

# TERMS OF SALE AND DELIVERY

## HI-TECH COATINGS INTERNATIONAL B.V., ZWAAG

For information purposes only, the Dutch language version of the terms of sale and delivery as registered at the Chamber of Commerce in Hoorn is binding between the parties

Version 5 october 2010

### § 1 Applicability

These Terms of Sale and Delivery of Hi-Tech Coatings International B.V. (hereinafter referred to as „HTC“) apply, unless otherwise expressly specified in writing, to all commercial activities between HTC and the other party (“Customer”), in particular to offers, purchase contracts, orders, order confirmations and deliveries. Differing general terms and conditions of business of Customer are not recognized, even if not expressly contradicted.

### § 2 Conclusion of Contract

(1) HTC’s price quotations are subject to change insofar as they are not expressly described in the quotation text as binding. The contract between HTC and Customer (the “Contract”) is concluded only when HTC confirms the contract to the Customer either in writing, by fax or email, or delivers to the Customer the delivery item (hereinafter referred to as “Goods”) in accordance with his order. (2) HTC provides a guarantee only where this has been expressly agreed in the order confirmation or in its advertising material. (3) Product descriptions, measures and specifications of the products of HTC as provided during contract negotiations are binding. Technical modifications compared with the features as agreed upon in the negotiation stage of a contract are admissible where the Customer can reasonably be expected to accept the same.

### § 3 Delivery, Transport and Passing of Risk

(1) Unless otherwise agreed in the contract, risk passes to the Customer with delivery ex work or ex point of shipment. (2) If shipment is delayed due to force majeure or due to behaviour of the Customer the risk passes on to the Customer by the notification of HTC that the goods are ready for shipment. (3) HTC shall - at its sole discretion and for the account of the Customer - be authorized to engage a forwarder to conduct the transport and to effect a transportation insurance which covers the risk of transport of all Goods covered by the order from the point of shipment to the agreed destination. (4) In case commercial terms are agreed on, the Incoterms in their respective valid version shall apply. The volume of the shipment is specified in the order confirmation.

### § 4 Delivery Period and Force Majeure

(1) Delivery periods not expressly designated as binding are non-binding. (2) The delivery period does not start until all documents necessary for the determination of the contents of the order is received if HTC should receive these documents according to the contract. Deliveries are considered to be within the delivery period if the Goods have been shipped within the delivery period or if the notification “ready to be shipped” has been sent within the delivery period. (3) Delivery periods are extended in the case of circumstances for which HTC is not responsible and which have substantial influence on the delivery of the Goods (in particular in the case of natural disasters and labour disputes which affect HTC or sub-suppliers) for the duration of the interruption in operations. If modification of the agreement in a case of force majeure is not possible, HTC is released from its obligations under the Contract. (4) If the delivery period is extended or if HTC is released from its obligation of delivery due to the aforementioned circumstances, the Customer shall have no liability claims of any kind against HTC. HTC shall also not be liable for interruptions in operations arising during a period when it is in default of delivery. HTC is obliged to notify the Customer with regard to the arising of any of the aforementioned circumstances. (5) HTC is permitted to make partial deliveries and to issue partial invoices to a reasonable extent prior to the expiration of the delivery period.

### § 5 Prices

(1) Deliveries are made at the respective valid prices of HTC as stipulated in the valid HTC price list. All prices apply ex work or ex-shipment. All prices are quoted in Euro, to which value added tax must be added as well as costs for transport and transport insurance policy. (2) HTC is entitled to increase prices reasonably if after the conclusion of the Contract increases of product costs have occurred, especially due to raw material price increases.

### § 6 Payment and Set Off

(1) Payments are to be made to HTC without delay and without any deduction upon receipt of the invoice before the due date. (2) In the case of default in payment, HTC shall be entitled to hold back the Goods to be delivered to the Customer until full payment of the amounts in arrears is made. (3) In addition, in the case of default in payment, the statutory interest is due. All costs of recovery of the claim of HTC, including the costs with respect to the repossession of the Goods, are for the account of the Customer. Any costs related to recovery of the claim resulting from engaging third parties are to be calculated at the rate these third parties may charge in accordance with the rules and regulations applicable to them. (4) The Customer shall be entitled to set off or exercise a right of retention only with claims which are uncontested, recognized or final and non-appealable. (5) The Customer is not entitled to assign any claims on HTC without permission of HTC. (6) If it is determined after the conclusion of the agreement, or after the delivery, that the Customer is no longer financially solid, which may appear from any attachments and or execution measures, executed against the Customer, or reduction of capital, HTC may directly claim all receivables. In all these cases, and if receivables due remain unpaid despite payment reminders, HTC may insist on a prepayment or secured payment (or cash on delivery) with regard to future deliveries. If a Customer does not fulfil these requirements, HTC is entitled to rescind the agreement or to claim direct payment of the delivered Goods. In the case of rescission the Customer shall pay all costs of HTC including loss of profit, up to the moment of rescission.

