



General Terms of Conditions

GENERAL SALES, DELIVERY AND PAYMENT CONDITIONS for RALSTON COLOUR & COATINGS B.V., business unit of Van Wijhe Verf BV, registered with place of business at Russenweg 14, 8041 AL Zwolle, The Netherlands.

Article 1. APPLICABILITY

1. In the General Conditions 'Purchaser' is defined as every natural or legal entity with whom we have a legal relationship based on a purchase agreement or other type of contract concluded with us, as well as any natural or legal entity who desires to conclude a purchase agreement or other contract with us. 'Purchaser' is further defined as any party at whose order and expense products are supplied.
2. The term (supply of) 'Products' is defined in these General Conditions also to include the provision of services and the implementation of activities of any kind.
3. Should one or more of the stipulations in these Conditions be void or made void, the remaining stipulations shall continue to apply in full.
4. These General Conditions supplement the VVVF Conditions maintained by us. If, and in so far as these General Conditions conflict with the VVVF Conditions, these General Conditions shall prevail.
5. The Dutch text of these General Conditions shall at all times be decisive.

Article 2. TENDERS

1. All our tenders are to be considered an invitation to potential purchasers to make an offer. They therefore bind us in no way unless the tender itself explicitly and unambiguously stipulates the contrary in writing. Any order placed with us shall apply as an offer which must first be confirmed by us in writing before it can be considered accepted by us.
2. Our tenders include, but are not restricted to software, samples and suchlike as well as appendices and documents which relate to our tenders. All these goods remain our property and shall be returned to us at our request and shall not be copied or given to third parties without our explicit permission.

Article 3. CREATION OF CONTRACT

1. A contract with us goes into effect when we have confirmed our acceptance in writing of an order placed with us. A contract shall be considered to go into effect at the time we send our order confirmation.
2. An order from Purchaser placed with us in any way whatever is irrevocable for the period of seven days after we have received it.
3. The order confirmation sent by us to Purchaser shall be considered to represent the contents of the contract concluded fully and correctly. Purchaser shall be considered to agree with this order confirmation unless within seven days after the date of our order confirmation he has notified us in writing that he disagrees with said contents.
4. Any supplementary agreements and/or notification made and/or given by persons employed by us, whether or not under an employment agreement, or for third parties who work for us, shall be binding for us only if these agreements and/or notification have been confirmed in writing by executives of our firm having representative authority.





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Article 4. DELIVERY CONDITIONS FOR BASE PAINTS AND COLORANTS

1. Unless explicitly agreed otherwise in writing, Purchaser shall purchase the base paints and colorants required and agreed for the colour tinting system exclusively from us.
2. Purchaser shall use the colour tinting system only for the colorants supplied by us and for the agreed base paints which are marketed under the agreed brand name(s), whether directly or through its customers.

Article 5. USE/SECURITY

1. Unless explicitly agreed otherwise, Purchaser is prohibited from granting the use of the colour tinting system, or renting it to another paint manufacturer, whether or not at remuneration.
2. Purchaser undertakes to maintain complete secrecy with respect to the documents, data and information obtained from us, the operation of the equipment, the system and the colour formulas during as well as after the term of the contract and to reveal nothing of them to third parties unless Purchaser is required by law to make disclosures or if disclosure is necessary in order to effect Purchaser's rights in (extra)legal proceedings and/or arbitration. Purchaser is obliged to impose secrecy on any of its personnel who have obtained knowledge of information which is considered secret if, and in so far as doing so is lawful; which secrecy shall extend for both the duration of the employment contract and thereafter.
3. The computer software, data and/or information files registered and/or recorded on diskettes, CD-ROM discs, databases, etc., all this in the broadest sense of the words, which are supplied by us or already installed for the operation of the colour tinting system remain our property at all times and shall be returned to us immediately upon termination of the contract.
4. We shall grant Purchaser for the term of the contract a non-exclusive and non-transferrable and furthermore terminable right of use on the products stipulated in Article 5.3. This right of use shall be limited to use in the normal professional activities and business operations of Purchaser. These shall not include exploitation of the products stipulated in Article 5.3, whether or not on a commercial basis, nor making these products available, whether or not for remuneration, to another paint manufacturer.
5. Purchaser is furthermore not permitted to modify the products stipulated in Article 5.3 in any way, or make them public, combine and/or integrate them in another (computer) system (whether or not used by third parties) unless doing so is necessary for the use permitted.
6. Purchaser is not permitted to transfer ownership of the products stipulated in Article 5.3 to third parties, to encumber them for the benefit of third parties with any rights nor to grant to any other paint manufacturer any right of use.
7. Purchaser is not permitted to carry out any analysis on samples of our products, nor to seek information with the intention of determining their composition or engage in actions that may possibly result in the composition being determined, except with our prior written permission; Purchaser shall refrain from the sale and provision in any way of the samples or parts thereof to a third party unless permitted to do so by us in advance and in writing, including but not limited to consultants, customers, branches, subsidiaries and parent companies.





