

General Delivery and Payment Conditions of InProCoat Südwestfalen GmbH

I Scope

- 1 These terms and conditions apply to companies, public-law legal persons and public funds; these terms and conditions do not apply to consumers within the meaning of Article 13, BGB (Bürgerliches Gesetzbuch [Civil Code]).
- 2 We supply goods and render services exclusively under the terms and conditions mentioned below, except as agreed otherwise in writing. They also apply to any future transactions with the principal under a current business relationship.
- 3 Other conditions of the principal do not apply, notwithstanding whether we are aware of them and deliver without reserve.
- 4 All arrangements that will be agreed between us and the principal for the purpose of implementing this agreement, must be confirmed in writing. Secondary agreements, amendments and deviations from the agreement and from our terms and conditions must be agreed in writing.

II Conclusion of the Agreement, Scope of Delivery

- 1 Our quotations are always subject to change without notice, unless stated otherwise in the order confirmation or unless we have expressly declared otherwise in writing.

The agreement comes into being upon us confirming an order in writing or upon us implementing the order.

- 2 The information contained in our offers, including attachments, brochures and catalogues concerning the subject matter of the delivery or service, such as illustrations, drawings, weights and measurements, usage values, load resilience, tolerances and technical data, etc. are only approximate values that are customary in the industry, unless we have expressly designated them as binding in writing. Under no circumstances may they be construed as being an agreement on quality or assurance of quality in terms of the described goods and/or services.
- 3 We reserve title of ownership and proprietary rights in respect of illustrations, brochures, calculations and other documentation. They may not be made accessible to third parties. That applies particularly to written records that have been marked as being confidential. Before such records and documents are passed on to third parties, the principal must obtain our express, written consent.

III Prices and Payment Conditions

- 1 Prices apply to the order confirmations that are listed in the scope of performance. Cost of additional or special performance will be calculated separately. Prices are stated in euros and are net, ex-factory prices without discount and without loading, exclusive of packaging, freight and insurance and without turnover tax at the prevailing legal rate; in case of export, they are without customs and excise duties and other public charges.
- 2 Our invoices are payable in full within seven days from invoice date, except as agreed otherwise in writing. In case of bank transfers, the date of the payment being credited to our account is of the essence.
- 3 Setting off or withholding by the principal is not permissible, unless the claim is not disputed or has been legally established.
- 4 Should we have supplied goods that are partially deficient, the principal will still have the obligation of paying for the proportion of goods that is not deficient, unless he can prove that the partial delivery does not meet his requirements.
- 5 We only accept discountable and properly taxed bills of exchange or cheques, if doing so will have been expressly agreed in advance, in writing. Credits of bills of exchange are accepted subject to deduction of charges and with the value date of the day on which we will be able to dispose over the proceeds.

- 6 We reserve the right of changing our prices if, after conclusion of the agreement, cost reductions or cost increases occur when implementing the agreement, particularly if due to changes in prices of materials, because of new collective bargaining agreements coming into effect, because of changed legal stipulations or because of unforeseeable, more difficult working conditions for which we are not responsible.

IV Delivery Periods and Delivery

- 1 Delivery periods commence upon our order confirmation, but not before all details for implementation have been clarified and all other conditions to be met by the principal have indeed been met; the same applies to delivery dates. Deliveries before the end of the delivery period and partial deliveries are permissible, provided that this is not unreasonable for the principal.
- 2 Without prejudice to our rights, agreed delivery periods and agreed delivery dates will be extended respectively postponed for the period during which the principal has been in default in terms of his obligations. Should the principal default on acceptance or culpably infringe any other duties to cooperate, we will have the right of demanding compensation for the resulting damages, including possible extra expenses. In such cases, the risk of accidental loss or impairment of the goods to be delivered will pass to the principal at the time that he will have get into default.
- 3 Events of force majeure, labour disputes, lock-outs and imposition of official measures will give us the right of postponing the delivery for the period that the impediment will prevail plus a suitable recovery period or of wholly or partially withdrawing from the agreement in respect of the as yet unfulfilled part.
- 4 Force majeure encompasses unforeseeable circumstances and circumstances that we are not responsible for, such as disruptions in operations belated deliveries or failures to deliver by our secondary suppliers, interruptions in operations owing to shortage of raw materials, energy or labour, as well as lock-outs and after-treatment, which make it impossible for us to deliver in good time, in spite of us making reasonable efforts to do so.
- 5 Deliveries will be made ex-factory, without loading and exclusive of packaging, except as expressly agreed otherwise in writing. That also applies, if we have committed ourselves to absorbing the transportation costs. If we have agreed in writing to take care of transportation, the transportation will take place under the relevant prevailing General German Haulage Stipulations (Allgemeine Deutsche Spediteurbestimmungen [ADSp]). In Paragraph 23, ADSp, legal liability for damage to goods that are in custody of the haulier in accordance with Article 431, HGB (Handelsgesetzbuch [Commercial Code]) is limited to EUR 5/kg; in case of international transport including transportation by sea it is limited to SDR 2/kg plus additionally EUR 1 million or EUR 2/kg or SDR 2/kg, whichever is the higher, per damage event.

