

GABOR Shoes AG Terms and Conditions of Delivery and Payment

1. General, scope of application

- 1.1 The Terms and Conditions of Delivery and Payment below are based on the terms and conditions of the German Footwear Industry's Terms and Conditions Cartel of 4 February 2002.
- 1.2 All GABOR's deliveries and services are carried out solely on the basis of these Terms and Conditions of Delivery and Payment – subject to individual agreements between the contracting parties (§ 305b BGB [German Civil Code]). They apply only to entrepreneurs as defined in § 14 BGB and are an integral part of all contracts GABOR concludes with its contractual partners – referred to hereinafter as "Customers" – in relation to the deliveries and services offered by GABOR. The Terms and Conditions of Delivery and Payment also apply to future deliveries and services to the Customer, without GABOR having to refer to them again in each individual case.
- 1.3 Any terms and conditions of business of the Customer's conflicting with, at variance with or supplementary to these are not applicable, unless GABOR explicitly consents to them in writing. This requirement for consent also applies if GABOR carries out the delivery unreservedly, cognisant of the Customer's terms and conditions of business conflicting with its own.
- 1.4 GABOR reserves all proprietary rights, copyright and rights of use to illustrations, image and text files, drawings, calculations and other documents. This applies in particular to documents marked "Confidential" or "Personal". The Customer requires the explicit consent of GABOR in writing or text form before passing them on to third parties.
- 1.5 The goods may be re-sold in the online trade only with the consent of GABOR.

2. Conclusion of contract

- 2.1 All GABOR's offers are subject to change and without obligation, unless they are designated as binding.
- 2.2 If the Customer places a purchase order for goods or other orders, this is deemed a binding offer to GABOR.
- 2.3 GABOR can declare acceptance of offers in writing or text form or by delivering the goods to the Customer. Alternatively, the offer and its acceptance by GABOR can be transmitted by means of shared electronic media (e.g. EDI). Other than that, with purchase orders for goods the order is deemed accepted unless declined by GABOR explicitly in one of the abovementioned means of communication
 - within 20 working days for first orders and
 - within 10 working days for follow-up orders.

3. Place of performance, delivery

- 3.1 The place of performance for all GABOR services arising from the delivery contract is Mindelheim (GABOR logistics centre)

- 3.2 The goods are delivered at the risk of the Customer ex Mindelheim. Unless the terms and conditions below contain differing provisions, delivery is made within the European Economic Area (EEA) at GABOR's expense by the means most favourable for them. Deliveries outside the EEA require individual agreements in writing or text form.
- 3.3 Orders that do not reach a value of EUR 550.00 (with follow-up orders a value of EUR 275.00) for one delivery date are delivered carriage due. The Customer invariably bears the additional costs incurred by special requirements, e.g. for transport insurance, dispatch by courier, express or another type of dispatch different from the usual, labelling and special order picking.
- 3.4 GABOR decides on the packaging at its own due discretion. GABOR's standard packaging is not invoiced separately. In all other cases the Customer bears the costs of packaging. Costs of disposing of packaging are invariably borne by the Customer.
- 3.5 GABOR is entitled to make partial delivery, insofar as this is reasonable for the Customer.

4. Delivery periods, delay in delivery and default on acceptance

- 4.1 The delivery periods indicated by GABOR are only approximate, unless a fixed deadline was explicitly promised or agreed. Transactions for delivery by a fixed date are excluded in the case of first orders.
- 4.2 Should GABOR exceed a firmly agreed delivery period, an additional delivery period of 22 working days applies automatically without any further notice being given. Once this additional delivery period is over, the contract is deemed cancelled unless the Customer declines cancellation before the end of the additional delivery period and demands performance of the contract. In this case GABOR is required to state the binding delivery deadline promptly, i.e. without undue delay. Unless the Customer objects to this deadline promptly, it is deemed a fixed deadline. If GABOR does not state the delivery deadline promptly, the Customer can cancel the contract in a written declaration to GABOR or demand compensation once the additional delivery period of 22 working days is over and the legal requirements are met. Likewise the contract is deemed cancelled at the end of the additional delivery period of 22 working days, if before or during the additional delivery period GABOR calls on the Customer, stating a binding delivery deadline, to declare whether he insists on fulfilment of the contract by the fixed deadline stated and the Customer does not make a prompt statement or no agreement is reached on the deadline.
- 4.3 Instead of the automatic additional delivery period of 22 working days under 4.2 the Customer can, at any time after the end of a firmly agreed delivery period, set GABOR a period of 15 working days, stating that he declines performance of the contract at the end of this period. The period runs from the day on which the Customer sends the declaration by registered letter. At the end of this period the Customer is entitled to demand compensation if the delivery is not made on time, provided the legal requirements are met.
- 4.4 If the Customer does not accept the goods, even after another offer of delivery from GABOR, he is in default of acceptance if a fixed delivery deadline was agreed.
- 4.5 If the Customer is in default of acceptance or in culpable breach of other duties to cooperate, GABOR is entitled to demand compensation for loss or damage resulting therefrom, including any additional expenditure. Other than that, the risk of accidental loss or accidental deterioration of the goods is transferred to the Customer at the time he is in default of acceptance.