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Article 6. PRICES

1. Unless explicitly agreed otherwise in writing our prices exclude insurance, value added tax, and charges for transport, assembly and packaging.
2. We shall determine the manner of packaging and shipment. Unless agreed otherwise in writing, packaging shall not be taken back by us.
3. Our prices are based on the cost factors which apply at the time the contract is concluded, such as exchange rates, (raw) material prices, taxes, import duties and other governmental levies.
4. In the event increases occur in one or more cost factors after the date the contract is concluded but before the day of delivery, we reserve the right to charge said increases on to Purchaser without being liable in this regard to the payment of damage compensation.

Article 7. DELIVERY AND TERMS OF DELIVERY

1. The delivery times quoted by us shall under no circumstances be considered deadlines unless explicitly agreed otherwise. In the event of late delivery we must therefore be held liable in writing and we shall be granted a reasonable supplementary period for compliance.
2. The delivery times quoted by us shall begin as soon as the contract has been concluded, provided all the information is in our possession which we require for execution of the order. Delivery terms shall be extended by the time during which the Purchaser has refrained from paying any sum which has become due.
3. We are entitled to execute an order in sections in the sense that we supply products to Purchaser as they are ready. In that case we shall be entitled to bill Purchaser immediately for products already delivered.
4. Unless explicitly agreed otherwise in writing, the supply of products is ex works.
5. Should Purchaser request products to be delivered in a manner and/or place other than the usual, we may charge Purchaser for the costs involved.
6. Purchaser is obliged to take up the goods purchased within the period agreed, in the absence of which we shall be entitled to claim payment of the purchase price and/or store the goods for account and risk of Purchaser with compensation for all resulting expenses. Should no period be agreed for take-up, we shall be entitled to act as stipulated in this article if the goods are not taken up within one month after our invitation to Purchaser to do so.
7. The consignment note, delivery note or similar document, as provided with the actual delivery of the agreed goods shall be considered to represent the goods ordered in all respects, hence in terms of amount and quality as well, in a manner which is complete and binding for parties, unless a substantiated complaint is made on time as stipulated in Article 9 of these Conditions.
8. With the exception of gross negligence or intention on our part, minor non-conformity in terms of both delivery time and the quality of the goods supplied or time for the execution of the agreed work shall under no circumstances confer the right of Purchaser to damage compensation, dissolution of the contract nor to cancellation of the order in question nor any right as meant in Article 8 of these Conditions.
9. Any shipments returned to us shall be sent in all cases postage paid, with specification of the reasons. The failure to comply with these conditions shall entitle us to refuse the returned shipment and/or to send it back at the expense of Purchaser. Any shipment returned shall be at the risk of Purchaser.





