

UNIFORM TERMS OF SALE AND DELIVERY FOR PAINT AND PRINTING INK, ETC

Fifteenth edition

Article 1. APPLICABILITY

Unless expressly agreed otherwise, these conditions apply to all quotations and contracts of sale and delivery relating to all goods and services put on the market and/or provided by the seller. Merely by placing an order the purchaser accepts the applicability of these conditions. General or specific Purchase Conditions operated by the purchaser are not accepted by the seller and do not apply to quotations, contracts and deliveries governed by these conditions, unless and after the seller (and, if the seller is a legal entity, a director of that legal entity) has expressly declared in writing that these Purchase Conditions are applicable to any specific transaction. Any such acceptance of the applicability of any such Purchase Conditions will never mean that these Purchase Conditions do or will apply to other transactions between the purchaser and the seller.

If and in so far as a quotation and/or contract between the purchaser and the seller contains clauses which differ from the quotations and/or contracts governed by these conditions without expressly ruling out the applicability of these conditions, the remaining provisions of these conditions remain in full force.

Article 2. QUOTATIONS, ADVICE AND ORDERS

All quotations are without engagement, though this is on the understanding that the seller is bound by the net prices in its written quotations for a period of 14 days from the date of sending of the quotation in question. All prices are quoted net cash and excluding taxes payable at the time of delivery. If an order is placed without an explicit price being agreed, then the order will be fulfilled at the current price at the time, regardless of any earlier quotation or price charged earlier. For all agreed quantities, 10 % tolerance is allowed on the understanding that the purchaser is obliged to accept and pay for 10 % more or less, subject to a minimum of 1 kg or 1 litre. The seller is entitled not to accept orders, unless it is under an obligation by virtue of a quotation it has submitted. In that case it must notify the purchaser within 5 working days of receipt of the order.

Article 3. DELIVERY

The seller has fulfilled his obligation to deliver goods by offering them to the purchaser once at the agreed time. The report of the person who arranged the transport serves as full proof of the offer to deliver if the purchaser refuses to take receipt of the goods, in which case the return freight costs, cost of storage and other necessary costs are charged to the purchaser. The offer to deliver is considered to be the same as delivery. If goods are refused, the seller will store them for 30 days after the offer to deliver and inform the purchaser in writing that the goods can be collected for cash payment. At the end of this period, the seller is entitled to sell the goods to a third party or dispose of them as it wishes.

In the case of delivery on call, if no demand period has been agreed, this will be four months with effect from the date on which the contract of sale is concluded. After four months, or after the agreed demand period, the seller is entitled to demand payment for the goods sold on call without observing any credit period.

Article 4. LATE DELIVERIES

Provided the delivery is made within reasonable limits, late delivery does not give any entitlement to compensation or to dissolve the contract. However, when the contract specifically stipulates that delivery will take place on a specific date and the purchaser has informed the seller in writing that delivery may not under any circumstances be after this date, then if the agreed period passes without the goods being delivered, the purchaser is entitled to dissolve the purchase contract without judicial intervention, without prejudicing the purchaser's right to compensation, except where the seller is prevented from delivering by force majeure. The purchaser must inform the seller of its intention to do so immediately in writing. Agreed delivery dates are target dates, unless expressly agreed otherwise.

Article 5. FORCE MAJEURE

Force majeure means: any circumstance which the seller could not have taken into account at the time of entering into the contract and as a result of which it would not be reasonable for the purchaser to demand that the contract be fulfilled in the normal way. Such circumstances include: war or threat of war, regardless of whether the Netherlands is directly involved or not; complete or partial mobilisation; a state of siege; riots; sabotage, flooding, fire or other forms of destruction at factories or warehouses and lockouts, at suppliers or producers which, for any reason whatsoever, renders them completely or partially unable to fulfil their obligations to the seller.

In the event of force majeure, the seller is entitled to dissolve the contract, without becoming liable to pay compensation.

Article 6. ADVANCE PAYMENTS/SECURITY

The seller is entitled at any time to require the purchaser to make advance payments or to provide security before it makes a delivery or a further delivery. If the purchaser fails to make the requested advance payment or to provide the requested security, any obligation on the part of the seller to deliver goods is cancelled, without prejudicing the seller's right to compensation from the purchaser for all losses, costs and interest.

Article 7. RETENTION OF TITLE

All goods delivered continue to be owned by the seller until the buyer has paid everything that he owes for this delivery or earlier deliveries by the seller to the buyer. The seller may demand immediate return of the goods, if the buyer has not fulfilled its obligations or if the seller has reason to believe that the buyer will not fulfil his obligations. The costs associated with returning the goods will be charged to the purchaser. When goods are returned, the purchaser will be credited based on the apparent value of the goods on return. The retention of title stipulated in this clause does not affect the fact that the risk attaching to the use and storage of the delivered goods, in the broadest sense of the word, passes to the purchaser from the moment of the actual delivery.

Article 8. PACKAGING

Only packaging returned within six months of the invoice date, free at warehouse, that is in good condition and for which a charge was made, entitles the purchaser to reimbursement of the packaging charge. The purchaser will be informed in writing within 30 days of its receipt if packaging is being rejected, after which this packaging will be kept available for purchaser for a week, at the end of which the seller is free to dispose of the packaging without becoming liable to pay any compensation. The seller will not take back packaging that is not charged for as a separate item on the invoice.

