

# TERMS AND CONDITIONS OF SALE AND DELIVERY FOR BEIRHOLMS VÆVERIER A/S

In the absence of any other written contract, Beirholms Væverier A/S, Danish central business registration number 36 80 51 10, (hereinafter referred to as “Beirholms Væverier”) shall supply all deliveries subject to the following terms and conditions, notwithstanding any provisions contrary to or deviating from those contained in the order placed by the Buyer or the letter of acceptance.

## 1. Offers, orders and acceptance

Offers from Beirholms Væverier shall be valid for two (2) weeks from the date of the offer, unless any other time limit is stipulated in the offer. However, Beirholms Væverier reserves the right to prior sale.

A Buyer's orders, including acceptance of the offer from Beirholms Væverier, are binding on Beirholms Væverier only once the Buyer has received the order confirmation in writing.

## 2. Service provided by Beirholms Væverier

The service provided by Beirholms Væverier shall include only those parts and goods specified in the order confirmation, and Beirholms Væverier undertakes to supply goods of the customary high quality in terms of materials and manufacture under the present Terms and Conditions of Sale and Delivery, as well as under any further terms and conditions expressly agreed to in writing. The Buyer accepts a quantity tolerance of +/- 10 per cent without this thereby constituting a non-conformity.

## 3. Product information and confidentiality

All drawings, sketches, designs, technical specifications, etc. remain the property of Beirholms Væverier and must not be copied or transferred to any third party except where otherwise expressly agreed in writing.

The Buyer additionally undertakes to treat as confidential all circumstances relating to Beirholms Væverier of which the Buyer gains knowledge as a result of the information exchanged in connection with the delivery.

The goods delivered must not be imitated or transferred to any third party with this purpose in mind.

## 4. Delivery

The place of delivery and the delivery clause are stipulated in Beirholms Væverier's order confirmation. If the delivery clause is not stipulated in the order confirmation, the delivery clause is Ex Works (Incoterms 2010).

## 5. Retention of ownership

The following has been specifically agreed with regard to deliveries to Buyers resident in Germany:

- Every delivered item remains the property of the Beirholms Væverier until payment has been made.
- Delivered items remain the property of the Beirholms Væverier until all requirements pursuant to the business account are paid.
- The buyer does not gain ownership of the manufactured products after delivered items have been processed. Processing is carried out free of charge for the Beirholms Væverier. If right of ownership must lapse anyway, the buyer and the Beirholms Væverier have already agreed that the right of ownership is transferred to the Beirholms Væverier on processing, and the Beirholms Væverier accepts this transfer. The buyer stores the manufactured product free of charge for the Beirholms Væverier. When items which still belong to a third party are processed, the Beirholms Væverier gains right of ownership to the new products. The scope of this right of ownership is determined by the relationship between the invoice value of the items delivered by the Beirholms Væverier and the invoice value of the other items.
- The buyer thus transfers to the Beirholms Væverier its requirements pursuant to the resale of items covered by the Beirholms Væverier's right of ownership, even if the items have been processed, and the Beirholms Væverier accepts the transfer. If the processed product – in addition to the item delivered by the Beirholms Væverier – only contains items which belong to the buyer or were delivered with so-called “simple reservation of right of ownership”, the buyer will transport the collected requirements pursuant to the resale to the Beirholms Væverier. In other cases, i.e. if the buyer has provided transport to multiple suppliers, the Beirholms Væverier is due a share of the buyer's requirements equivalent to the relationship between the value of the goods the Beirholms Væverier has delivered and the value of the other items that have been processed.
- At the buyer's request, the Beirholms Væverier is obligated – at its own discretion – to release the securities due pursuant to the above conditions, to the extent that the realisable value of the securities exceeds the hedged debts by more than 20%.
- The agreement regarding retention of ownership is subject to German law.

The following has been specifically agreed with regard to deliveries to Buyers resident in other countries than Germany:

- Notwithstanding delivery and the transfer of risk, ownership and title to the goods shall remain with Beirholms Væverier until Beirholms Væverier has received payment of the full price for everything. Payment of the full price shall include, without limitation, the amount of any interest or other sum payable under the terms of this and all other contracts between Beirholms Væverier and the Buyer.

## 6. Prices

Prices are stipulated in the order confirmation from Beirholms Væverier.

If any changes are made to the delivery, or if Beirholms Væverier's costs increase in any other way due to circumstances attributable to the Buyer, Beirholms Væverier is entitled to increase the price accordingly. Refer also to clause 7.

