

**GENERAL TERMS AND CONDITIONS OF "DAS GEWAND GmbH",  
March 2010**

**§ 1  
SCOPE**

1. The General Terms and Conditions of DAS GEWAND shall apply exclusively; deviating terms and conditions of the Customer which are not explicitly acknowledged by DAS GEWAND, in particular conditions of purchase, shall not be binding for DAS GEWAND, even if these are not explicitly opposed by DAS GEWAND. The following General Terms and Conditions shall also apply if DAS GEWAND unconditionally performs the order in the knowledge that the Customer's terms and conditions may conflict with or deviate from its own.
2. The following General Terms and Conditions shall also apply to all future business relations with the Customer even if they have not been explicitly agreed again.
3. All previous versions of the General Terms and Conditions (also referred to as General Conditions) hereby lose their validity and are replaced by this version.
4. The following General Conditions shall apply only for companies as defined by Para. 310 Sub-section 1 BGB (Federal Law Gazette).

**§ 2  
OFFER DOCUMENTATION / PATTERNS**

We shall retain ownership of and copyright on illustrations, drawings, calculations and, in particular, on patterns, as well as on other documents. The Customer is not entitled to make available the above-mentioned documents, especially patterns, to third parties without the consent of DAS GEWAND.

**§ 3  
CONCLUSION OF THE CONTRACT, ADDITIONAL AGREEMENTS**

1. All agreements that have been made by the Customer and DAS GEWAND relating to the performance of the Contract are documented in writing. All agreements and additional agreements – particularly those that amend or supplement these provisions (extension of Contract) – require written confirmation from the management of DAS GEWAND to be legally valid.

2. Details about price, time of performance and quality shall apply only to the order volume originally agreed in writing (number of items, etc.). Agreements about payment and time of performance with regard to extensions of Contract must be confirmed in writing. An agreement with the original orderer about time of performance (première) does not in itself constitute a warranty.

#### **§ 4**

#### **PRICES**

1. The agreed prices are quoted ex works and are the prices for the originally specified number of individual items of a garment or costume according to the agreed features (e.g. ornaments, embroidery, dyes). A flat rate based on a certain percentage shall also be charged for use of material. If applicable an extra charge will be made for the fitting.

Travel expenses and expenses for accommodation as well as the cost of a production assistant, for example, the costs of documenting use of material, additional costs for material orders by DAS GEWAND, additional costs for material research and the costs of communicating with third parties shall be charged separately. These are the costs of services that are charged separately. These also include the supervision of final fittings by staff from DAS GEWAND.

2. Statutory VAT is not included in the prices of DAS GEWAND; the required legal amount is shown separately on the invoice.

3. For extensions of Contract according to § 1 Item 1, DAS GEWAND is entitled to charge a surcharge.

#### **§ 5**

#### **TERMS OF PAYMENT**

1. DAS GEWAND is entitled to request the following part payments from the Customer:

- an initial instalment amounting to 30% of the agreed price immediately after the Contract has been concluded
- a second instalment amounting to 40% of the agreed price immediately after the first fitting
- a third instalment amounting to 30% of the agreed price immediately after delivery.

The payments are due immediately after receipt of the invoice by the Customer. A payment is not deemed to have been made until DAS GEWAND can dispose freely of the amount. DAS GEWAND is entitled to offset credits against the Customer's current balance.

2. Representatives of DAS GEWAND are only entitled to accept payments with explicit written collection authority, of which proof must always be provided. If the representative presents the Customer with an invoice that has been appropriately receipted by DAS GEWAND for the individual case this is equivalent to a collection authority.

3. If several claims exist against the Customer, DAS GEWAND is free to set off these claims against obligations.

4. The Customer is only entitled to rights of retention against DAS GEWAND if these are based on the same contractual relationship. He is only entitled to set off claims against DAS GEWAND with undisputed or legally determined claims.

5. If the customer falls behinds with payments, DAS GEWAND is entitled to demand interest on arrears amounting to 8% points above the base interest rate of the Deutsche Bundesbank. DAS GEWAND reserves the right to assert claims for other damage caused by default.

