

## 1. General Provisions - Scope of Validity

1.1 The General Terms and Conditions are exclusively binding; terms and conditions opposing or differing from these terms and conditions are rejected if Dermalog Identification Systems GmbH (hereinafter „**Dermalog**“) has not explicitly approved them as binding in written and signed form (including fax and signed PDF sent by email).

Dermalog's General Terms and Conditions are binding even if Dermalog effects delivery without reservation to the ordering party in awareness of opposing and differing terms and conditions of the ordering party.

1.2 All agreements with Dermalog, amendments and/or changes of such agreements and/or these General Terms and Conditions shall be in writing.

1.3 Individually negotiated terms made in writing shall prevail these General Terms and Conditions.

## 2. Conclusion of the Contract

Orders placed with Dermalog shall be made in writing. Dermalog's offers are only binding if and when they have been explicitly confirmed as binding. Orders are accepted only by way of Dermalog's written confirmation or by performance.

## 3. Prices, Price Adjustment

3.1 If a cost reduction or cost increase – in particular due to collective agreements or changes in the costs for material – occurs after conclusion of a contract with an agreed delivery period of more than three (3) months, Dermalog reserves the right to adequately adjust its prices. Dermalog will prove these changes to the ordering party on request. The ordering party has a right to dissolve the contract (right of termination or rescission) if the increase exceeds 5 % of the agreed price.

3.2 All prices of Dermalog are net Ex Works Hamburg (Incoterms 2000), excluding further costs and expenses such as freight, customs and other import and export duties, special packaging, installation or assembly. Prices include standard Dermalog packaging. General sales tax (VAT) is not included in Dermalog's prices; it will be separately accounted for in the invoice at the issue date of the invoice.

## 4. Payments

4.1 Dermalog's invoices are payable without deduction within seven (7) calendar days after receipt of the invoice. Payments shall be made in EURO at the place of business of Dermalog; fees and costs shall be borne by the ordering party. Payments shall be due immediately in case of violation of substantial obligations of the agreement by the ordering party and/or circumstances that would reduce the creditworthiness of the ordering party, in particular discontinuation of payments and/or pendency of insol-

veny proceedings. In such a case, Dermalog is entitled to withhold outstanding deliveries and services or to perform them only in return for advance payment or security.

4.2 Dermalog reserves its right to accept payment by cheque (Scheck) or bill of exchange (Wechsel). Such acceptance (Erfüllung) will be pending until full discharge of the debt and without warranty for timely presentation or protesting.

4.4 Dermalog is entitled to charge interest since default. The right to claim higher damages shall remain unaffected thereby provided that Dermalog can prove that the damage was caused by delayed performance.

## 5. Delivery and Acceptance of Work Performance, Force Majeure

5.1 Delivery dates and times are only binding for Dermalog if Dermalog has approved them in writing. Delivery times shall comply with customary delivery times. On condition that the ordering party itself has fulfilled all its obligations, especially effected any down payments, delivery times begin on the day of confirmation of the order but not before all documents and information necessary for due performance of the order are received.

5.2 If the ordering party has any change requests after placing of the order, Dermalog will reserve its right to adequately prolong the delivery time even if Dermalog has given its unrestricted consent to such changes.

5.3 In the event of force majeure and/or other unforeseeable and extraordinary circumstances impeding Dermalog's ability without its fault to perform its duty to deliver in time (e.g. war, blockade, fire, natural catastrophes, revolt, strike, lockout, operations or transport hold-up, material and energy supply problems, official intervention, embargos, refusal of export, import or transit permits by official authorities) Dermalog is allowed, notwithstanding Section 14.4, to adequately prolong the delivery period or, if delivery becomes impossible or unreasonable, to rescind the contract totally or partially. The same applies if the aforementioned circumstances occur with Dermalog's suppliers and/or subcontractors. If the impediment lasts longer than three months, the ordering party is entitled, after granting a reasonable grace period with the threat of rejection, to rescind the agreement in relation to the part that has not been fulfilled. The ordering party cannot base any damage claims on such extension of delivery times or Dermalog's release from its obligations. Dermalog will use its best efforts to inform the ordering party immediately of any event of force majeure.

5.4 If binding dates or delivery times (also in the before mentioned cases) are not kept the ordering party may – except for fix-date purchases – only rescind the contract after the lapse of an adequate grace period set by the ordering party.

5.5 Dermalog may at all times perform partial deliveries,

partial work performance and partial services; in case of partial fulfilment the ordering party may only rescind the whole contract if partial fulfilment is of no interest for the ordering party.