V Dispatch and Passage of Risk

- 1 The method of dispatch and the packaging will be at our dutiful discretion, if we should exceptionally take care of dispatching.
- 2 Risk passes to the principal not later than upon handing over the matter to be delivered to the haulier, carrier or any other third party that has been designated for handling the dispatch, whilst the beginning of the loading process is of the essence. That also applies in the case of partial deliveries or if we have agreed to rendering other services (for example dispatch, repair work, consultation, etc.).

Goods that are notified to be ready for dispatch must be forthwith accepted, in any case not later than two days after the notification of readiness. If dispatch or hand-over should be delayed for reasons that we are not responsible for, delivery and passage of risk to the principal will be considered to have taken place upon the notification of readiness for dispatch.

- 3 In case of delivery ex-factory, only the principal respectively the collecting party will be responsible for loading, the manner of loading and the suitability of the transport vehicle.
- 4 We place the goods to be delivered on the vehicle of the collecting party as per the instructions of the driving staff. Loading for secure transportation in accordance with the prevailing load securing technology must be done by the principal, who must deploy appropriately qualified staff for the task. The collecting

party must provide the load securing materials. We do not verify whether the collecting party or his fulfilment agents will have properly secured the load. The collecting party must use vehicles that are appropriate for the transportation. We are not liable for damage resulting from insufficiently secure loading.

VI Formal Acceptance

In principal, the supplied goods must be accepted on our premises – also in the case of inspection for special conditions. If the principal fails to accept on our premises, the delivery will be considered to have been accepted at the moment that it leaves our premises. Layer thicknesses are measured exclusively with the industry-standard measuring devices that we use.

VII Surety Rights and Reservation of Title

- 1 We have the legal right of placing entrepreneurial liens on objects that have been processed by us.
- 2 Irrespective of the legal entrepreneurial lien, the principal grants us a contractual entrepreneurial lien on the items that have been handed over to us for processing, which will serve as surety for our claim emanating from the agreement. Except if agreed otherwise in writing, the contractual entrepreneurial lien will also apply to claims from earlier agreements, if the substance of the order is in relation to uniform circumstances in terms of conjunction of content.
- 3 If the processed items will be delivered to the principal before our claim has been settled in full, it is hereby agreed already now with the principal that, in order to secure our claims emanating from this agreement, title to those items (secured goods) will be considered to have been transferred to us in proportion of the value of the secured goods to our outstanding claim until our claim will have been settled in full and that the transfer of ownership is replaced by the principal keeping the secured goods in safe custody for us.

The same applies *mutatis mutandis* in respect of the inchoate title of the principal in terms of the items that have been handed over to us for processing, through have been supplied to the principal under reservation of title. We have the right of bringing about cessation of title of ownership through payment.

Claims of recourse of the principal *vis-à-vis* a third party, to whom he had previously transferred ownership of the items that have been handed over to us for processing, are herewith ceded to us. We herewith accept the cession.

