

# **Pigment International GmbH & Co. KG**

## **Standard Conditions of Sale and Delivery**

### **§ 1 Area of application**

(1) The following Standard Conditions of Sale and Delivery of Pigment International GmbH & Co. KG (the "Seller") shall be an integral part of the purchase contract. They apply exclusively. Any provisions introduced by the Buyer that conflict with or are contrary to these Standard Conditions of Sale and Delivery shall not be effective unless the Seller has expressly accepted them in writing for a particular order.

(2) These Standard Conditions of Sale and Delivery also apply to all future business with the Buyer, to the extent that such future business concerns legal transactions of related kind.

(3) These Standard Conditions of Sale and Delivery are only applicable where the Buyer is an undertaking (*Unternehmen*) as defined in § 310 I of the German Civil Code (BGB).

### **§ 2 Offers and entry into contracts**

1) The Seller's offers shall not be binding with respect to price, quantity, delivery time or availability.

(2) The Buyer's orders shall become binding upon the Seller when the Seller issues its written or printed order acknowledgment (or an invoice or a delivery note).

### **§ 3 Prices and payment**

(1) To the extent that nothing is agreed in writing to the contrary, the prices stated are ex warehouse prices including packaging costs and excluding statutory VAT (as at the date of invoice) which must also be paid and the prices invoiced shall be the Seller's stated prices on the date of delivery.

(2) The purchase price shall be paid into the bank account specified in the invoice. The Buyer shall not have the right to withhold payments without the written agreement of the Seller.

(3) To the extent that nothing is agreed in writing to the contrary, payment is due within 10 days after delivery. If the payment is delayed, interest rates of 8% p.a., above the basis interest rate (ECB) will become due. The Seller reserves the right to charge a higher rate of interest as damages for delayed payment.

(4) If the Seller puts a general price increase into effect in the interval between entering into the contract and delivery, the Buyer shall have the right to withdraw from the contract within two weeks after having been informed of the price increase, unless the price increase is exclusively due to an increase in freight costs.

(5) Payment by bills of exchange, cheques or other methods of payment requires the Seller's prior consent and shall only be deemed effective upon fulfillment of the bill of exchange, cheque or other payment method. Bills of exchange shall not exceed 90 days from the invoice date. The Buyer shall be liable for discount expenses, bill charges, bill tax and similar expenses incurred after thirty days after the invoice date.

(6) Where the Seller has reason to doubt the Buyer's solvency or creditworthiness and the Buyer is not prepared to make an advance cash payment or provide the Seller with security as requested, the Seller shall have the right to cancel that portion of the contract which he has not yet performed.

(7) VAT must be added to advance payments.

(8) Payment shall not be deemed to have been effected until the amount has been cleared into one of the Seller's bank accounts.

(9) The Seller reserves the right to apply payments first against those invoices to the Buyer that have been outstanding longest, plus any interest on arrears and costs accrued thereon, and to apply payments in the following order: costs, interest, principal claim.

(10) The Buyer shall not have the right to withhold payments. The Buyer may only off-set amounts owed to the Buyer by the Seller if the amounts are not contested by the Seller or if the claim to the amount has become legally enforceable and finally binding.

(11) Where payment has been agreed in a currency other than euros (EUR), the Seller reserves the right to reduce or increase the amount originally agreed so that, when converted into euros, the sum invoiced is equivalent to the euro value of the amount originally agreed at the time of entering into the contract.

(12) If the buyer is behind with one payment, all other accounts receivable become due immediately without further request.

#### **§ 4 Delivery time**

(1) The Seller shall make every effort to effect delivery as early as possible. There shall be no fixed deadlines for delivery.

(2) Should, notwithstanding the preceding paragraph, a fixed delivery deadline have been agreed and the Seller is unable to comply with this deadline, the Buyer shall grant the Seller an extension of the deadline, normally of four weeks.

(3) The day of delivery shall be the day on which the goods leave the Seller's warehouse or, if that day cannot be ascertained, the day on which the goods are made available to the Buyer.

(4) If the Buyer delays in accepting the goods or if the Buyer negligently or culpably breaches any other duties, the Seller is entitled to claim damages from the Buyer for any losses incurred by the Seller in this regard including additional expenditure. The Seller reserves its rights to make additional claims. To the extent that the conditions mentioned above are met, the risk of destruction, loss or damage to the goods shall pass to the Buyer at the beginning of such delays.

(5) The Seller assumes liability under German law, to the extent that the sales contract is a fixed delivery date contract (*Fixgeschäft*) as defined in § 286 II (4) of the German Civil Code (BGB) or of § 376 of the German Commercial Code (HGB). The Seller also assumes liability according under German law if the Seller delays in delivering the goods to the Buyer and this results in the Buyer having the right to cancel the contract.

(6) The Seller assumes liability under German law if the Seller delays in delivering the goods to the Buyer and the delay is caused by a deliberate or grossly negligent breach of the contract by the Seller. If a representative or vicarious agent of the Seller is at fault, the Seller shall be deemed to be at fault. To the extent that the delay is not caused by a deliberate breach of the contract by the Seller, the Seller's liability shall be limited to compensation for typically foreseeable losses.