Article 9. INTELLECTUAL PROPERTY RIGHTS

The seller reserves the right to place its own name and trademark on the goods. The purchaser recognises that the intellectual property rights (copyright, patent rights, trademark rights, trade name rights etc.) relating to goods sold by the seller or other items provided by the seller, such as technical information sheets, advertising material etc., are vested in the seller, or in one of the companies of the group to which the seller belongs. The buyer will respect these rights and is obliged to conduct himself in accordance with the seller's instructions with regard to these matters. If the buyer discovers that one or more third parties have infringed the intellectual property rights referred to in this clause, the buyer has an obligation to inform the seller immediately. The buyer is not permitted to use any trademark or other distinguishing mark belonging to the seller as, or as part of, an internet domain name or alphanumeric telephone number. The purchaser gives the seller permission to enter all information concerning the sale and other information provided by the purchaser in a database and to use the information in the database. All rights to this database are vested in the seller.

Article 10. COMPLAINTS

1. Complaints of any nature whatsoever do not defer the purchaser's payment obligation, and complaints can only be made to the seller in writing within the time limits set out in this clause.
2. No complaint is allowed if the purchaser has processed or re-sold the goods, when a simple check on the part of the purchaser could have established the alleged defect. No complaint is allowed on the grounds of technically unavoidable differences in colour and properties.
3. Complaints relating to delivery shortfalls, incorrect appearance, weights or quantities, or complaints about packaging and the price charged can only be made within 14 days of the delivery of the goods.
4. Complaints about the quality of the delivered goods may only be made within 14 days of the purchaser discovering that the goods are faulty, and in any case never more than six months after the delivery of the goods. If a best-before date less than six months away is given on the packaging, any complaints must be submitted before that date.
5. The purchaser can only demonstrate that paint products supplied are faulty by submitting a report from the most appropriate section of the TNO (Netherlands Organisation for Applied Scientific Research); all other forms of evidence are ruled out. The cost of having the report produced are charged to the party which is found to be in the wrong. There are no binding rules of evidence for any other products.
6. The purchaser may use any means to demonstrate that printing inks supplied are faulty, on the understanding that the products will only be deemed to be faulty if they do not meet seller's current specification(s) for the product.
7. The compensation for which the seller can be held liable for the delivery of faulty goods, for documentation, processing advice and other advice, supervision and inspection, will never exceed 3 ½ x the invoice amount for delivered goods which have been found to be faulty. The seller is never liable for any form of consequential loss, whatever it is called and however it is caused.
8. The burden of proof that the goods to which the complaint relates are the same as the goods supplied by the seller rests upon the purchaser.

Article 11. PAYMENTS

1. Except where stipulated otherwise, the purchaser must pay the invoices in full within 30 days of the invoice date. Payments cannot be set off against any claims against the seller.
2. If the invoice amount explicitly includes a late payment surcharge, this is deemed to be part of the invoice amount and may only be deducted if the rest of the invoice amount is paid within 30 days of the invoice date.
3. If the purchaser does not pay the amount due on the invoice on time, he will be charged interest at 1 ¼ % of the invoice amount for each month or part month by which the payment deadline is exceeded. If at any point in time the statutory interest under article 6: 119 a. of the Dutch Civil Code is higher than the interest due under this interest clause, the seller is entitled to demand the interest due under article 6: 119 a. of the Dutch Civil Code, so the interest payable will be calculated by the method set out in that article.
4. Only payments made by the method specified by the seller are valid. The seller is free to deduct payments it receives from outstanding costs, interest due and the oldest outstanding invoices, even if the purchaser has indicated that a payment is intended to write off a particular invoice or if the amount transferred makes clear that the purchaser intended it to pay a particular invoice.
5. If the purchaser is in default by exceeding a payment deadline, the seller is entitled to recover the amount due at law, without any further demand for payment being required. The seller has the right to dissolve all contracts concluded with the purchaser, if the purchaser fails to fulfil his contractual obligation with the seller, if the purchaser has been granted a suspension of payments or if the purchaser is declared bankrupt.

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6. In addition to the amount due, the seller is entitled to claim from the purchaser all costs caused by the purchaser's non-payment, both court costs and extrajudicial collection charges.

7. Extrajudicial collection charges are payable by the purchaser whenever the seller has engaged the help of a third party to ensure collection. These charges amount to 12 % of the amount owing, being the invoice amount plus interest due under subclause 3 of this clause, with a minimum charge of € 11.50. If the purchaser pays the principal sum, plus the interest due and extrajudicial collection charges within 14 days of being sent a demand for payment in writing by a third party charged with the collection by the seller, then the extrajudicial collection charges will be 5 % of the amount owing, being the invoice amount plus interest due under subclause 3 of this clause, with a minimum charge of € 11.50.

8. The seller is not under an obligation to demonstrate that its expenditure on extrajudicial collection charges has fallen due. If the seller petitions for the bankruptcy of the buyer, the latter is liable for the costs of the petition for bankruptcy in addition to the amount owing and the associated court costs and extrajudicial charges.

Article 12. DISPUTES

Unless the parties have subjected their disputes to arbitration, all disputes (including interim injunction proceedings and requests for attachment orders) which may arise between the parties in connection with these Uniform Conditions of Sale and Delivery or in connection with later agreements, will only be adjudicated by the district court in whose area of jurisdiction the seller is established, in so far as the dispute is within the competence of the district court and the law has not declared another court competent by mandatory rules of law. All disputes will be settled in accordance with Dutch law.

**** This document is a translation. In the event of any dispute about the interpretation of an article, the text of the original Dutch version takes precedence**