COATING PRODUCTS
POLYMER ADDITIVES

TERMS & CONDITIONS

I. Generally and scope

Our General Terms and Conditions (referred to below solely as the "Terms of Trade") apply exclusively to all contracts that are made with our customers; our customer's Terms and Conditions of Business that differ from them or supplement them – even if we are aware of it – are not part of the contract unless we have expressly consented to their validity. Our Terms of Trade will also apply whenever we make the delivery unreservedly while being aware that the customer´s Terms and Conditions of Business conflict with our Terms of Trade or differ from them.

Our Terms of Trade also apply exclusively to all subsequent contracts that are made with the customer within the existing business relationship.

II. Quotation, conclusion of contract and offer documents

Our quotations are subject to change; they are given without engagement and can be revoked by us at any time up until the order is confirmed by the customer in writing, unless we have expressly designated our offer as binding.

We reserve all rights of ownership and copyright to all of the illustrations, drawings and other supporting documents.

We may deviate from the documents included in the contract, such as illustrations, diagrams, drawings, details of colour, weight and dimensions (collectively referred to here as "details") in the course of technical progress or for reasons of production in a scope reasonable for the customer, unless we have expressly designated the details as binding.

If the purchase order is not based on any quotation from us, then we will be entitled to accept the contractual offer that is stated in the customer´s purchase order within two weeks after receiving it. Acceptance can be declared either by written confirmation of order or by starting to dispatch the delivery item to the customer.

The contract will be concluded subject to the reservation that our suppliers themselves make the deliveries correctly and promptly. This reservation only applies to the case that we are not responsible for the non-delivery; especially in the case that an identical hedging transaction has been concluded with our supplier. We will inform the customer immediately whenever the service is unavailable and we will reimburse him immediately with any quid-pro-quo payment that we have received for it already.

Brochures, advertising or catalogues issued by us or by the manufacturer, and the details contained therein, do not become part of the delivery item`s agreed quality they the customer and we have expressly agreed this.

III. Prices and terms and conditions of paymentn

Our prices are understood to be net prices ex-works (EXW - Incoterms 2010), excluding incidental expenses like for example freight, packing and packaging as well as customs duties, insofar as we do not agree anything contrary with the customer. These incidental expenses will be charged separately, insofar as they are incurred. Our prices do not include value-added tax; if value-added tax is to be applied, it shall be charged at the rate prevailing at the invoice date and be itemised separately.

Unless expressly agreed otherwise in the contract, the customer is obliged to pay invoices without deduction by remittance to one of our bank accounts without fees, within 30 days after the invoicing date.

Cheques and bills of exchange are accepted only to facilitate payment on the basis of express prior agreement. All charges or costs incurred for the encashment of bills of exchange or cheques are borne by the customer.

As long as the customer is with due payments in arrears, we are entitled to make any further delivery subject to an advance payment up to the amount of the pending delivery price.

The customer may not offset its counterclaims unless these are undisputed or have been legally established. This rule applies to the same extent to the pursuit of rights of retention and refusal of performance by the customer. Offsetting or executing a right of retention or right of refusal of performance due to a counter-claim for compensation for remedial a defect or completion costs of the same legal relationship, are notwithstanding sentence 1 always possible.

IV. Passing of risk, shipment and transport insurance

The delivery is agreed to be ex-works (EXW - Incoterms 2010) insofar as nothing else arises from the contract expressly.

The Risk for the accidental deterioration or destruction of the delivery item will pass to the customer upon handover, or in the case of sale by dispatch, upon delivery to the carrier, freight forwarder or another person who is commissioned with carrying out the despatch. The same applies to part deliveries, regardless of whether carriage-free delivery has been agreed. If shipment is delayed at the customer's request, or if it is in default of acceptance or is in arrears, the risk will pass to the customer on the date of readiness for shipment.

We shall only conclude transport insurance for the delivery, if so expressly demanded by the customer. The costs incurred are borne by the customer.

V. Delivery, delivery time, default of acceptance and delivery

Part deliveries are admissible, insofar as these are within reason for the customer.

If the customer is in default of acceptance, it must recompense us for any added expenditure (e.g. for storing the delivery item). If the customer infringes other duties of cooperation, it must recompense us for any damages or losses incurred (incl. added expenditure), unless the customer has not infringed the cooperative duty culpably. Further-going claims are reserved, in particular claims to damages if the customer is simultaneously in default of acceptance and in arrears.

In case of Force Majeure (e.g. industrial strife affecting ourselves or our suppliers, war, fire, transport hindrances, shortages of raw materials, sovereign acts, natural events or lockouts), our delivery obligation is interrupted for its duration, plus a reasonable start-up time, and in the scope of its effects. The same applies even if we are already in default of delivery. We shall inform the customer of the occurrence of Force Majeure and the likely duration of the hindrance without delay. We are entitled to withdraw, in full or in part, from that part of the contract still unfulfilled, if it would be unreasonable for us to set the contract forth, even in consideration of the customer's interests, due to the duration of Force Majeure.