6. For every reminder sent out after delayed payment, the Customer is charged a flat rate of EUR 5.00.

7. If the Customer fails to observe the conditions of payment, in particular, if he falls behind with the payment of an invoice or if a significant deterioration of the Customer's financial circumstances occurs which jeopardizes the claim to the payment of the purchase price, DAS GEWAND is entitled to withdraw from the Contract immediately and to demand

compensation from the Customer. Furthermore, DAS GEWAND is entitled to perform every subsequent order only against prepayment or to demand security. All claims against the Customer shall also be payable immediately irrespective of agreed due dates of payment.

## **§ 6**

### **PREMATURE TERMINATION OF THE CONTRACT / CANCELLATION**

If the Customer terminates the Contract prematurely, i.e. during ongoing production, without DAS GEWAND having given cause for the termination, he is obliged to pay the agreed amount minus costs saved. This agreement shall also apply if individual parts of a garment or costume no longer have to be produced contrary to the original order. In particular, the Customer is obliged to pay for the staff who have been scheduled to work on the production, if DAS GEWAND is provably not in a position to deploy these workers elsewhere.

## **§ 7**

### **CUSTOMER'S OBLIGATION TO COOPERATE**

1. The Customer is responsible for making fitting appointments possible. It is pointed out that he will otherwise be in default of acceptance according to Para. 293 ff. BGB and that as a result DAS GEWAND is entitled to damage claims from a positive violation of contractual duty. DAS GEWAND assumes no liability for a delay resulting from this.

2. The Customer is also obliged to inspect the garments in terms of quality and intended use during fittings.

## **§ 8**

### **ACCEPTANCE**

1. The costumes shall be accepted by the Customer in partial deliveries, i.e. with the first fitting or presentation of the prototype, he accepts material, colour and interpretation of the concept (pattern) of the costume as contractually compliant. Subsequent amendments in this regard are already deemed extensions of Contract under the terms of § 1 Item 1.

2. After the Customer has tested the suitability of the costumes from the first fitting up to and including the final fittings, acceptance in terms of fit and final finish shall occur at the latest at the premiere if the Customer has not explicitly declared acceptance prior to this time.

**§ 9**

**RETENTION OF TITLE**

1. DAS GEWAND retains title of the goods until all claims resulting from an ongoing business relationship have been settled in full.

2. The Customer is obliged to treat the goods carefully.

3. The Customer shall inform DAS GEWAND immediately if third parties obtain access to the goods, for example, in the event of seizure, or if the goods are damaged or destroyed. The Customer shall notify DAS GEWAND if the goods change ownership or he changes his business location

4. DAS GEWAND is entitled to withdraw from the Contract and demand the return of the goods if the Customer breaches this Contract, in particular if he falls behind with payments or violates an obligation under the terms of Items 2. and 3. of this provision in the Contract. Taking back the goods does not constitute withdrawal from the Contract by DAS GEWAND unless DAS GEWAND has explicitly declared this in writing. Seizure of the goods by DAS GEWAND always constitutes withdrawal from the Contract. After taking back the goods, DAS GEWAND is entitled to use the goods; the proceeds of sale are used to reduce the Customer's debts – minus appropriate utilization costs.

5. The Customer is entitled to resell the goods in the ordinary course of business if has not fallen into arrears with the payment of these goods. The Customer already assigns claims arising from resale or another legal basis (insurance, unlawful act, etc.) with regard to the retained goods by way of security to DAS GEWAND including all ancillary rights and securities which he accrues from the resale of the goods against his purchaser or third parties, irrespective of whether the goods have been sold without or after processing. DAS GEWAND hereby accepts the assignment. The Customer is still authorized to collect these claims after the assignment. This shall be without prejudice to DAS GEWAND's authority to collect the claims itself. However, DAS GEWAND agrees not to collect the claims as long as the Customer fulfils his payment obligations from the collected proceeds, does not fall behind with payments and, in particular, no application for insolvency proceedings is made or payments are suspended. If this is the case, however, DAS GEWAND can demand that the Customer informs DAS GEWAND of the assigned claim and its debtor, provides all details necessary for collection, supplies all necessary documents and notifies the debtors/third parties of the assignment.

6. Until DAS GEWAND has received all payments resulting from the Contract, the Customer may neither pawn nor assign the goods by way of security nor assign claims of DAS GEWAND against him to third parties.

7. The Customer may not agree on a prohibition of assignment with his buyers.

8. In the event of seizure or intervention by third parties, the Customer shall notify DAS GEWAND immediately in writing so that DAS GEWAND may file third party proceedings or take other necessary measures. In the event of seizure/execution, the Customer shall immediately send DAS GEWAND a copy of the bailiff's report and a statutory declaration indicating that DAS GEWAND still has retention of title on the seized goods. If the Customer violates these obligations, he shall be liable for all resulting damage.

