

# General Conditions of Sale RIPOL Group (08/2016)

## Article 1 General

These General Conditions of Sale shall apply to all sales and deliveries of powder coatings ("the products") by Seller and shall form an integral part of Seller's quotations and order confirmations and sales agreements between Seller and Purchaser. No differing or supplemental terms or conditions shall be applicable unless expressly agreed to by Seller in writing.

## Article 2 The contract

Quotations made by Seller are not binding unless explicitly stated otherwise. The agreement ("sales agreement") between Seller and Purchaser shall be formed by Seller's written acknowledgement of Purchaser's order (Order confirmation).

## Article 3 Delivery

- 3.1 Unless otherwise stated delivery terms shall be interpreted in accordance with the latest edition of INCOTERMS published by the International Chamber of Commerce. Title to the products shall pass to Purchaser in accordance with Article 4 below.
- 3.2 Quantities are stated with a tolerance of  $\pm 0.5\%$ . The quantities stated in shipping documents such as weight certificates, bills of lading, sea-way bills, liner way bills, and freight receipts, shall be deemed correct unless proven to be incorrect.
- 3.3 In case of tailor-made products (MTOs) the tolerance will be  $\pm 5\%$  (five percent) and all deliveries shall be carried out in accordance to the a.m. tolerance
- 3.4 Any given delivery date shall be deemed approximate unless explicitly confirmed by Seller.
- 3.5 If Purchaser's shipping instructions are delayed or he provides for later delivery than specified in the sales agreement, delivery shall be deemed completed and Seller will store the products for Purchaser at Purchaser's expense.

## Article 4 Transfer of Title

- 4.1 The title to the products delivered shall remain vested in Seller until the price has been paid in full. During the period the title is retained by Seller, Purchaser shall hold the products in trust for Seller. If Purchaser fails to pay the purchase price of the products in accordance with the payment terms stated on the invoice, Seller shall have the right to repossess the products, without any prior notice being required.
- 4.2 Notwithstanding Section 4.1 Purchaser shall be entitled to use the products as an intermediate in its normal course of production before the price has been paid in full and the reservation of title will apply on the portion of the products, which is intact from time to time.
- 4.3 The risk of loss of or damage to the products shall pass to Purchaser upon delivery thereof in accordance with the agreed delivery term pursuant to Section 3.1.

## Article 5 Price

- 5.1 The price is exclusive of VAT and any applicable VAT will be charged in addition to the price at the moment of invoicing.
- 5.2 The price is based on exchange rates as well as duties, taxes and other public charges applicable at the time of the formation of the sales agreement. In case of any change in the relevant exchange rates, or in the applicable duties, taxes or public charges after the date of formation of the sales agreement, Seller shall have the right to adjust the price accordingly.
- 5.3 In case of an increase in the prices of energy, raw materials or other resources necessary for the manufacture of the product occurring prior to the agreed date of delivery, Seller shall have the right to increase the price of the product ordered in proportion by giving written notice to Purchaser provided that Purchaser shall have the right to cancel the sales agreement within seven days of following receipt of such notice.

## Article 6 Payment

- 6.1 The price shall be paid in accordance with the payment terms stated on the invoice to a bank account designated by Seller. If Purchaser fails to pay any amount when due, then Seller will in addition to any other remedies available be entitled to:
  - a) charge default interest rate set by ECB (European Central Bank) + 700 bps on the overdue amount;
  - b) charge to Purchaser all costs incurred of any kind and nature in order to obtain payment of the amount due;
  - c) block all deliveries until payment of all outstanding debts has been received.
- 6.2 Amounts paid by Purchaser shall be credited by Seller against the debts receivable by Seller from Purchaser (including those pursuant to Section 6.1) in the chronological order of the due dates of the debts.