If the hindrance lasts longer than 10 weeks, the customer is entitled to withdraw from that part of the contract still unfulfilled.

Our liability for default of delivery is governed by clause VIII.

VI. Reservation of title

We reserve the right to ownership to the delivery item (also referred to below as "reserved goods") until the purchase price and all receivables from the continuing business relationship with the customer have been paid in full. Reservation of ownership is not affected by posting individual receivables to an on-going account and drawing a balance; in this case, the reservation refers to the recognised or actual balance. Payment has not been made until we receive the counter value or the sum is credited to our bank account. The reservation of ownership is not revived for a delivery item after the customer has acquired ownership to this delivery item and new claims from the business relationship are accrued against it.

If the customer is culpable of conduct in violation of contract, in particular in case of default of payment, we are entitled, in accordance with legal provisions, to withdraw from the contract and reclaim the delivery item. The customer hereby irrevocably grants us unhindered access to its business premises and stores for the purpose of taking back the goods.

After taking back the delivery item, we are authorised to dispose over it. The revenue earned from its exploitation shall be offset against the customer's liabilities - less reasonable marketing expenses - as per section 367 BGB (German Civil Code).

The customer must inform us without undue delay in writing of seizures or other third party interventions to enable us to take legal action as per section 771 ZPO (German Code of Civil Procedure).

The customer is entitled to resell the reserved goods in regular business transactions; this does not apply if it has been agreed in the course of the resale that the customer's claim against the third party expires through netting. The customer even now assigns to us all claims (including balance claims from an on-going account existing even after the end of the on-going account relationship) to the amount of the end invoice sum (including VAT) of our claim which it accrues from the resale or for some other legal reason against its buyer or a third party. The assignment is independent of whether the reserved goods are sold processed or unprocessed. We accept the assignment. Even after making the assignment, the customer is still entitled to collect these receivables. This does not affect our authorisation to collect the claims ourselves. However, we shall not to collect the receivables as long as the customer meets its obligations of payment from the revenue it collects, is not in default of payment and has not stopped making payments. However, if this is not the case, we can demand that the customer discloses the assigned receivables and their debtors to us, provides us with all details required to make the collection, in particular the address of the debtors, hands over the associated documents and notifies the debtors of the assignment.

The entitlement according to clause VI. 4. does not include transferring or pledging the reserved goods – or the articles that are manufactured from them – as security without our prior written consent.

The customer will always process or modify the reserved goods for us, without creating any liabilities for us as a result. If the reserved goods are processed with other objects that do not belong to us, then we will acquire co-ownership of the new article according to the ratio of the reserved goods´s value (the finally invoiced amount including VAT) with the other processed objects at the moment when they are processed. The same rules that apply to the reserved goods also apply to the article which is created by means of the processing.

If the reserved goods are inseparably combined or mixed with other objects not belonging to us, we acquire co-ownership to the new item in the ratio of the value of the reserved goods (end invoice sum including VAT) to the value of the other combined or mixed objects at the time of combination or mixing. If the goods are combined or mixed in such a way that the customer's item is to be regarded as the main item, it is agreed that the customer even now assigns proportionate co-ownership to us. We accept the assignment. The customer shall safeguard our sole ownership or co-ownership for us at no charge.

In order to secure our claims, the customer hereby assigns the receivables it accrues against a third party from combining the reserved goods with a plot of land. We accept the assignment. Clause VI. 4 sentences 3 - 6 apply respecitvly.

The customer bears all the judicial and extrajudicial costs necessary to rescind a seizure or some other third party intervention against the reserved goods and to recover the reserved goods, unless these expenses can be collected from the third party. If this clause VI. entitles us to pursue claims assigned to us, the customer shall recompense us for the judicial and extrajudicial costs expended for the purpose.

At the customer's request, we shall release securities accruing to us insofar as the realisable value of our securities exceed the claims to be secured by more than 10 %; we select the securities to be released.

Does the mandatory law of the country in which the reserved goods is located not allow a retention of title as provided in the paragraphs before but allow other comparable rights in rem, it is deemed that with the conclusion of the contract such rights have been reserved for us by the customer. The customer is obliged to participate in all actions we might initiate to secure our retention of title or any other comparable rights in rem mentioned in this paragraph.

VII. Warranty

The customer's claims and rights due to defects (also referred to below as "claims due to defects") require that it has fulfilled its obligations of inspection and complaint as per § 377 HGB (German Commercial Code).

