

# **Akzo Nobel Deco GmbH**

## **General Terms and Conditions of Purchase**

### **1. Authoritative Conditions and Scope of Application**

- 1.1 The ordering of goods or services shall be governed exclusively by these Terms and Conditions of Purchase. This does not apply to construction orders, which shall be governed by our special terms and conditions for the performance of construction services. An order confirmation always means that the supplier is in agreement with the validity of the General Terms and Conditions of Purchase; the acceptance of merchandise or services with knowledge of the existence of conflicting conditions shall not constitute recognition of such conditions. Our Terms and Conditions of Purchase shall be deemed the agreed terms of the contract for subsequent orders as well.
- 1.2 Terms and conditions of the supplier which are divergent from our terms and conditions shall not be binding upon our company even if we have not expressly objected to them; this does not apply if we have expressly recognized such terms and conditions in writing.

### **2. Orders**

- 2.1 Orders, changes in or additions to orders, and demands for delivery are binding only if we have issued or confirmed them in writing. We shall be bound to our written orders for a two-week period starting with the order date. Order confirmations received by the company after the end of this period shall be considered new offers, and as such shall require our written acceptance.
- 2.2 The contract goes into effect upon the receipt of the supplier's written order confirmation or upon our acceptance of the consignment delivered. Should the contents of the order confirmation deviate from the contents of the order, the supplier must expressly and separately call our attention to the deviating acceptance of the conclusion of contract. In such a case the contract does not go into effect until we have agreed to this in writing.

### **3. Prices**

The agreed prices on which the order is based are fixed prices. Unless otherwise agreed, they shall be understood as inclusive delivery “CIP – Carriage and Insurance Paid to” at the receiving points specified by our company (including the usual charges for packaging, wheelage and storage). Shipping costs shall be carried by the supplier in all cases, including cases in which we have requested a particular type of shipping.

### **4. Delivery**

- 4.1 The receiving point specified by us shall be the place of performance; shipping shall be carried out at the supplier’s risk. For deliveries made “CIP – Carriage and Insurance Paid to” to the receiving point specified by us, the supplier shall take out transport insurance at no expense to us. Agreed dates and periods of time are binding; if delivery periods have been specified, these shall start on the order date. The receipt of the merchandise at the specified receiving point shall be decisive for adherence to this provision.
- 4.2 If delivery made “CIP – Carriage and Insurance Paid to ” to the specified receiving point has not been agreed, the supplier shall make the merchandise available in time, taking consideration of the usual times allowed for loading and shipping. Delivery dates set for on-demand deliveries are binding in accordance with the same basic principles unless the supplier lodges objections to these dates immediately.
- 4.3 If additional merchandise is delivered in excess of the agreed quantity, we shall be entitled a) to accept the additional merchandise (with appropriate adjustment of the invoices), b) to store it at the supplier’s expense until it is picked up by the supplier, or c) to return it to the supplier at its expense.
- 4.4 The supplier is not entitled to deliver the merchandise to us in advance of the agreed delivery period. Should the supplier deliver in advance of the agreed time nevertheless, we shall be entitled to store the consignment at the supplier’s expense until the agreed delivery period, or to return it at the supplier’s expense.
- 4.5 We will accept partial deliveries only if this has been expressly agreed.
- 4.6 If the supplier fails to deliver within the agreed period, it shall be liable in accordance with the statutory provisions unless other provisions have been made in the following.

- 4.7 In the event of delay or default on the part of the supplier, we shall be entitled to impose a contractual penalty equal to 0.1% of the total order value for each workday that elapses between the end of the delivery period and the actual delivery; however, this penalty shall not exceed 10% of the total order value. This penalty shall be offset against any further claims to compensation for damages based on this delay or default. The supplier is obliged to notify us immediately of any expected delays in the delivery – or of the possibility that it will not be able to make the delivery either in part or in its entirety – and shall inform us of the expected duration of such delay or non-performance. If we accept a consignment that has been delivered late, we can assert the rights listed in Paragraph 4 even if we have not expressly reserved such rights at the time of acceptance of the merchandise.
- 4.8 In the event of the occurrence of Force Majeure (e.g. war, breakdown or interruptions of transport or other operations, industrial action, impediments to delivery related to foreign exchange or other impediments to delivery which are not within our control), we shall be entitled to withdraw partially or completely from the contract or to demand performance at a later date without this constituting grounds for the supplier to assert claims of any kind. Any claims based on Force Majeure must be asserted in writing, either by our company or by the supplier, within one week of the date on which the event in question becomes known.
- 4.9 The supplier is obliged to dispatch a shipment notice for each individual consignment on the day of shipment; this shipment notice shall be dispatched separately from the merchandise and the invoice. Moreover, each consignment shall be accompanied by a delivery note issued in duplicate and containing our order number and (if available) our material number(s).
- 4.10 Any prolonged or expanded retention of title by the supplier – in particular, the retention of title to the delivered merchandise until all accounts receivable resulting from the entire business connection have been paid in full – is hereby excluded. In particular, no processing of the type described in § 950 of the German Civil Code (*BGB*) shall be carried out for the supplier.
- 4.11 If raw material is supplied the supplier shall add the certificate of analysis to the delivery documents. Additionally, a copy of the certificate shall be sent to our fax-number or email-address.

