the right of revocation subject to the proviso of the following Numbers 2. to 6.

2. The customer (CONSUMER) shall no longer be bound by his declaration of will to conclude the contract if he revokes it on time. Revocation does not have to include a reason and is to be stated to us in writing.

3. The revocation period shall only begin after our duty to provide information has been fulfilled in accordance with § 312c Section 2 BGB and not prior to the receipt of the goods by the customer (CONSUMER). Revocation must be exercised within two weeks. The period shall be observed if the letter of revocation is dispatched within the above period.

4. Revocation shall be ruled out if the goods have been produced to a customer's specification or have been customised to satisfy the personal requirements of the customer or, for software (including operating systems) if their seal has been broken.

5. If the value of the goods is not more than 40 EUR, the customer (CONSUMER) shall consequently have to bear the costs of return postage, unless the delivered goods are not the goods which were ordered. In other cases we shall reimburse the normal costs of returning the goods.

6. When returning damaged goods or goods having suffered from wear and tear, the statutory amount allowed shall be subtracted. This can be avoided by just having the function of the goods tested and sending back the goods without any signs of use and in the original packaging.

7. If the customer concludes a contract with us for the purpose which can be attributed to his business operations or freelance use, (BUSINESS), he shall consequently not be entitled to a right of revocation.

V. Price guidelines, Prices, Terms and Conditions of Payment, Default

1. The agreed price shall be regarded as being Ex Swing, excluding delivery, packing and packaging, insurance or other additional services and shall be payable without deductions. Besides this, the price to BUSINESSES shall be net.

2. Our pricing guidelines shall only be binding subject to the proviso of No V. 3 below.

3. If the agreed delivery period is in excess of four months, we shall be entitled to increase our prices as appropriate in the period between concluding the contract and delivery to cover increases in the prices of materials which have occurred. We shall also be

¹ BGB – Bürgerliches Gesetzbuch : German Civil Code

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obliged to reduce our prices as appropriate if there is a decrease in the prices of materials within this period of time. If there is an increase of the overall price of the goods or services in excess of 9%, a customer who is not a registered trader shall be entitled to withdraw from the contract. Towards BUSINESSES we shall – irrespective of the agreed delivery period – be entitled and obliged to adjust the price as appropriate to reflect the market price, provided that this has changed by more than 4.5% between concluding the contract and delivery.

4. Drafts and cheques shall not be accepted or shall be accepted solely for the purpose of payment. The customer shall have to pay the charges of draft and discounting incurred as well as the charges for collection. These shall become payable immediately. We shall not be liable for collection being effected on time or for a protest being made on time, in so far as we are only guilty of ordinary negligence in doing so.

5. If the customer should find himself in arrears with all or some of the payment, subject to asserting rights over and above this, we shall invoice default interest in accordance with the (German) law.

6. If the customer's default should last for more than 30 calendar days, if he should allow drafts or cheques be protested or if an application is filed to instigate insolvency proceedings on his assets, we shall be entitled to make all the customer's accounts owed to us payable immediately, and retain all goods and services and assert all our rights under our retention of title.

7. The customer can only offset with uncontested accounts or accounts which have been declared final and absolute in a court of law by asserting a right of retention.

VI. Delivery, Delivery date, Delay in delivery, Reservation as to oneself obtaining delivery

1. Agreed delivery dates shall be regarded as having been observed if the goods have been handed over to the carrier for delivery by the agreed delivery date. Upon request, we shall notify the customer when the goods are ready for dispatch.

2. The delivery date shall be agreed in accordance with our probable capacity and shall be regarded as being subject to circumstances and events for which we are not to blame and which did not exist when the contract was signed or which we were both unaware of, and which we could not have been expected to be aware of, irrespective of whether these circumstances or events occur to us or to the manufacturer. These include in particular force majeure, official measures, labour disputes, sabotage, lack of raw materials in the raw material markets relevant for the production of the goods to be delivered, as well as delays in the supplies of materials to us. Such events shall extend the delivery date accordingly, and to be more precise, even in those cases in which they occur during a delay which has already occurred. If a subsequent period for performance has possibly been set in such a case by the customer, it shall also be extended by the duration of the unforeseen event.

3. Should we find ourselves in default with a delivery by more than 4 weeks, the customer may withdraw from the contract having set in writing a reasonable period of time for performance. The delays in delivery

within the meaning of No VI 2 for which we are not to blame are not to be taken into account when calculating the duration of the default.

4. We shall reserve the right to withdraw from the contract if a delay in delivery within the meaning of No VI 2, for which we are not responsible, lasts for more than 4 weeks.

5. We shall be entitled to supply BUSINESSES with part deliveries on a reasonable scale, whereby it has to be taken into consideration that bottlenecks frequently occur in the markets from which we source our goods.

6. If we are not supplied by our sub-supplier, and this failure to deliver is final, although we have selected him carefully and the order satisfies the requirements of our obligation to deliver, we shall consequently be exempted from our obligation to deliver if we notify the customer that we have not received a delivery and, in so far as it is legal, offer to assign to the customer the claims to which we are entitled against the supplier.

When selecting our sub-supplier we shall not be liable for ordinary negligence in making a mistake in the selection procedure.

VII. Reservation of title

1. The goods shall remain our property until the purchase price has been paid. If the customer is a BUSINESS, the good shall remain our property until all, and also future, accounts have been paid, regardless of whatever their legal basis (also including draft, cheque, assignment, guarantee, compensation for damages inter alia). These also include conditional accounts.

