

# Supplementary Clause: Retention of Title

English translation of the model agreement issued by the ZVEI – the German Electrical and Electronics Manufacturers' Association. Status: November 2005

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

1. The goods supplied shall remain the property of the supplier until all claims on the purchaser arising from the business transaction have been met in full ("ROT goods"). Should the combined value of all goods to which title is retained exceed the value of such claims by more than 10%, the supplier may release a corresponding portion of the ROT goods from this clause at the purchaser's request; in such case, the supplier shall have the right to choose which ROT goods are released.
2. During the period of retention of title, the purchaser may not assign the ROT goods or use them as security and may only sell them to resellers in the course of ordinary business operations on the condition that the reseller obtains payment for them from its customers or makes transfer of title to the customer conditional upon fulfilment of the customer's payment obligations.
3. In case the purchaser should sell the ROT goods, title to all future claims on its customers in connection with such sale, together with all subsidiary rights – including any receivables – is hereby assigned to the supplier as security without the need for any separate declaration to this effect. In case ROT goods should be sold together with other items without a separate price being agreed for the ROT goods, the purchaser hereby assigns to the supplier the portion of the overall price corresponding to the amount invoiced by the supplier for the ROT goods.
  - 4.a) The purchaser is permitted to process the ROT goods, or to mix or combine them with other items. Processing shall be performed for the supplier. The purchaser shall store the resultant new items for the supplier with due professional care. The new items shall be deemed to be the ROT goods.
  - b) The supplier and purchaser hereby agree that if the goods are mixed or combined with other items that do not belong to the supplier, the supplier shall receive co-ownership of the new items based on the proportionate value of the ROT goods in the mixed or combined items relative to the value of the other components at the time of mixing or combination. The new items shall thus be deemed to be the ROT goods.
- c) The ruling on the assignment of receivables set out in No. 3 shall also apply to the new items. However, assignment shall only apply up to the amount invoiced by the supplier corresponding to the ROT goods processed, combined or mixed.
- d) If the purchaser combines the ROT goods with land or movable assets, it shall, without any further declaration, also assign its claims as compensation for such combination, together with all subsidiary rights, to the supplier up to the proportionate value of the ROT goods included in the new items relative to the other components.
5. The purchaser is hereby authorised until further notice to collect the assigned receivables relating to the resale of the goods. The supplier may revoke this authorisation with cause, especially default of payment, suspension of payment, the initiation of insolvency proceedings, the protest of bills of exchange or substantiated indications of over-indebtedness or imminent insolvency of the purchaser. Further, providing prior warning is given and a suitable deadline is observed, the supplier may disclose the assignment of such security, utilise the assigned claims and demand that the purchaser discloses the assignment of the security to customers.
6. In the event of assignment, seizure or other alienation of the goods or intervention in these rights by third parties, the purchaser notify the supplier at once. If a justified interest should be established, the purchaser must provide the supplier with the information required to enforce its claims against customers and hand over any necessary documents.
7. If the purchaser should fail to fulfil its obligations, especially in the case of default of payment, the supplier may – upon expiry of a reasonable period notified to the purchaser – recover the ROT goods and withdraw from the contract. This shall not affect the statutory provisions permitting dispensation of such periods of notice. In such case, the purchaser shall be required to return the ROT goods. The recovery of the ROT goods or the enforcement of title thereto or seizure of the ROT goods by the supplier shall not constitute withdrawal from the contract, unless this is specifically declared by the supplier