- 5.6 Any damage claim of the ordering party against Dermalog based on a delayed fulfilment shall be limited to the usually predictable damage and 0.5% of the net value of the delayed delivery and/or work performance per completed calendar week of delay. The overall damage claim based on the delay shall be limited to a maximum of 5 % of the total contractual net value. This limitation shall not apply for claims based on delay if the delay is caused by gross negligence or intent. Further damage claims based on delay shall be excluded; however other rights of the ordering party shall not be affected.
- 5.7 If the ordering party is in delay in accepting deliveries or services or the work performance or fails to cooperate, Dermalog is entitled to claim damages, in particular for the storage of the contractual products. The risk of accidental deterioration and accidental loss shall pass to the ordering party as soon as the latter is in delay in accepting delivery.
- 5.8 If, after expiry of a grace period granted by Dermalog, the ordering party refuses to accept the delivery and/or the work performance or does not respond within five (5) business days to a written demand to accept or declares that it does not intend to accept the goods and/or the work performance, Dermalog can refuse to fulfil the agreement and can demand damages due to non-fulfilment. However, acceptance of the goods delivered and/or the work performed shall be deemed given by the ordering party in case of commencement of commercial use or after expiry of a time period of four (4) weeks after Dermalog has delivered the goods and/or finished the work performance owed to the ordering party for fulfillment of the contract, whichever occurs first.
- 5.9 Minor defects shall not entitle the ordering company to deny acceptance.

## **6. Transfer of Risk**

Delivery is made Ex Works Hamburg (Incoterms 2000). The risk of accidental loss or deterioration passes to the ordering party upon readiness for shipment/transport and receipt of a respective notice of readiness for shipment/transport.

## **7. Reservation of title**

- 7.1 Dermalog retains full title of ownership in the delivered products until full payment is effected.
- 7.2 The ordering party shall neither attach the delivered products nor assign them as security. The ordering party shall notify Dermalog immediately of any attachment, confiscation of the goods or other actions by third parties.

## **8. Set-off / right of retention**

- 8.1 The ordering party may only set-off claims with undisputed claims, claims which have been finally declared by judgment or claims that have been recognized by Dermalog.

- 8.2 The ordering party may only use the right of retention if the counterclaim derives from the same contractual relationship. A right of retention due to counterclaims that have not been recognized by Dermalog or have not been finally declared by judgment shall be excluded.

## **9. Intellectual Property Rights**

- 9.1 Patents, licenses and other intellectual property of Dermalog are and remain the exclusive property of Dermalog or its third party suppliers and shall not be transferred. This shall also apply to any form of source code and other documentation. If software is supplied as part of the delivery, this shall be provided to the ordering party solely for use in accordance with the agreement. The ordering party shall refrain from either sublicensing it, copying it or modifying it in any way and shall not alter, enhance, adapt, reverse-compile, de-compile or compile, reverse-engineer, disassemble or translate the products, including the software or any part thereof or otherwise create any derivative work based thereon.
- 9.2 All trademarks on the products shall remain the property of Dermalog. Any use of them shall require the prior written consent of Dermalog.
- 9.3 If a third party asserts justified claims against the ordering party due to infringement of an intellectual property right or copyright (hereinafter referred to as „property rights“) by products that have been supplied by Dermalog and used in compliance with the agreement, Dermalog shall be liable towards the ordering party as follows:

a) Dermalog may choose to either obtain a right to use the product, modify the product so that it does not infringe the property right or replace the product, each at its own costs. If such is not possible for Dermalog at reasonable conditions, Dermalog is entitled to take back the product and refund the purchase price.

b) The ordering party shall only be entitled to the claims under Section 9.3 lit a) under the condition that the ordering party notifies Dermalog immediately in writing of the claims asserted by a third party and the ordering party does not acknowledge an infringement of the contested property right. If the ordering party discontinues using the product in dispute, it shall be obliged to point out to the third party that this does not represent any acknowledgment that a property right has been infringed.

- 9.4 Claims of the ordering party shall be excluded if the ordering party is responsible for the infringement of the property right or if the infringement is caused by its own specific stipulations, by an application not foreseeable by Dermalog or by the fact that the product is modified by the ordering party or used in conjunction with products from third parties.
- 9.5 Any developments carried out by Dermalog or its sub-contractors at the request of the ordering party shall be the property – including the related intellectual property rights – of Dermalog, except as otherwise agreed upon between the parties in writing.

## **10. Claims for Defective Goods and Support Duties of the Ordering Party**

- 10.1 The ordering party is obliged to inspect the delivered

items immediately after receipt. Any written notification of defects has to be made to Dermalog within seven (7) days after receipt of the goods, in case of hidden defects within the same period after awareness of the defects. Otherwise all warranty claims are barred.

- 10.2 The ordering party shall use its best efforts to support Dermalog in its rendering of services and work performance related to the delivered products and in any subsequent fulfilment action.

