

Terms of delivery

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Article 1: General

1. In these General Terms and Conditions, the following terms are defined as stated below:

Supplier:
Prokol Protective Coatings BV, established in Helmond;

Customer:
The contractual counterparty of Prokol Protective Coatings BV or the party to whom Prokol Protective Coatings BV has addressed its offer or order confirmation.

Agreement:
The activities to be determined in mutual consultation between the Supplier and the Customer (the delivery of goods and/or the provision of advice) that must be performed by the Supplier and the conditions under which this must be done.

Ex-Warehouse:
Pick up at the warehouses of Prokol Protective Coatings BV.

Carriage Paid Delivery Address:
The delivery address specified by the Customer where the goods are presented by the carrier of the Supplier.

2. These General Terms and Conditions apply to all offers made and agreements concluded by the Supplier insofar as they have not been deviated from in writing. The Customer accepts the applicability of these General Terms and Conditions by the mere fact of its Agreement, even if the Customer's terms and conditions would read otherwise. The applicability of any general terms and conditions of the Customer is hereby explicitly excluded. The applicability of the Vienna Convention of 11 April 1980 (Convention on the International Sale of Goods) is excluded in its entirety.
3. Once a Customer is contracted on the basis of these conditions shall agree to the applicability of these conditions to subsequent agreements between the Supplier and the Customer.
4. Deviations from these General Terms and Conditions are subject to the express written confirmation of the Supplier.
5. Specific clauses in agreements in which these General Terms and Conditions have been declared applicable will prevail over the provisions of these General Terms and Conditions.
6. If any provision of these General Terms and Conditions is void or may be voided, the other provisions of these General Terms and Conditions remain fully applicable, while the void or voided provision or provisions of these General Terms and Conditions will be replaced with a valid provision, taking the objective and purport of the void or voided provision into account to the greatest possible extent.

Article 2: Offers, data provided

1. All offers made by the Supplier are without any obligation. The Supplier is only bound after it has accepted an order in writing. The Supplier is entitled not to accept orders, in which case it is obliged to notify the Customer of this in writing within 30 days.
2. All information regarding colours, colour combinations, applications, prices, etc., included in sales brochures, advertisements, price lists and other descriptions provided by the Supplier are only indicative and are therefore not binding on the Supplier. The same applies to samples shown or provided.

Article 3: Prices and price adjustments

1. For the Benelux only, for orders with a value of less than €1,250 exclusive of VAT or otherwise agreed on in writing, the prices quoted are based on delivery Ex Warehouse in Helmond. Any freight and/or handling costs will be charged separately. For the Benelux only, for orders with a value exceeding €1,250 exclusive of VAT or as otherwise agreed in writing, the prices are based on delivery Carriage Paid Delivery Address as stated on the order. For other countries, separate arrangements must be made.
2. If one or more cost price factors would increase after the order confirmation - even if this occurs as a result of foreseeable circumstances - the Supplier is entitled to adjust the agreed prices accordingly. The Supplier will inform the Customer of its intention to increase the prices in writing. In addition, the Supplier must state the scope of the increase and the effective date.

Article 4: Delivery, acceptance, delivery time and returns

1. The Supplier has fulfilled its obligation to deliver, and the goods have therefore been delivered if it offers the goods to the Customer at the agreed time. In the case of delivery Ex Warehouse, the notification that the goods are ready for acceptance applies as such; in the case of delivery Carriage Paid Delivery Address, the delivery report of the carrier applies as such.
2. If the Customer refuses to take delivery of the goods, the costs of the return freight, storage and other necessary costs will be borne by the Customer. In such a case, the Supplier will store the goods for a maximum period of 30 days after the offer and notify the Customer in writing that it can collect the goods against cash payment. After the expiry of this term, the Supplier will be entitled to dissolve the agreement by means of a written statement addressed to the Customer. In that case, the Customer is obliged to pay compensation. This compensation is determined on the basis of the sales price of the goods not received.

3. The Supplier is entitled to deliver in parts. The Customer will be informed of this in advance by the Supplier.
4. The stated delivery time is an indication and commences on the day on which the Supplier has accepted the order in writing. The delivery time is not a strict deadline; the mere exceeding thereof shall not constitute default.
5. Return deliveries are always made in consultation. The Supplier is entitled to charge the Customer for costs incurred in connection with a return delivery. Products that have been customised for the Customer in terms of colour or size can not be returned.

Article 5: (Telephone) orders

1. If the Supplier receives an order (by telephone) from the Customer, the Supplier can send the Customer a written order confirmation (by e-mail). The Customer is obliged to carefully check the information in the written order confirmation and to inform the Supplier in writing within 24 hours of receipt of the written order confirmation whether the information contained therein is correct and/or complete.
2. If the Supplier has not received written confirmation from the Customer within the 24-hour period as referred to in paragraph 1, the Supplier is entitled to suspend the fulfilment of its delivery obligation until the Supplier has received said written confirmation. In this case, the Supplier is also entitled to cancel the order.
3. In the event of termination as referred to in paragraph 2, the Supplier is entitled to compensation from the Customer for the costs already incurred by the Supplier. The Supplier will in no way have no liability whatsoever, and/or liable for damages to Customer for the cancellation of any order.

