



## General Terms and Conditions

EXCOR® Korrosionsschutz-Technologien und -Produkte GmbH/January 2016

### 1.1. Scope of application

1.1. These General Terms and Conditions („GTC“) apply in their present form to all business relationships of EXCOR® Korrosionsschutz - Technologien und -Produkte GmbH (hereafter “**Supplier**“) with its buyers and customers (hereafter “**Purchaser**“). These GTC shall apply only when Purchaser is a businessman within the meaning of Sec. 14 German Civil Code), a legal person under public law or a separate estate under public law within the meaning of Sec. 310 (1) German Civil Code. These GTC especially apply to all contracts regarding the sale and/or the delivery of movable goods (hereafter “**Goods**“) regardless of whether Supplier produces the Goods itself or purchases them from external suppliers. These GTC shall also apply in their respective version to any future contracts between Supplier and Purchaser regarding the sale and/or the delivery of Goods, even if Supplier does not explicitly refer to these GTC in each single case.

1.2. These GTC apply exclusively. Supplier hereby objects to any conflicting, deviating or additional general terms and conditions of Purchaser. Purchaser’s general terms and conditions are applicable only if and insofar as Supplier explicitly agrees to them, or parts of them, in writing. This agreement by Supplier is necessary in any case, for example even if Supplier is delivering Goods to Purchaser without reservation while knowing Purchaser’s general terms and conditions.

### 2. Conclusion of contract

2.1. All offers made by Supplier are subject to change without notice and non-binding unless they are explicitly designated as binding.

2.2. Purchaser’s order of Goods, irrespective of whether it has been made by phone, mail, telefax or email is considered a binding offer. Supplier is entitled to accept this offer within a period of two weeks, starting from the receipt of the offer by Supplier, subject to any deviating provision contained in the order.

2.3. Contracts between Supplier and Purchaser become effective either by written confirmation of Supplier or with the delivery of the respective Goods by Supplier.

2.4. After conclusion of the contract Purchaser is obliged to take delivery of the ordered Goods.

### 3. Delivery

3.1. Delivery shall be ex Supplier’s distribution center which is also the place of performance of the contract. On Purchaser’s demand and costs the delivery can be made to a different place of destination (sale by delivery to a place other than the place of performance). Unless agreed otherwise, Supplier is entitled to determine the way of shipment (especially transport company, shipment route and packaging). When Purchaser and Supplier have agreed on “freight paid delivery” this refers to Incoterm CPT of the Incoterms 2010.

3.2. The agreed time of delivery is the day when the Goods are to be delivered to Purchaser. In case of a sale by delivery to a place other than the place of performance Supplier is entitled to deliver the Goods up to one week before the agreed time of delivery.

3.3. Unless agreed otherwise between Purchaser and Supplier the delivery date is the latest of the following dates:

- a) confirmed date stated in the order confirmation;
- b) seven working days after fulfillment of all technical, commercial and financial conditions to be fulfilled by Purchaser;
- c) seven working days after Supplier has received prepayment that had to be effected before delivery and/or a letter of credit in favor of Supplier has been opened.

3.4. If Purchaser is in default of acceptance of the Goods, omits to perform an act of cooperation or if delivery is delayed for other reasons within Purchaser’s responsibility, Supplier is entitled to damages resulting from such event, including additional expenses, e.g. storage costs. Supplier’s right to raise other statutory claims and its right to terminate the contract remain unaffected.

3.5. Any transport insurance will be provided by Supplier only upon Purchaser’s express written request and at Purchaser’s expense.

3.6. Purchaser or any other recipient of the Goods determined by Purchaser has to check the condition of the Goods together with the freight carrier and shall direct any objection regarding loss and damage to the freight carrier. As far as losses or damages are physically noticeable, Purchaser is obliged to direct these objections to the freight carrier when the Goods are delivered. The objection will be recorded on the consignment note. As far as the loss or damage is not physically noticeable, Purchaser will disclose these objections to the freight carrier within seven days; Sundays and public holidays will not be taken into account. If Purchaser does not comply with this obligation at the time of delivery of the Goods, his statutory warranty claims remain unaffected.

