# Terms and Conditions of Sale for the Marabu GMBH & Co.KG creative colour product range/Version 01/10/2020

## I. Application

1. We (the "Supplier") deliver exclusively under these delivery and payment terms and conditions. These apply to all our deliveries, unless explicitly agreed otherwise in writing between the parties to the contract. The legal provisions in force shall also apply.
2. Under no circumstances shall the Purchaser's terms and conditions of sale apply, even if we do not explicitly oppose a reference by the Purchaser to its terms and conditions of sale – regardless of the format and the time of this. The Purchaser's terms and conditions of sale are only applicable for us if we have explicitly acknowledged this in writing. Under no circumstances do the deliveries constitute acknowledgement of the Purchaser's terms and conditions of sale.
3. Acceptance of the delivery constitutes acceptance of these delivery and payment terms and conditions.
4. Our delivery and payment conditions also apply to transactions subsequently conducted between us and the Purchaser, even if no explicit reference is made thereto.

## II. Signing of the contract

1. Orders are only considered to be accepted when they have been confirmed by the Supplier in writing. In order to be legally valid, verbal and telephone orders, as well as the agreements, amendments and modifications to an order, require the written confirmation of the Supplier; the receipt of the delivery note by the Purchaser or the execution of the delivery also constitute confirmation.
2. Supplier quotes are not binding.
3. If the Supplier encloses documents such as illustrations, drawings, weight and size information with a quote, these documents only have an approximate value, unless explicitly indicated as binding in writing.

## III. Price Germany / Europe/world

**Germany, Austria**:

1. The applicable prices are the prices indicated in the Supplier's price list at the time of delivery, insofar as no other final price has been explicitly agreed.
2. For shipments with a net goods value (invoiced value, minus VAT) over €250, the price is expressed including shipping, freight (with the exception of surface or cartage freight costs) and packaging costs. For orders with a net goods value between the minimum order value of €100 and the shipping costs exemption limit of €250, proportional packaging and shipping costs of €10 are applicable. For orders below the minimum order value of €100, a €15 processing fee is applied. The other additional fees for express deliveries or deliveries on a specific date made at the request of the Purchaser shall be paid by this party.
3. In principle, the delivery is carried out in the packaging units indicated. Order quantities are rounded up.

**World**:

1. The applicable prices are the prices indicated in the Supplier's price list at the time of delivery, insofar as no other final price has been explicitly agreed. The minimum order value is €1,500. For orders below this value, a €25 processing fee is applied.
2. All deliveries are sent from the Supplier's plant (D-74321 Bietigheim-Bissingen, Fritz- Lieken-Straße 7-9). The current Incoterms are applicable. The deliveries are carried out in the packaging units indicated in the current price list. Order quantities are rounded up to the next packaging unit.

## IV. Payment conditions

1. The Supplier's invoices are payable within 30 days of the invoice date. In the event of payment in 8 days following the invoice date, the Purchaser is authorised to deduct 2% from the net goods value.
2. Any disputes must be submitted in writing within eight days of receipt of the invoice. The invoice date and number must be indicated for the dispute. If no objection is submitted within the aforementioned deadline, the invoice is considered to have been accepted.
3. The Supplier is authorised to carry out deliveries against repayment.
4. The Supplier reserves the right to accept bills of exchange and cheques. In any case, acceptance is only provided upon payment. The discount and recovery costs are the responsibility of the Purchaser. The Supplier does not provide any guarantee with regard to the timely presentation and the notice of protest. In the case of payment by bill of exchange, no discount is granted.
5. Payments are always considered to have been completed when the amount is definitively available to the Supplier.
6. If a payment by the Purchaser under existing contracts is over 10 days past due, if it is unable to meet its liabilities, or if its financial position has significantly deteriorated, the Supplier receivables that stem from all the existing contracts with the Purchaser shall become immediately payable, the postponement or other payment deferrals – also through the acceptance of bills of exchange – shall be terminated and the Supplier may demand security deposits for any pending deliveries.

