

Additional Clause

Extended Retention of Title

Contract sample of the ZVEI - German Electrical and Electronic Manufacturers' Association – November 2005 –

The following single and extended retention of title shall be agreed:

1. Items pertaining to the Supplies ("Retained Goods") shall remain the property of the Supplier until each and every claim the Supplier has against Purchaser on account of the business connection has been fulfilled. If the combined value of the security interests of the Supplier exceeds the value of all secured claims by more than 10 %, the Supplier shall release a corresponding part of the security interest if so requested by the Purchaser. Upon release the Supplier reserves the right to choose between different security interests.
2. For the duration of the retention of title, the Purchaser may not pledge the Retained Goods or use them as security, and resale shall be possible only for resellers in the ordinary course of their business and only on condition that the reseller receives payment from its customer or makes the transfer of property to the customer dependent upon the customer fulfilling its obligation to effect payment.
3. If the Purchaser resells the retained goods, the Purchaser shall relinquish forthwith to the Supplier any future claims from the resale to its customers, together with all accessory rights – including any payment balance requests – without the requirement to issue any further declarations. If the Retained Goods are resold together with other items without a single price being agreed for the Retained Goods, the Purchaser shall relinquish to the Supplier that part of the total price requested that corresponds to the reserved goods price invoiced by the Supplier.
- 4.a) The Purchaser shall be entitled to process the Retained Goods or mix or combine them with other items. The processing activities shall be performed for the Supplier. The Purchaser shall keep the resulting new item for the Supplier with the due care and diligence of a proper businessman. The item shall be deemed to be Retained Goods.
- b) The Supplier and Purchaser shall agree that if the Retained Goods are combined or mixed with other objects that do not belong to the Supplier, that the Supplier shall be awarded co-ownership in the new object at the proportionate amount which results from the ratio of the value of the combined or mixed Retained Goods to the value of the remaining goods at the date of performing any processing activities. The new item shall thus be deemed as Retained Goods.
- c) The provision concerning the relinquishing of claims in accordance with No. 3 shall also apply to the new item. The relinquishing, however, only applies up to the value of the amount corresponding to the value of processed, combined or mixed Retained Goods that were invoiced by the Supplier.
- d) If the Purchaser combines Retained Goods with real estate or movable assets, then the Purchaser will also assign his claim which has been awarded to him as remuneration for such a combination - without the requirement to issue any further declarations - to the Supplier as a security with all accessory rights and in ratio to the value of the combined Retained Goods to the remaining combined goods at the time of combination.
5. Subject to revocation at any time, the Purchaser is authorised to collect assigned claims arising from the resale. On the basis of an important and sound reason, in particular with regard to default in payment, suspension of payment, the petition to institute insolvency proceedings, and the protest of bills, or in the event that substantiated indications for an excessive indebtedness or imminent insolvency on the part of the Purchaser are presented, the Supplier is entitled to revoke the Purchaser's authorisation for the collection of claims. After prior warning - under observance of an adequate deadline - the Supplier, in addition, may disclose the assignment of securities, may utilise the assigned claims and may demand the Purchaser's disclosure of the assignment of security towards the customer.
6. The Purchaser shall notify the Supplier forthwith of any pledges, seizures or other alienation or act of intervention by third parties. Should an authorised interest be substantiated, the Purchaser shall provide the Supplier with the required information and the required documents in order to assert a claim of the Suppliers rights.
7. In the case of non-performance of contractual obligations by the Purchaser, especially with respect to default in payment, and after an unsuccessful expiry of an adequate time limit set to the Purchaser to make payment due, the Supplier shall be entitled to withdraw from the contract and to take back the Retained Goods; the legal provisions regarding the dispensability of setting a deadline remain unaffected therefrom. The Purchaser shall be obliged to surrender the Retained Goods. In the event that the Retained Goods are taken back or claimed, or pledged by the Supplier, the contract cannot be terminated unless expressly stated by the Supplier.