Article 6: Suspension and dissolution

1. The Supplier will (also) be entitled to suspend the fulfilment of its obligations or to dissolve the Agreement, if:
 - a. The Customer fails to fulfil its obligations under the Agreement or fails to do so in full.
 - b. If after conclusion of the Agreement, the Supplier, on the basis of information he has become aware of, has good reason to believe that the Customer will not be able to fulfil his obligations. In the event of justifiable reason to assume that the Customer will not perform fully or properly, suspension will be permitted if and in so far as justified by the shortcoming.
 - c. Upon entering into the Agreement, the Customer was requested to provide security for fulfilment of his obligations under the Agreement and such security has not been forthcoming or has proven to be insufficient.
 - d. In the event of any circumstances the nature of which means that performance of the Agreement is impossible or, in accordance with the criteria of reasonableness and fairness, performance can no longer be demanded, or in the event of any other circumstances in respect of which the unaltered continuation of the Agreement cannot reasonably be expected.
2. If the Agreement is dissolved, any claims of the Supplier against the Customer will become immediately due and payable. If the Supplier suspends the fulfilment of the obligations, it will not affect its statutory rights or any entitlements stipulated by the Agreement.
3. The Supplier shall at all times reserve the right to claim compensation from the Customer.

Article 7: Retention of title and security

1. Ownership of the goods only transfers to the Consumer as soon as it has fulfilled all its obligations under the agreement concluded with the Supplier regarding the sale of these or other goods.
2. The Customer is not entitled to alienate, encumber, pledge or otherwise bring the goods under the control of third parties in any form whatsoever without the written consent of the Supplier, as long as the ownership has not passed to the Supplier.
3. As long as the retention of title is in force, the Supplier will be entitled to unimpeded access to the goods. The Customer will provide the Supplier with every cooperation in order to enable the Supplier to exercise the retention of title as referred to in paragraph 1 by taking back the goods.
4. If third parties wish to attach or exercise any rights with regard to the goods delivered under retention of title, the Customer is obliged to notify the Supplier thereof as soon as is reasonably possible.
5. At the Supplier's first request, the Customer undertakes to pledge the claims the Customer has against its customers due to the delivery and/or processing of the goods delivered under retention of title to the Supplier in the manner prescribed in Section 3:239 of the Dutch Civil Code.
6. The Customer is obliged to cooperate with all reasonable measures the Supplier wishes to take to protect its property rights with regard to the goods and which do not unreasonably hinder the Customer in the normal course of its business.
7. Before and during the execution of its agreement with the Customer, the Supplier - if it has good reasons to fear the Customer will not be able to fulfil its payment obligations towards the Supplier - is entitled to set further payment conditions or to suspend the fulfilment of its obligations until the Customer has provided sufficient security for the fulfilment of its payment



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obligations within the term set for this purpose. If the Customer fails to do so, the Supplier has fulfilled its obligation to deliver by offering the goods to the Customer against simultaneous payment.

Article 8: Transfer of risk

In the case of delivery Ex Warehouse, the goods are at the expense and risk of the Customer from the moment they are ready for transport at the Supplier and the Customer has been notified of this in writing. In case of delivery Carriage Paid Delivery Address, the goods are at the expense and risk of the Customer from the moment of delivery, as appears from the delivery report of the carrier.

Article 9: Payment and collection

1. Unless otherwise agreed in writing, all payments must be made without any deduction, discount, suspension or settlement within 30 days of the invoice date into a bank account in the Netherlands to be specified by the Supplier. The Customer therefore expressly waives any right to suspension and/or settlement that may be due to it.
2. Any payments made by the Customer will first be applied to settle all interest and costs payable and secondly to settle outstanding invoices that have been payable the longest, even though the Customer has stated that the payment relates to a later invoice.
3. The Customer, from the due date, owes interest on an overdue instalment amounting to 1.25% per month or a part thereof, without a notice of default being required, as well as the judicial and extrajudicial collection costs related to the collection, the latter being determined at 15% of the relevant amount, with a minimum of €225, exclusive of VAT.
4. The provisions of the previous paragraph do not deprive the Supplier of its power to suspend further performance of the agreement or to dissolve it, insofar as it has not yet been performed, by means of a written statement, without prejudice to its right to claim compensation.
5. In the event of bankruptcy or suspension of payments on the part of the Customer or the shutdown or liquidation of its company, all claims of the Supplier against the Customer are immediately due and payable.

