

# General business terms

## of PLANTAG Coatings GmbH, Plantagenweg 34-38, 32758 Detmold / Germany

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### 1. Validity of our general business terms

1.1. These delivery conditions will be valid for all business transactions with persons who upon conclusion of this contract carry out their industrial and independent professional activities (entrepreneurs) as well as for business transactions with entities of public law or special assets under public law.

1.2. Our general sales terms and delivery conditions will be exclusively applicable; they will also be valid for future business with the contracting party. Any of the contracting party's conditions that deviate from our sales terms and delivery conditions will not be valid, even if we do not explicitly contradict them or render unconditionally services for the contracting party or accept the latter's services. We will be entitled to withdraw from the contract, if the contracting party objects to the validity of our sales terms and delivery conditions. The contracting party's general terms of business will also not be valid if they deviate from legal regulations, notwithstanding the contents of our sales terms.

1.3. Any changes to our general terms of business will be notified to the contracting party in writing. They will be deemed as accepted unless the contracting party contradicts them in writing. We will separately draw the contracting party's attention to this sequence upon notification. Any contradiction must be received by us within one month after the receipt of the notification of change by our contracting party.

### 2. Conclusion of contract/Written form/Representation

2.1. The contracting party's order will be a binding offer. We can optionally accept this offer within one month by sending a written order confirmation or by sending the ordered goods to the contracting party within that term.

2.2. Our offers will be non-binding and they only mean an invitation to the contracting party to place an order.

2.3 The written form provided for in these general terms of business will also be deemed to have been observed when the required statement has been made in a written form acc. to § 126b of the German civil code (e.g. by fax or by e-mail).

2.4. Our staff, commercial agents or other sales agents will not be entitled to make any statements that deviate from these sales terms and delivery conditions or to make promises, to accept payments or other statements, in particular guarantees, statements regarding the quality or the suitability of the goods for a special use or for warranty; they will not be entitled to accept notices of defects.

### 3. Prices, packaging

3.1. Packaging and freight costs will be charged at cost price.

3.2. The orderer will be liable for damages to leased containers if he is responsible for those damages.

3.3. Any other transport packaging will be disposed of by our contracting partner.

### 4. Payment/Default in payment

4.1. Our accounts receivable will be payable within the agreed terms. Upon expiry of this term the contracting party will be in default without reminder.

Cheques will be accepted on account of payment. Costs and expenses will be at the contracting party's charge. Any payments will have to be made in EUR (€). Any foreign bank charges will be for the contracting party's account.

4.2. If the contracting party is in default we will be entitled to claim default interest of eight percentage points above the legal base rate,

but we will reserve the right to prove higher damages due to the default and enforce them.

4.3. If the contracting party makes default regarding one payment all other claims will become due immediately unless the contracting party proves that it is not responsible for the delay.

4.4. If the contracting party is obliged to pay for several deliveries, the payments will be set off as follows: The first payment will be set off against the payable debts; in case of several accounts receivable the first amount will be set off against the receivables that have been hedged with the lower guarantee. A payment which is not sufficient to redeem the whole debt will first be set off against the costs, then against the interest and finally against the principal. Any deviating redemption clauses agreed by the contracting partner will be ineffective.

### 5. Set off/ Rights of retention

5.1. The contracting party will only be entitled to set off against its own claims, if its counter-claims have been legally ascertained, are uncontested or have been accepted by us in written form.

5.2. The contracting party will only have a right of retention regarding claims that are based on its own right, that have been legally ascertained, are uncontested, or have been accepted by us. In the case of faulty delivered parts or services the contracting party will only be entitled to retain from the payment those amounts that are equal to the value of the faulty delivery or service. We will be entitled to avert rights of retention – and also defense of non-fulfillment – by provision of a security which can also be made through a bank guarantee. The security will be deemed to have been given not later than on the date when the contracting party is in default with the acceptance of that security.

### 6. Right to refuse payment if the financial situation changes for the worse

6.1. If it becomes evident upon conclusion of the contract that our claim regarding the payment of the purchase price has been affected due to the contracting partner's insufficient solvency, we will be entitled to put forward a right of refusal regarding the delivery of the goods and to request advance payment. In particular, this will apply if insolvency proceedings are opened on the contracting party's assets, if the contracting party is in default with the payment of claims that are based on other contractual relationships, if submitted bills of exchange or cheques have not been paid, or if the limit fixed by a credit insurance has been exceeded and/or would be exceeded by the intended delivery.