#### **4. Partial deliveries/excess and short deliveries**

Supplier is to a reasonable extent entitled to partial performance by way of partial delivery. Supplier is entitled to deviate from the agreed quantity within the customary allowances regarding quality and quantity.

#### **5. Call orders**

**5.1.** If Purchaser and Supplier have agreed on partial deliveries, for example by means of a delivery schedule, Purchaser is obliged to take delivery of Supplier's partial delivery.

**5.2.** When Purchaser and Supplier agree on a certain annual purchase quantity of individually manufactured Goods by way of a framework agreement, such agreement is referred to as call-order or contract. If Purchaser does not call for an order of Goods within a period of three months the Supplier is, unless agreed otherwise, entitled to partial deliveries every four weeks and to calculate the deliveries in such way that the last delivery will be effected at the end of the annual period. Supplier will announce each partial delivery 14 days prior to delivery to Purchaser.

Invoices regarding partial deliveries become due for payment in accordance with Section 10 (Payment terms).

**5.3.** If Purchaser is even after the expiry of an appropriate additional period of time, which has been set by Supplier, in default of acceptance of the Goods, Supplier shall be entitled to withdraw from the contract or to claim compensation instead of performance.

#### **6. Custom-made products**

**6.1.** In case Purchaser is asking Supplier to produce custom-made products ("**Products**") according to Purchaser's demands, Supplier will submit an offer to Purchaser. This offer will include the estimated price for the Products. In order to generate such offer and to produce a prototype and/or an industrial sample, if necessary, Supplier will prepare a drawing of the goods according to Purchaser's demands by using CAD.

**6.2.** If it is necessary for the production of the Products to produce a prototype and/or an industrial sample beforehand, Supplier will submit an offer to Purchaser containing the estimated price for the production of the prototype and/or the industrial sample. After acceptance of this offer by Purchaser, Supplier will produce such prototype and/or the industrial sample. The acceptance of the offer with regard to the prototype and/or industrial sample shall be in writing or by email.

**6.3.** In case Purchaser is asking for changes after the production of the prototype and/or the industrial sample which are leading to the production of further prototypes and/or industrial samples, Purchaser will bear such additional costs of Supplier, resulting from the new production. This is not the case when the prototype and/or industrial sample initially produced by Supplier are not corresponding with the initial drawing of the Supplier or if the production of a further prototype and/or industrial sample is necessary for reasons for which the Purchaser is responsible.

**6.4.** Based on the drawing Purchaser releases the production of the Products in writing. In case the production of a prototype and/or an industrial sample is necessary, Purchaser releases the production of the Products on the basis of the prototype and/or the industrial sample. If Purchaser does not release the production of the goods, he is however obliged to bear the costs for the production of the prototype and/or the industrial sample.

**6.5.** When the Purchaser has confirmed the production of the Products Purchaser is obliged to take over the Products with the agreed quality and quantity.

#### **7. Passing of the risk**

**7.1.** The risk of accidental loss or deterioration of the Goods passes over to Purchaser when the Goods are handed over to Purchaser.

**7.2.** In case of a sale by delivery of the Goods to a place other than the place of performance the risk of accidental loss or deterioration of the Goods and the risk of delay passes over to Purchaser when the Goods are handed over by the Supplier to the forwarding agent, freight carrier or other carrier, person or institution commissioned by the Purchaser for the shipment.

**7.3.** In case of deviations in weight or quantity the weight determined at Supplier's production plant at the time of handover or delivery of the Goods is decisive for determining the shipping weight.

