

General Terms and Conditions for the Creative Colours Division of Marabu GmbH & Co. KG / Status 01 March 2022

I. Validity

1. We, Marabu GmbH & Co KG („Marabu“), deliver exclusively under these General Terms and Conditions (GTC). These shall apply to all our deliveries in the creative colours sector to entrepreneurs and other persons within the meaning of § 310 BGB (German Civil Code), unless explicitly agreed otherwise.
2. The buyer's GTC shall not apply in any case, even if we do not object to a reference by the buyer to his GTC, regardless of the form and time. The buyer's GTC can only become effective for us if we have explicitly accepted them. Deliveries do not constitute recognition of the buyer's GTC.
3. Acceptance of the delivery shall be deemed as acceptance of these GTC.
4. Our GTC apply to all transactions concluded with us, thus also to transactions in the area of e-commerce and also to any subsequently concluded transactions between us and the buyer, even if no reference is made to them in the individual case.

II. Conclusion of contract

1. Orders of any kind as well as other agreements, supplements and amendments to an order shall only be considered accepted when they have been confirmed by us; the receipt of the delivery note by the buyer or execution of the delivery shall also be considered as confirmation.
2. Our offers are subject to change.
3. If we enclose documents – such as illustrations, drawings, weights and dimensions – with an offer, these shall only apply approximately unless they are explicitly designated as binding.
4. The provisions of § 312i para. 1 sentence 1 nos. 1 to 3 and sentence 2 BGB (German Civil Code) do not apply to contracts concluded with us in electronic business transactions (e-commerce).

III. Prices Germany & Austria – Europe/World Germany & Austria:

1. The prices according to our price list at the time of delivery shall apply unless a fixed price has been explicitly agreed.
2. The minimum order value is € 100, unless otherwise stated in the offer. The prices are for shipments with a net value of goods (invoice value less VAT) of more than € 250, including postage, freight (except area freight or cartage) and packaging costs. Orders with a net value of goods between the minimum order value of € 100 and the exemption limit of € 250 will be charged with pro rata postage and packaging costs of € 12. For orders below the minimum order value of € 100, – a handling fee of € 17, – will be charged. Further additional costs for express and scheduled deliveries incurred at the request of the purchaser shall be borne by the purchaser.
3. In the case of orders for articles which are only offered in the stated packaging units, rounding up will take place if necessary.

Europe/World:

1. The prices according to our price list at the time of delivery shall apply in each case, unless a fixed price has been explicitly agreed. The minimum order value is € 1,500. For orders below this value, a processing fee of € 30, – will be charged.
2. All deliveries shall be made ex our works (D-74321, Bietigheim-Bissingen, Fritz-Lieken-Straße 7-9). The current Incoterms shall apply. Deliveries shall be made in the packaging units specified in the current price lists. Order quantities below this will be rounded up to the next higher packaging unit.

IV. Terms of payment

1. Our invoices are payable within 30 days of the invoice date. If payment is made within 8 days of the invoice date, the buyer is entitled to deduct a 2% discount from the net value of the goods.
2. Invoices must be objected to in writing within 8 days of receipt. This objection must contain the invoice date and number. If no objection is received by the end of the aforementioned period, the invoice shall be considered accepted.
3. We are entitled to make deliveries on a cash on delivery basis.
4. We reserve the right to accept bills of exchange and cheques. In any case, acceptance shall only be on account of payment. The costs of discounting and collection shall be borne by the buyer. We do not assume any liability for timely presentation and protesting. No discount shall be granted for payment by bill of exchange.
5. Payments shall be deemed to have been made when we can finally dispose of the amount.
6. If the buyer is delayed with a payment from one of the existing contracts for more than 10 days or if he has stopped his payments or if there has been a significant deterioration in his financial circumstances, our claims from all existing contracts with the buyer shall become due for payment immediately; deferrals or other deferrals of payment – also through the acceptance of acceptance bills – shall end; we may demand the provision of security for deliveries not yet executed.