## 7. Terms of payment

Terms of payment are thirty (30) days net, unless otherwise agreed or shown in the order confirmation. In the event of any late payment, interest shall be added as from the due date at the rate of 1.5 percent per month or part of a month.

## 8. Delivery time

Delivery up to six (6) working days before or after the time stipulated for delivery in the order confirmation shall be deemed timely delivery for all purposes.

Beirholms Væverier may demand postponement of the delivery time in the following cases:

- a. in the event of changes to the order in response to a request made by the Buyer;
- b. in the event of delays in deliveries or services performed by the Buyer itself or which the Buyer causes to be performed, or in the event of delays to approvals or drawings/specifications on the Buyer's part, or in the event of delays to the Buyer's compliance with other duties incumbent on it;
- c. in case of force majeure, cf. clause 14 of the present Terms and Conditions of Sale and Delivery; or
- d. in the event that work on the order has to be suspended or is delayed or changed as a result of orders issued by the public authorities.

In respect of items a, b and d above, Beirholms Væverier moreover reserves the right to adjust the agreed price.

## 9. Delays

If delivery of the goods or any part thereof is delayed, and if Beirholms Væverier is not entitled to postpone the time of delivery (cf. clause 8), the Buyer must – if it wishes to claim a delay – specify a reasonable deadline for delivery in writing, which may not, however, be less than five (5) working days. If delivery still does not take place within the specified reasonable deadline, the Buyer is entitled to cancel the purchase with regard to that part of the delivery that is delayed, though not with regard to any future/previous deliveries, notwithstanding that these may have been covered by the same order confirmation.

If the delay relates to goods produced at the directions of the Buyer, or deliveries that are not normally stocked by Beirholms Væverier, the Buyer is only entitled to cancel the purchase if the delay means that the Buyer's purpose for purchasing the goods has essentially been lost.

If the purchase is cancelled, the Buyer may claim compensation for the direct documentable loss suffered as a result of the delay – subject, however, to a maximum amount equivalent to 10 per cent of the agreed price for the delayed part of the delivery. The Buyer cannot claim compensation for any form of indirect loss, cf. clause 13.

Other than as stipulated in this clause, Beirholms Væverier shall not assume any liability for delays or the consequences thereof, and the Buyer may not claim any other remedy for breach of contract against Beirholms Væverier in the event of the delay.

## 10. Breach of contract by the Buyer

If, after the delivery time has arrived, the Buyer fails to take receipt of the delivery, or if the Buyer gives an order to Beirholms Væverier to delay the delivery, Beirholms Væverier is entitled to demand payment for the delivery and to store and insure the delivery at the Buyer's expense.

If the Buyer thereafter fails to take receipt of the delivery despite being requested in writing to do so, Beirholms Væverier is entitled to sell the items at the best possible price for the account of the Buyer – including in such cases where the goods have been manufactured in accordance with the Buyer's instructions or specifications. The Buyer must also compensate Beirholms Væverier for an amount comprising the difference between the agreed price and the selling price to the third party, added to which shall be all of Beirholms Væverier's other costs associated with the breach of contract by the Buyer.

### 11. Duty to give notice of defects and duty of examination

It is the duty of the Buyer to carry out a thorough examination of the delivery's conformance with the contract, including with respect to quantity, by no later than the time at which the Buyer takes receipt of the delivery.

The Buyer must immediately make a complaint over any non-conformities that may be ascertained during such an examination, and the Buyer cannot subsequently claim any non-conformities that could or should have been ascertained during such a thorough examination. The same shall also apply if the Buyer fails to complain immediately of any non-conformities ascertained at a later stage that it neither had nor should have ascertained at the time of delivery.

### 12. Product liability

Beirholms Væverier shall only be liable for personal injury if it can be proved that such injury is due to errors or negligence on the part of Beirholms Væverier or others for whom Beirholms Væverier is responsible. Compensation for personal injury can in no instance exceed the level of damages applicable at any time under Danish law.

Beirholms Væverier shall be liable for damage to real and personal property on the same terms and conditions as those that apply to personal injury – subject, however, to the proviso that compensation may never exceed DKK 2 million incl. interest and costs per damage case.

To the extent that Beirholms Væverier might be held liable towards any third party for any damage or injury caused by the goods, the Buyer must hold Beirholms Væverier harmless to the same extent as that to which the liability of Beirholms Væverier is limited pursuant to these present Terms and Conditions of Sale and Delivery.

If any third party makes a claim regarding product liability against one of the parties pursuant to this clause, then such party must immediately notify the other thereof. The Buyer must defend any such action before the court that hears the claim for compensation brought against Beirholms Væverier based on the injury or damage allegedly caused by the delivery.