#### **8. Delivery by Supplier's supplier/impairment of performance**

**8.1.** If agreed dates of delivery are not complied with for reasons which are not in Supplier's responsibility (unavailability of the Goods), Supplier will without delay inform Purchaser about the delay and the estimated new delivery date. If the Goods are unavailable even at this

new delivery date, Supplier shall be entitled to wholly or partially withdraw from the respective contract. In such case Supplier will without delay reimburse any corresponding payment already made by Purchaser. Goods are in particular unavailable when the delivery by Supplier's own sub-suppliers is delayed, insofar as the transaction with the Supplier's sub-supplier covers the intended sale between Supplier and Purchaser, neither Supplier nor its sub-suppliers are liable for the delay or the Supplier is in the particular case not obliged to make the Goods available.

**8.2.** In case of an unforeseeable interruption of operations for which the Supplier is not responsible, in particular in the event of strike and any form of force majeure at the Supplier or its sub-supplier, the agreed delivery dates are postponed and time limits are extended by the duration of the events of default which are caused by these circumstances; in such case the Supplier is not in default. This includes all unforeseeable, inevitable or exceptional events, like for example hindrances or delays of transport, hindrances regarding delivery of and supply with energy as well as semi-finished or finished products. As far as these hindrances lead to the impossibility of performance, Supplier is entitled to withdraw from the contract, without the Purchaser being entitled to claim compensation.

## **9. Prices**

Unless agreed otherwise, prices are subject to change without notice and remain non-binding. Unless agreed otherwise, VAT, transport, packaging, customs duties as well as other fees and duties are not included in the price.

## **10. Payment terms**

**10.1.** The purchase price („Price“) is due and payable within 30 days after the date of issuing the invoice and provision of the Goods at Supplier's distribution center or – if a respective agreement has been reached – delivery of the Goods. If Purchaser is obliged to receive the Goods, the price is due for payment with the receipt of the Goods.

**10.2.** If payment is received by Supplier within 14 days after the invoice date, Supplier grants Purchaser a 2 % discount on the price.

**10.3.** After effectless expiry of the payment period mentioned in Sec. 10.1. Purchaser is in default. When Purchaser is in default, Supplier is entitled to interest on the outstanding amount at the statutory interest rate. Supplier reserves its right to claim for further damages caused by default. When Supplier has a payment claim against Purchaser, Supplier is additionally entitled to a payment in the flat amount of EUR 40 for the compensation of damages resulting from Purchaser's default. Such flat amount will be deducted from any claim for compensation which is raised by Supplier.

**10.4.** Supplier is not accepting bills of exchange with debt discharging effect.

**10.5.** If Purchaser is unable to perform its contractual obligations Supplier is entitled – subject to any other rights – to refrain from its own performance until Purchaser has effectuated its own performance or provided a security for its performance. Supplier shall be entitled to withdraw from the contract if Purchaser – even after an additional deadline set by Supplier – has neither effectuated its own performance concurrently with Supplier's performance nor provided any security.

**10.6.** In the event of deliveries abroad Supplier reserves the right to request in its offer a security for the order amount by way of letter of credit. In this case Purchaser has to open a confirmed and irrevocable letter of credit at least one week before the delivery date. The conditions for the letter of credit will be determined in Supplier's contract offer. In addition the "Uniform Customs and Practice for Documentary Credits" (ERA), published by the International Chamber of Commerce in Paris (ICC) in their respective valid version shall apply on a complementary basis – unless those conditions were expressly excluded or the parties have agreed otherwise.

**10.7.** The term of each letter of credit shall be calculated in a way that it expires two month after the agreed delivery date at the earliest. Should the letter of credit expire before delivery and acceptance of the Goods, Purchaser is one month before the expiry of the letter of credit obliged to effectuate a prolongation of the letter of credit for one month and to disclose this prolongation to Supplier. This does also apply to any further prolongation. In case Purchaser is not effectuating a prolongation of the letter of credit or omits to inform Supplier on the prolongation in a negligent or intentional manner, Supplier is entitled to satisfy its contractual claims by using the letter of credit directly.

