

Extended ownership proviso

Amendment Clause

Contract sample of the ZVEI –Central Association for Electro-technical and Electronic Industries (charitable trust).

- Status November 2005 -

The following simple and extended ownership proviso is agreed upon:

1. The objects of the deliveries (the goods subject to retention of title) remain the property of the supplier up until fulfilment of all claims due to him arising from the business relationship vis-à-vis the orderer. To the extent that all security rights which the supplier is entitled to exceed the amount of all secured claims by more than 10% the supplier has the choice upon approval of two differing security rights.
2. During the coming into existence of the ownership proviso the orderer is denied any pledging or transfer by way of security and the forward sale is only permitted to re-sellers in the normal course of business and only under the condition that the re-seller receives payment from its purchaser or stipulates the proviso that the ownership is not assigned to the customer until the latter has fulfilled its payment obligations.
3. If the orderer sells on the goods subject to retention of title then he is already assigning to the supplier, for the sake of a security, all his future accounts payable from the onward sale vis-à-vis his customer together with all ancillary rights – including any possible payment balance requests - without any unit price having been agreed upon for the goods subject to retention of title, then thereby the orderer assigns to the supplier that part of the overall price payable which corresponds to the price of the goods subject to retention of title invoiced for by the supplier.
- 4.a) The orderer is allowed to process the goods subject to retention of title or to process them or to mix or combine them with other objects. The orderer then safeguards the newly arisen object with the care of a diligent businessman. The new object is deemed to be goods subject to retention of title.
- b) Supplier and orderer are already in agreement that in the case of linking or incorporation with other objects not the property of the supplier it is certainly the case that co-ownership in the new object is due to the supplier pro rata in the amount of his share which arises from the ratio of the value of the linked or incorporated goods subject to retention of title to the value of the other goods at the point in time of the linking or incorporation. To this extent the new object is deemed to be goods subject to retention of title.
- c) The regulation on the assignment of accounts payable as per Clause no. 3 is also valid for the new object. However, the assignment is only valid in an amount up to the sum of the value of the processed, linked or incorporated goods subject to retention of title invoiced for by the supplier.
- d) If the orderer of the goods subject to retention of title combines the goods subject to retention of title with real estate or with movable assets then, without any further declarations being necessary, he assigns to the supplier also all of his accounts payable which are his entitlement as remuneration for the linkage together with all ancillary rights, by way of security, in the amount of the ratio of the value of the goods subject to retention of title to the remaining linked goods at the point in time of the linkage.
5. Up until repeal the orderer is authorised to collect the assigned accounts receivable from selling on. In the case of the existence of a good reason, in particular in the case of arrears of payment, cessation of payment, opening of insolvency proceedings, act of protest or substantiated points of evidence for any overdebtedness or threatening insolvency on the part of the orderer the supplier is entitled to repeal the direct debit authorization of the orderer. Furthermore the supplier can, after prior warning and with adherence to an appropriate period of grace, exploit the assigned accounts receivable as well as demanding the disclosure of the assignment of security by the orderer vis-à-vis the customer.
6. In the case of pledges, seizures or other enactments or interventions by third parties the orderer must immediately notify the supplier. In the case of the furnishing of prima facie evidence of a justifiable interest the orderer must supply the supplier with the necessary items of information to lodge claims for his rights vis-à-vis the customer and also hand over the requisite documentation for this.
7. In the case of infringements of obligations on the part of the orderer, in particular of arrears in payment, the supplier, after the expiry of a period of grace granted to the orderer for performance as well as return of goods, is also entitled to withdrawal; the legal stipulations as to the waiving of the setting of deadline periods remains unaffected. The orderer is obligated to delivery. The recollection of goods and/or the lodging of the claim of property proviso or the seizure of the goods subject to retention of title by the supplier do not imply withdrawal from the agreement unless the supplier has expressly declared this.