

General Terms and Conditions of Delivery and Payment in the Coating Industry

in the recommended version as approved by the Federal Cartel Office on 11 July 2003

I. Scope of application

1. Our General Terms and Conditions of Delivery and Payment as set forth below are intended only to be used towards enterprises. They do not apply to consumers.
2. Our General Terms and Conditions of Delivery and Payment are exclusive. We do not acknowledge any terms and conditions of the purchaser conflicting with or deviating from our Terms and Conditions of Delivery and Payment, unless we have in writing expressly agreed to their applicability. Our offers are subject to confirmation, unless expressly agreed otherwise.
3. Side agreements, changes and amendments to these Terms and Conditions shall be agreed in writing.

II. Prices

1. The agreed prices are "ex works", plus statutory VAT as applicable on the delivery date.
2. The weights, numbers of items and quantities as established by us are authoritative for invoicing, unless the purchaser objects without undue delay, at the latest within 14 days of receipt.
3. If we generally reduce or increase our prices during the contractual term, the changed prices shall apply to the quantities still to be purchased. In the event of a price increase, the purchaser will be entitled to withdraw from the contract by written declaration without undue delay, at the latest however within four weeks of receipt of the price increase notice. The withdrawal does not have any influence on deliveries made before the price increase.

III. Application technology consultancy

1. As far as we render any consultancy services, we do so to the best of our knowledge. However, all statements and information given on the suitability and use of the delivered goods do not release the purchaser from its own duty to examine and test the products. This in particular applies if diluting agents, hardeners, additional varnishes or any other components are admixed, which were not purchased from us.

IV. Delivery

1. The purchaser has to collect the goods at the agreed delivery date, or if no fixed delivery date has been agreed without undue delay after notification of provision at the place of performance according to clause IX. 1. If the purchaser is in default of taking delivery of the goods, we will be entitled at our choice to either dispatch the goods at the expense of the purchaser or to store them – if necessary and not otherwise possible also outdoors. In this case we are not liable for accidental destruction or loss of or damage to the goods. If the goods need to be stored, we will be entitled to invoice the goods after expiry of one week.
2. If in deviation from para. 1 it has been agreed that we are obliged to dispatch the goods, transportation will be effected at the expense of the purchaser, and the selection of the means and route of transportation shall for lack of particular instruction be at our discretion. The risk passes upon the point of time when the goods are handed over by us to the carrier.
3. Partial deliveries are permissible if reasonably acceptable to the purchaser.
4. Substantial and unforeseeable operational disruptions not caused by us, exceeding of delivery dates or failures to deliver on the part of our suppliers, as well as interruptions of operations due to shortage in raw materials, energy and manpower, strikes, lockouts, difficulties in providing means of transportation, transportation disturbances, administrative acts, and force majeure events at us and our sub-suppliers will extend the delivery period by the duration of the incident preventing performance, insofar as they are relevant for the capability of delivering the goods. We will notify the purchaser without undue delay of the beginning and end of such disruptions. If delivery is thereby delayed by more than one month, both the purchaser and we will be entitled, to the exclusion of any claims for damages, to withdraw from the contract with regard to the quantity affected by the disruption to delivery. The statutory withdrawal right of the purchaser in case of a disruption of delivery due to an incident for which we are responsible shall remain unaffected.
5. If delivery is made in borrowed containers, these have to be returned within 90 days of receipt of delivery, fully emptied and freight paid. Loss and damage of any borrowed packaging is at the expense of the purchaser if the purchaser is responsible for such loss or damage. Borrowed packaging must not be used for any other purposes or for storing any other products. The are merely intended for the transportation of the delivered goods. Labelling may not be removed.

6. We do not take back any disposable packaging; instead we name a third party to the purchaser, who causes recycling of the packaging according to the Packaging Ordinance.

V. Payment

1. The invoiced amount has to be paid within 30 days of the date of the invoice, without deduction. Payment has been made on time when we can dispose of the money on our account with the value date being the maturity date.
2. In the event of default in payment, the purchaser will have to pay default interest of 8 % per annum above the relevant base rate. Both we and the purchaser are free to prove higher or lower default damage.
3. The submission of bills of exchange is not considered cash payment, and permissible as payment only upon our prior approval. Any discount expenses and bill charges are at the expense of the purchaser.
4. Withholding and set-off based on claims of the purchaser which we deny shall be excluded.
5. The non-payment of any due invoices or other circumstances that suggest a substantial deterioration of the financial situation of the purchaser after conclusion of the contract entitle us to immediate acceleration of maturity of all our claims that are based on the same legal relationship.