6.2. The right to refuse payment will become ineffective if the contracting party induces payment or gives a satisfactory security for payment through a bank guarantee.

6.3. We will be entitled to grant the contracting party a reasonable term for payment or for giving us the security, however, this term should not exceed ten days. If this term lapses unsuccessfully, we will be entitled to withdraw from the contract and to claim damages.

### 7. Delivery, transfer of risk, delayed delivery

7.1. The delivery date will result from our order confirmation. For the rest the terms of delivery and payment as well as the dates of delivery and payment will only be binding if confirmed by us in written form. The delivery term will be extended, if the contracting party does not procure in due time any documents that are to be procured by it and are necessary for the execution of the order, or if it does not make agreed advance payments.

7.2. Deliveries will be made ex factory. The delivery time will be deemed as observed if the goods leave our company on the delivery date. If the customer is in default (default by debtor or creditor), the delivery term will be deemed as observed if we notify readiness for dispatch within that term.

7.3. We will be entitled to make and separately charge just and reasonable partial deliveries before the agreed delivery date, unless the contracting party's special interest in receiving the whole delivery becomes evident.

7.4. If the delivery is delayed by the occurrence of inevitable events that were not foreseeable upon conclusion of the contract (e.g. Acts of God, insufficient supply of raw materials and auxiliary materials or energy, other operating troubles, the impossibility of procuring means of transport, strikes, interventions by the authorities, etc.) the delivery term will be extended by the period of the impediment of delivery, but not longer than by two months plus a reasonable initial term of at least one week as from the elimination of the impediment of delivery. If the delay exceeds 2 months, we will be entitled to withdraw from the contract. If the service/delivery becomes impossible, we will be exempted from our obligation to supply.

We will immediately inform the contracting party about a foreseeable extension of the delivery term or about the definitive impossibility of service/delivery, and in the case of impossibility of withdrawal we will reimburse any already received considerations.

7.5. We will only be in default if the contracting party has first fixed a reasonable term of at least 14 days for fulfillment, unless we have beforehand seriously and definitely refused the service/delivery. It will also be necessary to fix a term in the case of a calendar-based determination of the delivery term acc. to § 286, section 2, figure 1 and 2 of the German civil code. Only when this respite has lapsed unsuccessfully will the contracting party be entitled to withdraw from the contract and to claim damages.

7.6. Any of the contracting party's claims for damages based on the delayed delivery/service and claims for damages in lieu of the delivery/service will be limited to the value of the whole delivery. This clause will not apply if we or our vicarious agents are responsible for willful intention or negligence, or in the case of bodily injury or danger to health or life. A change of the burden of proof to the contracting partner's disadvantage is not connected with the provisions of this paragraph.

## 8. Technical lacquer-related notices

8.1. For shade and stain deliveries it will have to be taken into account that colours and shades may change depending on the structure and type of the base.

8.2. Only materials with identical batch numbers will be used for lacquering or coating on contiguous surfaces, as slight differences in the shade can be possible on new products which will not be accepted as claims.

8.3. The right assessment of the base will also be part of the proper use of our products. Before lacquering or coating doubtful bases will first have to be treated to be in a perfect, sustainable condition.

8.4. Our technical data sheets will be considered only as general guidelines. Due to the versatile fields of application of the individual products and to the special given factors involved, the orderer himself will carry out tests.

8.5. The lacquers supplied by our company will be used before the indicated use-by date. If these use-by dates are not observed, any claims for guarantee will be excluded.

## 9. Liability for material defects

9.1 We will guarantee that the goods supplied by us are free from material defects or defects of title. Claims for guarantee will not be justified by minor defects.

The description of the supplied products and of their intended use in the contract concluded with our customer will be relevant for determining if the contract specifications have been met or not. Insignificant changes of the goods regarding the values to be indicated in the description as well as minor changes of our service/delivery will be of no importance inasmuch as they can be reasonably accepted by the customer or are based on customary quantity, quality or design-related tolerances.

If commodities are to be supplied we will be entitled to deliver up to 10% more or less than the ordered quantity; the supplied quantity will be invoiced.

9.2. If the orderer has submitted specifications according to which the goods are to be manufactured or processed by us we will not be liable for the correctness of the specifications submitted by the orderer. The orderer will exempt us from any possible claims that result from mistakes in his specifications.

9.3. Indications that we have published in the written form or in drawings, e.g. catalogues, descriptions, figures, and drawings, as well as indicated measurements, weights or performances will only identify the properties of our products and they will not ensure any properties or guarantees.