9. DAS GEWAND is obliged to release the securities to which it is entitled at the request of the Customer insofar as the value of the securities which is realisable for DAS GEWAND exceeds the claims to be secured by more than 10%. DAS GEWAND is responsible for selecting the securities to be released.

## **§ 10**

### **DELIVERY AND DELAY IN DELIVERY**

1. For the scope of the delivery, the quotation and confirmation of order from DAS GEWAND are binding, in the case of a quotation by DAS GEWAND with a set deadline and acceptance within the time limit, the quotation is binding if no confirmation of order is available on time. Additional agreements and amendments require written confirmation by DAS GEWAND.

2. DAS GEWAND is not obliged to supply the patterns with the costumes.

3. If there is a default of acceptance on the part of the Customer or if he culpably violates his obligations to cooperate, DAS GEWAND is entitled to demand compensation for any damage he incurs in this respect, including any additional expenses. In this case, the risk of accidental loss or deterioration of the goods sold passes to the Customer from the moment in which he is in default of acceptance or default of debtor.

4. Partial deliveries are permissible. They are considered independent deliveries.

5. The choice of transport route and means of transportation is left to DAS GEWAND with no liability whatsoever.

6. DAS GEWAND is subject to the correct and punctual delivery of required materials.

7. The term of delivery which is to be agreed separately begins on the day on which the written confirmation was dispatched by DAS GEWAND, however, not before all order details have been clarified. The delivery date is deemed to be complied with if the goods are dispatched or – if, by way of exception, the Customer has arranged for their collection – their readiness for dispatch has been advised by DAS GEWAND. Compliance with the delivery deadline presupposes the punctual fulfilment of all of the contractual obligations of the Customer.

8. If DAS GEWAND is unable to fulfil its delivery commitment due to reasons beyond its reasonable control – e.g. interventions by the authorities, industrial disruption, strike, lock-out, delay in the delivery of important raw materials – , also in the case of suppliers of DAS GEWAND, which DAS GEWAND was unable to prevent despite reasonable care being taken in accordance with the circumstances of the case, the delivery term shall be extended in a reasonable measure if the delivery or service has not become impossible.

In the event of force majeure, the Customer and DAS GEWAND are entitled after a period of eight weeks to declare their withdrawal from the part of the Contract that has not been fulfilled. Should delivery or services become impossible as a result of the said events, DAS GEWAND is released from its delivery obligation. If the delivery term is extended as a result of the above events or if DAS GEWAND is released from its delivery commitment, the Customer is entitled to no claims for damage from DAS GEWAND as a result of this.

9. If the above circumstances occur for the Customer, the same legal consequences and effects shall apply to his obligation to accept.

10. If DAS GEWAND falls behind schedule, the Customer must grant an appropriate additional respite in writing. If this respite passes without result, he may withdraw from the Contract insofar as the goods have not been delivered on time. Default on performance does not occur if the Customer fails to fulfil his obligations vis-à-vis DAS GEWAND on time and in full.

## **SHIPMENT AND PASSING OF RISK**

1. Dispatch shall occur at the expense of the Customer unless otherwise agreed.
2. The risk of accidental loss and accidental deterioration of the goods passes with the transfer, in the case of sales shipment with the handing over of the goods to the forwarding agent, carrier or person or body specified to carry out shipment, to the Customer.
3. If shipment is delayed as a result of circumstances for which the Customer is responsible, the risk passes to the Customer from the day on which the readiness for shipment is advised.
4. Delivered items must be received by the Customer even if they have slight defects irrespective of the rights resulting from § 12 of these General Terms and Conditions.

### **§ 12**

#### **INSURANCE**

1. Insurance against damages in transit, losses in transit or breakage occurs only at the explicit request of the Customer and at his expense and on his own account.
2. The nature and extent of obvious damages must be reported immediately after receipt of the goods by the Customer in writing.
3. Damages in transit and missing parts must be declared immediately after arrival of the consignment by means of an **official statement of facts issued by railroad authorities** or proof of a similar nature and certified on accompanying documents (letter of consignment, etc.).
4. Any claims resulting from damages in transit and missing parts shall be assigned to DAS GEWAND at the request of the Customer.