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Article 8. LIABILITY

1. Purchaser shall be entitled to make claims against us only in the event that the guarantee obligations for products supplied by us is not assumed by third parties (such as manufacturers). Our liability shall in that case be limited to defects which are the result of manufacturing and material faults; the aforementioned guarantee obligation for us shall persist for a period of at most six months (starting the date of delivery), unless explicitly agreed otherwise in writing.
2. In the event of liability as stipulated in section 1, we shall be bound - at our discretion - only to the following:
 - a) supplying replacement products or parts, after receipt of the defective products or parts, or
 - b) refunding the purchase price received or crediting a bill sent to Purchaser, with dissolution of the contract without legal intervention, all to the extent the purchase price, the bill and the contract concern the faulty products supplied, or
 - c) compensating damage in a form other than stipulated here to be determined in consultation with Purchaser.
3. Should Purchaser repair and/or alter the products, or have them repaired and/or altered without our prior explicit and written permission, all guarantee obligations on our part shall lapse.
4. Subject to our obligations pursuant to the foregoing, we shall under no circumstances be obliged to pay damages in any form to Purchaser and/or others, with the exception of gross negligence or intention on our part. We especially accept no liability for consequential loss or trading loss, direct or indirect damages of whatever description, loss of profits and loss due to stoppage including that suffered by Purchaser, his subordinates and third parties working for, or at the order of Purchaser caused by any delivery or non-delivery of goods or by the goods themselves.
5. Purchaser is obliged to indemnify us for any claims made against us by third parties with respect to the execution of the contract, including all claims for damage suffered by third parties as a result of, or in connection with the use and consumption of products supplied by us or as a result of defects in products manufactured with the colour tinting system, including damage in connection with product liability to the extent the law does not prevent the loss and costs concerned from being for account of Purchaser.

Article 9. COMPLAINTS

1. Purchaser guarantees the correctness and completeness of, and is responsible for the data which he provides us.
2. Complaints of Purchaser concerning a mistaken delivery or defects in products which are perceptible from the outside shall be reported to us by Purchaser within fourteen days after delivery (or within fourteen days after the invoice date) if products were not, or could not be delivered to Purchaser. This notification shall be made by registered letter and include a clear and accurate description of the complaint and specification of the bill for which the products concerned were delivered.
3. Defects which were not perceptible from the outside at the time of delivery shall be reported to us within fourteen days of being discovered by Purchaser in the manner stipulated in section 2.
4. All claims by Purchaser on us in connection with defects in products supplied by us shall lapse in the event that
 - a. the defects have not been reported to us within the terms stipulated in sections 2 and 3 and/or in the manner stipulated there;
 - b. Purchaser fails to cooperate (adequately) with us in connection with an enquiry into the validity of the complaints;





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- c. Purchaser has used and/or maintained the products contrary to the instructions concerned or at least other than in the normal way;
- d. the complaints concern defects as stipulated in section 3 and the guarantee period stipulated in the individual contract has lapsed, or, should such a term be lacking, said complaints are first lodged after the lapse of a period exceeding 12 months after the date of bill.

Article 10. PAYMENT

1. Should Purchaser fail to make payment (in full) on time, he shall be in default without the requirement of further proof of default. In that case we shall be entitled, if and in so far as sufficient connection exists with the non-compliance of Purchaser, to suspend compliance with all our obligations to Purchaser, without prejudice to all other rights which result from the prevailing right.

Article 11. CAPITAL REQUIRED

1. In the event of (partial) capital being required, (request for) suspension of payments, (request for) bankruptcy and/or any other (foreign) insolvency arrangement, or liquidation of Purchaser or reasonable fear of this, as well as in the event of termination of the business of Purchaser, the transfer of (authority over) shares of the legal entity in which the business of Purchaser is operated, or alteration in the management or the articles of association of Purchaser, the obligations of Purchaser shall be immediately claimable. In these cases, as well as in the event of non-compliance by Purchaser with one or more of his obligations, we shall be likewise entitled - subject to the authority vested in us by law to suspend performance - to dissolve the (not yet executed part of the) contract by written notification, without prejudice to our right to compensation for damages, interest and costs.