5. Interruptions in delivery

- 5.1 *Force majeure* or other severe disruptions not foreseeable when the contract was concluded (e.g. official orders, operational disruptions, strikes and lawful lockouts, suppliers' failure to supply GABOR or to supply it on time) entitle both GABOR and the Customer to extend the delivery or acceptance period by the duration of the hindrance, albeit up to a maximum duration of three weeks, provided the contractual party concerned is not responsible for the occurrences resulting in the delay.
- 5.2 At the end of the period under 5.1 the contracting parties are entitled to cancel the contract.

6. Reservation of title

- 6.1 The goods delivered remain the property of GABOR (reservation of title) until all (present and future) receivables arising from the ongoing business relations with the Customer are paid in full. Account balancing and acknowledgment of balance do not affect the reservation of title.
- 6.2 The Customer is entitled to re-sell or process the goods subject to reservation of title (reserved goods) in the ordinary course of business. The goods cannot be pledged or assigned by way of security without the consent of GABOR. The Customer is obliged to notify GABOR promptly of any third-party access to the reserved goods outside the Customer's ordinary course of business (e.g. distraints, other enforcement measures, damage, theft).
- 6.3 In the event of the reserved goods being resold, the Customer hereby assigns to GABOR by way of security all receivables from the acquirer arising from the resale. GABOR accepts the assignment. The Customer remains entitled to collect the receivables, provided he complies duly and properly with his payment obligations towards GABOR. GABOR can revoke the authorisation to collect if the Customer defaults on payment or there is a significant deterioration in his financial situation, especially if the Customer suspends his payments or declares his intention to suspend them.
- 6.4 If the Customer is in breach of contract, particularly in the case of non-payment of receivables due, GABOR is entitled to cancel the contract and reclaim the reserved goods. Furthermore, in the case of non-payment of receivables due, the reserved goods may only be reclaimed if GABOR set the Customer a reasonable time limit beforehand to no avail, unless such a time limit is unnecessary in view of the concrete circumstances.

7. Warranty

- 7.1 In the event of defects in the goods delivered, GABOR will opt for rectification or replacement delivery. If the rectification or replacement delivery fails (e.g. owing to impossibility, unreasonableness, rejection), the Customer is entitled to cancel the contract or reduce the purchase price; the Customer can assert claims for compensation or reimbursement of expenditure incurred in vain only in accordance with the terms of sub-article 8.
- 7.2 The Customer is required to notify GABOR of visible defects in writing or text form (notice of defects) within 10 working days of receipt of the goods, otherwise the goods are deemed approved.
- Other than that, the provisions of law apply, in particular § 377 HGB.
- 7.3 The rejected goods may only be sent back with the consent of GABOR and at no expense for GABOR, unless GABOR has not reacted to the notice of defects within 10 working days of receipt. If the complaint is justified, GABOR will refund the postage costs incurred.

- 7.4 In the event of complaints about individual pairs, it is permissible for the goods to be returned simultaneously with the notice of defects. GABOR is required to settle such complaints within 12 working days of receipt, otherwise the Customer is entitled to charge the purchase price of the individual pairs.
- 7.5 If the Customer has settled a consumer complaint by exchange without consulting GABOR, GABOR will opt for issuing a credit note or making a replacement delivery, provided the complaint is justified and it was possible to rectify the defects only at expense disproportionate to the value of the goods. The Customer runs the risk of GABOR turning the complaint down.
- 7.6 Neither GABOR nor the Customer may charge processing costs for complaints.