(7) The Seller assumes liability under German law if the Seller delays in delivering the goods to the Buyer and the delay is caused by a deliberate breach of a material term of the contract by the Seller. In such cases the Seller's liability shall be limited to compensation for typically foreseeable losses.

(8) If the Seller delays in delivering the goods to the Buyer, the Seller assumes liability to pay a lump sum of 0.5% of the value of the goods for each full week in which it fails to deliver the goods, up to a maximum of not more than 5% of the value of the goods.

(9) Further legal requirements and rights of the Buyer remain unaffected.

#### **§ 5 Shipment**

(1) The Seller reserves the right to choose the route and the mode of transport. Any additional costs resulting from special shipping requests made by the Buyer shall be borne by the Buyer. Unless it has been agreed that freight is paid, the Buyer shall also bear any increases in freight rates which become effective after entry into the contract, any additional costs resulting from re-routing a consignment, any storage expenses etc.

(2) The risk of destruction, loss or damage shall pass to the Buyer upon dispatch of the goods or, if the goods are collected by the Buyer, at the time the goods are made available to the Buyer.

#### **§ 6 Force majeure**

Force majeure of any kind in particular unforeseeable production, traffic or shipping disturbances, fire, floods, unforeseeable shortages of labour, power, raw materials or supplies, strikes, lockouts, acts of government, and any other hindrances beyond the control of the party that has to perform the obligation which diminishes, delays or prevents production, shipment, acceptance or use of the goods, or makes it unreasonable to do so, shall relieve the party from its obligation to supply or accept goods, as the case may be, as long as and to the extent that the hindrance prevails. If, as a result of the hindrance, supply and/or acceptance is delayed by more than eight weeks, either party shall have the right to cancel the contract. If there is a total or partial failure by the Seller's suppliers to supply the Seller, the Seller shall not be under obligation to purchase from other sources. In such cases, the Seller shall have the right to distribute the available quantities among the Seller's customers while at the same time taking into account the Seller's own requirements.

#### **§ 7 Retention of title**

(1) Title to the goods shall not pass to the Buyer until the Buyer has fulfilled all its obligations arising from his business connection with the Seller, which shall include settling accessory claims and claims for damages and honouring cheques and bills. The Seller shall also retain title over the goods regardless of whether a running balance is kept which sets off the Buyer's obligations to pay against the Seller's obligations to pay.

(2) If the Buyer defaults in fulfilling his obligations towards the Seller, the Seller is entitled to demand the return of goods to which the Seller retains title without granting an extension of the relevant deadline and without cancelling the contract. Acceptance of the returned goods shall not constitute cancellation of the contract unless the Seller has expressly declared this. If the Seller cancels the contract, the Seller shall have the right to demand appropriate compensation for having permitted the Buyer to use the goods for a certain period.

(3) If goods to which the Seller retains title are processed into new products, the Buyer shall be deemed to be effecting such processing on behalf of the Seller without thereby acquiring any claims against the Seller. The Seller's title shall thus extend to the products resulting from the processing. If goods to which title is retained by the Seller are processed together with, mixed with or attached to goods to which title is retained by third parties, the Seller shall acquire co-ownership of the resulting products in the ratio of the invoice value of the goods owned by him to the invoice value of the goods owned by those third parties. If goods to which title is retained by the Seller are processed together with, mixed with or attached to goods to which the Buyer has title, the Buyer, by accepting these Standard Conditions of Sale and Delivery, assigns in advance his title to the new item to the Seller.

(4) The Buyer shall provide, on behalf of the Seller, adequate storage of the goods to which the Seller retains title, to service and repair them at the Buyer's expense and to insure them against loss and damage to the extent which may reasonably be expected of a prudent

businessman at the Buyer's expense. By accepting these Standard Conditions of Sale and Delivery the Buyer assigns in advance to the Seller any claims which may accrue to the Buyer under the insurance policies.

(5) As long as the Buyer duly meets his liabilities to the Seller, the Buyer shall have the right, in the normal course of business, to do as it wishes with the goods to which the Seller retains title. This shall not apply, however, if the Buyer and its customers have agreed that the Buyer must not assign its claims against its customers to third parties. The Buyer shall not have the right to pledge, chattel mortgage or otherwise encumber the goods to which the Seller retains title. When reselling the goods, the Buyer shall make the passing of title subject to its customers paying in full for the goods.

(6) By accepting these Conditions, the Buyer assigns in advance to the Seller any claims which may arise from a resale of the goods to which the Seller retains title, together with any incidental rights and security interests including bills of exchange and cheques, so as to provide the Seller with security for all claims that the Seller has against the Buyer which result from this business relationship. If goods to which the Seller retains title are sold together with other goods at a single price, the assignment shall be limited to the portion of the invoice value which covers the goods to which the Seller retains title. If the Buyer sells goods which the Seller co-owns under to clause §7(3) of these Standard Conditions of Sale and Delivery, the assignment shall be limited to the portion of the invoice value which corresponds to the Seller's co-ownership. If the Buyer uses goods to which the Seller retains title for processing a third party's product on a contract basis, in accepting these Standard Conditions of Sale and Delivery the Buyer assigns in advance its contractual claim against the third party to the Seller in order to provide the Seller with security for its claim. As long as the Buyer meets its payment obligations to the Seller on time, its customers' payments in respect of resale or contract processing can be made to the Buyer. The Buyer shall not have the right to assign or pledge such claims as security.