2. If the customer is a BUSINESS, he may sell the goods subject to reservation of title in the course of his proper business transactions, and to be more precise, in return for cash or subject to the reservation of title. He shall not be entitled to dispose of them otherwise, by assigning them as a security and as a pledge in particular.

3. If the customer is a BUSINESS, he shall assign to us here and now as a security for our accounts against him – regardless of whatever legal basis (cf. No VII.1.) – based on his accounts from deliveries by him in which our goods subject to the retention of title are included, that sum plus all subsidiary rights equal to our invoice price including value added tax for the goods subject to the retention of title included.

4. If the customer is a BUSINESS, and if the total value of the securities to which we are entitled exceeds the total amount of our accounts by more than 30%, we shall release securities selected by us at the request of the customer. If the turnover tax is incurred by us in accordance with § 170 Section 2, § 171 Section 2, 3 of the InsO², this limit shall increase up to 40%.

5. If the customer is a BUSINESS, he shall have to notify us immediately in writing if the goods subject to the retention of title are seized by third parties and to support us in every way with intervention. The costs of this shall be borne by the customer if the intervention is successful, but if the attempt to enforce a ruling on costs against the defendant as the party liable for costs is unsuccessful.

6. If the customer is a business and if the goods subject to a retention of title delivered by us are combined with

² InsO – Insolvenzordnung : German Insolvency Code

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another moveable thing in such a way that both become an integral component of a unitary thing, the customer shall consequently be obliged to procure for us co-ownership of the new thing in proportion to the ratio of the invoiced value of the goods subject to the retention of title to the other thing.

VIII. Packing, Dispatch and Passing of risk

1. Our consignments shall be packed properly and in accordance with the normal standards within the trade at the expense of the customer. The goods shall be transported properly and moreover, at our equitable discretion taking our route planning into consideration. The customer shall bear the costs of transportation.

2. Risk shall pass over to the customer when the goods are handed over to the carrier, his agents or other persons nominated by us, unless the goods are transported with our own people or vehicles to the customer. In so far as there is a delay in dispatch, or dispatch is impossible and we are not to blame, risk shall pass over to the customer at the same time as notification that the goods are ready for dispatch. These provisions regulating the passing of risk shall also apply for return consignments after a defect has been rectified, a chargeable customer service has been carried out, or a replacement part is to be sent to the customer.

3. At the request of the customer the consignment shall be insured at his expense against the risks specified by him – provided that it is possible for us to do so at a reasonable expense.

IX. Defective goods

1. If the customer is a BUSINESS he shall have to inspect the goods straight away - provided that this is reasonable – and substantiate identified defects in writing - provided that this is reasonable.

2. If the goods are defective and if the customer is a BUSINESSMAN, notwithstanding § 439 Section 1 BGB, we shall at our choice be entitled to rectify the defect or to supply a replacement.

3. Should it turn out that following the receipt by us of an object covered by warranty that there is no defect, we shall be entitled to invoice the customer a lump-sum for our expenses / time taken to deal with the matter. In this case the customer shall be at liberty to prove that the expenses incurred by us were lower than those invoiced to him by us.

4. In accordance with No X below, the customer shall not be entitled to any other rights on account of the goods being defective.

X. Limitation of liability

1. We shall be liable to the customer under statutory or contractual liability only if we are guilty of intent or gross negligence.

2. The limitation of liability under No X No1 shall not apply however, for loss of life, physical injury or impairment of health or property damage or damage from a culpable breach of significant contractual duties ("Cardinal duties") or if the other party relies upon duties being fulfilled properly as a result of a particular trust. If our liability is not based on breaches of duty by our executive bodies or senior employees, our liability towards BUSINESSES shall be limited to the replacement of the direct loss,

excluding the liability for subsequent damage, in particular lost profit. In any case our liability towards BUSINESSES shall be limited to typical and foreseeable damage; given this, we shall be liable up to a maximum amount of €5,000.00. In so far as we are not liable ourselves, the claims to which we are entitled against third parties shall be assigned to our customers upon request.

3. Our liability for a procurement risk we have accepted, guarantees we have furnished, assurances or malicious concealment of defects with regard to the delivered goods and claims under product liability, liability regardless of fault, or liability for accidental events shall not be affected.

XI. Validity provision

If individual provisions of these GTC are, or become, invalid, the validity of the remaining provisions shall not be affected by this. The parties shall be obliged to replace the invalid provision with a valid provision which comes closest to the intended purpose of the invalid provision. This duty shall not exist if, at the time at which the GTC are used by us in response to customers complaining about invalidity, it has already been decided by several higher regional courts or the Federal Court of Justice that the provision is invalid.

XII. Place of fulfilment, Place of jurisdiction

If the customer is a BUSINESS, the place of fulfilment for our contractual obligations and place of jurisdiction for all disputes arising from the contract shall be Schwaig in Germany. We may also take legal action against the customer at the courts having jurisdiction where he has his principal place of business or at his normal place of residence.

If the customer is a CONSUMER, the place of fulfilment shall be Schwaig in the event that the customer does not have a general place of jurisdiction in the FRG or relocates his principal place of business or normal place of residence to a location beyond the jurisdiction of the FRG after concluding the contract. This shall also apply if the principal place of business or normal place of residence of the customer is unknown at the point in time at which legal action is taken.

XIII. Applicable law

The law of the FRG shall apply. The standard UN law on sales as well as international private law shall be excluded.

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