

# General Terms and Conditions of PUFAS Werk KG, Hann. Münden

## I. Terms of delivery

1. Our terms of delivery and payment shall be applicable only to companies and not to end consumers. Unless otherwise expressly agreed, our offers are without obligation and subject to confirmation. Any additional agreements, amendments to or deviations from these General Terms and Conditions shall be made in writing.
2. Any major unforeseeable operational disruptions occurring through no fault of our own, late deliveries or delivery failures on the part of our suppliers, operational interruptions due to raw materials, energy or labour shortages, strikes, lockouts, difficulties in procuring means of transport, traffic disruptions, instructions from higher authority or force majeure affecting us or our upstream suppliers shall result in an extension of the delivery period by the duration of the disruptive circumstances, insofar as these are significant to the deliverability of the goods. We shall immediately inform the Purchaser of the start and end of any such disruptive circumstances. Should the delivery be consequently delayed by over a month, both we and the Purchaser shall be entitled, without any liability for compensation, to withdraw from the contract in respect of the quantity of goods affected by the delivery disruption. The Purchaser's statutory right of withdrawal in the event of delivery disruptions due to a fault on our part shall remain unaffected.
3. We shall not accept back any disposable packaging. Instead, we can refer the Purchaser to a third-party agent that will hand over the packaging for recycling in accordance with the German Packaging Ordinance ("Verpackungsverordnung").
4. Should acceptance of the goods by the Purchaser be delayed, we shall be entitled, at our own discretion, to dispatch the goods at the Purchaser's expense or to hold them in storage – if necessary, outdoors, if no other option exists. In such cases, we shall not be liable for accidental loss of, destruction of or damage to the goods. If the goods are stored, we shall be entitled to invoice the Purchaser for the goods after a period of one week.
5. Delivery shall be DAP (Delivered at Place/Incoterms 2020) for consignments of € 750 upwards, or as specified in the quotation or separate confirmation of conditions. Goods shall be sold only in complete shipping units (SU). Any visible damage shall be confirmed by the freight forwarder's driver on the waybill/consignment note.
6. Part deliveries shall be permissible provided these are not unreasonable for the Purchaser.

## II. Terms of payment and prices

1. Unless otherwise agreed in the quotation or separate confirmation of conditions, our invoices shall be payable without deduction within 30 days of the invoice date.
2. Payment shall only be deemed timely if the money has been credited to the account specified by us by the due date.
3. In case of default on payment, interest on arrears shall be due at a rate of 8% above the relevant base interest rate. Both we and the Purchaser shall reserve the right to provide evidence of higher or lower default damages.
4. The graduated prices in the price list shall apply in case of combined acceptance of the products and shall be subject, where applicable, to statutory value-added tax.

5. Should our prices be generally raised or lowered during the contract period, the amended prices shall apply for the quantity of any deliveries still to be accepted. In case of price increases, the Purchaser shall be entitled to withdraw from the contract through written notice immediately or, at the latest, within four weeks of notification of the price increase. Withdrawal from the contract shall not affect any deliveries made prior to the price increase.

6. Failure to pay invoices when due or any other circumstances that suggest a significant deterioration in the Purchaser's financial situation after conclusion of the contract shall entitle us to demand immediate payment of all claims based on the same legal relationship.

### **III. Merchants' obligations**

1. We offer high-quality branded products. This shall be duly reflected by the infrastructure and advice provided by merchants. To ensure the required quality as merchant partner, you thus undertake to meet at least two of the following criteria:

- a. You shall operate a fixed sales outlet, with a minimum floor area of 20 m<sup>2</sup>, in which you permanently present our products and offer these for sale. The provision of customer support shall be guaranteed at the sales outlet by suitably skilled and qualified personnel.
- b. You shall have technically qualified field staff to provide regional support for painting contractors.
- c. You shall offer permanent warehousing capacity for our products in standard retailing quantities.

We shall be entitled to verify the above criteria.

### **IV. Advice on product application**

1. Any advice provided by us is accurate to the best of our knowledge. All data and information on suitability and application of the supplied goods shall not exempt the Purchaser from conducting its own tests and investigations. This shall, in particular, apply where thinners, hardeners, additional coating materials or other components not purchased from us are added to our products.

### **V. Retention of title**

1. We shall retain title to the supplied goods until the purchase price has been paid in full. The supplied goods shall remain in our ownership until such time as all claims arising from the ongoing business relationship with the Purchaser have been met. Retention of title shall also remain effective where some of our claims have been added to a running account and the balance struck and acknowledged. Should the supplied goods be processed or mixed with other products not in our ownership, in order to secure our claims, the Purchaser herewith assigns to us an ownership interest in the new product equal to the ratio of the value of the goods subject to retention of title to the other processed products. The Purchaser further undertakes to hold the new product in safekeeping on our behalf.

