



Terms and conditions of sale, delivery and payment of Akzo Nobel Powder Coatings GmbH

I. General

Our deliveries are performed exclusively in accordance with the terms and conditions of sale, delivery and payment set out in the following. Any terms of conditions applied by the Buyer are excluded even where not expressly contradicted by us. Within the framework of on-going business associations, the terms and conditions below are applicable also to future business transactions.

II. Quotations, conclusion of contract, written form

1. All contractual rulings shall be definitively set down in writing. Verbal ancillary agreements before or during conclusion of contract shall not form a constituent part of the agreement. The requirement for the written form shall apply even if this written form clause is nullified.
2. Any quotations submitted by us are without commitment. Following placement of order by the Buyer, the contract is validated by our written confirmation of order. This may not under any circumstances be construed as in any way connected to the granting of a licence allowing utilization of our industrial property rights.

III. Prices, delivery and delivery periods

1. The prices specified in our confirmation of order are based on currently customary and applicable calculation factors. Should these factors – labour costs, material or energy costs – change, we shall be entitled to adjust the price also for unfulfilled deliveries.
2. Unless otherwise expressly agreed, the delivery periods and deadlines agreed are approximations only. If delivery periods or deadlines are exceeded by more than four weeks for reasons for which we are responsible, or should it be impossible for us to fulfil our obligation for reasons outside of our control, the Buyer shall be entitled to withdraw from the agreement. However, in the case of a delay in delivery this shall only apply after an additional period of grace of at least four weeks has expired without result for reasons for which we may be held responsible. The Buyer shall only be entitled to compensation for damages in the event of gross negligence or intent on our part.
3. Delivery dates refer to dispatch of the goods ex works. Force majeure and other events which are out of our control which could jeopardize smooth execution of the order, in particular delivery delays on the part of our sub-contractors, transport and operational disruptions, industrial conflict, material or energy deficiencies, shall entitle us to withdraw fully or partially from the contract or to delay the delivery without giving rise to any claim to compensation on the part of the Buyer. This shall also apply in the event that the listed occurrences take place during an existing delivery delay. The Buyer shall be entitled to withdraw in the event of a protracted delivery delay (at least two months) which results in the delivery no longer being of interest to the Buyer. This shall not exonerate the Buyer from its obligation to set a period of grace as outlined in point III.2 above.
4. Partial deliveries are admissible.
5. In the case of non-standard products in small quantities, a specially calculated price surcharge shall be levied.

IV. Shipping, packaging

1. Deliveries are shipped at the Buyer's risk.
The weight determined in the supplying plant shall be exclusively authoritative. Given the special nature of powder coating production, a shortfall or excess of up to 20% of the agreed weight is admissible. In the case of non-standard products, we shall be entitled to deliver the entire production volume.
2. Insurances against damage of any kind shall only be concluded at the express request of the Buyer and the relevant expenses duly invoiced.
3. If carriage-paid delivery has been agreed, this shall apply only to purchases of at least 200 kg (net), and only carriage paid to the Buyer's nearest railway station. Otherwise, delivery shall take place ex works.
4. Our reusable steel containers shall be returned carriage paid immediately once unloaded, but no later than 8 weeks after receipt.

V. Complaints and notification of defects

1. Complaints due to incomplete or incorrect deliveries or notification of obvious defects must be submitted immediately, but no later than 8 days following receipt of the goods. Other defects must be reported in writing within the same period following their discovery. Labels indicating content shall be sent in together with the complaint.
2. Failure to report complaints or to provide notification of defects within the specified period shall render any warranty claims null and void.

VI. Warranty

1. The limitation period for notification of defects is two years. The Buyer is advised that the nature of powder coatings restricts their storage capability. No warranty rights are applicable to goods which have exceeded their recommended storage period.
2. In the case of a justified complaint, we reserve the right to either remedy the defect at no charge or to replace the product forming the subject of the complaint (replacement delivery). Should any attempt to remedy the defect be unsuccessful, fail to be carried out or be delayed for reasons for which we are responsible, the Buyer shall be entitled to withdraw from the agreement.
3. For any further-reaching warranty claims than those outlined above, in particular for compensation, we shall only be deemed liable in the event of intent or gross negligence.
4. Warranty claims are excluded in cases where components are conjoined with other components not purchased from us, excepting where a complaint can be proven to be due to a defect for which we are responsible.

VII. Maximum liability limits and other claims for damages

1. In all other cases of breach of duty, unless governed by the regulations above, we shall only be deemed liable in the event that we or our assistants or vicarious agents may be proven to have acted with intent or gross negligence, or in the event of breach of duties material to the agreement. Any verbal and written application-related recommendations provided in support of the Buyer or user to the best of our knowledge and experience and based on the state of the art and the scientific knowledge available at the time shall be non-binding, and shall not constitute a basis for any contractual or legal relationship or any ancillary obligation arising from the purchase agreement. Any such recommendations shall not exonerate the Buyer from its obligation to test the products for their suitability for the intended application.
2. Our liability arising on any legal grounds, whether contractual or non-contractual, shall be limited unless otherwise decreed in the agreement or in these terms and conditions to the scope of our insurance cover: 512000 € for personal injury, 153000 € for material damage.
3. The Buyer shall exonerate us from any third party claims to damages if infringing any application patents by the processing of our products. We shall not be liable for any legal or pecuniary disadvantage incurred by the Buyer abroad as a result of industrial property rights regulations when reselling or using our products.

