

## **Standard Terms and Conditions of Delivery and Payment of Karl Wörwag Lack- und Farbenfabrik GmbH & Co. KG**

### **I. Scope**

1. Our conditions of delivery and payment as set out below, are only applicable to companies, legal persons constituted under public law or public law special funds within the definition of Section 310 (1) German Civil Code (Bürgerliches Gesetzbuch, "BGB"). They shall not apply to consumers.
2. Our conditions of delivery and payment apply exclusively. The customer's conditions that are contrary to or divergent from our conditions of delivery and payment shall not form part of the contract, unless we have explicitly approved the validity of such provisions in writing. Our offers are non-binding unless something to the contrary has been explicitly agreed.
3. Subsidiary agreements, amendments and modifications to these conditions must be agreed in writing.

### **II. Prices**

1. The statutory value-added tax applicable on the day of delivery shall be added to the agreed prices.
2. Unless the customer raises an objection promptly following delivery, the billing shall be based on the weights, unit numbers and quantities as determined by us.

### **III. Technical application consultancy**

1. If we provide consultancy services, these shall be provided to the best of our knowledge but shall be non-binding. All details and information concerning the suitability and application of the supplied goods do not exempt the customer from performing its own examinations. This particularly applies if thinners, curing agents, supplementary varnishes or other components not supplied by us are added to the product mix.

### **IV. Delivery**

1. Deliveries shall be made in accordance with EXW Incoterms 2010. The customer is required to collect the goods at the agreed delivery date or, if no binding delivery date has been agreed, it must do so promptly following said goods having been made available at the place of performance according to Para. IX. 1. If the customer is in default of its obligation to take delivery of the goods, we shall be entitled, at our own choice, to either dispatch the goods at the cost of the customer or put them into storage, including outdoors if necessary if no other option is available. In this case we shall not be liable for the accidental destruction, loss or damage to the goods. If we put the goods into storage, we shall be entitled to issue an invoice and demand payment for the goods one week following the start of the delay in acceptance.
2. In the event that, by derogation from Para. 1, it is agreed that we are obliged to dispatch the goods, the consignment shall be performed at the cost of the customer and the choice of the means of transport and the transport route shall be made at our discretion, unless the customer has issued us with special instructions in this respect. The risk shall pass at that time at which the goods are handed over by us to the freight carrier.
3. Part deliveries may be made insofar as these are tenable to the customer.
4. Significant, unforeseeable operational disruptions for which we are not culpable, failures to meet delivery times or delivery failures on the part of our suppliers, and (for example) operational interruptions caused by the scarcity of raw materials, energy or manpower, strikes, lock-outs, difficulties in the procurement of means of transport, transport disruptions, official decrees or instances of force majeure experienced by us and our sub-suppliers shall extend the

delivery time by the period of the duration of the impediment to performance, insofar as such events are relevant to the deliverability of the goods. We shall promptly inform the customer of the start and end of impediments of this type. If this delays the delivery by more than one month, both we and the customer shall be entitled to rescind the agreement with respect to the quantity affected by the impediment to delivery; all compensation claims are excluded. This shall not affect the customer's statutory right of withdrawal in the event of an impediment to delivery resulting from circumstances for which we are responsible.

5. If the delivery is performed using returnable containers, these must be returned to us completely empty of residues and carriage paid within 90 days following receipt of the delivery. Losses of and damage to returnable packaging shall be charged to the customer insofar as it is responsible for said loss or damage. Returnable packaging may not be used for other purposes or for the storage of other products. Such packaging is intended solely for the consignment of the delivered goods. Inscriptions may not be removed.
6. We do not accept returns of disposable packaging. We shall instead inform the customer of a third party that will arrange for the recycling of the packaging in accordance with the statutory and local official regulations.

## **V. Payment**

1. The invoice sum is payable without deduction immediately following receipt of the invoice. Payment shall only be deemed to have been made punctually if we are able to dispose of the money with the value having been credited as of the due date of payment to the account specified by us.
2. Direct debit procedure: A pre-information notice containing the direct debit amount and the due date of payment shall be forwarded to the customer no later than 14 calendar days prior to the due date for a SEPA direct debit. The time period can be reduced to any other period by way of an individual agreement between us and the customer, whereby the minimum permissible period is "receipt one day prior to the due date", however. The pre-information notice can be sent by invoice, SMS, telephone, mail, fax or online. The debit amount corresponds to the invoiced amount, subject to any cash discount agreements. The direct debit will trigger a credited payment on the due date.
3. In the event of any delay to payment, the customer shall be obliged to pay interest on arrears at the rate of 9% over the relevant base interest rate.
4. The submission of bills of exchange does not constitute a cash payment, and is only permissible with our approval and shall be made on account of payment. The customer shall bear all discounting and bill charges.
5. The customer may not exercise any right of retention or offset, unless the claim asserted for the exercise of the right of retention or offset is undisputed, confirmed by a final court judgement (res judicata decision) or arises from the same contractual arrangement.
6. The non-payment of due invoices or other circumstances that indicate a significant deterioration in the financial circumstances of the customer following the conclusion of the agreement, shall entitle us to demand the immediate payment of all our claims arising from the same legal relationship.

