



**GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY OF**

**PROFILTRA PIGMENTS B.V.**

with its registered office in Almere,

Listed with the Chamber of Commerce

under file reference number 53599632

**1. Definitions**

Unless explicitly indicated otherwise, the following terms in these general terms and conditions are defined as follows:

- 1.1 General terms and conditions: these general terms and conditions.
- 1.2 Supplier: the user of the general terms and conditions.
- 1.3 Other party: the company that enters or wishes to enter into an agreement with the supplier.
- 1.4 Company: legal or natural entity, other than a consumer.
- 1.5 Agreement: agreement for the delivery of products by the supplier to the other party.
- 1.6 Products: the products and services offered by the supplier.
- 1.7 Intellectual property: all intellectual property rights and related rights, such as copyrights, trademark rights, patent rights, design rights, trade name rights, databank rights and neighbouring rights.
- 1.8 Personal details: personal details as defined in the Personal Data Protection Act.
- 1.9 In writing/written: on paper, by e-mail or fax.
- 1.10 Website: the website(s) run by the supplier.

**2. Applicability**



2.1. These general conditions apply to all offers and all agreements with regard to the sale and delivery of products by the supplier. The acceptance of an offer or placing an order means that the other party has accepted the applicability of these terms and conditions.

2.2. These general terms and conditions can be deviated from in writing only.

2.3. The applicability of the general and/or special terms and conditions of the other party is explicitly excluded, unless the supplier has accepted the applicability of such conditions in writing.

2.4. These general terms and conditions also apply to all agreements with the supplier with regard to which the supplier engages third parties for the execution thereof.

2.5. Provisions varying from these general terms and conditions the applicability of which has been agreed by the supplier and the other party for a separate agreement, are not applicable to other offers, orders, quotes and agreements between the supplier and the other party.

2.6. If part of these general terms and conditions is or has been declared invalid or non-binding, or if any of the provisions in these general terms and conditions cannot be invoked, the parties continue to be bound by the remaining part. The parties will replace the invalid or non-binding part by provisions that *are* valid and binding and of which the legal consequences, in view of the contents and purport of these general terms and conditions, correspond to those of the invalid or non-binding part as much as possible.

2.7. The supplier reserves the right to change or supplement these terms and conditions from time to time. The most recently filed version, as at the time the agreement was concluded, applies.

### 3. Offers/formation of the agreement

3.1. Every offer made by the supplier is subject to contract and must be deemed a coherent whole, unless explicitly deviated from in writing.

3.2. If the other party places an order, the agreement is not formed until the supplier accepts it in writing or until the supplier makes a start with the execution thereof.



3.3. Samples or models provided or shown in catalogues or on the website are for indicative purposes only, without the goods owing having to correspond to these.

3.4. The supplier is not obliged to make subsequent deliveries of products supplied before, if these products have been taken out of production or out of the suppliers' sales programme.

3.5. Unless evidence to the contrary is produced, the administrative records of the supplier are decisive and binding with regard to the contents of the agreement and these records will serve as evidence for the agreement.

3.6. The other party guarantees that the information stated by the other party in the request or order to the supplier is correct and complete.

3.7. The supplier is at all times entitled to verify an order in advance or to refuse it, without having to state reasons, in which instance the other party will be notified by the supplier as soon as possible.

3.8. The supplier is not obliged to abide by his offer if the other party, in accordance with the principles of reasonableness and fairness and generally accepted standards, should have understood that the offer, or part thereof, contains an apparent error or mistake.

#### 4. Prices

4.1. All prices for agreements with companies are exclusive of turnover tax (VAT) and any other government levies imposed at the time the agreement is concluded, unless explicitly stated otherwise.

4.2. All prices and rates of the supplier are subject to programming and typing errors.

4.3. In the event of agreements with companies, assembly or installation work and provisions will be at the expense of the other party.

4.4. Changes in purchase prices, wage costs, costs of materials, social and government charges, transport costs, insurance premiums and other costs in relation to the agreed performance, give the supplier the right to change the price. If the supplier changes the price within three months of conclusion of the agreement, the other party will be entitled to terminate the agreement on that ground, without the supplier being obliged to pay any compensation.



## 5. Delivery

5.1 Unless stated otherwise, the delivery of products by the supplier will be subject to the provisions as laid down in the most recent version of the Incoterms, as adopted by the International Chamber of Commerce (ICC).