**10.8.** The letter of credit has to be arranged in such a way that the notifying and/or confirming bank is a financial institution which is authorized to conduct banking activities in the Federal Republic of Germany. All costs of the letter of credit shall be borne by Purchaser.

## **11. Retention of title**

**11.1.** Supplier reserves its title in the sold Goods ("**Reserved Goods**") until any and all current and future claims of Supplier against Purchaser arising from sales contracts, contracts for work and materials and from the ongoing business relationship have been fully and finally settled.

**11.2.** Purchaser is obliged to take care of the Reserved Goods.

**11.3.** In the event of processing, mixing or combining of the Reserved Goods ("**Further Processing**") the Further Processing will be carried out in the name and on behalf of Supplier as manufacturer. Supplier acquires direct ownership in the new Goods. If any ownership of third parties remains in the new Goods after the Further Processing, Supplier acquires co-ownership in the new Goods in the equivalent of the value of the Reserved Goods.

**11.4.** In the event that Supplier acquires ownership in the new Goods after the Further Processing of the Reserved Goods, Supplier will transfer a co-ownership share corresponding to the value of the Reserved Goods to Purchaser under the condition precedent that the purchase price is fully paid.

**11.5.** Purchaser is entitled to sell the Reserved Goods in the ordinary course of business. For such case and in order to secure Supplier's claim for the purchase price Purchaser hereby assigns to Supplier any and all claims against the third party purchaser – in the amount of the value of the Reserved Goods – arising from the resale. Supplier hereby accepts this assignment. Supplier authorizes Purchaser to collect these assigned claims in its own name and at Supplier's account. If Purchaser is in default of its payment obligations vis-à-vis the Supplier, the Supplier is entitled to revoke the authorization to collect the assigned claims and, as a result, Supplier is itself entitled to collect the claims vis-à-vis the respective third party. In case the realizable value of the securities provided to Supplier extends Supplier's claims by more than 10 %, Supplier is obliged to release the exceeding part of its securities to the Purchaser upon its request.

**11.6.** Purchaser shall immediately inform Supplier when there will be enforcement regarding Reserved Goods, enforcement regarding Goods which are co-owned by Supplier or in claims that were assigned to Supplier. Purchaser has to inform the enforcement authority and the enforcement creditor without undue delay that Supplier has retained title in the Goods, that Supplier is co-owner of the Goods or that the claim had been assigned to Supplier, as the case may be.

## **12. Set-off**

Purchaser is only entitled to declare a set-off against any payment claim of Supplier with counterclaims which are undisputed or legally binding. In case that Supplier is in default with its performance, Purchaser's rights resulting from Sec. 13 remain unaffected.

## **13. Warranty**

**13.1.** Supplier is delivering in accordance with the product description which was provided to Purchaser before its order or which has become part of the agreement in the same way as these GTC, as well as in accordance with the agreed specification. This shall be qualified as an agreement on the legal and factual nature. Supplier is not liable for public statements of the manufacturer or third parties.

**13.2.** Deviations with regard to quality and appearance, the purity of material, color and other characteristics are not considered a defect, if and insofar as they are unavoidable. With regard to the quality of the material the norms that are customary in the industry, the standards and system of rules (particularly ISO standards, color standards and the standards of the Deutsches Institut für Normung – DIN) apply in their current version. For imported materials the respective provisions of the country where the materials are manufactured apply.

**13.3.** In case of a justified notice of defect with regard to non-processed Goods or processed Goods the Purchaser is only entitled to request a compensation delivery. In case the compensation delivery fails, the Purchaser is entitled to a price reduction or to withdraw from the contract.