- 4 The principal may neither place liens on secured goods as well as on items in respect of which we have an entrepreneurial lien nor transfer ownership of such items. However, he may on-sell and process secured goods in the course of ordinary business, unless he would have already in advance enforceably ceded the claim against his contractual partner to a third party. Possible processing of the secured by the principal into new movable objects will be by our order and with effect for us, without it leading to the establishment of obligations.
- 5 In the event that the principal should acquire sole ownership or co-ownership of new, uniform items as the result of processing, combining, blending or mixing the secured goods with other movable items, he does already now cede to us the co-ownership of the new items as surety for our claims emanating from this agreement, in proportion to the value of our secured goods in terms of the other goods, whilst simultaneously promise us to keep the new items properly in custody for us, without charge.
- 6 In the event of on-selling the secured goods that have been processed by us or the new items that have been manufactured from them, the principal must draw the attention of his customers to the surety ownership.
- 7 In order to secure our claim, the principal does already now cede to us all claims that may emanate in future from on-selling or further processing the secured goods, up to the value of our co-ownership.
- 8 The principal is being authorised until further notice to collect in our favour from third parties under our claims emanating from on-selling or further processing. We have the right of revoking that authorisation if the principal defaults on payments, bankruptcy proceedings are instigated against him, a moratorium on payments is in force or circumstances are known to us that might endanger satisfaction of our claim to payment on account of deficient solvability of the principal. In case of revocation by us, we will have the

right of collecting ourselves under the claims. In such a case, the principal must disclose to us, upon our request, the ceded claims and the names of the concomitant debtors, provide us with all information that is necessary for collecting under the claims, submit to us all appurtenant documentation and notify the third parties of the cession.

- 9 The principal is obliged to inform us forthwith of any enforcement measures of third parties with regard to the secured goods and to inform the third party forthwith about our surety ownership.
- 10 The principal is obliged to keep the secured with good care in safe custody, to protect them adequately against fire and theft and to keep them under protection of insurance. The principal does already now cede to us the claims against his insurance company that may arise out of damage cases, to the extent that they will relate to secured goods; we accept the cession.
- 11 If the value of existing sureties were to exceed the total value of the secured claims by more than 10 %, we will be obliged sureties at our discretion, but only upon the request of the principal.
- 12 In cases where we are entitled to revocation of the authority of the principal of collecting under claims in accordance with Article VI, Paragraph 8, we will also have the right of refusing to deliver on outstanding goods and services and of setting a suitable period for the principal, within which he must one by one arrange for payment or provide a surety against our delivery or service, at his discretion. Should the period lapse fruitlessly, we will have the right of withdrawing from the agreement.
- 13 All goods supplied by us remain our property (goods subject to reservation of title) until all our claims will have been satisfied, particularly also those balances that we are entitled to out of the business relationship. If the principal should get in default, we will have the right of demanding the surrender of the supplied goods that are subject to reservation of title. The concomitant costs will be for account of the principal. That does not apply in the case of insolvency proceedings that may have applied for or may have been instigated by the principal, because then we will not have the right of demanding the immediate surrender of the supplied goods.
- 14 Taking back good under reservation of title respectively enforcing reservation of title does only amount to withdrawal from the agreement, if we declare that explicitly in writing.
- 15 Other than that, in the case of reservation of title, the arrangement of surety rights for the secured as per Article VI apply accordingly to the supplied goods that are subject to reservation of title.

VIII Claims for Deficiencies

- 1 The principal has the obligation of inspecting the supplied goods immediately upon receipt, before further processing. If the goods are supplied directly to a third party for further processing, the principal must ensure that the third party will investigate the goods immediately before further processing.
- 2 Obvious deficiencies must be reported in writing within a period of two working days of receipt and hidden deficiencies must be reported within two working days of being discovered. If the principal neglects to do the investigation or report the deficiency, the supplied goods will be considered to be free of deficiencies and rights of the principal in respect of deficient goods will be excluded.
- 3 In case of confirmed acceptance, claiming on account of deficiencies that could have been detected during inspection, will be excluded.
- 4 Claims for deficiency will not be acceptable for mere minor deviations from the agreed quality, mere minor impairment of usability and in case of deficiencies caused by unsuitable or improper use, faulty mounting respectively commissioning, normal wear and tear or any other faulty or negligent treatment (for example incorrect storage, excessive load and other external influences that are not foreseen in the agreement). If the principal or third parties should incorrectly make changes or incorrectly carry out repair work, we will not be liable for them and the ensuing consequences either.
- 5 We must be accorded the opportunity of determining ourselves the deficiencies that are claimed. In urgent cases of imminent danger to operating safety, we must forthwith determine the scope of the claimed defi-

ciencies, in order to fend off disproportionately serious damage for the principal. Upon our request, goods that are complained about, must be forthwith returned to us. Should the principal not honour his obligations or make changes without our consent to goods that have already been complained about, he will forfeit his rights in relation to the deficiency.