## V. Delivery deadline

1. The delivery dates and deadlines are only provided for information purposes.
2. The Supplier's delivery obligation is suspended for as long as the Purchaser has overdue payments.
3. The cases of force majeure, disruption to operation, failure by our suppliers to meet their delivery deadlines, shortages of raw materials, energy, labour, strikes, lockouts, supply difficulties linked to transportation methods, traffic disruption, decision by the public authorities or failure by the authorities or other institutions to provide the authorisation necessary for the performance of the delivery shall release the Supplier from its obligation to provide the service for the duration of the impediment and to the extent of the impact thereof, insofar as the disruption to the Supplier is not due to an intentional act or gross negligence for which it is responsible. The aforementioned circumstances may not be attributed to the Supplier if they occur at the time of a pre-existing delay.
4. Insofar as the unforeseen events cited in paragraph 3 may considerably modify the economic scale or the content of the service, or may considerably impact our operation, the Supplier is authorised to withdraw from the contract. In this case, the Purchaser only has restitution rights; other rights, such as rights to damages, are excluded.
5. The Supplier is authorised to perform partial services; the aforementioned services may be invoiced separately.
6. If the Supplier is delayed in providing the service, the Purchaser may withdraw from the contract, if it agreed a reasonable subsequent execution deadline with the Supplier, and if this deadline has passed without successful provision of the service. If the delay is limited to part of the service, the Purchaser may only withdraw from the entire contract under the aforementioned conditions if it has no interest in the partial service. The right to compensation in the event of delay and rights to damages in exchange for the service are limited to the damages provided for by the Supplier at the time of signing the contract and, in terms of value, up to twice the net value of the goods. This does not apply if the delay or non-execution of the service by the Supplier is due to an intentional act or gross negligence.

## VI. Shipment, transfer of risk

1. The risk is transferred to the Purchaser upon shipment of the goods at the latest. The same shall apply for partial deliveries when the Supplier assumes the delivery costs, or when it transports the delivery. In any event, the shipment is sent from the Supplier's plant or warehouse at the risk of the Purchaser. No liability is assumed with regard to the damage and loss of goods during transport.
2. If the shipment is delayed due to circumstances out of the control of the Supplier, the risk is transferred to the Purchaser on the day of provision of the shipping notice.
3. If no specific shipping instructions have been provided by the Purchaser and if this has been confirmed by the Supplier, the shipping method and route shall be chosen by the Supplier. The Supplier is not required to carry out delivery.

## VII. Retention of ownership

1. The Supplier shall retain ownership for the goods delivered by it until full payment of all outstanding – even future – debt linked to the commercial relationship, including all additional debt and until the deposit of bills of exchange and cheques provided for this purpose. In the event of suspension of a pending invoice, the retention of ownership applies for the corresponding balance. The retention of ownership extends to products manufactured through transformation. In the event of the transformation, combination or mixing of the Supplier's goods with other materials, the Supplier shall acquire joint ownership of the product created in this way, based on the proportion of the value of the Supplier's goods in relation to the value of the other material. The transfer of ownership is compensated by the fact that the Purchaser shall freely store these products for the Supplier, with the diligence of a professional retailer.
2. As a guarantee, the Purchaser hereby transfers all the receivables that stem from the sale of the goods to which the Supplier has ownership rights, for the Supplier's proportion of joint ownership of the goods sold.
3. If the goods for which ownership is retained are seized by a third party, the Purchaser must immediately inform the Supplier thereof, providing a photocopy of the seizure report.
4. The Supplier agrees to release all securities at the request of the Purchase, subject to selection, insofar as the value of the securities exceeds the value of the receivables to be guaranteed by more than 20%.
5. If a request to launch insolvency proceedings is submitted against the Purchaser, the authorisation of the contractual partner to resell, transform, combine or mix the goods shall expire. If a sale, etc. is still carried out by the Purchaser or the legal (temporary) administrators, the full profits of such an action shall be transferred to the Supplier. This is a departure from art. 170 and 171 of German insolvency law. The Purchaser or its legal (temporary) administrators are not authorised to recover the receivable transferred to the Supplier.

## VIII. Guarantee/liability

1. The Supplier is responsible for the major defects affecting the goods, as follows:

a) The goods delivered shall be subject to correction or a new delivery, at the discretion of the Supplier, if the object is unusable or significantly damaged due to circumstances that are proven to have occurred prior to the transfer of risk. The replacement parts are the property of the Supplier. The guarantee provided for the replacement parts and the subsequent deliveries is assumed in the same way as for the goods of the initial delivery. If a correction or a new delivery is not made within a reasonable time frame, considering the Supplier's delivery possibilities, the Purchaser is authorised to demand a discount or withdraw from the contract, at its discretion. The other rights of the Purchaser, in particular with regard to consequential damage, are excluded. This does not apply in the event of fraud, gross negligence, or breach of the Supplier's essential contractual obligations, as well as in the event of endangering life, health or a risk of bodily harm. In the event of a breach of essential contractual obligations, a potential right to damages is limited to compensation for the damage provided for in the context of this type of contract. In the case of consequential damage, in particular in the event of a lack of economic success, indirect damage, other financial damage, and damage linked to third-party rights, no liability is assumed. Prior to signing the contract, the Purchaser is required to inform the Supplier, in writing, of any specific risks, potential for atypical damage and exceptional amounts.