**13.4.** Purchaser is obliged to inspect the Goods immediately after delivery and, if an obvious defect materializes (with regard to kind, quantity and/or quality including wrong delivery or short delivery), has to notify Supplier without undue delay. The notification of Supplier is made without undue delay when it is made within two weeks after delivery; the notification has been made in a timely manner when the notification has been dispatched in due time. If a defect occurs at a later stage, Purchaser has to notify Supplier in writing within two weeks after detecting the defect. Again, the notification has been made in a timely manner when the notification has been dispatched in due time. In case Purchaser fails to properly inspect the Goods and/or fails to provide Supplier with a notice of defect, the Supplier is not liable for the defect which has not been notified by Purchaser.

**13.5.** If the Goods are delivered to a third party which has been appointed by Purchaser, Purchaser has to take care that the third party complies with the duty to inspect the Goods to the extent and within the time limits stated in Sec. 13.4. and that the third party informs Supplier or Purchaser about the detected defects.

**13.6.** Purchaser itself is obliged to examine whether the Goods are suitable for the intended use. Supplier may provide Purchaser with samples in a customary manner.

#### **14. Limitation of claims**

**14.1.** The general limitation period for claims resulting from defects as to quality or legal defects is one year, starting from the passing of the risk. When Supplier and Purchaser have agreed on the acceptance of the Goods, the limitation period starts with the acceptance of the Goods by Purchaser.

**14.2.** If the goods are a building or an item that according to its customary use has been used for a building and has caused a defect of the building (building material) the limitation period is according to statutory law five years starting from the delivery of the goods. Specific statutory provisions regarding **(a)** actions by third parties for recovery of property, **(b)** cases of fraudulent intent of Supplier and **(c)** claims regarding recourse by Purchaser against Supplier in case of final delivery to a consumer remain unaffected.

**14.3.** The above-mentioned limitation periods also apply to Purchaser's contractual and non-contractual damage claims which are based on a defect of the Goods, unless the application of the regular statutory limitation period would in particular cases lead to a shorter limitation period. In any case the limitation periods contained in the Product Liability Act remain unaffected.

#### **15. Liability**

**15.1.** Irrespective of the legal basis Supplier is liable to pay damages only in cases of intent and gross negligence. In case of simple negligence Supplier is liable only for

**a)** Damages to life, body or health;

**b)** Damages based on a material breach of contract; however, in this case Supplier's liability is limited to the foreseeable, direct damage which is typical for the type of contract. This does also apply in cases of simple negligent conduct of any of Supplier's legal representatives or any auxiliary person of Supplier.

**15.2.** The limitations of liability contained in Section 15.1. do not apply when Supplier has acted in bad faith or when Supplier has issued a guarantee for the quality of the Goods. This does also apply to claims resulting from the Product Liability Act.

#### **16. Applicable law/place of jurisdiction**

**16.1.** These GTC and the contractual relationship between Purchaser and Supplier are subject to German substantive law. The United Nations Convention on Contracts for the International Sale of Goods (CISG) does not apply.

**16.2.** The exclusive place of jurisdiction for all disputes directly or indirectly resulting from or in connection with the contractual relationship between Purchaser and Supplier shall be the court at Supplier's registered office. This does not apply when Purchaser is no merchant who has been entered as such in the commercial register unless Purchaser has no general place of jurisdiction in Germany. However, Supplier is also entitled to bring an action against Purchaser at Purchaser's general place of jurisdiction.

#### **17. Written form/severability clause**

**17.1.** Any and all modifications and amendments to these GTC have to be writing. This does also apply to this requirement of written form. The effectiveness of any post-contractual, oral ancillary agreements that are not related to the provisions of these GTC, shall remain unaffected of this requirement.

**17.2.** In the event that any of the provisions herein are or become fully or partly invalid or unenforceable, this shall not affect the validity of the remaining provisions of these GTC and of the contract as such. The invalid or unenforceable provision shall, when it becomes invalid or unenforceable, be replaced by a valid and enforceable provision by taking into account the respective interests of both parties and with a substitute provision which comes closest to the originally intended economic purpose. The same shall apply in respect of any gap.