### § 7 Retention of Title

(1) HTC retains title to the Goods delivered until full payment has been made, until the payment for services as stipulated in the Contract is received, and until the damages for non-performance of the Contract is received as meant in article 3:92 Dutch Civil Code. (2) Default of the Customer, especially payments being overdue, entitles HTC to repossess the Goods. Repossessing the Goods or stopping further deliveries is not considered a rescission of the agreement unless clearly specified by HTC in writing. HTC is entitled to execute the Goods and to set of the net proceeds against the debt of the Customer. The Customer must keep the Goods delivered in a flawless condition while they are subject to the retention of title. Furthermore, he must insure the Goods delivered at his own expense against damage arising from fire, burglary and water pipe damage. HTC is entitled to any payments received by the Customer from insurance companies for the substitution of the Goods. As far as maintenance or inspection of the Goods is necessary, Customer is obliged to arrange this within due time for his own account. (3) The Customer is not entitled to pledge the Goods without permission of HTC. The Customer should inform HTC immediately in case of attachments or other interference of third parties with respect to the Goods, in order to enable HTC to conserve its rights. The Customer shall provide HTC with all information and documents necessary for the preservation of HTC’s rights, and shall inform all third parties concerned, such as bankruptcy receivers, trustees, bailiffs etc, immediately with respect to

the ownership to the Goods of HTC. The Customer is liable for all costs, losses and damage resulting from HTC not being able to repossess the Goods from third Parties or the partial loss of the Goods.

(4) The Customer may sell the Goods in the normal course of business.

(5) The Customer hereby authorizes HTC or any third persons hired by HTC, to enter its premises and warehouses in order to repossess the Goods of HTC.

### § 8 Claims for Defects – Rule of Limitation

(1) Should Goods or Equipment delivered be defective, the Customer has the following rights within one year upon delivery. With respect to coatings and/or varnishes the Customer has these rights within 6 months upon delivery. (a) HTC is obliged to cure the defect and may, at its option, perform this either by removing the defect through remedial measures or by delivering Goods free of defects. The title to any Goods replaced shall pass to HTC. (b) If the supplementary performance proves ineffective, the Customer is entitled to rescind the Contract or reduce the purchase price. The Customer may not rescind the Contract if the breach of duty is of no significance. (c) In order for HTC to carry out the remedial measures and deliver the replacements it considers necessary, the Customer must provide HTC with the required time and opportunity for this task. Otherwise HTC is released from any liability for consequences which may result. Should the customer, for operational reasons, choose to have HTC send the Goods by express courier or send an express technician or perform the work outside the normal working hours, the Customer shall bear the extra costs hereby arising, e.g. for extra transport costs, overtime premiums, longer travel routes etc. (d) Defects in the Goods must be reported to HTC immediately.

(2) Claims for defects are excluded:

(a) for second hand equipment, including second hand electronic equipment and machinery in case second hand equipment is delivered, unless liability for defects is expressly agreed upon. (b) for coatings, varnishes or such other Goods which by their nature only have a limited shelf life, if and to the extent the respective shelf life as indicated on the label was exceeded, or for as far as the products have not been stored in a manner compliant with the instructions for storage as stipulated on the label of the product and/or in the Technical Data Sheet (TDS).

(c) in case of normal wear and tear of materials and Goods, in case of wrongful use, in case of wrongful treatment, excessive force, influence of chemical substances, electrochemical influences or electricity influences. (d) for coatings and/or varnishes in case of processing-, drying- or light curing-problems, provided that such problems are within the tolerances allowed, or for problems which are based on factors which cannot be influenced by HTC, such as paper grades, channel flow, impurity of equipment, powdering of the printed sheets, venting the pile or the like.

