

MODINT TERMS AND CONDITIONS OF SALE, DELIVERY AND PAYMENT

In short:

MODINT Conditions

General

The MODINT TERMS AND CONDITIONS OF SALE, DELIVERY AND PAYMENT included in this publication were drawn up under the authority of MODINT, Employers' organisation for fashion, interior, carpet and textile, in consultation between MODINT, Intres and Euretco retail service organisations on behalf of Retail Partners Netherlands, and the Mitex association. These conditions conform to the non-recurrent terms and conditions of sale, delivery and payment of the Dutch Textile and Clothing Conventions, commonly known as the NTKC condition.

The MODINT TERMS AND CONDITIONS OF SALE, DELIVERY AND PAYMENT (version 1.3 dated 01.05.13) are filed with the Chamber of Commerce of Central Netherlands under the name of "MODINT Conditions" under file reference number 3009 39 30.

In the case of any discrepancy between language versions the Dutch version prevails.

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MODINT

New address since 1 July 2017

Postbus 762

3700 AT ZEIST

Tel.: +31 (0)88 810 09 00

Fax: +31 (0)88 810 09 99

E-mail: info@modint.nl

Website: www.modint.nl

SCOPE

Article 1

a. These MODINT TERMS AND CONDITIONS OF SALE, DELIVERY AND PAYMENT, hereinafter referred to as: "MODINT Conditions" only apply to agreements that are in relation to the purchase/sale, delivery and payment of textile and clothing items in the Netherlands, subject to meeting all three of the following conditions:

I. the supplier/seller is a member of MODINT, Employers' organisation for fashion, interior, carpet and textile

II. the supplier/seller is entitled to use these conditions, and

III. the supplier/seller declares these conditions applicable to the relevant agreements. The applicability of these conditions is demonstrated by e.g. a correct reference to the relevant forms, such as offers, order confirmations and invoices and - except for the provision of Section 6:234, subsection 3, of the Netherlands Civil code - by the seller making available a copy of these conditions to the customer/buyer and/or the supplier and/or MODINT being in the possession of a statement of the customer/buyer declaring that he is familiar with the contents of these conditions.

b. These conditions may also apply to agreements in relation to the purchase/sale, delivery and payment of textile and clothing items outside the Netherlands and to contract order agreements entered into outside the Netherlands.

These conditions may also apply to agreements in relation to the purchase/sale, delivery and payment of goods other than textile and clothing items, provided the supplier/seller and customer/buyer agree to this.

d. If a buyer explicitly reject the applicability of these conditions in writing and, on his forms, such as order forms, refers to his own purchase conditions and makes these available, these conditions apply, unless the seller explicitly rejects those purchase conditions.

DEFINITIONS

Article 2

In these conditions, the following terms are defined as follow:

Agreement: every agreement regarding the purchase/sale of textile and/or clothing items and/or the provision of services in relation to this, including contract orders.

Buyer: the entrepreneur/company who has instructed a seller to supply certain textile and/or clothing items

Call-off order: an agreement in which the time of delivery has been made dependent on a call-off by the buyer

Call-off: instruction from the buyer to the seller to supply part of the goods, which he instructed the seller to supply by means of an order

Complaint: the buyer notifying the seller of all complaints of that buyer in relation to a delivery and/or the goods supplied by the seller

Conditions: the/these MODINT TERMS OF SALE, DELIVERY AND PAYMENT, in short: MODINT Conditions

Contract order: every agreement under which a contractor undertakes towards a client to treat or process textile and/or clothing materials made available by the client and/or to manufacture (create) textile products or clothing and/or parts thereof on the basis of materials made available by the client.

Days: all calendar days

Delivery date: the day laid down in the agreement on which delivery must be effected

Delivery term: a period of more than one day as laid down in the agreement within which delivery must be effected

Delivery: the seller offering and/or making the goods available to the buyer for the first time

Dispute: situation in which the seller and buyer disagree with one another

Due date: final date of the agreed payment term

Force majeure: a circumstance that makes the correct performance of an agreement or fulfilment of obligations under an agreement impossible and which circumstance cannot reasonably be attributed to the seller or buyer

Grouping: subdivision of goods within the framework of an order on the basis of the time of delivery and either the sizes/size series to be delivered or the quantity to be delivered.

Hidden defect: an invisible or otherwise undetectable fault, the existence of which only manifests itself when treating or processes the fabrics or when using the items or goods supplied, manufactured from those fabrics

Intellectual property right: trademark rights and/or copyrights and/or design and model rights and/or patent rights

Label/Brand (mark): an identifying mark and/or word and/or image that is or has been incorporated or affixed in, to or on the textile and/or clothing items.

MODINT BV: the operating company of MODINT

MODINT: the MODINT association, Employers' organisation for fashion, interior, carpet and textile

Order confirmation: acceptance by the seller of the instruction from the buyer, in which the seller indicates which goods he will supply

Order: instruction from the buyer to the seller to supply certain goods

Partial delivery: the seller offering the buyer an (agreed) part of the goods that have been ordered by the buyer with the seller

Partial payment: time at which the bank or giro account as designated by the seller has been credited by or on behalf of the buyer with part of the amount owed under the agreement or an alternative settlement of part of the amount owed which has been approved by the seller

Payment: time at which the bank or giro account as designated by the seller has been credited by or on behalf of the buyer with the amount owed under the agreement or an alternative settlement of the amount owed which has been approved by the seller

Pre-delivery term: a period preceding the delivery date

Private label: a label prescribed and/or originating from the buyer

Retail Service Organisation (RSO): an organisation of retail companies which, pursuant to agreements, performs certain acts on their behalf, such as paying the seller's claim against the buyer by virtue of goods supplied by the seller to the buyer, thereby being subrogated to certain rights of the seller

Seller: the entrepreneur/company who undertakes to make, treat, distribute and/or import textile and/or clothing items or parts thereof, or to have these made, treated, distributed or imported, and to subsequently deliver these goods to the buyer