We will reserve the right to change technical data and formulations that contribute to technical progress.

9.4. If the contracting party refers to a public statement, in particular made in advertising, to justify a defect claimed by him, it will be obliged to prove that this public statement was the reason for its decision to buy.

9.5. The contracting party will be obliged to accept the delivery/service even if the goods show only insignificant defects. Guarantee will be excluded if the goods have only minor defects. By insignificant defects we understand in particular minor deviations from the contractually agreed quality or if the contractually intended usability of the goods is only insignificantly affected. Furthermore, guarantee will be excluded if the contracting party or third parties have carried out trouble shooting or repairs that have not been absolutely necessary.

9.6. The contracting party will be obliged to immediately control every single delivery as to recognizable deviations regarding the quality, quantity and other features, and it will complain in written form about any ascertained deviations immediately, but not later than within one week from the date of dispatch. The contracting party will be obliged to make available to us a detailed written description of the defects it has complained about. If it does not put forward the claim or if it puts forward the claim belatedly, it will forfeit its claims regarding any possible defects of the purchased goods. If any possibly notified notice of defect is being handled by us, and in particular, if goods returned by the contracting party are checked by us, this does on no account mean a waiver of the contracting party's obligation to present a notice of defect.

9.7. In case of a defect we will be entitled at our option to eliminate the defect or to supply proper goods (subsequent fulfillment, § 439, section 1 of the German civil code). In the case of a subsequent fulfillment we will be obliged to bear all the expenses that are necessary for such a fulfillment, in particular, transport, conveyance, labour, and material costs, inasmuch as these have not been increased due to the fact that the goods have been conveyed to another place than that the goods were supplied to originally. We will be entitled to refuse subsequent fulfillment if it is only possible with unreasonably high costs.

9.8. Unless otherwise provided by law, the contracting party will be obliged to fix in writing a reasonable term for subsequent fulfillment before it can put forward any other rights to guarantee. In general, we will have to be granted at least a 3-week term for subsequent fulfillment. This will not apply if a shorter term is contractually agreed in an individual case or if a shorter term is absolutely necessary, e.g. in urgent cases when unreasonably high damage could result or the operational safety is put at risk.

If the subsequent fulfillment is not carried out within this term the customer will be entitled to put forward legal rights, and in particular, to withdraw from the contract, to declare the reduction of the purchase price – and provided that figure 11 applies – to claim for damages.

It will not be necessary to fix a term if we have definitely and seriously refused subsequent fulfillment or if the latter is impossible.

9.9. Normal wear of the purchased goods, faults of or damage to the purchased goods due to faulty or negligent handling after the transfer of risk, or due to excessive fatigue or to the use of unsuitable equipment, or to faults of or damages to the purchased goods that have been caused by special outer influences after the transfer of risk, and that had not been taken into account in the contract, will not be deemed as defects.

9.10. Claims based on any possible ancillary damages that have been caused independent of the subsequent fulfillment (loss of production, claims based on late delivery to the contracting party's customers, etc., § 280 of the German civil code) can only be put forward if a reasonable term for subsequent fulfillment had been notified to us in

written form and has unsuccessfully lapsed. Beside this figure 11 will apply to claims for damages.

9.11. The contracting party's claims based on faults of the purchased goods will prescribe within one year from the dispatch of the purchased goods. If the contracting party intends to withdraw from the contract or to declare the reduction of the purchase price, these rights will also be excluded when a year has lapsed from the dispatch of the purchased goods.

The guarantee term will not be reduced in the case of willful or malicious actions. In the case of defects in buildings or goods that have been used as usual for a building and have caused the faultiness of the latter, the legal 5-year prescription period (§ 438, section 1, no. 2 of the German civil code) will apply; however, the 5-year prescription period will only apply if the purchased goods have been purposefully built into our contracting party's building within two years from their dispatch.

9.12. If the period for subsequent fulfillment has unsuccessfully lapsed, we will be entitled to request the customer to put his further rights to guarantee forward to us within a 1-month term. Should it not make such a statement within that term we will be further entitled to subsequent fulfillment.

9.13. If the product we supplied has been delivered to the end consumer by the intermediary of a delivery chain, the relevant legal regulations will be valid. In this case we will not be liable acc. to §§ 478, 479 of the German civil code, if our customer has delivered the goods abroad and excluded the validity of the UN Purchase Act.