## Article 7 Warranties

- 7.1 Seller warrants that the product shall meet the specifications mentioned in the respective technical data sheets (TDS) and in the sales agreement and that Seller will convey good title thereto. Seller makes no other representation or warranty, express or implied nor does Seller warrant that the product is merchantable or fit for any particular purpose unless confirmed in writing in accordance with section 7.2.
- 7.2 Recommendations or statements about the products shall not constitute a warranty unless confirmed in writing. Purchaser must determine for

itself by tests or otherwise, the suitability of the products for the intended use with due regard to all factors influencing such use. If Seller has agreed to carry out tests or research on behalf of Purchaser no responsibility is assumed for:

- a) use of the results for a certain purpose unless such use has been clearly confirmed in writing;
- b) interpretation of developed data other than explicitly stated;
- c) deviations from the results because of outside factors other than the defined parameters set in the laboratory environment.

## Article 8 Limitations of liability

Seller shall not be liable for loss of profits, loss of production, indirect, or other special, incidental or consequential damages, regardless of negligence other than the remedies attributable to product liability set forth in Article 9 below. Seller's liability and Purchaser's exclusive remedy for any cause of action arising out of the sale, use, or non-delivery of the products or under any warranty, is expressly limited to replacement of products if it is clearly proven that the product is non-conforming or to refund of the price in the event of justified cancellation of a specific order caused by a prolonged delay in delivery that must last longer than 4 (four) weeks with respect to the confirmed delivery date.

## Article 9 Product liability

Seller shall indemnify and hold Purchaser harmless for any costs incurred by Purchaser because of injuries or physical damages caused by defective products provided that the Purchaser has used the products for a purpose in respect of which the products are suitable and strictly in accordance with the product technical data sheets and safety data sheets submitted by Seller and provided further that Purchaser can prove that he is maintaining continuous production control, including regular inspection and tests of all intermediates and end-products. If not otherwise is expressly agreed in writing the liability for injuries or physical damages shall be limited to € 50,000,- (EUR fifty thousand). Other possible claims by third parties attributable to Purchaser's use of the products are falling outside Seller's responsibility and Purchaser shall indemnify and hold Seller harmless if such claims would be directed against Seller.

## Article 10 Inspection, claims, notification

Upon receipt of the products, Purchaser shall inspect the same, by analysis or otherwise, exercising such care as is customary or appropriate in the circumstances. Any claims concerning the quantity or apparent quality of the products delivered shall be submitted by Purchaser to Seller within 1 (one) day from the date of receipt of the products. Any claims concerning inherent defects in the products shall be submitted by Purchaser to Seller within 3 (three) months following receipt of the products. Purchaser's failure to give notice of any claim beyond the stated time periods shall constitute a waiver by Purchaser of all claims with respect thereto. Defective products shall not be destroyed or returned to Seller without prior written consent of Seller.

## Article 11 Force Majeure

Non-performance of a party is excused and that party is relieved from any liability, if the non-performance was caused by an impediment beyond the party's reasonable control (force majeure). Such impediments include for example war, extensive military mobilization, act of terrorism or sabotage, act of authority, natural disaster, epidemic, explosion, fire, nuclear disaster, labor disturbance, strikes, lack of raw materials, break-down of equipment, transport, telecommunication, electric current, destruction of machine, equipment or factory and any kind of installation. A party invoking this clause shall take reasonable actions to limit the effects of the impediment and inform the other party about cause and time expected to solve the situation. Both parties can withdraw from the agreement if the cause of force majeure cannot be eliminated within 3 (three) months.

## Article 12 Hardship

If, prior to the date of delivery of the products, the circumstances that existed at the date of conclusion of the sales agreement should change to such an extent that the fulfillment of one or more of the obligations under the sales agreement should become unreasonably burdensome and such change could not have been reasonably foreseen by the affected party, then Seller and Purchaser shall seek to remove such hardship with the objective to preserve the original intention and balance between the parties. If no agreement is reached within a reasonable time, the affected party shall be entitled to terminate the sales agreement with respect to non-performed shipments.

## Article 13 Applicable Law, Competent Court

The sales agreement shall be governed by the law of the country where Seller has its legal seat. Any dispute, controversy or claim arising out of or in connection with the sales agreement, or the breach, termination or invalidity thereof, shall be finally settled by the court of the tribunal where Seller has its legal seat.