VI. Retention of title

1. We reserve title to the delivered item until full payment of the purchase price. The delivered goods remain our property until full settlement of all claims under the current business relationship with the purchaser. The retention of title also remains valid if individual claims of ours are taken into current account and the balance has been drawn up and acknowledged. Purchase price claims are despite payment considered as not extinct for as long as a liability under bills of exchange assumed by us in this context – including but not limited to liability within the scope of a cheque/bill of exchange procedure – continues to be valid.
2. The purchaser performs any processing or mixing for us without any obligation arising to us therefrom. In the case of processing or mixing with other products which do not belong to us, the purchaser already here and now, for securing our claims, transfers to us a co-ownership share in the newly created product at a ratio of the invoiced value of the retained goods to the value of the other processed products, subject to the proviso that the purchaser stores the newly created product for us.

3. The purchaser is entitled to dispose of the products in the ordinary course of business for as long as the purchaser in good time complies with its obligations under the business relationship with us.

4. The purchaser already here and now assigns to us as a security all claims arising from the sale of goods to which we hold ownership rights, to the extent of our ownership share in the sold goods.

If the purchaser against remuneration combines or mixes the delivered goods with a principal item of third parties, the purchaser already here and now assigns to us as a security its remuneration claims against such third party up to the amount of the invoiced value of the delivered goods.

We hereby accept these assignments.

5. Upon our request, the purchaser is obliged to provide us with all necessary information on the inventory of the goods to which we have title, and on the claims assigned to us, and shall also inform its customers of the assignment.
6. The purchaser is obliged to carefully store the retained goods and to sufficiently insure them at its own expense against loss and damage. The purchaser hereby in advance assigns to us its claims under the insurance contracts. We accept this assignment.
7. If the value of the collateral exceeds our claims by over 20%, then to this extent and at the purchaser's request we shall release collateral at our option.
8. The purchaser's right to dispose of the products subject to our retention of title and its right to collect the claims assigned to us shall expire as soon as the purchaser discontinues payments and/or suffers from deterioration of its assets. If these requirements occur we will be entitled, to the exclusion of the retention right without granting any additional period or exercising the withdrawal right, to request the immediate preliminary surrender of all goods subject to our retention right.

9. If the retention of title is not valid according to the law of the country in which the delivered goods are situated, the purchaser will upon our request be obliged to furnish collateral of equal value. If the purchaser does not comply with this request, we may without consideration of agreed payment terms request immediate payment of all unsettled accounts.

VII. Claims based on defects

1. The purchaser is obliged to examine the goods for defects without undue delay after receipt.
2. Obvious defects have to be notified in writing without undue delay, at the latest within 14 days of receipt. Hidden defects have to be notified at the latest within 14 days of detection. The notification has to be made in writing, with exact description of the type and extent of the defect.
3. In the case of properly notified and legitimate complaints, we will at our choice be entitled to remedy the defects or to replace the goods. In the case of a remedy of defects, we will bear all costs required for this purpose, insofar as these are not increased by the fact that the products were delivered to a place other than the place of performance. If we are not prepared or in a position to remedy the defect or to provide replacement, or if such measures are delayed beyond a reasonable period of time for reasons for which we are responsible, or if the remedy of defects or replacement fails otherwise, the purchaser will at its choice be entitled to request rescission of the contract or a corresponding reduction of the purchase price.
4. All claims based on defects are statute-barred 12 months after receipt of the goods by the purchaser, insofar as the delivered goods have not been used according to their usual manner of use for a building, and caused the defectiveness of such building.
5. In the case of entrepreneur's recourse (Section 478 German Civil Code) we will be entitled to refuse recourse rights of the purchaser, except for claims for redelivery of the goods and reimbursement of expenses, insofar as we grant the purchaser a compensation of equal value for the exclusion of its rights. Any claims for damages on the part of the purchaser shall be excluded without compensation to be granted.

VIII. Liability

1. Unless agreed otherwise, all further compensation claims of the purchaser against us and our employees, workers, staff members, representatives, and vicarious agents shall be excluded, in particular a claim for compensation for damage not occurred to the delivered goods themselves.
2. The limitations and exclusions of liability contained in these General Terms and Conditions of Delivery and Payment do not apply insofar as we are by mandatory law liable in case of intent, gross negligence, injury of life, body and health, under a quality or durability guaranty assumed, or according to the regulations of the Product Liability Act. This also applies in the event of any breach of duty on our part which jeopardizes the achievement of the contractual purpose, it being understood that the liability is limited to the compensation for typical, foreseeable damage.

IX. Place of performance, place of jurisdiction, miscellaneous

1. The place of performance for all liabilities arising from the business relationship or any individual contract is our respective place of dispatch, for payment our registered office.
2. The place of jurisdiction is, at our choice, either our registered office or the general place of jurisdiction of the purchaser. This also applies to disputes under proceedings restricted to documentary evidence and evidence by production of bills of exchange or cheques.
3. The laws of the Federal Republic of Germany are exclusively applicable to the contractual relations with our customers. The applicability of the UN Convention on the International Sale of Goods of 11 April 1980 (CISG) is excluded.
4. We regularly store and process the purchasers' data to the extent required for proper handling of the contractual relationships.