Article 10: Complaints and warranty

1. Complaints regarding the delivered goods can only be handled if the Customer has followed all applicable user instructions. No complaint can be processed if the Customer has proceeded to processing or onward delivery while it could have easily discovered the alleged defect. Nor can complaints be handled on the basis of technically unavoidable deviations in colours and properties of the product.
2. Complaints regarding incorrect layout, weights, numbers or packaging, etc. must be submitted in writing and by registered letter within 8 days of delivery of the goods, failing which the Customer is deemed to have approved the goods in question.
3. Complaints regarding the quality of the delivered goods must be submitted in writing and by registered letter within 14 days of the Customer discovering the defectiveness of the delivered goods, but in no case later than 6 months after delivery of the goods, subject to forfeiting all rights. If an expiry date is stated on the packaging, the complaints must in any case be submitted before that date, subject to forfeiting all rights.
4. Complaints about colour deviations can no longer be considered after application. Complaints of whatever nature do not suspend the Customer's payment obligations.
5. The Supplier guarantees the soundness of the products it supplies in the sense that these products meet the specifications specified by the Supplier in this regard.
6. Unless the Supplier immediately acknowledges the complaint in writing, the Customer is obliged, under penalty of forfeiting all rights, within 8 days of submitting the complaint to instruct the public legal entity TNO or the private limited company Nebest COT B.V. or the private limited company Kiwa Assurance B.V. to make an analysis of the delivered product. If the analysis shows that the product does not have the properties that it should have according to the product description, the Supplier will reimburse the costs of the investigation in full. The Customer has to prove that the goods to which the complaint relates are the same as those delivered by the Supplier. If the Customer uses a product from the Supplier for a purpose other than that for which it is suitable according to the product description, any warranty lapses. In that case, the Customer uses the product entirely at its own risk.
7. For a product developed by the Supplier for a specific purpose at the request of the Customer, the Supplier will state the specifications of the product in detail. In that case, the Supplier guarantees for a period of two years after delivery that the product meets the specified specifications, provided that the Supplier has advised this product to solve the problem formulated by the Customer.

Article 11: Liability

1. The Supplier can be held liable for direct damage only. The Supplier can never be held liable for any indirect damage.
2. Direct damage is understood to mean exclusively: the costs for delivering a replacement copy of the product sold and delivered.
3. Indirect damage means any damage that does not fall under the definition of direct damage as referred to in paragraph 2 of this article. Indirect damage includes (but is not limited to) consequential damage, loss of turnover, loss of profit, lost savings, damage due to business stagnation, damage due to delay, damage due to incorrect or unauthorised use of the product by the Customer,

repair costs, clean-up costs and reputational damage.

4. If the Supplier is liable for compensation, such compensation will be limited to a maximum of the amount of the payment to be made by the Supplier's insurer, or to one time the invoice amount of the products supplied by the Supplier, with a maximum of EUR 10,000 (in words: ten thousand euros).
5. The limitations of liability contained in this article will not apply if any damage is caused intentionally or is the result of deliberate recklessness on the part of the management of the Supplier and/or the persons charged with the management of the Supplier's business.
6. In derogation from the statutory time limits, the time limit for all claims against the Supplier shall be one year.
7. The Customer is not permitted to use, trade or put into circulation any packaging originating from or delivered through the Supplier other than with the original contents which were supplied to the Customer.

Article 12: Force majeure

1. The Supplier has the right to invoke force majeure, which is understood to mean circumstances that prevent the fulfilment of the agreement with the Customer and which cannot be attributed to the Supplier. Force majeure includes, but is not limited to government measures, a virus outbreak or pandemic, strikes, factory sit-ins, a lack of necessary raw materials and other items or services required to achieve the agreed performance, unforeseeable stagnation at suppliers or other third parties on which the Supplier depends and all other matters and matters beyond the Supplier's control.
2. During force majeure, the Supplier's obligations to deliver and other obligations will be postponed. If the force majeure period lasts longer than 6 months, both parties are entitled to dissolve the agreement without there being any obligation to pay compensation in that case.
3. If the Supplier has already performed in part, he is entitled to a reasonable compensation for the costs of that performance, which he has incurred until the moment of the occurrence of the force majeure.

Article 13: Confidentiality

1. Both parties will keep secret all confidential information obtained from the other party or from another source within the framework of their Agreement. Information is considered confidential if the other party has communicated its confidential nature or if such confidentiality ensues from the nature of the information.
2. If the Supplier is under an obligation, either pursuant to a statutory provision or a court order, to disclose confidential information to any third parties designated by law or by the competent court, and the Supplier cannot invoke any privilege, either statutory or recognised or permitted by the competent court, the Supplier will not be under any obligation to pay compensation or indemnify and the other party will not be entitled to dissolve the Agreement on account of any resulting damage.

Article 14: Applicable law and disputes

1. All legal relationships to which these General Terms and Conditions apply and all agreements resulting therefrom are exclusively governed by Dutch law.
2. All disputes between the Supplier and the Customer - including those that are regarded as such by only one party - will be settled by the competent court in the East Brabant court district.

Article 15: Changes

1. These terms and conditions have been filed with the Chamber of Commerce in whose district the Supplier has its registered office. The most recently filed version or the version that applied when the Agreement was concluded shall apply.
2. In the event of any conflict or differences in interpretation between translations of the text of these General Terms and Conditions, the text drawn up in Dutch will prevail.