### 13. Limitation of liability

Beirholms Væverier shall in no event – neither in the event of product liability – be liable for any indirect damage or loss, such as operating loss, loss of time, loss of profits or any other similar loss.

### 14. Force majeure

Beirholms Væverier shall not be liable for any non-performance or delays in performance of the contract due to force majeure, i.e. circumstances beyond the control of Beirholms Væverier – including, but not limited to: war, riots, civil unrest, government intervention or intervention by the public authorities, fire, strike or lockout, export and/or import bans, missing or non-conforming deliveries by sub-contractors, shortage of labour, fuel or power, and that have the effect of delaying or preventing the manufacture and delivery of the goods sold.

If the delivery of conforming goods or timely delivery is prevented temporarily by one or more of the above-mentioned circumstances, the delivery time shall be postponed for a period equal to the delay caused by force majeure plus a reasonable period, according to the circumstances for normalising the situation. The delivery time postponed thus shall be deemed timely delivery for all purposes. If the hindrance to delivery is expected to last for more than four months, both Beirholms Væverier and the Buyer are entitled to cancel the contract without this being deemed to constitute a breach of contract.

### 15. RFID transponders

If the Buyer wants the goods to be supplied with RFID transponders, the Buyer must at its own expense and risk arrange for the purchase and delivery DDP, see INCOTERMS 2010, of the agreed number of RFID transponders to Beirholms Væverier at the address Nordager 20, DK-Kolding, unless another address has been specified in Beirholm Væverier's order confirmation.

The agreed number of RFID transponders must be delivered at the time agreed and in due time for the estimated delivery time for the finished goods to be met. If the Buyer's delivery of the RFID transponders is delayed, the estimated delivery time for the goods will be postponed accordingly.

If the Buyer delivers a higher number of RFID transponders than agreed, it will be at the Buyer's expense and risk. Beirholms Væverier will endeavour to stock any excess number of RFID transponders for the Buyer, but is not obliged to do so. The same applies in relation to the number of RFID transponders, which are not used due to the quantity tolerance specified in clause 2.

A small wastage of RFID transponders must be expected due to rejection in the different textile quality control tests.

RFID transponders are fitted in the goods at the location and according to the fitting method specified in the order confirmation. If the Buyer must supply fitting instructions and these are delayed, the estimated delivery time for the goods will be postponed accordingly. If Beirholms Væverier is to follow the Buyer's fitting instructions, the fitting of RFID transponders will be at the Buyer's risk.

Beirholms Væverier does not check the Buyer's RFID transponders for serviceability, faults and defects, neither when receiving, fitting or delivering the goods supplied with RFID transponders to the Buyer and Beirholms Væverier is not liable for the Buyer's RFID transponders, neither for their serviceability, faults or defects. Beirholms Væverier is exempt from liability for damage of textiles caused by RFID transponders' wear of the textile.

If the Buyer proves that Beirholms Væverier's fitting of the Buyer's RFID transponders is contrary to the fitting instructions and that is the cause of the Buyer's RFID transponders' inoperability, Beirholms Væverier is obliged to compensate the Buyer for its resulting loss. However, Beirholms Væverier is not liable for indirect damage or loss such as business interruption, loss of time, loss of profit, etc. In addition to the above, Beirholms Væverier's fitting of RFID transponders is subject to the other provisions of these Terms and Conditions of Sale and Delivery.

### 16. Invalidity

If one or more of the provisions of these Terms and Conditions of Sale and Delivery are known to be invalid, unlawful or unenforceable, this shall not as a result thereof affect or lessen the validity, legality or enforceability of any of the other provisions.

### 17. Governing law and venue

All disagreements between the parties must be resolved in accordance with Danish law, including the Danish Sale of Goods Act (Købeloven), with the exception of the Danish choice of law rules. The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply, whether in whole or in part.

Any dispute between the parties must be resolved either by the ordinary courts of law in Denmark (initially with the court in Kolding as the court of first instance) or by arbitration at the sole option of Beirholms Væverier.

In the event of arbitration, this must take place at the Danish Institute of Arbitration in accordance with the rules thereon adopted by the Danish Institute of Arbitration as they apply at the time of commencement of the arbitration case, subject to the changes indicated below.

The parties have agreed, however, that the arbitration tribunal shall consist of three members, each party to appoint one member and the Danish Institute of Arbitration to appoint the Chairperson of the arbitration tribunal. If a party has not appointed a member within fourteen (14) days of the Danish Institute of Arbitration's request to do so, the Danish Institute of Arbitration shall appoint the member on behalf of the party in question.

The arbitration tribunal shall be held in Kolding.

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