4. Where an obligation exists on our part to compensate for damages, any such liability shall be restricted in any event to such damage as was foreseeable at the time of conclusion of contract.

VIII. Reservation of title

1. We reserve title to delivered goods up until full payment of all our existing and impending claims arising from the business association with the Buyer, whatever their legal basis.
2. The Buyer shall be entitled to process our products or conjoin them with other products within the framework of its ordinary business operations. We shall also acquire co-ownership of the objects produced as a result of processing or conjoining as security against our claims as outlined in point 1 above. The Buyer hereby transfers co-ownership to us accordingly. The Buyer undertakes to hold the objects in which we hold co-ownership in safekeeping without charge to us. The extent of our co-ownership is determined by the proportion of the value of our product to the value of the objects created by processing or conjoining.
3. We grant the Buyer the revocable right to resell such objects in the normal course of business. This right shall be revoked in the event of a default of payment by the Buyer. The Buyer hereby assigns to us all claims and ancillary rights arising from the resale. Any such assigned claims shall be deemed security against our claims as outlined under point 1 above. The Buyer shall be entitled to collect claims which have been assigned to us, excepting where we have previously revoked this right. The right to collect claims on our behalf shall be invalidated without being expressly revoked by us should the Buyer be in default of payment. At our request, the Buyer shall inform us without delay in writing of which party has been sold the goods and also of the extent of its claims arising from the sale, and shall issue us with notarially authenticated certification of assignment of its claims to us.
4. The Buyer shall not have any other right of disposal over objects in which we hold co-ownership or over claims assigned to us. The Buyer is obliged to inform us without delay of any seizure or other legal impairments to objects to which we hold full or partial title.
5. We shall be entitled to demand the surrender of goods in which we hold title at any time should the Buyer default on due payments or should its financial situation deteriorate substantially. Should we decide to invoke this right, then – without prejudice to any other mandatory statutory rulings – we are only deemed to have withdrawn from the agreement if this intention is declared expressly by us.
6. Should the value of the securities held on our behalf exceed our claims by a total of more than 20%, then at the request of the Buyer we shall release securities at our discretion to this extent.

IX. Payments

1. Payments fall due 30 days from the date of issue of the invoice.
2. Payments shall be offset in each case against the oldest outstanding invoice. Deduction of cash payment discounts on new invoices is inadmissible where outstanding existing invoices remain to be settled.
3. Should the Buyer be in default of payment or should its financial situation deteriorate substantially following completion of contract, we shall be entitled to demand immediate cash payment of old claims arising from the business association, even those for which deferment has been agreed. This shall apply also in cases where we have accepted bills of exchange or cheques. Where such conditions exist, we shall also be entitled to demand advance payment or the provision of securities for all current business transactions. This shall not affect rights arising from Art. 326 BGB (German Civil Code).
4. In case of default of payment, without prejudice to further-reaching rights, we shall be entitled to charge default interest of 8% over the relevant base rate of the European Central Bank.
5. Where we accept bills of exchange, discount and bank charges shall be charged which shall fall due for immediate payment.

6. The Buyer shall only be entitled to withhold or offset payments based on undisputed or legally established claims. Where payments are withheld, the claim must be based on the same contractual relationship.

7. In the event of non-acceptance of ordered goods, we shall be entitled to claim 15% on the value of the goods and on unfulfilled contractual agreements to cover already incurred expenses and loss of revenue, as well as a reasonable agent commission, except where the Buyer is able to provide evidence that damages have not been incurred or incurred only to a substantially lower degree than the blanket amount charged.

X. Place of fulfilment, legal venue, applicable law

1. The place of fulfilment and legal venue is Reutlingen. The parties agree the international competence of the German court. However, we reserve the right to file actions at the Buyer's place of business.

2. The law of the Federal Republic of Germany shall apply exclusively. Application of the Hague Convention on the International Sale of Goods shall be excluded.

XI. Final clause

Should one or more clauses of the agreement or of the general terms and condition be or become invalid, this shall not affect the continued validity of the remaining stipulations. The agreement and these general stipulations shall be interpreted, reformulated or if necessary supplemented so as to most closely approximate the original economic intention.
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Where powder coatings are not correctly processed, a risk of powder dust explosions can occur. This applies in particular to coating powders containing aluminium. Please refer in particular to VDI directive 2263 (Prevention of dust fires and dust explosions), to the data sheet on electrostatic powder coatings including the notes quoted regarding occupational health and safety when dealing with dust concentrations (issued by the Northwest Iron and Steel Employers' Liability Insurance Association) and to the regulations governing electrical manual spraying equipment VDE 0745 (EN 50053) and to the multiple-language guideline leaflet "Safe use of powder" published by the European Council of the Paint, Printing Ink and Artists' Colours Industry (CEPE). We also recommend, in the absence of adequate experience, seeking advice from the responsible trading standards office and from the Employers' Liability Insurance Association.