Sets: a combination of two or more textile and/or clothing items agreed by the seller and buyer in advance, deemed indivisible for the purpose of a (partial) delivery

Subsequent delivery term: a period following a delivery term

Subsequent order: instruction from the buyer to the seller to supply additional quantities of certain goods, following a previous order

Term of the agreement: the period that lies between the date the order is placed and the date as calculated most recently on which the goods may be delivered in accordance with the provisions of these conditions

Visible defect: properties of an item that can be identified with the naked eye and/or on the basis of a combination of available data and/or a non-complex investigation

Working days: all days, with the exception of Saturdays and Sundays, 1 January, Easter Monday, Ascension Day, Whit Monday, Christmas Day and Boxing Day, the days that have been designated by the government as public holidays and the day on which the King's or Queen's birthday is officially celebrated

FORUM AND CHOICE OF LAW

Article 3

All agreements entered into under the scope of these conditions or provisions are governed by Dutch law. All disputes arising from the aforesaid agreements will be submitted to the District Court of Utrecht or Amsterdam. The seller can also institute legal proceedings against the buyer in the District Court of place of business or residence, under application of the law where the buyer is established or resides or otherwise.

OFFERS

Article 4

1. An offer is subject to contract, unless explicitly stated that it is not without obligation. The seller can revoke an offer, even if the offer has been accepted by the buyer, provided it is revoked within 4 working days of acceptance by the buyer. If the offer has not been revoked within 4 working days of acceptance, the agreement has been formed.
2. A fixed offer is an irrevocable offer which, unless agreed otherwise by the parties, expires at midnight of the 5th working day following the day on which the fixed offer was issued. In the event of prompt acceptance of a fixed offer, an agreement between the seller and buyer is formed the moment the notification of acceptance by the buyer has reached the seller. Contrary to the provisions of article 5.2 below, written confirmation by the seller is no longer needed in that case.

ORDERS

Article 5

1. Every agreement entered into between the seller and the buyer fully binds both parties, unless the seller or the buyer notifies the other party, in writing, within 8 working days of that agreement having been formed, that he cancels the agreement. Such cancellation terminates the agreement without the other party being entitled to any compensation.
2. The contents of the agreement are the contents of the verbal or written order given by the buyer to the seller, unless the seller, taking into account the provisions of article 5.3 below, confirms the order to the buyer in writing. In that case, the contents of the agreement will be equal to the contents of the seller's order confirmation.
3. A seller who submits a written order confirmation to the buyer which in any way deviates from the buyer's order is obliged to alert the buyer of this deviation or these deviations by means of an accompanying letter. If a buyer does not agree with this deviation or these deviations, the buyer, within 8 working days of receiving the order confirmation and the accompanying letter, must notify the seller in writing that the contents of the order confirmation are rejected, failing which the buyer will be deemed to have agreed to the contents of the order confirmation.
4. If a buyer cancels an agreement in writing within 8 working days of the formation of that agreement, the seller, without further notice of default, will be entitled to claim compensation of the actual damage suffered by him.
5. If a seller cancels an agreement in writing within 8 working days of the formation of that agreement, the buyer, without further notice of default, will be entitled to claim compensation of the actual damage suffered by him.
6. If an agreement is in relation to sets, the cancellation will affect the entire agreement and not just parts thereof.

7. If the buyer is or can be sufficiently aware of the fact that production must commence within 8 days of conclusion of the agreement to ensure the timely delivery of an order, the cancellation term of 8 days referred to in paragraph 1 of this article does not apply, nor do paragraphs 4, 5 and 6 of this article.

8. If goods are delivered from stock, the cancellation term referred to in paragraph 1 of this article ceases to have effect and paragraphs 4, 5 and 6 of this article do not apply.

9.a. The term of an agreement is always a minimum of 7 working days, regardless of whether a delivery date or delivery term has been agreed.

b. If the delivery date or delivery term is referred to with descriptions such as “from stock”, “urgent”, “immediately” or words to that effect, the delivery term will be 10 working days, commencing on the date of formation of the agreement.

c. If no delivery date or term is specified, the delivery term is 4 months, from the date of the formation of the agreement.

GROUPING of delivery

Article 6

1. If the agreement does not stipulate arrangements on the time of grouping of delivery, the buyer is obliged to group the desired delivery of the order no later than 8 weeks prior to the agreed delivery date or 8 weeks prior to the end of the agreed delivery term.

2. A buyer who did not group in time is entitled to an additional grouping period of 5 working days, starting on the first working day following the working day on which he received a written grouping demand from the seller.

However, if a delivery date has been agreed, no right to an additional grouping period exists.

3. In the event of late grouping, the delivery term, or the delivery date, is shifted by 15 working days in addition to the time period that has lapsed between the date on which grouping should have taken place and the date on which the seller received the grouping from the buyer.

4. If the buyer again fails to group within the additional grouping period, the seller will be free to group instead, provided the seller notifies the buyer thereof. The seller must make any changes proposed by the buyer, insofar as still possible without objection, within 5 working days of the buyer receiving the grouping notification from the seller.

CALL-OFF AND PURCHASE

Article 7

1. If a call-off order does not stipulate the time of call-off, the delivery date or the final date of the delivery term applies instead.

2. In the event of a call-off order, delivery must be effected within a term of 15 working days, starting on the first working day following the working day on which the written call-off from the buyer is received by the seller. If the call-off order stipulates a time at which the goods must be ready to be called off or a time from which it must be possible to call off the goods, a call off order received earlier must be deemed to have been received at that time. In those cases, delivery can be made prior to the intended time.

3. A buyer who did not call off in time is entitled to an additional call-off period of 8 working days, starting on the first working day following the working day on which he received a written demand to call off from the seller.

However, if a delivery date has been agreed, no right to an additional call-off period exists.

