

Purchasing Conditions - RAW FABRICS –

These Purchasing Conditions Apply Only Between Merchants

I. Conditions applicable to both purchasing and finishing orders

- Orders shall not be legally binding upon the Client unless they have been placed in writing and carry the signature of an authorized representative. Verbal orders shall be confirmed in writing by the Client in order to be valid. In the event that an order is not confirmed by the Supplier, the timely execution of the order shall be deemed a confirmation of the order. Price reservations and subsequent price changes by the Supplier shall be excluded.
 - The following Purchasing Conditions shall apply to all present or future contracts concerning deliveries, purchases and other services. The Supplier's standard business conditions will not be recognized by the Client, unless the Client expressly recognized such conditions in writing. Further the Supplier shall comply with the Client's Code of Conduct which can be given to the Supplier on demand or which is on the Client's website www.montana-txt.com. In case of non compliance with the Code of Conduct by the Supplier the Client shall specify a reasonable time limit to the Supplier in which the Supplier has to comply with the Client's standards. If the Supplier exceeds time limit without compliance the Client shall be entitled to rescind the contract and to demand damages or reimbursement for futile expenses.
 - The Supplier shall perform the delivery exactly according to the Client's specifications, in particular, cloth deliveries shall comply with the required construction, composition, weight, colour and width; weaved cloth must be rolled up across its entire width. All deviations shall be expressly recognized in writing by the Client in order to be valid. In the event of unforeseen circumstances that are beyond the Client's intention yet have considerable impact on his demand or that of his customers, the Client shall be excused from his obligation to take the goods for as long as such circumstances persist; the same applies to labour disputes, including, but not limited to, strikes and lock-outs, and to disturbances in railroad links or access roads. The same also applies if such circumstances are experienced by its subcontractors or customers.
 - In the event that the Client should detect any defects upon acceptance of the goods, he shall notify the Supplier in time of such defects. This notification of the Client shall be deemed to have been given in time if it is sent to the Supplier within 2 weeks of receipt of the goods or, in the case of hidden defects, within 2 weeks of their detection, the date of sending is of the essence. If the Supplier maliciously withheld the defects of the goods, he cannot claim that the Client failed to give notification of defects.
 - In the event of defects, the Client may demand, in his sole discretion, remedy of the defect or the delivery of faultless goods (subsequent performance). Subsequent performance must be rendered within 10 calendar days after the notification of defects by the Client. All expenses in this connection shall be borne by the Supplier. If the remedy of the defects fails, if the Client cannot be expected to accept it, or if a second defect is noticed on the goods, the Client shall be entitled to reduce the agreed price or to rescind the contract and to demand damages or reimbursement for futile expenses. The remedy of the defects shall be deemed to have failed, for example, if the defect was not completely corrected by an attempted remedial action or if the remedy is not in period of time. The Client shall be entitled to specify an additional period of time for rendering subsequent performance. If the Client detects defects upon receipt of the goods for the first time or if the Client detects defects upon receipt after subsequent performance, he may rescind the contract immediately and without subsequent performance and demand damages or reimbursement for his futile expenses or
- he may reduce the agreed price and may demand damages or reimbursement for his futile expenses, if the Supplier's performance can no longer be integrated into the Client's production process without any undue delay, or at unreasonably high additional expenses only, or if it is otherwise deemed unacceptable. All claims of the Client in connection with defects shall be time-limited when 3 years have passed since receipt of the goods, unless agreed otherwise.
- The agreed delivery dates shall be carefully complied with; this requirement applies to both partial deliveries and as a final date agreed. An extension of the agreed lead times shall not be possible unless the Client expressly agrees to such an extension in writing. The individual lead times are equivalent to the last delivery dates, therefore, the Supplier will be in default upon expiration thereof even without a notification of the Client. After the end of the lead time, an extended period of delivery of 12 working days is granted without the need to specify a time limit, unless the Client specifies a reasonable shorter date to the Supplier. When this additional period of time has elapsed, the Client shall be entitled to rescind the contract.
- The Client reserves the right not only to rescind the contract but also to demand damages from the Supplier or to demand reimbursement for his futile expenses.
- The Client may immediately rescind the contract without observing an extended time period and demand damages or reimbursement for his futile expenses, if the Supplier's performance can no longer be integrated into the Client's production process without any undue delay, or at unreasonably high additional expenses only, or if it is otherwise deemed unacceptable.
- In the event of fixed-date purchases, the Client may rescind the contract without giving any additional notifications or granting additional periods of time. Any claims for damages including lost profit or reimbursement for futile expenses shall not be affected.
- Each consignment shall be accompanied by a delivery note without prices which lists the article number(s). The invoices shall be sent in duplicate separately from the goods. Shipment is generally made according to INCOTERMS 2010. The details shall be agreed upon when placing the order.
 - The Supplier is not entitled to assign pecuniary claims against the Client. In the case of such an assignment which is valid irrespective of the reasons the Client may always render performance to the Supplier, thus being discharged from his obligation. The Supplier shall not have a right of retention with respect to items belonging to the Client which were made available to the Supplier unless the right of retention was based on the same contractual relationship.
 - The place of performance and venue shall be Heidelberg. If the Supplier's place of business is abroad, the Client may, without being obligated to, sue the Supplier in this place, notwithstanding the 1st sentence hereof. The contractual relationship shall be governed by German Law to the exclusion of the United Nations Convention on contracts for the international sale of goods dated April 11, 1980. The contract and its terms shall be construed according to German law. If the English meaning differs from the German law meaning of this Agreement and its terms, the German meaning shall prevail.