V. Delivery time

1. Delivery dates and times are only binding if they have been explicitly designated by us as binding.
2. Our obligation to deliver shall be suspended as long as the buyer is in arrears with an obligation.
3. Force majeure (e.g. pandemic-related restrictions), operational disruptions, delivery delays on the part of upstream suppliers, shortages of raw materials, energy, labor, strikes, lockouts, difficulties in procuring means of transport, traffic disruptions, decrees of governmental authorities or the lack of official or other permits required for the execution of the delivery shall release us from the obligation to perform for the duration of the disruption and to the extent of its effect. We shall not be responsible for the aforementioned circumstances even if they arise during our already existing delay.
4. If unforeseen events within the meaning of paragraph 3 significantly change the economic significance or the content of our performance or have a significant effect on our operations, we shall be entitled to withdraw from the contract. In this case, the buyer shall only be entitled to claims for restitution; any further claims, in particular claims for damages, shall be excluded.
5. We are entitled to render partial services; partial services may be invoiced separately in each case.
6. If we are in default with performance, the buyer may withdraw from the contract if he has set us a reasonable period of grace and this period has expired fruitlessly. If the delay is limited to a partial performance, the buyer may only withdraw from the entire contract under the above conditions if he has no interest in the partial performance. Claims for damages are limited in accordance with section VII. no. 1 lit. b).

VI. Shipping, transfer of risk, waste product responsibility, liability of the importer in third countries

1. The risk shall pass to the buyer at the latest when the goods are dispatched. This also applies to partial deliveries or if we cover the shipping costs or take care of the transportation of the delivery. In all cases, the goods are shipped from our factory or warehouse at the risk of the buyer. No liability is assumed for damage or loss during transport.
2. If dispatch is delayed due to circumstances for which we are not responsible, the risk shall pass to the buyer on the day on which the goods are ready for dispatch.
3. Unless the buyer has issued special shipping instructions and these have been confirmed by us, the shipping method and route shall be chosen by us. We are not obliged to insure the deliveries.
4. The fulfilment of the national waste product responsibility (based on the EU directives for electrical appliances 2012/19/EU and packaging 94/62/EG) is the responsibility of the buyer if Marabu is not domiciled in the country. Marabu strives to comply with the national regulations on product responsibility under waste law despite the fact that there is no legal obligation to do so. If this is the case, Marabu shall inform the buyer thereof. If Marabu does not expressly inform the buyer of this, the buyer shall continue to be responsible for the implementation of the national regulations on product responsibility under waste law.
5. Insofar as we ship products to countries outside the EU, it is the responsibility of the buyer as importer to check whether the products delivered by us are in compliance with the regulations of the importing country or the country of destination specified by the buyer regarding their import or use. We do not accept any liability for breaches of duty in this respect. The buyer is obliged to release us from any obligation arising from such breaches of duty.

VII. Retention of title

1. We retain title to the goods delivered by us until full payment of all claims – including future claims – arising from the business relationship, including all ancillary claims and until the bills of exchange and cheques issued for this purpose have been honored. In the event that our claims are included in a current account, the retention of title shall apply to the respective balance. The retention of title extends to the products created by processing, combining or mixing. If our goods are processed, combined or mixed with other material, we shall acquire co-ownership of the resulting product in the ratio of the value of our goods to the value of the other material. The transfer of possession shall be replaced by the fact that the buyer shall keep these products for us free of charge with the diligence of a prudent businessman.
2. All claims arising from the sale of goods to which we are entitled to ownership rights shall be assigned to us by the buyer here and now – if applicable in the amount of our co-ownership share in the sold goods – as security. We hereby accept the assignment. Until revoked, the buyer is authorized, in addition to us, to sell or process the goods in the ordinary course of business.
3. The goods subject to retention of title may neither be pledged to third parties nor assigned as security. The buyer must inform us immediately if third parties seize the goods subject to retention of title.
4. We are obliged to release securities to which we are entitled at the request of the buyer, subject to selection, to the extent that the value of the securities exceeds the claims to be secured by more than 20%.
5. If an application for the opening of insolvency proceedings has been filed for the buyer, the contractual partner's authority to resell, process, combine or mix the goods shall expire. If the buyer or the (provisional) insolvency administrator nevertheless sells the goods, we shall be entitled to the full proceeds thereof. Sections 170, 171 InsO (German Insolvency Act) are hereby waived. The buyer or his (preliminary) insolvency administrator shall not be entitled to collect the claim assigned to us.