4. In the event of late call-off, the delivery term, or the delivery date, is shifted by 15 working days, unless the agreement is in relation to goods which must be ready for delivery/dispatch at the agreed time of call-off.
5. If the buyer fails to call off within the additional call-off period as well, the seller can decide to deliver the goods to the buyer or store the goods at his warehouse or elsewhere, at the expense and risk of the buyer, including the risk of reduction in quality or value. The act of storing means that the goods are deemed to have been delivered. The seller is obliged to immediately notify the buyer of said act of storing, in writing, accompanied by the invoice relating to the relevant agreement.
6. If the buyer refuses to take delivery of the goods, the seller can decide to store them in the manner and with the consequences set out in paragraph 5 of this article.

DELIVERY AND TRANSPORT

Article 8

1. Delivery is deemed to have been made:
 - a. if the goods are collected by or on behalf of the buyer: the moment the buyer, or a third party acting on behalf of the buyer, e.g. a carrier (road haulier) engaged by the buyer, takes delivery of the goods.
 - b. if the goods are transported by or on behalf of the buyer: the moment of 1st offering or delivery of the goods at the domicile or warehouse of the buyer or other address as indicated by the buyer.
2. From the moment of delivery, the goods are at the risk of the buyer.
3. The costs of transport of the goods in connection with the delivery will be at the expense of the party arranging the transport.
4. Insofar as the goods to be delivered are transported on behalf of the seller, they will be dispatched as freight or standard cargo. If the buyer wishes the goods to be dispatched as an express or urgent delivery, or as special cargo, the additional costs arising from it will be at his expense.
5. Contrary to the provisions of paragraph 3, the freight charges will be at the expense of the buyer if a seller arranges the transport of a delivery of goods, the value of which is equal or less than €400.
6. The following provisions apply to insurance of the goods during transport:
 - a. if the goods are collected by or on behalf of the buyer: the buyer, at his expense, arranges insurance in a manner that suits him. In the event of damage, the buyer settles any claims with the insurer.
 - b. if the goods are transported by or on behalf of the seller: the seller, at his expense, arranges insurance for the buyer, providing cover up to the supplier's sales price of the goods. Insurance covers the standard transport risk, exclusive of wilful damage and/or other extraordinary risks. In the event of damage, the seller settles any claims with the insurer.
- 7.a. In the event that the seller arranges the transport of goods in connection with a delivery, but these goods cannot be transported as a result of circumstances for which he cannot or cannot reasonably be held responsible, the seller must keep the goods at the disposal of the customer/buyer and notify the customer/buyer thereof within 3 days of the goods becoming ready for dispatch. The payment term commences on the day of the actual delivery.

b. If a temporary delay in delivery as referred to in paragraph 7, under a., of this article causes the agreed delivery date or delivery term to be exceeded, including any subsequent delivery term, by at least 20 working days, the other party will be entitled to terminate the relevant agreement in writing.

8. Partial deliveries are subject to the following agreements:

a. Partial deliveries of goods are permitted, unless otherwise agreed by the parties.

b. If the agreement stipulates that the buyer has purchased a combination of 2 or more items from a range as a set, partial deliveries are only possible in terms of quantities, possibly in combination with size series and therefore not in the form of a delivery of separate range items which are in fact part of the set.

Article 9

1. If an agreement stipulates a delivery date, the seller is entitled to a pre-delivery term of 10 working days.

2. If an agreement stipulates a delivery term, the seller is entitled to a subsequent delivery term of 10 working days.

3. The seller will not be entitled to a subsequent delivery term if:

a. the term of the agreement does not exceed a period of 15 working days, or

b. the delivery is in relation to a call-off order, insofar as it concerns goods which need to be ready for dispatch at the agreed time of call-off.

4. In the event of late delivery of goods by the supplier, the following provisions apply:

a. Goods, the delivery of which is made at a time after expiry of the delivery date or the delivery term, including delivery of goods in situations that fall within the scope of paragraph 3 of this article, can be refused by the buyer (= not accepted), or returned to the seller, at his expense, within 5 days of receipt. If the buyer does not return the goods to the seller within 5 working days, he is deemed to have accepted the goods.

b. A buyer who refuses goods on the grounds of late delivery has the right to claim compensation of the actual loss suffered by him, in addition to the right referred to in paragraph 4.a of this article, without further notice of default.

5. If the agreement stipulates that the buyer arranges the transport, the following arrangements apply:

a. the buyer must collect the goods within 3 working days of having been offered by the seller for the first time, or arrange for the goods to be collected.

b. if the buyer does not collect the goods within the time period stipulated under a. of this paragraph, or if he fails to arrange the collection thereof, the buyer will be in default without further notice of default and the seller will have the right to act as set out in article 12, paragraph 11, with the exclusion of article 22.

6. Contrary to the provisions of paragraphs 1 to 5 of this article, the agreement is deemed to have been terminated by operation of law if and insofar as it has not been performed within three months of expiry of the subsequent delivery period, unless the delivery date or the delivery term was exceeded at the request of the buyer, or if it is a consequence of late grouping or call-off by the buyer or if it relates to suspension of delivery as referred to in article 12, paragraph 11 et seq. In the event of termination by operation of law, neither party will be entitled to compensation.

The provisions of this paragraph do not apply if the buyer has demanded performance or termination of the agreement and/or compensation in accordance with article 5, prior to expiry of said term of three months.