5.2. Delivery is ex warehouse of the supplier or otherwise at the address of the other party, unless explicitly agreed otherwise.

5.3. All (delivery) periods stated by the supplier serve as approximates and are determined on the basis of the data and circumstances known to the supplier at the time that the agreement was entered into. The agreed delivery period never serves as a final deadline, unless explicitly agreed otherwise. In the event of late delivery, the other party must furnish the supplier with a written notice of default and allow him a reasonable term to fulfil his obligations at a later time.

5.4. The supplier is entitled to deliver the sold goods in parts. This does not apply if the delivery does not represent an independent value. If the goods are delivered in parts, the supplier will be entitled to invoice each part separately.

5.5. The other party is obliged to take delivery of the sold goods when made available to him. Furthermore, the other party must provide sufficient loading and unloading facilities and ensure that waiting times are reduced to a minimum when making the delivery. Should the other party refuse to take delivery or fail to provide information or instructions required for the delivery, any additional costs will be payable by the other party, including storage costs.

5.6. The risk in respect of the delivered goods passes to the other party at the time of delivery, unless otherwise agreed.

5.7. Insofar as dispatch and transport of the products have been agreed between the supplier and the other party, they will be at the expense and risk of the other party, also if ownership is yet to transfer to the other party.



6. Defects, time limits for lodging complaints and warranty

6.1. The other party must inspect the delivered products upon delivery. In the course thereof, the other party must verify if the delivered goods comply with the agreement, i.e.:

- a. if the correct goods have been delivered;
- b. if the delivered goods correspond with that which has been agreed in terms of quantity and numbers;
- c. if the delivered goods meet the requirements which may be attached to normal use and/or commercial purposes.

6.2. The other party must notify the supplier of any defects within thirty days of delivery, or at least after detection was reasonably possible, in writing, stating the reasons and invoice details.

6.3. Complaints about invoices must be submitted to the supplier by the other party in writing, within 8 days of the invoice date.

6.4. If the other party fails to report any defects or make any complaints within said terms, the complaint will not be processed and all rights will lapse.

6.5. Actions and defences in respect of all agreements, based on facts that would justify the assertion that the delivered goods do not comply with the agreement, are barred following a period of one year following delivery.

6.6. Each claim of the other party in respect of the products delivered further lapses if:

- a. the products cannot (or no longer) be identified as products originating from the supplier;
- b. the defects are (partly) caused by normal wear and tear, improper and/or incorrect handling, use and/or storage of the products;
- c. If the supplier has not been given the immediate opportunity by the other party to investigate the complaint and remedy the situation;
- d. if the other party fails to (promptly or properly) fulfil any obligation which the other party is subject to;



6.7. If any visible defects or shortcomings are detected, the other party must note this on the delivery note, consignment note and/or any other transport document. In addition, the other party is obliged to notify the supplier of these defects and/or shortcomings within three days of delivery.

6.8. If it has been demonstrated that the products do not conform to the agreement, the supplier has the option to either repair and/or replace the relevant products by new products when returned or to refund the invoice value. These general terms and conditions fully apply to the new delivery.

6.9. Goods cannot be returned without the prior consent of the supplier. Return shipments made without the consent of the supplier will be kept in the possession of the supplier at the expense and risk of the other party.

## 7. Payment and invoicing

7.1. Invoices of the supplier must be paid within thirty days of the delivery date, unless agreed otherwise. This payment must be made by bank transfer, unless agreed otherwise.

7.2. The payment date is the value date on which the supplier receives the payment.

7.3. Payment must be effected in the agreed currency, without reduction or setoff claims.

7.4. If the other party fails to pay within the agreed term, he will be in default with effect from the invoice due date, without a prior notice of default being required.

7.5. As from the due date, the other party owes the monthly statutory interest on the outstanding amount.

7.6. Claims regarding the amount due on invoices do not suspend the payment obligation

7.7. Any payments made by the other party will first be applied to reduce costs, subsequently to any interest due and finally to reduce the principal sum and accrued interest.

7.8. In the event of late payment, the other party owes the extrajudicial costs incurred for collection, which costs amount to 15% of the principal sum, subject to a minimum of € 250.