## 11. Warranty claims

- 11.1 The contractual products are produced with due care and diligence. However, the parties agree that it is not possible in accordance with the state of the art to rule out software errors under all application conditions. Where this is not possible in accordance with the state of the art at the time of production, warranty claims shall be excluded.
- 11.2 Dermalog warrants that the contractual products are generally described accurately in the product information and are essentially able to be used within these limits. The technical data and descriptions in the product information by itself do not represent a warranty of specific qualities. Dermalog shall not be liable if the program functions do not satisfy the requirements of the ordering party or work together with own components of the ordering party in the selection chosen by it.
- 11.3 If Dermalog only supplies individual subcomponents (e.g. modules) and these are processed by the ordering party, the warranty shall be restricted to the supplied subcomponents.
- 11.4 Claims and rights of the ordering party due to defects shall initially be restricted to the right of Dermalog to rectification or subsequent fulfilment. Apart from this the legal provisions shall apply.
- 11.5 If the ordering party or a third party undertakes improper modifications or maintenance work, no warranty shall be given for these and the resultant consequences. If a malfunction or a defect is the consequence of the non-observation of operating or maintenance instructions, modifications of a programming or material nature, a replacement of parts or consumable materials that do not comply with the original specifications, all claims and rights of the ordering party due to defects shall lapse. This shall also apply if the defect is due to incorrect use, storage or foreign influence. Insignificant deviations from the contractually agreed stipulations shall not found any warranty claims.
- 11.6 If examination of a notification of defects reveals that the defects are not covered by the warranty, Dermalog shall be entitled to demand restitution of all expenses by the ordering party.
- 11.7 Without prejudice to Section 10.1, the warranty period is twelve (12) months starting with transfer of risk or acceptance in accordance with Section 5.7.

## 12. Liability

- 12.1 Dermalog will be liable according to the legal provisions for damage claims resulting from intent or gross negligence or the breach of a fundamental contractual duty. In case of unintentional breach of contract Dermalog's liability

is limited to foreseeable and typical damages.

- 12.2 The liability for negligent infringement of life, bodily integrity or health is unaffected; the same applies for mandatory liability under the German Act on Product Liability, „Produkthaftungsgesetz“. The liability for non-existence of a guaranteed specification remains unaffected as well.
- 12.3 The exclusion or limitation of Dermalog's liability also applies to the personal liability of Dermalog's employees, associates, workers, agents and auxiliary persons.
- 12.4 Damage claims made by the ordering party which result from Dermalog's ordinary negligence are barred after 12 months after transfer of risk. This does not apply to damages that are based on the infringement of life, bodily integrity or health.
- 12.5 Unless otherwise foreseen above all liability is excluded.

## 13. Transfer and assignment of rights and duties

The ordering party may only transfer or assign rights and/or duties arising out of the existing business relationship with Dermalog, especially the existing contracts, with Dermalog's prior written approval.

## 14. Export and Allowances

- 14.1 Parties are obliged to respect the export control rules valid in Germany.
- 14.2 The ordering party is obliged to provide Dermalog with all necessary information requested by official authorities, including but not limited to information on the intended use of the products or services with respect to such relevance for export control purposes, and exempts Dermalog from any possible non-disclosure obligation.
- 14.3 The ordering party is solely responsible for any necessary import licences and for compliance with all legal rules valid in the country of destination.
- 14.4 Dermalog will not be liable for any delay caused by the delayed adduction of a necessary allowance or licence, if Dermalog has applied for this allowance or licence immediately, at most three (3) months in advance of the agreed delivery date.
- 14.5 If it becomes apparent that an agreed contract or deal will be subject to authorization or may fall within the scope of an embargo, the parties shall commence early consultations, whether the already signed contract can be modified in a way that it will not be subject to authorization and will not be affected by an embargo anymore. If – in particular in case of explicit political statements or imposition of an embargo by the United Nations Security Council – it turns out that a contract or deal may not be carried out anymore, Dermalog is allowed to rescind the contract immediately.

## 15. Confidentiality

The ordering party is obliged to treat all information confidential to which it gains access in connection with the deliveries of Dermalog and to use such information only for the performance of the contract.

## 16. Miscellaneous

- 16.1 Place of jurisdiction is Dermalog's registered place of business; Dermalog retains the right to bring an action against the ordering party at the competent court at the private or business seat of the ordering party.
- 16.2 The contract shall be governed by the material laws of the Federal Republic of Germany; the UN Convention on the International Sale of Goods (CISG) does not apply.
- 16.3 Place of performance is the place of Dermalog's place of business unless the order confirmation provides otherwise.
- 16.4 In the event that any provision of this contract is or will become null and void, or cannot be implemented on legal grounds, this shall not affect the legal validity of the other provisions of this contract.
- 16.5 In case of any discrepancy between the German and the English version of Dermalog's General Terms and Conditions, the German version shall prevail.