8. Limitation of liability

- 8.1 The Customer's claims for compensation are excluded, regardless of the legal basis, unless stated otherwise in these terms and conditions, including the provisions below.

GABOR is liable for compensation for injury to life, limb or health or for breach of cardinal contractual duties, as well as for other loss or damage due to an intentional or grossly negligent breach of duty by GABOR, its legal representatives or agents. Cardinal contractual duties are duties imposed on GABOR by the content of the contract for the attainment of the purpose of the contract, whose fulfilment is a prerequisite for enabling the proper performance of the contract in the first place, and which the Customer may regularly rely on.

- 8.2 In the event of a breach of cardinal contractual duties GABOR is liable only for typical contractual foreseeable loss or damage caused by ordinary negligence, unless it is a case of claims for compensation arising from injury to life, limb or health.
- 8.3 The limitations of 8.1 and 8.2 also apply in favour of GABOR's legal representatives and agents if the claims are made directly against them. They do not apply if GABOR has fraudulently concealed a defect or assumed a guarantee of quality of the goods, or in the event of claims under the *Produkthaftungsgesetz* [Product Liability Act].

9. Terms of payment

- 9.1 Invoices are issued on the day the goods are dispatched/delivery is taken of the goods; in the case of early delivery, the agreed delivery date is deemed the date of issue.
- 9.2 A deferral of the due date (value date) is categorically excluded.
- 9.3 If payment is made without loss within 10 calendar days of the invoice date, a 3% discount is granted. Otherwise the purchase price has to be paid net (without deduction) within 30 calendar days of the invoice issue date. The provisions of law governing the consequences of delayed payment apply.
- 9.4 Invoices can be consolidated from the 1st to the 10th, the 11th to the 20th, and the 21st to the last day of the month, on to the last day of this period.
- 9.5 The date of payment is the day on which the Customer sent the payment, as proven.
- 9.6 GABOR is also entitled to transmit invoices to the Customer electronically (e.g. by e-mail, EDI).
- 9.7 If the Customer defaults on payment of an invoice that is due, or there is a significant deterioration in his financial situation (e.g. imminent insolvency), GABOR can demand immediate payment for all deliveries already made, whilst cancelling the term of payment, of all invoices still outstanding without having to set a further deadline. For deliveries still

outstanding, GABOR is entitled to opt for either demanding prepayment and refusing delivery until that payment is made, or for cancelling the contract having set a reasonable deadline; this does not affect the provisions of law governing the dispensability of setting deadlines.

- 9.8 Should the Customer default on payment, GABOR is entitled to reclaim from the Customer goods delivered subject to reservation of title, having set a reasonable deadline. GABOR is entitled to sell the reclaimed goods to third parties at its own equitable discretion; the net selling price achieved is to be credited minus the selling costs to the Customer's liabilities.
- 9.9 Should the Customer default on payment, the risk of accidental loss or accidental deterioration of the goods is transferred to the Customer at the time he is in default, unless it has already been transferred beforehand.

10. Set-off, right of retention

- 10.1 The Customer is entitled to set-off against GABOR's receivables due only if he is giving notice of defects or asserting counterclaims from the same contract of purchase.
- 10.2 Other than that, set-off is admissible only with uncontested counterclaims or counterclaims established in law. The Customer may exercise a right of retention only if the counterclaim arises from the same contract of purchase.

11. Applicable law, venue

- 11.1 These terms and conditions are subject to the law of the Federal Republic of Germany to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).
- 11.2 The contractual language is German. The same applies to all contracts based on these Terms and Conditions of Delivery and Payment. Versions of the Terms and Conditions of Delivery and Payment in other languages (e.g. English and French) are for information purposes only. In the event of contradictions or ambiguities, the German version always takes precedence.
- 11.3 If the Customer is a business owner, legal entity under public law or a special fund under public law, the venue for all disputes between the contracting parties arising from the contractual relationship is Traunstein. GABOR is entitled to file a lawsuit against the Customer at the latter's general place of jurisdiction.
- 11.4 Should one of the above provisions be partially or wholly invalid, this will not affect the validity of the other provisions. The invalid provision is to be replaced by one that best approximates the economic intention.

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