

## **General Terms and Conditions of HELIO BEIT Pigmentpasten GmbH**

### **I. General – Scope of Application**

1. Our deliveries, services and offers are made exclusively on the basis of these General Terms and Conditions for Deliveries and Services (hereinafter referred to as “GTC”); we do not accept any conflicting terms and conditions of the customer or terms and conditions of the customer which deviate from our GTC unless we have explicitly consented to their application in writing. Our GTC also apply where we execute delivery to the customer without reservation while being well aware of the customer’s conflicting or deviating terms and conditions.
2. Our GTC only apply in our relationships with entrepreneurs (§ 14 BGB – German Civil Code), legal persons under public law and special funds under public law (“öffentlich rechtliche Sondervermögen”).

### **II. Contract Conclusion – Bidding Documents**

1. Our offers are without engagement, subject to change and subject to prior sale unless they are explicitly referred to as binding. The customer order is deemed to constitute a binding offer for contract conclusion. Unless otherwise provided for in the order, we are entitled to accept this offer for contract conclusion within a period of two (2) weeks from delivery (“Zugang”) of the offer.
2. For us, the documents provided by the customer (specifications, drawings, samples, models or the like) constitute the decisive basis for the order, the customer is liable for the correctness of their contents, the technical feasibility and the completeness of these documents; we are under no obligation to check these on our part.
3. The customer is obliged to provide together with his orders or order confirmations all necessary information which we are in need of to ensure complete delivery.

### **III. Prices - Payment**

1. Unless stated otherwise in the order confirmation, our prices are EXW (Incoterms 2010), i.e. ex our works in Cologne, inclusive of standard packaging.
2. Our prices are exclusive of the statutory VAT. The VAT at the rate valid at the date of the invoice will be shown as a separate item in the invoice.
3. Unless stated otherwise in the order confirmation, our invoices are due and payable net without deduction within 30 days after issue of the invoice.
4. The customer is only entitled to set off counterclaims if they arise out of the same legal relationship or if and to the extent that such counterclaims have been acknowledged, are undisputed or have been established by a final non-appealable court decision (*res judicata*). In addition the customer is only entitled to withhold payments if the customer’s counterclaims arise out of the same legal relationship or if and to the extent that the customer’s counterclaims have been acknowledged, are undisputed or have been established by a final non-appealable court decision (*res judicata*).
5. We are entitled to assign any claims arising out of our business relationship.

### **IV. Delivery Time**

1. Unless explicitly agreed otherwise, the indicated delivery times are approximate only. The period for delivery only starts to run when all details of the order execution have been clarified and both parties have mutually agreed on the conditions of the order. Any agreed delivery dates will be postponed accordingly.
2. Compliance with our delivery obligation is subject to the proper and timeous fulfilment of the obligations incumbent on the customer. In addition, we are entitled to postpone delivery if and to the extent that the customer does not fulfil due payment obligations resulting from previous deliveries unjustified.
3. We are entitled to make partial deliveries if and to the extent that they are deemed to be reasonably acceptable for the customer when considering the customer’s interests.

4. If we are prevented from timeous delivery due to force majeure, industrial action, riots, official measures taken by the authorities or other disturbances of the operations in our enterprise or that of our pre-suppliers for which we cannot be made responsible and which demonstrably are of considerable relevance, or due to any other unforeseeable, inevitable and serious events, the delivery time will be extended adequately. If delivery is rendered impossible due to any such event, our obligation to deliver will lapse without any liability for damages. If the customer demonstrates that the subsequent fulfilment is of no interest for him any longer due to the delay already occurred, the customer is entitled to rescind the contract without any liability for damages. If the impediment lasts longer than two months, either contracting party is entitled to rescind the contract with regard to such part of the contract as has not yet been fulfilled. The occurrence of a force majeure event or other disturbing event must be notified to the other party without undue delay ("unverzüglich").
5. If we are in default of delivery, the customer is entitled to give us an adequate grace period in writing and upon its unsuccessful expiry to rescind the contract. A grace period is not required if we definitively and seriously refuse delivery or if it concerns a fixed term contract („Fixgeschäft“) within the meaning of sec. 323 para 2 no. 2 of the German Civil Code (BGB) or sec. 376 of the German Commercial Code (HGB) or special circumstances exist, taking the interests of both parties into account, which justify immediate rescission.
6. If we are in default of delivery, we can only be held liable for damages according to the provision of no. VIII of these GTC.