2. The Purchaser shall be entitled to freely dispose of the products in the ordinary course of business, subject to the timely fulfilment of all its obligations arising from the business relationship with us.

3. As security, the Purchaser herewith assigns to us all claims arising from the sale of goods in which we have an ownership interest in the proportion of our interest in the sold goods.

4. At our request, the Purchaser shall disclose to us all required information on the inventory of goods to which we retain title and on the claims assigned to us. The Purchaser shall also notify his customers of the claims assigned to us.

5. The Purchaser undertakes to exercise all due care while holding in storage the goods subject to retention and to insure them, at its own expense, against loss and damage. The Purchaser herewith assigns to us in advance all claims arising from its insurance policies. We hereby accept this assignment.

6. The Purchaser's right to freely dispose of the products subject to our retention of title and to collect the claims assigned to us shall expire as soon as the Purchaser suspends payment and/or faces financial collapse. Should such a situation arise, we shall be entitled, under exclusion of any rights of retention on the part of the Purchaser, without the grant of any grace period and without exercise of any withdrawal rights, to demand the immediate provisional surrender of all goods subject to our retention of title.

7. Should the retention of title provisions be ineffective under the laws of the country in which the supplied goods are located, the Purchaser shall, at our request, be obliged to provide equivalent security. Failure by the Purchaser to comply with this request shall entitle us to demand immediate payment of all outstanding invoices, regardless of the agreed payment deadlines.

## **VI. Defects claims**

1. The Purchaser shall be obliged to inspect the supplied goods for defects immediately upon receipt.

2. Patent defects shall be reported to us immediately in writing, though at the latest within 14 days of receipt. Latent defects shall be reported to us within 14 days of their discovery. This notification shall be in writing and shall precisely describe the nature and scope of the defect.

3. In case of properly served and justified defect notices, we shall be entitled, at our own discretion, either to rectify the defect or make a replacement delivery. Should the defect be rectified, all associated expenditure shall be borne by us, provided no extra costs are incurred due to the goods having been previously transported to a location other than the place of performance. Should we be unwilling or unable to rectify the defect or make a replacement delivery, or should such remedy be delayed beyond a reasonable period due to reasons for which we are responsible, or should the defect rectification or replacement delivery prove unfeasible for any other reason, the Purchaser shall be entitled, at its own discretion, to demand either rescission of the contract or a reasonable reduction in the purchase price.

4. All defects claims on the part of the Purchaser shall become time-barred upon expiry of the minimum shelf life of the goods.

5. In the event of recourse of the entrepreneur (as described under § 478 German Civil Code), we shall be entitled to reject any recourse rights of the Purchaser, with the exception of claims for redelivery of the goods and reimbursement of expenses, provided we grant the Purchaser another form of compensation of equal value for the exclusion of its rights. All damages claims by the Purchaser shall be excluded without any compensation being due.

## **VII. Liability**

1. Unless otherwise agreed, all further compensation claims brought by the Purchaser against us or our employees, representatives and agents shall be excluded, in particular, any compensation claims for damage not suffered by the supplied goods themselves.
2. The limitations and exclusions of liability contained in these terms of delivery and payment shall not apply where liability on our part is mandatory in cases of intent, gross negligence or injury to life, body or health, or pursuant to a given guarantee of quality or durability, or under the provisions of the German Product Liability Act ("Produkthaftungsgesetz"). The same shall apply in case of a breach of obligations on our part that endangers the achievement of the contract purpose, though with liability being limited to compensation for the typical, foreseeable loss or damage.

## **VIII. Place of performance, place of jurisdiction and miscellaneous**

1. The place of performance for all obligations arising from the business relationship or individual contract shall be the relevant place of dispatch, and for payments our registered office.
2. The place of jurisdiction shall, at our discretion, be either the location of our registered office or the Purchaser's general place of jurisdiction.
3. The contractual relationships with our customers shall be exclusively subject to the laws of the Federal Republic of Germany.
4. Purchaser data are stored and processed by us only insofar as this is necessary for the proper management of our contractual relationships. Data processing shall comply with the provisions of the GDPR (General Data Protection Regulation) as at 2019.
5. Should any provision of these General Terms and Conditions or of any additional agreements be or become ineffective, this shall not affect the validity of the remainder of the contract. In such a case, the contract parties shall be obliged to negotiate, in good faith, a new arrangement to replace the ineffective provision.

PUFAS Werk KG

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