Claims due to defects do not exist for just a minor deviation from the agreed quality or if usability is only impaired insignificantly.

If the delivery item is defective, then in deviation to section 439 Para. 1 BGB (German Civil Code) concerning subsequent fulfilment, we can choose between remedying the defect or delivery of a new free of defect item.

To the extent that the defect has been caused by a non-product of us, we have the right to restrict our warranty and liability at first to the surrender of our claims for and rights of warranty and liability for defects against the supplier of the product. Should the settlement from the surrendered claims or rights come to nothing or for other reasons not be able to be enforced, the customer is entitled to the rights in Clauses VII and VIII.

If we are responsible for the defect, the customer can only pursue claims to damages or losses under the additional prerequisites of clause VIII.

VIII. Liability for damages

Deviating from the regulations of Article 74 ff. CISG we shall only be liable if we caused the loss or damage with negligence or intentionally.

Our liability to recompense damages or losses, regardless of the legal reason, particular due to impossibility, default of delivery, infringement of duties during contractual negotiations or illicit acts, is then limited in accordance with this clause VIII.

We have unrestricted liability, if applicable, if we are liable under product liability laws, in case of malicious concealment of a defect, for culpable damages involving a loss of life, physical injuries or harm to health, if we acted intentionally or if we have extended a guarantee. In case of gross negligence, we have only restricted liability for the damages that are foreseeable when the contract begins and that are contractually typical.

In case of slight negligent infringement of essential rights or duties inherent in the nature of the contract, we likewise have only restricted liability for the damages that are foreseeable when the contract begins and that are contractually typical.

Except in the cases stated in clauses VIII. 3. and 4., we are not liable for damages caused by slight negligence.

IX. Expiry by limitation of time

The warranty period for defects in the delivery item is one year. The legal periods of warranty under section 438 Para. 1 No. 2 BGB (German Civil Code) and section 634a Para. 1 No. 2 BGB (German Civil Code) remain unaffected.

Other claims on the part of the customer due to infringements of duty committed by us, in particular claims to damages or claims under a guarantee, expire by limitation of time in one year. The customer's right to withdraw from the contract due to an infringement of duty on our part which does not concern a defect remains unaffected.

In deviation to sentence 1, the legal periods of limitation apply to the following claims accruing to the customer:

1. under product liability laws and due to damages involving a loss of life, physical injuries or harm to health or the infringement of primary rights and duties arising from the contract,

2. due to damages caused by an infringement of duty on the part of ourselves or our vicarious agents attributable to malice aforethought or gross negligence,

3. due to malicious concealment of a defect.

The legal provisions concerning the start, expiry suspension, suspension and re-starting of the periods of limitation remain unaffected.

Our claims against the customer expire by limitation of time in accordance with legal provisions.

X. Data protection

We are entitled to process and store the data concerning the customer received in the course of the business relationship - even if these originate from outside sources – in accordance with the stipulations of the German Data Protection Act and to have these processed and stored by third parties working on our behalf.

XI: Place of jurisdiction and fulfilment, applicable law

If the customer is a merchant, a legal entity under public law or a public law special trust, Bremen, Germany is the sole place of jurisdiction for all disputes arising from or in connection with the contractual relationship. The same applies if the customer does not have a general place of jurisdiction in Germany, if it relocates its offices or normal place of residence abroad after conclusion of contract, or if its offices or normal place of residence abroad are unknown at the time legal action is taken. We reserve the right to take legal action against the customer at its general place of jurisdiction.

Unless we have expressly agreed something different with the customer, the place of fulfilment for all deliveries/supplies arising from or in connection with the contractual relationship is Osterholz-Scharmbeck, Germany.

The UN laws governing purchases (especially the United Nations Agreement covering the international purchase of goods – CISG) are applicable to this contract; the laws of the Federal Republic of Germany, without its conflict laws, shall – exclusively – amend the UN laws. The UN laws and the laws of the Federal Republic of Germany are also applicable for the interpretation of the contract.

XII: Concluding provisions

Should individual provisions in the contract concluded between ourselves and the customer be or become unworkable or ineffective, this shall not affect the workability of the contract as a whole. An unworkable or ineffective provision shall be replaced by a provision which comes closest to the financial sense and purpose of the unworkable or ineffective provision in a legally valid manner. The foregoing regulation applies accordingly to loopholes in the contract. Should the affected provision be a standard business term, § 306 Para. 1 and 2 BGB (German Civil Code) shall apply in deviation to the foregoing.

None of our actions, except an express declaration of waiver, can be construed as a waiver of a right accruing to us from this contract, these Terms of Trade or under law. Delay in pursuing our rights can likewise not be construed as a waiver of the right in question. A one-time waiver of a right is not regarded as a waiver of this right at a later date.

October 01, 2020