

# German Yarn Contract

- Version of 1 June 2016 -

Terms and conditions of trade in raw, solution dyed and refined - dyed, bleached, gassed, etc. yarns and twisted yarns made from natural and man-made fibres<sup>1</sup>  
This German Yarn Contract solely applies between merchants.

For all deliveries and performances of the seller, exclusively the following general terms and conditions of the German Yarn Contract shall apply. Any general terms and conditions of the buyer are not recognized by the seller, unless the seller has expressly approved the application thereof in writing. This shall also apply if the seller performs the service with knowledge of contrary terms and conditions of business or terms and conditions at variance with the present ones.

## Part 1 - Delivery and Payment Conditions

### 1. Price

The prices shall apply 'ex spinning works', and in the case of an agreement where the consignment is shipped by rail shipments, 'ex dispatch station'. They represent one kilogramme of yarn. The calculation of the tare weight of the core shall take place under a special arrangement.

### 2. Payment Terms

The invoice shall be issued on the date of delivery and/or the provision of the goods.

Invoices are payable:

- (with a 2% cash discount) within 30 days of the invoice date
- (net) from the 31st to the 60th day after the invoice date.

If paid before the 30th day from the invoice date, in addition to the 2% cash discount, a discount shall be granted from the date of payment up until the 30th day calculated of 4 percentage points above the current base interest rate on the amount reduced by the cash discount. In the case of payment between the 30th and 60th day after the invoice date, there shall be no cash discount permitted, but only the discount of 4 percentage points above the respective base interest rate, calculated from the date of payment to the 60th day.

Instead of the above provision, the following scheme may apply:

- settlement on the average due date at a 2% cash discount, if the aggregate invoices do not exceed a period of 30 days;
  - 10 day settlement
- | invoices from                                  | to be settled at a 2% discount     | to be settled net on                 |
|--|------------------------------------|--------------------------------------|
| 1 <sup>st</sup> - 10 <sup>th</sup> of a month  | 5 <sup>th</sup> of the next month  | 5 <sup>th</sup> of the second month  |
| 11 <sup>th</sup> - 20 <sup>th</sup> of a month | 15 <sup>th</sup> of the next month | 15 <sup>th</sup> of the second month |
| 21 <sup>st</sup> -end of a month               | 25 <sup>th</sup> of the next month | 25 <sup>th</sup> of the second month |

No discount shall be granted in the 10 day settlement arrangement. The account shall be in default from the 61st day in accordance with § 286(2)1 of the German Civil Code (BGB). In the case of payments after the due date, default interest shall be charged at a rate of 9 percentage points above the base interest rate in the terms of § 247(1) of the Civil Code. Otherwise, § 288 of the Civil Code shall apply.

Payments shall always be used to settle the oldest payable accounts plus the default interest accrued thereon.

The day upon which the buyer or its paying agent has verifiably rendered the payment to the seller shall be considered as payment date for purposes of respecting the payment deadline.

Payment must be made in cash or by bank transfer. Bank cheques shall be credited when honored; negotiable bills of exchange shall be credited after deducting interest at the respective base interest rate, if discounting is possible at the Bundesbank, otherwise at the standard bank discount, when honored. Discounts and expenses shall be borne by the buyer. Bills of exchange to be honored at other locations shall not be accepted as payment. Promissory notes shall generally not be accepted as cash. The seller reserves

the right to decide whether to accept promissory notes and whether it shall grant a cash discount on promissory notes.

The netting of due invoiced amounts and the withholding of due invoiced amounts shall only be permitted with respect to undisputed claims or claims declared by non-appealable judgment, unless damage compensation claims are concerned that have a close connection to the claim of the buyer to defect-free performance of the contract. This also applies in the event the seller suspends payments. Other deductions (e.g. for postage and bank charges) shall not be permitted.

The seller shall not be obliged to make further deliveries before the full payment of due invoice amounts including billed interest and default interest. The readiness to ship the yarns shall be declared by the seller by sending the invoice. In the case of imminent insolvency or other significant deterioration in the buyer's financial situation after concluding the contract, the seller may, after setting a grace period for still outstanding performances based on the same contractual relation, refuse to render the performance incumbent upon it or rescind the contract or claim damage compensation. This shall also apply if the buyer does not immediately refute objective doubts asserted about its ability to pay or concerning its creditworthiness. Otherwise, § 321 of the Civil Code shall apply. Section 119 of the Insolvency Code shall not be prejudiced hereby.