4.12 The truckdriver is obliged to comply with our safety rules. Upon non-compliance entrance to our premises is denied. The supplier shall be liable for the hereby caused delivery delay (including but not limited to lost output).

## **5. Payment**

5.1 In the absence of any special agreement, payment is to be made within 30 days (with the deduction of a cash discount amounting to 3% of the net invoice amount), or within 60 days (net). The payment period shall not start until after the receipt of the merchandise (accompanied by correctly prepared delivery notes and invoices) pursuant to the contract.

5.2 The supplier can assign its accounts receivable, or have them collected by a third party, only with our prior consent.

5.3 The time of payment shall not have any effect on the supplier's liability for defects or on the right to give notice of defects. Should a defective consignment be delivered, we shall be entitled to retain a commensurate portion of the payment up to the time of proper performance.

5.4 We can only handle invoices if they contain our order number; the supplier is liable for the hereby caused delay, unless he can prove he is not answerable.

## **6. Quality Assurance**

The merchandise delivered must conform to the national and foreign legal regulations (e.g. Equipment Safety Act) applicable in the particular case; the properties and quality specifications set down in the order; the regulations and guidelines of the authorities, the Employers' Liability Insurance Associations and the trade organizations; and the most recent state of science and technology. The supplier is obliged to call our attention in writing to any declaration obligations applicable to the delivered merchandise as well as to any limitations on its use. The same applies to any finished goods manufactured from the delivered merchandise. Orders placed for materials – as well as parts or elements of equipment, plant and machinery – are to be carried out in conformance with the German Industrial Standards (DIN) unless otherwise agreed in writing.

## **7. Liability for Defects**

- 7.1 The obligation to inspect the merchandise and give notice of defects begins, in all cases, when the delivered consignment has arrived at the destination specified in the order and proper documents (in particular, the shipment notice and the delivery note) have been received. We are entitled to give notice of defects within 14 workdays of the receipt of the merchandise and, in the event of concealed defects, within 14 workdays of the discovery of the defects. The supplier waives the right for late notice of defects (§ 377 HGB), unless it is a non-concealed defect.
- 7.2 The supplier shall be liable for any defects of title; this applies, in particular, to the encumbrance of delivered merchandise with any trademark rights. The supplier shall indemnify us and our customers – without prejudice to any other rights we have as a result of the defectiveness of the merchandise – of any claims arising on the grounds of defects of title with respect to delivered merchandise used in accordance with this contract. The contractual parties pledge to inform each other immediately of any potential or actual violations.
- 7.3 In the event of the delivery of defective merchandise, the supplier shall be obliged, in response to our request, to sort out the defective merchandise and either remedy the defects or deliver replacement merchandise within a reasonable period of time specified by us. In this case the supplier shall be obliged to make any and all expenditures necessary for this purpose. The supplier shall not be entitled to deny us the type of subsequent performance we demand. To the extent that such subsequent performance is unsuccessful or unacceptable to us, or that the same merchandise is delivered again with defects, we shall be entitled to make a reduction in the purchase price or to withdraw from the contract; this right of withdrawal also applies to that part of the scope of delivery which has possibly not been carried out. In urgent cases or in the case of imminent danger, we shall be entitled to remedy defects ourselves – or have them remedied by third parties – at the supplier's expense.