(e) for alterations, amendments or damages of the Goods which are due to the manufacturing or processing of the Goods by the Customer.

(3) If HTC has guaranteed compatibility with third-party products, this only applies to the product version current at the time of the guarantee; not to older or future product versions of such product.

(4) For damages resulting from an unsuitable storage location, chemical or electrochemical influences, weather and other natural influences, the Customer remains solely responsible. The same applies for damages resulting from the Customer not paying attention to the information and directions given by HTC with respect to the processing or further processing of the Goods.

(5) Upon discovery of defects with respect to goods intended for end users, these goods must be separated in the condition they were in at the time of discovery and must be held ready for

inspection by HTC. Otherwise they are deemed accepted in the condition they were at the time of delivery without any further liability on the part of HTC.

### § 9 Use of Goods

(1) The successful, effective and safe use of the Goods depends on the respective intended purpose and is dependent on a variety of factors which cannot be influenced by HTC (e.g. choice of application technology, substrate, subject of the printing, print speed, power of curing lamps for UV-applications, ambient conditions during the processing, etc.). Accordingly, HTC cannot be held responsible for those factors.

(2) The Customer is solely responsible for the determination of the actual usage of the Goods and their suitability for the intended purpose. In particular where the Goods are to be used for the production or processing of food packages or for labelling foodstuffs the Customer must ensure compliance with the respective applicable statutory provisions and that no third party is endangered by the use of the Goods. (3) In the case the Customer resells the Goods, he shall be responsible for providing his contractual partner with the necessary information.

### § 10 Liability and Compensation for Damages

(1) In case of injury to life, body or health which is due to a wilful or negligent breach of duty on the part of HTC or one of its legal representatives or vicarious agents, HTC is liable in accordance with the statutory provisions.

(2) For other damages, the following applies: (a) For damage which results from a wilful or grossly negligent breach of duty on the part of HTC or one of its legal representatives or vicarious agents, HTC is liable in accordance with the statutory provisions. (b) For damages which result from a breach of substantial contractual duties as a result of ordinary negligence on the part of HTC or on of its legal representatives or vicarious agents, HTC’s liability is limited to the foreseeable damage typical for such contracts but in any case shall not exceed the value of the Goods delivered.

(c) In the case of ordinary negligence, claims for damages arising from breach of ancillary or non substantial duties, or claims for damages relating to delays are excluded. (d) Claims for damages arising from default as a result of ordinary negligence are excluded; the customer’s statutory rights following the expiration of a reasonable extension of time remain unprejudiced.

(3) The exclusions or limitations of liability do not apply insofar as HTC has fraudulently failed to admit to a defect or has given a guarantee as to the properties of the Goods.

(4) The claim of the Customer to reimbursement of wasted expenditure instead of claims for damages in place of performance remains unprejudiced.

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### § 11 Liability for Indirect Damages

HTC is not liable for indirect damage resulting from a defective delivery, e.g. production stoppage, loss of profits and extra consumption of materials, and damage as a result of liability against third parties.

### § 12 Rescission of Purchase Contract

(1) Any default or non-performance of the Contract by the Customer entitles HTC to rescind the Contract, notwithstanding HTC’s rights to damages.

(2) If the purchase Contract is rescinded, the Customer is, without prejudice to the steps to be carried out in accordance with the following paragraph, obliged to in advance return the Goods delivered to HTC. HTC is entitled to have the delivered Goods collected from the premises of the Customer. (3) HTC may furthermore claim reasonable remuneration from the Customer for the deterioration, loss of the delivered Goods or for the impossibility of handing over the delivered Goods to HTC.

### § 13 Assignment

The Customer may only assign its rights and obligations under the Contract if it has received HTC’s written consent.

### § 14 Place of Jurisdiction, Applicable Law

(1) These terms shall be subject to, governed by, and construed in accordance with the Netherlands law, excluding the UN Convention relating to the International Sale of Goods. (2) The parties hereby submit to the exclusive jurisdiction of the Amsterdam Court.

### § 15 Previous agreements

(1) Unless stipulated otherwise, the written Contract concluded between the parties supersedes all previously concluded oral or written agreements. (2) Invalidation of one or more paragraphs of the Contract does not affect validity the remaining parts of the agreement.

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