GUARANTEES

Article 10

1. The seller must supply the goods as agreed. In concrete terms this means that, with due observance of the other stipulations in the order and corresponding (technical) specifications and without prejudice to what has been stated in article 11, paragraph 4, the goods to be delivered:
 - a. must be in accordance with what is stated in the agreement in terms of quantity, description and quality;
 - b. must be equal to any samples or models provided or made available by the buyer and/or seller, and
 - c. must be suitable for the purpose as indicated by the buyer to the seller.
2. Contrary to the provisions of paragraph 1 of this article, any guarantees regarding colour authenticity, water-resistance, machine washable, shrink-proof and other technical properties only apply if confirmed by the seller to the buyer in writing, or indicated as shrink-proof, machine washable, all wool, waterproof, etc. on the items by means of labels, tags or otherwise.
3. The seller guarantees that the fit, manufacturing and quality of the goods, which must be delivered by virtue of the order, meet all the requirements set by the relevant and applicable legislation and/or other applicable government regulations in force at the time the agreement is concluded.
4. The provisions of paragraph 1, 2 and 3 do not apply to improper use of the goods.
5. On demand of the buyer, the seller will give the buyer the opportunity to check that the goods delivered are in accordance with the samples.
6. The seller indemnifies the buyer against any (financial) claims by his customer in connection with the faulty goods delivered to him, i.e. goods which do not appear to have the properties which may be expected under normal use of the goods. The burden of proof with regard to the defective condition of the goods delivered rests with the buyer. This indemnification does not apply in the event the defective condition of the goods can be attributed to the buyer. Nor does the indemnification apply if the buyer has raised unreasonable expectations with the consumer/end-user with regard to the goods delivered.

COMPLAINTS

Article 11

1. The seller is obliged to inspect the goods immediately upon delivery, or within the shortest possible term thereafter. As part thereof, the buyer must inspect whether the quality and quantity of the goods correspond to the agreement, or at least meet the relevant requirements applicable in the normal course of business and trade.
2. Complaints with regard to visible or otherwise detectable defects can only be filed if the buyer, within 15 working days of delivery, sends a written statement to the seller outlining the nature and ground of the complaint as accurately as possible (= complaint notification), the relevant invoice number and/or the relevant product numbers and/or a description of the items that are the subject of the complaint.
3. The right to complain can only be exercised with regard to goods that are still in the condition they were in when delivered, except in the event the complaint relates to hidden defects or defects that only manifested themselves during or after treatment or processing.
4. Minor, trade-customary or technically unavoidable deviations in terms of quality, quantity, width, colour, finish, size etc. do not constitute a basis for complaints.

5. By filing a complaint in accordance with the provisions of paragraph 2 of this article, the payment obligation is suspended only with regard to the goods that are the subject of the dispute. The suspension ends the moment the dispute has been resolved following a decision by an independent judicial authority regarding the dispute, or if both parties have reached an agreement.

6. In the event the buyer filed an apparently unfounded complaint, the rights by virtue of article 12, paragraph 11, under a. revert to the seller for all current orders (still outstanding).

7. With regard to suppliers that have been classed in the NTC section within MODINT, if the complaint concerns visible or otherwise detectable defects which, in accordance with common business practice, are not checked for immediately after receipt of the goods, the complaint can still be filed within 15 working days after the defect has become, or could reasonably have become apparent to the buyer, by means of a written statement to the seller outlining the nature and ground of the complaint as accurately as possible (= complaint notification), the relevant invoice number and/or the relevant product numbers and/or a description of the items that are the subject of the complaint. This rule, which deviates from paragraph 2 of this article, cannot be invoked if the buyer could have detected the defect by means of a simple or customary random check within the term referred to in paragraph 2 of this article.

8. Invisible defects or other undetectable faults which manifest themselves when the items are used (= hidden defects) must be reported within 15 days of discovery thereof by means of a written statement to the seller, outlining the nature and ground of the complaint as accurately as possible (= complaint notification), the relevant invoice number and/or the relevant product numbers and/or a description of the items that are the subject of the complaint.

9. With regard to suppliers that have been classed in the NTC section within MODINT, if the complaint concerns invisible or otherwise undetectable faults which only manifest themselves when treating or processing the fabrics, or when using the items manufactured from the fabrics or the goods delivered (= hidden defects), the complaint can still be filed within 15 working days after the defect has become apparent to the buyer, by means of a written statement to the seller outlining the nature and ground of the complaint as accurately as possible (= complaint notification), the relevant invoice number and/or the relevant product numbers and/or a description of the items that are the subject of the complaint.

10. In the event the complaint is upheld, the seller is entitled to repair the goods that are the subject of the complaint, or to replace the goods with other goods in accordance with the order (replacement right), provided re-delivery is made:

a. if the complaint relates to visible or otherwise detectable defects:

prior to the delivery date, or prior to the delivery term, increased by the duration of the subsequent delivery term, if entitled to this, or within 10 working days of the goods having been received back;

b. if the complaint relates to invisible or otherwise undetectable defects (hidden defects): within 10 working days of the goods having been received back,

yet no later than 25 working days after delivery, or no later than 25 working days of delivery date or expiry of the delivery term;

11. If (timely) re-delivery as referred to in paragraph 10 of this article is not possible, the seller and buyer must deem the purchase agreement terminated with regard to the goods that are the subject of the dispute. In that case, the seller is obliged to credit the buyer for the disputed goods. In that instance, the buyer is obliged to return the goods delivered that are the subject of the dispute as soon as possible, at the expense and risk of the seller, to the address and in the manner indicated by the seller.

12. Crediting by the seller in the event of termination of the purchase agreement as referred to in paragraph 11 of this article does not affect the buyer's right to compensation in accordance with article 22.

13. Return shipments not preceded or accompanied by the complaint notification referred to in this article will not be accepted. The costs of unfounded and/or unannounced return shipments will be at the expense of the buyer. If the complaint is upheld however, the costs of the return shipment will be at the expense of the seller.

14. Goods that have been returned unjustly or wrongfully can be stored at the seller's or at third parties, at the expense and risk of the buyer. With regard to the costs in relation to unauthorised return shipments and the measures taken by the seller in relation to this, his specified breakdown will be binding for the buyer subject to evidence to the contrary. The buyer is obliged to ensure that the goods to be returned are packed and dispatched with due care and attention and that they are insured. He will be liable for damage caused by his negligence.

PAYMENT

Article 12

1. The following applies to all invoices and claims entered:

a. the date is the date on which the goods have been delivered. Invoice dates may therefore not precede the actual delivery date. If the date applies to a partial invoice, the date on which the partial delivery was made must be stated.

b. contrary to the provisions of paragraph a., if a seller exercises his rights by virtue of article 12, paragraph 11, under b., the date of the invoice will be the date of the transfer of title.

