

General Terms of Payment and Delivery

of Tenax Marine Paints Vertriebs GmbH

I. Scope of Application

1. Our terms of payment and delivery as provided in the following shall apply exclusively. We shall not acknowledge conflicting or Purchaser's terms and conditions, which vary from our terms of payment and delivery, unless said conditions were expressly approved by us in writing. Our offers are subject to change without notice, unless otherwise expressly negotiated.
2. If Purchaser is already familiar with our terms of payment and delivery, they also shall reply to future transactions without notification. The acceptance of our deliveries or performance is deemed to be a recognition of our terms and conditions.
3. Collateral agreements, modifications, and deviations from these terms and conditions are subject to the written form requirements.

II. Prices

1. The negotiated prices are ex-works and are subject to the statutory rate of VAT applicable on the date of delivery.
2. The rates, numbers of units and quantities determined by us shall be relevant for invoicing, unless objected to by Purchaser immediately upon receipt.
3. Should our prices generally be decreased or increased during the term of contract, the changed prices shall apply for the still outstanding quantities. In the case of an increase in prices, Purchaser is authorised to withdraw from the contract by written notice immediately, at the latest however within 14 days after receiving the notice regarding the price increase. The withdrawal shall have no effect on deliveries effected prior to the price increase.

III. Application engineering consultation

1. We shall provide consulting services to the best of our knowledge and ability. All information and data regarding suitability and application of supplied merchandise is non-binding and does not release Purchaser from its own examinations and tests. This applies in particular when dilutions, hardeners, supplementary varnishes or other components, which were not purchased from us, are to be admixed.

IV. Delivery

1. Except as otherwise expressly negotiated, the delivery shall be effected ex-works or delivery warehouse.
2. Purchaser shall accept without delay all merchandise ready for shipping; otherwise, we are authorised at our own option to deliver the merchandise at Purchaser's cost or store, if necessary, said merchandise in the open. One week after the start of storing said merchandise, it shall be deemed to have been delivered and a storage fee can be charged. In this case, we shall not be liable for damage to the merchandise.
3. The risk of the merchandise's accidental destruction, loss or damage will be transferred upon the merchandise being picked up by Purchaser following a notice of said merchandise being available to Purchaser. In other respects, the risk will be transferred at the time at which the merchandise is handed over by us to the carrier. In the absence of special instructions, we shall choose the mode of transportation and the forwarding route. Additional costs caused by Purchaser's special forwarding requests shall be borne by Purchaser.
4. Partial deliveries acceptable to Purchaser are permissible.
5. Major, unforeseeable breakdowns not caused by us, failures to keep delivery dates, or non-deliveries by our suppliers, as well as operating disruptions due to lack of raw materials, energy or manpower, strikes, lock-outs, difficulties in providing means of transportation, forwarding disputes, rulings issued by high authorities, and in cases of force majeure affecting us and our suppliers, the period of delivery shall be extended by the period of impediment, if the supply capability of the merchandise is of importance. We shall notify Purchaser immediately of the beginning and end of such impediments. If delivery is extended by more than one month as a consequence hereof, both Purchaser and we are authorised, subject to the exclusion of damage claims, to withdraw from the contract with respect to the volume effected by the default in delivery.
6. If delivery is effected in rental containers, said containers are to be returned empty of all residues free of charge within 60 days upon receipt of delivery. Loss of and damage to rental packaging shall be borne by Purchaser, should Purchaser be liable. Rental packages may not be used for other purposes or for storing other products. They are designated only for transporting the supplied merchandise. Labels may not be removed.
7. We will not accept disposable packaging, but instead we shall provide to Purchaser with the name of a third party that will forward the packaging to a recycling company in accordance with the packaging ordinance.

V. Payment

1. Invoice amounts are payable within 30 days after the invoice date without deduction. A payment has been effected in due time, if we are able to dispose of the amount with valuation on the due date in the account specified by us. Cash discount deductions and rebates will be granted only upon special agreement. A cash discount deduction on new invoices shall be excluded in the event of older invoices not yet having been paid.
2. In the case of default in payment, a default interest will be charged in the amount of 8 % above the respective base rate. Both Purchaser and we are free to prove higher or lower damage due to delayed performance.
3. Retention and set-off due to disputed claims on the part of Purchaser shall be excluded.
4. The non-payment of due invoices or other circumstances, which give rise to the conclusion of a major deterioration of Purchaser's assets following the conclusion of contract, authorise us to demand the immediate accelerated maturity of all our claims, based on the same legal relationship.

VI. Reservation of Title

1. We reserve the title to the item of delivery until the purchase price has been paid in full. The delivered merchandise shall remain our property until all claims from the current business relationship with Purchaser have been fulfilled. The reservation of title also shall remain, if individual claims were included in current invoices and the balance has been struck and acknowledged. Purchase price claims are considered unredeemed in spite of payment, so long as a liability under a bill accepted by us in this connection – for example, within the scope of a check-bill procedure – continues to exist.