#### **V. Passing of risks - Dispatch - Packaging**

1. Unless explicitly stated otherwise in the order confirmation, delivery EXW, i.e. ex our works in Cologne, is deemed to have been agreed between the parties. This also applies in the case that we have, by way of exception, agreed to pay the costs of transport or if we have advanced such costs for the customer.
2. If dispatch of the goods has been agreed between the parties, the risk of accidental perishing or accidental deterioration of the goods will pass to the customer upon hand-over of the goods to the forwarder, carrier or other person or company entrusted with the execution of the dispatch. This also applies in the case that we have agreed to pay the costs of transport or if we have advanced such costs for the customer. If there is a delay in dispatch or hand-over of the goods the cause of which is attributable to the customer, the risk will pass to the customer from the day when the goods are ready for dispatch or we have given notice of such readiness for dispatch to the customer.
3. If acceptance ("Abnahme") of the goods has been agreed between the parties, the statutory regulations governing acceptance under the German law of contracts for work and services ("Werkvertragsrecht") will apply.
4. If the customer is in default of acceptance or if the delivery is delayed for reasons which are attributable to the customer, we will be entitled to claim compensation of the damage incurred as a result thereof, including additional expenses, if any. In these cases, we will store the goods at the customer's risk and invoice the customer for such storage.
5. The customer is not allowed to use rented containers within his own factory or to lend them to third parties. The customer is obliged to completely empty the containers and return them clean and undamaged using the original references and numbers for free to us. If the containers are not returned to us within one month, we may charge a reasonable utilization fee for each beginning month. Damage claims shall remain unaffected. In the event of damage or loss, we are entitled, at our discretion, to require payment of the reinstatement value or supply of equivalent replacements in return of surrender of the damaged or lost containers; in event of damage we are also entitled to require reimbursement of repair costs.

#### **VI. Retention of Title**

1. The products delivered by us remain our property until receipt of all payments due from the business relationship with the customer. This also applies under a current account relationship („Kontokorrentverhältnis“) with the customer; in these cases the reservation shall relate to the acknowledged balance.

2. The customer is obliged to treat and to store the goods which have been delivered subject to retention of title properly, in particular the customer is obliged to take out adequate new value insurance for these goods against the risk of fire, water damage and theft.
3. The customer is not entitled prior to full payment of the secured claim to pledge the goods delivered subject to retention of title in favour of third parties or transfer title to them by way of security without our explicit written consent. In the case of attachment or seizure by a third party or any other third-party intervention, the customer is obliged to notify us in writing without undue delay ("unverzüglich"). If we bring an action against the third party and if to the extent that the action was successful and the third party is unable to reimburse us for the judicial and extra-judicial costs incurred by us, the customer will be liable for such costs.
4. The customer is entitled to resell the delivered products in the ordinary course of business; the customer already now assigns to us all claims in the amount of our final invoice amount (including VAT) which are owing to the customer by his own customers or third parties from the resale, and that regardless of whether or not the product has been resold without or after processing. The customer continues to be entitled to collect the claims even after their assignment. This is without prejudice to our right to collect the claims ourselves. However, we undertake not to collect the claims as long as the customer fulfils his payment obligations using the proceeds earned, the customer is not in default of payment and no petition in insolvency has been filed with regard to the customer's assets. However, if any of the aforesaid occurs, we are entitled to request the customer to disclose to us the assigned claims as well as the identity of the corresponding debtors, to provide us with all information required for the collection, to hand over to us the relevant documents and to inform the debtors (third parties) of the assignment.
5. The processing or transformation by the customer of the goods delivered by us subject to retention of title is always deemed to be carried out for us. If the goods delivered by us subject to retention of title are processed with other items/ substances which do not belong to us, we will become co-owner of, and share title to the new item in the proportion of the value of the goods delivered subject to retention of title to that of the other processed items/ substances at the time of the processing. The customer will keep the co-ownership item so generated in custody for us. Apart from that, any item generated by the processing is subject to the same provisions as the goods delivered subject to retention of title.
6. If the goods delivered subject to retention of title are inseparably mixed with other items/ substances or combined with them in the way that they become integral part of a unitary item, we will become co-owner of, and share title to the new item in the proportion of the value of the goods delivered subject to retention of title to that of the other mixed or combined items/ substances at the time of the mixture or combination. If the combination or mixture is made in the way that the item of the customer is to be considered as the main item, the customer will be deemed to have agreed under these GTC already to transfer to us proportionate co-ownership. The customer will keep the co-ownership item so generated in custody for us. Apart from that, the item generated by way of combination or mixture is subject to the same provisions as the goods delivered subject to retention of title.
7. In case the goods delivered subject to retention of title perish or are damaged, the customer hereby assigns to us in advance by way of additional security any claims to indemnification payments by the insurer existing in this context, and that in the amount of our final invoice amount (including VAT) of our claims.
8. We are obliged to release, upon the customer's request, the security granted to us to the extent that the realizable value of the security exceeds the claims to be secured by more than 10 %; we will determine those parts of the security which we are willing to release in our sole discretion.
9. To enforce the rights from the retention of title, it is not necessary to rescind the contract.