7.9. In the event of late payment, winding-up, bankruptcy or a moratorium on payments of the other party, all payment obligations of the other party become immediately due and payable, regardless of whether the supplier has sent an invoice or whether pre-financing has taken place, while the supplier is entitled to suspend the further execution of the agreement or to decide to terminate the agreement, all this without prejudice to the right of the supplier to claim compensation from the other party.

7.10. The supplier is at all times entitled to set off everything that can be conditionally claimed from the other party, due and payable or otherwise, against any counterclaim the other party may have against the supplier. In the event that the supplier's claim against the other party is not yet due and payable, the supplier will not exercise his right to set off, unless the other party's counterclaim is attached, is otherwise made subject to recourse, subjected to a restricted real right or if the other party transfers his counterclaim under particular title. If possible, the supplier will notify the other party of the fact it will exercise his right to set off.

7.11. The other party is obliged to provide proper and satisfactory security in the format as indicated by and on the demand of the supplier and to supplement this for the fulfilment of all his obligations, if so required. As long as the other party has failed to do so, the supplier will be entitled to suspend his obligations.

7.12. If the other party fails to comply with a request as referred to in the previous paragraph within 14 days of a relevant demand, all his obligations become immediately due and payable.

#### Article 8: Liability

8.1 In the event that the supplier is liable, his liability is limited to the stipulations in this provision.

8.2 The supplier is not liable for damage, regardless of the nature thereof, due to the supplier acting on incorrect and/or incomplete information made available by or on behalf of the other party.



8.3 The supplier is only liable for direct damage suffered by the other party as a result of an attributable failure of the supplier to fulfil the agreement, as well as for the damage which the supplier is liable for pursuant to the law, custom or generally accepted standards.

8.4 The supplier can never be held liable for indirect damage, which is also taken to mean: lost profits, missed savings, damage caused by business interruptions, aesthetic damage, loss of reputation and all other consequential damage.

8.5 The compensation for direct damage caused by the supplier will never exceed the compensation for the relevant invoice amount for the other party's instruction, that is, up to that part of the invoice amount which the liability relates to.

8.6 The other party indemnifies the supplier against third-party claims in connection with the goods supplied by the supplier.

8.7 The restrictions detailed in this article with regard to liability do not apply if the damage can be attributed to intent or gross negligence on the part of the supplier or his managerial subordinates.

## 9. Force majeure

9.1. In the event the supplier is unable to fulfil his obligations towards the other party due to a non-attributable failure in the performance (force majeure), the supplier, without judicial intervention and at his discretion, will be entitled to suspend the performance of the agreement or to terminate the agreement, without being obliged to pay any compensation.

9.2. Force majeure on the part of the supplier is taken to mean every circumstance beyond the control of the supplier, fully or partially impeding the fulfilment of his obligations towards the other party, or as a result of which the fulfilment of such obligations cannot reasonably be expected from him, regardless of whether that circumstance could have been foreseen when the agreement was concluded. Such circumstances include: strikes, lockouts, fire, machinery breakdowns, stagnation or the failure of the supplier's suppliers to fulfil their obligations, transport problems with the supplier's own or third-party transport and/or measures imposed by any governmental organisation, as well as





the lack of any permit available from the authorities, work stoppages, loss of the parts to be processed, import or trading bans.

9.3. Insofar as the supplier, at the time of occurrence of a situation of force majeure, has already fulfilled part of his obligations under the agreement, or will be able to do so, and the part performed or to be performed has independent value, the supplier will at all times be entitled to invoice the part performed or to be performed separately. The other party will be obliged to pay this invoice as if it were a separate agreement.

9.4. If the situation of force majeure continues for more than three months, both parties will be entitled to terminate the agreement. The supplier will in that case not be liable to pay any compensation.

## 10. Intellectual property

10.1. All intellectual property rights with regard to (advertising) messages of the supplier, including the website, are vested in the supplier.

10.2. The other party and (other) users of the website acknowledge these rights and guarantee that they will refrain from any infringement thereof, which is taken to mean, among other things, making copies of the website other than technical copies needed for the use of the website (loading and visualisation).

10.3. The website contains hyperlinks to other websites that are maintained by other parties. The supplier does have no control whatsoever of the information stated on these websites and does not accept any liability for damage or loss in any way arising from the use of these websites.

10.4. The supplier cannot be held responsible for the pictures, descriptions and other information material on the website and in other (advertising) messages of the supplier issued by third parties.