### 3. Packaging

The cost of the packaging material shall be settled according to a set rate per kg of yarn. The packing rate shall be agreed upon in the case of special packaging requested by the customer. Reusable logistical aids (e.g. returnable pallets or returnable intermediate pads) shall remain the property of the seller; they shall be billed by the seller if they are not returned within two months in working order.

### 4. Delivery and acceptance

If a delivery deadline has not been determined upon conclusion of a transaction, the goods shall be deemed as having to be delivered promptly, i.e. fulfilment may be demanded after the expiry of a reasonable period of time necessary for manufacturing the yarn and may be rendered at any time.

If a delivery is determined to take place in instalments within a specified period, unless agreed otherwise, the delivery and acceptance must take place for approximately the same quantities each month. If delivery was agreed to take place in instalments without stating a final date, unless the parties have agreed otherwise, delivery and acceptance shall take place with approximately equal quantities each month within six months from the date on which the agreement was concluded. This shall also apply to purchases on call.

With the delivery of yarns, technically unavoidable differences in quantity (which may at most fall within the following tolerances) shall be admissible and may not be protested:

In the case of woolen yarn, semi-worsted and corresponding open-end yarns:

up to ± 5% with an order quantity of 1000 kg and  
above up to ± 10% with an order quantity of below  
1000 kg.

In the case of tufting yarns the number of reels can deviate by up to + 1.5% from the prescribed number of reels. Excess numbers of reels can be jointly supplied as cones to replace finished cones. Regarding the reel run length for tufting yarns, a tolerance of ± 3% is permitted.

In the case of other yarns:

up to + 5% with natural yarns,  
up to + 10% for bleached, dyed and special yarns  
based on the quantity to be delivered.

The seller's delivery obligation shall be fulfilled when the seller makes the yarn available to the buyer by the last day of the delivery period 'ex spinning works' and/or 'ex-stock'.

If two or more contracts exist, the seller shall have the right to deliver the oldest one first in full.

If the seller has not fulfilled its obligation to deliver or the buyer has not fulfilled its obligation to accept the goods, a grace period of 4 weeks shall first be granted. After the unsuccessful expiry of this

period, the provisions of civil and commercial law shall apply.

#### **5. Scheduling of spun goods**

The buyer is obliged to communicate the scheduling of the spun goods in a timely manner. In the case of contracts which function with open yarn counts and varieties, the seller may claim a classification period of four weeks before the start of the delivery month and in the case of contracts with colourful spun yarn, may claim a classification period of six weeks before the start of the delivery month.

If the buyer remains in arrears with the scheduling of the spun goods beyond the prescribed period after a second demand, and fails to observe a grace period of four weeks provided by the seller, the seller shall be entitled to carry out and invoice the relevant delivery at its fair discretion.

#### **6. Shipping**

Without prejudice to any covenant made in accordance with § 1, the shipping and delivery shall take place at the expense and risk of the buyer.

#### **7. Place of performance and jurisdiction**

The place of performance for the services based on the contract shall generally be the registered office of the seller. A different domestic production site can be agreed upon as the place of delivery.

The exclusive place of jurisdiction for any dispute between the buyer and the seller, including actions concerning bills of exchange and cheques, shall be the district or local court where the registered office of the seller is located. However, the seller shall also have the right to bring an action in a district or local court competent for the registered office of its professional association (Deutscher Garnkontrakt e.V., Frankfurt am Main).

#### **8. Defects**

Complaints concerning the gross weight must be lodged at the latest within three business days after the arrival of the yarn at the destination.

Complaints regarding the yarn (material defects) may only be lodged within two weeks after the arrival of the yarn at its destination and only if yarn has not yet begun to be processed. Hidden defects must be protested immediately upon detection.

Common (within the context of trade) or minor, technically unavoidable differences in the quality, colour or finish of the supplied yarn may not be protested. No liability shall be assumed for deficiencies in goods made from the yarn which are caused by improper processing and treatment of the yarn. Fancy yarns and twisted yarns shall be subject to technically unavoidable variations in yarn quality. Yarns may change their technical characteristics during the storage period (ageing). In such a case, the buyer is to be informed about this by the seller when the contract is concluded. Therefore, technical and/or chemical changes caused by ageing shall not be considered defects.