## **VII. Warranty Rights**

1. If we are obliged to deliver goods or provide services on the basis of and in accordance with drawings, specifications, samples, requirements etc. of the customer, the latter bears the risk regarding their suitability for the intended use.
2. If we provide written or oral information how to process or use our products, technical recommendations, leaflets or other information such information are given to the best of our knowledge, but however non-binding. Such information in particular represent no guarantees or warranties („Zusicherungen“) and shall not relieve the customer from its duty to execute own tests or examinations on the suitability of the products for the intended processes and purposes.

3. The warranty rights of the customer are subject to compliance by the customer with his obligation to timeously and properly inspect the goods and give notice of defect, if any, according to § 377 HGB (German Commercial Code).
4. If acceptance ("Abnahme") or examination ("Erstmusterprüfung") has been agreed with the customer, the customer can no longer give notice of defects which the customer could have detected when carefully inspecting or examining the goods.
5. We must be given the opportunity to check and verify the defect which the customer has complained about on site. In case of unauthorized rework and / or improper handling the customer shall have no warranty claims for such rework or improper handling and the consequences thereof.
6. If the delivered product is defective and the customer has duly fulfilled his obligation to inspect the product and give notice of defect, the customer is entitled to the statutory rights as is provided for hereinafter:
  - (i) First of all, we have the right, at our choice, to either remedy the defect or deliver a non-defective product to the customer as agreed in the contract ("Nacherfüllung" / subsequent performance). This is without prejudice to §§ 439 subs. 3, 635 subs. 3 German Civil Code (BGB). The customer is obliged to leave us sufficient time and opportunity to provide such subsequent performance within our usual working hours. We are obliged to pay all expenses which are necessary to realize subsequent performance including but not limited to the costs of transport, routing, personnel and material provided that the goods are actually defective. If the customer's request for defect remedy proves to be unjustified, we are entitled to claim from the customer compensation of the costs incurred by as a result of the request. Where we were under no obligation originally to install/ assemble the product, the subsequent performance ("Nacherfüllung") does not comprise the deinstallation/ disassembly of the defective product nor its reinstallation/ reassembly. We are entitled to make the subsequent performance dependent on customer's payment of the purchase price claimed. The customer is however entitled to withhold an adequate part of the purchase price. In the case of substitute delivery or new construction/ manufacture in the case of a contract for works and services ("Werkvertrag"), the customer is obliged to return the defective product to us upon request.
  - (ii) If the subsequent performance fails or we refuse to provide subsequent performance, the customer is entitled, after expiry of an adequate grace period, to rescind the contract or reduce the purchase price. If the defect is a minor one or if the product has already been resold, processed or transformed, the customer is only entitled to reduce the purchase price.
  - (iii) For the Customer's claims for damages or reimbursement of futile expenses no. VIII of these GTC shall apply.
7. The limitation periods are governed by no. IX of these GTC.

## **VIII. Liability**

1. Subject to the provisions of no. VIII.2, we are only liable for contractual, non-contractual and other claims for damages, regardless of the legal cause, including but not limited to claims for defects, default or impossibility of performance, culpa in contrahendo and tort, in the case of wilful or grossly negligent conduct including wilful or grossly negligent conduct of our representatives and vicarious agents or other persons employed by us in the performance of our obligations ("Erfüllungsgehilfen"). Beyond that, we are also liable in the case of simple negligence including simple negligence of our representatives and vicarious agents or other persons employed by us in the performance of our obligations ("Erfüllungsgehilfen"), for any damage resulting from the breach of a fundamental contractual duty ("wesentliche Vertragspflicht"), i.e. a duty the fulfilment of which is an indispensable condition for the proper execution of the contract and on the fulfilment of which the customer is hence generally allowed to rely ("Kardinalpflicht"). If and to the extent that we are not liable because of a wilful breach of duty, including wilful conduct of our representatives and vicarious agents or other persons employed by us in the performance of our obligations ("Erfüllungsgehilfen"), our liability for damages is limited to the typical foreseeable damage.
2. The exclusions and limitations of liability stipulated in no. VIII.1 above do not apply to claims for damages based on an injury of life or limb or health and to claims of the customer under the German Product Liability Act ("Produkthaftungsgesetz") and the special German statutory regulations to be applied in the case of final delivery of the goods to a consumer (§§ 478, 479 BGB – German Civil Code). The preceding exclusions and limitations of liability do not apply either if

