

# General Terms and Conditions of PRAXAIR SURFACE TECHNOLOGIES GmbH

To be used in relation to:

1. an individual acting on conclusion of the contract in execution of his/her commercial or independent professional activity (entrepreneur).
2. legal entities under public law or a public law special fund.

## I. General

1. Our Terms and Conditions shall apply exclusively to this and any future business transactions, irrespective of how they are concluded. Any General Terms and Conditions of the buyer that are inconsistent with our General Terms and Conditions, or supplement our General Terms and Conditions, shall only apply with our express written agreement. This shall also apply to any future transactions, irrespective of whether we refer again expressly to our General Terms and Conditions. The provision and acceptance of goods and services or their payment shall not represent any recognition of the buyer's General Terms and Conditions.
2. We reserve the right to amend or alter these Terms and Conditions for individual technical areas by the application of special conditions (see "Special Conditions" section in the quotation and/or the order confirmation).

## II. Delivery

1. Delivery periods shall commence only after all technical and commercial details of execution have been clarified, and all prior obligations have been met as contractually agreed.
2. Partial deliveries are permitted.
3. Our deliveries shall in principle be carried out ex-warehouse or ex-works, at the expense of the buyer, and the risk shall be transferred to the buyer at latest when the goods are loaded onto the means of transport. Where transport insurance has been taken out by us, the conditions contained in the cover note shall apply.
4. Where the buyer has been notified that goods are ready for shipment but has not requested delivery, we reserve the right either to store or dispatch the goods in question at the expense and risk of the buyer.
5. We shall be entitled to select the packaging that we consider appropriate, and the mode of dispatch.
6. All means of transport and containers provided by us are to be emptied immediately, cleaned and to be returned to us, carriage-free and without any charges. The buyer shall be liable at least to the extent of any demurrage, stallage fees and rents incurred, irrespective of fault.
7. Force majeure, unforeseeable circumstances, strikes, lockouts, transport and supply difficulties, war, insurrection, official bans, refusal of import or export licences and all circumstances beyond our control which render delivery impossible shall free us of our delivery obligations. If these circumstances are merely of a transitory nature they shall interrupt delivery periods and extend them by an appropriate initial period.
8. In the event of delivery delays resulting from circumstances of the kind listed in Item 7, we shall also be entitled to withdraw from the contract in whole or in part. This shall not apply if the delivery delay is only of a transitory nature. The buyer shall be entitled to withdraw from the contract if we cannot give a binding answer to his enquiry as to whether we will deliver within a reasonable period or withdraw from the contract.
9. If, in the circumstances listed in Item 7, the goods available are not sufficient to satisfy the requirements of all buyers, we shall be entitled to make proportionate reductions to deliveries.
- [10. The circumstances and regulations listed in Items 7 to 9 shall also apply where a delay already exists].

## III. Retention of title

1. All deliveries shall be subject to extended retention of title. Payment for a particular individual consignment shall not in any way affect the retention of title.
2. The buyer undertakes to store the goods in a clearly separated manner, to carry out appropriate separation during the production process, and also to record sales correspondingly.
3. The buyer shall process the goods on our behalf without us incurring any obligations as a result. If the goods are incorporated into another item, or blended or combined with other items, we shall acquire joint title of the new item in accordance with the provisions of the Civil Code, proportionate to the gross invoice value of the goods supplied by us in relation to the value of the other item. The same shall apply as appropriate to the use of the goods supplied by us for the purposes of production.
4. The buyer shall be entitled to sell the goods supplied by us or new goods manufactured by the buyer in the course of normal business dealings, with all claims arising from such dealings being already assigned to us, and the buyer shall be authorised as a trustee to collect claims until further notice. If items are sold, to which we have only joint title, this assignment shall correspond to the extent of the gross invoice value of the goods supplied by us.
5. On the basis of the retention of title we shall be entitled to demand the return of the goods only if we have withdrawn from the contract. The assertion of the retention of title and/or the distraint of the goods shall not be considered as withdrawal from the contract.
6. Irrespective of any disputes, the right to information, to access business records and to make copies shall exist at all times, to the extent that this is necessary to establish these rights.

