

General Terms and Conditions of Supply and Payment of the Coating and Printed Ink Industry

Translation – only the German version is legally binding

I. Scope

1. Our Terms and Conditions of Supply and Payment set out below are intended to apply only to undertakings, legal persons governed by public law and special funds under public law pursuant to § 310(1) of the German Civil Code. They shall not apply to consumers.
2. Our Terms and Conditions of Supply and Payment shall apply on an exclusive basis. Any terms and conditions of the buyer that contradict or depart from our Terms and Conditions of Supply and Payment shall not be incorporated into contracts unless we have expressly agreed in writing to their application. Our offers are subject to confirmation, unless expressly agreed otherwise.
3. Any side agreements, amendments or exceptions to these Terms and Conditions must be agreed to in writing.

II. Prices

1. The prices agreed shall be subject to value added tax as applicable on the date of delivery.
2. The weights, numbers and quantities determined by us shall be deemed to have been accepted unless objected to properly by the buyer following delivery.

III. Technical advice concerning application

1. In the event that we provide any advisory services, such advice is provided to the best of our knowledge and is non committal. Any specifications and information concerning the suitability and application of the goods supplied shall not release the buyer from the requirement to carry out its own inspections and tests. This shall apply in particular in the event of mixing with thinning agents, hardeners, supplementary paints or other components not obtained from us.

IV. Delivery

1. The buyer shall collect the goods on the agreed delivery date or, if no binding delivery date has been agreed to, promptly following notification that the goods are ready at the place of performance pursuant to clause IX.1. In the event that the buyer is late in accepting the goods, we shall be entitled at our choice to dispatch the goods or – if not otherwise possible, in case of emergency also outdoors – to store them, in both cases at the cost of the buyer. Should this occur, we shall bear no liability for the accidental destruction of, loss of or damage to the goods. If the goods are stored by us, we shall be entitled to invoice the goods and to demand payment upon expiry of a period of one week after the failure to accept the goods.
2. If it is agreed notwithstanding paragraph 1 that we are to be obliged to dispatch the goods, transport shall occur at the cost of the buyer and we shall be entitled to choose the means of transportation along with the route at our discretion, unless the buyer has issued specific instructions to us regarding this matter. Risk shall pass at the time the goods are handed over by us to the carrier.
3. Partial deliveries shall be permitted where reasonable for the buyer.
4. Any significant, unforeseeable breakdowns, late delivery or non-delivery on the part of our suppliers for which we are not at fault in addition to e.g. stoppages of operations resulting from a lack of raw materials, energy or labour, strikes, lockouts, difficulties in procuring means of transportation, traffic disruptions, governmental action or force majeure occurrences affecting us or our sub-suppliers shall extend the delivery period by the duration of the disruption of performance, where this has a significant effect on our ability to supply the goods. We shall promptly inform the buyer of the start and finish of any such impediments. If delivery is delayed as a result by more than one month, the buyer shall be entitled and we shall also be entitled to withdraw from the Contract with regard to the quantity affected by the disruption to delivery, without any right to claim damages. The foregoing shall be without prejudice to the buyer's statutory right of withdrawal in the event of a disruption to delivery on account of a circumstance for which we are at fault.
5. If delivery is made using returnable containers, these shall be fully emptied and sent back, carriage paid, within 90 days of receipt of the delivery. The buyer shall be liable for the loss of or damage to any returnable packaging if it is at fault for such loss or damage. Returnable packaging may not be used for other purposes or to accommodate other products. It is only intended for the transportation of the goods delivered. Any labelling must not be removed.
6. Disposable packaging will not be taken back by us. However, we shall inform the buyer of a third party which recycles the packaging in accordance with statutory and administrative requirements.

V. Payment

1. The amount invoiced shall be payable immediately upon receipt of the invoice and shall be paid without any deduction. Payments shall only be deemed to have been made on time if we are able to dispose of the money on the account indicated by us with value date on the expiry date.
2. In the event of late payment, default interest of 9% above the relevant basic rate shall be payable by the buyer.
3. The presentation of bills of exchange does not constitute payment in cash and shall only be acceptable as payment with our prior approval. Any discounting and bill charges shall be borne by the buyer.
4. No right of retention or offsetting may be exercised by the buyer unless the claim giving rise to the exercise of the right of retention or offsetting is undisputed, has been established with legal effect or results from the same contractual relationship.
5. In the event of non-payment of overdue invoices or other circumstances that point to a significant deterioration in the financial circumstances of the buyer after conclusion of the contract, we shall be entitled to demand the immediate repayment of all of our claims based on the same legal relationship.

VI. Reservation of title

1. We shall retain ownership of any items delivered until the purchase price has been paid in full. The goods delivered shall remain our property until the fulfilment of all claims under the ongoing business relationship with the buyer. The retention of title shall also apply in the event that any of our individual claims have been included in an open account and the balance of that account has been established and recognised. Entitlement to the purchase price will not lapse notwithstanding payment for as long as any liability pertaining to a bill of exchange remains with us in this context – such as for example as part of a process involving the exchange of a cheque and a bill of exchange.
2. Any processing or mixing shall be carried out by the buyer on our behalf, although shall not result in any liability for us. In the event of processing or mixing with other items that are not owned by us, the buyer hereby transfers to us as collateral for our claims joint ownership over the new item in proportion with the value of the goods subject to the reservation of title with the other items processed, subject to the proviso that the buyer will safely store the new item for us.