(7) If the Seller believes its claims against the Buyer to be at risk, the Buyer shall, at the Seller's request, inform his customers of the assignment of its claims against its customers to the Seller and supply the Seller with all necessary information and documents. Any acts of third parties aimed at seizing goods to which the Seller retains title or at appropriating claims assigned to the Seller shall be brought to the Seller's attention by the Buyer immediately.

(8) If the value of the security provided to the Seller exceeds the value of the claims to be safeguarded by more than 20 per cent, the Seller shall, at the Buyer's request, bring the excess coverage down to 20 per cent by releasing security of the Seller's own choice.

#### **§ 8 Warranties and notice of defects**

(1) The Buyer has the following warranty rights, provided that the Buyer has duly carried out its duties under §377 of the German Commercial Code (HGB) to inspect the goods and to make a complaint regarding a defect immediately upon receipt of the goods. If, despite the Seller's greatest attention, the Buyer has complaints, notification of apparent defects according to §377 of the German Commercial Code (HGB) shall only be recognized if filed in writing within two weeks of receipt of the goods and latent defects must be notified to the Seller immediately upon discovery, If no such notification is made the goods will be deemed accepted.

(2) To the extent that the goods are defective, the Seller may, at the Seller's discretion, repair the defective goods for the Buyer or supply a defect-free replacement to the Buyer. If the Seller repairs the defective goods, the Seller shall bear all necessary transport, travel,

labour and materials costs to the extent that these have not been increased by reason of the goods being in a different location from the place of delivery.

(3) If the replacement provided by the Seller is also defective, the Buyer shall be entitled to either adjust the purchase price or withdraw from the contract.

(4) The Seller is liable in accordance with German law if the Buyer brings a claim for damages against the Seller where the claim is based on a deliberate act or gross negligence by the Seller or by the Seller's representatives or vicarious agents. To the extent that the Seller did not breach the contract deliberately, the damages shall be limited to the typically foreseeable losses.

(5) The Seller is liable in accordance with German law to the extent that the Seller has deliberately breached a material term of the contract, although the damages shall be limited to the typically foreseeable losses.

(6) To the extent that the Buyer is entitled to compensation by way of damages rather than performance by the Seller, the Seller's liability is limited to the typically foreseeable losses, taking into account sub-clause (3) of this clause 8.

(7) The foregoing limitations shall not apply to death, personal injury or damage to health.

(8) The Seller shall not have any liability except to the extent regulated above.

(9) The period of limitation for warranty claims shall be 12 months from the date the risk in the goods passes.

(10) The statutory period of limitation of five years from the date of delivery remains unaffected in cases that fall under §§ 478 and 479 of the German Civil Code (BGB) (recourse for delivery).

### **§ 9 Total liability**

(1) To the extent that liability for damages is not provided for in §8, it is excluded irrespective of the legal nature of the claim. This applies in particular to claims relating to pre-contractual liability and liability when contracting (*Verschulden aus Vertragsschluss* pursuant to §311 of the German Civil Code (BGB)) by reason of various breaches of duty or of tortious claims for damage to property under §823 of the German Civil Code (BGB).

(2) To the extent that the Seller's liability for damages is excluded or limited, such exclusion or limitation also applies to the Seller's liability for damages towards the Buyer's employees, representatives and vicarious agents.

### **§ 10 Quality and properties of the goods, technical support, use and processing**

(1) As a general rule the goods shall only be of such quality and have such properties as stated in the Seller's product descriptions, specifications and labelling. Public statements, pitch documents or advertising shall not be classed as descriptions of the quality or properties of the goods.

(2) Technical advice provided by the Seller verbally, in writing or by way of trials is given in good faith but without warranty. This also applies in relation to any proprietary rights of third parties. Such technical advice shall not release the Buyer from the obligation to test the products supplied by the Seller as to their suitability for the intended processes and uses. The application, use and processing of the products are beyond the Seller's control and therefore are entirely the Buyer's responsibility.

### **§ 11 Other**

(1) This contract and the entire legal relations of the parties are subject to the law of the Federal Republic of Germany. The UN agreement on the sale of goods (CISG) does not apply

(2) Place of performance and exclusive place of jurisdiction for both parties shall be Steinau (Germany)

(3) Changes and additions to this must be in writing. This also applies to this sub-clause. Verbal agreements are not valid.

(4) Should any clause in these Standard Conditions of Sale and Delivery be or become invalid or should a required provision not be contained within these Standard Conditions of Sale and Delivery this shall not affect the validity of the remaining clauses or remaining parts of the clause concerned.

Steinau, February 2012