2. The following applies to payment terms:

a. if contrary to the provisions of paragraph 1.a of this article, the invoice date nevertheless precedes the actual delivery date, the payment term starts from the moment of actual delivery. All payments must have been received no later than on the final day of the agreed payment term (= due date) by means of a bank transfer or cash payment, without the seller incurring costs for bank transfers or any other costs in connection with the transfer of funds, and without deduction of costs or discounts for which the buyer, at the time of payment, has not received a credit note or other statement of approval from the seller, except for the provisions of paragraph 3.

b. contrary to the provisions of paragraph a., if a seller exercises his rights by virtue of article 12, paragraph 11, under b., the payment term will commence from the date of the invoice, which in that case coincides with the date of the transfer of title.

3. The seller has the right to determine a payment discount and/or a graduated scale of payment discounts with corresponding payment terms. The payment discount is calculated on the basis of the amount paid for the goods, i.e. the sales price of the goods, possibly corrected by credit notes, yet always on the basis of the amount, exclusive of VAT. A seller can allow a buyer and/or third party paying for the buyer on a contract basis that the invoices for a certain time period are paid together, provided this is done with due observance of the average credit term or terms set by the seller in his payment discount scheme. The start date for the calculation of the payment discount and the payment term is the date of actual delivery, all this in accordance with the provisions of paragraphs 1 and 2 of this article.

4. When a buyer or a third party paying on behalf of a buyer pays earlier than agreed upon formation of the agreement, he is not entitled to a corresponding higher payment discount, unless the seller explicitly agrees to this. Payments will always be reconciled with the invoice that has been outstanding the longest, without prejudice to the provisions of article 11, paragraph 5. In the event of a partial payment against an invoice, the payment discount will be proportional, i.e. the extent of the payment discount for the partial payment equals the discount that corresponds to the payment term of the partial payment.

5. In the event of payment via bank or giro account, the date of payment is the date on which the relevant amount has been credited to the seller's bank or giro account.

6. The seller is not obliged to notify the buyer of amounts owed becoming due or to send him account statements etc., unless explicitly agreed otherwise.

7. A buyer who has failed to pay an invoice on or before the invoice due date will be in breach of contract without the need for a warning or notice of default, except for instances as described in article 11, paragraph 5.

8. When exceeding the payment terms set by the supplier other than the due dates, the payment discount corresponding to that term lapses.

9. For every 14 days, or part thereof, that the payment term is exceeded as from the 14th day following the due date, the buyer owes the seller interest of 0.5% of the outstanding amount on account of late payment.

10. With regard to costs that have been caused by the defaulting buyer failing to act, the buyer owes the seller compensation to cover extrajudicial collection costs. The extent of the compensation corresponds to the percentage stated in the collection rate of the Netherlands Bar Association and is calculated for each invoice amount that is or has been overdue, subject to a minimum of €25 per invoice. All this has no bearing on any legal costs set by the court, if a claim has been outsourced by the seller or by a third party on behalf of the seller.

11. The seller, without prejudice to his other rights under these conditions, has the following right towards a buyer who does not pay in due time or - as the case may be - who can no longer be insured according to a credit insurer:

a. to require security to be furnished for payment and/or payment in advance and/or immediate payment when offering the goods to the buyer for the first time (cash on delivery) for all current agreements between the seller and the buyer;

b. to suspend the deliveries and manufacturing and/or treatment of goods intended for those deliveries, without prejudice to his right to simultaneously demand security to be furnished for payment, or to do so later. As appropriate, the seller can store the goods that are ready or arrange for them to be stored, subject to the provisions of article 7, paragraph 5. If the buyer has fulfilled his obligations at a later date, the seller may apply a delivery term that corresponds to the time needed for the manufacturing and/or treatment and/or delivery, taking into account his current business circumstances;

c. fully or partially terminate the relevant agreement, by means of a written notification. In the event of such full or partial termination, the seller will be entitled to compensation in accordance with the provision of article 22, paragraph 1;

d. fully or partially terminate one, multiple or all current agreements between the seller and the buyer, including those with regard to which the buyer is not in default (yet) towards the seller, by means of a written notification.

A seller can only invoke the options stated under a., b., and c. above if he has given the buyer a term of 3 days to meet his payment obligations and the buyer failed to do so. A seller can only exercise the right referred to under d. if the buyer has failed to meet a requirement from the seller to provide security for the payment of the amount that the buyer owes and/or will owe by virtue of the relevant agreement or agreements within 8 days.

The seller can at all times change his selection from the rights referred to in this article, unless he has exercised the right to fully or partially terminate an agreement. In the event of such full or partial termination, the seller will be entitled to compensation in accordance with the provisions of article 22, paragraph 1.

12. If a buyer, through an announcement by MODINT BV or otherwise, is deemed in default and/or not creditworthy or insolvent towards one or more sellers who is or are member or members of MODINT and who apply the “conditions” module of MODINT BV, each of the sellers referred to, without the requirement of a notice of default with regard to all current agreements, insofar as not performed, will enjoy the rights described in paragraph 11, under a. and b., without prejudice to the seller’s rights by virtue of Section 6:83, subsection c, in conjunction with Section 6:265 of the Netherlands Civil Code.

13. MODINT BV will only announce the name of the buyer as referred to in paragraph 12, subject to that buyer having been summoned to meet his obligations towards seller or sellers and the buyer failed to do so (or failed to do so fully), unless in the opinion of MODINT BV the announcement cannot wait on account of urgent circumstances.

14. With due observance of the provisions of article 11, paragraph 6, a seller cannot exercise the rights described in paragraphs 11 and 12 of this article, if the buyer has submitted a complaint notification in accordance with the provisions of paragraphs 2 and 8 of article 11, until the suspension of the obligation to pay ends in accordance with article 11, paragraph 5 (by means of a decision by an authorised legal authority or third party, which decision has become final and conclusive, or by means of an agreement between the parties).