and to the extent that we have fraudulently concealed a defect or given a guarantee for the quality of the goods.

3. No. VIII.1 and VIII.2 also apply if the customer claims for reimbursement of futile expenses incurred by him instead for damages.
4. If and to the extent that our liability for damages is excluded or limited, this also applies with regard to the personal liability for damages of our employees, personnel, staff, representatives, vicarious agents and other persons employed by us in the performance of our obligations ("Erfüllungsgehilfen") provided that such liability is based on the same legal cause.

#### **IX. Statute of Limitation**

1. Notwithstanding § 438 subs. 1 no. 3 German Civil Code (BGB) and § 634 a subs. 1 no. 1 and § 634 a subs. 1 no. 3 German Civil Code (BGB), customer's claims for defects in quality or title become time-barred after expiry of one year from the time when the limitation period has begun to run according to the German statutory provisions.
2. Mandatory German statutory provisions regarding limitation periods remain unaffected. Hence the reduced limitation period regulated in no. IX.1 do in particular not apply for claims based on an injury of life or limb or health, for claims based on wilful or grossly negligent conduct and for claims based on the assumption of a guarantee. In addition the longer limitations periods pursuant to § 438 para. 1 no. 1 German Civil Code (BGB) (third party rights in rem), §§ 438 para. 1 no. 2, 634 a para. 1 no. 2 German Civil Code (BGB) (buildings ("Bauwerke"), building materials ("Baustoffe"), building components ("Bauteile") as well as a work the result of which is the planning of a building); §§ 438 para. 3, 634 a para. 3 German Civil Code (BGB) (fraud) and § 479 German Civil Code (supplier recourse) shall remain unaffected.
3. The limitation periods which apply in the case of defects in quality or title according to no. IX.1 and IX.2 apply *mutatis mutandis* to any concurrent contractual and extra-contractual claims for damages of the customer which are based on a defect of the goods sold under the contract. If and to the extent that the application of the statutory regulations governing limitation would cause the concurrent claims to become time-barred at an earlier point in time, such concurrent claims are deemed to be subject to the statutory limitation period. In any case, the statutory limitation periods under the German Product Liability Act ("Produkthaftungsgesetz") remain unaffected.
4. If and to the extent that the limitation period for claims is shortened according to no. IX.1 - IX.3, such a shortening also applies *mutatis mutandis* to any claims of the customer asserted against our legal representatives, employees, personnel, staff, agents and vicarious agents and other persons employed by us in the performance of our obligations ("Verrichtungsgehilfen" / "Erfüllungsgehilfen") provided that such claims are based on the same legal cause.

#### **X. Right of Rescission – Right of Termination**

1. The customer is only entitled to rescind the contract for a breach of duty on our part other than a defect if we can be made responsible for such breach of duty.
2. If the contract in question is a contract for work and services in which the contractor undertakes to bring about a particular result ("Werkvertrag") or a contract for work and services in which the contractor supplies the material from which non-fungible movable items are to be made ("Werklieferungsvertrag"), the right of the customer to freely terminate the contract according to §§ 651, 649 German Civil Code (BGB) is excluded.

#### **XI. Place of Jurisdiction – Applicable Law – Place of Delivery and Performance – Partial Nullity**

1. If the customer is a merchant the place of jurisdiction for all disputes arising from the contractual relationship is our business seat in Cologne. However, we can also sue the customer at his domicile.
2. The contractual relationship is governed by the law of the Federal Republic of Germany with the exception of the regulations of the United Nations Convention on Contracts for the International Sale of Goods (CISG – UN sales law).
3. If not expressly stated otherwise in the order confirmation the place of delivery and performance ("Erfüllungsort") is our business seat in Cologne.
4. If any provision of these GTC or any provision in any other agreement should be or become invalid, this will be without prejudice to the validity of all other provisions and agreements.