- 7.4 The liability for defects expires at the end of five (5) years for defective merchandise which has been used, in accordance with the usual mode of employment, in a structure and has caused this structure to be defective; in all other cases, it expires at the end of two (2) years. In both cases, the liability period starts with the delivery of the ordered merchandise. This does not apply, however, when the supplier has intentionally failed to disclose a defect. In the event of the remedying of defects, the guarantee period shall be extended by the duration of such remedying; nevertheless, it shall expire, at the latest, at the end of six (6) years in cases subject to Para. 7.3, Sentence 1 1. alternative and at the end of three (3) years in cases subject to Para. 7.3, Sentence 1 2. alternative; this guarantee period shall start in all cases on the date of delivery to us.
- 7.5 If we have notified the supplier that we are purchasing the merchandise for export purposes, the place of delivery announced for this export transaction shall be deemed the place of performance; in this case, we are entitled to accept the merchandise and ship it onward without inspecting it. All periods of time granted for inspecting the merchandise and giving notice of defects shall not begin until the foreign purchaser has had the possibility to inspect the merchandise; they shall begin at the earliest with the unloading of the merchandise at the place of delivery.
- 7.6 Unless otherwise stipulated in the foregoing, the liability for defects shall be governed by the statutory provisions. The period of limitations for warranty claims shall be suspended by the notice of defects; it shall not start up again until the liability for defects has been expressly rejected or the negotiations concerning such liability have been terminated.
- 7.7 Insofar as the supplier performs work at our site, the most recently updated version of our safety regulations shall apply to the supplier and its sub suppliers. In addition, both the supplier and its sub suppliers shall be bound by our instructions for customer service, assembly and contractor's personnel.

## **8. Liability**

- 8.1 The supplier shall indemnify us of claims by third parties arising from manufacturer's liability due to defects of the products. This also applies to no-fault liability, e.g. liability under the Product Liability Act. The supplier shall take out an appropriate insurance for the purpose of this indemnification.

- 8.2 Unless other arrangements have been made concerning liability elsewhere in these terms and conditions, the supplier shall be obliged, in accordance with Paragraphs 8.3 – 8.7 below, to compensate us for damages caused either directly or indirectly by the delivery of a defective consignment, the infringement of official safety regulations, or any other reasons for which the supplier is responsible.
- 8.3 An obligation to provide compensation for damages exists only when the supplier is responsible for the damage.
- 8.4 The basic principles set down in § 254 of the German Civil Code (*BGB*) concerning contributory fault shall be applied accordingly to the compensation for damages between us and the supplier. This also applies in the event that claims are asserted directly against the supplier.
- 8.5 The obligation to provide compensation for damage is excluded insofar as we have effectively limited our liability toward our customers.
- 8.6 The supplier shall bear the liability for the measures we take to limit damages (e.g. recall actions) insofar as these measures were caused by defects in delivered merchandise. § 254 of the German Civil Code (*BGB*) is applied here accordingly.
- 8.7 We have the right to reach settlements with third parties which have incurred damages; this shall not affect the obligation of the supplier to provide compensation provided that such settlements were necessary for business reasons.

## **9. Use of Confidential Information**

All information related to our order and resulting from the business transaction may be used for deliveries to third parties only with our prior written consent. This information is to be treated as absolutely confidentially even after the order has been carried out. In the event that the supplier discloses our information to its sub suppliers with our prior written consent, he shall oblige these suppliers in turn to maintain confidentiality. We shall assume the same obligation of non-disclosure. Commercial and technical details which are in the public realm – or will enter the public realm – are excluded from the obligation of non-disclosure.

## 10. Concluding Provisions

- 10.1 All agreements are to be set down in writing. Any changes in or additions to this contract, including this provision stipulating written form, shall also be effective only if they have been made in written form. The same applies to subsidiary or supplementary agreements. We shall not be bound by any oral agreements or warranties made by our employees.
- 10.2 In the event that one contractual party stops making payments, that bankruptcy proceedings are instituted against his or her assets, or that an application is made to institute settlement proceedings in court or outside of court, the other party shall be entitled to withdraw from the non-performed part of the contract.
- 10.3 Should any provision of this contract be invalid or become invalid, either in part or in its entirety, this shall not affect the validity of all other provisions of this contract. The invalid provision is to be replaced by a legally valid provision that comes as close as legally possible, from an economic point of view, to the intent of the invalid provision it has replaced. The same applies to any omissions in this contract.
- 10.4 The relations between us and our suppliers are governed by the laws of the Federal Republic of Germany. Neither the UN-Treaty (CISG) nor any other existing or future bilateral or international treaties, even if implemented into German law, shall be applicable.
- 10.5 For all disputes arising from or in connection with this contract, the place of jurisdiction shall be, at our discretion, either Cologne or the domicile of the supplier; for lawsuits filed by the supplier, Cologne shall be the exclusive place of jurisdiction. Any statutory provisions regarding exclusive jurisdiction shall remain unaffected. This agreement on jurisdiction does not apply to suppliers who are not commercial businessmen.

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Latest version: November 2008