- 6 In case of justified claims that are lodged in good time, we will take remedial action on the goods of the complaint or will supply proper replacement goods (subsequent fulfilment).
- 7 If we do not honour our guaranty obligations or do not do so within a reasonable period or if remedial action will initially remain fruitless, the principal may set a final reasonable deadline by which we must honour our obligations. A deadline does not need to be set, if doing so were to be unreasonable for the principal. Regardless of the legal right of oneself taking remedial action, after fruitless passing of the deadline, the principal may demand a reduction in price or withdraw from the agreement.
- 8 Claims of the principal emanating from the requisite expenditure for moving the supplied goods to another location after delivery for the purpose of subsequent performance are excluded, if they will have led to higher expenditure, unless the relocating is in accordance with use as intended.
- 9 Legal claims for recourse against us are only permissible to the extent that the principal will not have entered into agreements with his customer that go beyond the legal claims for deficiency.
- 10 Further claims of the principal are excluded, as stipulated in Article IX.
- 11 The burden of proving the existence of the deficiency falls upon the principal.

IX General Limitation on Liability

- 1 Except as may be otherwise provided hereafter, other and further-reaching claims of the principal against us are excluded, regardless of their legal basis and particularly if emanating from breach of obligations under the debt relationship and/or from impermissible actions.
- 2 The limitation on liability does not apply, where liability is mandatorily imposed, such as under product liability legislation, in case of wilfulness, gross negligence on the part of legal representatives or managerial staff and in case of culpable infraction of essential contractual stipulations. An essential contractual obligation is one that makes proper implementation of the agreement possible in the first place and in respect of which the other parties to the agreement may trust that it will be consistently honoured. Except in cases of wilfulness or gross negligence on the part of our legal representatives or managerial staff, we are only liable for culpable violations of contractual obligations for damage that is typical for the agreement and can be reasonably foreseen. The limitation on liability does not apply either to damage resulting from loss of life, bodily injuries or impaired health and in the absence of the guaranteed quality, if and to the extent that the purpose of the guaranty is precisely protecting the principal against damage that does not occur on the supplied goods proper.
- 3 Where our liability is excluded and/or limited, it applies equally to the personal liability of our staff, employees, legal representatives and fulfilment agents.
- 4 There is a period of limitation of six months from delivery on claims for compensation of damage and deficiencies that the principal may lodge against us or, where acceptance is required, of six months from acceptance. That does not apply where the stipulates in Article 438, Paragraph 1, Clause 2, Civil Code (buildings and objects usually used in buildings) and in Article 479, Paragraph 1, Civil Code (claims under recourse) longer periods of limitation and in case of loss of life, bodily injuries or impaired health, of wilfulness and gross negligence and in case of deceitfully concealing a deficiency. The legal stipulations governing expiry, suspensions and restarting periods remain unaffected. In case of claims for compensation of damage under product liability legislation, the statutory periods of limitation apply. The statutory periods of limitation also apply in cases of wilful or grossly negligent violation of obligations.

X Data Protection

We have the right of processing within the meaning of the federal data protection legislation the data of the principal that have been acquired within the framework of the business relationship or in conjunction with that relationship, regardless of whether they come from the principal himself or from third parties.

XI Fulfilment Location and Jurisdiction

- 1 Location of fulfilment for all delivery and payment obligations under this agreement is Kreuztal.
- 2 If the principal is a merchant, jurisdiction will be vested in the courts of Siegen. That also applies to disputes about processing documents, cheques or bills of exchange. However, we also reserve the right of suing the principal in the courts of his statutory seat.

XII Applicable Law

This agreement is exclusively governed by the laws of the Federal Republic of Germany, under exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG). The German version of the text of the agreement will always prevail.

XIII Final Provisions

- 1 If individual stipulations should be void or unenforceable, the effectiveness of the remaining stipulations of these General Delivery and Payment Conditions and/or the agreement will not be affected.
- 2 The parties are committed to replacing the relevant void or unenforceable stipulation by such legally effective stipulation that does agree with the obviously intended commercial purpose of the void or unenforceable stipulation or at least comes closest to it.
- 3 Should hiatuses exist in this agreement or these General Delivery and Payment Conditions, those legally effective arrangements will apply to filling those hiatuses that the partners would have agreed in accordance with the economic objectives of the agreement and these General Delivery and Payment Conditions, if they had been aware of the hiatus.

Status: 1 January 2019