3. The buyer shall be entitled to dispose of the products through the ordinary course of business upon condition that it promptly complies with its obligations under the business relationship.
4. The buyer hereby assigns to us as collateral any claims relating to the sale of goods over which we are vested with rights of ownership to the extent of our share of ownership over the goods sold. In the event that the buyer amalgamates or mixes the goods supplied for consideration with a principal object of a third party, it hereby assigns to us as collateral its claim to remuneration against the third party up to the amount of the invoice value of the goods supplied. We accept these assignments.
5. Upon request by us, the buyer must provide all necessary information concerning the status of the goods owned by us and of the claims assigned to us, and also to inform its customers of the assignment.
6. The buyer is obliged to store safely the goods subject to the reservation of title and to insure them at its own cost against loss or damage. It hereby assigns its claims under the insurance contracts to us in advance. We accept this assignment.
7. In the event that the value of the collateral exceeds our claims by more than 20 percent, we shall release collateral of our choosing upon request by the buyer.
8. The buyer's right to dispose of the products that are subject to our reservation of title and to collect the claims that have been assigned to us shall expire in the event of non-payment and/or if it experiences financial difficulties. If these prerequisites obtain, we shall be entitled to demand the immediate temporary surrender of all goods that are subject to our reservation of title without any requirement to set a grace period or to exercise the right of withdrawal, whereupon the buyer shall not have any right of retention.
9. In the event that the reservation of title is not valid according to the law of the country in which the goods delivered are situated, the buyer shall provide equivalent collateral if so requested by us. In the event that it fails to comply with this request, we may demand the immediate payment of all outstanding invoices, irrespective of the agreed payment terms.

VII. Claims relating to defects

1. The buyer shall inspect the goods for defects promptly following receipt.
2. Any defects shall be reported in writing promptly following receipt except for defects that are not identifiable upon inspection. Any defect that becomes apparent at a later stage must also be reported promptly. The report must be made in writing and describe precisely the nature and extent of the defect.
3. The buyer is obliged to inform us promptly and to grant us the opportunity to carry out an immediate inspection in the event that it intends to make a claim in relation to defects in the goods supplied by us.
4. If supplementary performance is required, we shall be entitled at our choice to rectify the defect or to supply a replacement.
5. In the event that the defect is to be rectified, we shall bear all expenses necessary for this purpose except those arising on account of the fact that the item purchased has been transferred to a location different from the place of performance.
6. We shall only be liable to compensate consequential losses if we are (jointly) liable for the existence of the defect as a result of wilful or grossly negligent action.
7. If we are not willing or able to rectify a defect or to supply a replacement or are late in doing so following expiry of a reasonable period for reasons that are within our control or if the rectification of the defect or supply of a replacement is unsuccessful on other grounds, the buyer shall be entitled at its choosing either to rescind the contract or to claim a reduction in the purchase price.
8. In the event of a recourse action by a commercial operator (§ 445a of the German Civil Code), it will be presumed that no defects were present upon the transfer of risk to the buyer if the buyer inspected the goods as it is obliged to do under section VII. 2. (sentence 1) and did not report any defects, unless this presumption is incompatible with the nature of the item or of the defect.
9. If the buyer exercises its rights of recourse, it must acquiesce in the presumption by us that it has availed itself of all contractual possibilities permitted by law in respect of its contractual partner (e.g. refusal of supplementary performance on the grounds that it is disproportionate or limitation of the reimbursement of expenses to a reasonable amount).
10. We shall be entitled to refuse any recourse actions of the buyer with the exception of claims to the supply of new goods, provided that we have granted equivalent compensation to the buyer for the exclusion of its rights. We shall only be liable to compensate consequential losses if we are (jointly) liable for the existence of the defect as a result of wilful or grossly negligent action.
11. Any claims of the buyer to damages shall be excluded without any requirement to grant compensation unless we have acted wilfully or with gross negligence.

VIII. Liability

1. Unless agreed otherwise, any further claims to compensation of the buyer against us and our workers, employees, staff, representatives and auxiliary agents shall be excluded, as shall in particular any entitlement to claim for damage that was not caused to the goods themselves.
2. The limitations on and exclusions of liability set forth in paragraph 1 above and elsewhere in these General Terms and Conditions of Supply and Payment shall not apply in the event that any strict liability is imposed on us in situations involving wilful conduct, gross negligence, loss of life, personal injury or damage to health or as a result of any guarantee as to quality or durability or according to law, including in particular the German Product Liability Act. The same shall apply in the event of a breach of duty on our part that jeopardises the achievement of the contractual purpose, in which case however our liability shall be limited to the compensation of typical, foreseeable losses.

IX. Place of performance, applicable law and miscellaneous issues

1. The place of performance for all obligations arising out of the business relationship or the individual contract shall be our relevant shipping facility, and for payment purposes shall be our registered office.
2. Jurisdiction shall lie at our choice at our registered office or at the general place of jurisdiction of the buyer. This shall also apply to any disputes arising within the process involving bills, cheques or any other payment instruments. The buyer shall be obliged to request us to exercise our right to those within a reasonable period.
3. Contractual relations with our customer shall be governed exclusively by the law of the Federal Republic of Germany. The UN Convention on Contracts for the International Sale of Goods shall not apply.
4. The buyer's data shall only be stored and processed by us in strict accord with the relevant statutory provisions and to the extent necessary for the proper implementation of the contractual relationship.