## VI. Retention of title

1. We reserve our ownership over the object of the delivery until such time as the purchase price has been fully paid. The delivered goods shall remain our property until full settlement of all receivables established under the current business relationship with the purchaser. The retention of title is not affected even if we consolidate our individual receivables into one current account, in which the balance is drawn up and acknowledged. Even if payment is made, our purchase price receivables shall be considered unredeemed for the time that any liability endures under a bill accepted by us in this connection - such as by way of a check/note procedure.
2. Any processing or mixing is performed by the customer on our behalf, without this establishing any liability on our part. In the event that the goods delivered by us are processed or mixed with other items not belonging to us, in order to provide security for our receivables the customer here and now assigns to us co-ownership in the new object, this assignment being equal to the ratio of the value of the goods subject to retention of title compared to that of the other processed articles, subject to the condition that the customer retains the new item on our behalf.
3. The customer shall be entitled to dispose of the products as part of its normal course of business, provided it punctually fulfils its obligations under this business relationship.
4. In order to provide us with security, the receivables from the sale of goods to which we have ownership rights are assigned to us here and now by the customer to the extent of our ownership share in the goods sold.  
  
If the customer combines or mixes the delivered goods with a principal item belonging to a third party in return for payment, it assigns its claims to payment against the third party here and now to us up to the amount of the invoice value of the delivered goods.  
  
We accept these assignments.
5. If demanded by us, the customer shall provide us with all requisite information concerning the status of the goods in our ownership and concerning the receivables assigned to us, and it must likewise inform its buyer of the assignment.
6. The customer is obliged to carefully keep the goods subject to retention of title, and to insure them against theft and damage at its own cost. It shall make an advance assignment of its claims under the insurance contracts. We accept this assignment.
7. If the value of the securities exceeds our receivables by more than 20%, if requested we shall release the customer's securities according to our own selection.
8. The right of the customer to dispose of the products subject to our retention of title and to collect the receivables assigned to us, shall be extinguished as soon as it ceases to service its debts and/or finds itself in financial difficulties. If these conditions are fulfilled, we shall be entitled, to the exclusion of the right of retention, to demand the interim surrender of all of the goods subject to our retention of title, without granting any grace period or exercising a rescission.
9. If the retention of title is not valid according to the law of the country in which the delivered goods are located, if demanded by us the customer must provide us with equivalent security. If it fails to meet this demand, we may demand the immediate payment of all outstanding invoices irrespective of the agreed payment periods.

## **VII Claims for defects**

1. The customer must inspect the goods for defects promptly following receipt.
2. Defects must be reported in writing promptly following the receipt of the goods, unless it relates to a defect that was not identifiable during the inspection. If such a defect become subsequently apparent, this must likewise be reported without delay. The report must be issued in writing and it shall precisely describe the nature and extent of the defect.
3. The customer is obliged to promptly inform us and afford us the opportunity to perform an immediate inspection, if it wishes to claim for defects in the products delivered by us.
4. In rendering subsequent performance, we shall be entitled to eliminate the defect or perform a substitute delivery, the choice resting with us.
5. In the event of fault elimination, we shall bear all the costs necessary for this purpose, provided these are not increased due to the relocation of the purchased item to a place away from the place of performance.
6. We shall be liable to compensate consequential damage, only if we are (jointly) responsible for the occurrence of the defect due to our deliberate act or gross negligence.
7. If we are not willing or able to perform the fault elimination or the substitute delivery, or if this exceeds a period of time considered reasonable for reasons for which we are responsible, or if the fault elimination or substitute delivery proves unsuccessful, the customer shall be entitled, at its choice, to rescind the agreement or demand a reasonable reduction of the purchase price.
8. All warranty claims expire 12 months after receipt of the goods by the purchaser if the supplied goods have not been used in accordance with their normal method of use for a structure and have caused it to be defective.
9. In the case of a trader's right of recourse (Section 445a German Civil Code (Bürgerliches Gesetzbuch, "BGB")), it shall be assumed that no defects were present at the time of the transfer of risk to the customer, if, according to Para. VII. 2. (sentence 1), the customer duly performs an inspection but did not report any defects, unless this assumption is not reconcilable with the nature of the article or the defect.
10. If the customer asserts claims to recourse, it must allow us to treat it such that it has implemented all legally permissible contractual possibilities vis-à-vis its contractual partners (e.g. Refusal of subsequent performance due to disproportionality or limiting the reimbursement of expenditure to a reasonable amount).
11. We shall be entitled to reject the customer's claims for recourse - with the exception of claims to the new delivery of the goods - if we grant the customer an equivalent settlement for the exclusion of its rights. We shall be liable to compensate consequential damage, only if we are (jointly) responsible for the occurrence of the defect due to our deliberate act or gross negligence.
12. Unless we are culpable of having acted deliberately or with gross negligence, the customer has no compensation claims without any settlement having been granted.

## **VIII. Liability/disclaimer**

1. Unless agreed otherwise, all further compensation claims of the customer against us and our employees, workers and staff, representatives and vicarious agents shall be excluded, particularly in the case of claims for compensation for damage not actually sustained by the delivered goods themselves.
2. The limitations and exclusions of liability contained No. 1 above and elsewhere in these conditions of delivery and payment shall not apply in case of deliberate acts, gross negligence, death or personal injury, or as a consequence of guarantees of quality or durability assumed by us, or particularly in accordance with the German Product Liability Act, where we are subject to rules of strict liability. This also applies in the event of any breach of duty on our part that jeopardises the achievement of the contractual purpose, whereby our liability is limited to the compensation of damage that is typical and foreseeable for this type of contract.

## **IX. Place of performance, legal venue and miscellaneous provisions**

1. The place of performance for all obligations under the business relationship or the individual contract shall be our dispatch point; the place of performance for all payments is our address.
2. The legal venue shall either be our registered address or the general legal venue of the customer, this choice resting with us. This likewise applies to all disputes concerning documents, bills or cheque processes. The customer shall be obliged to grant us a reasonable period of time in which to exercise our optional right.
3. The contractual relationships with our customers shall be governed exclusively by the Law of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods shall not apply.
4. We shall store and process the customer's data only in accordance with the relevant statutory provisions, insofar as this is necessary for the orderly administration of the contractual relations.