2. Purchaser shall perform processing or compounding for us without creating a liability for us. In the case of processing or compounding with other items not owned by us, Seller shall already at this time transfer the item for the purpose of securing our claims to the joint ownership in the new item in proportion to the value of the conditional commodity with respect to other processed items on condition that Purchaser preserves the new item for us.
3. Purchaser is authorised to dispose of the individual products in the ordinary course of business so long as Purchaser thus meets its obligations from the business relationships in due time.
4. Purchaser already at this time shall assign to us claims from the sale of merchandise in which we are entitled to ownership rights, to the extent that our ownership in the sold merchandise is secured. If Purchaser combines or compounds the supplied merchandise against payment with a main item of a third party, Purchaser already at this time shall assign to us as security its remuneration claims against said third party in the amount of the invoice value of the supplied merchandise. We shall accept these assignments.
5. Upon our request, Purchaser shall provide all necessary information on the status of the merchandise owned by us and on the assigned claims, as well as notify its clients of said assignment.
6. Purchaser agrees to preserve the conditional commodity with due care and to insure said commodity at its own cost against loss and damage. Purchaser hereby assigns to us in advance its claims from insurance contracts. We shall accept said assignment.
7. If the value of the securities exceeds our claims by more than 20%, we shall upon Purchaser's request release securities at our own option.
8. Purchaser's right to dispose of the products, subject to our ownership, as well as the collection of claims assigned to us shall expire as soon as Purchaser discontinues payment and/or experiences financial collapse. Should any of these conditions occur, we are authorised, subject to the exclusion of the right of retention without setting an additional acceptance period or exercising the withdrawal, to demand the immediate, temporary surrender of all merchandise, subject to our reservation of title.
9. Should the reservation of title be invalid under the law of the country in which the supplied merchandise is located, Purchaser shall provide an equivalent security at our request. Should Purchaser fail to meet our request, we may, irrespective of the negotiated payment targets, demand immediate payment of all outstanding invoices.

VII. Claims arising from a defect

1. Immediately upon receipt, Purchaser shall examine the merchandise for defects.
2. Apparent defects are to be reported immediately in writing, at the latest, however, within seven days upon receipt. Hidden defects are to be reported immediately after their discovery. Defects must be reported in writing and the type and extent of the defect must be described in detail.
3. In the case of properly filed and substantiated notices of defect, we have the option either to remedy the defect or make a replacement delivery. In the case of remedying the defect, we shall bear all expenses necessary for this purpose, provided that said expenses will not be increased on account of the purchased item having to be delivered to a location other than the place of performance. If we are unwilling to remedy a defect and/or make a replacement delivery or unable to do so or should the reasonable time limits set for this purpose be delayed beyond reasonable time limits for reasons for which we are reasonable, or if the remedying of a defect and/or replacement delivery fail for other reasons, Purchaser has the option to cancel the contract or request a corresponding reduction of the purchase price.
4. All claims arising from a defect shall lapse 12 months after Purchaser receives the merchandise, if the supplied merchandise was not used in accordance with its usual instructions for building work and thus caused the defect.
5. In the case of recourse by the contractor (Sec. 478 German Civil Code), we are authorised to limit the claim to redelivery of the merchandise and replacement of expenditure.

VIII. Liability

1. Except as otherwise provided, all further claims for reimbursement on the part of Purchaser against us and our employees, representatives and vicarious agents shall be excluded, in particular a claim for damages not caused to the supplied merchandise itself.
2. The liability for damages or useless efforts which have not been caused by an additional payable advice or information, shall be excluded, as long as we have not premediated it or due to gross negligence and this violation of the obligations do not represent a material defect according to § 434 BGB.
3. Our technical information and advice (especially Technical Data Sheets) do not represent a property promise or guarantee in the legal sense. A liability on the basis of technical information and advice is – no matter of what of the legal relationship or legal grounds – is excluded. § 475 BGB remains unaffected.
4. The limitations and exclusions of liability contained in these terms of payment and delivery shall not apply, if in cases of intent, gross negligence, fraudulent concealment or injury to life, body and health, or as a consequence of an accepted quality or service life guarantee or in accordance with the regulations of the Product Liability Act, a liability on our part is mandatory.

IX. Place of performance, jurisdictional venue and miscellaneous

1. The place of performance for all liabilities from business relationships or from individual contracts is our respective shipping centre and the place of performance for payments our head office.
2. The jurisdictional venue at our option may be our head office or Purchaser's general jurisdictional venue. This also applies to disputes relating to document, bill or check litigations.
3. The law of the Federal Republic of Germany shall be applicable exclusively to contractual relationships with our customers. The applicability of the UN Sales Convention of April 11, 1980, regarding contracts relating to the international purchasing of goods (CISG – "Vienna Sales Convention") shall be excluded.
4. Purchaser's data will be stored and processed by us to the extent that this is required for the proper handling of contractual relationships.