7. In the event of over-securing, we undertake to declare the release of the goods to the required extent at the buyer's request.

## IV. Liability for infringement of property rights

1. If the use of the goods supplied leads to an infringement of commercial property rights or copyright, we shall in principle at our own expense acquire for the buyer the right to their continued use, or modify the goods supplied in such a way as is acceptable to the client so that the infringement of property rights no longer exists.
2. Should this not be possible under commercially reasonable circumstances or within an acceptable period, the buyer shall be entitled to withdraw from the contract. We shall also have the right to withdraw from the contract under the aforementioned circumstances.
3. Moreover we shall indemnify the buyer against any undisputed or legally established claims by the owners of the property rights in question.
4. The obligations on our part listed in 1 – 3 shall be conclusive, subject to the arrangement in VI no. 1 covering the infringement of property rights or copyright.

They shall only exist if

- the buyer informs us immediately of any assertions of infringement of property rights or copyright;
- the buyer assists us to an appropriate extent in our rebuttal of the claims that have been asserted, or enables us to carry out the modification measures as set out in IV no. 1;
- we retain the right to undertake all rebuttal measures including out-of-court settlements;
- the legal deficiency is not based on an instruction given by the buyer; and
- the legal infringement has not been caused by the buyer modifying the goods supplied without authorisation, or using them in a manner not provided for in the contract.

## V. Liability for other deficiencies, quantity, quality, complaints

1. We supply on the basis of company quality standards. Our analyses and measurements shall be the only standards to apply. Our methods of analysis and measurement are to be used exclusively.
2. Special technical requirements and uses are to be expressly stated and finalised in writing at the time the order is placed, and require our written confirmation, whereby we reserve the right to demand that the acceptance test takes place in the factory. The buyer undertakes to inspect each consignment immediately on receipt in accordance with all technical requirements and reasonable checking methods. This is to take place, if necessary, on his customer's site and in any event prior to production. Should defects only become apparent at the start of production, production is to be halted immediately. Any damage or quantity discrepancies ascertained on delivery, as well as any obvious and noticeable defects or deficiencies, must be reported in writing to us and the forwarder or carrier within 10 days. We are to be notified in writing of any not immediately noticeable defects as soon as they are discovered if they are detected after the exclusion period mentioned in the previous sentence has expired.  
Warranty claims on the basis of material defects will not be accepted after the aforementioned periods have elapsed.
3. In the case of defects to the goods supplied, the buyer is entitled to a replacement delivery free of charge or to a repair – to be decided at our discretion. The buyer is to allow us the necessary time and opportunity, to be agreed in consultation with us, to undertake all the improvements and replacements that we consider necessary at our just discretion. Otherwise we shall be relieved of our liability in this respect. The buyer shall only be entitled to have the defect remedied by himself or any third party, and to demand compensation for the necessary costs incurred, in those urgent cases where operational safety is put at risk and to prevent excessively major damage, in which case we are to be informed immediately, or if we delay in remedying the defect.
4. If, taking into account the legal exceptions, we allow an appropriate extended deadline for remedy or replacement relating to a defect for which we are responsible according to the terms and conditions of delivery to pass without resolving the problem, or if the remedy is ineffective, the buyer shall be entitled to withdraw from the contract within the context of the legal regulations. If there is only a minor deficiency, the buyer shall merely be entitled to a reduction of the purchase price. The right to a price reduction shall be excluded in all other respects. This rule shall also apply to delivery errors.
5. If the buyer has the opportunity on the one hand to demand from us delivery or remedy of a fault, or to withdraw from the contract or demand compensation in place of goods or services, we may require the buyer to exercise his rights within an appropriate period. If the buyer does not exercise his rights in time, the buyer shall no longer be entitled to demand delivery of the goods to be supplied, or remedy of a defect.