VIII. Warranty/ Liability

1. We shall be liable for material defects in the goods as follows:
 - a) The delivery item shall be repaired or replaced at our discretion if it is unusable or its usability is significantly impaired as a result of a circumstance that demonstrably occurred prior to the transfer of risk. The buyer shall return replaced parts to us. The warranty for rectification and subsequent deliveries shall be the same as for the delivery item. If a rectification or subsequent delivery is not made within a reasonable period of time taking into account our delivery possibilities, the buyer shall be entitled to a reduction in price or to withdraw from the contract at our discretion. Further claims of the buyer, in particular for consequential damages, are excluded. Liability for consequential damages beyond this, in particular for lack of economic success, for damages caused by slight negligence, for indirect damages as well as other financial losses and for damages from claims by third parties is also excluded.
 - b) The limitations and exclusions of liability do not apply to the breach of essential contractual obligations, to explicitly guaranteed characteristics and in the event of injury to life, limb or health. In the event of a breach of essential contractual obligations, any claim for damages shall be limited to the damages typical for the contract and foreseeable by us and to ten times the value of the goods.
 - c) The buyer is obliged to inform us in writing of special risks, atypical damage possibilities and unusual damage amounts before conclusion of the contract.
 - d) The buyer shall inspect the goods immediately upon receipt, insofar as this is feasible in the ordinary course of business, and, if a defect becomes apparent, notify us immediately, i.e. within one week, in writing or electronically legible. If the buyer fails to make this notification, the goods shall be deemed to have been approved, unless the defect is a hidden defect which could not be detected during the inspection. The buyer must notify us of a hidden defect immediately after discovery, i.e. within one week, in writing or electronically readable. In all other respects, §§ 377 ff. HGB (German Commercial Code) shall apply.
 - e) We shall only be liable for public statements, e.g. in advertising, if we have initiated them and the contractual partner's decision to purchase is demonstrably due to the statement.
 - f) Warranty claims are subject to a limitation period of one year from the date of delivery.
 - g) We do not accept any liability for damage caused by natural wear and tear, incorrect or negligent handling, improper storage or unsuitable or improper use or by failure to observe our instructions for processing or use.
2. Returns of goods, including those which are to be made on the basis of a justified complaint, require our consent. Otherwise, acceptance may be refused. Each return must be accompanied by delivery documents and precise details from the invoice.

IX. Other rights of the contracting parties

1. If unforeseen events within the meaning of section V. no. 3. occur and, as a result, the economic significance or the content of the performance changes significantly, if such events have a significant effect on our business or if the agreed performance proves impossible after conclusion of the contract, we shall be entitled to make an appropriate adjustment to the contract. Insofar as an adjustment of the contract is not economically reasonable, we shall be entitled to withdraw from the contract in whole or in part.
2. We are entitled to withdraw from the contract if an application has been made to open insolvency proceedings against the buyer's assets.
3. The buyer may withdraw from the contract if the performance incumbent upon us becomes impossible before the transfer of risk due to a circumstance for which we are responsible.

X. Transferability of rights

The buyer may transfer his rights under this contract in whole or in part to third parties only with our prior written consent.

XI. Offsetting, retention

Offsetting with counterclaims against our claims is only permissible if the counterclaim is undisputed and has been legally established. The buyer is only entitled to exercise the right of retention insofar as it is based on the same contractual relationship.

XII. Data protection

We are entitled to process and store the data received about the Buyer in connection with the business relationship within the meaning of the Federal Data Protection Act and the DSGVO.

XIII. Place of performance, place of jurisdiction

1. The place of performance for our obligations is our respective factory or the contractual workshop, for the buyer's obligations our registered office.
2. The exclusive local and factual place of jurisdiction for all claims arising from the business relationship, including claims arising from bills of exchange and cheques, is Stuttgart. However, we may also bring an action before the court having jurisdiction in accordance with the statutory provisions.

XIV. Final Provisions/ Severability Clause

1. The law of the Federal Republic of Germany shall apply exclusively. Laws on the international purchase of movable goods, in particular the United Nations Convention on Contracts for the International Sale of Goods (CISG) of 11.04.1980 are excluded.
2. Should any of the above provisions be void, this shall not affect the remaining provisions. Insofar as a provision is void or the contract or these GTC contain a loophole, those provisions shall be deemed agreed which the contracting parties would have agreed in accordance with the economic objectives of these GTC if they had known of the voidness of the provision or the loophole.