b) If the purchase constitutes a commercial transaction for the two parties, the Purchaser must inspect the goods immediately after receipt, insofar as this is feasible in the context of the normal conduct of operations. If any defects are observed, it must immediately inform the Supplier of this. If the Purchaser fails to inform the Supplier of the defect, the goods shall be considered as accepted, except in the case of a defect that is not visible at the time of the inspection. In addition, art. 377 et seq of the Commercial Code (HGB) are applicable.

c) The Supplier may refuse a correction and a new delivery insofar as the Purchaser has not fulfilled its obligations.

d) For public declarations such as registration, the Supplier is solely responsible if it has requested this and if the purchase decision of the contractual partner clearly relies upon the declaration.

e) The guarantee rights are shall expire twelve months after delivery.

f) The Supplier assumes no responsibility for a guarantee in relation to the damage caused by normal wear, incorrect or negligent handling, non-compliant storage and inappropriate or non-compliant use, or failure to follow our transformation or usage instructions.

2. All returns of goods require our agreement, even returns to be made due to a legitimate complaint. In the absence of this agreement, we may refuse to accept the goods. Returns we have approved are subject to credit for their fair value, with the deduction of inspection, repair or repackaging costs, and processing fees of up to 20% of the net value of the goods. Products that are no longer delivered as part of the range and/or which can no longer be purchased are not eligible for credit or exchange. All returns must be accompanied by the delivery documents and the specific invoice information.

## IX. Other rights of the Supplier and the Purchaser

1. If the unforeseen events cited in section V.3 occur and if, due to this, the economic scale or the content of the delivery is considerably modified, if such events have a considerable impact on the Supplier's operation or if the agreed service is found to be impossible after the signing of the contract, the Supplier is authorised to make a reasonable adjustment to the contract. If an adjustment to the contract is not acceptable from an economic point of view, the Supplier is authorised to fully or partially withdraw from the contract.
2. The Supplier is authorised to withdraw from the contract if a request to launch insolvency proceedings is lodged or if legal or extra-judicial compensation proceedings are launched with regard to the Purchaser's assets.
3. The Purchaser may withdraw from the contract if the service for which the Supplier is responsible is impossible due to events that occur prior to the transfer of risk and which are attributable to the Supplier.
4. The right to damages due to impossibility is limited to the damages foreseen at the time of signing the contract and, in terms of value, up to ten times the value of the goods. This does not apply if the Supplier caused the impediment through an intentional act or gross negligence.
5. Paragraphs 3 and 4 above are both applicable in the event of incapacity.
6. Insofar as the rights and demands of the Purchaser are not explicitly cited in these Terms and Conditions of Sale and Delivery, they are excluded insofar as acceptable by law.

## X. Transferability of rights

The Purchaser may only transfer all or part of its rights under this contract to third parties with the prior, written approval of the Supplier.

## XI. Compensation, retention

Compensation with counterclaims or the exercise of the right of retention against the Supplier's receivables are only authorised if the counterclaim is uncontested and legally declared.

## XII. Data protection

We are authorised to process and save the Purchaser's data obtained in the context of the commercial relationship under the terms of the German data protection law.

## XIII. Place of execution, competent jurisdiction

1. The place of execution of the Supplier's obligations is the location of the plant concerned or the partner workshops of the Supplier; for the Purchaser's obligations, it is the location of the Supplier's registered office.
2. Stuttgart is the exclusive competent jurisdiction for all the objectives that stem from the commercial relationship, including the objectives that stem from the bills of exchange and cheques. However, the Supplier may also take action before the competent court for the Purchaser's registered office.

## XIV. Final provisions, safeguard clause

1. German law is exclusively applicable, to the exclusion of the conflict of laws rules and the United Nations convention on the international sale of goods (CISG).
2. If the individual provisions above are deemed invalid at any time, the other provisions shall not be affected. If one of the provisions is declared fully or partially invalid, the contractual partners shall immediately endeavour to achieve the economic success sought by the invalid provision through another method authorised by law.
3. All agreements must be set out in writing. The written format is also required if the necessary declaration is provided in one of the written formats corresponding to art. 126b of the German Civil Code (BGB), for example by fax or email. The verbal declarations of the Supplier's employees are only binding when confirmed by the Supplier.

**Version 01/10/2020**

The current version of the terms and conditions of sale is available on our website at www.marabu.de.