If the buyer has specified for the performance of the contract particular raw materials, dyes, dying techniques or finishes to the seller without any alternative, the seller shall only be liable for faults that arise as a consequence of the raw material, dye or finish used, and for faults detected despite proper controlling of the goods when received, only insofar as a warranty has been assumed for this purpose by the fibre or dye supplier and/or finisher. The seller shall agree with the buyer if a job is to be encompassed by the aforementioned provisions. In the event of a claim, the seller shall transfer any warranty claims it has against upstream suppliers and finishers to the buyer.

Obvious defects shall entitle the seller to either make a one-off repair or deliver defect-free replacement goods, which must be done by the seller within a reasonable period for the buyer and seller from the date the asserted complaint was acknowledged. The seller shall check the complaint without delay and shall make a decision without delay concerning the return of the defective goods. During this period, the buyer shall keep the product in custody for the seller free of charge. If the repair fails or if the replacement is defective, the buyer shall have the right to reduce the purchase price or rescind the contract, unless § 10, Paragraphs 2 and 3 hereof are applicable.

In the case of hidden defects, the buyer shall be entitled to a reduction to the purchase price for those delivered yarns included in the faulty goods. For the non-processed share of the delivered yarn, the buyer shall be entitled to a repair or a one-off replacement within a period reasonable for the seller and the buyer. If this is unacceptable for the buyer or if the repair or replacement delivery fails, the buyer shall have the right to reduce the purchase price or rescind the contract, unless § 10, Paragraphs 2 and 3 hereof are applicable.

Any other compensation based on the defectiveness of the delivered goods shall be limited, in the case of slight negligence, to twice the value of the yarn for the affected delivery and/or partial delivery. In the event of slight negligence, damage compensation shall be excluded if the damage was atypical and unforeseeable by the seller on the closing date of the contract. The provisions of law shall apply in the case of intentional action, gross negligence or negligent injury to the life, limb or health of another person. The Product Liability Act shall apply without restriction.

#### **9. Operational disruptions**

Force majeure, labour disputes (which are caused by no fault of any party), administrative action within Germany or abroad (which is caused by no fault of any party), power failure (which is caused by no fault of any party) and unforeseeable, serious operational disruptions and limitations to the seller (which are caused by no fault of any party) etc., including such disruptions that lead to a deterioration in the agreed supply of raw materials or other instances of force majeure which have lasted, or are likely to last more than a week, shall entitle the seller to postpone the delivery dates accordingly.

One condition for this, however, shall be that the seller has undertaken every effort and made all of the dispositions that can be reasonably expected of the seller in order to mitigate or eliminate the impact of supply disruptions. If, due to the aforementioned circumstances, the delivery will be delayed for more than three months, both parties shall have the right to rescind the contract. In the event of force majeure, or operational disruptions (which are caused by no fault of any party) as described in Paragraph 1, damage compensation claims shall be excluded hereby.

As soon as an impediment to delivery of the aforementioned type becomes evident, the buyer must be notified thereof without delay.

#### **10. Damage compensation claim**

Damage compensation claims shall be excluded hereby, unless stipulated otherwise in these terms and conditions.

The exclusion in Paragraph 1 shall not apply in the event of liability in accordance with the Product Liability Act, in the event of intentional action, gross negligence of owners, legal representatives and executives; in the event of fraud, non-compliance with an assumed guarantee; in the event of negligent injury to life, body or health or in the event of negligent breach of material contractual duties. "Material contractual duties shall mean those duties the performance of which characterise this Contract and in whose performance the buyer may trust. However, a damage compensation claim due to a breach of material contractual duties shall be limited to foreseeable damage typical to the contract, except in another of the cases mentioned in Paragraph 2, Sentence 1.

#### **11. Arbitration clause**

All disputes of a factual or legal nature shall be decided by an arbitration board, to which the arbitration rules of this German Yarn Contract (Part 3) shall apply, or an ordinary court of law.

To seize the arbitration board, both parties must agree to the arbitration proceedings.

After the respective proceedings have been initiated, it shall no longer be possible to switch between arbitration proceedings and proceedings before an ordinary court of law.

## Part 2 – Technical Foundations

### 1 Commercial weight (Avoirdupois)

Unless agreed otherwise, the relevant German and European standards (DIN and/or EN), as amended on the closing date of the Contract, shall apply for determining the commercial weight. Otherwise, Regulation (EU) No 1007/2001 of 27 September 2011 on textile fibre names (OJ L 272/1 of 18 October 2011) shall apply.

In the case of yarns and twisted yarns, the moisture allowances apply for the respective fibre types prescribed in the Textile Labelling Act (TKG), as amended at the point in time that the contract was concluded. Otherwise the EU-Textile Labelling Regulation dated Sept. 27, 2011 (OJ. EU L 272/1 of Oct. 18, 2011) shall apply.