9.14. We will not give any guarantee for the quality of the purchased goods supplied by us beyond the stipulation indicated above.

#### 10. Liability for defect of title

10.1. Within the scope of the legal stipulations we will be liable for ensuring that the delivered products are free from defect of title. We will guarantee that the products supplied by us do not infringe third parties' industrial property rights or copyrights in the country of our company's seat (home country), unless otherwise agreed. We will not be liable inasmuch as the infringement of such property rights is based on instructions given by the contracting party, or if the infringement is based on unauthorized changes of the product or if the product has been used by the contracting party for other purposes than those agreed in the contract.

10.2. The contracting party will immediately inform us when an infringement of industrial property rights is put forward by third parties. If this immediate information is not given, warranty claims will be excluded.

10.3. Regarding the guarantee period figure 9.11 will be applicable accordingly.

10.4. If justified claims are put forward by third parties, we will be authorized - at our own option and at our expense - to obtain a right of use for the deliveries concerned or to change the deliveries in a way that they will not infringe the property rights, or to supply comparable products that do not infringe the property rights, whereas the contractually intended purpose will be taken into account.

10.5. A warranty claim by the contracting party will be excluded if  
- the contracting party itself has the negotiations with the third party or makes agreements with the latter without our consent,  
- the contracting party has not immediately informed us about the third parties' claims.

#### 11. Liability for damages and futile expenses

11.1. In the case of negligence and willful malicious actions we will be liable for damages and futile expenses for whatever legal ground. This will also apply to neglect of duty by our legal representatives and vicarious agents.

11.2. In the case of minor negligence we will only be liable for the infringement of contractual obligations independent of the legal ground; in such a case the amount of a possible claim for damages will be limited to the compensation of the typical foreseeable damage. The contracting party will be obliged to draw our attention to special risks, atypical damage-related possibilities and unusual amounts involved of damages in writing and prior to the conclusion of the contract. Liability for any other consequential damages, for lacking

economic success, indirect damages and damages resulting from third parties' claims will be excluded.

11.3. Claims for damages based on deficiencies will be excluded if the goods are only affected by unessential defects.

11.4. Any limitations of liabilities will not refer to claims in connection with bodily injury or danger of life or health, and neither to claims based on the product liability law and other obligatory liability-based stipulations (environmental liability act, etc.).

11.5. If an object that is only defined by its category is the subject of the purchase contract, our liability will - also in this case - be determined acc. to the above-mentioned regulations; any liability which is independent of default will be excluded.

11.6. Furthermore we will be liable for the fulfillment of agreed guarantees, if we have given guarantees in exceptional cases; guarantees will have to be given in written form and will be expressly described as such.

#### 12. Obligations regarding protection and thoughtfulness

In case of the breach of protection and thoughtfulness obligations for which we are responsible within the meaning of § 241, section 2 of the German civil code, but which does not directly refer to the delivery of the goods, our contracting party will only be entitled to claim for damages and to exert his right to withdrawal, if he has served notice in writing to us beforehand regarding the breach of obligations. This will not apply if we, our representatives or our vicarious agents are blamed for willful or negligent actions and also not in connection with bodily injury and danger of life and health.

#### 13. Reservation of title

13.1. We will reserve the title to all goods delivered by us until all claims - including also future claims - resulting from the business relations with the contracting party have been settled. As long as the invoices have not been completely settled the reservation of title will apply to the unsettled balance concerned.

13.2. If the contracting party behaves culpably and contrary to the contract, and in particular, if it delays payment, we will be entitled to take back the delivered object also without prior withdrawal from the contract. The contracting party will be obliged to handover. Taking back the delivered goods will not mean our withdrawal from the contract, unless expressly stated in written form by us. The taken back goods will be credited based on the effective proceeds after deduction of the commercialization and taking back costs.

13.3. In case of seizures and other charges by third parties the contracting party will immediately inform us in writing so that we can file suit acc. to § 771 of the civil process order. If the third party is not able to reimburse us the judicial and extrajudicial costs of the suit acc. to § 771 of the civil process order, the contracting party will be liable for the expenses borne by us.

13.4. The contracting party will be obliged to insure our property against fire, water, theft. The claims against the insurance company will be ceded to us.

13.5. The contracting party will be entitled to resell the supplied object in the regular course of business, unless it delivers with reservation of title when his customer does not pay the full invoice amount. Beside others, the resale will not be made in the regular course of business if the contracting party has agreed an effective prohibition of assignment of claims with its customer; on the other hand resale before the settlement of all unbalanced invoices will be allowed.