## VI. Liability

1. We shall be liable for damages of any type, including for damage that has not been incurred to the goods supplied (consequential damages), on whatever legal basis, only as follows:
  - a) In the event of culpable injury to life and limb or health;
  - b) In the case of intent;
  - c) For gross negligence by our boards or managers in the event of an infringement of essential contractual obligations, but also for

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gross negligence by non-management staff and for minor negligence; in the case of minor negligence, however, compensation shall be limited to contractually typical, reasonably predictable damages;

- d) For deficiencies which we have maliciously concealed, or for the absence of which we have given a guarantee;
  - e) For deficiencies in the goods supplied, insofar as there is liability according to the Product Liability Act for personal injury or damage to property in terms of privately used objects.
2. Should it become absolutely impossible to provide the entire scope of goods and services before the transfer of risk, the buyer may withdraw from the contract without notice. The same shall apply in the event of inability on our part, and if when components of the same type have been ordered it becomes impossible to complete part of a delivery in the numbers required, and the buyer has a justified interest in rejecting a partial delivery. If the latter is not the case, the client may reduce the remuneration.
  3. If there is a delay in the delivery of goods or services and the buyer grants an appropriate extension, and this extended deadline is not met, the buyer shall be entitled to withdraw from the contract.
  4. If the inability to supply arises in the course of a delayed acceptance or through the fault of the buyer, the latter shall remain obliged to pay.
  5. All further claims, particularly for termination of contract or price reduction, are excluded.
  6. Items 1 to 5 shall apply as appropriate to any claims by the buyer that have arisen as a result of proposals or advice from before or after conclusion of the contract, or infringement of subsidiary contractual obligations, as well as to claims of unauthorised activity.

## VII. Period of limitation

All claims by the buyer – on whatever legal basis - shall be limited to 12 months. The following statutory periods of limitation shall apply to the compensation claims listed under VI. No 1. Similarly the statutory periods of limitation shall apply to defects to items supplied which are used in the construction of a building in accordance with their normal mode of usage, and which have caused deficiencies in the building.

## VIII. Price and payment

1. The valid prices correspond to the general listed prices at the time of delivery, unless expressly agreed otherwise in writing. We will not cover any taxes, duties etc. levied on the transaction in the recipient country. Increases in customs duties etc. following the conclusion of the contract shall be charged to the buyer. Unless otherwise agreed, the prices are valid ex works and excluding packaging and VAT.
2. Our deliveries are to be paid net immediately after the date of invoice, unless other payment conditions have been agreed in writing. Cheques, bills of exchange and other payment documents shall only be accepted as conditional payment and do not change the due date of payment; any resulting costs are for the buyer's account.
3. In the event that the buyer falls in arrears with his payment obligations we shall be entitled to charge the buyer interest on arrears at the basic interest rate of the Deutsche Bundesbank, plus eight percent (8%). It is permissible to provide evidence of higher damages, and in particular we may demand that the buyer pay interest and costs for uncovered loans arising as a result of payment arrears. We may also demand compensation in place of payment on expiry of an appropriate period of notice set by us. In addition to which, in the event of payment arrears on the part of the buyer, we reserve the right, irrespective of all previous agreements, only to make further deliveries to the buyer on payment in advance, or to withhold them completely.
4. Any significant negative changes to the assets and revenue situation of the buyer (particularly the initiation of bankruptcy proceedings on the buyer's assets) shall entitle us to deny the buyer any further deliveries, or only to make them on payment in advance, irrespective of any previously valid agreements. Furthermore we shall be entitled to withdraw from or terminate all current contractual relationships, and to demand immediate settlement of all of the buyer's outstanding payment obligations arising from the contractual relationships in question.
5. The retention of payments or offsetting by the buyer shall only be possible in the case of undisputed or legally established claims.
6. All reimbursements for customs duties paid by us shall be due to us, and the buyer agrees to provide us with the documents required to obtain such reimbursement, and to assist us in this.