In the case of yarns and twisted yarns that have been made from fibres that are not listed in the Textile Labelling Act, the moisture allowance is to be agreed between the contracting parties.

In the case of blended yarns and twisted yarns, the moisture supplement is calculated based on the percentages which apply to the unblended yarns according to the percentage of each fibre in the blend. The resulting percentages are rounded up to the nearest 0.5% respectively. In all other cases, the relevant German and European standards (DIN and/or EN) apply for determining the commercial weight

In the case of a moisture rate over 8.5%, the maximum permissible tolerance is

+ 1.0%

In the case of a moisture allowance of 8.5% and

below

± 0.5%.

If these tolerances are exceeded or not met, remuneration is to be calculated on the basis of the permissible moisture allowances for both parties. Factors which are excluded from inclusion in the calculation of averages include results of those packaging units where the contents exceed the maximum moisture allowance by a quarter, however at least 1% in absolute terms.

The relevant German and European standards (DIN and/or EN) are deemed as agreed upon for determining the actual moisture allowance. The seller has the right to ask for the analytical determination, wherein the involvement of a third party (e.g. an officially recognised certifying body) is deemed as agreed upon.

The packaging units which exceed the aforementioned permissible moisture allowance tolerance level are to be considered as not fit for supply and can be made available by the buyer against compensation of the costs which arise thereof. The seller has the right to make a delivery of a substitute product within a reasonable period for him and the buyer from the point in time the defective packaging units are returned. This delivery of a substitute product is only permissible once.

### 2 Commercial number (commercial grade (fineness))

a) Commercial number - Provisions (commercial grade (fineness)) The metric yarn numbering system shall apply as a standard for determining the commercial number (commercial grade (fineness)). At the request of the buyer, the commercial grade (fineness) can be established in accordance with dtex. In all other respects, the relevant German and European standards (DIN and/or EN) shall apply.

b) Run length

The run length of the twisted yarn shall be deemed as met if it is made from yarn with the same commercial number (commercial grade (fineness)) as the single yarn.

Gassed yarns and twisted yarns are traded in accordance with the final commercial number (commercial grade (fineness)) Changes to the run length as a consequence of the further processing of yarns and threads are charged to the buyer. In the case of twisted yarns, the variations for the commercial number of the single yarn (commercial grade (fineness)) apply.

c) Yarn count (fineness) tolerance

Yarn counts deviations which are technically unavoidable are permitted, however at most, the following tolerance rates.

ca) In the case of woolen yarns and corresponding open-end yarns - to Nm 5 including (2000 dtex and higher) ± 8%

above Nm 5 - to Nm 7 including + 7%  
(below 2000 dtex to 1450 dtex)

above Nm 7 to Nm 10 including (below 1450 dtex to 1000 dtex) ± 6%  
above Nm 10 (below 1000 dtex) +5%

cb) In the case of semi-worsted yarns and corresponding open-end yarns

to Nm 5 including (2000 dtex and higher) ± 6 %  
above Nm 5 (below 2000 dtex) + 5 %

cc) In the case of other yarns ± 3 %

cd) In the case of fancy yarns higher number variations which are technically unavoidable and appropriate are permissible

No compensation shall be made within the above tolerance limits. In the case of possible deviations which do not meet the lower permissibility limit, the full deviation from the agreed yarn count (yarn fineness) is to be paid for.

If

- the claim for compensation is unreasonable for the buyer,  
- the yarn count (fineness) tolerances are exceeded upwards and acceptance is unreasonable,  
the buyer may request that the quantities which form the basis of the complaint are exchanged, free of charge, for yarns of the agreed number (fineness) within a period which is reasonable for the seller and buyer. This applies to yarns in cc) provided that the deviation from the agreed number (fineness) is greater than ± 5%. If the buyer can prove that a replacement delivery is unreasonable for him, the buyer shall have the right to reduce the purchase price or rescind the contract.

### 3 Incorrect weight and yarn count (fineness) fluctuation

If a buyer makes a claim regarding an incorrect weight yarn count (fineness) fluctuation for a consignment, the seller shall have the right to determine the commercial weight and/or demand the commercial number (commercial fineness), wherein the involvement of a third party (e.g. an officially recognised certifying body) shall be considered as agreed upon.

### 4 Chains

Chains (single and twisted) shall be sold and billed in accordance with the calculated weight; however, the seller must compensate the buyer for any possible deficit weight exceeding 3%.