In the case of resale the contracting party will already now assign all the claims for the total invoice amount to us (incl. V.A.T.) that it has against its customers or against third parties based on the resale; it will do so independent of the fact whether the supplied object was resold prior to or after processing. The contracting party will be entitled to collect these accounts receivable also after their assignment, notwithstanding our right to collect ourselves these accounts receivable as long as the contracting party properly fulfills its payment obligations with us and is not in default. In such a case we can request the contracting party to notify us the assigned claims and the debtors concerned, to give us all information necessary for collection, to hand over the pertinent documents and to notify the debtor (third parties) of the assignment.

If the orderer has sold the claim within the scope of a genuine factoring, our claim will become due immediately and the orderer will assign his claim against the factoring company to us and immediately transfer the sales proceeds to us. We accept this assignment.

13.6. Processing or transformation of the supplied goods by the contracting party will always be carried out for us. If the supplied goods are processed together with other objects not belonging to us, we will acquire the co-property of the new object proportionally to the value of the supplied object compared with the value of the other processed objects at the time of their processing.

13.7. If the supplied object is inseparably connected or mixed with objects that do not belong to us we will acquire the co-property to the new object proportionally to the value of the supplied object compared with that of the other connected or mixed objects at the time of connection or mixture. If the connection or mixture is carried out in a way that the buyer's object is to be considered as the main object, the proportional transfer of the co-property by the contracting party will be deemed as agreed. The contracting party will preserve the sole property or the co-property for us.

13.8. The contracting party will also assign to us the claims intended to secure our claims against it; such claims against a third party will accrue to it by the connection of the supplied object with a piece of land.

13.9. We will oblige ourselves to release our securities at the contracting party's request inasmuch as their value exceeds the claims to be secured by more than 20 %, provided that those claims are still unsettled. A restitution claim will not be put forward if and inasmuch as it is opposed to a release claim.

#### **14. Inhibition of prescription**

If negotiations regarding a claim are pending between ourselves and the contracting party, prescription will be inhibited (§ 203 of the German civil code). The inhibition of prescription will end not later than three months after the last written statement of one party regarding the negotiations about the claim, unless one of the contracting parties notifies in written form the end of the negotiations earlier.

#### **15. Protection rights / Secrecy**

15.1. The contracting party will ensure that third parties' protection rights are not infringed by the records, objects, etc. that have been handed over to us for the purpose of delivery or service. We will draw the contracting party's attention to the third parties' rights we know. The contracting party will release us from third parties' claims and reimburse us any damages we suffer. If any third party prohibits us service, production or delivery under reference to a protection right it owns, we will be entitled – without checking the legal situation – to cease the work and to demand reimbursement for our expenses.

Records, objects, etc. that have been handed over to us but did not result in placing an order will be returned at request against reimbursement of the costs. Otherwise we will be entitled to destroy them three months from the submission of the offer.

15.2. We will reserve the property rights and copyrights to all samples, models, drawings, quotations, calculations, and similar information of material and immaterial kind – also those in electronic form. Such information will not be made available to third parties. If the contracting party receives such information in connection with the initiation of the contract-related negotiations, it will be obliged to return the information free of charge to us if the contract is not concluded.

15.3. The contracting party will be obliged not to make available any information to third parties without our express consent, if it has expressly been described as confidential or is to be kept secret due to the existing circumstances.

#### **16. Consumer Arbitration Law/ Procedures**

Plantag Coatings GmbH will neither be obliged nor ready to attend dispute settlement procedures before a consumer arbitration board. Therefore Plantag Coatings GmbH will not take part in any dispute settlement procedures before a consumer arbitration board.

#### **17. Final clauses**

17.1. The German law will be applicable. The UN Purchase Act (CISG) will be excluded.

17.2. Should single clauses of these General Terms of Business be wholly or partly ineffective this will not affect the effectiveness of the other clauses and/or of the other parts of such clauses; in lieu of this the legal stipulations will apply.

17.3. The supplier's seat will be the exclusive place of jurisdiction. We will – at our option - be entitled to file suit against the contracting party also at its general place of jurisdiction or at the place of jurisdiction which is competent for its place of business.

17.4. The supplier's seat will be the place of service, payment and fulfillment for all obligations resulting from the legal relationships with the user. Verbal agreements about the payment of costs will not include a change of the place of fulfillment indicated above.

17.5. The data necessary for handling the business affairs will be stored at a central place in our company.