RETENTION OF TITLE

Article 13

PART A: IF A SELLER HAS PROVIDED ONE OR MORE RSOs WITH A POWER OF ATTORNEY FOR RETENTION OF TITLE AND PLEDGE AND THAT RSO, PURSUANT TO AGREEMENTS WITH THE SELLER AND BUYER IS OBLIGED TO PAY THE SELLER ON BEHALF OF THE BUYER, THE FOLLOWING APPLIES WITH REGARD TO RETENTION OF TITLE:

A.1 The seller retains the right of ownership with regard to all goods to be delivered by virtue of agreements concluded and to be concluded with the buyer, until payment by an RSO to the seller and payment of the buyer to the RSO have fully extinguished:

- a. the claims that are in consideration of delivery of the relevant goods;
- b. the claims that arise due to the buyer failing in the performance of his obligations under the agreements referred to above, with regard to the relevant goods that have been delivered.

In addition, the seller, now and in the future, delivers all goods by virtue of the agreements concluded and to be concluded with the buyer subject to an undisclosed pledge on all those goods in favour of the seller and the RSO. Therefore, after the retention of title has been extinguished through payment, the buyer is provided with the goods encumbered with an undisclosed pledge in favour of the seller and the RSO who paid the sales price for the relevant goods. These pledges serve to increase security for payment of anything the seller and/or RSO can claim from the buyer, for whatever reason, in case of the RSO more in particular the security for anything else it can or will be able to claim by virtue of payments made by the RSO for the buyer, as set out in paragraphs A.5 et seq. of this article.

A.2 Goods are deemed not to have been paid for by the buyer if he has not demonstrated payment thereof to the RSO.

The buyer is obliged to show the goods to the seller on demand of the seller or the RSO and to return them to the seller in the event of failure to pay. The buyer will be credited for the goods returned by virtue of this article, at the market value of the seller's goods as at the return date.

A.4 In all cases in which an RSO pays the seller's invoices for the buyer and in which the RSO is subrogated to the seller's rights, including all ancillary rights, the retention to title does not lapse for as long the buyer does not pay the relevant claim to the RSO.

A.5 As a result of and simultaneous to the subrogation referred to in paragraph A.4, the seller transfers to the RSO the retention to title of the goods for which the RSO paid the sales price. From the moment of that transfer, the buyer retains possession of the goods referred to above on behalf of the RSO.

A.6 Subrogation to the claims by and transfer of the retention to title to the RSO are without prejudice to the buyer having the option to sue the seller in the event the seller in any way fails in the performance of the agreements concluded between them.

A.7 The buyer is not entitled to dispose of goods that are subject to retention to title or to put them forward as security against claims from third parties other than the RSO referred in article A.1 of this article. However, the buyer is permitted to sell and transfer the aforesaid goods to third parties within the framework of the normal running of his business. This permission lapses by operation of law when the buyer in any way fails in his performance regarding the claims that are subject to retention of title and pledge, when he is granted a provisional moratorium or when he is declared bankrupt.

A.8 The buyer is obliged to insure the goods referred to in paragraph A.1 of this article against the risks of fire, theft and damage caused by storm and flooding, with the added clause in the insurance policy that the insurance continues to provide cover for goods of (potentially) interested third parties. The buyer is not permitted to pledge any claims against his insurer by virtue of insurances as referred to in this paragraph, insofar as in relation to the goods referred to in paragraph A.1 of this article, to third parties or to put them forward as security for third parties, in the broadest sense of the word. Payments made in connection with damage to or loss of the aforesaid goods replace these goods.

A.9 In the event of a contradiction between the provisions of part A of this article and the provisions in the agreement or agreements between the seller and the buyer, the provisions of part A of this article prevail exclusively.

PART B: IN ALL CASES OTHER THAN REFERRED TO IN PART A OF THIS ARTICLE, THE FOLLOWING APPLIES WITH REGARD TO RETENTION TO TITLE:

B.1 The seller retains the right of ownership of all goods delivered or to be delivered under agreements, paid and unpaid, until the following have been extinguished by payment of the buyer:

- a. the claims in relation to the consideration for all goods delivered or to be delivered;
- b. the claims on account of failure to perform stated agreements;
- c. the claims with regard to the activities undertaken or to be undertaken in performance of the stated agreements as well as activities undertaken or to be undertaken for the buyer.

B.2 Goods are deemed not to have been paid if the buyer fails to demonstrate payment thereof.

B.3 The buyer is obliged to show the goods to the seller on demand of the seller and, in the event of default of payment, or in the cases referred to in article 12, paragraph 11, under c. and d. or referred to in article 12, paragraph 12, return them to the seller if so requested. The seller credits the buyer the market value as at the day of return of all goods repossessed by virtue of this article.

B.4 A buyer can agree with a third party that the latter pays the purchase price for him, thereby being subrogated to the seller's claim. Payment by a third party who is subrogated to the buyer's claim does not cause the retention to title to lapse.

B.5 As a result of subrogation as referred to in paragraph B.4 of this article, the seller transfers to the subrogated third party the retention to title of the goods the sales price of which was paid for by the third party. The buyer retains the goods for the subrogated third party from the time of subrogation.

B.6 Subrogation to the claim by and transfer of the retention to title to a third party as referred to in paragraphs B.4 and B.5 of this article are without prejudice to the buyer having the option to sue the seller in the event the seller in any way fails in the performance of the agreements concluded between them.

B.7 The buyer is not entitled to dispose of or encumber the goods that are subject to retention of title. However, the buyer is permitted to sell and transfer the aforesaid goods to third parties within the framework of the normal running of his business. This permission lapses by operation of law when the buyer in any way fails in his performance regarding the claims that are subject to retention of title, when he is granted a provisional moratorium or when he is declared bankrupt. The buyer can never use the goods that are subject to retention of title as security for third-party claims.