## IX. Miscellaneous

The place of performance for delivery, including carriage-free deliveries, is the manufacturing plant or our warehouse. The place of performance for the buyer's obligations is Ratingen. The law of the Federal Republic of Germany shall apply.

The application of the UN Convention on the International Sale of Goods (CISG) shall be excluded. In the case of export business, the appropriate version of "incoterms" is also valid. Place of jurisdiction shall be Ratingen, subject to agreement in accordance with the Code of Civil Procedure. Any alterations to these conditions must be made in writing, including this clause relating to the written form.

Buyer's data, insofar as required for the contractual relationship, will be recorded in our data processing system (stored, transmitted, altered) in compliance with the currently applicable Data Protection Act.

Should there be an omission from these terms and conditions of sale, or should any of the individual provisions be or become invalid, this shall not affect the validity of the remaining provisions; the provisions in question are to be reinterpreted in such a way as to achieve their intended commercial outcome. Should this not be possible the parties shall agree on a new ruling, the commercial effect of which comes closest to that of the invalid provision.

## Special conditions for the coating of components supplied by the buyer with PRAXAIR SURFACE TECHNOLOGIES products.

- 1.1 We coat and process all items sent to us by the customer according to our own in-house quality standards and experience. Changes to the specifications set out by the customer are possible following written agreement. The condition of the components to be coated when they are delivered to us must correspond with the details in the quotation or the order; otherwise we can accept no liability.
- 1.2 In the case of price discrepancies from the quotation, the price stated in the order confirmation shall apply. Orders for which there is no quotation, plus any additional work, will be charged according to time and materials used.
- 1.3 All documents relating to the order, and particularly illustrations, drawings, samples and tools, shall remain our property. Newly made items resulting from article-related changes or wear and tear will be charged for.
- 2.0 If goods are not accepted for delivery on time and/or not to the full extent, we shall be entitled to dispatch the goods without acceptance or to store them at the customer's expense and risk. On dispatch or storage, the goods are considered to have been delivered as set out in the contract, provided that we notify the customer of this legal consequence on dispatch or storage, and he does not contest his within two weeks.
- 3.1 The packaging of the goods supplied is not part of our contractual services. This may happen as a favour in individual cases on acceptance of the goods, and on reimbursement of costs.
- 3.2 The customer is responsible for taking out insurance to cover the goods supplied against damage in transit.
- 3.3 No liability is accepted for reject or missing quantities of small parts up to a total of 3 % of the overall quantity.
- 4.1 The risk of destruction or deterioration of the goods supplied as a result of an accident or the actions of a third party passes to the customer on leaving our plant or on being loaded onto a means of transport within our plant.
- 4.2 If the handover is delayed for reasons for which the customer is responsible, the risk passes to the customer when he is informed that the goods are ready for dispatch.
- 4.3 We will transfer to the customer any claims for damages against third parties on request, insofar as and to the extent that that the customer has compensated us for our damages.
- 5.1 Our services and guarantee are restricted to the coating and do not include the customer's part. No liability is accepted for the processing of such faults in the supplied customer's part that are undetectable without the application of unconventional aids, along with any resulting consequential damages, even if we were to be viewed as the manufacturer in legal terms.
- 5.2 We do not accept responsibility in any case for the suitability of the coated items for use in the context of their intended application, be it known or unknown to us. The customer accepts liability for all risks and claims arising from the use of the items supplied in all areas of application.
- 5.3 Any complaints are to be made in writing and without delay. Complaints about obvious and noticeable defects can only be made within an exclusion period of one week following receipt of the goods, and at latest following inspection.
- 5.4 The above General Terms and Conditions of Praxair Surface Technologies GmbH shall apply in all other respects

Managing Director: Klaus H. Gorris, Pierre Claude Lüthi

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