### **§ 13**

#### **WARRANTY**

1. Claims of the Customer based on defects exist only if he has fulfilled his duties to examine the goods and provide notification of defects according to § 377 HGB (German Commercial Code).



2. DAS GEWAND warrants defects at its discretion by subsequent improvement or product replacement.

3. If subsequent improvement fails, the Customer may on principal at his discretion demand a reduction in payment, a rescission of the Contract (withdrawal) or compensation. In the case of a minor violation only, in particular in the case of only minor defects, however, the Customer has no right of rescission.

4. If the Customer chooses to withdraw from the Contract on the grounds of defect of title or material defect following failed subsequent performance, he is not eligible for any claims for damage on the grounds of the defect.

5. If the Customer chooses to claim compensation after failed subsequent performance, the goods shall remain with the Customer insofar as this is reasonable. Compensation is limited to the difference between purchase price and the value of the faulty goods. This shall not apply if DAS GEWAND maliciously violated the Contract. The above limitation of liability does not apply to the liability of DAS GEWAND for damages resulting from injury to life, body or health resulting from a negligent or intentional breach of duty by DAS GEWAND, its legal representative or persons assisting in the performance of obligations.

6. New goods have a warranty period of one year from the time of delivery of the goods. The limitation period in the event of supplier's recourse according to §§ 478, 479 BGB shall remain unaffected. Used goods are sold to the exclusion of liability for material defects. The statutory warranty period applies to the liability of DAS GEWAND for damages resulting from injury to life, body or health resulting from a negligent or intentional breach of duty by DAS GEWAND, its legal representative or persons assisting in the performance of obligations.

7. The Customer does not receive guarantees in the legal sense from DAS GEWAND.

## **§ 14**

### **LIABILITY**

1. In the case of slightly negligent breaches of duty of important contractual obligations which have to be fulfilled for the correct performance of the Contract and on whose fulfilment the Customer can regularly depend, the liability of DAS GEWAND is limited to the kind of damage that is predictable and typical and average for this kind of goods.

2. DAS GEWAND is not liable in the case of slightly negligent breaches of insignificant contractual obligations.

3. The above limitations of liability do not concern claims from the Customer resulting from product liability. Furthermore, the limitations of liability do not apply to damages resulting from injury to life, body or health resulting from a negligent or intentional breach of duty by DAS GEWAND, its legal representative or persons assisting in the performance of obligations.

4. Claims for damages by the Customer on the grounds of a defect fall under the statute of limitation after one year from the delivery of the goods. This does not apply if DAS GEWAND is accused of fraudulent intent. The statutory warranty period applies to the liability of DAS GEWAND for damages resulting from injury to life, body or health resulting from a negligent or intentional breach of duty by DAS GEWAND, its legal representative or persons assisting in the performance of obligations.

5. If the liability of DAS GEWAND is excluded or limited, this also applies to the personal liability of staff, employees, co-workers and persons assisting in the performance of obligations of DAS GEWAND.

6. Liability that goes beyond the liability specified in the above Item is excluded without consideration of the legal nature of the asserted claim. This applies, in particular, to claims for damages resulting from default at Contract conclusion, or another breach of duty or through claims in tort for damage to property according to § 823 BGB. This limitation also applies if, instead of a claim for damages, the Customer demands compensation for his expenses rather than the performance of services.

## **§ 15**

### **DATA PROTECTION**

In compliance with § 26 BDSG (Federal Data Protection Act), DAS GEWAND points out that it records the necessary customer data in the ordinary course of business. All personal data will naturally be treated confidentially.

## **§ 16**

### **Place of performance, jurisdiction, applicable law**

1. If the Customer is a businessman, the place of performance and jurisdiction for deliveries and payments (including actions arising from dishonoured bills and cheques) and all disputes arising between DAS GEWAND and the Customer based on the Contract entered into by DAS GEWAND and the Customer are the registered office of DAS GEWAND. DAS GEWAND, however, is also entitled to bring action against the Customer in his place of residence or business location.

2. The relations between the parties to the Contract are subject exclusively to the law of the Federal Republic of Germany. Application of the UN Sales Law (CISG) is excluded.

### **§ 17**

#### **SEVERABILITY CLAUSE**

If one or several of the above provisions becomes either fully or partially invalid, the other terms shall remain unaffected.