B.8 The buyer is obliged to insure the goods referred to in paragraph B.1 of this article against the risks of fire, theft and damage caused by storm and flooding, with the added clause in the insurance policy that the insurance continues to provide cover for goods of third parties who, when taking out the insurance, are interested parties or who will become interested parties during the term of the insurance. The buyer is not permitted to pledge any claims against his insurer by virtue of insurances referred to in this paragraph, insofar as in relation to the goods referred to in paragraph B.1 of this article, to third parties or to put these forward as security for third parties, in the broadest sense of the word. Payments made in connection with damage to or loss of the goods referred to in this article replace these goods.

FORCE MAJEURE

Article 14

1. A seller or buyer will immediately notify the other party to an agreement in the event of a situation of force majeure.
2. In the event of force majeure, the other party cannot claim any compensation.
3. In the event of force majeure, the parties must make arrangements for the continued performance of the agreement.
4. If a case of force majeure leads to the agreed delivery date or delivery term being exceeded, including any subsequent delivery terms, by at least 20 working days, the other party, contrary to the provisions of paragraph 3 of this article, will be entitled to terminate the relevant agreement in writing.

TAXES

Article 15

Sales prices or other stated prices are always exclusive of turnover tax and/or other similar levies which are or will be owed by virtue of the agreement. All costs as a result of this tax and/or levies are payable by the buyer at all times.

TERMINATION OF RELATED ORDERS

Article 16

If the seller is in default or will be in default in accordance with a written statement issued by him on account of failure to deliver an order in accordance with the agreement, the buyer will be entitled to terminate any other orders, or parts thereof, in writing, which other orders are inexplicitly linked to the economic purpose of this order.

THE BUYER'S RIGHT TO RETENTION

Article 17

If the buyer has an acknowledged claim against the seller by virtue of an agreement as referred to in article 2 of these conditions, which claim cannot be set off against amounts payable to the seller or only partially, the buyer is entitled to retain textile and clothing items of the seller legitimately held in his possession, subject to a maximum of the invoiced value, equal to that part of the claim that cannot be offset, as security and to sell them as settlement of said claim against the seller.

DISPUTE SETTLEMENT PROCEDURE

Article 18

1. In the event of a dispute between the seller and the buyer, including disputes deemed as such by only one of the parties, with regard to and/or in connection with and/or arising from the purchase agreement which these conditions are subject to, such as:
 - a. complaints as referred to in article 11;
 - b. the question whether an order has been confirmed, in writing or otherwise, and/or whether the obligation to alert as referred to in article 5, paragraph 3, has been met;
 - c. the question whether force majeure as referred to in article 14 applies and/or how the consequences thereof must be dealt with by the parties;
 - d. the application of retention to title or undisclosed pledge;
 - e. the question whether grouping, call-off or purchase by the buyer or delivery by the seller was effected in time or not;

- f. the question whether termination was legitimate;
 - g. the question whether compensation is payable to the other party on account of failure to perform by the seller or buyer and, if so, the extent thereof;
 - h. the application of the provisions in articles 16 and 17;
 - i. and all other situations stated as such by either party, parties will have the option to consult each other and solve the dispute amicably. In doing so, the parties are free to engage the mediation of a third party, all this in accordance with the conditions set by this third party to this process.
2. If the parties fail to reach a solution through the consultation referred to in article 1 of this article, either party can submit the dispute for settlement by the competent court, in accordance with the provisions of article 3 of these conditions.

PRODUCT INFORMATION LABELS

Article 19

All textile and clothing articles destined or ready for immediate use by the consumer and which may only be offered to consumers by the retail trade provided they have been fitted with labels stating the composition of the raw materials used, will be supplied by the supplier inclusive of the required product information labels. If no or incorrect product information labels have been fitted, it will be deemed a visible defect which can provide ground for a complaint as referred to in paragraphs 2 and 7 of article 11. The relevant items can be returned to the supplier at his costs in order to have the (correct) labels fitted. Re-delivery will be in accordance with the provisions of article 11, paragraph 10. If so desired, the buyer can arrange to have the labels replaced/fitted at his expense. In that case, the supplier will make the necessary labels available free of charge.

INTELLECTUAL PROPERTY AND PRIVATE LABEL

Article 20

1. The seller guarantees that the goods sold by him to the buyer, or the goods delivered or to be delivered to the buyer, do not infringe any intellectual property right and he indemnifies the buyer against any third-party claims on account of infringement of an intellectual property right.
2. The guarantee and indemnification described in paragraph 1 do not apply to goods that have been or need to be manufactured as part of a contract order. In the event of a contract order and/or private label, the intellectual property right is vested in the designer, unless the designer has agreed otherwise with the contract order client and/or private label holder. If the designer has been contracted by and/or is in the employment of the seller, the buyer must:
 - a. either agree with the seller that all follow-up orders are ordered with the seller; if the buyer does not comply with this agreement, he immediately owes a penalty of 100% of the value of the original delivery, without prejudice to the right of the seller to recover the actual damage suffered, if this is higher;
 - b. or pay the seller a buyout sum by way of compensation of the transfer of the intellectual property rights regarding the goods delivered/to be delivered; the extent of the buyout sum will be set in mutual consultation.
3. The buyer guarantees that he is entitled to use the label/brand (mark), as well as his models (samples) and/or patterns and/or designs of fabrics which the private label textile and/or clothing items must be fitted with and indemnifies the seller/contract order client/supplier against any third party claim on account of infringement of any intellectual

property right thereof.

4. In the event of a justified complaint with regard to private label textile and/or clothing items as part of which the goods that are subject of the complaint cannot be repaired or replaced in accordance with article 11, paragraph 10, of these conditions, the seller will be entitled to sell these goods to third parties, on the condition that all labels/brands/marks of the buyer have been removed. If the labels/brands/marks cannot be removed without damaging the goods, the seller will be entitled to sell said goods to third parties one year after the complaint notification as referred to in article 11, including the labels/brands/marks of the buyer.