II. Special conditions for purchasing (general)

- The Supplier shall be liable for being the owner of the goods, and for their passing to the Client's ownership free from third-party rights. An extended or more comprehensive reservation of ownership by the Supplier shall be excluded.
The Supplier guarantees without any restrictions that the goods do not infringe upon any third-party intellectual property rights, patents, trademarks, utility models, marks, other third-party rights or legal provisions. He shall be answerable for all consequences of such infringements. The Supplier shall indemnify the Client against all third-party claims raised against the Client on the basis of such infringements.
 - The Supplier guarantees that the goods are in compliance with the legal requirements, i.e. the hazardous substances regulation for clothing, leather and accessories (GefahrstoffVO); the AZO regulation; the regulation concerning the modification of the regulation on articles of daily use (BedarfsgegenständeVO) or similar protective provisions, as amended; the Supplier shall keep himself informed of the applicable provisions, especially those valid in the Client's country. Furthermore, the Supplier guarantees that the goods are in compliance with the Client's Quality Requirements for textile and leather, which are known to the Supplier and the applicable version of which, as amended, will be made available to the Supplier on request and which is documented on www.montana-txt.com.
 - In order to maintain these standards, the Supplier's goods will be collected from the Supplier's and tested by an independent material testing institution to be appointed by the Client prior to shipment to the Client. This institute will determine all digressions and defects and define the gross/net yardage on behalf of the parties according to the Client's fault compensation system known by the Supplier. The Client shall only be obligated to pay the net yardage determined. If the tests reveal that the goods are defective, the Supplier shall return the goods at his own expense. Any other claims or rights of the Client, in particular, any claims for material defects, shall not be affected. If the goods are initially sent to the Client without any complaints, the Client shall pay for the costs of the inspection of the goods unless the inspection reveals that the goods digress so far from the contractual agreements that they are 2nd choice. The claims specified in Section I.3 hereof shall not be affected by the inspection of the goods and the determinations made in this context; in particular, the determinations made in the course of the inspection are not equivalent to a limitation or waiver of making claims and rights, in particular, claims for material defects.
- The Supplier shall fill in all written product information and eco information received from the Client completely and return it immediately to the Client. If the Supplier fails to return one of these pieces of information after a reasonable additional period of time granted by the Client, the Client may rescind the contract and demand damages or reimbursement for his futile expenses. Section I.3 shall furthermore be applicable.
The terms of payment shall be as follows and as far parties do not agree otherwise:
10 days after delivery less 4% cash discount
30 days after delivery less 3% cash discount
60 days net after delivery.
 - Specifications
 - Partial deliveries of the Supplier shall not be permitted unless they have previously been agreed and correspond to the percentage portion of the entire order volume by colours in quantities suitable for production. If such a partial delivery is made prior to the fixed date, the Supplier shall not be entitled to payment from the Client prior to the fixed date. Settlement of invoices for partial deliveries prior to the fixed date shall be made subject to the normal terms of payment only if the partial deliveries and the dates thereof had been previously agreed with the Client and correspond to the percentage portion of the entire order volume by colours in quantities suitable for production.
 - All shipments (including partial deliveries) shall be accompanied by a delivery note.
 - All documents (including delivery notes) shall bear the Client's article number.

III. Special conditions for purchasing of animal products

- The Supplier hereby guarantees that he and/or his suppliers/subcontractors observe all national and international provisions relating to the protection of species/animals, in particular, the Washington Convention on International Trade in Endangered Species of Wild Fauna and Flora, the EC Regulation no. 3254/91 (ban on leghold traps), EC Regulations no. 35/97 and 338/97, EC Council Decision 97/602/EC, the German Federal Act on the Protection of Wildlife, the Ordinance on the Protection of Endangered Species, as well as the Code of Practise of the European Fur Breeders Association (EFBA).
- The Supplier shall, at the Clients request, disclose his sources of animal products and grant the Client visiting rights in order to verify the guaranty given in Section III.1.
- A violation of the provisions contained in Section III.1, 2 hereof constitutes a material breach of contract. The Client shall be entitled to rescind the contract in the event of such a breach. Any other claims shall not be affected.
- II.2 hereof shall apply, mutatis mutandis.