10.5. The supplier will make every effort to ensure that the goods supplied by him do not infringe any third-party intellectual property right, but is unable to guarantee this. Should it nevertheless be established by law that any goods delivered by the supplier infringe any third-party intellectual



property rights, the supplier, at his exclusive discretion, will replace the goods in question with goods that do not infringe the aforementioned rights, acquire a right of use for them, or take the goods in question back at repayment of the purchase price, minus the customary depreciations. The other party will not be able to invoke this provision if he fails to notify the supplier of this fact within a reasonable period.

10.6. In the event of delivery of software, the other part will only be given user rights, without ever becoming owner of the software. The copyrights of the software are vested in the manufacturer.

## 11. Termination of the agreement

11.1. In the event that the other party fails to (promptly or properly) fulfil any obligation from an agreement with the supplier and has received a written notice of default from the supplier, as well as in the event of bankruptcy, the other party being placed under guardianship or in the event of discontinuation or wind-up of his company, the supplier, without judicial intervention, without any obligation to pay compensation and without any prejudice to any other rights of his, will be entitled to terminate the agreement. In those instances, all claims the supplier has against the other party will become immediately due and payable.

11.2. If the supplier is unable to properly fulfil his obligations from an agreement with the other party, either fully or partially or temporarily or permanently, due to one or more circumstances which are not attributable to the supplier, which include the circumstances stated in article 9, the supplier will be entitled to terminate the agreement.

11.3. The supplier is furthermore entitled to suspend fulfilment of his obligations or terminate the agreement if, after concluding the agreement, he hears of circumstances that give him reason to believe that the other party will not fulfil its obligations.

## 12. Retention of title

12.1. The goods supplied by the supplier to the other party remain the property of the supplier until full settlement of the amounts owed by the other party. Notwithstanding actual delivery, ownership of



the products delivered only transfers to the other party after full settlement of everything the other party owes under any agreement with the supplier. This includes payment of any interest and costs, also of orders completed previously.

12.2. If the supplier, by virtue of paragraph 1, claims the goods which are subject to a retention of title and arranges for these goods to be repossessed, or supplies these to a third party *traditio longa manu*, the claim of the supplier against the other party regarding these goods, up to the total amount owed by the other party to the supplier, will be reduced by the market value of the goods that have been repossessed, until the moment of repossession. The market value is equal to the purchase sum that has been or could be realised by the private or public sale of the repossessed goods to third parties.

12.3. Subject to the provisions of article 12.4, the other party is not permitted to charge, resell, dispose of, hire out, make available, pledge or otherwise encumber the goods delivered, prior to ownership thereof having been passed on to him. Up to the actual transfer of ownership has taken place, the goods delivered may only be used in accordance with their designated use as determined, or as could be reasonable expected, upon conclusion of the agreement, subject to other provisions and obligations.

12.4. The other party is only entitled to sell or deliver the goods supplied to third parties, which goods are owned by the supplier, insofar as this is required within the other party's normal business operations. In the event of resale, the other party is obliged to stipulate retention of title from his buyers.

12.5. The other party, on demand of the supplier or of (legal) entities to be appointed by the supplier, undertakes to make the goods delivered available and hereby grants an irrevocable mandate to access the location where the goods delivered are stored in order to repossess the goods that are subject to retention of title.

12.6. In the event of attachment, a (provisional) moratorium on payments or bankruptcy, the other party must make the bailiff levying the attachment, the administrator or receiver immediately aware of the (property) rights of the supplier.



13. Privacy /processing of personal details

13.1. The supplier processes the personal details of (natural persons working at) the other party within the framework of the following objectives:

- a. the conclusion and execution of the agreement;
- b. the ability to contact the other party;
- c. market research, sales activities and direct marketing to be conducted by the supplier for the products of the supplier and companies affiliated to him.

13.2. The supplier must take the appropriate technical and organisational measures to protect the personal data from being lost or any form of unauthorised processing.

14. Product recalls

14.1. The other party is obliged to cooperate in product recalls if, in the opinion of the supplier, it is necessary to recall the goods delivered.

15. Applicable law; competent court

15.1. All legal relationships between the supplier and the other party are governed by the laws of the Netherlands.

15.2. Disputes between the supplier and the other party will be settled exclusively by the competent court of the locality in which the supplier has his place of business, unless the supplier, as the claimant or applicant, chooses the competent court of the other party's place of residence or place of business.