5. If the seller has sold the buyer textile and/or clothing items with generic labels/brands/marks based on the models and/or samples and/or designs of fabrics of the buyer, the seller guarantees that he does not infringe any intellectual property right with said models etc. and he indemnifies the seller against any third-party claim on account of infringement of any intellectual property right.

6. In the event of a justified complaint with regard to textile and/or clothing items with generic labels/brands/marks as referred to in paragraph 5 of this article, as part of which the goods that are subject of the complaint cannot be repaired or replaced in accordance with article 11, paragraph 10, of these conditions, the seller will be entitled to sell these goods to third parties.

PRODUCT LIABILITY

Article 21

1. Scope of application of this regulation are European countries. They are subject to the "European Council Directive 85/374/EEC, amended by Directive 1999/34/EC, regarding the mutual amendment of the statutory and administrative provisions of the Members States on the subject of liability for defective products". Product liability applies if the seller and the buyer, based on the legislation adopted in these countries by virtue of the stated Directive, are liable for the damage described in paragraph 4 of this article, caused by a defect in the goods supplied by the seller to the buyer, other than a consumer.

2. For countries other than those referred to in paragraph 1, product liability is taken to mean the liability of a buyer, other than a consumer, based on current legislation and/or case law in these countries, for damage as described in paragraph 4 of this article, which damage has been caused as a result of a defect in the goods supplied by the seller to the customer.

3. A consumer is taken to mean a natural person, not acting in the course of his profession or business, suffering the damage referred to in paragraph 4 as a result of a defect in the goods.

4. Damage is taken to mean:

- a. the damage caused by death or physical injury;
- b. damage or destruction of an item other than the faulty goods, with the application of a franchise van € 500, if this item:

I is normally used or consumed privately and

II has been used by the aggrieved consumer mainly privately.

5. Goods in this article are taken to mean all goods supplied by the seller to the buyer and of which the consumer cannot establish who the manufacturer of these goods is.

6. The seller indemnifies the buyer against product liability for damage as referred to in paragraph 4, as a result of consumer claims on account of a defect in the goods which have been bought by the consumer in one of the countries referred to in paragraph 1.

- 7.a. The seller is only obliged to indemnify as referred to in paragraph 6 of this article, if the goods have been manufactured entirely from and/or according to his own materials.
- b. The seller is not obliged to indemnify as referred to in paragraph 6 of this article, if: the goods are subject to processing after delivery, thereby causing the defect in the goods. In the event of doubt, a research institute to be appointed by the seller will issue a binding decision to this end.
- c. If the materials have been fully or partially manufactured according to materials of the buyer, the buyer indemnifies the seller against liability for damage as referred to in paragraph 4 as a result of consumer claims on account of a defect in the goods, unless the buyer demonstrates the absence of a causal relationship between his materials and the defect in the goods. If the goods have been partially manufactured according to materials of the buyer, the buyer is only obliged to indemnify as such if the buyer demonstrates the absence of a causal relationship between his materials and the defect.
- d. Materials within the context of clothing are taken to mean:
the outer fabrics made available / to be made available by the client, supplemented by lining, smallwares, packaging, labels, brands, marks, patterns, models, fabric designs, price tags, hangers, yarn and anything else that may be required for the creation of clothing and/or further execution of the instruction, in whichever combination.
- e. If the goods only need to be fitted with the label/brand/marks of the buyer, these goods are deemed to have been manufactured entirely in accordance with materials of the buyer.
8. The seller must arrange for sufficient insurance against damage as a result of consumer claims by virtue of product liability as described in the regulation. The seller, if both he and the buyer deem this desirable, will have an annotation made in the policy documentation stating that any payments made by the insurer must be made directly to the party actually suffering the damage. The seller must keep a certificate of insurance as satisfactory evidence.
9. If on the basis of legislation and/or case law as referred to in paragraph 2, the buyer sues on behalf of consumer or a third party, he undertakes to report to the seller in writing within 3 working days of having received a notification of liability. The notice of liability will be handled further in close consultation between the seller, his insurer and the buyer, as part of which neither an acknowledgement of any liability nor a promise of any compensation will be made by the buyer, until after agreement has been reached about this between the seller, his insurer and the buyer.
10. If the buyer fails to meet one or more of obligations in this regulation, the indemnification referred to in article 6 lapses.

NON-PERFORMANCE

Article 22

1. If the buyer fails to perform the agreement entered into with the seller, the latter will be entitled to terminate the agreement, without prejudice to his right to compensation in accordance with the provisions of paragraph 3 of this article, provided that non-performance is in relation to the article 12, paragraph 11, under c. and d. of these conditions.
2. If the seller fails to perform the agreement entered into with the buyer, the latter will be entitled to terminate the agreement, without prejudice to his right to compensation in accordance with the provisions of paragraph 3 of this article, provided that non-performance is in relation to the article 11, paragraph 12, of these conditions.

3. Without prejudice to the right to recover the actual damage suffered from the other party, the buyer or seller will have the option to exercise his rights to compensation as referred to in paragraph 3, under b., of this article. The following agreements apply in order to establish said compensation:

a. the value of the seller's invoice or the relevant part thereof in the event of a partial termination serves as fixed departure point for the calculation of the extent of the compensation;

b. the extent of the compensation depends on the time that has lapsed between the formation of the agreement, i.e. the date of the order or the order confirmation, and the moment at which the agreement is terminated in relation to the most recent, originally agreed time of delivery, in accordance with the graduated scale below, in which the time lapsed between the formation of the agreement and the latest date of delivery is referred to as the period:

termination within the first $\frac{1}{4}$ period lapsing: compensation = 20%

termination between $\frac{1}{4}$ period and $\frac{1}{2}$ period: compensation = 40%

termination between $\frac{1}{2}$ period and 1/1 period: compensation = 60%

termination after (scheduled) delivery date/term: compensation = 60%.

Zeist, 1 May 2013