### 5 Test dyeing and other tests

In the course of weaving, knitting, tufting, working, braiding and other processing steps, it is necessary to examine sufficient quantities of raw materials in a suitable test procedure in order to detect possible defects.

The test sample must be an appropriate, small production sample (as small as possible) however, at least 500 m. This test can directly follow another test.

In all processing areas:

- dyed yarn batches have to be tested for streakiness and other changes before and during processing,  
- in the case of raw white and dyed yarn which is processed jointly or yarns with different fibre structures, adequate tests have to be performed in order to test uniform shrinkage or other relevant effects that may affect the intended use.

### 6 Marking

Unless the buyer does not explicitly object, the seller shall be allowed to mark off-white yarn batches with water-soluble dyes.

### 7 The examination and examination fees

For the examination, the provisions of the relevant German and European standards (DIN, EN) apply, alongside the involvement of an officially recognised certifying body. The examination fees, including a possible re-examination including transportation costs, shall only be borne by the liable party if this has been expressly agreed between the parties.

### Part 3 - Arbitration Rules

1 An arbitration board shall adjudicate all disputes arising from contracts that have been concluded under this German Yarn Contract where an ordinary court of law has not been seised (Part 1, § 10 of the German Yarn Contract).

2 Both parties must appoint to the arbitration board. These must be businessmen or industrialists from the textile industry who are active in business (in practice) or living in retirement.

The instigating party shall name the arbitrator appointed by it in writing to the opposing party requesting the latter to name an arbitrator. The opposing party is to name the arbitrator that it has appointed within 14 days following the date of the receipt of the letter. If the opposing party does not obey the request in a timely manner, the president of the Chamber of Commerce of the district where the firm concerned is located or, if it does not belong to any Chamber of Commerce, the president of the Chamber of Commerce of the place nearest to where the firm has its registered office shall appoint the arbitrator in question.

The parties may agree that a dispute can be decided by only **one** arbitrator.

3 The arbitrators appointed by the two parties must immediately select an umpire who must be qualified to exercise the office of a judge.

If they cannot agree on the umpire, then the president of the Chamber of Commerce for the instigating parties' district shall appoint such person. The parties may waive the appointment of an umpire. Similarly, the two arbitrators are entitled to refrain from selecting an umpire, if they agree on the decision relating to the dispute. In this case as well, the procedural rules shall apply analogously.

4. If an arbitrator steps down, he is to notify both parties of this in writing. The party which had appointed the arbitrator shall, within 14 days after the receipt of the notice, appoint another arbitrator and inform the opposing party thereof.

5 The procedure before the arbitration board shall be as follows:

Explaining the state of affairs, each of the parties shall submit to the arbitrator appointed by it the contract and copies of the correspondence conducted between the parties in the disputed matter, along with their motions.

Both arbitrators shall send their documents to the umpire and, together with him, shall schedule a date within two weeks from the appointment of the umpire in order to undertake inspections or for joint deliberation.

The motion of a party for a hearing of the arbitral board with the parties must be granted. The arbitrators are to make their decision as quickly as possible, impartially and to the best of their knowledge and may not view themselves as representatives of a party. They shall first base their decision on the contractual arrangements of the parties, then on applicable civil and commercial law and otherwise on the generally accepted practices in the trade.

The exchange of the aforementioned documents may be omitted if both parties agree.

6 The decision of the arbitration board shall be made by majority.

7 The arbitral award shall be issued in writing by the arbitrators. The award shall contain:

- a) the exact names of the parties by surname, status, place of residence and party status;
- b) the names of the arbitrators;
- c) a brief findings of fact, pointing out the parties' motions;
- d) the grounds for the decision;
- e) the operative provisions of the decision, which are to be separate from the findings of facts and the grounds for the decision.

The arbitral award must be signed by all the arbitrators specifying the date of composition.

8 The award is to be sent by the umpire to the parties as a counterpart signed by the arbitrators and submitted to the office of the clerk of court with the confirmation of the service of process.

9 The arbitral award shall have the effect of a non-appealable court ruling for the Parties.

10 The costs are to be determined by the arbitrators in the

operative provisions and imposed upon the party against whom the decision is rendered. If a claim is only partially recognised by the arbitration board, then the costs are to be divided accordingly between the two parties.

11 The declarations of the parties foreseen in the above arbitration rules must all be sent by registered mail.

12 Sections 1025-1066 of the Civil Procedure Code shall apply in a supplementary fashion.